

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellants,

vs.

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

Respondents.

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Clerk of Supreme Court
Supreme Court No. 81704

District Court No.
A-17-763397-B

JOINT APPENDIX

Vol. 68 of 85

[JA015503-JA015752]

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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 760

EXHIBIT 760

JA015503
014225

TX 102-014765



Analysis of the Potential Input File Issue for the October 2008 National DNC Registry Reassign Process

Based on our discussion yesterday afternoon, we believe that it is possible that the file that Lockheed Martin sent to PossibleNOW for processing on October 7th, 2008 did not have up-to-date DNC registration dates.

According to our discussion yesterday, the October 7th, 2008 file should have contained phone numbers with DNC registration dates up to October 6th, 2008. When we analyzed the file we found that the most recent DNC registration date in the file was September 1st, 2008.

Based on this finding, we performed the following analysis:

1. We analyzed the file that Lockheed Martin sent to us on November 5th for the November processing run. The latest DNC registration date in that file was November 4th.
2. That indicates that the latest date we should have had in the October file was October 6th (since we received the file on October 7th). Therefore, the October file sent to us appears to have been missing DNC registrations from the period of September 1st through October 6th.
3. We analyzed the November file to identify numbers on the National Registry at that time that had a DNC registration date of September 1st, 2008 through October 6th, 2008.
4. Once we had those numbers, we compared them to the list of actual numbers that PN returned for dropping in October. Any matches would be numbers that would NOT have been dropped in October if the updated DNC registration dates had been provided in the October file.
5. There were 19,066 such phone numbers.
6. Of those numbers, 3,075 have subsequently been added back to the National DNC Registry (as of March 5, 2009).
7. Based on this analysis, 15,991 phone numbers may need to be added back onto the National Registry at this time.

See the attached spreadsheet for a breakdown of this analysis.

DEFENDANT'S
EXHIBIT
DTX-583

Confidential - US v. Dish000056

Analysis of Promise.txt File against 2008-Nov Max Customer Date of Promise file Max Customer Date of 2008-Nov file	9/1/08 0:43 11/4/08 0:43	
Analysis 8-31-2008 Through 9-30-2008 Should Not have Dropped Back on National	16180 2636	National pulled 3/5/2008 6am
Analysis 10-1-2008 Through 10-6-2008 Should not have dropped Back on National	2886 439	National pulled 3/5/2008 6am
Analysis 10-1-2008 Through 10-31-2008 Should not have dropped Back on National	13499 3625	National pulled 3/5/2008 6am

Confidential - US v. Dish000057

EXHIBIT 761

EXHIBIT 761

JA015506
014228

TX 102-014768

From: Voice <voice@jsrsatellite.com>
Sent: Monday, November 6, 2006 11:59 AM
To: Musso, Reji <Reji.Musso@echostar.com>
Subject: Response To Melissa wallace
Attach: Excerpts from DNC regarding actual damages.doc; top-60-new-8-1dvr.doc

Hello

Per your request, enclosed please find the response to the Melissa Wallace issue, and our sales script.

Within the answer to the Wallace complaint, you will find the proof of our DNC registration and SAN number.

Also, in response to the Hannah Klein matter, we provided a response to this 45 days ago. Check with Dana Steele.

If you have any other questions, please contact us at any time

Thank you
God Bless
Richard Goodale



EXHIBIT 762

EXHIBIT 762

JA015508
014230

TX 102-014770

Musso, Reji

From: Neylon, Brian
Sent: Friday, February 09, 2007 1:46 PM
To: Musso, Reji
Cc: Origer, Robb; Werner, Bruce; Mills, Mike
Subject: RE: American

Not 11 as we have a chat. Needs to be later in the day (early afternoon)

From: Musso, Reji
Sent: Friday, February 09, 2007 1:44 PM
To: Neylon, Brian
Cc: Origer, Robb; Werner, Bruce; Mills, Mike
Subject: American

I just advised Tim that he and Todd needed to be at corporate at 11:00 on Tuesday morning for a meeting. I also let him know to anticipate a penalty of \$10,000.

He asked if this was coming from Charlie and I told him it was the RS Mgt Team (Carlson, Neylon, Origer, Mills, etc) who met this morning and felt that it was time to have everyone operating from the same page and expectations. That the meeting was to clear up any misunderstandings and would hopefully preclude any further consequences (i.e. termination).

He asked if he was coming to be termed and I told him not as long as we could all agree on moving forward and meeting the expectations.

I let him know that his lead gens were a problem - he concurred.

He will get Todd in the loop.

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

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EXHIBIT 763

EXHIBIT 763

JA015510
014232

TX 102-014772

Subject: Understanding PN EBR Process Flow

Location: Call Me 720-514-6479

Start: 7/2/2010 1:00 PM

End: 7/2/2010 2:00 PM

Show Time As: Busy

Recurrence: (none)

Meeting Status: Organizer

Required Attendees: stafur@possiblenow.com; Guy Caldwell

Hi Sandy,

Can we meet tomorrow at 1PM EST (11AM MTN)? As I mentioned below, I am really looking for a process flow in order to understand how PN uses the EBR tables we create in the DNC application. From what I can tell it doesn't look like they are used at all, but I know that can't be correct. Ken mentioned that the EBR process relies on a reference to the National DNC list, but it seems to me that if I give you a phone number, a last payment date, and an EBR rule, (say 18 months), then PN should eliminate any records that exceed that 18 month rule.

Hopefully, this is enough detail so that you will be able to do a little research before we meet.

Talk to you soon.

Thanks,

Joey Montano

Resource Manager

CSC Administration & Management

Dish Network, LLC

Meridian: (720)-514-6479

Desk Ext: 46479

Email: joey.montano@dishnetwork.com

From: Sandy Tafur [mailto:stafur@possiblenow.com]

Sent: Thursday, July 01, 2010 9:05 AM

To: Montano, Joey

Subject: RE: Possible Now Scrub Clean Up

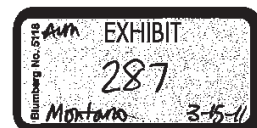
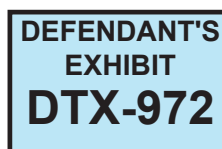
Hi Joey,

I am the Client Services Manager here and will soon officially be the main point of contact for Dish as we roll out our VIP customer program. Please feel free to contact me for anything at all. Let me know what your availability is like. I am free this afternoon from 2PM eastern to 5PM eastern, and tomorrow any time after 11AM eastern.

Look forward to talking to you!

Sandy Tafur

Client Services Manager



Confidential-US v. Dish

DISH2-0000039203

DTX 972 1 of 5

JA015511
014233

TX 102-014773

PossibleNOW
4400 River Green Pkwy. Suite 100
Duluth, GA 30096
O: 770-255-1040
M: 404-660-5314
stafur@possibleNOW.com

Are you **LinkedIn**? [Click here to join](#) the Direct Marketing Compliance Channel

[Click here to visit the ATA: the only association dedicated to the teleservices channel](#)

From: Guy Caldwell
Sent: Thursday, July 01, 2010 11:02 AM
To: Montano, Joey
Cc: Sandy Tafur
Subject: RE: Possible Now Scrub Clean Up

Joey,

My apologies again as I had an old email address as well. Here is the current one: tlhead@possibleNOW.com (with her middle initial).

As far as the call, I am going to put you in touch with Sandy Tafur. She will walk you through the logic of the system.

I will let you guys coordinate a time for the call. I copied her on this email.

GC

Guy Caldwell
PossibleNOW, Inc - Sr. Business Dev Mgr
4400 River Green Pkwy - Suite 100
Duluth, GA 30096
(770) 255-1020 main
(770) 255-1042 direct
(770) 255-1025 fax
gcaldwell@possibleNOW.com

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From: Montano, Joey [mailto:Joey.Montano@dishnetwork.com]
Sent: Thursday, July 01, 2010 10:53 AM

Confidential-US v. Dish

DISH2-0000039204

DTX 972 2 of 5

JA015512
014234

TX 102-014774

To: Guy Caldwell
Subject: RE: Possible Now Scrub Clean Up

Good to know. That was actually the email address Joanne gave us so we could forward our registration materials while she out.

Thanks for passing the information along to Tonya.

I also need to speak with someone who can give a really good detailed explanation of the Possible Now EBR scrub procedure and how it works. Ken had some concerns about how we had our processes setup and I made changes based on his recommendations, however, I have additional questions. Who would be the best point of contact Tonya, BJ, or someone else?

The primary question is---If we give you a record with a phone number 256-350-1719 and a last payment date of 10/17/2008 and our Existing EBR criteria (of 18 months for AL), how does the Possible Now process work with this information? I did some testing last night and the results that were returned were not what I expected, so if I can get an understanding of a process flow or the logic behind the scrub procedure it would really help in determining where we are at with our changes.

Thanks again,

Joey Montano
Resource Manager
CSC Administration & Management
Dish Network, LLC
Meridian: (720)-514-6479
Desk Ext: 46479
Email: joey.montano@dishnetwork.com

From: Guy Caldwell [mailto:gcaldwell@possiblenow.com]
Sent: Thursday, July 01, 2010 6:55 AM
To: Montano, Joey
Subject: RE: Possible Now Scrub Clean Up

Joey,

Thanks for copying me. I forwarded this Tonya. Though she got married and her last name changed, her email address is still tmelton@possiblenow.com.

GC

Guy Caldwell
PossibleNOW, Inc - Sr. Business Dev Mgr
4400 River Green Pkwy - Suite 100
Duluth, GA 30096
(770) 255-1020 main
(770) 255-1042 direct
(770) 255-1025 fax
gcaldwell@possiblenow.com

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From: Montano, Joey [mailto:Joey.Montano@dishnetwork.com]

Sent: Wednesday, June 30, 2010 4:30 PM

To: 'thead@possiblenow.com'

Cc: Guy Caldwell

Subject: Possible Now Scrub Clean Up

Good Afternoon Tonya,

I am not sure who to turn to, but I am hoping you can help us get our Project Tree and SFTP Scrub Folders cleaned up. We are looking to eliminate any out-dated and unused projects and folders so that we can eliminate any possible DNC scrub failures.

Can we delete the following:

Remove SFTP Folders titled:

AF_NPOPEN61_198111

ep_198105

LTS_0214

Day 45

NonPay Disconnect_EBR

ARPU_EBR

Automessage_NonPDR

Acquisition_Warm

Acquisition Cold_OTM

Ad Hoc Scrub

ARPU

Non-Pay_Retention

EBR FTP

Retention_NonPay

PN Connects (? Not sure if this is a folder used by PN, but Dish doesn't use it)

Retention_Zip

Remove Projects from the tree titled:

EBR FTP

PN Connects (? Not sure if this is a folder used by PN, but Dish doesn't use it)

Retention_NonPay

Retention_Zip

Leave the following Projects/Folders active:

ACQ_Warm

Acquisition_Cold

Equipment Verification

PN Assistance

Retention_FTP

Retention_Interactive_Scrub

Test

TEST Wireless Only Cisco

Wireless Only Scrub

Z-BJ

Please let me know what you think.

Thanks,

Joey Montano

Resource Manager

CSC Administration & Management

Dish Network, LLC

Meridian: (720)-514-6479

Desk Ext: 46479

Email: joey.montano@dishnetwork.com

EXHIBIT 764

EXHIBIT 764

JA015516
014238

TX 102-014778

2039969

May 19 2003

ECHOSTAR SATELLITE CORPORATION
INCENTIVIZED RETAILER AGREEMENT

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

INTRODUCTION

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

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

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

AGREEMENT

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

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

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

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

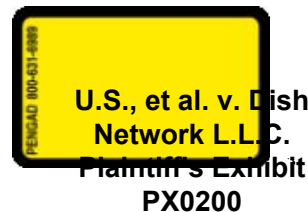
1.4 EACH PARTY HERETO WARRANTS AND REPRESENTS THAT IT HAS READ THIS AGREEMENT IN ITS ENTIRETY AND THAT IT UNDERSTANDS FULLY EACH OF THE TERMS AND CONDITIONS SET FORTH HEREIN.

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

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

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

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



PX0200-001

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

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

ECHOSTAR SATELLITE CORPORATION

By: [Signature]
Title: VP Sales
Date: 5/19/03

RETAILER

Echosphere Retailer Number: 2038968
Retailer Company Name: Star Satellite LLC
(Please Print)
Signed By: [Signature]
Print Name: Daniel Myers
Street Address: 79 W. 1450 N. #80
(Please Print)
City, State, Zip Code: Provo, UT 84604
Date: March 11, 2003

May 19 2003

PX0200-002

ATTACHMENT A

TRADEMARK LICENSE AGREEMENT

2039869
May 18 2009

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

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

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

C. Licensee desires to be permitted to use the EchoStar trademarks, service marks and trade names set forth in Exhibit 1 hereto, which may be amended at any time and for any reason in ESC's sole discretion (the "Trademarks") as ESC, in its sole discretion and for any reason, may authorize, from time to time, under a non-exclusive license, to promote and solicit orders for DISH Network Programming.

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

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

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

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

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

PX0200-003

2039969 11/19/03

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

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

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

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

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

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

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

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

ECHOSTAR SATELLITE CORPORATION

By: Title: VP SalesDate: 5/19/03

LICENSEE

By: Title: PresidentDate: March 11, 2003

PX0200-004

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

2039963
May 19 2003

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

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

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

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

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

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

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

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

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

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

PX0200-005

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

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

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

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

ECHOSTAR SATELLITE CORPORATION

By: *Chris L. N. Clark*

Title: VP Sales

Date: 5/19/03

RETAILER

Echosphere Retailer Number: 2039969

Retailer Company Name: Star Satellite LLC
(Please Print)

Signed By: *Daniel Myers*

Print Name: Daniel Myers

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

City, State, Zip Code: Provo, UT 84604

Date: March 11, 2003

May 19 2003

PX0200-006

ECHOSTAR SATELLITE CORPORATION INCENTIVIZED RETAILER AGREEMENT

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

INTRODUCTION

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

AGREEMENT

1. **REPRESENTATIONS AND WARRANTIES** The parties hereto make the following representations and warranties with the specific intent to induce the other party into entering into this Agreement and recognize that the other party would not enter into this Agreement but for the following representations and warranties:
 - 1.1 Each party represents that the execution, delivery and performance of this Agreement have been duly authorized and that it has the full right, power and authority to execute, deliver and perform this Agreement.
 - 1.2 Each party represents that the signatures hereon are genuine and the person signing on behalf of each party is authorized by the respective party to execute the Agreement on its behalf.
 - 1.3 Retailer represents that (i) it is a valid and existing entity in compliance with all laws and regulations related to maintenance of its corporate or other business status; (ii) it is not currently insolvent; (iii) it is not violating any federal, state or local law or regulation; (iv) it has never engaged in any of the acts prohibited under Section 3.6, 3.7, 9.2, 9.3 or 9.4 below; (v) it has not engaged in any acts which would have resulted in automatic termination or be considered default or breach under its current or former EchoStar Satellite Corporation Retailer Agreement; and (vi) it is not dependent upon EchoStar or its Affiliates for a major part of Retailer's business and that Retailer either sells or could sell other products or services in addition to EchoStar products or services that compete with EchoStar products or services.
 - 1.4 EACH PARTY HERETO WARRANTS AND REPRESENTS THAT IT HAS READ THIS AGREEMENT IN ITS ENTIRETY AND THAT IT UNDERSTANDS FULLY EACH OF THE TERMS AND CONDITIONS SET FORTH HEREIN.
 - 1.5 EACH PARTY HERETO WARRANTS AND REPRESENTS THAT IT HAS BEEN GIVEN THE OPPORTUNITY TO HAVE INDEPENDENT COUNSEL REVIEW THIS AGREEMENT PRIOR TO EXECUTION. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT EITHER THIS AGREEMENT HAS BEEN ACTUALLY REVIEWED BY ITS COUNSEL OR THAT SUCH PARTY HAS DECLINED TO HAVE ITS COUNSEL DO SO.
 - 1.6 EACH PARTY HERETO REPRESENTS AND WARRANTS THAT IT IS NOT RELYING UPON ANY STATEMENTS OR REPRESENTATIONS NOT CONTAINED HEREIN AND THAT IT HAS NOT BEEN INDUCED INTO ENTERING THIS AGREEMENT BY ANY STATEMENTS, ACTS OR OMISSIONS NOT EXPRESSLY SET FORTH HEREIN.
 - 1.7 EACH PARTY HERETO REPRESENTS AND WARRANTS THAT IT HAS NOT BEEN COERCED INTO ENTERING INTO THIS AGREEMENT AND THAT IT HAS ENTERED INTO THIS AGREEMENT OF ITS OWN FREE WILL AND FREE OF INFLUENCE OR DURESS.
 - 1.8 RETAILER WARRANTS AND REPRESENTS THAT BEFORE IT WILL PARTICIPATE IN ANY PROMOTIONAL PROGRAM IT WILL CAREFULLY REVIEW THE TERMS OF THE PROGRAM AND ASSOCIATED BUSINESS RULES OR HAVE THEM REVIEWED BY INDEPENDENT COUNSEL.

PX0200-007

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

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

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

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

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

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

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

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

ECHOSTAR SATELLITE CORPORATION

LICENSEE

By: _____

By: Daniel Myers

Title: _____

Title: President

Date: _____

Date: March 11, 2003

PX0200-008

Confidential-US v. DISH

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014246

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**ARTICLES OF ORGANIZATION
OF
Star Satellite LLC**

inc
203 9969

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

Article I NAME

(76) 2039969-2/11/03-113

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

Article II BUSINESS PURPOSE

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

Article III REGISTERED AGENT

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

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

ACCEPTANCE OF APPOINTMENT:

Katie S. Myers
Katie S. Myers

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

Article IV MEMBERS

RECEIVED

JAN 16 2003

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

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Confidential-US v. DISH

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

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

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

Daniel R. Myers

1760 E. Downington Ave.

Salt Lake City, Utah 84108.

Article V MANAGEMENT

(Management NEEDS TO BE AMMENDED Daniel Myers is president)

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

V.1

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

Article VI DESIGNATED OFFICE

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

Article VII RECORDS

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

VII.1

PX0200-010

inc
2038868
A current list, in alphabetical order, of the names and current business street address of each Organizer who is not a member or manager.

VII.2

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

VII.3

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

Article VIII CONTRIBUTIONS

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

Article IX DISSOLUTION

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

Article X ANNUAL REPORT

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

Article XI AMENDMENTS

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

Article XII ARBITRATION

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

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

PX0200-011

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

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

inc


Daniel R. Myers

2039869

DATED this 11 day of March, 2003.

PX0200-012

Confidential-US v. DISH

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014250

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PERSONAL GUARANTEE

2039969

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

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

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

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

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

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

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Confidential-US v. DISH

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

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

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

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

GUARANTOR

Daniel Myers

In his/her individual capacity

President

STATE OF District of Columbia
COUNTY OF _____)

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

Petrina Thompson
Name: Petrina Thompson
Notary Public
My Commission Expires: 9-30-05

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

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Confidential-US v. DISH

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Confidential-US v. DISH

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

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

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

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

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

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

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

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

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

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

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

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

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

PX0200-016

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

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

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

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

3. APPOINTMENT; TERRITORY

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

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

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

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

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

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

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

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

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

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

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

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

4. **PROGRAMMING**

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

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

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

6. **INCENTIVES.**

6.1 **Monthly Incentives.**

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

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

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

6.2 **Additional Incentives.**

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

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

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

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

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

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

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

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

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

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

6.6 **Suspension and Termination of Incentives.**

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

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

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

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

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

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

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

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

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

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

7. ORDERS.

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

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

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

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

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

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

9. **CONDUCT OF BUSINESS.**

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

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

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

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

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

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

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

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

10. **TERM AND TERMINATION.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15. **DISPUTE RESOLUTION.**

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

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

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

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

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

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

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

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

16. **INSURANCE.**

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

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

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

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

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

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17. **MISCELLANEOUS.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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EXHIBIT 1 TO TRADEMARK LICENSE AGREEMENT



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

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

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

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

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

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

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

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

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

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IV. Section 2.15 shall be deleted in its entirety and replaced with the following:

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

V. Section 3.1 shall be deleted in its entirety and replaced with the following:

3.1 **Appointment.** EchoStar appoints Retailer as a non-exclusive Authorized Retailer to promote and solicit orders for Programming, subject to all of the terms and conditions of this Agreement. The appointment set forth herein for the promotion of the DISH Network by Retailer shall apply to the same DBS service which may be operated by EchoStar or its Affiliates under a different name in the future. Retailer's authorization herein is limited to the solicitation of orders for Programming from, and the marketing, advertising and promotion of Programming to, consumers at Residential Locations, Commercial Locations, Institutional/Residential Locations, Guest Properties and MDU Properties.

VI. Section 3.6 shall be deleted in its entirety and replaced with the following:

3.6 **Sale of DISH DBS Systems.** Retailer agrees that as a condition precedent to eligibility to receive Incentives from EchoStar, it will not directly or indirectly sell, lease, or otherwise transfer possession of a DISH DBS System or Promotional Certificate to any person or entity whom Retailer knows or reasonably should know: (i) is not an end-user and/or intends to resell, lease or otherwise transfer it for use to another individual or entity; or (ii) intends to use it, or allow others to use it in a Commercial Location or Guest Property under a residential subscription; or (iii) intends to use it, or to allow others to use it, or to resell, lease or otherwise transfer it for use in Canada, Mexico or at any other location outside of the Territory; or (iv) intends to have, to allow others to have, or to resell, lease or otherwise transfer it to others who will have Programming authorized for it under a single DISH Network account that has or will have Programming authorized for multiple satellite receivers that are not all located in the same Residential Location, Institutional/Residential Location, Unit of an MDU Property (except for Bulk Programming) or Commercial Location and connected to the same phone line. It shall be Retailer's responsibility to investigate and determine whether any sale by Retailer would be in violation of this Section. In the event that Retailer directly or indirectly sells, leases or otherwise transfers possession of a DISH DBS System or Promotional Certificate to a person or entity who uses it, allows others to use it, or resells, leases or otherwise transfers it for use to permit the viewing of Programming in a non-Residential Location or any other area open to the public while it is associated with a residential subscription account, then Retailer agrees to pay to EchoStar upon demand: (a) the difference between the amount actually received by EchoStar for the Programming authorized for the DISH DBS System and the full commercial rate for such Programming (regardless of whether EchoStar has or had commercial distribution rights for such Programming); and (b) the total amount of any admission charges or similar fees imposed for listening to or viewing such Programming (regardless of whether such charges and/or fees were imposed or collected by Retailer). In the event that Retailer directly or indirectly sells, leases or otherwise transfers possession of a DISH DBS System or Promotional Certificate to a person or entity who has, allows others to have, or resells, leases or otherwise transfers it to others who have Programming authorized for it under a single DISH Network account that at any time has Programming authorized for multiple DISH DBS Systems that are not all located in the same Residential Location, Institutional/Residential Location, Unit of an MDU Property (except for Bulk Programming) or Commercial Location and connected to the same phone line, and Retailer knew or reasonably should know that the person or entity intended to have, allows others to have or resell, lease or otherwise transfer it to others who would have Programming authorized for the DISH DBS System under such an account, then Retailer agrees to pay to EchoStar upon demand, the difference between the amount actually received by EchoStar for the Programming authorized under the single account and the full retail price for such Programming had each DISH DBS System authorized under the single account been authorized under a separate DISH Network account. IN THE EVENT THAT RETAILER BREACHES ANY OF ITS OBLIGATIONS UNDER THIS SECTION 3.6, ECHOSTAR SHALL BE ENTITLED TO CHARGE BACK AT ANY TIME (EVEN AFTER THE TERMINATION OR EXPIRATION OF THIS AGREEMENT) THE INCENTIVES, IF ANY, PAID TO RETAILER BY ECHOSTAR WITH RESPECT TO ANY SUBSCRIBER ACCOUNT AFFECTED BY SUCH BREACH OR DEFAULT. IN THE EVENT RETAILER WISHES TO DISPUTE ANY SUCH CHARGEBACK, RETAILER SHALL FOLLOW THE DISPUTE RESOLUTION PROCEDURES SET FORTH IN SECTION 15, BELOW. ECHOSTAR'S CALCULATION

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OF AMOUNTS OWING TO ECHOSTAR FROM RETAILER UNDER THIS SECTION 3.6 SHALL BE BINDING ABSENT FRAUD, MALICE OR WILLFUL AND WANTON MISCONDUCT ON THE PART OF ECHOSTAR. The foregoing provisions of this Section 3.6 are without prejudice to any other rights and remedies that EchoStar and/or its Affiliates may have under this Agreement, at law, in equity or otherwise (all of which are hereby expressly reserved), and shall survive expiration or termination of this agreement for any reason whatsoever indefinitely (even if termination is due to a default or breach by EchoStar).

VII. Section 3.7 shall be deleted in its entirety and replaced with the following:

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

VIII. Sections 3.11 shall be added as follows:

3.11 Retailer shall ensure that no Guest Property or MDU Property engages directly or indirectly in: (a) the reselling of Bulk Programming (i.e. the property cannot charge more for the Bulk Programming than they pay to EchoStar); (b) the retransmission or rebroadcast of any Programming, except with the express written consent of EchoStar which EchoStar may withhold in its sole discretion for any reason; or (c) modifying, adding to, or deleting from any of the Bulk Programming. Retailer shall promptly notify EchoStar if it is aware of or suspects a change in the number of Units at any Guest or MDU Property subscribing to Programming. Retailer understands and agrees that Commercial Locations, MDU Properties, and Guest Properties may require the purchase of DISH DBS Systems invoiced under pricing specific to non-residential accounts ("Commercially Invoiced"), as further described in the Business Rules and adjustable at EchoStar's sole discretion.

IX. Section 6.1.1 shall be deleted in its entirety and replaced with the following:

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

X. Section 6.2.1 shall be deleted in its entirety and replaced with the following:

6.2.1 **Definition; Terms.** During the Term of this Agreement, Retailer may be eligible to participate in and receive incentives other than Monthly Incentives including, but not limited to, activation fee payments, flex payments, equipment discounts, and free professional installation payments, ("Additional Incentives") under such Promotional Programs as EchoStar may make available to Retailer in its sole discretion from time to time. The terms and conditions, including without limitation, eligibility requirements, governing each Additional Incentive shall be set forth in Business Rules which shall be distributed or otherwise made available by EchoStar from time to time in accordance with Section 2.2, above. RETAILER ACKNOWLEDGES AND AGREES THAT: (I) UNDER NO CIRCUMSTANCES SHALL ECHOSTAR HAVE AT ANY TIME ANY OBLIGATION TO OFFER ADDITIONAL INCENTIVES TO RETAILER, OR IF ADDITIONAL INCENTIVES ARE OFFERED TO OTHERS, TO ALTER OR AMEND THE BUSINESS RULES TO PERMIT RETAILER TO BE ELIGIBLE TO RECEIVE THEM; (II) IF ECHOSTAR OFFERS ANY ADDITIONAL INCENTIVES TO RETAILER THROUGH ANY PROMOTIONAL PROGRAM, RETAILER SHALL ONLY BE ELIGIBLE TO RECEIVE THE ADDITIONAL INCENTIVES IF AND TO THE EXTENT THAT IT MEETS ALL OF THE QUALIFICATION CRITERIA AND OTHER TERMS AND CONDITIONS SET FORTH IN THE APPLICABLE BUSINESS RULES AND THIS AGREEMENT; (III) UNLESS EXPRESSLY SET FORTH TO THE CONTRARY UNDER THE TERMS AND CONDITIONS OF THE RELEVANT PROMOTIONAL PROGRAM, ADDITIONAL INCENTIVES SHALL ONLY BE PAID TO RETAILER

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WITH RESPECT TO DISH DBS SYSTEMS OR PROMOTIONAL CERTIFICATES THAT: (A) ARE SOLD TO RETAILER BY ECHOSTAR OR ANY OF ITS AFFILIATES, OR A THIRD PARTY MANUFACTURER; (B) ARE RE-SOLD BY SUCH RETAILER DIRECTLY TO A QUALIFYING RESIDENTIAL SUBSCRIBER OR QUALIFYING COMMERCIAL SUBSCRIBER; AND (C) RESULT IN THE ACTIVATION OF ELIGIBLE PROGRAMMING FOR A NEW SUBSCRIBER ACCOUNT. ECHOSTAR IN ITS SOLE DISCRETION SHALL DETERMINE WHETHER A PARTICULAR ECHOSTAR SUBSCRIBER IS A NEW SUBSCRIBER ACCOUNT ELIGIBLE FOR THE PAYMENT OF INCENTIVES HEREUNDER. RETAILER ACKNOWLEDGES AND AGREES THAT IF IT CHOOSES TO PARTICIPATE IN ANY PROMOTIONAL PROGRAM IT WILL CAREFULLY REVIEW AND ADHERE TO ALL THE TERMS AND CONDITIONS SET FORTH IN THE BUSINESS RULES RELATED THERETO. FURTHERMORE, RETAILER'S PARTICIPATION IN ANY PROMOTIONAL PROGRAM OR RECEIPT OF ADDITIONAL INCENTIVES THEREUNDER SHALL SERVE AS RETAILER'S ACKNOWLEDGEMENT OF THE TERMS AND CONDITIONS SET FORTH IN THE RELEVANT BUSINESS RULES AND RETAILER'S AGREEMENT TO BE BOUND THERETO. ECHOSTAR'S CALCULATION AND PAYMENT OF ADDITIONAL INCENTIVES SHALL BE PRESUMED CONCLUSIVELY AND IRREBUTABLY CORRECT ABSENT A TIMELY NOTICE OF CLAIM BY RETAILER PURSUANT TO SECTION 15.1.

XI. Section 6.5.1 shall be deleted in its entirety and replaced with the following:

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

XII. Section 6.7 shall be deleted in its entirety and replaced with the following:

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

XIII. Section 17.7 shall be deleted in its entirety and replaced with the following:

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

XIV. Except as expressly modified herein, this Amendment is not intended to, and does not, alter, amend or modify all or any part of the Agreement. The distribution of this Amendment shall not be construed as an admission or acknowledgement by EchoStar that an agreement exists between Retailer and EchoStar, that if an agreement exists, such agreement is in full force and effect, or that Retailer is not in breach or default thereunder. Nothing contained herein shall serve to revive an Agreement that has been terminated pursuant to Section 10.2, 10.3 or 10.4 thereof. Furthermore, nothing contained herein shall constitute a waiver by either party of any rights or remedies they may have under the terms and conditions of the Agreement.

PX0200-035

EXHIBIT 765

EXHIBIT 765

JA015552
014274

TX 102-014814

VIA FACSIMILE 303-723-1699

2 pages

January 25, 2005

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

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

Re: Violation of Telephone Consumer Protection Act

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

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

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

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

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

U.S., et al. v. Dish
Network L.L.C.
Plaintiff's Exhibit
PX0203

PX0203-001

FTC/ECHOSTAR000762

Confidential-US v. Dish

JAN 26 2005
014275

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

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

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

Very truly yours,



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

MEMORANDUM OF CALL:

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

Details of Call:

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

PX0203-002

FTC/ECHOSTAR000763

Confidential-US v. Dish

JAN 25 2005 15:04:662
014276

TX 102-014816

EXHIBIT 766

EXHIBIT 766

JA015555
014277

TX 102-014817

From: Manuel Castillo [man_in_castle@yahoo.com]
Sent: Tuesday, June 05, 2012 1:36 PM
Subject: Runkle, Patrick R.
Fw: progress

----- Forwarded Message -----

From: "Eichhorn, Bert" <Bert.Eichhorn@Dishnetwork.com>
To: man_in_castle@yahoo.com
Sent: Wednesday, January 7, 2009 5:01 PM
Subject: Re: progress

I do need to look into VB violations. I have been so focussed on fraud. I know our legal dept agrees with you about the exposure.

Sent using BlackBerry

From: Manuel Castillo
To: Eichhorn, Bert
Sent: Wed Jan 07 17:58:25 2009
Subject: Re: progress
What is a Bad account in your standards?

The are using massive DNC violations, prepaid cards and spam.
Other than that they are clean, no selling existing customers.

You are exposing yourself to getting slapped with lawsuit for millions for violating the DNC like DIRECTV.

Look it up, or did u already know about it?

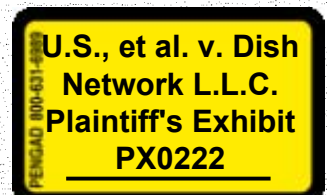
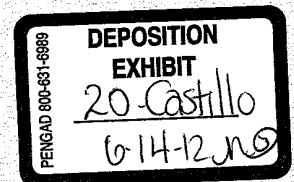
--- On Thu, 1/8/09, Eichhorn, Bert <Bert.Eichhorn@Dishnetwork.com> wrote:
From: Eichhorn, Bert <Bert.Eichhorn@Dishnetwork.com>
Subject: Re: progress
To: man_in_castle@yahoo.com
Date: Thursday, January 8, 2009, 12:48 AM

Why are am sat and allegro among the lowest percentage of bad acct's?

Sent using BlackBerry

From: Manuel Castillo
To: Eichhorn, Bert
Sent: Wed Jan 07 17:45:09 2009
Subject: Re: progress
The checks and links on the site are proof unless you don't want to see it

My guess is that Andy Steeples might be lying to Glen the owner about AMSAT putting thru the bad deals with them, If you look at the checks from Allegro they are made out to CW Web designs (Caleb Wickman) its possible the owner might not even know who CW web designs is or maybe he knows but the have an agreement



that if a license goes bad they both use the other one but thats just speculation.

The FACTS are:

Allegro and AMSAT have an agreement

AMSAT Puts thru Allegro Voice Broadcasting deals to avoid liability

AMSAT Puts thru Allegro deals with prepaid debit cards.

Andy Steeples and Allegro employee knows about it since he was warned by me and other former AMSAT employees and did nothing about it except remove evidence from AMSAT's home page.

Glen Vastine is accountable either because he knows or because he does not have proper oversight of his business.

Any questions?

--- On **Thu, 1/8/09, Eichhorn, Bert** <Bert.Eichhorn@Dishnetwork.com> wrote:

From: Eichhorn, Bert <Bert.Eichhorn@Dishnetwork.com>

Subject: Re: progress

To: man_in_castle@yahoo.com

Date: Thursday, January 8, 2009, 12:30 AM

She implied that they were violating the spirit and the language of the retailer agreement. She wants proof.

She asked why would they risk the allegro license and protect trhe am sat license?

Sent using BlackBerry

From: Manuel Castillo

To: Eichhorn, Bert

Sent: Wed Jan 07 17:27:53 2009

Subject: Re: progress

What was her impression on it?

--- On **Thu, 1/8/09, Eichhorn, Bert** <Bert.Eichhorn@Dishnetwork.com> wrote:

From: Eichhorn, Bert <Bert.Eichhorn@Dishnetwork.com>

Subject: Re: progress

To: man_in_castle@yahoo.com

Date: Thursday, January 8, 2009, 12:15 AM

Kathy told me to write it up and send it all the way to the top of the sales channel

Sent using BlackBerry

From: Manuel Castillo

To: Eichhorn, Bert

Sent: Wed Jan 07 16:46:49 2009

Subject: progress

Any progress on that Info?

EXHIBIT 767

EXHIBIT 767

JA015558
014280

TX 102-014820

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

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

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

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

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

Mike –

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

Mike

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

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

Amir,



PX0503-001

Confidential - U.S. v. DISH

DISH 11-028658
JA015539
014281

TX 102-014821

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

Thanks

MJO

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

From: Ahmed, Amir

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

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

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

Subject: RE: Satellite Systems Network OE Tool # 821970

Mike and Jim,

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

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

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

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

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

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

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

PX0503-002

Confidential - U.S. v. DISH

DISH 11-029659
JA015560
014282

TX 102-014822

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

Thanks,

Amir

PX0503-003

Confidential - U.S. v. DISH

DISH11-029660
JA015561
014283

TX 102-014823

EXHIBIT 768

EXHIBIT 768

JA015562
014284

TX 102-014824

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

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

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

Team,

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

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

Alex agreed and understood that we do not allow this.

MJO

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

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

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

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

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

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

Thanks
MJO

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

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

Mike and Steve,



PX0504-001

Confidential - U.S. v. DISH

DISH 11-029661
JA015563
014285

TX 102-014825

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

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

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

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

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

Thanks,

Leslie Fiedler

Key Account Manager - Order Entry Retailers

Echostar Satellite LLC

(720) 514-5865

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

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

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

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

Leslie,

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

PX0504-002

Confidential - U.S. v. DISH

DISH 11-029662
JA015564
014286

TX 102-014826

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

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

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

Erik

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

973-328-7600

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

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

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

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

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

Erik

PX0504-003

Confidential - U.S. v. DISH

DISH 11-029663
JA015565
014287

TX 102-014827

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

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

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

To: Carlson, Erik

Subject: TELEMARKETING

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

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

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

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

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

PX0504-004

Confidential - U.S. v. DISH

DISH 11-029664
JA015566
014288

TX 102-014828

EXHIBIT 769

EXHIBIT 769

JA015567
014289

TX 102-014829

From: Montano, Joey <Joey.Montano@dishnetwork.com>
Sent: Tuesday, January 11, 2011 6:22 PM
To: joey@ecreekgroup.com; 'Isaac Falkowski' <isaac@ecreekgroup.com>; 'Colter Strahan' <colter@ecreekgroup.com>
Cc: Dexter, Amy <Amy.Dexter@dishnetwork.com>; Scott@ecreekgroup.com; Salvatori, Brian <Brian.Salvatori@dishnetwork.com>
Subject: RE: Call Research

Joey,

I need some additional insight to the following questions:

- 1) Is "answering machine" the first disposition in the agent drop down list? And, are the agents using the appropriate disposition for the call? It appears that "AM" is readily used in place of the correct disposition, or agents are riding the answering machine. Example: in the case below you had two separate agents use the "AM" disposition three times on calls that lasted 210, 101, and 62 seconds. On the migration account Isaac research the other day there were three agents that did same thing for 28, 72, and 22 seconds. In all the cases, if a disposition indicating customer contact was used, none of the calls would have resulted in a complaint.
- 2) You mentioned that Erika provided the number to another agent; why would an agent be handing out phone numbers for other agents to call back?
- 3) Have agents routinely made manual calls on any outbound campaigns outside of the dialer?
- 4) How does your dialer account for the records that are called outside of the campaign? (How are the calls tracked, call results recorded, DNC dispositions handled, etc.)

Joey Montano
Resource Manager
CSC Administration & Management
Dish Network, LLC
Meridian: (720)-514-6479
Desk Ext: 46479
Email: joey.montano@dishnetwork.com

From: joey@ecreekgroup.com
Sent: Tuesday, January 11, 2011 1:36 PM
To: 'Isaac Falkowski'; Montano, Joey; 'Colter Strahan'
Cc: Dexter, Amy; Scott@ecreekgroup.com; Salvatori, Brian
Subject: RE: Call Research
Importance: High

Joey,

We have completed our research on this account.

Here is what we found:

- 1st call made: 1/08 – 2:46pm



PX1079-001

Confidential-US v. DISH

DIS-50050078171
JAN 11 2011
014290

TX 102-014830

- This call was made by our agent Erika Amin.
 - Erika spoke to the customer who was upset that she had received many calls from us.
 - Customer asked to be put on the DNC list, but was not by Erika.
 - Erika then provided this number to a second agent to call back the customer
- 2nd call made: 1/08 – 2:53pm
 - The agent that placed the second call was under the impression that this phone number was a customer that they had spoken with and were calling back to setup service.
 - The second agent spoke with the customer, who was still upset
 - The second call resulted in the agent putting the customer on the DNC list.
 - 3rd call made: 1/08 – 2:58pm
 - After the second call was made, Erika provided this number for 3rd agent to call back.
 - Again, the 3rd agent thought that they were calling back a customer to set them up with service.
 - When the 3rd agent spoke with the customer, they were extremely apologetic to the customer after they questioned why they were receiving so many calls and after they requested to be put on the DNC list.

Action taken:

- We are terminating employment with Erika Amin effective immediately. She is not here today but will be termed ASAP the next time she arrives to work.
- We have addressed all agents with the severity of the issue and consequences with this type of behavior
- For the time being, we have disabled manual dial on call types. Agents do not have the ability to manually make outbound dials in any campaign.

Let me know if there are any other questions, thanks.



From: Isaac Falkowski [mailto:isaac@ecreekgroup.com]
Sent: Monday, January 10, 2011 5:25 PM
To: Montano, Joey; 'Colter Strahan'
Cc: Dexter, Amy; Scott@ecreekgroup.com; Salvatori, Brian; 'Joey Dang'
Subject: Re: Call Research

Joey, below is the requested information:

CALLS TO THIS LEAD:

#	DATE/TIME	LENGTH	STATUS	TSR	CAMPAIGN	LIST	LEAD	HANGUP REASON
1	2011-01-08 14:58:39	210	AM	<u>4061</u>	495213	495213	9578525	AGENT
2	2011-01-08 14:53:15	175	DNC	<u>4143</u>	495213	495213	9578525	AGENT

PX1079-002

Confidential-US v. DISH

DISH 15005079172
JAN 10 2011
014291

TX 102-014831

3	2011-01-08 14:46:50	101	AM	<u>1403</u>	495213	495213	9578525	CALLER
4	2011-01-07 12:11:02	1	NA	<u>VDAD</u>	495213		9578525	NONE
5	2011-01-06 15:57:08	5	AM	<u>3862</u>	495213	495213	9578525	AGENT
6	2011-01-06 12:49:10	3	AM	<u>2802</u>	495213	495213	9578525	AGENT
7	2011-01-05 17:05:07	5	DROP	<u>VDAD</u>	495213		9578525	QUEUE TIMEOUT
8	2011-01-05 09:19:17	62	AM	<u>4061</u>	495213	495213	9578525	CALLER

The last 2 calls look strange, we need to speak with these agents and their supervisors (who work tuesday through saturday) tomorrow morning and will get back to you after doing so.

Isaac

From: Montano, Joey
Sent: Monday, January 10, 2011 4:11 PM
To: 'Isaac Falkowski' ; 'Colter Strahan'
Cc: Dexter, Amy ; Scott@ecreekgroup.com ; Salvatori, Brian
Subject: Call Research

Isaac,

Can you outline all the calls to phone number 269-782-9605 on Account 8255909650889543?

Thanks,

Joey Montano
 Resource Manager
 CSC Administration & Management
 Dish Network, LLC
 Meridian: (720)-514-6479
 Desk Ext: 46479
 Email: joey.montano@dishnetwork.com

PX1079-003

Confidential-US v. DISH

DISH 1500500701173
 JAO-13570
 014292

TX 102-014832

EXHIBIT 770

EXHIBIT 770

JA015571
014293

TX 102-014833

Dealer Name	Complainant's Name	Date Complaint Submitted	Nature of Complaint	How Retailer Identified	Complaint Disposition (Violation)	COMMENTS
Allegro Discount Advertising	William Cohen	10/26/2006	Pre-recorded calls	Sting	Status Not Determined	Initial verbal discussion with owner of Allegro indicates that this complaint is erroneous. Consumer has indicated that he has a "tape" - Allegro has asked that he produce.
Allsat Inc	Melissa Wallace	8/4/2006		Sting		AllSat settled with her.
Allsat Inc	Aaron Hakeem			Sting		
Allsat Inc	Fred Wall	10/11/2006	"Alleged calls from Dish Network"	Consumer provided	Status Not Determined	Retailer was notified on 10/31/06 - working on responses.
Allsat Inc	Michael Huber	10/26/2006		Caller id	Status Not Determined	Still researching-no record of o/b call. Consumer provided tel# which RS searched through Google and it directed us to a web site for AllSat.
Allsat Inc	Ronnie Martin	7/25/2006	Unsolicited calls	Caller id	Status Not Determined	Response was insufficient - working on details of allegation.
			Unsolicited calls Requested to be on internal DNC			Consumer attempted to set up a sale himself to determine who was calling him all the time. Asked who the co was and the consumer identified AllSat. No work order to confirm. AllSat has no record of call.
Allsat Inc	Mr. Brian	8/24/2006		Consumer provided	No Violation	
Allsat Inc	NA	7/25/2006	Obscene Phone Calls	Consumer provided	Status Not Determined	Response was insufficient - working on details of allegation.
Allsat Inc	Narashimha Acharya	9/20/2006	Unwelcome calls	Consumer provided	Status Not Determined	MyDishGlobal (which at the time led us to Allsat. That relationship was terminated on August 3, 2006. Global Wizards LLC should be notified about this allegation.
Allsat Inc	not listed	8/7/2006	Not provided	Consumer provided	Status Not Determined	Response was insufficient - working on details of allegation.
Allsat Inc	Ruth Khan	9/5/2006	Obscene Phone Calls	Consumer Provided	Status Not Determined	Response was insufficient - working on details of allegation.
Allsat Inc	Nikhil Goyal	9/22/2006	Not provided	Consumer Provided	Status Not Determined	Retailer was notified on 10/31/06 - working on responses.
Allsat Inc	Patricia Hussion	10/4/2006	Unwelcome calls	Consumer Provided	No Violation	Relationship unconfirmed - AllSat has no record of call.
						No longer has relationship w/ My Dish Global - requested info on termination of relationship AND any possible involvement with Jain; however, this call was linked to All Sat through the misrepresented relationship with My Dish Global.
Allsat Inc	Rejat Jain	10/25/2006	Frequent/Persistent Calls	Consumer provided	Status Not Determined	
Allsat Inc	Yousuf Raza	9/18/2006	Frequent/Persistent Calls	Consumer provided	Status Not Determined	Response was insufficient - working on details of allegation.
American Satellite	Michael Brawner	10/13/2006	Unwelcome calls	Sting	Status Not Determined	Retailer was notified on 10/31/06 - working on responses.
American Satellite	Robert Parker	9/20/2006	Frequent/Persistent Calls	Sting	Status Not Determined	V&T Marketing (lead gen), 5125 Convoy St., Suite 304, San Diego, CA 92111/Dana had conversation with marketing company. American termed the relationship with them. No clear indication of any wrongdoing.
						Atlas Assets is working on responses, but lacks accountability and sense of urgency. Notified yesterday that they will be going to the call center - "Silverbird" - on Tuesday to do due diligence. In researching "Silverbird" RS has found NO information. Have asked that Atlas contact me.
Atlas Assets	Anonymous	10/3/2006	Frequent/Persistent calls	Sting	Status Not Determined	
						At present, they have admitted to only one recognition. Since the same number was presented on caller id, they have been advised that they are responsible for figuring out why this occurred and where the calls are coming from.
Atlas Assets	Anonymous	9/21/2006	Unknown	Sting	Status Not Determined	
Atlas Assets	Anonymous	8/28/2006	Profanity	Sting	Status Not Determined	See comment above - retailer has not formally responded to date.
Atlas Assets	Anonymous	8/11/2006	Unknown	Sting	Status Not Determined	See comment above - retailer has not formally responded to date.
Atlas Assets	Anonymous	8/11/2006	Unknown	Sting	Status Not Determined	See comment above - retailer has not formally responded to date.
Atlas Assets	Bob Olive	10/17/2006	Frequent/Persistent Calls	Sting	Status Not Determined	This sting yielded 37 additional complaints. There are 33 other complaints associated, yet unidentified, with 503-426-31xx nos.

**U.S., et al. v. Dish
Network L.L.C.
Plaintiff's Exhibit
PX1082**

ATTORNEY/CLIENT PRIVILEGE

11/01/2006

Letter List

DISH5-0000112292-1

PX1082-001

JA015572
014294

TX 102-014834

Dealer Name	Complainant's Name	Date Complaint Submitted	Nature of Complaint	How Retailer Identified	Complaint Disposition (Violation)	COMMENTS
Atlas Assets	Brian Lovelace	9/1/2006	"Alleged calls from Dish Network"	Sting	Status Not Determined	See comment above - retailer has not formally responded to date.
Atlas Assets	Chad Jarvis	8/9/2006	"Alleged calls from Dish Network"	Sting	Status Not Determined	See comment above - retailer has not formally responded to date.
Atlas Assets	Clara Beatty	10/12/2006	Frequent/Persistent calls	Sting	Status Not Determined	See comment above - retailer has not formally responded to date.
Atlas Assets	Courtney Cummings	8/23/2006	"Alleged calls from Dish Network"	Sting	Status Not Determined	See comment above - retailer has not formally responded to date.
Atlas Assets	David Abbott	8/22/2006	"Alleged calls from Dish Network"	Sting	Status Not Determined	See comment above - retailer has not formally responded to date.
Atlas Assets	Dennis Dewitt	9/8/2006	"Alleged calls from Dish Network"	Sting	Status Not Determined	See comment above - retailer has not formally responded to date.
Atlas Assets	Dennis Reeser	10/4/2006	Frequent/Persistent calls Rude Behavior Hung Up	Sting	Status Not Determined	See comment above - retailer has not formally responded to date.
Atlas Assets	Jennifer	9/21/2006	"Alleged calls from Dish Network"	Sting	Status Not Determined	See comment above - retailer has not formally responded to date.
Atlas Assets	Joe Biggy	9/8/2006	Unsolicited calls after 11:00 PM.	Sting	Status Not Determined	See comment above - retailer has not formally responded to date.
Atlas Assets	Joe Burk	10/18/2006	Frequent/Persistent calls	Sting	Status Not Determined	See comment above - retailer has not formally responded to date.
Atlas Assets	John Dillon	8/23/2006	Misrepresentation Unsolicited calls	Sting	Status Not Determined	See comment above - retailer has not formally responded to date.
Atlas Assets	Johnny Shipley	9/15/2006	Frequent calls Harassment	Sting	Status Not Determined	See comment above - retailer has not formally responded to date.
Atlas Assets	Joyce Villareale	9/8/2006	"Alleged calls from Dish Network"	Sting	Status Not Determined	See comment above - retailer has not formally responded to date.
Atlas Assets	Kathy Deroch	9/19/2006	"Alleged calls from Dish Network"	Sting	Status Not Determined	See comment above - retailer has not formally responded to date.
Atlas Assets	Kim Hendricks	9/18/2006	"Alleged calls from Dish Network"	Sting	Status Not Determined	See comment above - retailer has not formally responded to date.
Atlas Assets	Lance Lowery	9/29/2006	Rude/Harassing	Sting	Status Not Determined	See comment above - retailer has not formally responded to date.
Atlas Assets	Larry/Janice Vormbrock	9/6/2006	"Alleged calls from Dish Network"	Sting	Status Not Determined	See comment above - retailer has not formally responded to date.
Atlas Assets	Lisa Lukas	8/11/2006	"Alleged calls from Dish Network"	Sting	Status Not Determined	See comment above - retailer has not formally responded to date.
Atlas Assets	Lucen Hodges	8/24/2006	"Alleged calls from Dish Network"	Sting	Status Not Determined	See comment above - retailer has not formally responded to date.
Atlas Assets	Melvin/Virginia Hambright	10/4/2006	Frequent/Persistent calls Rude Behavior Harassment Hung Up	Sting	Status Not Determined	See comment above - retailer has not formally responded to date.
Atlas Assets	Mike Nelms	9/29/2006	Frequent/persistent calls	Sting	Status Not Determined	See comment above - retailer has not formally responded to date.
Atlas Assets	Mike Witsaman	8/28/2006	Frequent/Persistent calls	Sting	Status Not Determined	See comment above - retailer has not formally responded to date.
Atlas Assets	Mrs. Bell	10/18/2006	Frequent/Persistent calls	Sting	Status Not Determined	See comment above - retailer has not formally responded to date.
Atlas Assets	Shirley Brightenstein	8/21/2006	"Alleged calls from Dish Network"	Sting	Status Not Determined	See comment above - retailer has not formally responded to date.
Atlas Assets	Tabitha Atterberry	10/10/2006	Frequent/Persistent calls	Sting	Status Not Determined	See comment above - retailer has not formally responded to date.
Atlas Assets	Teresa Payne	8/23/2006	"Alleged calls from Dish Network"	Sting	Status Not Determined	See comment above - retailer has not formally responded to date.
Atlas Assets	Theresa J. Daughtry	9/27/2006	Frequent/Persistent Calls	Sting	Status Not Determined	See comment above - retailer has not formally responded to date.
Atlas Assets	Tim Croxen	9/9/2006	"Alleged calls from Dish Network"	Sting	Status Not Determined	See comment above - retailer has not formally responded to date.
Atlas Assets	Tonia Trom	10/18/2006	Frequent/Persistent Rude Behavior Hung Up	Sting	Status Not Determined	See comment above - retailer has not formally responded to date.
Brandvein	Anonymous	9/23/2006	Unwanted solicitations	Sting	Admitted Violation	Problems with the scrub of the DNC list. Problem has been rectified and all operations in Delhi have been suspended.
Brandvein	Anonymous	8/22/2006	"Alleged calls from Dish Network"	Sting	Admitted Violation	Problems with the scrub of the DNC list. Problem has been rectified and all operations in Delhi have been suspended.

ATTORNEY/CLIENT PRIVILEGE

111/02/2006

Letter List

DISH5-0000112292-2

PX1082-002

JA015573
014295

TX 102-014835

Dealer Name	Complainant's Name	Date Complaint Submitted	Nature of Complaint	How Retailer Identified	Complaint Disposition (Violation)	COMMENTS
Brandvein	David & Rose Marie Geissinger	8/22/2006	"Alleged calls from Dish Network"	Sting	Admitted Violation	Problems with the scrub of the DNC list. Problem has been rectified and all operations in Delhi have been suspended.
Brandvein	Joseph Meistas	9/19/2006	Frequent Calls Requested to be on internal DNC list	Sting	Admitted Violation	Problems with the scrub of the DNC list. Problem has been rectified and all operations in Delhi have been suspended.
Brandvein	Kip Kibler	9/25/2006	"Alleged calls from Dish Network"	Sting	Admitted Violation	Problems with the scrub of the DNC list. Problem has been rectified and all operations in Delhi have been suspended.
Brandvein	Laura Barron	9/26/2006	Frequent/Persistent Calls	Sting	Admitted Violation	Problems with the scrub of the DNC list. Problem has been rectified and all operations in Delhi have been suspended.
Brandvein	Peavy	9/22/2006	Unwanted solicitations	Sting	Admitted Violation	Problems with the scrub of the DNC list. Problem has been rectified and all operations in Delhi have been suspended.
Brandvein	Peggy Clark	9/14/2006	Unsolicited Calls	Sting	Admitted Violation	Problems with the scrub of the DNC list. Problem has been rectified and all operations in Delhi have been suspended.
Brandvein	Ronald Clark	9/23/2006	"Alleged calls from Dish Network"	Sting	Admitted Violation	Problems with the scrub of the DNC list. Problem has been rectified and all operations in Delhi have been suspended.
Brandvein	Robert Yaklin	10/31/2006	Frequent calls On the DNC list	Sting	No Violation	Consumer did not enter name in DNC until 9/26/06. This was not a violation.
Cascade Callworks	Kristina Ertner	10/17/2006	Unsolicited Calls	Caller id	Status Not Determined	Retailer was notified on 10/31/06 - working on responses.
Cyberworks Software	Stewart Abramson	10/3/2006	Unsolicited Calls	Sting	No Violation	There was a lead for "Tom Bell" at this number - of consumer's 4 numbers, one is not on the DNC and this is the one that was used for the lead.
Defender	Don Keys	10/3/2006	Unsolicited Calls	Caller id	No Violation	Consumer initiated phone call - retailer called back - consumer requested to be removed from internal DNC list and retailer complied.
Dish Factory Direct Inc	Amber Nickerson	8/5/2006	Unsolicited Calls	Caller id	No Violation	Calls were placed on 8/3 and 8/4 and she was not added to DNC until 8/5/06.
Dish Pronto	Becky Lee	10/9/2006	Frequent/Persistent Calls	Consumer provided	Unknown	Letter was sent 10/16 - no reply.
Dish Pronto	Claude Gainer		Misrepresentation	Retailer provided	No Violation	Never dialed. This is another retailer.
Dish Pronto	John Healey	8/25/2006	Recorded Intro Message	Sting	Retailer identified	Retailer has lead from this retailer/consumer. This does not appear to be a violation.
Dish Pronto	Ronald/Tammy Todd	9/30/2006	Frequent/Persistent Rude Behavior Hung Up	Caller id	Unknown	Mr. Todd was not at home and Mrs. Todd advised the rep to call back. On calling back the same day Mr. Todd expressed his disinterest and hung up. Lead supported by opt in info.
Dish Pronto	Wayne Leboeuf	9/29/2006	Frequent/Persistent calls Harassment	Caller id	No Violation	Mr. Leboeuf told the rep (Steve) that he would need to speak to his wife to book Dish. Mr. Leboeuf called back on his Steve's extension & expressed his interest. Steve offered a callback and when he was about to process the order Mr. Leboeuf was reluctant to give out his SSN & card/ checking account details on phone. Steve asked Mr. Leboeuf to check the site and followed up the next day and that's when Mr. Leboeuf asked not to be called again. No call has been made since then to Mr. Leboeuf. Lead supported by opt in info.
Dish Pronto	Cara	9/1/2006	Multiple calls-various retailers. Sky High named by Cara	Consumer provided	No Violation	Did not get through - customer hung up before getting connected, AND not dialed from the DP- SkyHigh center. Lead supported by opt in info.
Dish Pronto	Melony Russell	8/5/2006	Frequent calls	Caller id number	No Violation	Never Dialed
Dish Pronto	Ryan Smith	8/26/2006	Unknown	Unknown	No Violation	Never Dialed
Dish Pronto	Susan Burkholder	8/26/2006	Unknown	Caller id	No Violation	Mrs. Burkholder spoke to the rep (David) and she seemed to be interested in the promotion. No where on the call she asked to be taken off the calling list and she wanted to consult with her husband before booking the order. David called her back the same day and found out that they already have Dish. Lead supported by opt in info.
Dish TV, Inc	Tom Bruiniers	8/24/2006	Unsolicited Calls	Consumer provided	No violation	No record of dialing. Response was sufficient.
E-Management	Michael Brewer					Closed, info was sufficient.
GlobalWizards	Anita Kumar	10/12/2006	Frequent/Persistent Calls	Web site reference	Status Not Determined	Consumer id'd MyDishGlobal which was linked to Allsat in error. Relationship with MyDishGlobal was terminated by AllSat on 8/3/06. Global Wizards, LLC will be notified about this allegation 11/3/06. Customer indicates that she has tapes.
GlobalWizards	Narashimha Acharya	9/20/2006	Unwelcome calls	Consumer provided	Status Not Determined	Consumer id'd MyDishGlobal which was linked to Allsat in error. Relationship with MyDishGlobal was terminated by AllSat on 8/3/06. Global Wizards, LLC will be notified about this allegation 11/3/06.

ATTORNEY/CLIENT PRIVILEGE

111/02/2006

Letter List

DISH5-0000112292-3

PX1082-003

JA015574
014296

TX 102-014836

Dealer Name	Complainant's Name	Date Complaint Submitted	Nature of Complaint	How Retailer Identified	Complaint Disposition (Violation)	COMMENTS
I Dish Com LLC/Blu Kiwi	Anita Kumar	10/12/2006	Frequent/Unsolicited Calls	Consumer provided	Status Not Determined	Retailer was notified on 10/16/06 - working on responses.
I Dish Com LLC/Blu Kiwi	Douglas Mckellar	10/5/2006	Frequent/Unsolicited Calls	Caller id	Status Not Determined	Information requested was received. Specifics surrounding the allegations was requested. Modified letters to include specifics on individual claims.
I Dish Com LLC/Blu Kiwi	Naveen/Zibi Jamal	6/2/2006	Obscene Phone Calls	Caller id	Status Not Determined	Information requested was received. Specifics surrounding the allegations was requested. Modified letters to include specifics on individual claims.
I Dish Com LLC/Blu Kiwi	Varun Gupta	8/18/2006	Frequent/Unsolicited Calls	Caller id	Status Not Determined	Information requested was received. Specifics surrounding the allegations was requested. Modified letters to include specifics on individual claims.
Jerry Dean Gilder d/b/a/ JSR Enterprises	Hannah Klein	9/29/2006	On DNC list	Sting	TCPA Violation Retailer Identified	Third Party, no longer under contract, placed call following a corrupted DNC download.
Jerry Dean Gilder d/b/a/ JSR Enterprises	Melissa Wallace	10/20/2006	Frequent/Unsolicited Calls	Sting	Status Not Determined	Letter sent 10/31/06 - retailer identified.
Marketing Guru	Aaron Hakeem	9/8/2006	Frequent/Persistent Calls	Sting		?
Marketing Guru	Ryan Amherst	7/28/2006	Refusal to remove from internal list	Consumer provided	Status Not Determined	Working with MG/VP-Sales on responses.
Marketing Guru	Tracy Rose	8/30/2006	Unwelcome calls	Consumer provided	Status Not Determined	Working with MG/VP-Sales on responses.
Marketing Guru	Barbara Drake	9/8/2006	Caller represented self as "VP of Marketing"	Consumer provided	Status Not Determined	Working with MG/VP-Sales on responses.
Marketing Guru	Charlotte /Grover Gilbert	8/9/2006	Requested removal from internal list. Was hung up on.	Identification of Caller ID #	Status Not Determined	Working with MG/VP-Sales on responses.
Marketing Guru	Dawayne Lawrence	9/9/2006	Unknown	Unknown	Status Not Determined	Working with MG/VP-Sales on responses.
Marketing Guru	Jody Lyn Creamer	10/20/2006	Unwanted solicitations	Consumer provided	Status Not Determined	Working with MG/VP-Sales on responses.
Marketing Guru	Kenneth Shields	7/17/2006	Unwanted solicitations	Consumer provided	Status Not Determined	Working with MG/VP-Sales on responses.
Marketing Guru	Manish Malhotra	7/26/2006	Unwanted solicitations	Sting	Status Not Determined	Working with MG/VP-Sales on responses.
Marketing Guru	Keith Pomroy	7/14/2006	Frequent/Persistent Calls	Consumer provided	Status Not Determined	Working with MG/VP-Sales on responses.
Marketing Guru	Puri Manoj	9/14/2006	Harassment 3/4 calls daily	Sting	Retailer identified	Working with MG/VP-Sales on responses.
Marketing Guru	Josh Rice	6/17/2006	Disconnect and reconnect account	Caller ID	Status Not Determined	Working with MG/VP-Sales on responses.
National Satellite Systems	Aaron Hakeem	10/10/2006	Unwanted solicitations DNC List	Sting	Retailer identified TCPA Violation	Consumer was put on DNC in January of 2005. The "scrub" did not eliminate this consumer.
RPM Technologies and Satellite	Sameer Alam	10/8/2006	Unsolicited calls	Caller ID	No violation	Retailer indicates that they do not outbound. They get leads from door hangers and referrals and the "817" area code for this consumer is not even one of their target areas.
Satellite Systems Now	Michael Todd	8/29/2006		Sting	Retailer identified	Retailer and their attorney working with consumer on settlement and will also insure that EchoStar has no liability.
Satellite Systems Now	Michael Todd	10/18/2006	Misrepresentation	Sting	Retailer identified	The second call was a follow-up to the first. Retailer is trying to get a copy of call as consumer "badgers" the CSR into saying he is Dish Network.
Sterling Satellite	Rawal, K.H.	6/5/2006		Sting		
Sterling Satellite	Robert Yaklin	10/25/2006	Frequent calls On the DNC list	Sting	No violation	Consumer confirmed that he was not put on the list until 9/26.
Sterling Satellite	Stewart Abramson	10/11/2006	On DNC list	Sting	TCPA Violation	Called consumer following distribution of POE notice-412-665-0118 does not show on DNC - all other 3 do. Sterling working with consumer.
United	Ken Teleis					
United	Michael Todd					

Clear Link Technologies 5202 W Douglas Corigan Way, suite 300 Salt Lake City UT

Options for identifying retailer

Caller ID
Consumer Provided
Sting
Web site reference
Retailer provided

ATTORNEY/CLIENT PRIVILEGE

11/02/2006

Letter List

DISH5-0000112292-4

PX1082-004

JA015575
014297

TX 102-014837

EXHIBIT 771

EXHIBIT 771

JA015576
014298

TX 102-014838

From: Binns, Todd
Sent: Wednesday, September 17, 2003 11:14:36 AM
To: Richardson, Sid; Pacini, Brian; Dimick, Jeff; Bangert, Russell; Parekh, Maulik
Subject: RE: CRM DNC addition

This is a good idea on the surface but I want to stress the importance of not forcing automatic Do Not Contact selects into campaigns. There will be instances when these will need to be overridden. Example - we lose a satellite/locals/etc. and need to dial a subset of our sub-base. This process is applied via a human decision today and is working well. It is better for a department to know they are applying DNC criteria than to assume the system is handling correctly.

Also, DNC criteria is applied via AND NOT logic and therefore is represented in a second super query. Forcing the automatic select will greatly confuse the campaign structure for new and existing users.

Jeff and I have already created requirements and work flow. I do not want these to change as we are working towards a tight timeline - 10/1.

If any questions/concerns exist give me a call.

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

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

From: Richardson, Sid
Sent: Wednesday, September 17, 2003 6:40 AM
To: Pacini, Brian; Dimick, Jeff; Binns, Todd; Bangert, Russell; Parekh, Maulik
Subject: RE: CRM DNC addition

Yes, this makes great business sense!
I believe we should investigate the options and get a business case developed around this.

I'll run this past the Data Warehouse Architects..to get initial response.
Sid.

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

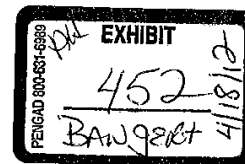
From: Pacini, Brian
To: Dimick, Jeff; Binns, Todd; Bangert, Russell; Parekh, Maulik; Richardson, Sid
Sent: 9/16/2003 7:07 PM
Subject: CRM DNC addition

With the plan to expand CRM to other departments in the future and the plan to implement DNC currently I wanted to bounce an idea off of you all:

I am concerned that when other departments use the CRM they will make mistakes on DNC suppression and get Echostar sued. My idea is that when some selects what type of campaign they are creating the CRM automatically suppresses the right DNC list. While this would take additional programming time it would not need to be done by the October 1st deadline, but after.

Food for thought...

Brian



Confidential-US v. DISH

PX1176-001

DISH5-0000066928
JA015577
014299

TX 102-014839

EXHIBIT 772

EXHIBIT 772

JA015578
014300

TX 102-014840

ECHOSTAR SATELLITE, L.L.C.

“DO-NOT-CALL” POLICY

**IN COMPLIANCE WITH THE
THE TELEMARKETING SALES RULE OF 2003**

AND

**TELEPHONE CONSUMER PROTECTION ACT OF 1991
(T.C.P.A.)**

AND

**THE TELEMARKETING AND CONSUMER FRAUD
AND ABUSE PREVENTION ACT OF 1994**

AND

ACCOMPANYING REGULATIONS

(Revised Revised March 20, 2008)

DX-83 Page 1 of 3

Confidential/Privileged

Dish-00006052
SLC_ DNC_Investigation 6070 045
9A015579
014301

TX 102-014841

ECHOSTAR DO-NOT-CALL POLICY

I. INTRODUCTION

EchoStar has implemented this Do-Not-Call Policy in order to protect the privacy rights of consumers and to promote compliance with applicable laws and regulations. EchoStar intends to honor the request of any person who opts not to receive telephone solicitations.

II. DO-NOT-CALL POLICY

EchoStar maintains a list of phone numbers of persons who have indicated that they do not wish to receive solicitation calls. The phone number of any person who informs EchoStar that he or she does not wish to receive solicitation calls is placed on EchoStar's Do-Not-Call list. A request may be communicated by means of: 1) advising an EchoStar Customer Service Representative by phone; or 2) advising EchoStar in writing. Oral requests should be made by calling EchoStar's Customer Service Center at 1-800-333-DISH or by stating the wish to be placed on EchoStar's Do-Not-Call list while on an phone call initiated by EchoStar. Written requests should be sent to: EchoStar Satellite, L.L.C., Attention: Do Not Call, P.O. Box 9008, Littleton, Colorado 80120. All EchoStar employees who conduct outbound solicitation calls will be instructed on company policy and provided with guidance on how to add numbers to EchoStar's Do-Not-Call list.

A. GOVERNMENT CONTROLLED DO-NOT-CALL LISTS

It is Echostar's policy to obtain state and federal Do-Not-Call list(s), and fully comply with legislation regarding the calling of phone numbers on these lists. EchoStar's Do-Not-Call list will be updated within 30 days of receipt of the state Do Not Call list, or such shorter time if required by state law.

B. COMMUNICATION

WHAT TO SAY WHEN A PARTY REQUESTS TO BE ADDED TO OUR DO-NOT-CALL LIST:

"Mr.(s) _____, please excuse this call, I will have your phone number removed from our calling list immediately."

WHAT TO SAY IF A PERSON REQUESTS A COPY OF OUR "DO-NOT-CALL" POLICY:

"Mr.(s) _____, we will be happy to send a copy of our Do-Not-Call policy to you. Please let me confirm your address and we will mail you a copy. Thank you for your interest."

C. UPDATING THE DO-NOT-CALL LIST

If a non-customer or existing Dish Network subscriber calls in to request exclusion from solicitations, the inbound Customer Service Representative will submit the request to EchoStar's Do-Not-Call database via an internal web page. If an outbound Customer Service Representative receives a Do-Not-Call request from a non-customer or existing DISH Network customer, the Customer Service Representative will mark the account as "Do Not Call" in the dialer. Data is downloaded from each dialer and updates EchoStar's Do-Not-Call database each morning. Account in EchoStar's Do-Not-Call database, whether marked manually by an inbound Customer Service Representative or by download, are excluded from any future telemarketing solicitation.

III. OTHER CALLING REQUIREMENTS

In addition to any specific training, instruction or other requirements, all EchoStar employees placing outbound solicitation calls must comply with the following:

- 1) Calls may only be placed between the hours of 8:00 a.m. and 9:00 p.m., local time of the called party or as specific state law regulates.
- 2) Use of an artificial or prerecorded voice to deliver a message to any residential phone line is prohibited. Thus said, we do deliver automated messages to only our existing subscribers for the purpose of customer service reminders such as when a credit card expires.
- 3) When making a call, provide the potential customer with your name and that you are calling on behalf of "DISH Network."
- 4) Advertisements may not be transmitted by any device to a telephone facsimile machine unless the person receiving the facsimile has given prior express invitation or permission to receive it.

EXHIBIT 773

EXHIBIT 773

JA015582
014304

TX 102-014844

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE CENTRAL DISTRICT OF ILLINOIS
 SPRINGFIELD DIVISION

3 UNITED STATES OF AMERICA and)
4 The STATES OF CALIFORNIA,) BENCH TRIAL
 ILLINOIS, NORTH CAROLINA, and)
5 OHIO,) 09-03073
 PLAINTIFFS,)
6 VS.) SPRINGFIELD, ILLINOIS
 DISH NETWORK, L.L.C.,)
7 DEFENDANT.) VOL. 11

8 TRANSCRIPT OF PROCEEDINGS
9 BEFORE THE HONORABLE SUE MYERSCOUGH
 UNITED STATES DISTRICT JUDGE

10 FEBRUARY 4, 2016

11 A P P E A R A N C E S:

12 FOR THE PLAINTIFFS:

13 USA DEPT. OF JUSTICE. LISA HSIAO
14 PATRICK RUNKLE
 SANG LEE
15 STATE OF CALIFORNIA: JINSOOK OHTA
 JON WORM
16 STATE OF ILLINOIS: ELIZABETH BLACKSTON
 PAUL ISAAC
17 PHILIP HEIMLICH
18 STATE OF OHIO: ERIN LEAHY
 JEFF LOESER
19 STATE OF NORTH CAROLINA: DAVID KIRKMAN

20 FOR THE DEFENDANT: PETER BICKS
21 ELYSE ECHTMAN
 JOHN EWALD
22 JAMIE SHOOKMAN
 JOSEPH BOYLE

23
24 COURT REPORTER: KATHY J. SULLIVAN, CSR, RPR, CRR
 600 E. MONROE, ROOM 312
25 SPRINGFIELD, ILLINOIS
 (217)492-4810

 KATHY J. SULLIVAN, CSR, RPR
 OFFICIAL COURT REPORTER

 JA015583
 014305

I N D E X

WITNESS PAGE

BRIAN NEYLON

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AMIR AHMED

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E X H I B I T S

ADMITTED

PLAINTIFFS

Exhibit PX80	2330
Exhibit PX188	2405

DEFENDANT

JOINT EXHIBITS

1 P R O C E E D I N G S

2 * * * * *

3 THE COURT: Court is reconvened. Please
4 continue, Ms. Ohta.

5 BRIAN NEYLON

6 recalled as a witness herein, having been duly
7 sworn, was examined and testified as follows:

8 CROSS EXAMINATION

9 BY MS. OHTA: (Cont'd)

10 Q. Good morning. So you testified that your
11 account managers did not review sales scripts to
12 improve QA scores?13 A. The account managers would have reviewed
14 documents and provided guidance on making sure that
15 disclosures were fairly and accurately represented
16 to potential customers.17 Q. So are you changing your testimony to say
18 that they did review sales scripts to improve QA
19 scores?20 A. I can't speak to that, but their job was to
21 ensure that the selling entity, our OE partners,
22 were fairly and accurately representing what the
23 terms and conditions of the consumer promotion was,
24 and the consumer was clear in their mind what they
25 were getting and committing to.

1 Q. I'd like to show you the deposition
2 testimony of Mr. Mike Mills. It's in your binder.
3 And it should be under the front tab. If you will
4 turn to page 106 of that deposition transcript.

5 If you'd like to start reading at page 106,
6 line 20. And the pertinent parts I'd like you to
7 focus on are around 107 starting line 4.

8 A. Beginning where, I'm sorry?

9 Q. Beginning with page 106 line 20. And this
10 is just so you can get some context, beginning with
11 the question (as read:) Okay. What involvement
12 does the sales group, your group, have in the QA
13 program?

14 A. (As read:) Okay. What involvement does the
15 sales group, your group, have in the QA program as
16 it exists today? We get -- the answer was, we get
17 scores on a weekly basis for all of the retailers
18 and which we are required to discuss those scores
19 with the retailers, as well as identify specific
20 areas of opportunity within those scores. And when
21 you say specific areas of opportunity, can you give
22 me some examples? If there's a low score, it should
23 be higher. Okay. And how does your -- does your
24 organization take steps to help the retailer improve
25 that score? Mr. Boyle: Objection. The witness:

1 Yes. Question by Mr. Runkle: Okay. What steps?
2 We would listen to calls onsite. We would review
3 scripting and ensure that whatever was being missed
4 was, in fact, included in their scripting. These
5 are probably the two big ones.

6 Q. So it appears that account managers did
7 indeed review the sales scripts in an effort to
8 improve QA scores; right?

9 A. That is what Mike is saying; yes.

10 Q. And the reason that you couldn't
11 specifically speak to that, is that because you're
12 not as familiar as Mr. Mills with what account
13 managers are up to?

14 A. I didn't -- I didn't review scripts with
15 accounts when I visited them. So I wouldn't speak
16 to it.

17 Q. Is it true that you're less familiar than
18 Mr. Mills with what account managers are up to? I
19 know you're in a more senior position and Mr. Mills
20 works more directly with them.

21 A. I'm not sure I can say less familiar. I
22 think I might be more familiar in some areas and
23 less familiar in other areas, but in aggregate I'm
24 not sure it would be a fair statement that I would
25 be totally more or less familiar.

1 Q. Did you know that Mike Mills himself
2 regularly reviewed sales scripts and provided
3 comments on them for OE retailers?

4 A. I don't recall.

5 Q. Okay. So yesterday we talked about how you
6 told Mike Mills and account managers that improving
7 scores should be their number one priority and that
8 you expected each of them to get 110 percent
9 involved and drive them--that is OE retailers--to
10 compliance; is that right?

11 A. Yes.

12 Q. Great. Can we turn to Plaintiff's
13 Exhibit 1048 in your binder. If you would turn to
14 page 3 of that exhibit. Sorry, page 4. Page 4 of
15 that exhibit.

16 So under the section entitled Actions Taken to
17 Remedy, toward the bottom of the page. I know there
18 are two of them, I'm directing your attention to the
19 one toward the bottom.

20 A. Okay.

21 Q. Did you know that national account managers
22 were writing actual call flow sales scripts for the
23 OE retailer that must be followed?

24 A. I think there's -- no. The -- the call flow
25 would be a general outline on an opening, a

1 proposition, fact-finding questions, closing,
2 consummating the sale, and confirming the sale. So
3 a call flow is really a generic flow that the call
4 would follow.

5 Q. So did you know that national account
6 managers were writing them and requiring OE
7 retailers to follow them?

8 A. No, ma'am.

9 Q. So in this document, if you will turn to --
10 just take a look at the top of the document where it
11 says that the particular national account manager
12 who authored this page is Will Walker.

13 So Will Walker says that he actually -- he
14 wrote this actual call flow sales script and
15 required the OE retailer to follow it. Do you know
16 specifically whether he did so or not?

17 A. I don't.

18 Q. But if he did, that would have been one way
19 to drive compliance as you instructed the account
20 managers to do; is that right?

21 A. We required that our partners include in
22 their sales process the disclosures that were
23 applicable to that particular sale. So that the
24 customer fully understands what they were getting,
25 what they would pay, and what they were committing

1 to from -- from a timeline commitment prospective.

2 Q. So if this national account manager did
3 require the OE retailer to follow a script that he
4 wrote, he would have had the right to do so under
5 the retailer agreement; is that right? He wouldn't
6 have been doing anything inappropriate?

7 A. The retailer agreement -- the retailer
8 agreement didn't -- as they were acting as an
9 independent -- as an independent contractor, the
10 information that we gave to them on how they conduct
11 their business is -- is up to them whether they
12 choose to incorporate it into their business or not.

13 The things that we required of them was that
14 there was accurate disclosures on what the customer
15 was agreeing to. And we enforced that through
16 listening to calls.

17 Q. But the retailer agreement said that DISH
18 could ask retailers to take -- take any actions or
19 refrain from any actions relating to marketing;
20 correct?

21 A. As it relates to marketing?

22 Q. Yes, as it relates to marketing.

23 A. Yes.

24 Q. So if the national account manager did
25 require the OE retailer to follow a script that the

1 account manager wrote, that would have been within
2 the bounds of what's permitted by the retailer
3 agreement; correct? It's not like the account
4 manager was doing something wrong or inappropriate?

5 A. So the -- I believe the section you're
6 referring to in the agreement referenced marketing.
7 This is -- this is in reference to what happened
8 when a potential customer was talking to an account.
9 So that wouldn't be marketing.

10 Q. And how is -- can you explain how you see
11 that distinction?

12 THE COURT: I'm sorry, I don't understand
13 the answer.

14 Q. I was gonna ask the same thing, Your Honor.

15 A. So the marketing of the offer would be a
16 piece of mail that you get in your house or an
17 internet ad that you saw. And it would -- it would
18 define what -- what the -- our ads back then
19 probably had a price point that was either 24.99 or
20 19.99, and sign up for DISH. And that would be a --
21 that would be the marketing piece.

22 And then when you called we went through --
23 they went through a sales -- a sales flow that
24 included additional details that they could get HD
25 and this is how much it costs, or a DVR box and this

1 is how much it costs on a monthly basis.

2 And that your 19.99 package that for 12 months,
3 and then after that it would be for the regular
4 price, and at that time it was probably somewhere in
5 the low to mid-forties.

6 Q. But these scripts are for OE retailers, what
7 they say to customers when they're selling the
8 product? How is that not marketing?

9 A. The marketing is to -- the marketing is to
10 prompt the call to a selling entity. And it's not
11 always a call. Today we have retailers that do
12 marketing where a customer will walk into a place of
13 business and ask about, "Hey, I want to get this
14 offer." So it doesn't all generate a call. It can
15 be -- it could be a sale consummated online, it
16 could be a sale consummated through chat today, or
17 in person.

18 Q. So these calls with the customer when the OE
19 retailer sales rep is asking them questions about
20 how many TVs they have in their house and what
21 channels they like to watch, and trying to sell
22 them -- right-size them and sell them the right
23 package, that's not marketing?

24 A. I would say that -- that's selling. In the
25 fact that you understand what the customer's needs

1 and requirements are, and that you tailor the
2 solution -- we have multiple different solutions and
3 we want to make sure that what the customer gets
4 satisfies their needs and they're not dissatisfied.
5 A dissatisfied customer is gonna be upset with us
6 and it's not gonna be a good, long-term relationship
7 with us.

8 Q. Okay. We'll go back at a later point as to
9 the exact language of that retailer agreement and
10 see if that distinction between selling and
11 marketing is there as you're describing it, but for
12 now let's move on.

13 So was your answer that if your national
14 account manager did require the OE retailer to
15 follow a script as he wrote it, that that would not
16 have been permitted by the retailer agreement?

17 A. Can you ask me that question again? I'm
18 sorry.

19 Q. So I asked you, so if -- so here, in this
20 document will walker says, (as read:) I wrote an
21 actual call flow sales script that must be followed,
22 implicitly by the OE retailer. In doing so was he
23 doing something that's permitted by the retailer
24 agreement or not?

25 A. I think that -- and I can't speak to this

1 specifically, but I think will was trying to help
2 this particular account, Go Dish, in Houston, from
3 a -- a construct prospective. Making sure that
4 the -- the disclosures -- and I think if you look --
5 if you look up top, the reasons for the scores have
6 slipped, the time limit on -- excuse me, the time
7 limit on sales calls and disclosure read. I think
8 that's what the problem was he was trying to solve.
9 So that he was highlighting to them that there was
10 things that were not included that needed to be
11 included.

12 Q. And this particular way of solving the
13 problem, that would have been within the bounds of
14 the retailer agreement?

15 A. I would say that this is collaborative.
16 This was an effort between the field-based sales rep
17 and -- although I'm not sure it says on here who at
18 Go Dish, if it was the owner or one of his senior
19 managers, but you know, he was trying to help them
20 get to a point where they fully disclosed to a
21 customer within the call flow what the customer was
22 getting.

23 Q. If you could answer for me with a yes or no.
24 would this have been allowed under the retailer
25 agreement? A yes or a no, please.

1 A. I apologize, I'm not sure that I fully
2 understand the question to give a yes or no answer.

3 Q. Okay, so let's try again.

4 So your national account manager will walker
5 says that he wrote an actual call flow sales script
6 that must be followed. Did he have the right to
7 require that of an OE retailer under the terms of
8 the retailer agreement?

9 A. He did not.

10 Q. So he was violating the retailer agreement
11 when he did this?

12 A. I don't think he was violating the retailer
13 agreement. I think what he was trying to do was
14 solve the problem that was detailed in that first
15 bullet point on the page, which was there was --
16 their seemed to be, at least from reading this, an
17 internal policy on time limit of sales calls at Go
18 Dish.

19 And it seemed that disclosures were -- although
20 it doesn't say this here, what I get from this is
21 there was either disclosures not being read, or not
22 being read fully. And he was trying to get -- he
23 was highlighting that and trying to get them to
24 understand that that was important to us.

25 And this was -- this was part of an evolution.

1 I believe this -- although it's not dated, I could
2 assume that based on the focus that we were putting
3 on this at the account by account level, that not
4 all accounts started at the same point and not all
5 accounts got to the same point in the scale. But
6 will was trying to help his individual accounts get
7 further along the scale in doing better on QA.

8 THE COURT: So you said both he did not
9 violate the retailer agreement and then you say, "I
10 don't think he was violating the retailer
11 agreement."

12 A. Yeah.

13 THE COURT: Okay. He did not have the
14 right to require? I'm confused.

15 A. Yeah. What -- what his job was was to --
16 his job was to educate and coach and share best
17 practices and point out things that he thought that
18 a re-seller or a dealer or an OE partner could do
19 better based on the information that he had
20 available to him.

21 And I think from this prospective Go Dish had a
22 company policy that they were very focused on time
23 limits on sales calls, and things that usually are
24 negatively impacted by that would be full
25 disclosures.

1 Q. I'm gonna put up the provision of the
2 retailer agreement. I think it might help here.
3 For you, Mr. Neylon, it's under tab 7 of the binder
4 Mr. Bicks gave you, the black one. And for us on
5 the screen, Andrea, if you would pull up PX238.
6 7.3, please.

7 If it's easier, it will be right there on the
8 screen right next to you, Mr. Neylon.

9 And again, we're gonna focus on the sentence
10 kind of in the middle of that paragraph which starts
11 (as read:) Furthermore, retailer shall take all
12 actions and refrain from taking any action as
13 requested by EchoStar in connection with the
14 marketing, advertisement, promotion, and/or
15 solicitation of orders for programming and the sale
16 of DISH DBS systems.

17 Do you see that?

18 A. Yes.

19 Q. Okay. So to go back to a point that was
20 giving us a little trouble earlier. DISH's right to
21 ask retailers to take all actions and refrain from
22 any actions extends to marketing, it also extends to
23 solicitation of orders for programming; is that
24 right?

25 A. The -- the 7.3 -- the 7.3 is in relationship

1 to the marketing of an order. So the marketing
2 would be the consumer -- for example, at the time
3 our introductory price point I think I said was
4 19.99. They didn't have the right to advertise
5 24.99 -- excuse me, a lower price point, like 15.99,
6 or 14.99. They didn't have the right to advertise
7 that there was no commitment when, in fact, there
8 was a two year commitment.

9 So as it related to what they could advertise,
10 that was what we told them, but how they could
11 advertise and market, and where they could, was up
12 to them.

13 Q. So, Mr. Neylon, I understand that you're
14 talking about the beginning of that paragraph which
15 talks about complying with business rules which
16 governs specific promotional programs?

17 A. Yes.

18 Q. But right now we're talking about the yellow
19 highlighted sentence in the middle of the paragraph
20 which says (as read:) In addition to business rules
21 which govern the specifics of promotional programs.
22 we're talking about a more general provision which
23 says retailers shall take all actions and refrain
24 from taking any actions as requested by EchoStar in
25 connection with not only the marketing, but also the

1 advertisement, promotion, and/or solicitation of
2 orders for programming.

3 So if a national account manager required an OE
4 retailer to follow a script as he dictated, he would
5 have been within his rights to do so under this
6 provision which says retailers have to take actions
7 related to the solicitation of orders for
8 programming; isn't that right?

9 A. I don't know that Will, in fact, gave a full
10 script, or if he was focused on the parts of a call
11 flow that required us to make sure that the customer
12 was fully disclosed what they were getting and what
13 they were committing to.

14 Q. Okay. We are gonna move on from that point.
15 Can we turn back to the Plaintiff's Exhibit 1048,
16 page 4.

17 A. I'm sorry, one more time that number?

18 Q. Plaintiff's Exhibit 1048 and page 4 of that
19 exhibit. And that's back in the white binder.

20 A. Yes.

21 Q. So the second bullet point under that
22 page -- I'm sorry. The second bullet point under
23 that section Actions Taken to Remedy says (as read:)
24 updated disclosures. If disclosures are not being
25 read as I have written, I will disable log-ins.

1 Did you know that your national account
2 managers were doing that?

3 A. So the action here was that in this case
4 will has provided the written disclosures, and that
5 if they weren't being followed, that the remedy that
6 we had was disabling the log-in or log-ins. And
7 disabling log-ins would ultimately prevent them from
8 placing orders with DISH and interrupt their revenue
9 stream.

10 So it was a remedy that we had to ensure that,
11 from a compliance prospective, that the disclosures
12 for the promotion were being fairly and accurately
13 represented to the potential customer.

14 Q. So national account managers were taking
15 this action to drive the compliance that was so
16 important to the company? That's right?

17 A. National account managers and others were
18 taking compliance very seriously because we wanted
19 to make sure that a potential customer knew what
20 they were getting. We didn't want unhappy
21 customers.

22 Q. And DISH had the right to do that under the
23 retailer agreement; right?

24 A. We had the right to turn off log-ins; yes.

25 Q. And turn off log-ins because disclosures

1 weren't read as written by DISH?

2 A. We have many rights under the contract, but
3 turning off the log-in interrupts their ability to
4 give an order, which interrupts their business flow,
5 which is a fairly drastic measure. The threat of
6 it, the threat of it is -- is sometimes enough to
7 make sure that people are doing -- doing the
8 disclosures. Reading correctly.

9 Q. Definitely. And that was well within your
10 rights to have that threat?

11 A. Yes.

12 Q. So turning to the third bullet point in that
13 section. Did you know your national account
14 managers were requiring individual sales people at
15 OE retailers to meet with them once a week to
16 monitor calls?

17 A. I'm sorry, I was reading. Can you ask me
18 that question again.

19 Q. So I asked you did you know your national
20 account managers were requiring individual sales
21 people at OE retailers to meet with them once a week
22 to monitor calls?

23 A. I'm not -- I'm not sure that I would say
24 that that was a broad practice at every -- at every
25 retailership, but as it relates here to Orbit, also

1 located in Houston, Texas, that that's what will
2 wrote here.

3 Q. And you were aware that this was happening?

4 A. As it relates to will requiring that he meet
5 with a salesperson from Orbit?

6 Q. Yes.

7 A. No, I was not.

8 Q. So you weren't aware of this instance?

9 A. I was not aware of that instance; no.

10 Q. But again, DISH had the right to require
11 such actions, if it chose, under the retailer
12 agreement; is that right?

13 A. We had the right to ensure that our
14 promotion was being fairly and accurately
15 represented. And we did that through launching the
16 QA process. It gave us visibility into who was
17 doing what. And it gave us visibility into how each
18 individual company was doing as it related to both
19 our direct sales efforts and to the -- their peers
20 within the sales channel.

21 And as I think I said yesterday, we looked --
22 we looked at each company individually. We looked
23 at each score individually. And where we saw areas
24 of opportunity, because they under-indexed or they
25 scored lower than their peer group, we focused -- we

1 focused our efforts in those areas. To make sure
2 that the customer on the other end of the phone knew
3 what they were getting and knew what they were
4 committing to.

5 Q. That makes perfect sense. And so you also
6 had the right on the back end to drive the
7 compliance to your QA standards by requiring things
8 like requiring sales people to meet with DISH agents
9 for live call monitoring?

10 A. I think in this case will -- will worked --
11 worked with the ownership structure at Orbit. And
12 this is what he wrote. This is -- this is what his
13 plan of attack was.

14 Q. Would you turn to page 6 of the same
15 document. And if you would focus on the fourth
16 bullet point under Current Action Items.

17 So speaking of national account managers
18 working with the OE retailers to improve these QA
19 scores, does it appear from this highlighted bullet
20 point that national account managers were working
21 with the retailers to identify specific sales reps
22 who were failing QA?

23 A. I'm not -- I don't read -- I read this
24 bullet point differently. The QA scores that we
25 give to the individual accounts, we don't have

1 visibility to the agent level, we have visibility to
2 the account level. And where we see areas of
3 opportunity, we give that information to the
4 ownership, and they have the ability to go and look
5 within their -- within their metrics, within their
6 business, to understand who is doing better or
7 worse.

8 And I read this that we highlighted an area --
9 or calls that -- calls that were failing QA. We
10 would give that feedback to the individual retailer.
11 And that retailer would then go see who the sales
12 agent was and they would work with that individual
13 sales agent to do better.

14 Q. Okay. So the QA system did identify
15 individual sales agents who needed to do better?

16 A. The -- the QA process -- we listened to a
17 call and we were able to score the call. And we
18 gave that information back to the client or the
19 partner. To the extent that it was a call that
20 wasn't good, then that was a piece of information
21 that the -- that the account or the owner of the
22 account didn't have before. So we were able to
23 highlight to him that you might -- you might want to
24 focus your energy here. You have an opportunity to
25 improve your company's performance by focusing in

1 this area if you so choose.

2 Q. But in this bullet point though it appears
3 that the QA system is being used to identify
4 specific agents that are failing QA; is that right?

5 A. No. I think the QA process gave us a view
6 into both the overall business and specific calls.
7 We got specific calls, we didn't -- we didn't get
8 three calls from John and two from Dave and one from
9 Mary. We asked for a random sampling of calls and
10 we scored those calls, and we provided that
11 information back to the account so they could take
12 that data and if there was areas of improvement they
13 saw, they could incorporate it in their business and
14 make their business good. Excuse me, better.

15 Q. So yes or no question, Mr. Neylon: Were
16 specific sales agents who were failing QA being
17 identified?

18 A. I don't know.

19 Q. I'm gonna read this fourth bullet point to
20 you. (As read:) Agents that are consistently
21 failing QA are being removed from the phones for
22 additional coaching.

23 Does that sound like specific agents were being
24 identified for their low QA scores?

25 A. I answered I don't know from the prospective

1 of did I know. My sense from reading this is that
2 the account owner knew who the agent was and the
3 account owner removed that agent from the phone --

4 Q. So --

5 A. -- and provided additional coaching.

6 Q. Okay. So you don't know, you don't know and
7 didn't know, that individual agents who were failing
8 QA were being removed from phones for additional
9 coaching pursuant to this QA action plan?

10 A. My understanding from reading this is that
11 we gave information to the ownership level of an
12 account and --

13 Q. I'm sorry to interrupt. I'm asking, so you
14 didn't know --

15 MR. BICKS: Your Honor, can I ask that she
16 not interrupt him. That's not fair I don't think.

17 THE COURT: I think she's getting a little
18 frustrated with not getting an answer to her
19 question.

20 Ms. Ohta, if you will be careful about
21 interrupting.

22 Q. So did you know that this was happening?
23 That agents were consistently failing QA are being
24 removed from the phones?

25 A. I did not. No.

1 Q. Thank you.

2 Turning to the bullet point below that, did you
3 know financial penalties are being imposed on agents
4 that failed QA?

5 A. I did not know.

6 Q. But these are action items that were
7 pursuant to an OE partner QA action plan in order to
8 improve these scores? These were in Richard
9 Brilli's action plan?

10 A. Yes.

11 Q. Would you turn to page 3 of the same
12 exhibit. And if you'll turn to the bolded,
13 italicized section toward the bottom of that page.

14 Do you know whether national account managers
15 were withholding offers if OE retailers didn't agree
16 to update their scripting to comply with QA?

17 A. No.

18 Q. Sorry. Was that a no?

19 A. No.

20 Q. So when you testified earlier for Mr. Bicks
21 that DISH did not exercise control over OE retailer
22 activities in certain ways, in fact, you didn't know
23 a lot of what your national account managers were
24 doing with regard to the OE retailers? What they
25 were requiring of them. Is that right?

1 A. The national -- my sales managers were
2 requiring that they incorporate the QA disclosures
3 so that the customer understand what they were
4 getting.

5 Q. I understand that. You told them to drive
6 the compliance and they --

7 A. Yes.

8 Q. -- were doing what you told them to; is that
9 right?

10 A. Yes.

11 Q. But the specifics of how they were
12 accomplishing that, you just testified today that
13 you didn't know a lot of the specific action plans
14 that the national account managers were undertaking
15 to execute according to your commands. Or, you
16 know, the mandates to them?

17 A. The ones we discussed I wasn't aware of.

18 Q. So when you testified for Mr. Bicks that
19 DISH did not exercise certain levels of control over
20 OE retailers' activities, you didn't have this
21 information?

22 A. I wasn't aware.

23 Q. Would you turn to Plaintiff's Exhibit 616 in
24 your -- in the white binder.

25 So we've been talking about your earlier 2009

1 e-mail where you communicated the number one
2 priority in terms of improving the QA scores, the
3 110 percent involvement, the driving them to
4 compliance. And that was an e-mail back in 2009.

5 And I just wanted to ask you, so DISH's
6 emphasis on keeping these QA scores high to make
7 sure the customer gets the experience as dictated by
8 the QA forum, that remained a high priority for
9 DISH; correct?

10 A. Yes. Yes.

11 Q. And that remained a high priority for DISH
12 all the way through the August 13, 2011, time period
13 in this e-mail; is that right?

14 A. Yes. Ongoing priority.

15 Q. And in this e-mail Mike Mills informs you
16 that he ripped the team again last week. Can I take
17 that to mean that he reprimanded them or had a --
18 you know, exhorted them to improve the QA scores
19 even further?

20 A. I'm not sure what Mike said, but I assume he
21 had conversations with the individual or the
22 collective team on where we were wasn't acceptable.

23 Q. So this communicated a continuing priority
24 and emphasis on keeping these QA scores high; is
25 that right?

1 A. Yes. I think that the other e-mail below it
2 where I said I thought we'd see an improvement this
3 week, and I think we actually went backwards. And
4 Mike's explanation was at the time we had changed
5 the center where the QA scoring was being done and
6 it seemed that there was a -- some of the slide or
7 the decline was caused by calibration issues between
8 the center that was being used and then the new
9 center that we used to score these calls. So some
10 of the -- some of the slide was caused by the same
11 people weren't doing the scoring for the two
12 measurement periods.

13 But he also, as it says here, there's little
14 things contributing. But he goes on to say about
15 the referencing a new center, and that's where we
16 changed the center that we did the scoring through.

17 Q. So if you'll turn to the second page of this
18 exhibit. And it has these, what I'm reading, as QA
19 questions and scores and Delta points where we can
20 see increases or decreases in the scores. Is this
21 the kind of indexing that you were referencing
22 earlier in your testimony?

23 A. Yes. Yes.

24 Q. So DISH was analyzing these QA scores for OE
25 retailer sales calls at this level of detail

1 consistently; is that right?

2 A. Yes.

3 Q. Can we turn back to the retailer agreement,
4 PX238. And that's at tab 7 of the black binder for
5 you, Mr. Neylon.

6 So we've talked a little bit about how you felt
7 that some of the requirements came from business
8 rules related to certain promotional programs; is
9 that right?

10 A. Yes.

11 Q. But the retailer agreement gave DISH the
12 right to issue any business rules it chose related
13 to promotional programs; isn't that right?

14 A. I'm sorry, one more time?

15 Q. The retailer agreement itself gives DISH the
16 right to issue any business rules it chooses in
17 relation to promotional programs; is that right?

18 A. Yes.

19 Q. And it can change those promotional rules at
20 their sole discretion at any time it wishes; is that
21 right?

22 A. Yes.

23 Q. Now back to the more general provision in
24 the middle of that paragraph starting "furthermore."

25 You testified earlier that DISH had oversight

1 over how DISH products were marketed, but not the
2 vehicles and -- not the vehicles, I think these were
3 your words, not the vehicles that DISH -- not the
4 vehicles that the OE retailers were marketing
5 through?

6 A. Yes.

7 Q. Taking a look at this yellow, highlighted
8 paragraph. DISH could have controlled the vehicles
9 that OE retailers were marketing through pursuant to
10 this paragraph -- pursuant to this provision; isn't
11 that right?

12 A. I'm sorry, the question one more time?

13 Q. So reading this yellow, highlighted
14 paragraph --

15 A. Yes.

16 Q. -- DISH could have controlled the vehicles
17 that OE retailers were marketing through if it
18 chose?

19 A. We didn't have control over where they
20 marketed or how they marketed. We had control --
21 we -- we, through the promotional business rules,
22 had control over what they marketed.

23 Q. But DISH could have had that control
24 pursuant to this provision that says (as read:)
25 Retailers shall take all actions and refrain from

1 taking any actions in connection with marketing and
2 advertisement. Is that right?

3 A. As it relates to our promotional program.
4 which was our consumer facing offer.

5 Q. But there's no limitation to promotional
6 programs in this particular part of this paragraph?

7 So I'm not asking whether DISH did exercise
8 that right to control, I'm just asking DISH could
9 have exercised control over the vehicles that OE
10 retailers were marketing through according to this
11 one sentence that's highlighted here?

12 A. I don't know.

13 Q. In fact, DISH could have required anything
14 regarding marketing of its OE retailers pursuant to
15 this one sentence here; isn't that right?

16 A. I don't know.

17 Q. Thank you, those are all my questions.

18 THE COURT: Any other questions from the
19 states?

20 MR. LOESER: Yes, Your Honor.

21 THE COURT: All right.

22 CROSS EXAMINATION

23 BY MR. LOESER:

24 Q. Mr. Neylon, my name is Jeff Loeser. I'm an
25 attorney for the State of Ohio.

1 Now, I believe you said your title is executive
2 vice-president for customer acquisition and
3 retention; is that right?

4 A. Yes, sir.

5 Q. And so your goal in DISH is to get new
6 customers?

7 A. Get new customers and keep our existing
8 customers; yes.

9 Q. And DISH has a lot of ways to do marketing;
10 right?

11 A. Yes.

12 Q. You do TV advertising?

13 A. We do.

14 Q. Print advertising?

15 A. We do.

16 Q. And back before the OE retailers, you had
17 what I'll call non-OE retailers that had their own
18 storefronts throughout the countries; right?

19 A. Yes. And we still do today.

20 Q. And there were thousands of these?

21 A. Yes, there -- yes, there is.

22 Q. And DISH also has its own internal
23 telemarketing center; right?

24 A. DISH -- we have inbound sales centers today;
25 yes.

1 Q. And DISH doesn't do outbound sales centers?
2 Doesn't do outbound telemarketing?

3 A. We contract on a limited basis to a third
4 party to do so, but most of our sales today from a
5 DISH prospective is inbound sales.

6 Q. And that third party is a vendor; right?

7 A. Yes.

8 Q. And then in the earlier or mid-2000s DISH
9 decided to set up this OE retailer program; right?

10 A. Yes.

11 Q. And this was basically -- these OE retailers
12 would do marketing, but DISH would do the
13 installation and maintenance and the long-term
14 customer contact?

15 A. They would do the marketing and selling, and
16 then DISH would do the installation and ongoing
17 customer relationship or management; yes.

18 Q. And DISH wanted to do this to get more
19 subscribers; right?

20 A. We saw this as an opportunity to leverage
21 some entrepreneurial resources that we saw in the
22 marketplace; yes.

23 Q. Now, if DISH had wanted to DISH could always
24 hire more sales people under DISH itself; right?
25 More of its own call center operators or vendors?

1 A. We felt that -- are you asking me about
2 today or then?

3 Q. Then?

4 A. So when we started the OE channel our direct
5 sales efforts were not as large as they are today.
6 There's -- there's -- there's -- I would classify it
7 as that sometimes independent entrepreneurs do
8 things better than a broader enterprise. And we
9 have a -- we have a -- it's been the history of our
10 company since -- for most of our existence, that we
11 have a distributed approach to the marketplace in --
12 in many parts of our business.

13 We don't -- we don't fully do all of our --
14 we -- through vendors, we do some of our customer
15 service. Through our installation resources are --
16 some of it is outsourced. Our sales, some of it is
17 outsourced. Through other people, not just
18 ourselves.

19 Q. With the OE retailers there are some things
20 that DISH doesn't do? They don't do the OE
21 retailers' hiring?

22 A. We don't.

23 Q. You don't do the payroll for the OE
24 retailers?

25 A. No.

1 Q. You don't pay their taxes?

2 A. No.

3 Q. You don't have to rent or maintain their
4 facilities?

5 A. No.

6 Q. Okay. But I do -- I did want to go through
7 what DISH does with the retailers. So when a
8 retailer signs up a customer, that customer's
9 contract is with DISH; right?

10 A. Yes.

11 Q. And DISH sets the programming and pricing
12 that the retailers can sell?

13 A. Yes.

14 Q. DISH -- DISH sent facts blasts with
15 marketing tips to the retailers?

16 A. Yes.

17 Q. DISH holds trainings for the OE retailers?

18 A. Yes.

19 Q. They send out videos, I think they're called
20 Charlie Chats?

21 A. We do video broadcasts to our entire
22 third-party selling base, that is really a, here's
23 what's going on, here's what's new, here's what's
24 coming. Updates to consumer promotions. We talk
25 about, in certain cases, changes in retailer

1 incentives. So it's -- that's a vehicle we still
2 use today to communicate various topics.

3 Q. DISH lets the retailers use its logo if they
4 add DISH Authorized Retailer to it; right?

5 A. Yes, we do.

6 Q. DISH has the authority to approve or reject
7 any affiliates that the OE retailer might use?

8 A. We do.

9 Q. DISH, as we kind of discussed, there's a 45
10 question QA process they score the OE retailers on?

11 A. Yes.

12 Q. And at least occasionally it looks like DISH
13 wrote call flow scripts for the retailers?

14 A. I think my sales managers from time to time
15 have provided information to OE retailership owners
16 on flows.

17 Q. And as you said, to educate, coach, and
18 share best practices with them?

19 A. In certain cases; yes.

20 Q. And DISH -- DISH's OE entry tool, it's DISH
21 that runs the credit report or checks the credit of
22 the customer; right?

23 A. It's actually done by one of the bureaus,
24 but yes, we interface with the bureau directly. The
25 partner doesn't.

1 Q. So the retailer doesn't have the authority
2 to decide whether or not the DISH customer
3 qualifies; right?

4 A. They do not.

5 Q. And occasionally the retailers might screw
6 up and DISH would fine them; right?

7 A. We have.

8 Q. Or you could fine them?

9 A. We have, yes.

10 Q. But really that's just money that's already
11 DISH's and it's just not sent on to the retailers;
12 right?

13 A. The fine is usually in -- in reaction to a
14 bad behavior. The customer -- the customer might
15 not have been fully disclosed that they were in a
16 two year agreement, or that the rate they were
17 getting in the first year was an introductory rate
18 and that they would go up. So the -- the ability
19 for DISH to make a profit is multiple years from the
20 day that the customer comes to DISH.

21 And to the extent that the fine is levied
22 against an individual retailer or retailerships,
23 it's a way for us to demonstrate that -- that this
24 behavior is not good and we're gonna take action.
25 And it's -- it's intended as a deterrent to future

1 bad behavior, if you want to call it that.

2 Q. And DISH keeps the fine though; right?

3 A. In the -- in this -- yes.

4 Q. And DISH can demand that the OE retailers
5 provide recorded calls for DISH's review; right?

6 A. We have a requirement that we ask them
7 for -- we ask them for a sample of calls. They
8 don't provide us with calls. We don't ask for a
9 number of calls, we ask for specific calls related
10 to specific accounts. So it's -- the word I'm
11 looking for is random. So it's a random request.

12 Q. And DISH scores the retailers on these
13 calls; right?

14 A. Yes, we do.

15 Q. And I know we talked about it a little bit,
16 but Andrea, if you could pull up the retailer
17 agreement again, PX238, 7.3.

18 we talked a little bit about what this means,
19 but reading it, DISH shall take -- in the middle.
20 (As read:) Furthermore, retailers shall take all
21 actions and refrain from taking any action as
22 requested by EchoStar in connection with the
23 marketing, advertisement, promotion and/or
24 solicitation of orders for programming and sale of
25 DISH DVS systems. That's what it says; right?

1 A. Yes.

2 Q. Now, Mr. Neylon, we have talked about all of
3 this. These OE retailers are what DISH calls
4 independent contractors; right?

5 A. Yes.

6 Q. Thank you. No further questions.

7 CROSS EXAMINATION

8 BY MR. KIRKMAN:

9 Q. Good morning, Mr. Neylon. I'm David Kirkman
10 from the State of North Carolina and I just have a
11 few questions to follow-up on some things you
12 discussed yesterday.

13 You were asked several questions about JSR and
14 about their termination. You discussed that
15 yesterday; correct?

16 A. Yes, sir.

17 Q. How soon after DISH learned that JSR had a
18 lawsuit against it by the State of Missouri was JSR
19 terminated?

20 A. I don't know the specifics, but I believe I
21 became aware of it in the e-mail, that the actual
22 press release that I was sent, I believe that was in
23 early February of 2008. And I believe we terminated
24 very soon after.

25 Q. It was within a week; correct?

1 A. I'm not sure the specifics, but I know it
2 was really -- very soon after.

3 Q. Okay. DISH had several OE retailers back in
4 2006 who had been with them for a number of years;
5 is that correct?

6 A. Yes.

7 Q. Retailers such as EBN Financial? They were
8 OE retailers for a long time, were they not?

9 A. They were -- yes.

10 Q. How about Sterling, were they OE retailers
11 for several years?

12 A. Yes.

13 Q. Satellite Systems Network?

14 A. Yes.

15 Q. They were OE retailers for almost ten years;
16 isn't that correct?

17 A. I believe so, yes.

18 Q. Back in 2006 did DISH do Dunn and Bradstreet
19 checks on its existing retailers?

20 A. Not to the best of my knowledge.

21 Q. Did they ever do any public record searches
22 on their OE retailers on regular intervals back in
23 2006?

24 A. Not to the best of my knowledge.

25 Q. Did they even do Google searches to see if

1 their OE retailers were in the news back in 2006?

2 A. Not to the best of my knowledge.

3 Q. How about if DISH became aware that a
4 particular OE retailer was generating complaints
5 about robo calls or TCPA violations; did such
6 searches occur then?

7 A. I don't know.

8 Q. Could you please look at Exhibit PX1086 in
9 your binder. And turn to page 23?

10 A. Just a moment.

11 (Court reporter requested clarification.)

12 A. I have 1086.

13 Q. Do you have that document open to page 23?

14 A. Yes, sir.

15 Q. Do you know who Ron Dufault is?

16 A. I know who Ron is.

17 Q. Was he with your group?

18 A. He was in -- he was in our Retail Services
19 Group, sir.

20 Q. Okay. This is an e-mail from Ron Dufault
21 dated September 21, 2006; is that correct?

22 A. Yes.

23 Q. Can you read the paragraph that begins just
24 after "Yes, I just cracked it"?

25 A. (As read:) It is Satellite Systems Network,

1 OE number 821907, owner is Alex Tehranchi. They
2 were fined \$25,500 by North Carolina in 2004 for
3 TCPA violations. I've attached a couple of
4 documents for your reading pleasure.

5 Q. Did DISH Network move to terminate
6 Mr. Tehranchi and his company Satellite Systems
7 Network in 2006?

8 A. I don't believe so.

9 Q. Did they in 2007?

10 A. No.

11 Q. Did they in 2008?

12 A. No.

13 Q. Those are my questions.

14 THE COURT: Any other states questions?

15 MR. LOESER: No, Your Honor.

16 MS. OHTA: No, Your Honor.

17 THE COURT: Mr. Bicks?

18 MR. BICKS: Thank you, Your Honor.

19 REDIRECT EXAMINATION

20 BY MR. BICKS:

21 Q. Can we pull up Neylon 1 we started his
22 examination with.

23 I just want to orient ourselves in time for a
24 minute. You see Neylon 1 up on the graphic?

25 A. Yes.

1 Q. And you were asked questions, in fact the
2 focus of your cross-examination was about a quality
3 assurance program; right?

4 A. Yes.

5 Q. Can you just, on the context of this
6 timeline, point out what we're talking about in
7 terms of timing? What's the date of the documents
8 and the quality assurance program that you were
9 talking about, what year are we talking about?

10 A. My recollection is that we started this
11 process and program sometime in the August-September
12 time frame of 2009.

13 Q. All right. So when we look at this timeline
14 2009, you see that the violations that are at issue
15 in this case are 2004, 2005, 2006, 2007. And then
16 you've got the 2010 to 2011 violations; right?

17 A. Yes.

18 Q. All right. So the quality assurance you're
19 talking about takes place after all the conduct
20 involving Dish TV Now, Star Satellite, American
21 Satellite, JSR; right?

22 A. Yes.

23 Q. All right. Now just as a general
24 proposition, is quality assurance a good thing for
25 customers?

1 A. Yes.

2 Q. Is that something that a responsible company
3 does?

4 A. Yes.

5 Q. All right. And was any quality assurance in
6 your mind ever intended to change the independent
7 contractor relationship with retailers that's
8 provided in the agreement?

9 A. No.

10 Q. And in practice--putting aside this
11 contract--in practice, did DISH ever control the
12 marketing practices when it comes to telemarketing,
13 newspapers, TV, radio of any OE retailer?

14 A. No.

15 Q. Could DISH, from a practical standpoint, in
16 terms of the business relationship, do that?

17 A. No.

18 Q. Now, you were shown the contract, and I
19 know -- the retailer agreement, 238. Obviously,
20 sir, your background, you are not a lawyer; right?

21 A. I am not a lawyer.

22 Q. All right. But does it make sense from your
23 prospective to pull one sentence out of a contract
24 and not look at the whole contract?

25 A. No.

1 Q. All right. So I want to show you this 7.3.
2 And you've been asked a lot about one sentence
3 within one paragraph. But let's pull up the whole 7
4 section for a minute.

5 What is the top of the section? Has to do with
6 orders; right?

7 A. Yes.

8 Q. All right.

9 THE COURT: Excuse me, Mr. Bicks. The
10 grand jury is ready for me. Is now a good time to
11 break?

12 MR. BICKS: It is.

13 THE COURT: All right. Court is in recess.
14 You may stay here. I'm going to another courtroom.

15 (A break was taken.)

16 THE COURT: Please continue, Mr. Bicks.

17 BY MR. BICKS:

18 Q. We were talking about 238 and Paragraph 7.
19 This has to do with the topic orders; right,
20 Mr. Neylon?

21 A. Yes.

22 Q. All right. And the provision you were
23 talking about in 7.3, that little in the middle
24 about retailers shall take all actions; right? And
25 you see right before that the relevant terms of the

1 promotional program appearing right before that,
2 under orders, within the whole paragraph? Do you
3 see that?

4 A. Yes.

5 Q. What again is a promotional program?

6 A. That would be the consumer-facing
7 proposition; an introductory price, an offer to our
8 customer.

9 Q. And can we then go to Paragraph 11 at page
10 20. Do you see the entire paragraph that talks
11 about independent contractor?

12 A. Yes.

13 Q. All right. Any question in your mind from
14 your intent as an executive that the relationship
15 with the OE retailers was that of an independent
16 contractor?

17 A. It was an independent contractor
18 relationship.

19 Q. And in your mind is there a difference
20 between the vehicle of advertising--something like a
21 newspaper, a television, a radio, whether it be a
22 telephone--is that a completely separate kind of
23 area than uniformity of product disclosure?

24 A. Yes.

25 Q. And can you explain why?

1 A. The -- the television, radio, newspaper
2 print is the method to get the message there. What
3 is the message is the promotional offer.

4 Q. Right. And so if I'm gonna buy -- if I'm a
5 customer and I want to -- talking about DISH, and
6 it's \$19.99 a month. Is it important to make sure
7 that that \$19.99 is the same communication whether
8 it be on a radio, whether it be on a TV, whether it
9 be in a newspaper, whether it be on a telephone?

10 MS. HSIAO: I'm going to make a leading
11 objection, Your Honor.

12 THE COURT: I'm surprised you're making it
13 now, since he's been leading --

14 MS. HSIAO: I figured I would wait until it
15 got so bad I had to object.

16 THE COURT: The objection is sustained.
17 You do lead very well.

18 Q. Can you explain to us, sir, the difference
19 between the actual method of marketing and the
20 actual disclosure of things like pricing?

21 A. So the -- the importance of controlling
22 the -- what is marketed is we're a national company,
23 we have one price point whether you're in Ohio or
24 California. There's certain attributes to our offer
25 that we include--that could be three months of HBO.

1 There's also attributes of the offer that the
2 customer needs to be aware of--that there's a fee
3 for our DVR system.

4 So what the customer is getting, the
5 retailers -- nobody other than we have control over
6 what the introductory promotional offer is.

7 How that is encapsulated and gotten to a
8 customer, either through a radio ad or television ad
9 or their mailbox or a flier handed out at a state or
10 local fair, that is up to -- solely up to our
11 independent retailers.

12 Q. And did DISH, on a day-to-day basis, ever
13 dictate whether marketing would be done on a
14 telephone, a radio, a television, or anything like
15 that?

16 A. No.

17 Q. Did DISH have any role in determining how
18 much investment would be spent on any of those
19 different marketing vehicles?

20 A. No.

21 Q. You were shown -- and to go back to the
22 contract. Can you bring up 9.1 at page 17.

23 And you see the provision that deals with
24 compliance with the laws and says the retailer is
25 solely responsible for its compliance? Are you with

1 me, Mr. Neylon?

2 A. Yes. Yes.

3 Q. Is that your understanding of what was the
4 relationship and obligations of OE retailers?

5 MS. HSIAO: Objection, leading.

6 THE COURT: The objection is overruled.

7 A. Yes, it is.

8 Q. And was this ever amended or changed by any
9 retailer ever?

10 A. No.

11 Q. And did ever -- any retailer ever
12 communicate to you that they were anything but
13 solely responsible for compliance with all laws?

14 A. No.

15 Q. Now, you were shown Plaintiffs' 486.
16 Remember that?

17 A. Yes.

18 Q. And I want to show you the second paragraph
19 on the first page. Can you blow up, Trudy, in order
20 to project, that three lines right there.

21 This says (as read:) In order to protect the
22 consumers and to alleviate complaints to government
23 agencies, EchoStar has renewed our dedication to
24 first minimize and hopefully eliminate these types
25 of complaints.

1 Is that a good thing to do?

2 A. I think this is a good thing for potential
3 customers, or prospective customers, and it's a good
4 thing for the retailer. And I think it's a good
5 thing for DISH.

6 Q. And do you know, you were questioned about
7 this quality assurance steps that were taken in
8 2010. Do you know if those were something that
9 actually various state Attorney General required
10 DISH to do?

11 A. Yes. Yes, they did.

12 Q. And is it a good thing to do what a state
13 Attorney General requires you to do?

14 A. I believe so. Yes.

15 Q. And in this same document at page 5 there's
16 a statement about the TCPA. It's page -- yes, right
17 there, Trudy. Let's blow that up.

18 This is also in this quality assurance
19 document. And the bottom paragraph says (as read:)
20 All retailers that engages in telemarketing or
21 utilities, any entity that performs telephone
22 solicitations, should become familiar with and
23 adhere to all applicable laws, including maintaining
24 documentation to provide such adherence.

25 Do you see that?

1 A. Yes.

2 Q. And I want to focus on the point -- the
3 language in there says that the retailers should
4 become familiar with and adhere to all applicable
5 laws. Was that your understanding of the obligation
6 of the retailers?

7 A. Yes, it was.

8 Q. And why have it in this document?

9 A. This is, in my opinion, a reaffirmation of
10 what the retailer had already agreed to when they
11 signed the retailer agreement.

12 Q. And in practice, did any information ever
13 come to your attention which said that the
14 arrangement was anything different than what is
15 represented here, which is that the retailer should
16 become familiar with and adhere to all applicable
17 laws?

18 A. Nothing ever changed in my mind, no.

19 Q. All right. Now, you were asked questions
20 about Exhibit 107, this question of use of voice
21 broadcasting. Remember those questions?

22 A. Yes.

23 Q. And this is a document that goes back to the
24 year 2000 -- I'm sorry, I meant Exhibit 80.
25 Plaintiff's Exhibit 80. Are you with me on 80? Do

1 you remember this? It's on the screen.

2 THE COURT: It's pretty non-legible on the
3 screen.

4 A. I've got it.

5 Q. Can that be seen?

6 A. I have a copy.

7 Q. Okay. And you were asked -- this is the
8 year -- this is 2002; right?

9 A. Yes, it is.

10 Q. And there's a statement in here from Nick
11 Myers that he says in the third paragraph, (as
12 read:) we know of no Colorado law which prohibits
13 leaving solicitation voice mails.

14 Do you see that?

15 A. Yes.

16 Q. You're not here obviously as an expert on
17 state law and telemarketing; right.

18 A. No, I'm not.

19 Q. All right. He actually drops down in here
20 and he talks about a retailer in Fort Collins,
21 Colorado, named Satellite systems Network out of
22 Fort Collins, Colorado. Do you see that?

23 A. Yes.

24 Q. And so we're complete about the e-mail, if
25 you go to the next page, you do have a comment here

1 by Mr. Novak which he says he doesn't know New York
2 law, but in general state law frowns on prerecorded
3 telephone calls. Are you with me, trying to orient
4 ourselves?

5 A. Yes.

6 Q. Was it clear at this time about exactly what
7 the law was on the use of prerecorded telephone
8 calls?

9 A. It wasn't clear to me; no.

10 Q. Nevertheless, was it DISH's practice to
11 frown on it?

12 A. Yes.

13 Q. And let me show you Defendant's 607. This
14 is a communication from November of 2006 to all
15 retailers. And I want to show you Paragraph 5, and
16 blow that up at the bottom.

17 Is this consistent -- you with me on this?
18 This is a facts blast?

19 A. Yes.

20 Q. And it says (as read:) EchoStar strongly
21 discourages the use of prerecorded messages or
22 solicitations.

23 Was that the policy of EchoStar and then DISH?

24 A. Yes.

25 Q. And why?

1 A. Couple of reasons. One was it was difficult
2 to implement correctly from a retailer's
3 prospective. But more importantly, the customers we
4 were getting from this type of marketing were of a
5 lower quality than our average customer. And I
6 think I said a little earlier, we don't make money
7 on customers from day one. It's multiple years in
8 the future before we make a profit on that customer.
9 And if they are of lower quality that typically is a
10 leading indicator that they will leave us before we
11 make a profit on them.

12 Q. And then the next sentence says, (as read:)
13 In the event that state or federal laws permit you
14 to engage in prerecorded messaging, you should
15 ensure that you strictly comply with such laws.

16 Why did DISH remind retailers that they should
17 ensure that their strictly comply with the laws?

18 A. Because it was important to us and we used
19 this as a vehicle to reaffirm their requirements
20 from what they signed in the retailer agreement.

21 Q. And you were asked questions about JSR. And
22 I want to show you Exhibit 250, Plaintiffs' 250.

23 And let me back up while you're looking at
24 that, because you were asked questions about why you
25 would -- did you rely on the judgment of Mike Mills

1 and Reji Musso?

2 A. Yes.

3 Q. And why did you rely on their judgment?

4 A. Well, I've known Mike -- I've known Mike --
5 I knew Mike a while at that time, and I know Mike
6 through today. I believe he's an honest guy. I
7 believe his judgment is good and I trust him. As I
8 did and do Reji.

9 Q. And I want to ask you, because there was an
10 inference made that kind of the people at DISH just
11 sat there and accepted everything that was said and
12 didn't follow-up. And I want to ask you about that.

13 You see the questions that Reji is raising
14 here? Third -- second paragraph. (As read:) Do
15 you have affiliates? The information, while vague,
16 points to multiple other complaints that we've been
17 unable to identify. Richard, it's critical that I
18 get feedback immediately. How about your leads?
19 Where do they come from? Are they shared with any
20 other retailers?

21 What does this tell you when you see this about
22 the level of proactivity that's going on here?

23 A. I think I get from this that Reji is trying
24 to -- Reji is following up. She's asking the
25 questions. We have -- and I think I alluded to it

1 yesterday, we got information that we always
2 couldn't -- sporadic pieces of information, we
3 couldn't always connect the dots.

4 At some point after -- later on in certain
5 cases, we did get pieces of information that allowed
6 us to go back in time and connect some dots and get
7 to resolution on some complaints. But what Reji
8 says here, I think she uses the word vague in here.
9 So the information that we provided, then that could
10 have been some of the information that we had
11 included in a facts blasts that we put up on the
12 screen yesterday. It could have been names,
13 addresses, phone numbers, bank account names --
14 numbers, excuse me. Just small pieces of
15 information that we -- that we housed and that we
16 used to go and solve some complaints that we
17 couldn't solve.

18 Q. And then look --

19 THE COURT: I have a question. So why
20 couldn't you pinpoint it if you have the retailer's
21 number?

22 A. We couldn't pinpoint who was actually doing
23 it if it was being done by a third party. And in
24 certain cases certain third parties were using
25 generic names or were working for more than one

1 retailer.

2 Q. And look, for example, at Plaintiff's
3 Exhibit 1135. This is on December 21st. And you
4 see at the bottom there Reji is saying, (as read:)
5 I will do a check on the above-named company. It's
6 in the middle paragraph. I will do a check on the
7 above-named company and see what we can figure out
8 about this company, if anything.

9 Do you see that?

10 A. Yes.

11 Q. And what does that indicate to you about
12 following up when information is brought to DISH's
13 attention?

14 A. I think what Reji is saying here is she's
15 got a new piece of information, South Coast
16 Holdings, and that she was going to do some
17 follow-up to find out if we had additional
18 information about it, or if we could find out
19 additional information about it. And see if we
20 could associate it with any other complaints that we
21 had -- that we had gotten.

22 Q. And if you see in the second paragraph, the
23 last sentence, (as read:) Always unidentifiable.
24 Was that a challenge for DISH?

25 A. It was a challenge.

1 Q. Yeah. And you were shown -- but even though
2 it was a challenge, did you sit there and just
3 forget about it?

4 A. No, we did not.

5 Q. And Plaintiffs' 1361. It's an exhibit that
6 you were shown on cross-examination.

7 You see the first sentence of that -- the
8 middle paragraph, "unfortunately." And by the way,
9 do you know who Ms. Marciedes Metzger is?

10 A. Yes.

11 Q. Who is she? She goes by Marcie?

12 A. Marcie Metzger. She works in our customer
13 service organization.

14 Q. And she says here, (as read:)
15 Unfortunately, most of the time we're not able to
16 identify the caller. And therefore, we're not able
17 to offer a complete resolution to the consumer.

18 Can you explain that and how that impacted what
19 you all were trying to do?

20 A. Yeah. I think what Marcie is alluding to
21 here is that we get the customer complaint and we
22 don't have enough information gathered to get to
23 resolution on the complaint.

24 Q. Does that mean that you just stopped and
25 threw up your hands?

1 A. No. What we generally did there was we --
2 we logged it and it was -- it was, for want of a
3 better term, an unsolved case. And in -- on a go
4 forward basis additional pieces of information might
5 come into our possession and we would be able to go
6 back and see if it's associated with things that we
7 hadn't been able to solve. Or understand.

8 Q. Thank you, Mr. Neylon. That's all I have.

9 THE COURT: Ms. Hsiao?

10 MS. HSIAO: Yes, Your Honor.

11 RE CROSS EXAMINATION

12 BY MS. HSIAO:

13 Q. Good morning -- is it Neylon or Neylon?

14 A. Neylon.

15 Q. Sorry for mispronouncing. I have that
16 problem myself.

17 THE COURT: In that I just mispronounced
18 your name.

19 Q. It happens all the time.

20 You just said that a lot of times you got a
21 complaint and you couldn't figure out where it was
22 coming from; right?

23 A. Yes.

24 Q. But I believe that the testimony that you've
25 given over the last two days shows that even when

1 you got a complaint and you figured out who was
2 responsible and you figured out there was a
3 violation, oftentimes nothing happened; isn't that
4 right?

5 A. In certain cases we -- we spoke to the
6 account, we did some coaching, we leveled fines, and
7 in certain cases we ended up terminating.

8 Q. But not after the first complaint certainly?

9 A. Generally, no.

10 Q. Not after the second in the case of JSR,
11 SSN, Satellite Systems Network?

12 A. In those cases, no.

13 Q. Now, Mr. DeFranco -- I don't know -- I don't
14 think you were here when he testified last week.
15 But he said that, you know, maybe some retailers,
16 there were nine stings, Marketing Guru had nine
17 stings or more, but if that's out of 30,000 calls,
18 that's not a big deal. That's your attitude too,
19 isn't it?

20 MR. BICKS: Objection, Your Honor. That's
21 not what Mr. DeFranco said.

22 THE COURT: The objection is overruled.

23 A. I think my -- I'm sorry, what adjective you
24 used. Was my philosophy --

25 Q. Your attitude?

1 A. No. My attitude is we look at every
2 complaint on an individual basis and we try to
3 investigate it to see what the root cause was. I
4 think that -- that my attitude was also to find out
5 where it originated from and how it originated. And
6 was it a mistake, was it an employee within a
7 business doing bad things, or was it intent at the
8 ownership level as a -- as a means of practice.

9 Q. So you did that by talking to the retailer;
10 right?

11 A. We did that by talking to the retailer. We
12 did it by understanding -- and I asked in one of the
13 e-mails what was their volume because I wanted to
14 understand in the context of their overall business
15 was this -- was it a rampant problem that we just
16 found out about or didn't know about, or was it an
17 isolated incident. Or was it one instance. So we
18 could come to a determination on it.

19 Q. Well, you testified yourself that you didn't
20 do audits after you got a complaint; right?

21 A. I didn't? No.

22 Q. The compliance people didn't do audits?

23 A. They did not.

24 Q. They didn't ask for call records?

25 A. They did not.

1 Q. They didn't ask for campaign calling lists
2 to see if other people were being called, for
3 example, on the Do Not Call Registry?

4 A. Correct.

5 Q. They didn't even go to the retailer and see
6 what was going on there; right?

7 A. They did not.

8 Q. You sent your sales people there sometimes
9 to find out what was happening?

10 A. Yes.

11 Q. But the compliance people, they weren't on
12 the ground at those retailers after a complaint
13 was --

14 A. Our compliance people have visited --
15 visited some of our third-party centers. Excuse me,
16 third-party sellers.

17 Q. Well, nobody went to JSR; right?

18 A. I'm not -- I don't know.

19 Q. And in fact, we know now that the complaints
20 that you got were just the tip of the iceberg; isn't
21 that right?

22 A. We now know that.

23 Q. You figured it out with -- well, you figured
24 out, I think in many cases, you talked about LA
25 Activations, that somebody had too many sales. It

1 didn't seem reasonable; right?

2 A. Yes.

3 Q. You wanted to investigate?

4 A. Yes.

5 Q. The tip of the iceberg problem; right?

6 A. There was a problem between what his -- his
7 activations were and what he produced as a marketing
8 expense.

9 Q. And you could have taken -- we've talked a
10 lot about the retailer agreement. You could have
11 taken action that would put things on hold while you
12 did an investigation; isn't that right?

13 A. Putting a retailer on hold would interrupt
14 the economic flow of monies. So by putting a
15 retailer on hold generally is an action that leads
16 to the business going out of business.

17 Q. Well, it also would stop them from selling
18 DISH for a while, wouldn't it?

19 A. Yes, but we -- I assume we didn't put
20 certain people on hold until we were sure that we
21 had a problem, instead of taking a course of action
22 that punished an innocent party.

23 Q. Well, what about seeing if there were other
24 innocent consumers that got illegal phone calls like
25 the one that you got complaints about? You didn't

1 do anything about them, did you?

2 A. I did not.

3 Q. They continued to be victimized by these
4 illegal calls; correct? while you waited and
5 investigated? By you, I mean DISH, not you
6 personally.

7 A. while DISH investigated; yes.

8 Q. And we also know now that Ms. Musso, who I
9 know did her best to ask questions and to
10 investigate, her doing that wasn't enough? It
11 wasn't enough to prevent it, was it?

12 A. No.

13 Q. So as an homage to Mr. Bicks's
14 demonstratives, we have own our demonstrative now on
15 JSR Enterprises. I'm going to pass out -- we
16 only -- I apologize, we only have black and white
17 copies, but we --

18 THE COURT: You should apologize.

19 Q. we have a color copy we're going to put on
20 the screen. And, Your Honor, we will get you a
21 color copy. we're having some made.

22 So as a preface to this, and as an homage to
23 your European background, I'm sure you're familiar
24 with the story of Nero fiddling while Rome burned;
25 you know about that, right?

1 A. Yes.

2 Q. So let's look at what happened. You brought
3 on JSR as an OE retailer in August 2006. And the
4 complaints started rolling in within a month after
5 that.

6 And Ms. Musso investigated. Ms. Musso asked
7 questions. There was a sting. There were actually
8 I think two stings early in the fall of 2006. And
9 the complaints kept coming in.

10 Sorry, PowerPoint is a little slower than me
11 talking.

12 Mr. Goodale gave you some legal advice about
13 how he believed his calls were legal.

14 And there were some, in fact, admitted
15 violations. There was a corrupted DNC file.

16 While DISH dithered and investigated and
17 accepted the flimsy excuses that were offered by
18 JSR, JSR lit up the country. And they made two and
19 a half million calls to people on the Do Not Call
20 Registry. And we now know from Mr. Goodale that
21 they made prerecorded calls as well. All of those
22 two and a half million calls were press 1 voice
23 broadcasting calls.

24 MR. BICKS: Your Honor, are we gonna have a
25 question --

1 MS. HSIAO: I'm getting there.

2 MR. BICKS: It's kind of a closing
3 argument. And a lot of this is not in evidence and
4 supported --

5 MS. HSIAO: All of this is exhibits that
6 have been offered or will be offered into evidence.
7 These are all -- the red flags, literally and
8 figuratively.

9 THE COURT: Objection is overruled.

10 BY MS. HSIAO:

11 Q. And you can see what was happening at this
12 time. So January 31st, 2007, was the last
13 complaint. You found out about the Missouri
14 injunction in February, 2007; right?

15 A. Yes.

16 Q. And while all that was going on, while you
17 were investigating, let's look at our violations.
18 You know that there were all these calls that were
19 made; correct?

20 A. I wasn't aware, no. These ones, these
21 complaints? Excuse me?

22 Q. So this is our comic relief for the day.
23 The Lincoln heads represent the population of
24 Springfield, Illinois in 2010. 116,000 people. And
25 every one of those heads represented every man,

1 woman and child in this city we're in here now. And
2 that's how many people were called by JSR
3 Enterprises during this six month period that you
4 waited and sat on your hands.

5 Is that acceptable behavior?

6 A. I think -- I think in hindsight we now know
7 what we didn't know then. I think every one of
8 these complaints, when presented to my enterprise or
9 my corporation, were dealt with in a serious manner.
10 I think we --

11 Could we have done more or better? Yes. I
12 think we were -- we were -- we were dealing with
13 what we knew at the time.

14 And I would say that when presented with
15 information that I got on February the 7th, we took
16 swift action to terminate the relationship.

17 Q. Well, it looks pretty unreasonable, doesn't
18 it? what happened? what you let happen?

19 A. I'm sorry that it happened to these
20 individual people. I didn't know it was happening.
21 I don't know that we knew to the level of detail
22 that we have today that it was happening. And I
23 think that when we -- when we were made aware of the
24 magnitude of it, we took swift action.

25 Q. Well, not swift enough evidently; right?

1 A. I think we took swift action.

2 Q. Now, you talked quite a bit with Mr. Bicks
3 and the states Attorneys General about the retailer
4 agreement, and all the things that it gives DISH the
5 right to do. Remember those -- do you remember that
6 testimony?

7 A. Yes, ma'am.

8 Q. And in fact, Paragraph 7.3 of the retailer
9 agreement gives DISH the right to make the retailers
10 do anything it wants; right?

11 A. That's not my understanding.

12 Q. It requires them to take any action that
13 DISH requires with respect to marketing and refrain
14 from any action that DISH requires them to refrain
15 from, doesn't it? That's correct, isn't it?

16 A. That's a narrow reading of the overall
17 document. I think there's other sections in the
18 document, Page 1 and Section 11, that clearly
19 outlines in broader terms they are an independent
20 contractor for DISH Network and EchoStar.

21 Q. You know DISH calls -- the people at DISH
22 call 7.3 the absolute power clause? Have you heard
23 that?

24 A. I have not.

25 Q. And DISH made the retailers do a lot of

1 things. Things you said a reasonable, responsible
2 company does. Quality assurance programs; right?

3 A. That we were required to do by the state
4 Attorney Generals of multiple states.

5 Q. DISH was required to do it and you required
6 the retailers to do it; right?

7 A. Yes. And I believe that it was a good thing
8 for potential customers.

9 Q. Mandatory disclosures? Required by the AVC
10 and you made the retailers do them; right?

11 A. Yes, we did.

12 Q. But you told your lawyer, you told Mr. Bicks
13 just a few minutes ago, that DISH chose not to
14 control the retailers when it came to their
15 telemarketing; isn't that right?

16 A. Yes.

17 Q. In fact, DISH told everybody else that it
18 couldn't control their retailers with respect to
19 telemarketing. You know that; right?

20 A. Telemarketing is the vehicle for marketing.
21 what we did control was what they were marketing as
22 it related to the consumer-facing proposition.

23 Q. You told the Justice Department and the FTC
24 that you couldn't control the retailers; correct?

25 A. I'm not aware of what we told.

1 Q. DISH told this Court and other courts that
2 it couldn't control the retailers and their
3 telemarketing; isn't that right?

4 A. I'm not aware -- you're asking me to comment
5 on other people's testimony that I was not read or
6 was not --

7 Q. I'm asking you to comment on the company's
8 position. You know what the company's position in
9 this lawsuit and other suits have been?

10 A. Yes. To comply with all laws of both
11 federal, state, and local laws.

12 Q. But you know that DISH has been, for years,
13 saying that it can't control the retailers and their
14 telemarketing activities; isn't that right?

15 A. Yes. Can't control how they market our
16 product.

17 Q. But it could, it just didn't want to; isn't
18 that correct?

19 A. I don't believe we could.

20 Q. Well, we talked about the retailer
21 agreement. And I would submit to you that the
22 reason you didn't, even though you could have, was
23 because it was in DISH's interest to let those
24 retailers keep dialing; isn't that right?

25 A. No. It's not in our interest, because

1 ultimately that customer has a -- has a bad
2 experience and could form a negative opinion of my
3 company. And also, customers that are brought to my
4 company via that vehicle tend to be not a good
5 investment for us.

6 Q. Well, and I will bring you back to PX486, I
7 think it was, that Mr. Bicks referred to earlier. A
8 few concerning complaints --

9 A. I'm --

10 Q. We will put it up on the screen.

11 A. I'm sorry, I can't read it. Sorry.

12 Q. Okay, go ahead. Sorry.

13 THE COURT: I don't remember from the
14 evidence, when did DISH actually do a study that
15 showed that these customers who were dialed in this
16 fashion were not a good investment?

17 A. We looked at it -- we looked at it from
18 the -- from the retailer's prospective and we saw
19 that people that were doing this had high churn.
20 High churn --

21 THE COURT: When was this?

22 A. We took actions for some of these people in
23 2008 and 9 when customers -- retailers that have
24 high churn mean that -- that the customer leaves us,
25 generally speaking, prior to us reaching a breakeven

1 point from our investment. And while it -- it might
2 feel good to get a customer today, if we don't make
3 money on them for three or four years, and you never
4 get to three or four years, that's not a good use of
5 our capital.

6 Q. So the exhibit I'm looking at is 80. PX80.

7 A. 80?

8 Q. Yes.

9 A. Yes.

10 Q. And Nick Myers, who I think you said was one
11 of your regional directors, he made a comment back
12 in 2002 that's pretty apt for what we are dealing
13 with today, which is that (as read:) The complaints
14 have caused a few concerning calls, but they seem to
15 be greatly outweighed by the results.

16 That's what happens, isn't it? That's why
17 we're here today?

18 A. Yeah, I can't comment on what Nick's frame
19 of mind was at the time. That's not my philosophy.
20 My philosophy has always been that we wanted to do
21 what I would believe to be classified as good
22 business. We wanted to make sure that the customer,
23 when presented with our offer, fully knew what they
24 were getting and fully knew what they were
25 committing to.

1 Q. Now, I just want to address one last
2 question, which is in response to the Court's
3 question. You said that, you know, DISH doesn't
4 make any money on these people for at least
5 four years or something like that?

6 A. It depends on the individual customer. But
7 we invest money today, and through that customer
8 paying us each month for programming, we make a
9 little bit of money every month. And at some point
10 in the future hopefully we actually break even and
11 start making some money.

12 Q. Well, DISH has to report in its public
13 filing the amount -- average monthly revenue per
14 subscriber, doesn't it?

15 A. Yes, we do.

16 Q. So you're aware, I'm sure, that in 2007 DISH
17 was making \$65.83 per subscriber?

18 A. I can't answer yes to that question, but I
19 do know that our average revenue per -- average
20 revenue per subscriber was probably in that
21 ballpark. If you're telling me that's what we
22 reported, then that's what we reported; yes.

23 Q. And you know it was about that. It actually
24 has gone up. So in 2008 it was \$69.27. In 2010 it
25 was \$73.22 -- and 32. In 2011 it was \$76.93. Do

1 those numbers sound right to you?

2 A. Yeah. That would be the revenue we get from
3 the customer, and then you would offset our costs
4 for that customer. Some of that money went to HBO
5 or ESPN or ABC or Viacom or things like that.

6 Q. So DISH made that money every month for each
7 of its subscribers? That's what it was reporting to
8 the SEC; correct?

9 A. That was our revenue from the customer, yes.
10 There's a cost basis that needs to be applied to
11 that too.

12 Q. Right. The per subscriber acquisition cost
13 was between \$656 and \$771 per subscriber; right?

14 A. Yes.

15 Q. Is that per year or per month?

16 A. That would be per subscriber.

17 Q. Per subscriber for the whole lifetime of
18 their subscription?

19 A. You pay the subscriber acquisition cost
20 once.

21 Q. So if I were to tell you that JSR
22 Enterprises brought in about \$8,000 subscribers for
23 DISH, you can't tell me you didn't make any money
24 off those customer; isn't that right?

25 A. I can't tell you if we did or didn't on a

1 per subscriber basis; no.

2 Q. Thank you, I have nothing further.

3 THE COURT: Mr. Loeser. I'm sorry,
4 Ms. Ohta.

5 RECROSS EXAMINATION

6 BY MS. OHTA:

7 Q. Mr. Neylon, you just testified for Mr. Bicks
8 that DISH had nothing to do with what OE retailers
9 were spending on advertising; is that right?

10 A. Yes.

11 Q. Andrea, could you put up Plaintiff's
12 Exhibit 409. I apologize, I don't have paper copies
13 of this. If you will follow along on the screen.

14 If you will turn to the second page of that
15 exhibit. Does this appear to be a document where
16 DISH is tracking the advertising spending of its OE
17 retailers?

18 A. This looks to be one of our sales teams
19 tracking grid for what our retailers are telling
20 them they're spending on a month over month basis.

21 Q. On advertising; is that right?

22 A. That would be -- yes.

23 Q. And it's tracking whether spending is up or
24 down or flat, and by what percentages; is that
25 right?

1 A. This would be based on what the account
2 manager or someone at DISH was told they were
3 spending, versus -- January versus December.

4 Q. Right. And this is a DISH document tracking
5 that information?

6 A. This would be a sales -- sales document,
7 yeah, internal document. Tracker.

8 Q. Thank you.

9 I'm gonna turn to Plaintiff's Exhibit 1201.
10 And we will pass that up to you.

11 So you just testified for Mr. Bicks that the QA
12 program started in 2009. Have you had a chance to
13 look at this document? Isn't it true actually that
14 the QA program started, at the very latest, in
15 September of 2006?

16 A. The QA process that we were talking about
17 that where we scored the calls and documented the
18 results, and the variances on a week over week
19 basis, and for them to upload calls to us for
20 listening was done in August of 2009. As it relates
21 to this, that -- that it seems to me that our
22 field-based sales people were doing onsite -- maybe
23 doing onsite listening of calls.

24 Q. You know we've had earlier testimony in this
25 Court from Reji Musso that in the August-September

1 2006 time frame, a QA program was launched which
2 involved a combination of onsite call monitoring and
3 also call recording and monitoring. Does that sound
4 correct to you?

5 A. I'm not aware.

6 Q. So you're just not aware of when the QA
7 program started?

8 A. Yes.

9 THE COURT: What is MBG?

10 A. I'm not sure.

11 Q. I'm gonna turn you again to Plaintiff's
12 Exhibit 238, Paragraph 7.3. It's that same retailer
13 agreement provision that we've been going over back
14 and forth again and again.

15 So according to this provision, whether it's
16 through a business rule attached to a promotion or
17 through the provision that says retailers have to
18 take all actions or refrain from any actions
19 relating to marketing, DISH always had the right to
20 require a QA program of its OE retailers if it
21 wished to?

22 Do you want me to repeat the question?

23 A. I'm sorry, yes.

24 Q. Okay. So with -- according to this
25 provision in the retailer agreement that we've been

1 looking at over and over again, DISH always had the
2 right to require a QA program of its OE retailers if
3 it chose to; isn't that right?

4 A. We had -- we had the right to implement a QA
5 process to ensure that the disclosures for the
6 offers were being fairly and accurately represented
7 to the customers they were trying to bring to my
8 company.

9 Q. Right. And it chose not to exercise that
10 right until the 2006 time frame?

11 A. We started the process, it looks like, on
12 a -- on some sort of basis in 2006. And we expanded
13 those efforts and increased those efforts in 2009.

14 Q. But it could have done this earlier
15 according to your retailer agreement if you chose?
16 If DISH chose?

17 A. Yeah, this section gives us the right to
18 implement monitoring of calls.

19 Q. Thank you.

20 Oh, actually I have one more question. So you
21 told Mr. Bicks that in your mind these OE retailers
22 are independent contractors; is that right?

23 A. Yes.

24 Q. So when you told your national account
25 managers to go out and get 110 involved in the

1 operations of these independent contractors, did you
2 think it was appropriate?

3 A. I thought it was appropriate that they take
4 ownership of it. That they understand the
5 importance of the initiative to ensure that
6 prospective customers were being fairly and
7 accurately represented what they were getting. And
8 to ensure that the customer -- the customer wasn't
9 lied to and that that would -- that the customer
10 experience with my company would -- would be not
11 good.

12 Q. So DISH could get 110 percent involved in
13 certain aspects of its independent contractor's
14 business operations if there's a good enough reason?

15 A. Well, I think that some would argue you
16 can't do better than a hundred percent. My sense is
17 that I used the 110 percent argument as an emphasis
18 point to say that -- that it is important -- that it
19 is important, gravely important, very important,
20 ultimately important, utmostly important, whatever,
21 to make sure that the people selling our product are
22 doing so in an accurate manner so that the customer
23 who is -- who is sold DISH Network has a great
24 experience and is a customer for a long period of
25 time.

1 Q. Great. Thank you. Those are all my
2 questions?

3 THE COURT: Mr. Loeser.

4 RECROSS EXAMINATION

5 BY MR. LOESER:

6 Q. Mr. Neylon, I know we've talked a lot about
7 7.3. And I think you talked with Mr. Bicks about
8 how this applies only to programming and what prices
9 they could sell and what programming they could
10 sell; right?

11 A. We dictated what the promotion was. And the
12 promotion was inclusive of pricing and packaging and
13 commitments and things like that.

14 Q. But whether or not you or DISH believes this
15 would apply to telemarketing, it is in fact true
16 that DISH at times directed or asked retailers --
17 directed retailers to do certain things and refrain
18 from certain things? We went over those call flow
19 scripts and the QA process and the fines. So DISH
20 was directing these marketers on how to do
21 telemarketing; right?

22 A. Not telemarketing. Telemarketing in my mind
23 is the action of -- of calling. What the QA process
24 was intended to do, that when there was a customer
25 speaking to a selling entity, or a sales agent at a

1 selling entity, that they were fairly and accurately
2 represented what they were getting, what they were
3 committing to, so that -- so that there was no
4 surprises.

5 Q. DISH did know that these companies were
6 doing telemarketing; right? Some of them?

7 A. Some of them.

8 Q. Because they had -- I believe I saw the
9 application form had a list of what percentage of
10 marketing you'll be doing, and one of those was
11 telemarketing; right?

12 A. Yes.

13 Q. And in fact, whatever the contract may say,
14 you at times -- Dish did educate, coach, and share
15 best practices with these retailers; right?

16 A. We educated, coached, shared best practices
17 with our selling partners; yes.

18 Q. And I -- I'm guessing that DISH shared its
19 education, coaching and best practices with its own
20 telemarketers vendors, it's internal direct sales;
21 right?

22 A. I apologize, I didn't follow the question.
23 Because I run direct sales as well today, so --

24 Q. Does DISH -- do you also provide best
25 practices and educate your direct sales

1 telemarketers?

2 A. So we have -- we have inbound sales agents
3 at DISH. They don't make outbound telephone calls.
4 And our internal sales -- or internal sales reps,
5 employees, we train them and educate them on our
6 processes, our promotions, our programming, just
7 like -- yes, because it's their function, their job
8 function.

9 Q. Just like you train the OE retailers on your
10 programming and sales; right?

11 A. The training that we provided to them was
12 the construct of what the offerings were. And what
13 the customer was getting. What they were committing
14 to. How they communicated that to the potential
15 customer was -- was up to them.

16 Q. Just to be clear, you mentioned that DISH
17 does take inbound calls. But at least with some --
18 I believe one of the vendors was eCreek, DISH does
19 do some outbound telemarketing directly; right?

20 A. I know that we have. I can't speak to today
21 that we do.

22 Q. And so wouldn't, instead of using the OE
23 retailers, one option be for DISH just to do its own
24 telemarketing like it has in the past?

25 A. I think I answered this a little bit

1 earlier. We have a distributed approach to the
2 marketplace in varying parts of our business.
3 Having had exposures to a wide swath of our
4 business, I see the advantage of having a
5 distributed approach to the marketplace.
6 Entrepreneurs are entrepreneurs and the advantage --
7 one of the advantages of doing business with
8 entrepreneurs is that -- that they're entrepreneurs.
9 We're a big company.

10 Q. And one of the advantages is that DISH is
11 trying to get out of telemarketing liability for
12 these telemarketers, isn't it?

13 A. I'm not sure I understand the question.

14 Q. DISH is disputing that it's liable for these
15 retailers' calls; right?

16 A. Yes.

17 Q. So one of your benefits is trying to claim
18 you're not liable for these retailers?

19 A. I think we're not. Again, I'm not a lawyer
20 but the claim is premised on the -- the relationship
21 being that of an independent contractor.

22 Q. Because you were able to outsource your
23 telemarketing?

24 A. We didn't -- we didn't outsource -- we
25 didn't outsource telemarketing per say. Just like

1 we wouldn't outsource direct mail or shared mail or
2 television or radio or local fairs participation.
3 we left that to the independent retailer to decide
4 how they were going to market and attract a
5 potential customer.

6 Q. And you let them decide that rather than
7 DISH making that decision and doing it in-house?

8 A. We have and we do do a lot of marketing
9 practices in-house. Some greater than others. Some
10 more effective than others. So we have -- within
11 our own internal sales efforts we have a distributed
12 approach to the marketplace.

13 MR. LOESER: Thank you. No further
14 questions.

15 MR. RUNKLE: Your Honor, I have something
16 that I think will answer the Court's most recent
17 question, if I could ask a few questions to the
18 witness?

19 THE COURT: You may.

20 RECROSS EXAMINATION

21 BY MR. RUNKLE:

22 Q. If we could PX1201 up there.

23 A. What was the number?

24 Q. PX1201. Do you have -- it's a loose sheet.

25 A. I've got it.

1 Q. It's a one page e-mail?

2 A. Yes.

3 Q. The Court asked for MBG stands for. Does
4 MBG stand for money back guarantee?

5 A. I don't know.

6 Q. So did DISH offer a money back guarantee for
7 30 days or 90 days at certain points in time?

8 A. We've done a lot of consumer-facing
9 promotions or tests. I can't answer honestly if we
10 have done a money back guarantee for 30 or 90 days.

11 Q. Okay. Let's assume for a moment that MBG
12 stands for a type of promotion. Okay?

13 A. Okay.

14 Q. So what's happening here is that -- I mean
15 it actually is you, since you're being asked, you
16 are using the scores from a QA program in 2006, or
17 the results of a QA program in 2006, to compare the
18 OE retailers with the direct retailers in order to
19 identify whether Jim, who I'm assuming is
20 Mr. DeFranco, can turn off the money back guarantee
21 that DISH is offering; isn't that right?

22 A. Just -- I'd like to read it real quick.
23 Sorry, I apologize.

24 Q. Sure.

25 A. So reading this, the -- the money back

1 guarantee, they argued to turn off the money back
2 guarantee, if I follow this and put the pieces
3 together. From a direct sales prospective the money
4 back guarantees, and it says here from Jodi Martin,
5 who was in marketing at the time. The latest
6 results from direct tests showed no impact on close
7 rates from taking money back guarantee away -- money
8 back guarantee, if that's what it stands for, away
9 from a specific group of reps.

10 So that seemed to say that that part of the
11 consumer-facing promotion on -- those reps didn't
12 impact their close rates. That coupled with the
13 confirmation that the OE guys were not using, on a
14 test basis, is -- the reasons that the OE guys
15 wouldn't use is that the money back guarantee would
16 be that the customer would be able to get out of
17 their promotion requirements, the two year
18 commitment. And the OE guys would see that they
19 didn't offer it because they didn't want the
20 customer to be not under a two year -- a two year
21 commitment.

22 We had, at one point in time, where you could
23 pay an activation fee and not have a two year
24 commitment. And our third-party sellers didn't
25 support that because that, in their minds, left them

1 a little -- it let the customer have a short-term
2 view of the relationship with DISH. They might live
3 in an apartment and have nine months left on the
4 lease and there's no penalty to leave our service.
5 So that's why they wouldn't do it.

6 Q. But information, specific information about
7 how the retailers are selling appears to have
8 influenced DISH's decisions about how to sell its
9 products? wouldn't you agree with me, Mr. Neylon?

10 A. I think that question from Jody was that she
11 was -- she was trying to gather information and go
12 back and speak with Jim. I don't know what
13 happened.

14 Q. Thank you.

15 THE COURT: Anybody else?

16 MS. HSIAO: No, Your Honor.

17 THE COURT: Mr. Bicks, are you done?

18 MR. BICKS: Can I just put up one exhibit
19 fast?

20 THE COURT: You may.

21 REDIRECT EXAMINATION

22 BY MR. BICKS:

23 Q. 139. DTX139. You were asked about the
24 churn rate and JSR. Were they profitable for DISH?
25 Remember that?

1 A. Yes.

2 Q. What's kind of -- when DISH looks at its
3 churn rate, what's a break even number? What's the
4 ballpark?

5 A. Anywhere from below 1. -- below 2, 1.9, 1.8
6 is good. Below 1.3, 1.2, 1.1, 1.0 is great. And
7 this is measured on a monthly basis.

8 Q. So what happens when you're up there at
9 8 percent?

10 A. I approach it pretty simply. I take the 8,
11 I multiply it by 12 and get 96. In my mind almost a
12 hundred percent of the customers that come to us are
13 gone by the end of the first year.

14 Q. Thank you.

15 THE COURT: May this witnesses be excused
16 at this time?

17 MS. HSIAO: One second, Your Honor.

18 RECROSS EXAMINATION

19 BY MS. HSIAO:

20 Q. So is it your testimony, Mr. Neylon, that
21 DISH didn't make any money on the 8,000 subscribers
22 JSR brought it?

23 A. That's not my testimony.

24 Q. You don't know; right?

25 A. I don't know.

1 Q. Thank you. No more questions, Your Honor.

2 THE COURT: I don't write as fast as my
3 Court Reporter. Sir, you're excused.

4 (The witness was excused.)

5 THE COURT: Next witness.

6 MS. HSIAO: Your Honor, while we are
7 waiting for the next witness, we were wondering if
8 we could have a preview for DISH's case for the
9 coming days, including when Mr. Bicks -- how long he
10 thinks it will take with respect to his argument on
11 the Rule 52 motion, and then the witnesses we have
12 coming up for the rest of this week and next week?

13 THE COURT: Do the plaintiffs rest at this
14 time? Subject to the exhibits?

15 MS. HSIAO: We have the deposition
16 transcripts we want to offer and resolving the
17 exhibits we want to have admitted.

18 THE COURT: Okay. And your next witness is
19 Mr. Ahmed?

20 MR. BICKS: Yes. I thought I said this,
21 but I will say it again. Yes, Amir Ahmed is the
22 next witness. The Court knows we have the Rule 52
23 motion that we mentioned to the Court. I believe we
24 have indicated to the Court that we had some short
25 deposition readings. We actually pared those back

1 even shorter.

2 I think --

3 THE COURT: So you think I have a learning
4 disability? I can't read?

5 MR. BICKS: No, I don't think that.

6 THE COURT: All right.

7 MR. BICKS: And then the next witness is
8 Amy Dexter. And then the next witness is going to
9 be Russell Bangert.

10 THE COURT: So it's not Ahmed next?

11 MR. BICKS: It is.

12 I left out Mr. Sponsler. Mr. Sponsler will be
13 before Amy Dexter and Russell Bangert.

14 THE COURT: All of these witnesses, Ahmed
15 and Sponsler, the next two witnesses, will be long;
16 correct?

17 MR. EWALD: My direct of Mr. Ahmed is
18 pretty short. But with Mr. Neylon so was Mr. Bicks,
19 and the cross took triple --

20 THE COURT: It was not ten minutes,
21 Ms. Ohta.

22 MS. OHTA: I'm sorry, Your Honor.

23 THE COURT: All right. Let's get Mr. Ahmed
24 in.

25 MR. BICKS: So, Your Honor, is the case

1 closed then?

2 THE COURT: No. I have to get the
3 depositions and do the exhibits.

4 MR. BICKS: Okay.

5 THE COURT: Then you will be allowed to
6 make your argument.

7 MS. HSIAO: Do you want -- Your Honor, does
8 the Court want to put time limits on anything on the
9 argument? I don't know --

10 THE COURT: You think Mr. Bicks needs a
11 time limit?

12 MS. HSIAO: I'm wondering what we should be
13 anticipating, and what we should be prepared for?

14 MR. BICKS: I think ballpark about
15 20 minutes.

16 MS. HSIAO: Works for us.

17 THE COURT: Okay. Just so you know, I've
18 quit putting my Fitbit on during court given what my
19 heart rate has been. I'm going to try it again.

20 If you will step over here, Diane will swear
21 you in.

22 (The witness was sworn.)

23 AMIR AHMED

24 called as a witness herein, having been duly sworn,
25 was examined and testified as follows:

KATHY J. SULLIVAN, CSR, RPR
OFFICIAL COURT REPORTER

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1 DIRECT EXAMINATION

2 BY MR. EWALD:

3 Q. Good morning, Mr. Ahmed.

4 A. Good morning.

5 Q. Will you please state your name for the
6 record?

7 A. Amir Ahmed.

8 Q. And what is your educational background?

9 A. I have a business degree from Indiana
10 University.11 Q. Could you pull the microphone a little bit
12 closer to you, do you mind?

13 A. Sure.

14 Q. Thank you.

15 THE COURT: We can actually turn up the
16 sound if you want.

17 Q. I think it's fine. Say something?

18 A. How are you?

19 Q. Better.

20 What is your current position at DISH?

21 A. I'm the senior vice-president of sales
22 overseeing the door-to-door organization and the
23 independent local retailers.24 Q. Do you currently have any responsibilities
25 relating to OE retailers?

1 A. No, I do not.

2 Q. When did you start working at DISH?

3 A. I started June of 1993 as a sales manager
4 out of our Miami office. Would you like me to
5 continue?

6 Q. Yes, please.

7 A. Okay. In August of 1995 I was promoted to
8 director of sales and operations overseeing the
9 mid-west region that was in Chicago.

10 Then in 2001 promoted to vice-president of
11 sales. And that was overseeing the southeast,
12 mid-west and the northeast region.

13 Then in 2005 promoted to SVP, senior
14 vice-president of sales and distribution.

15 Q. Let me stop you there. From that time
16 period that you just described, at some point did
17 you have responsibility for OE retailers?

18 A. Yes, I did.

19 Q. Can you tell us about that?

20 A. Sure. Started in 2003, I think the program
21 launched end of 2003, until about end of 2005. I
22 left the company early 2006.

23 Q. So you just said that you left the company
24 in early 2006. Can you tell us about that?

25 A. Sure. Well, personal reasons. My daughter

1 was diagnosed with a pretty bad illness where she
2 could not live in Denver or at high altitudes. She
3 had to live at sea level. So the decision was made
4 to move to Dallas.

5 And to be very honest, it was travel on a daily
6 basis, and then on a weekly basis, and then it
7 became every two weeks, you know. And it just
8 became too much. And I just wanted to find balance
9 in life. It was just a personal reason, after 13
10 years it was just time to spend time with the
11 family.

12 Q. So after -- what time period was that when
13 you decided to spend time with your family?

14 A. I mean I made the decision around after
15 Thanksgiving of 2005 that I was going to leave.
16 Officially it was January 31st of 2006.

17 Q. So what did you do after leaving DISH?

18 A. Trying to be a good dad to be honest.
19 Nothing for a while. Went on vacation, spring break
20 with the family for the first time. Went to Europe
21 when the kids came out of school. I did basic
22 things as finally figuring out where the kids go to
23 school and picking them up after practice, and just
24 things like that, you know. And I took some time
25 off. And I needed to take some time off.

1 Q. What happened after that period of time?

2 A. Sure. I was -- I was approached by
3 Marketing Guru. We had -- that was one of our
4 retailers. Benny Traub, who was one of the owners
5 of Marketing Guru, approached me. And had actually
6 called Jim DeFranco and said, "Hey, can I speak to
7 him. There's an opportunity."

8 And his proposition was that, "I'm a big DISH
9 retailer, I know how to market, but I would love to
10 do business like I am with DISH with AT&T, with
11 Verizon, with the cable companies. And you have
12 some relationships with all these major players.
13 And would you help me consult and go out there and
14 meet with them and pitch a program and try to get me
15 contracts so I can sell their services."

16 So I looked at it where I can live in Dallas
17 and kind of travel and visit these guys. And I did
18 that.

19 Q. So how long did you do that?

20 A. I did that until about December of that
21 year. And did a lot of the contracts, including
22 building a business model. Did meet with Benny on
23 numerous occasions, built a pretty good business
24 model as it relates to -- their part was that we
25 wanted to be a separate business to build something

1 like a Switzerland, they called it. Agnostic to the
2 customer. Customer calls, based on all the
3 marketing, and regardless of what they're need is or
4 what they're looking for, you have an option.

5 So based on where they lived, you know, it's
6 just not about DISH Network. If they lived in an
7 apartment, guess what, we offer Comcast. If you're
8 looking for telco service, we offer AT&T, like that.

9 So the model was, you know, how do you go out
10 there and build it, just outside just marketing.

11 So I went out and did deals with a lot of the
12 moving companies. I did deals with some realtor
13 company, because that's a prime time to move. And
14 you can work would them and say, "Here's the deal.
15 We can offer services for consumers who are moving,
16 moving into house."

17 And it worked. It was a pretty good model that
18 we built.

19 Q. So at some point in time did you return back
20 to DISH?

21 A. Yes, I did. I returned -- well, I -- I
22 started talking to DISH about two years later about
23 coming back. And I did come back officially end of
24 May of 2009.

25 Q. And what was your position when you

1 returned?

2 A. When I came back I was senior vice-president
3 of sales and distribution.

4 Q. At that point in time did you have some
5 connection to the OE retailers?

6 A. It fell underneath me. I had the
7 responsibility -- I had inherited some additional
8 responsibilities. As an example, I also inherited
9 the telco division, which I didn't really know too
10 much about that. So I had to learn that.

11 Q. What is telco?

12 A. Telco is that we had partnerships -- while I
13 was gone we built partnerships with Wind Stream,
14 TVS, Frontier Communications. So that was something
15 new to me that fell underneath me.

16 And then obviously the OE retailers was
17 underneath me at that time. I had the independent
18 local retailers, which I was passionate about. That
19 was the business that I was involved in and built.
20 We had thousands of those retailers.

21 Also inherited the commercial division, which
22 was fairly new to me. That is the entire
23 organization that deals with hospitals, hotels, and
24 so on.

25 And so, yeah, that's the indirect channel. I

1 mean the indirect channel, that was my
2 responsibility.

3 Q. And was there someone that dealt directly
4 with the OE retailers? Responsibility for it?

5 A. Well, when I came back there was an
6 organization. There were account managers. We had
7 some operations people. We had Mike Mills as a
8 director. I gave that responsibility -- Brian
9 Neylon had gotten there right before me. Brian
10 Neylon's responsibility as a VP was to run the OE
11 channel. So it was a pretty good infrastructure at
12 that point.

13 Q. Now, did your focus change at some point
14 once you got back?

15 A. In August of 2013 I was asked to go build a
16 door-to-door organization. And I did. I moved to
17 Utah for about a year. And working with a lot of
18 the universities and students to build a
19 door-to-door organization that exists today and we're
20 continuing to build that.

21 Q. Let's talk a little bit about OE retailers.
22 What do OE retailers bring to the relationship with
23 DISH?

24 A. Well, they're business people that do a
25 tremendous amount of advertising and spend a lot on

1 advertising. They are independent contractors. And
2 they have a retailer agreement with us. But they
3 are, you know, retailers that advertise DISH
4 products.

5 Q. And why does it make sense for DISH to use
6 OE retailers?

7 A. Well, they're business people. What I mean
8 by that is -- I mean if you look at -- if you look
9 at, from DISH -- it doesn't matter, DirectTV,
10 whatever, but when we advertise, we're advertising
11 on a national basis. We're taking television ads
12 out, we're taking ads out in U.S.A. Today, we're
13 taking print ads out in newspaper, right, that hits
14 every home. But one page ad, as an example, in the
15 U.S.A. Today, or two television ads.

16 The OE retailers are very specific. So you
17 might have one that does tremendous direct mail.
18 And they're going to do testing. So they will do A
19 and B testing. And what I mean by that is, they're
20 not just going to go out and do a direct mail and
21 just wait for, right, a response. It could work or
22 it could not work. Because they're spending their
23 own money, they're taking the risk.

24 So what I mean is, one week you could see a
25 direct mail in a town that has an offer, and it

1 could be the fonts, the color scheme. And the next
2 week the same house gets a direct mail piece, but it
3 could be totally different messaging. Because
4 they're seeing what the response rate is. Someone
5 might be doing tremendous print advertisement.
6 Someone might be doing radio, right. A lot of them
7 will do internet. So it all depends.

8 But they bring specific expertise, just like
9 all the independent satellite dealers do to their
10 specific niche. And that's why these guys were very
11 valuable, and they still are today.

12 Q. Now, you mentioned, I believe, that these OE
13 retailers are bound by a contract with DISH; is that
14 right?

15 A. That's correct. The retailer agreement.

16 Q. Are the terms of this retailer agreement
17 essentially the same for all retailers?

18 A. Yes, they are.

19 Q. By entering into these agreements was it
20 contemplated that DISH had the authority to control
21 the day-to-day operations of all of its retailers?

22 A. No.

23 Q. Is there any way that DISH could do that?
24 As a practical matter?

25 A. No. I don't think they would allow us to do

1 it.

2 Q. And why do you --

3 THE COURT: Who is "they"?

4 A. All the retailers. Because they're the ones
5 who are kind of running their business, right. They
6 understand what they're selling, where they're
7 selling, how they're marketing, how much money
8 they're spending. Right? Who they need to hire,
9 what their operational cost is. I don't think I can
10 go in there and say, "This is what you need to do."

11 Q. And in your 20 or so years at DISH did any
12 retailer tell you that they thought they were agents
13 of DISH?

14 A. No.

15 Q. Did DISH review the product disclosures that
16 retailers used?

17 A. The product disclosures being?

18 Q. Well, when I say product disclosures, the
19 specification about the DISH -- the DISH promotional
20 programs?

21 A. Absolutely. I mean if it was -- on the
22 promotional end of it, on the terms and conditions
23 and product disclosures, they're very specific. You
24 have to be able to explain what the technology is,
25 what the promotion is, what the pricing is, what the

1 consumer offer is. So we would review that with
2 them; yes.

3 Q. And why is that important?

4 A. Well, let's take -- it's competitive; right?
5 It's -- you have -- you have a consumer offer and
6 it's not just about the price points. So let's just
7 say today we have an offer that's called 49.99, or
8 DirectTV has an offer for 19.99. That doesn't mean
9 it's 19.99. It depends on what the customer gets.
10 If they buy a certain type of hardware there could
11 be DVR costs associated, there could be HD costs
12 associated, there could be local channels cost
13 associated with. If they purchase additional
14 receives, there would be additional costs
15 associated. Your programming cost could go up in
16 month 13. So you need to explain that to the
17 customer, because they might think that that's their
18 cost forever.

19 Okay, there could be other installation costs.
20 There's an agreement that they're signing. So it's
21 a two year agreement, you need to let them know
22 that.

23 So there's -- you have to go through what
24 you're selling, you have to think customers, you
25 have to make sure they completely understand what

1 they're buying. So yes, we would review that and we
2 would go through that with them. It's training,
3 it's education.

4 Q. Does DISH tell retailers how to market their
5 products?

6 A. No. Again, I don't -- I don't think I can
7 go out there and -- or DISH would not, but I know I
8 can't go out there and tell a retailer go spend
9 dollars in advertising and where to advertise.

10 Q. And when a retailer markets products,
11 markets DISH, who bears the financial risk?

12 A. The retailer does.

13 Q. Let's talk a little bit about the OE tool.
14 What is the OE tool?

15 A. Well, it's a platform to process an order
16 for consumer order from beginning to end. It's --
17 it's an easier form to do it. If you -- seriously,
18 if you think about it, when DISH launched, I mean
19 retailers would stand out there, and you wanted to
20 buy DISH products, you know, they probably had a
21 clipboard. And they would sit there, name, address,
22 and all this other stuff, and then call it in to
23 Dish Network to qualify the customer.

24 It's technology that every retailer uses to
25 qualify customer and then go through the promotions

1 and the programming and the hardware. It's just an
2 order-enter platform.

3 Q. Is there a similar tool that DISH uses for
4 its independent retailers?

5 A. Yes, it's -- there is one difference. It's
6 a similar tool, it's called -- it's called Accent
7 today. But the difference is on the OE tool you
8 process the entire order. However, the retailer can
9 schedule the installation, where we perform the
10 installation, meaning DISH Network. And the other
11 for the independent dealers is exactly the same, but
12 the end, because they're doing the installation,
13 they schedule it themselves.

14 THE COURT: I'm sorry. Did you say on the
15 OE tool the retailer cannot schedule installation?

16 A. No. They have the ability to schedule
17 installation. And independent retailers, they do
18 their own installation.

19 Q. I know there are a lot of terms that get
20 thrown around. When you say independent retailers,
21 you are talking about the TVRO retailers?

22 A. Yeah. We call them independent local
23 retailers, but that's what it was, TVRO. The
24 thousands of them out there.

25 Q. Very briefly explain what that is?

1 A. That is -- that's a passion of mine. These
2 are the thousands of retailers that are the local
3 mom and pops. They're in the local communities.
4 You know, I'm sure there's two or three in
5 Springfield. And they've been around forever. And
6 they market DISH, or whatever, DirectTV products.
7 They usually have a storefront. And majority of
8 them you've got a husband and wife and kids involved
9 in the business.

10 And you know, but they're independent local
11 retailers. Meaning, you know, they're very much
12 segmented into the specific area and they kind of
13 own that area for themselves. So they're just good
14 old business people, you know.

15 Q. So how did the OE tool come about?

16 A. Well, DirectTV launched a program, they
17 launched their own version of OE tool. And it gave
18 their retailers, even our retailers, the ability to
19 market on a national level. Okay. Where
20 historically, you know, we had 6, 7, 8,000
21 independent retailers that were the majority of our
22 business. And every community had an independent
23 retailer, and it was difficult for them to grow.

24 DirectTV I think figured it out. They were very
25 top-centric from the beginning of the consumer

1 electronic stores. I think they always wanted to
2 penetrate the independent satellite dealers. They
3 developed a tool.

4 And then we ended up developing a -- we had a
5 tool that we developed for AT&T. And so AT&T can
6 sell our product because we were their vendor
7 provider, and we can perform their installation.
8 And that's where the origination happened.

9 Q. And then did you use it with another
10 retailer after that?

11 A. I did. Yes, I -- I launched the OE tool as
12 an -- a plan to offer it to some of our retailers;
13 yes.

14 Q. Did you use it with Radio Shack?

15 A. I did. Radio Shack was a major, major
16 account for us. They had close to 5500 stores. And
17 we did launch the OE tool with them. Imagine 5500
18 stores, 5500 locations. Inventory going in
19 everywhere, returns coming back to them,
20 warehousing. Carrying different SKUs. Installation
21 issues.

22 And so it was a nightmare for them and for us.
23 So we did launch all the stores on the OE program;
24 yes.

25 Q. Was the OE program conceived of as something

1 to foster telemarketing?

2 A. No.

3 Q. Did you have in your mind at the beginning
4 that the OE tool would create possible telemarketing
5 problems for DISH?

6 A. No, I did not.

7 Q. Did you view the OE tool as allowing
8 retailers to act on behalf of DISH?

9 A. No.

10 Q. In the 2004-2005 time period what was your
11 understanding of the predominate form of marketing
12 that the OE retailers were using?

13 A. We only had a few at that time. I mean --
14 but at that time the entire industry, but it was
15 print advertising, a tremendous amount of print
16 advertising. There was a tremendous amount of
17 direct mail going on. There were newspaper ads.
18 There was television ads. Obviously a lot of radio
19 ads. But then some of the retailers started playing
20 with internet advertisement, because that was up and
21 coming at that time.

22 Q. Now, you talked briefly, I think in an
23 earlier question, about the financial investment
24 that OE retailers make in marketing; right?

25 A. Yes.

1 Q. Can you talk a little bit more about how
2 significant that investment is for a typical OE
3 retailer?

4 A. Depending on the retailer, but into the
5 millions. Millions of ads, hitting -- you could
6 pick up -- you would see ads literally every single
7 day from DirectTV, and you would see ads from our
8 retailers literally every day. On -- every
9 Thursday, which is a major print house day, you
10 would see an ad where there's a direct mail ad on a
11 money mailer, or coupon ads, newspaper inserts, you
12 would see it on Sundays every around the country.
13 Same with DirectTV.

14 Q. Now, Mr. Ahmed, you've been doing sales a
15 long time; right?

16 A. Yes.

17 Q. How long have you been in the sales
18 business?

19 A. Well, before DISH?

20 Q. Just generally.

21 A. A long time. Obviously since I started with
22 DISH in '93.

23 Q. Now, is it important for marketing to be
24 targeted at specific portions of the population in
25 your mind?

1 A. Can you repeat that? I'm sorry.

2 Q. Sure. Is it important for marketing to be
3 targeted at specific portions of the population?

4 A. Yes. And what I mean by that is you have
5 to -- when you're marketing you have to make sure
6 that you're getting a customer that wants your
7 product and wants to be there as a long-term
8 customer.

9 So as an example, it doesn't make sense to go
10 out there and just market DISH Network into Chicago
11 or New York, because you have high-rises, you have
12 MDUs. You aren't going to get the response. You're
13 going to go into rural America. So you have to be
14 intelligent about what you're going to do. You are
15 going to go into rural America a lot. You're going
16 to think about where there's an advantage over cable
17 companies.

18 So the answer is yes, you have to understand
19 where you're going. You can't just blanket it, just
20 market, you know, DISH or any product, you know.

21 Q. So would blasting the entire country with
22 the same marketing technique be a useful and
23 profitable strategy in your mind?

24 A. No. It's kind of a stupid strategy.

25 Q. Is blasting prerecorded calls across the

1 country a profitable marketing strategy in your
2 mind?

3 A. No, it's not. Can I explain the previous
4 one?

5 Q. Sure.

6 A. Look, okay, you're advertising, you --
7 everything is about the customer calling in. And
8 when a customer -- internet, print advertisement,
9 television, the customer is educated. They're
10 making a decision. They're looking at an ad,
11 they're comparing what they have at home, they're
12 looking at what their options are, and then they are
13 taking their initiative themselves to call. So they
14 know that they're interested. They have looked at
15 the pricing, they have looked at the promotion.
16 Maybe they want to enhance whatever TV viewing they
17 have at their house.

18 So that makes sense; okay. And that is why
19 it's important to target around the country; right.
20 If you're just out there and just randomly just
21 placing ads, or, you know, telemarketing, the
22 customer is not educated; right? It's all about the
23 response and how you close that customer.

24 Q. We've heard some testimony in this trial
25 from a few individuals that worked at retailers.

1 They said that essentially print marketing is dead,
2 you know, direct mail marketing is dead. Do you
3 agree with that?

4 A. No. It's -- it was very strong while I was
5 there, it was very strong when I came back. It
6 still is. It just -- you know, you can go in your
7 mailbox or you can -- today the OE retailers
8 continue, continue to spend tremendous amount of
9 dollars on print advertising. And you're seeing the
10 same thing from DirectTV today. Same type of
11 methods.

12 Q. Mr. Ahmed, are you familiar with the Retail
13 Services Department?

14 A. Yes.

15 Q. What is it?

16 A. It's organization that kind of runs the
17 operations behind the scenes. So they're the ones
18 that make the payments. They're the ones that
19 charge back the customer. They're the ones that
20 kind of run the DISH portal with the -- with all our
21 advertising that we put out there for the retailers
22 or the product, the business rules. That's their
23 responsibility basically.

24 And today they also -- Retail Services also
25 oversees the compliance group, the Compliance and

1 Audit Group.

2 Q. And how long has Retail Services been
3 around?

4 A. I believe since inception. Different names,
5 but it's always been there as a support.

6 Q. When you came back to DISH in 2009 who was
7 in charge of retailer compliance issues?

8 A. It was under Blake Van Emst. And Reji Musso
9 was in charge of it, and I believe she reported into
10 Blake Van Emst.

11 Q. And before you left in 2006 which
12 departments had primary responsibility to deal with
13 any kind of retailer compliance issues?

14 A. I mean Retail Services, Legal Department. I
15 mean that's who I would go to.

16 Q. And what has been your role in compliance?

17 A. Not day to day, but obviously working with
18 them. If, you know, any issues arose they would --
19 they would come to me. Listen to their feedback.
20 And, you know, we have people that deal with it.
21 But involved in the sense that, you know, respecting
22 what they're saying and listening to their guidance
23 and so on; yes.

24 Q. Is telemarketing compliance important to
25 you?

1 A. Excuse me?

2 Q. Is telemarketing compliance, with the laws,
3 is that important to you?

4 A. Yes, it is important to me.

5 Q. When you did get information relating to
6 retailer compliance issues, what did you do with it?

7 A. Immediately look -- I'm not the most
8 talented guy as it relates to all the laws. I think
9 there are people more intelligent than me. That
10 part of it, I understand there are laws, but I very
11 quickly would go to legal or go -- go to Retail
12 Services. And ask for their opinion and -- but
13 those were the two organizations that we had that
14 dealt with it; yes.

15 Q. Are you familiar with a company called Dish
16 TV Now?

17 A. Yes.

18 Q. And what is that company?

19 A. They were I believe our first OE retailer.

20 Q. Around what time frame are we talking about?

21 A. Later -- end of 2003.

22 Q. Are you aware that this Court found that
23 Dish TV Now made about 6.6 million prerecorded calls
24 from June to August 2004?

25 A. Yes.

1 Q. And in 2004 and 2005, were you aware that
2 Dish TV Now was using a company called Guardian
3 Communications to make those prerecorded calls?

4 A. No, I was not aware of that.

5 Q. When did you find that out?

6 A. During these proceedings of this trial.

7 Q. How did you feel when you found out that
8 Guardian made prerecorded calls on behalf of Dish TV
9 Now?

10 A. Pissed off. Angered. Cheated. I'm being
11 honest.

12 Q. Why?

13 A. Because they were the first account that I
14 brought on. And they were a very large DirecTV
15 account. And they were -- their whole plan,
16 marketing plan, was huge print ads, television ads,
17 internet advertisement, direct response television.
18 And so it's a surprise. And that's not was ever
19 discussed with me. And yeah, so it wasn't the plan.
20 It was never discussed.

21 Q. So let's talk a little bit more about that.
22 why don't you talk a little bit about what you
23 recall regarding your initial contacts with Dish TV
24 Now?

25 A. Well, they reached out to me about

1 opportunity to sell DISH Network. And we knew of
2 them, retailers knew of them, because they were a
3 very large DirectTV account. We would see their ads.

4 And I did meet a company in San Diego that was
5 a very large DirectTV retailer using their OE
6 platform. I was interested in seeing if I could get
7 some of their business. And they said no, but they
8 said, "We have -- there's a company in North
9 Carolina that we know of."

10 So they reached out to me and they talked
11 about, you know, how they market. How big they are
12 with Direct. They had done tremendous business with
13 Prime Star, which was a competitor of ours in the
14 early days of satellite.

15 And one of their big pitch was the fact that,
16 you know, "We do a lot of advertisement. And
17 obviously, DISH Network is becoming a pretty big
18 household name out there in satellite. We get tons
19 of calls. And we have to walk away from that
20 business because we don't have the ability to sell
21 DISH Network. And so this is huge incremental
22 opportunity for us and for you guys."

23 And so that obviously peaked my interest, and
24 had a couple of conversations with them.

25 Q. So who was the principal of Dish TV Now?

1 A. David Hagan.

2 Q. And did Mr. Hagan and other representatives
3 from Dish TV Now come visit you and other DISH
4 executives in Denver?

5 A. They did.

6 Q. Can you talk about that, please?

7 A. Sure. They made a formal visit. There was
8 probably four or five individuals. You know, this
9 is back in 2003, dealing with thousands and
10 thousands of independent satellite dealers.

11 They were impressive. Very impressive. And
12 what I mean by that is, you know, you don't see --
13 not to make fun of my independent satellite dealers,
14 but not everyone wears suits and ties. They came
15 in, were very professional. They flew in on their
16 own jet, or private plane into our Centennial
17 Airport, did not come to DIA.

18 They did a fabulous presentation in terms of
19 marketing. They talked about their facility. They
20 talked about how they do television ads, how they
21 promoted DirectTV, the volume they do. And it was an
22 impressive, impressive presentation. From four or
23 five -- it could have been five or six, but very
24 professional. Incredible presentation, incredible
25 marketing. And we knew of them because of DirectTV.

1 Q. So at any point in time during that meeting
2 was the prospect of them using telemarketing to
3 market DISH products discussed?

4 A. No.

5 Q. At some point in time did Dish TV Now submit
6 a business plan?

7 A. Yes, they did.

8 Q. We will bring you a binder right now.
9 Trudy, pull up PX198, please.

10 Mr. Ahmed, if you want to look at the paper
11 version, it's behind tab 1.

12 A. Okay.

13 Q. Is this the business plan that Dish TV Now
14 submitted to you?

15 A. Yes, they did.

16 Q. And what does this document indicate will be
17 the marketing methods used by Dish TV Now?

18 A. Can I take a moment?

19 Q. Yes, please.

20 A. This is a lot of television ads, print
21 advertisement, and also introduction of internet.

22 Q. And in that first paragraph, does it
23 describe what they did for DirectTV? How many
24 consumers activations they were able to get, and by
25 what methods?

1 A. Yes. They talk about averaging 27,000
2 activations per month for DirectTV, including about
3 10,000 calls they get from customers seeking DISH
4 Network service.

5 Q. And it says they would get those through
6 commercial -- direct response commercials,
7 newspaper, co-op direct mail, Yellow Pages, and
8 internet advertising?

9 A. That's correct.

10 Q. Was that impressive to you?

11 A. Yes, it's very impressive. Because again,
12 keep in mind, you know, at that time, you know,
13 we've got three national accounts that are doing
14 business with us, that is Sears, Radio Shack and
15 Costco. And 90 percent of our business is done
16 through independent satellite dealers. So that is
17 very impressive. And it stands out.

18 Q. So let's turn to the second page.

19 A. Okay.

20 Q. Did Dish TV Now project sales they would be
21 able to make for DISH?

22 A. Yes.

23 Q. And what were those projections?

24 A. There's a ramp-up period here. And they
25 showed November of 2003, starts at around 2,000

1 looks like, and it reaches a peak of about 25,000 by
2 the following year, following September.

3 Q. Now, was Dish TV Now brought on as an OE
4 retailer?

5 A. Yes, they were. There's -- I will tell you
6 what else is impressive about this?

7 Q. Please.

8 A. They -- they're projecting direct response
9 television, which they did, in 50 markets. And the
10 reason I'm saying that, why that's important, is
11 because the volume that they're talking about, you
12 know, we're gonna do the installations, so basically
13 that helped me in some sense identifying where the
14 markets they were gonna spend their dollars
15 advertising so I could prepare the installation
16 group, at least give them some idea that, you know,
17 this is where you're gonna see some sales.

18 Q. And it says Top 50 Producing DMAs. What is
19 that?

20 A. They've probably -- I look at it where this
21 is where they're gonna spend advertisement. This is
22 probably where they've had the best response for --
23 for DirectTV. But -- but this is more of -- more
24 of -- looks like where they're gonna get the best
25 results, or most amount of sales.

1 Q. And I know you didn't write this document,
2 but do you know what DMAs means?

3 A. Designated market areas, I believe.

4 THE COURT: Mr. Ewald. Is now a good time
5 to break for lunch?

6 MR. EWALD: Perfect, Your Honor.

7 THE COURT: All right. We will reconvene
8 at 1:30.

9 (A lunch break was taken.)

10 THE COURT: All right. We have everyone.
11 Please proceed, Mr. Ewald.

12 MR. EWALD: Thank you, Your Honor.

13 BY MR. EWALD:

14 Q. Good afternoon, Mr. Ahmed.

15 A. Sir, good afternoon.

16 Q. I just want to clear up one little issue
17 that -- during your earlier testimony. You made
18 reference to two acronyms, MDUs and SKUs, earlier in
19 your testimony. Can you explain what each of those
20 is as relates to DISH and retailers?

21 A. Sure. MDU, that stands for multiple
22 dwelling unit. That would be apartments, condos.

23 SKUs. I apologize, I don't know what it stands
24 for. But I'll give you an example. If you are a
25 consumer electronic stores and you have ten TVs, ten

1 different brands, you have ten SKUs. That's all it
2 is. So from Radio Shack--that's when I mentioned
3 it--we had five receivers, they were carrying five
4 SKUs.

5 Q. Okay. So I think we left off, we had just
6 gotten to the point where Dish TV Now became an OE
7 retailers. Do you remember that?

8 A. Yes.

9 Q. And is that the beginning of 2004?

10 A. That was end of 2003.

11 Q. Okay. Now, at the time that you brought on
12 Dish TV Now as an OE retailer were you aware of
13 Mr. Hagan's felony conviction?

14 A. No, I was not.

15 Q. If you had known that he was a felon what
16 would you have done?

17 A. Probably not have talked to him, but
18 definitely not have approved him as a retailer.

19 Q. And did you ever find out at some point in
20 time that he was a felon?

21 A. I did. I did.

22 Q. And do you recall when that was?

23 A. Sure. I came back end of May 2009, and it
24 was shortly after, a month or two after. I don't
25 remember who it was, but somebody came up to me and

1 said, "Hey, do you remember David Hagan?" And I
2 said "yes." And he goes, "The guys in jail."
3 That's how I found out.

4 Q. What was your overall impression of
5 Mr. Hagan when you were -- when he made his pitch to
6 you, when you were working with him during that
7 2003, 2004, 2005 time period?

8 A. Flamboyant. Very talented. He was, in his
9 opinion, the greatest marketer in the world. Felt
10 that he could create television ads better than us
11 and DirecTV. His print advertisement can drive
12 calls better than anyone. But he was just -- he was
13 eccentric. I'm going honest. He was a very
14 confident individual.

15 Q. Did you visit Dish TV Now's headquarters?

16 A. Yes, I did.

17 Q. About how many times did you do that?

18 A. I know of three times.

19 Q. And what was your overall impression when
20 you visited?

21 A. It was incredible. It was a phenomenal
22 facility. We had not seen things like that,
23 facilities like that, unless you went to Sears or
24 Radio Shack. It was a very large facility.
25 Extremely professional. Beautiful office and --

1 It was one of the most incredible marketing
2 areas. They had a studio to shoot commercials,
3 which I had not seen. They had an engineering
4 department there. They did have a call center. But
5 extremely well put together, huge operation.

6 Q. While you were there did you visit the call
7 center?

8 A. Yes, I did.

9 Q. And what did you observe?

10 A. A lot of cubicles. Employees. They would
11 give me a tour for about 15 and 20 minutes. And
12 then they also gave me a tour of engineering
13 department, marketing department, so on.

14 Q. At any time during your visit to Dish TV
15 Now's headquarters was there any indication to you
16 that they were marketing via prerecorded messages?

17 A. No, sir.

18 Q. Did you ever visit Dish TV Now's offices
19 with some marketing people from DISH?

20 A. I did. It probably was the second trip.
21 They had shot some TV commercials. And I cannot
22 tell you who I took from marketing, but there was a
23 couple of individuals that went from marketing. And
24 their marketing team wanted to show those
25 commercials. They also showed us a lot of the print

1 ads, and they were very obviously proud of them. So
2 I did make that trip with a couple of marketing
3 folks.

4 Q. Based on your observation, interactions with
5 Mr. Hagan in which you just described, did you
6 believe that you were in a position to influence how
7 he marketed DISH's products?

8 A. Mr. Hagan?

9 Q. Yes.

10 A. No. I'm sorry, absolutely not.

11 Q. And -- why?

12 A. You have to know him. What I mean by that
13 is the guy was talented. I mean they -- really,
14 they showed us -- you're talking about in 2003.
15 They're showing us TV commercials and how to market
16 DISH. And they shoot commercials like that in their
17 studio. Things I had not seen from independent
18 satellite deals.

19 So it was -- I don't think I could have gone in
20 there and told him, "By the way, this is how you
21 need to do a print ad, or this is where you need to
22 advertise, or this is what commercials look like."
23 It just wasn't going to happen. He was way ahead of
24 us. And he actually thought he was better than us.

25 Q. Do you recall an e-mail when you asked Dish

1 TV Now whether they were using telemarketing?

2 A. Yes.

3 Q. DTX223. And Mr. Ahmed, it's in Tab 2 of
4 your binder if you want to look at the hard copy.

5 A. I'm sorry, can you tell me?

6 Q. Tab 2.

7 A. Thank you.

8 Q. Of course. Trudy, can you blow up -- the
9 bottom.

10 So, Mr. Ahmed, this is an e-mail from you to
11 Mr. Hagan September 16th, 2004?

12 A. Yes.

13 Q. I think it was sent pretty late at night?

14 A. Yeah. Actually, 1:16 in the morning. I
15 work hard.

16 Q. And you say (as read:) David, this is
17 simple. Is Dish TV Now telemarketing customers over
18 the phone, or are you guys using predictive dialers
19 and leaving messages trying to sell the customers
20 DISH Network? We're not interested in this type of
21 marketing. We're receiving complaints on your
22 department doing just this kind of marketing.

23 Now, did Mr. Hagan respond to that e-mail?

24 A. Yes, he did.

25 Q. What did he say?

1 A. Would you like me to read it?

2 Q. Yes.

3 A. It say (as read:) Amir, Dish TV Now uses a
4 predictive dialer to make outbound calls to
5 consumers who have previously inquired with us about
6 satellite TV service or are current Dish TV Now DISH
7 Network customers. The intelligent dialer knows the
8 difference between a no answer, busy, answering
9 machine, or live connect. The dialer only connects
10 live customers to a live Dish TV Now agent. We do
11 not leave messages. We have a list of over 5
12 million past and current customers that we scrub
13 against the do not call list. In addition, we
14 maintain a Dish TV Now do not call list. Any
15 customer who wishes to opt out on future
16 solicitations is immediately added to the list.
17 Dish TV fully complies with the TCPA.

18 Q. Mr. Ahmed, did this e-mail address the
19 concerns you raised in your e-mail to Mr. Hagan on
20 December 16th, 2004?

21 A. Based on that response; yes.

22 Q. And do you interpret this e-mail to assure
23 you that he is not engaging in prerecorded calls?

24 A. Yes, that's correct.

25 Q. That he's complying with TCPA and DISH do

1 not call lists?

2 A. Correct.

3 Q. I'm sorry. The Dish TV Now do not call
4 list?

5 A. Correct. He's complying.

6 Q. Before receiving this e-mail on
7 September 16th, 2007, had anyone at Dish TV Now told
8 you that they intended to do outbound telemarketing
9 as a marketing technique?

10 A. You meant 2004?

11 Q. I'm sorry, 2004. Thank you.

12 A. Sure. No, no one had told me that.

13 Q. And had you received any evidence, even
14 separate and apart from Dish TV Now, before
15 receiving the e-mail from Mr. Hagan, that they were
16 doing prerecorded calls?

17 A. No.

18 Q. At any point in time did anyone from Dish TV
19 Now mention Guardian Communications?

20 A. No.

21 Q. Would DISH have consented to Dish TV Now's
22 use of Guardian?

23 A. Based what I know now of Guardian. No. If
24 they're doing illegal activities, absolutely not.

25 Q. Do you recall when Dish TV Now was

1 terminated?

2 A. Yes. I believe January of 2005. Is that
3 correct?

4 Q. Let's look actually, we -- may I approach,
5 Your Honor?

6 THE COURT: You may.

7 Q. I won't make you hold it this time.

8 Mr. Ahmed, we have a timeline that we've been
9 using with a few other of the witnesses. I will
10 just show this to you. Can you see that?

11 A. Yes.

12 Q. And this timeline lists the date of
13 termination as January 2006, not 2005?

14 A. Oh, I'm sorry.

15 Q. Does that sound right?

16 A. Yes. So they were terminated right around
17 when I was leaving; yes.

18 Q. And you left when?

19 A. I left, official date was January 31, 2006.
20 I was transitioning out around November, December.
21 You know, that's important.

22 Q. Okay. Let's turn to another retailer. Star
23 Satellite. Are you familiar with a company called
24 Star Satellite?

25 A. Yes, I am.

1 Q. And how are you familiar with them?

2 A. They were a door-to-door company. And then
3 obviously an OE retailer after that.

4 Q. Are you aware that this Court found in
5 summary judgment that Star Satellite contracted with
6 a company called Guardian Communications to make
7 calls on its behalf?

8 A. Yes.

9 Q. Are you aware that the Court found that
10 Guardian Communications made about 43 million
11 prerecorded calls on behalf of Star Satellite from
12 July 2005 to November 2005?

13 A. Yes.

14 Q. Were you aware at that time in 2005 that
15 Guardian Communications was making prerecorded calls
16 for Star Satellite?

17 A. No.

18 Q. Before I move into Star Satellite I just
19 wanted to ask you one more thing, general
20 background. You said they did door-to-door sales,
21 and that you now or in the recent past have had a
22 focus on door-to-door sales. Can you explain what
23 that is in this context?

24 A. Meaning the -- how we door-to-door?

25 Q. The method --

1 A. Sure. Basically it's more of a summer
2 program. And what I mean by that is when you do
3 door-to-door sales, it's -- well, I'm passionate
4 about this too. I want to explain it, because it's
5 the hardest thing to do.

6 You usually do it in summer because it's
7 Daylight Savings Time. The majority of decisions
8 are made when both decision-makers are home.
9 Parents. So seldom during the day do you get sales.
10 So it's usually the evenings when parents are home.

11 The importance of it is, look, I don't think
12 anyone sits at home and says, "I hope someone knocks
13 on the door and helps me buy something or helps me
14 change my video provider."

15 So the context of the reason I'm saying that is
16 because it is a difficult task. And you knock on
17 the door and you have to really showcase the
18 product. You have to convince a customer that we
19 have better technology, this is gonna change your
20 viewing experience, you've got to get that
21 communication going. And then obviously you have a
22 better offer for them then currently what they have
23 at home.

24 So that's how we do it. There's a lot of
25 students we hire in college, because it's a great

1 way to, one, make money. But two, learn about, you
2 know, how to sell, how to overcome objections, and
3 so on. And that's the gist of it. From our
4 prospective. There's a lot of door-to-door
5 companies from the satellite prospective.

6 Q. Thank you. So when do you recall first
7 interacting with Star Satellite?

8 A. October of that year.

9 Q. You say that --

10 A. 2005.

11 Q. Will you pull up PX212. And, Mr. Ahmed,
12 this is Tab 3 in your binder.

13 A. Okay.

14 Q. Mr. Ahmed, have you seen this letter before?

15 A. Yes, I have.

16 Q. What is it?

17 A. It was a letter sent to them. Obviously my
18 signature is on it.

19 Q. It's dated October 26, 2005?

20 A. Correct.

21 Q. The first line says (as read:) Further to
22 our conversation yesterday, among other issues
23 EchoStar Satellite, LLC, EchoStar, has received an
24 inquiry from the Offices of Congressman Fred Upton
25 of the State of Michigan's 6th Congressional

1 District, concerning telemarketing activities
2 apparently being conducted by your company.

3 Now. You recall being deposed in this case?

4 A. Yes, I was.

5 Q. And you didn't recall at your deposition
6 either this letter or what's referred to as further
7 to our conversation yesterday at that time. Do you
8 recall that?

9 A. That's correct.

10 Q. Do you have a recollection as you sit here
11 today about that conversation that's referenced in
12 the first sentence?

13 A. Yes, I do.

14 Q. And what caused you to remember now, but not
15 remember a few years ago at your deposition?

16 A. I've read Mr. Myers' testimony in
17 preparation for this trial. But I kind of put two
18 and two together, to be very honest.

19 There was one conversation I had with a
20 retailer out of Utah. I did not -- I couldn't
21 remember it was them. I've only dealt with them one
22 time, which was on this phone call. But it was a
23 legendary conference call. I was embarrassed to
24 say, but I was very loud, maybe rude or violent on
25 the phone, because a complaint came to my desk. And

1 the reason I remember is because I was reprimanded
2 for the first time by HR.

3 Q. Why were you reprimanded?

4 A. Because someone from marketing down the
5 hall, which is very much further down the hall,
6 complained that I was yelling very loud and I'd said
7 some foul language, and they went and told HR.

8 Q. And why did you react like that?

9 A. Got a complaint. Don't appreciate it. I
10 wanted to send a message. I didn't know who they
11 were. I asked for a call. And I wanted to send a
12 message that at a higher up, I don't appreciate a
13 complaint, and you guys need to take the business
14 seriously. And they needed to hear it from me.

15 Q. And how did Mr. Myers react?

16 A. On the call? I don't remember too much
17 about that call. I've heard that he didn't say much
18 because I was yelling so much to him. But
19 apologetic, I believe, like any retailer would be.
20 And that there's no issues and we'll fix it and, you
21 know, move forward, there will be no issues coming
22 from us.

23 Q. Now, that second sentence in the first
24 paragraph you write, (as read:) You have confirmed
25 you have halted all telemarketing activities

1 involving persons named on the National Do Not Call
2 Registry as necessary to comply with applicable
3 telemarketing, do not call, and other laws.

4 when Mr. Myers told you this did you believe
5 him?

6 A. Yes, I did. I think I scared him enough --
7 whatever -- there was a complaint that came. And I
8 addressed it in such a way that I didn't want to
9 hear about any complaints; okay. You guys are in
10 business with me and with DISH Network, up-and-up,
11 do it correctly, this is what I care about; okay.
12 So if he responded, I can't recall that
13 conversation, but I was -- yes. I was satisfied.

14 Q. Let's go to PX211, which is tab 4,
15 Mr. Ahmed, in your binder.

16 And am I correct, Mr. Ahmed, that this is an
17 e-mail chain between you and Mr. Myers that's dated
18 October 25, 2005, the day before the letter that we
19 just looked at?

20 A. That's correct.

21 Q. And in this e-mail you say, (as read:)
22 Eric, I need you to become very serious about the
23 business and the methods you are using to market the
24 types of customers you are bringing in -- bringing
25 to us, excuse me. Low completion rate and high

1 churn does not help anyone. It's not all about huge
2 sales, but rather quality customers that want to be
3 DISH Network subscribers for a long time.

4 what did you mean when you say low completion
5 rates. What is that?

6 A. That one is pretty simple. It's -- can I
7 give an example?

8 Q. Yes, please.

9 A. If you do a hundred sales, and a hundred
10 customers are inquiring and want to purchase DISH,
11 and have gone through the process, then you might
12 have certain issues; right? You might have no line
13 of sight. You might have 4 or 5 or 8 percent that
14 something happens. A hundred percent are not going
15 to get activated in the ground.

16 But if you only get 60 in the ground, well, you
17 missed an opportunity on the 40 or 30. And why? So
18 I'm not interested in that. I'm trying to educate
19 him and saying, "Look, it's about the quality of the
20 customer. It's about when you sell to a customer
21 that they're long-term DISH customers. This is how
22 it's gonna help you and how you're gonna make
23 revenue and how you're gonna grow. It doesn't
24 matter if you give me a bunch of customers that are
25 going to disconnect. I don't want that."

1 It's an education process. He's a young guy.
2 I'm telling him, "Look, it's about quality of the
3 customers and not about sales. If you give me a
4 hundred customers and 90 are with me for a long
5 time, that's great. I don't need 1,000 and maybe 50
6 held with me."

7 Q. In the last concept, when you say high
8 church, is that the phenomenon you're talking about?

9 A. Sure. Churn is disconnects. Customers
10 disconnecting. Correct.

11 It's -- you know, I don't know how much I went
12 into it, but it's a complete education that it's all
13 about quality sales. And churn is a direct
14 reflection of how many customers that purchase from
15 me, how long they stick around. And we know that's
16 what matters. And we have a huge breakeven, a long
17 breakeven, a long three years for breakeven. And
18 I'm just trying to educate him, that's all it is.

19 Q. Now, are you aware of any other complaints
20 about Star Satellite's telemarketing?

21 A. No. At that time, no. I -- obviously I've
22 learned there were three or four additional
23 complaints during, you know, preparation for this
24 trial; yes.

25 Q. Okay. Thank you.

1 Now let's turn to the retailer SSN. Are you
2 familiar with the company called SSN?

3 A. Yes, I am.

4 Q. Actually, one other question I wanted to ask
5 before we turn away from Star Satellite. You refer
6 to high churn in the e-mail with Star Satellite.

7 Trudy, could you put that back up there.

8 In your experience can DISH make a profit on a
9 retailer with high churn?

10 A. It doesn't matter if it's a retailer, it's
11 us. You can't, you have -- in those days it could
12 have been three years breakeven. Today, as an
13 example, it's close to four years to breakeven on a
14 customer.

15 Look, you need to understand that when a
16 customer purchases DISH, or gets DISH or DirectTV,
17 it's not just, oh, you're happy-go-lucky. We're
18 investing. And nowadays, even those days, that was
19 the advent of HD and DVR. And customers are buying
20 televisions, they want the latest technology. Not
21 everyone just has one television at their house.
22 The customers we're looking for, single family
23 dwelling home, families, they have two or three
24 televisions. That means you're putting two or three
25 receives in their home.

1 You've got programming costs. I want people to
2 understand that. You have programming costs that
3 all the programmers deal with. That's a tremendous
4 cost. You have installation costs, you have to roll
5 out a truck to install. You have future service
6 calls; okay. You've got operational costs from a
7 DISH prospective. You know, there's costs to launch
8 the satellite, to how to maintain it. There's
9 billing costs. Then you have the commissions you're
10 paying out.

11 So when you add all that up there's a
12 tremendous cost there. And that's what I'm trying
13 to educate all of them; right? It's not about just
14 sales and be happy that you did a bunch of sales.
15 That you have to be joined at the hip with me; okay.
16 And you've got to think long-term. You've got to
17 think long-term. And some of these guys took it to
18 a different level. You know, and yelled at them a
19 little bring the too much.

20 Q. Let's talk about SSN?

21 A. Yes.

22 Q. Was SSN an OE retailer?

23 A. Yes, they were.

24 Q. And are you aware that this Court found in
25 summary judgment that SSN made about 381,000 calls

1 to numbers on the National Do Not Call Registry from
2 2010 to 2011?

3 A. Yes.

4 Q. Were you aware that that was happening
5 during that time period, 2010 to 2011?

6 A. In '10, '11; no. I have found out that was
7 the case, but when -- when are we talking about?
8 During this trial, yes, I did find that out; yes.

9 Q. So let's talk a little bit about your early
10 interactions relating to SSN.

11 PX80, Trudy. This is tab 5, Mr. Ahmed. Let's
12 go all the way to the beginning e-mail on page 3.

13 A. Okay.

14 Q. And it starts at the bottom of page 2 there.
15 Before we go there, let's step back a second.

16 Mr. Ahmed, you were, I guess, copied to this
17 e-mail. Right above it, right. From Amir Ahmed.
18 Do you see that?

19 A. Okay.

20 Q. On page two?

21 A. Okay.

22 Q. Have you seen this e-mail before?

23 A. Yes, I have.

24 Q. Your Honor, I move PX80 into evidence.

25 MS. HSIAO: No objection.

1 THE COURT: It's not previously admitted?
2 It's admitted.

3 (Plaintiff's Exhibit PX80 admitted.)

4 Q. Let's go back to the bottom of page 2,
5 carryover to 3. Go to page 3.

6 Mr. Ahmed, this is a complaint about a
7 prerecorded call; is that right?

8 A. Yes. It says (as read:) Prerecorded
9 message on my answering machine.

10 Q. If you go back to page 2. Let's focus on
11 your e-mail. You e-mail Brian Neylon and Scott
12 Novak on March 8, 2002. Do you see that?

13 A. Yes.

14 Q. What do you say?

15 A. I'm asking Brian who is the retailer, if
16 this originated from a retailer. And I'm asking
17 Scott what are the laws, what do you want me to do
18 here? You know, I don't understand the laws and I'm
19 asking him to clarify it.

20 Q. And who is Scott Novak?

21 A. Scott Novak was in our Legal Department.

22 Q. Okay. So then both Mr. Novak and
23 Ms. Davidson respond; right? Mr. Novak first. He
24 says, amongst other things (as read:) Wade: Is
25 calling with prerecorded message a specific

1 violation of the Federal Telemarketing Act.

2 Do you see that?

3 A. Yes, I do.

4 (Court reporter requested clarification.)

5 Q. I said it was Scott Novak, it's actually
6 Ms. Davidson who sends this e-mail.

7 She also says at the beginning (as read:) Our
8 retailer agreement does have a clause that says that
9 retailers must follow all laws, federal, state, and
10 local. So if this is a violation of state law, that
11 he needs to be advised of this.

12 Then Mr. Novak jumps in, right? You see there
13 where he says, Mr. Novak says, (as read:) Don't
14 know New York law specifically, but in general state
15 law frowns on prerecorded calls.

16 A. Yes.

17 Q. Okay. So based on their responses to you
18 does it seem like Ms. Davidson or Mr. Novak knows
19 for sure whether or not prerecorded calls are legal
20 during this time period?

21 A. Can I read Ms. Davidson's comment? I've
22 read Mr. Novak's, it seems like he's not confident
23 on the law. Can I just have a second?

24 Q. Sure.

25 MS. HSIAO: I object, Your Honor. He's

1 asking the witness to comment on somebody else's
2 knowledge when he's already testified that he is not
3 knowledgeable about the law. It seems kind of
4 irrelevant.

5 Q. I'm asking for his impression of the e-mails
6 sent to him in response to a question that he asked.

7 THE COURT: You may ask that.

8 A. It seems like both of them are not confident
9 on exactly what the law is.

10 Q. Okay. Then if you turn -- and at this time,
11 in 2002, did you know whether or not prerecorded
12 calls were against the law?

13 A. No. I did not have solid knowledge of that.

14 Q. Let's go to first page and e-mails from--the
15 very top there Trudy--Nick Myers. Who is Nick Myers
16 in this time, Mr. Ahmed?

17 A. Nick Myers at that time would have been the
18 regional director for the mountain region. So that
19 would be our Denver office.

20 Q. And you see, I guess it's the fourth
21 paragraph down there, (as read:) while we are not
22 lawyers, we know of no Colorado law which prohibits
23 leaving solicitation voice mails. Vector claims the
24 same.

25 Do you see that?

1 A. Yes.

2 Q. Based on Mr. Myers' response does it seem
3 like he knew for sure whether or not prerecorded
4 calls are legal at that time?

5 A. For certain I don't think he knows the laws.
6 Based on this response.

7 Q. And just to make sure we're all clear, in
8 the -- Trudy, can you back down for a second.

9 Dennis Frey's e-mail earlier to Brian Neylon,
10 you weren't on this e-mail, but he says (as read:)
11 Brian, this is Satellite Systems Network out of Ft.
12 Collins, Colorado.

13 Do you see that?

14 A. Yes.

15 Q. Scroll back out, Trudy.

16 I want to ask you about the second to last
17 sentence there where Mr. Myers says, (as read:)
18 This caused a few concerning calls, but seems to be
19 greatly outweighed by the results.

20 Mr. Ahmed, do you agree with that sentence from
21 Mr. Myers?

22 A. Generally I don't agree with that, what Nick
23 said. It's -- he's saying it has caused a few
24 concerning calls which seem to be greatly outweighed
25 by the results.

1 No, I don't -- I don't -- generally I don't
2 agree with that, because -- first of all, it's a
3 complaint. So I think, you know, you need to go
4 look into what caused it. Who's the retailer? Is
5 there any other issues?

6 And then results -- I don't understand what the
7 results mean. Because I know everything to me is
8 about customers, long-standing customers. I don't
9 know what he means by what the results are. What
10 kind of customers are we getting.

11 But if this is prerecorded calls, whether it's
12 legal or illegal, and I've said this, it doesn't
13 make sense. That's not a marketing method that
14 makes sense. There is no guarantee that is going to
15 bring us great customers. Matter of fact, it
16 probably wouldn't. So to me this doesn't make sense
17 why he would say that.

18 Q. So let's go to PX187, tab 6.

19 A. Okay.

20 Q. And this is June 12, 2002, letter from
21 Ms. Davidson to Mr. Tehranchi.

22 A. Yes, I see the letter.

23 Q. Have you seen this document before?

24 A. Yes, I have.

25 Q. So just to set the stage a little bit. The

1 previous e-mail chain we were looking at was in
2 March of 2002; is that right?

3 A. Yes, that's correct.

4 Q. This one is a couple months later in June?

5 A. Correct.

6 Q. And we just looked at an e-mail from
7 Ms. Davidson where she said that she thought it
8 would be good to send out a letter to SSN. Do you
9 remember that?

10 A. Can you repeat that again? I'm sorry.

11 Q. In one of the e-mails -- the e-mail we just
12 looked at, the chain, Ms. Davidson referred to
13 possibly needing to send a communication out to SSN?

14 A. That's correct. I see it.

15 Q. And this letter comes a couple months later?

16 A. That's correct. In June.

17 Q. And what does she say in that third
18 paragraph about telemarketing compliance with the
19 law?

20 A. She's saying (as read:) Please ensure that
21 all practices pertaining to telemarketing are within
22 the law.

23 She's basically saying, you know, you need to
24 follow the law, make sure you're abiding by it. And
25 you know, as a retailer, I believe it's his

1 responsibility. She's guiding him to take a look at
2 it and make sure you're doing everything correctly.

3 Q. Let's go to PX190, tab 7. Have you seen
4 this document before?

5 A. Yes, I have.

6 Q. Let's go all the way to the beginning. Page
7 3.

8 This is e-mail from Charlie Ergen. It's dated
9 June 28, 2004. So now we're basically a couple
10 years later after the last letter we just saw from
11 Ms. Davidson in June of 2002; right?

12 A. Correct.

13 Q. And what is Ergen telling you?

14 A. He's saying he received a call at his home,
15 or at his ranch, on his answering machine. Liked
16 the script. And he did get the 800 number. He
17 called them back and they tried to sell him DirectTV.

18 Q. Now you responded, it's on page 2, later
19 that day; right?

20 A. Yes, I did.

21 Q. And what did you say back to Mr. Ergen?

22 A. Probably got the information. Charlie, he
23 wanted to know who is it, what is the churn, does a
24 distributor sell to them? So I probably went and
25 got that information from someone. Probably the

1 guys running the account.

2 And I said it's Satellite Systems Network.
3 They have been a retailer since March of 2001.
4 Their subscriber base with the churn since
5 inception. And I also talk about that they are
6 DirectTV, is one of their largest retailers, eighth
7 largest retailer, doing close to 6 to 8,000
8 activations a month. And they use message
9 broadcasting with DirectTV as their primary source to
10 generate sales. And I talked about -- okay, I
11 talked about the projections and I talked to the
12 Sacramento team --

13 Q. Okay. So at this time, in 2004, do you know
14 whether or not SSN's message broadcasting
15 telemarketing was compliant with telemarketing laws?

16 A. -- no, I do not have any knowledge of that.

17 Q. So let's go through the rest of the chain.
18 What was -- turn to page 1. What was SSN's response
19 to inquiries about their script? You see the e-mail
20 from Mr. Oberbillig?

21 A. Yes.

22 Q. What does he tell you?

23 A. He's saying that he has spoken to Alex. All
24 telemarketing is done live. They do not -- they do
25 live. And if they do receive an answering machine,

1 that if they -- if they do receive an answering
2 machine, they leave a message. That he's not
3 willing to provide the script.

4 He says 20 percent is telemarketing, however,
5 it's going to be less than 1 percent over the next
6 six months as his focus is going to be on TV,
7 newspaper and aggressive direct mail campaign with
8 about 5 million pieces a month.

9 Q. So DISH asked for the script from SSN, and
10 they refused to provide it?

11 A. They refused to provide it; yes.

12 Q. And they're also indicating here that within
13 six months they're going to reduce the telemarketing
14 all the way down to 1 percent; is that what it says?

15 A. Yes, less than 1 percent.

16 Q. And we are, just to remind everybody, in
17 June of 2004; right?

18 A. Yes.

19 Q. Okay. So let's go to PX656, which is tab 8.

20 A. Okay.

21 Q. Have you seen this e-mail before?

22 A. Yes.

23 Q. Like we did last time, let's go to page 2,
24 the beginning.

25 A. Okay.

1 Q. Now, in this e-mail you're asking Jim
2 DeFranco a question; right?

3 A. Yes, I am.

4 Q. What are you asking him?

5 A. I'm asking him to recommend increasing his
6 activation payment by \$25. \$175 to \$200. This is
7 September, so for about a three or four month
8 period.

9 Q. Why are you doing that?

10 A. Anything that came like that it would be
11 from the region. So here the region that's probably
12 running it --

13 (Court reporter requested clarification.)

14 Q. I know who is running it, it's Mike
15 Oberbillig and Jim Spritzer. Sorry.

16 And they're communicating back to me that,
17 "Look, he is a very large DirectTV retailer. He's
18 moving his business -- he will move his business
19 over to DISH a little bit and do a tremendous amount
20 of advertising for us."

21 And probably to be competitive--I know that
22 DirectTV paid more than us to their larger OE
23 retailers--and so I'm requesting \$25 payment to see
24 if I can get that business. And for him to invest
25 in advertisement for DISH, which is what he is

1 saying is print advertisement and direct response
2 television and direct mail.

3 And this e-mail from you to Mr. DeFranco is
4 September 14th, 2004?

5 A. Yes.

6 Q. Which is a couple months after the last
7 e-mail we looked at?

8 A. Uh-huh, yes.

9 Q. Now, you look at page 1 -- first of all, go
10 back to page 2. Did Mr. DeFranco approve your
11 request?

12 A. Yes, he did.

13 Q. Now Trudy, can we go back to page 1, please.

14 And you have this e-mail that Jim Spreitzer
15 sends you on the next day, September 15, 2004;
16 right?

17 A. Yes.

18 Q. Who is Jim Spreitzer?

19 A. Jim would be the regional director for the
20 west coast region. And we had an office in
21 Sacramento.

22 Q. So what did Mr. Spritzer tell you about
23 SSN's marketing plan in connection with this
24 increased economics?

25 A. His response is that he's hiring people for

1 DISH, so I would assume that he would have separate
2 groups selling DISH, because he had a huge group
3 selling DirectTV. And he's contacting advertising
4 agencies to develop commercials, would be obviously
5 television or direct response ads.

6 Q. So at this point in time is it your
7 impression that SSN had moved away from voice
8 broadcasting and prerecorded calls?

9 A. Yes. I mean he -- pretty simple, I didn't
10 think that that was a problem. He is basically
11 saying that, "We're gonna promote DISH in these
12 methods, yes." Print advertisement and television
13 advertisement.

14 Q. Let's go to PX120, which is tab 9.

15 A. Okay.

16 Q. Have you seen this e-mail chain before?

17 A. Yes, I have.

18 Q. And I know this one is scrunched together
19 and difficult to read, but let's go to page 6, the
20 beginning of the e-mail chain.

21 Is this relating to a complaint about
22 prerecorded calls?

23 A. Yes. It says, (as read) from Margaret
24 Sweeney, I just received an autodialer call at the
25 house.

1 Q. And this is dated September 23rd, 2005?

2 A. That's correct.

3 Q. So we're talking about a little more than a
4 year after the e-mail that we -- chain we just
5 talked about how they were going to be using
6 television commercials; right?

7 A. That's correct.

8 Q. Now let's go to the bottom of page 4. You
9 see the carryover to page 5, that e-mail from Mike
10 Mills to yourself and Mr. Oberbillig?

11 A. I'm just trying to look for it. I'm sorry.

12 Q. Sure. I know it's hard.

13 A. From Mike Mills. This is on page 5.

14 Q. Carryover from 4 to 5.

15 A. I see it now.

16 Q. The very top there of page 5, what does Mike
17 Mills say the results of a preliminary investigation
18 about who made this prerecorded call?

19 A. Mike is responding to me and Mike Oberbillig
20 and he's saying, "Yes, this is Satellite Systems."

21 Q. Okay. So then let's go to page 4 again.

22 A. Okay.

23 Q. Now, you end up forwarding this on. Are
24 you -- you indicate that -- in response you will
25 deal with Novak and let legal handle it?

1 A. Mm-hmm, yes.

2 Q. You end up forwarding the e-mail chain on, a
3 couple -- a little bit above that you see from Amir
4 Ahmed to, amongst others, Scott Novak, September 26,
5 2005? Do you see that?

6 A. Yes.

7 Q. And so you were the one that looped in
8 Mr. Novak into this conversation; is that right?

9 A. Yes.

10 Q. And why would you do that?

11 A. I did that -- I mean this is just -- that
12 was my -- whether it was Retail Services or legal,
13 that's where I would go for any issues that came on
14 my desk. You know, like I said, I didn't have all
15 the understanding of the laws, but I thought it was
16 best to get it to people that had a little bit
17 better understanding, which would be legal and
18 Retail Services.

19 Q. Okay. And then Mr. Novak writes a long
20 e-mail that carries over from the bottom of page 3
21 to page 4. Do you see that?

22 A. Yes.

23 Q. I just want to focus on, for now, the last
24 paragraph there. It says (as read:) I favor
25 probation provided that there is unanimous

1 understanding that EchoStar becomes aware of any one
2 additional violation, he's terminated.

3 Do you see that?

4 A. Yes.

5 Q. And then you respond to Mr. Novak; right?

6 A. Yes, I did.

7 Q. What do you say?

8 A. I said (as read:) I prefer to put them on a
9 30 to 60-day probation.

10 Basically he's recommending probation, and I'm
11 saying 30 to 60 days.

12 Q. So --

13 A. Agreeing with him.

14 Q. Agreeing with him?

15 A. Yes.

16 Q. And then does someone else from legal weigh
17 in? See an e-mail response from Dana Steele?

18 A. Yes. Dana Steele was in legal.

19 Q. And what does she say?

20 A. Dana says -- she's recommending probation
21 for up to a year so if there's any offense within a
22 year it could lead to, at our discretion,
23 termination.

24 Q. Do you respond to that recommendation from
25 Ms. Steele?

1 A. It was a recommendation from legal, so I
2 agreed, I said, "Okay with me."

3 Q. Now, Mr. Oberbillig, remind me again, did --
4 what responsibility did Mr. Oberbillig have with
5 respect to SSN at this time?

6 A. The Sacramento office -- they were based out
7 of LA, I believe. And that fell into the Sacramento
8 or west coast region, so Mike was the account
9 manager. He was a regional sales manager at that
10 time, and his boss was Jim Spritzer. So it fell
11 under their jurisdiction, management of the account.

12 Q. So Mr. Oberbillig has a conversation with
13 SSN and what does SSN tell him?

14 A. SSN -- Mike is saying that apparently he's
15 spoken to him. He claims it's not him. And any
16 telemarketing he does is done by the law. And they
17 only call people that call into the center. And he
18 would personally like to talk to Scott Novak in
19 legal to talk about telemarketing.

20 Q. And does Mr. Oberbillig's investigation stop
21 there?

22 A. No.

23 Q. What happens?

24 A. Mike looks like he takes upon himself to --
25 himself or one of his employees, they ended up

1 calling the phone number. And he says (as read:) I
2 had one of my people call and sign up. They signed
3 up to get add number for -- to be a customer. And
4 then he responds this is United Satellite, not SSN.

5 Q. Not SSN. So the basis for Mr. Novak's
6 recommendation about probation for SSN was premised
7 on erroneous information?

8 A. On this -- on this account; yes.

9 Q. Let's look at PX504, which is at tab 10.
10 Have you seen this e-mail before?

11 A. Yes.

12 Q. Okay. Let's go to the beginning again on
13 page 4.

14 A. Okay.

15 Q. Is this a complaint about a prerecorded
16 call?

17 A. It's about a telemarketing call.

18 Q. Okay. Let's go to page 2.

19 A. Okay.

20 Q. Leslie Fiedler is -- is she a DISH employee?

21 A. Yes.

22 Q. And she conducts an investigation?

23 A. Yes, she does. She calls the 800 number.

24 Q. And what does she find?

25 A. That it was -- she says, last paragraph says

1 (as read:) This is Satellite Systems Network.

2 Q. And you react to this e-mail; right? On
3 pages 1 and 2. Do you see that?

4 A. Yes.

5 Q. And what do you say?

6 A. (As read:) This is Alex's last chance. Fix
7 it or he gets a letter and will lead to termination.
8 It's that simple.

9 Q. What does Mr. Oberbillig say in response?
10 On page 1.

11 A. He's saying that he wants to verify, but
12 last time an issue came up it was not SSN, but it
13 was United. And he will call both accounts. He
14 will call both of the accounts.

15 Q. And then does Mr. Oberbillig report back on
16 the results of his investigation?

17 A. Yes.

18 Q. What does he say?

19 A. Said that he verified it was SSN. So
20 obviously he spoke to Alex directly. And was saying
21 that the customer was a past customer of SSN and had
22 purchased DirecTV. And that they are -- started
23 outbound calling their past 155,000 DirecTV
24 customers. And they -- the customers are scrubbed
25 against the most recent do not call list.

1 He does continue though, he says that he should
2 stop using message broadcasting and leaving messages
3 even if he has followed do not call lists. And do
4 not call list, even if it's a prior customers, even
5 if he's following the Federal Trade Telemarketing
6 Guidelines. And informed him he must follow DISH
7 Network guidelines and stop using mining
8 immediately. And --

9 Q. So at this point -- sorry. At this period
10 of time is SSN-- is he forthcoming to you?

11 A. Pardon me?

12 Q. Does SSN seem forthcoming to you at this
13 period of time?

14 A. Forthcoming?

15 Q. Yes.

16 A. What do you mean by that?

17 Q. Well, they explained --

18 A. Yeah, I'm -- I'm satisfied with their
19 response. It's saying he's verified with them that,
20 "You need to stop, you know. It doesn't matter if
21 you're following the law, just don't do it. We
22 don't want that business." And Alex has agreed.

23 You know, this -- this is end of 2005. So I'm
24 sorry, I just wanted to read it more because I
25 probably wasn't paying too much attention. But yes,

1 I'm satisfied with this response.

2 Q. And then I think at the very end of that
3 e-mail from Mr. Oberbillig he indicates that Alex
4 agreed with what Mr. Oberbillig was stating about
5 stopping prerecorded messages. And he indicates,
6 "He understood we do not allow this." Do you see
7 that?

8 A. Correct.

9 Q. So this is October 27, 2005, near the end of
10 2005. What's happening in your career right now at
11 this point in time?

12 A. I don't -- I don't think I have informed
13 DISH Network at this time that I'm leaving, but I
14 had made up my mind. But you know, shortly
15 thereafter I was probably transitioning out. I know
16 I started transitioning out definitely in terms of
17 Thanksgiving in terms of some of my
18 responsibilities.

19 Q. When you started transitioning and left DISH
20 in 2006, where did you understand things stood with
21 SSN?

22 A. My understanding is that they solved
23 whatever issues they were having, and they, you
24 know, put it to bed. They fixed their issues.

25 Q. When you came back in 2009, was SSN on your

1 radar?

2 A. No.

3 Q. And why not?

4 A. Well, I don't know if they were doing a lot
5 of business. I had -- when I came back -- I came
6 back, again, there was a complete new organization
7 in the OE channel. We had Brian Neylon as a VP.
8 When I was there it was me and the regions. We had
9 a director, we had account managers, we had Brian.

10 But when I came back my concentration was on
11 the telco, to get back the independent Satellite
12 dealer business. I think we had lost some business
13 to DirecTV. I was very focused at that time with --
14 with national accounts. You know, we had lost
15 Costco to DirecTV when I left. I did the Costco
16 deal, so I was a little, you know, offended about
17 that. I worked my butt off to get the Costco
18 account back from DirecTV.

19 I concentrated -- on the OE retailers, I
20 concentrated on the OE retailers that had high
21 churn. And I terminated retailers that had high
22 churn. Because to me, it didn't make sense why we
23 were doing business with them.

24 So they weren't on the radar. They were small,
25 and the group was handling them.

1 Q. Since you came back in 2009 did you hear any
2 more complaints like the kind you heard about
3 prerecorded messages in 2004-2005?

4 A. No.

5 Q. Did any complaints come across your desk, do
6 you recall, related to SSN?

7 A. No.

8 Q. When you came back to DISH in 2009 did you
9 come back to the same, at least, position, as in the
10 same title?

11 A. The title was the same.

12 Q. But you say a lot more responsibility?

13 A. A lot more responsibility. I mean that's
14 important.

15 Q. Right. And what had changed about the OE
16 channel from when you left to when you came back in
17 2009?

18 A. There were more OE retailers. Obviously the
19 organization. We had a compliance group, Blake
20 group, Reji's group, was new to me. But there were
21 more OE retailers when I came back.

22 Q. PX658, please. Tab 11, last one in your
23 binder, I believe.

24 A. Okay.

25 Q. Mr. Ahmed, do you recognize this e-mail?

1 A. Yes, I do.

2 Q. And there's a reference in there that you
3 and Brian Neylon cleaned up the OE channel. Do you
4 see that?

5 A. Yes.

6 Q. What did you mean by that?

7 A. Brian is on the team, you know, he's my VP,
8 so it's one team. And he's running it, and I'm not
9 sitting here trying to take the credit or anything,
10 because he was involved.

11 But basically what I'm telling Tom and Jim.
12 There's a lot going on in this e-mail, but basically
13 what I'm saying is that, you know, there was
14 retailers that were doing a decent amount of
15 activations, but that had high churn. I mean -- you
16 know, I'm not interested. You know, I think I might
17 have said, I have to read this thing, I haven't read
18 it for a while. 30,000 activations per month, but I
19 terminated a lot of these retailers that accumulated
20 total of about 30,000 activations a month. And I
21 don't believe they're aligning with us, had high
22 churn, and wasn't interested in their business.

23 Q. Now, if history is any guide plaintiffs will
24 show you a document here in a little bit that refers
25 to shady and illegal marketing practices relating to

1 OE retailers. And I want -- I'm interested in your
2 answer to the question do you think that all of the
3 OE retailers were engaged or are engaged in shady
4 and illegal marketing practices?

5 A. No.

6 Q. Can you explain?

7 A. Actually that's -- that offends me. No,
8 because look, there's no doubt, okay, based on what
9 I'm seeing, there were a couple of guys that had bad
10 intentions. Okay. Hagan is one of them. And I
11 take it personally, because I'm the one who did that
12 deal. Okay.

13 Star Satellite. Don't know them, couldn't tell
14 you who they were, but they were a retailer, okay, I
15 take that personally too. No doubt they had bad
16 intentions.

17 But as a whole these are business people.
18 They're great marketers. They provide tremendous
19 amount of advertising for us. They help us as a
20 company. They help other retailers.

21 Okay. Imagine an OE retailer advertising--and
22 some of them will do 60 million direct mail pieces
23 or free standing inserts on a weekly basis--and
24 they're hitting towns in Illinois. And you know why
25 that benefits me? Because the independent satellite

1 dealer who's local in that community, the customer
2 is seeing an ad marketing by an OE retailer. And if
3 the local retailer is doing their job, the customer
4 should buy from them. So it's impacting so many
5 people, it's not just about them.

6 But most of them are great business people. I
7 mean they're doing great advertisement. They're
8 running great businesses. Right. They employ tons
9 of people. You know, when they sell, the thousands
10 that they're selling, we're installing. It's not
11 DISH, it's all our partners that do installations
12 for them. We're rolling vans.

13 So I don't agree with that. Yes, there are a
14 couple of people that did some -- had some bad
15 intentions here.

16 Q. You're in sales; right, Mr. Ahmed?

17 A. Yes.

18 Q. And activation numbers are important to you,
19 right, and to your job?

20 A. Yeah. I'd be lying if I said no. Yes, of
21 course.

22 Q. Do you value activations over legal
23 compliance?

24 A. Goes hand in hand. It's not -- I've said
25 that. I mean you can go back to the history of me,

1 okay. Everyone needs to know that. It is not about
2 activations. It's not -- that's the whole point.
3 It's like being labeled here it's all about
4 activations. It's not about activations. It's
5 about who the consumer is. It's the length of how
6 long they will be with us. Are they satisfied.

7 I could go out tomorrow and get 3 million
8 activations for Charles, but if 2.9 million
9 disconnect, the company doesn't exist. I know I
10 won't have a job, my people won't.

11 It's not all about activations. Yes, I'm a
12 sales guy, I want activations; okay. But quality
13 activations. And compliance is a balancing act.
14 You want to do it right. You want to make sure that
15 the retailers are doing it right. You want to make
16 sure the employees -- you expect the best out of
17 them, expect the best out of retailers. And I've
18 been that way from day one. And I'm just telling
19 you how I feel about it.

20 MR. EWALD: Thank you. I have no further
21 questions.

22 MS. HSIAO: Your Honor, May I proceed?

23 THE COURT: Yes.

24
25

1 CROSS EXAMINATION

2 BY MS. HSIAO:

3 Q. Good afternoon, Mr. Ahmed. We have met
4 before --

5 A. Yes.

6 Q. -- I took your deposition, I'm sure you
7 remember. It's nice to see you. I just have some
8 follow-up questions based on what Mr. Ewald asked
9 you.10 So you've been at DISH for a long time. Since
11 1993; right?

12 A. Correct.

13 Q. And you've been a senior vice-president
14 since 1993; is that right?15 A. No. I became senior vice-president in the
16 end of January 2005.17 Q. Okay. So you were not a senior
18 vice-president in 1993?

19 A. No. I was a sales manager.

20 Q. Well, I have to tell you. I actually looked
21 up on LinkedIn. And your LinkedIn page says you
22 have been a senior VP since September 1993. So
23 that's not right, is it?24 A. Okay, if -- if it said there -- I apologize,
25 because I will tell you one thing, okay. I don't

1 know, you know, probably my daughter updated that.
2 I've never really gone on the LinkedIn. I don't
3 even use it, to be very honest with you.

4 But SVP, 1995. Excuse me, 2005. January 2005.
5 Are you sure it says that? SVP. It says when I
6 started. I'm an SVP today on LinkedIn now, not
7 since 1993.

8 Q. Let me give you a copy. I don't know if
9 you --

10 A. No, that's fine.

11 well, I tell you what, I'm looking at it. And
12 that's one thing that I wouldn't even know how to go
13 on LinkedIn and do that, to be very honest with you.
14 So it's there, that's fine, no problem.

15 Q. You'll have to tell your daughter to fix it.

16 A. I promise you I will, because as
17 embarrassing as it is for a professional, don't even
18 go on LinkedIn and don't care about it.

19 Q. But you have 450 connections, so you might
20 want to check it out.

21 A. Yeah. You know, someone should go through
22 my computer, because every single week I get and I
23 delete, delete. I don't think I have ever accepted
24 anyone for a while. I understand, I apologize for
25 that.

1 Q. So let's go back to the early years. Your
2 early years with the order entry tool.

3 Now, this program that we're talking about that
4 started around 2003-2004, that was your baby; right?
5 That was your brainchild?

6 A. The order entry tool?

7 Q. For use by these retailers?

8 A. Yeah, I definitely started that.

9 Q. You nurtured that along and it was your
10 idea; right?

11 A. Yes. The OE tool was mine; yes.

12 Q. And you were passionate about those
13 retailers you were bringing in? I think you told
14 Mr. Ewald that.

15 A. I am passionate about the retailers.

16 Q. Today even?

17 A. Yes, I am.

18 Q. So now as I understand it, and correct me if
19 I'm wrong, the OE program, those retailers that were
20 selling nationally, they had to be on the telephone
21 to close the sale with their customers; right?

22 A. Correct.

23 Q. And the fastest way to make -- the fastest
24 way to get somebody on the telephone is to call
25 them, is it not?

1 A. Sure, you can call the customer, but that
2 doesn't -- what are you getting at?

3 Q. Well, I'm just getting at the idea that the
4 OE tool and the program encourage the use of a
5 telephone to sell DISH; correct?

6 A. The OE tool was developed for retailers to
7 go out and market our product. Simple as that.
8 That's exactly what it was for. Never, never was it
9 intended for what I think you're saying is for them
10 to just make random calls at all.

11 Q. No. I'm not saying that. I'm saying that
12 the sale began and ended on the telephone with the
13 consumer; right?

14 A. Sure. Consumers calling in OE partner,
15 exactly, processing the order; correct.

16 Q. That's all I was trying to say.

17 A. Okay.

18 Q. So Dish TV Now. You talked quite a bit
19 about it. And your first visit to North Carolina to
20 see David Hagan's call center.

21 And I think Mr. Ewald showed you a document, a
22 business plan, projecting that Dish TV Now was going
23 to bring 19,000 to 21,000 activations a month; is
24 that right?

25 A. Correct.

1 Q. Is that a lot?

2 A. Sure, that's a lot. But there were other
3 retailers doing that for DirectTV at that time.

4 Q. But for DISH, on your OE tool, that was a
5 great win, wasn't it? It was a prize?

6 A. Yes, that's -- that's significant
7 activations.

8 Q. Almost like a gift to you?

9 A. They're also -- yes, their business model
10 showed they can do that; correct.

11 Q. And you went in there and they gave you this
12 great presentation, I think you said. Came on a
13 private plane. You were dazzled by the presentation
14 and flash?

15 A. They came to Denver, yes, and presented;
16 correct.

17 Q. So you trusted them that they were selling
18 so many DirectTV accounts, and that they could do the
19 same for DISH; right?

20 A. Correct.

21 Q. And you didn't do any actual background
22 research into them other than the fact that they
23 were selling DirectTV; is that right?

24 A. Yes, I didn't do any background check on
25 them.