

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

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

Appellants,

vs.

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

Respondents.

Electronically Filed  
Mar 30 2021 01:55 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court  
Supreme Court No. 81704

District Court No.  
A-17-763397-B

**JOINT APPENDIX**

**Vol. 69 of 85**

**[JA015753-JA015982]**

Eric D. Hone (NV Bar No. 8499)  
Joel Z. Schwarz (NV Bar No. 9181)  
H1 LAW GROUP  
701 N. Green Valley Pkwy., Suite 200  
Henderson, Nevada 89074  
Tel: (702) 608-3720

*Liaison Counsel for Appellants*

J. Stephen Peek  
Robert J. Cassity  
HOLLAND & HART LLP  
9555 Hillwood Drive, 2nd Floor  
Las Vegas, Nevada 89134  
Tel: (702) 669-4600

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

[Additional counsel appear on next page.]

<p>Randall J. Baron (<i>Pro Hac Vice</i>)  Benny C. Goodman III (<i>Pro Hac Vice</i>)  Erik W. Luedeke (<i>Pro Hac Vice</i>)  ROBBINS GELLER RUDMAN &amp;  DOWD LLP  655 West Broadway, Suite 1900  San Diego, CA 92101-8498  Tel: (619) 231-1058</p> <p><i>Lead Counsel for Appellants</i></p>	<p>C. Barr Flinn  Emily V. Burton  YOUNG CONAWAY STARGATT  &amp; TAYLOR, LLP  Rodney Square  1000 North King Street  Wilmington, DE 19801  Tel: (302) 571-6600</p> <p><i>Attorneys for the Special Litigation  Committee of Nominal Defendant  DISH Network Corporation</i></p>
---	---

## TABLE OF CONTENTS FOR VOLUME 69<sup>1</sup>

<b>Document</b>	<b>Vol.</b>	<b>Page No.</b>	<b>Date</b>
Report of the Special Litigation Committee of DISH Network Corporation and Appendices of Exhibits Thereto (Exs. 1-792; Appx. Vols. 1-50)	4-73	JA000739- JA016874	11/27/18
<b>Evidentiary Hearing SLC Exhibit 102<sup>2</sup></b>			

---

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

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

1 Q. So I think as you've testified, you didn't  
2 know that Mr. Hagan had a criminal record and had  
3 spent 60 months in federal prison; right?

4 A. Yes, I did not know.

5 Q. You didn't know he had been enjoined in  
6 Virginia. Both he and his wife, in fact, I believe?

7 A. No, I did not know.

8 Q. And I take it you didn't know -- you  
9 probably do know now, that he is in federal prison  
10 now as we speak; right?

11 A. Yes, I do know that.

12 Q. Now, you testified that I believe you  
13 learned later, maybe 2011, long after Dish TV Now  
14 was a retailer, about Mr. Hagan's prison record; is  
15 that right?

16 A. Say it again?

17 Q. I'm trying to remember, I think you  
18 testified that you learned that he had been a felon  
19 in 2011? 2010?

20 A. No. When I came back in 2009, a few months  
21 afterwards, someone came to me and said, you know,  
22 "Do you remember David Hagan? By the way, he's in  
23 prison." Correct.

24 Q. So would it surprise you to know that  
25 Mr. Hagan testified in his deposition that he told



1 you in 2004 about his prison record?

2 A. No recollection of that. There is no way he  
3 told me that.

4 Q. Well, if he had told you, it would be  
5 something you would remember I would --

6 A. I would remember that; yes.

7 Q. And I believe you also testified that if you  
8 had known about that you would not have allowed him  
9 to be your premiere OE retailer; right?

10 A. That's correct.

11 Q. Are you aware that Mike Mills gave testimony  
12 as DISH Network in March 2000 -- March or May?  
13 May 2012, where he actually said that he wouldn't be  
14 able to say one way or the other if DISH would do  
15 business with Dish TV Now today?

16 A. No --

17 Q. Did you know that?

18 A. No, I didn't know that.

19 Q. Does that sound right to you?

20 A. No. I would not have done business with  
21 Mr. Hagan.

22 Q. If you knew what you knew now?

23 A. That's correct. I don't think anyone would  
24 have allowed me to do this.

25 Q. Now, so let's go a little bit through the

1 history of Dish TV Now. We talked about you thought  
2 they were doing TV advertising and print and direct  
3 mail; is that right?

4 A. Yes.

5 Q. And you had no idea they were doing voice  
6 broadcasting?

7 A. That's correct.

8 Q. All right. Let's look at PX168. So I'm  
9 gonna give you a bunch of binders. Or actually Erin  
10 will.

11 Erin and Grace have handed out two sets of  
12 binders, frequently used documents, which will  
13 hopefully cut down the number of binders we give out  
14 every day. And then one just for you.

15 So I'm looking in the frequently used binder at  
16 tab 168.

17 A. Okay.

18 Q. So if you look -- let me know when you're  
19 there.

20 MR. EWALD: I don't see 168 in here. Maybe  
21 I'm missing it.

22 A. There's no 168.

23 THE COURT: It's in mine.

24 A. I see it. I do have it.

25 Q. So have you seen PX168 before?

1 A. Yes.

2 Q. And what is it?

3 A. It's a complaint from Mr. Swanberg to DISH  
4 Network.

5 Q. And it's a complaint about Dish TV Now?

6 You see it says (as read:) Such actions by one  
7 of your retailers, Dish TV Now?

8 A. Yes.

9 Q. And it's about an illegal prerecorded  
10 telemarketing message; right?

11 A. Yes.

12 Q. And actually attached to it is a draft  
13 lawsuit. Do you see that, from --

14 A. Yes, yes.

15 Q. So in July 2004 it appears that DISH  
16 certainly was aware that a consumer, at least this  
17 consumer, was complaining about Dish TV Now making  
18 illegal prerecorded calls; right?

19 MR. EWALD: I'm sorry, I believe you said  
20 July. I believe it was August 2004.

21 Q. Well, the letter is July.

22 MR. EWALD: Received August 2nd, 2004.

23 Q. All right. DISH received the letter  
24 August 2nd, 2004. So safe to say August 2004 DISH  
25 knew about it?

1 A. If that's what our counsel is saying; yes.

2 Q. Well, we're just looking at the received  
3 stamp on the first page.

4 THE COURT: Top right.

5 A. Yes. Sorry, there we go. August 2, 2004.

6 Q. Now, at this point when DISH received this  
7 letter you had been going through a lot to try and  
8 actually keep Dish TV Now as a retailer? Do you  
9 remember that?

10 A. Yes. There was communication between myself  
11 and Dish TV Now.

12 Q. So at the risk of overwhelming you, I'm  
13 going to ask you to look at the other binder.

14 A. Okay.

15 Q. Which has got PX154 in it.

16 A. Okay. Yes.

17 Q. So this is January 2004. And you are  
18 pleading with Steve Skalski and Nick Rossetti to  
19 help you, because Dish TV Now is activating a lot of  
20 customers and they're not getting installed by DISH;  
21 is that right?

22 A. That's correct.

23 Q. And you were begging because you didn't want  
24 to lose the account; right?

25 A. Yes. This is a couple months after they

1 launched; correct.

2 Q. And in fact, the account was so high profile  
3 that Charlie Ergen asked you every day what was  
4 going on with the sales and activations in this  
5 account; right?

6 A. I don't think Charlie asked me that. I  
7 probably put that to make a sense of urgency for  
8 them. They were running installation.

9 Q. But you wanted to show them it was coming  
10 from the top and it was serious?

11 A. Yes, sure. They launched a couple of month  
12 later and we're not able to install their sales;  
13 correct. And that's a concern to me.

14 Q. Well, Charlie knew about Dish TV Now, didn't  
15 he?

16 A. Yes. He would know about Dish TV Now.

17 Q. But I guess he wants asking you every day?

18 A. No, this is -- this is trying to create a  
19 sense of urgency.

20 Q. Well, and that urgency paid off, didn't it?

21 A. They -- in which way?

22 Q. Well, they -- they sold a lot of -- they  
23 activated a lot of subscribers?

24 A. Yes, they did a lot of activations. But  
25 this -- this is -- this is specifically about

1 installation. That we're not able to keep up with  
2 their sales. And there's also issues in here as it  
3 relates to the OE tool, because it had just  
4 launched, going in and out. It's not working  
5 properly.

6 And I'm asking our DNS organization at that  
7 time, installation organization, if they can help me  
8 get these jobs in the ground. Because when you -- I  
9 mention in here that some of these cancellations,  
10 the calendars are two to four weeks out. And that  
11 -- I'm just explaining to them I don't think any  
12 customer is going to wait two to four weeks to get  
13 an install.

14 Q. Well, they fixed it, didn't they?

15 A. I don't know if they were able to fix it. I  
16 think there were always issues. But I think they  
17 put some initiatives to help get these installed;  
18 yes. I mean that would be part of the job.

19 Q. And you didn't lose Dish TV Now, at least  
20 for the next couple of months or a year, did you?

21 A. For -- well, love to see the activation  
22 numbers. But not for the next couple of months.  
23 They were still doing business with us.

24 Q. So that's January 2004, you were saying  
25 better get these people -- gotta get these

1 satellites in the ground?

2 A. Yes.

3 Q. We looked at that August 2004 letter from  
4 Ryan Swanberg complaining about illegal prerecorded  
5 calls from Dish TV Now.

6 And then Mr. Ewald showed you DTX 223, which is  
7 a September 2004 complaint about Dish TV Now using  
8 predictive dialers to make outbound calls. And you  
9 actually wrote him a threatening e-mail about that.  
10 Do you remember that?

11 A. The one he just discussed?

12 Q. It's the one in yet the other binder. The  
13 black one.

14 A. Sorry. Am I going back to this one now?

15 Q. I'm sorry, I wish there was a more practical  
16 way to do it. It's in your black binder.

17 MR. EWALD: It's in your binder too.

18 Q. It's in my binder too.

19 A. I can take this binder. Which tab is this  
20 one?

21 Q. It's tab 2.

22 A. Yes. The one that I sent on September 16th?

23 Q. Yes.

24 A. Okay.

25 Q. You got another complaint in September 2004

1 about it; right?

2 A. That I don't know. I don't know if it's  
3 that complaint, or this one finally came to me. And  
4 when it came to me I reacted immediately and just  
5 e-mailed David saying, "Okay, tell me if this is a  
6 method that you are using."

7 Q. So you think this might be in response to  
8 the Swanberg letter?

9 A. I don't know. I don't know. I just know  
10 that if a -- a complaint came to me, I wanted to  
11 know who it was. If it was a retailer, immediately  
12 responded to give me an answer.

13 So I don't know which complaint we're talking  
14 about here. I -- we received a complaint,  
15 apparently it came to me, and I responded to get an  
16 answer from David.

17 Q. And he said that they were using predictive  
18 dialers to do outbound calling; isn't that right?

19 A. His response in here says they "use a  
20 predictive dialer to make outbound calls to  
21 consumers who have previously inquired with us about  
22 satellite TV services, or a current DISH subscriber,  
23 and we follow all the laws and we only talk to live  
24 customer."

25 Yes, that's his response.



1 Q. So he wasn't just doing TV advertising,  
2 internet advertising; right? He was doing outbound  
3 calling with predictive dialers?

4 A. Yes. I mean his response is he's making  
5 outbound calls following the laws. And I received  
6 one complaint. There's not a plethora of complaints  
7 come. And yes, that's our response. And I'm okay  
8 with that based on his response.

9 Q. Well, did you have anybody look into, for  
10 example, whether he has the leads that he said he  
11 had for those calls?

12 A. No, I did not.

13 Q. Did you ask him to provide a list so you  
14 could see who he was calling and make sure that  
15 people weren't on the Do Not Call Registry?

16 A. No, I did not.

17 Q. So you just took his word and said let's  
18 continue to do business?

19 A. Yes. This is September. Yes, I did do  
20 that. But it's not like I was getting a bunch of  
21 complaints. It was one complaint that came. There  
22 wasn't anything that raised my eyebrow saying, "Oh,  
23 there's an issue going on here."

24 Q. Well, I mean one complaint could mean -- it  
25 could be the tip of the iceberg; isn't that right?

1           A. But -- could be, but I don't think one  
2 complaint, you know, tells me to go out there and,  
3 you know, terminate a guy, or shut him down, or go  
4 do a huge investigation because this one complaint.

5           You've also said he's done thousands of  
6 activations and there's no other complaints coming  
7 to me. So yeah, I didn't look at it as a major  
8 issue.

9           Q. In fact, you didn't do any investigation;  
10 isn't that right? You just asked him?

11          A. I asked him. That's correct.

12          Q. And you told him you didn't want him to do  
13 illegal calling?

14          A. I said -- yeah, I said "I'm not interested  
15 in telemarketing, because I know that that's not the  
16 type --" his -- it's real simple. "David, you've  
17 got a great plan. You're talking about television  
18 advertising, you showed it to me." This is just  
19 very -- this is six, seven months into the  
20 partnership. You know, you're doing a bunch of  
21 radio -- excuse me, newspaper ads, prints ads, we've  
22 seen the ads out there. So why am I getting this  
23 one complaint? What don't I know?

24          And his response is, "I'm following the laws,  
25 and yes, I'm calling current customer." There

1 wasn't someone coming back to me, there's another  
2 complaint, another complaint. So yes, I mean I just  
3 moved forward.

4 Q. So I guess the answer was good enough. It  
5 wasn't exactly what their business plan said, but  
6 you were okay with it? You were okay with his  
7 explanation; right?

8 A. I was okay with the explanation, and there  
9 was one complaint that came to me. Someone brought  
10 it to me saying "hey, by the way." So I was  
11 reaching out to him. I was totally -- tell me what  
12 is going on here. I could have looked the other way  
13 and I didn't. That's what I'm saying here. There  
14 wasn't complaints coming to me.

15 I was more concerned about are you selling --  
16 are we installing it. There were other issues with  
17 him as it relates to, you know, him challenging me  
18 that, right, you're not paying us correctly, or the  
19 system continues to be down.

20 Q. You were working out a lot of kinks with the  
21 system at this point; right?

22 A. Yes. The system would go down a few times.

23 Q. And Mr. Hagan was actually helping you work  
24 through those problems; right?

25 A. Help meaning?

1 Q. Meaning he would alert you to problems and  
2 then you would try to figure out how to fix them?

3 A. Oh, I think any retailer would. I think --  
4 it's not Mr. Hagan. If you have a system that goes  
5 down for all the independent satellite dealers, you  
6 want feedback. So if it goes down, it's affecting  
7 them to process an order. It's affecting them in  
8 terms of how do you make a sale. So anyone would  
9 give you feedback. And that's how we would find  
10 out.

11 Q. Right. But there was only him and maybe a  
12 couple others at that time; isn't that right?

13 A. Yes, on the OE tool. But I'm just saying  
14 that's across the board. Systems go down. As  
15 technology, it was new, at least on that part of it.  
16 And yes, we were working out the bugs, you know.

17 You expect to be able to process an order. The  
18 system -- it's the same thing with direct sales.  
19 It's not -- systems go down. And this is in the  
20 early days, yes. And we're trying to improve it.  
21 He's giving us feedback that, "Hey, by the way --"

22 You know, I would call IT. Can you check on  
23 it. What is going on? Do we have redundancy here?  
24 I mean I'm doing the right thing as it relates to my  
25 work. Or I would forward it to someone to look into

1 it.

2 Q. Okay. And you were aware, I take it then,  
3 that a lawsuit was filed against Dish TV Now on  
4 December 13th, 2004, regarding its illegal  
5 prerecorded calling by Phil Charvat?

6 A. To be honest I cannot tell you that I knew  
7 about that lawsuit.

8 Q. Have you heard the name Phil Charvat?

9 A. No.

10 Q. He files a lot of TCPA lawsuits. But you've  
11 never heard of him?

12 A. No, I have not. I'm sorry, I have not.

13 Q. So nobody told you about that lawsuit that  
14 was filed in 2004 against them?

15 A. No. I cannot honestly tell you I know who  
16 that is or anyone told me about that.

17 Q. And I guess you also don't know about  
18 complaints that were sent to DISH about Morton Sill,  
19 who is an Illinois consumer who had gotten calls and  
20 he had filed complaints?

21 A. No, no one told me.

22 Q. There were more complaints than the ones I  
23 showed you. Is it still your answer there weren't a  
24 lot and that was okay?

25 A. I know -- yes, I know -- I don't know even

1 know if it was -- which complaint we're talking  
2 about here. But something came to me and I  
3 immediately contacted David via e-mail to tell me  
4 what's happening. And that was the end of it. And  
5 his response.

6 Q. And in fact, you continued to be concerned  
7 about losing Dish TV Now, because in January 2006  
8 you had Mike Mills write a letter to David Hagan  
9 asking why he wasn't selling DISH anymore? Isn't  
10 that right?

11 A. Can I see that?

12 Q. Sure. It's PX712. In the big white binder.  
13 Do you see that?

14 A. This is from Mike Mills to David?

15 Q. From Mike Mills to David Hagan, January 3,  
16 2006. Mike saying (as read:) I've been trying to  
17 contact you during the last several weeks regarding  
18 what your plans are to promote DISH Network products  
19 and services, and have received no response.

20 Please -- and then the next paragraph is please let  
21 me -- please contact with me -- please contact me  
22 within the next week to let me know what your plans  
23 are for promoting DISH Network in 2006.

24 So Mr. Mills wrote that letter; right?

25 A. Yes, this is from Mike.

1 Q. And it turned out that Dish TV Now stopped  
2 selling DISH around that time; isn't that correct?

3 A. I -- probably did if that's a letter from  
4 Mike. They probably slowed down selling us.

5 Q. And you terminated them for churn and  
6 failure to promote?

7 A. I believe they were terminated for high  
8 churn; yes.

9 Q. Do you remember what the churn was?

10 A. Can I look somewhere for that, please?

11 Q. Well, let's see if I can figure it out.

12 A. I don't want to guess. I don't want to  
13 guess, but it had to be high. So we terminated, a  
14 retailer had to be fairly high. But I would love to  
15 see the numbers.

16 Q. I think it's 165 in your little binder.

17 A. I see it.

18 Q. You see there's a little chart at the bottom  
19 there?

20 A. Yes.

21 Q. And Dish TV Now had 3.03 percent churn in  
22 September 2005, and then it was down a little to  
23 2.83 percent?

24 A. Yes. And then 2.83 in November.

25 Q. Right. And this is you guys considering how

1 you want -- how and whether you want to terminate  
2 them; right?

3 A. That's correct. Yes. We have -- right, I  
4 mean this churn is high. And I believe they were  
5 terminated for churn. For high churn.

6 Q. Now, if you see in the top paragraph, you  
7 actually say "account is on hold." Or I'm sorry,  
8 Mike Mills said this to you.

9 And in the second bullet point he says (as  
10 read:) Dish TV Now failed to retain legal  
11 representation as promised for a legal matter in  
12 which EchoStar and Dish TV Now are named.

13 And then he says (as read:) Litigation  
14 Overview. We were sued, along with Dish TV Now, at  
15 the beginning of this year for allegations of  
16 multiple Ohio TCPA violations. And that Dish TV Now  
17 said they were gonna indemnify DISH and they didn't,  
18 and now DISH has to pay for its own lawyers.

19 Do you see that?

20 A. Yes.

21 Q. So you did know back in the day in 2005  
22 about the lawsuit we were just talking about? The  
23 Charvat suit?

24 A. I'm sorry, I -- really, I don't recollect  
25 this at all. You know, I'm reading it right now.



1 And look, this is ten years ago. This is a lot of  
2 responsibilities I have. But yes, this could have  
3 been -- there could have been something there.

4 But you know, he has slowed down probably in  
5 terms of sales. Mike's managing the account. And  
6 obviously churn is high. And we're probably walking  
7 away from the account because churn is high.

8 Q. And in fact, you were holding a residual in  
9 the amount of \$89,635 for the month of December  
10 2005; right? That's money you would have paid them  
11 but you didn't?

12 A. That's probably the right thing to do, based  
13 on the fact that if we're looking at terminating  
14 them for high churn, there's no reason to pay them  
15 because, again this churn, this is a prime example  
16 of when we talk about almost 3 percent churn, the  
17 math is really simple. That means they're averaging  
18 about 3 percent. That means 36 percent of the  
19 customers that they brought us will disconnect  
20 within one year. 72 percent within two years. Our  
21 breakeven is over three years. We're not gonna make  
22 a penny on the customers they're bringing us. And  
23 I've got no interest in doing business with them.  
24 And anybody at DISH, as a matter of fact.

25 Q. They brought you, in the two years they were

1 a retailer, about a hundred thousand activations?

2 A. Hm-mm.

3 Q. So even if 30 percent of those cancelled,  
4 that's still a lot of activations, isn't it?

5 A. No, no, you can't look at -- you have to  
6 look at -- if you bring on a customer -- there is no  
7 way, based on these numbers. I wish I had more  
8 numbers here. But it's not about just that year.

9 If a customer is brought on today, or in  
10 November of 2005, we're really not making anything  
11 on that customer until November 2008. So it's --  
12 you have to look two, three years down the road  
13 what's gonna happen to that customer.

14 So if -- if they're running 3 percent churn,  
15 that means they're churning out 36 percent of  
16 everyone they brought on. Year two, those  
17 customers, another 36 percent are going to churn  
18 out. So two years, 72 percent of the customers they  
19 brought on are gone. There's no way.

20 Q. So if that's true, why are you paying these  
21 retailers? And I think Dish TV Now made something  
22 like \$11 million the first year. Why are you paying  
23 them all that money if you're not making anything on  
24 those people they bring in?

25 A. There's an activation payment we pay the

1     retailers. It's not just paying \$11 million.  
2     Obviously they're exposed to charge back. The OE  
3     retailers are 180 days, the normal retailers a full  
4     year. They exposed to a full year. If the customer  
5     disconnects, we get everything back.

6             But they have obviously the huge expenses. So  
7     yes, it might be \$11 million, okay, and you look at  
8     the customers, they bring us a hundred thousand  
9     customers, you can look at the cost of acquisition.  
10    But how much are they spending on marketing? What  
11    is their payroll cost? What is their operational  
12    cost? How much is their workmen's comp? There's so  
13    much involved. So you can't say I paid them 11 and  
14    they made \$11 million, maybe they didn't make any  
15    money, I don't know.

16            Q. Well, you're a businessman, right?  
17    Everybody is in this to make money. They are,  
18    right? Retailers are?

19            A. Yes. And --

20            Q. You are?

21            A. A lot -- I am. If I get good customers,  
22    long-term customers, we will make money. If we  
23    don't, we don't make money. I mean we --

24            Q. Well, you did? Let's just go there.

25            A. On Dish TV Now? I don't know if -- based on

1 these churn numbers, I cannot be certain of that.  
2 I'm being very honest, based on these numbers.

3 Q. well, and in fact, let's talk about that.  
4 DISH has had an issue in the last -- now we're in  
5 2016. But I'm talking about the 2004 to 2010 time  
6 period. Over that time there's been a lot of  
7 competition in the market; right? You have to  
8 compete for customers with a lot of different  
9 companies?

10 A. Sure. That's continued to increase;  
11 correct.

12 Q. Right. So maybe in the old days it was just  
13 satellite TV and cable. And now there's the  
14 internet and there's people that don't even watch TV  
15 and all different options; right? So you really  
16 have to keep those numbers up. You have to keep  
17 them coming just to try and stay afloat; isn't that  
18 right?

19 A. Or you can -- you can provide greater  
20 product, better technology to hold on to that  
21 customer. And that's exactly what we're doing.  
22 Just look at our transition into technology. If I  
23 sell you -- if that was the case, just -- to me if  
24 that's the case I would sell everyone just a set top  
25 box. But we invest into us. DirecTV, cable

1 companies, no one is doing that. It's about DVR.  
2 It's about how you watch television anywhere around  
3 the world; okay.

4 Because when you sell that kind of customer  
5 that technology they're hopefully gonna stick around  
6 long term because they're whole experience changes.  
7 It's not just about watching CNN on CNN. You can do  
8 that anywhere.

9 So yes, but it's -- it's about technology.  
10 It's about how you're marketing to them. That is  
11 why today -- today it's different. If you look at  
12 our promotion today, we have a three year price  
13 guarantee. Okay. Because we know we want to hold  
14 on to the customers, we want to hold on to the  
15 customers. Their expectation is totally different  
16 in terms of what they want in their house.

17 In 2004, yes, it was probably a little bit  
18 different; okay. But the advent of HD television at  
19 that time, and people are wanting higher end  
20 products, and they are wanting more high end  
21 products today. So yes, there's competition, but we  
22 are doing things to hold on to that customer.

23 Q. And the company is doing very well; right?

24 A. What does that mean?

25 Q. Your share price went from, I don't know,

1     \$17 a share or something in 2010, and it's in the  
2     50s or the 40s now?

3           A. It's in the 40s. Okay.

4           Q. And --

5           A. But --

6           Q. You've expanded into new areas of technology  
7     you just told me yourself; right?

8           A. So -- but that's -- I think wouldn't any  
9     company want to do that? Make good investments.  
10    Right? What does that have to do with this?

11          Q. Well, you brought it up. I'm just  
12    commenting --

13          A. I'm just talking about Dish TV Now. I'm  
14    sorry, this -- Dish TV Now, I'm just saying these  
15    churn numbers, these churn numbers I'm seeing right  
16    now, when I do the math, their -- they have churned  
17    out all their customers very quickly. That's what's  
18    disappointing to see.

19          Q. So it sounds like you're saying your first  
20    OE retailer was not the success you thought it was  
21    gonna be; is that right? Is that fair to say?

22          A. It's fair to say that I brought in an OE  
23    retailer, and within a year and a half they are --  
24    or yeah, less than a year and a half, they're gone.  
25    Okay. They -- they gave us customers that obviously

1 are churning out. Okay. And so yeah, I wouldn't  
2 call that a huge success.

3 Q. And that pattern repeated itself; isn't that  
4 right? Where -- you had Star Satellite, correct?  
5 We -- you talked about them. Even though you didn't  
6 remember when I deposed you, you obviously remember  
7 now; right?

8 A. Yes.

9 Q. So Star Satellite. Eric Myers, the  
10 principal. You looked at his deposition?

11 A. I read his deposition.

12 Q. So you know that Eric Myers actually started  
13 out as a different retailer. And when DISH was  
14 gonna terminate him for high churn, he basically  
15 went dark and then popped up as Star Satellite under  
16 his brother, who was the nominal head, and then Eric  
17 started running it again. You know that now; right?

18 A. I read the deposition; yes.

19 Q. And the DISH FSDR, Regina Thompson, she knew  
20 it was the same person. She said she was annoyed  
21 that he popped up and DISH let him do that; right?

22 A. Okay. We're -- I said that early in the  
23 deposition. Yes, I'm upset that there were two  
24 retailers that we're talking about that did some bad  
25 things. That does not make every one of my

1     retailers bad.  Okay, I accepted that.  Star  
2     Satellite did some bad things that I did not know.

3           Q.  But Star Satellite went -- in 2003, before  
4     they were on the OE program, they brought in 2000  
5     subscribers.  And in 2004 they brought in 18,679  
6     subscribers; right?

7           A.  Yes.

8           Q.  And you didn't wonder if they were voice  
9     broadcasting?

10          A.  No.  I -- let's -- if -- first of all,  
11     they're being managed.  They're -- unfortunately  
12     they're not on my radar.  That's -- they're doing --  
13     now you're talking about 1200, 1500 activations.  
14     They're doing 2400 activations.  They're a door  
15     knocker.  That means they're basically working three  
16     to four months with a small group in a special  
17     market.  Now the team has allowed them to go on the  
18     OE tool through a distributor who's managed them to  
19     sell nationally.

20          So instead of a small area, you can sell all  
21     around the United States.  And you expect the  
22     activations to increase.  But that doesn't mean they  
23     are doing anything illegal, because I didn't know  
24     they were doing anything like that.

25          Q.  So you didn't know there were complaints



1 about Star Satellite's prerecorded press 1 messaging  
2 in January, February, May of 2005? And then they  
3 were sued by a consumer in South Carolina in August  
4 of 2005? That didn't make it to your desk?

5 A. No, ma'am, it did not. It did not.

6 Q. So nothing was done, obviously. And then  
7 they went on and made the 43 million prerecorded  
8 calls that Mr. Ewald alluded to; isn't that right?

9 A. When one complaint came to me I reacted  
10 immediately, because that's the way I am.  
11 Immediately. And got them on the phone. The one  
12 conversation I had, that I do not remember them. I  
13 have never met them and never was involved in the  
14 business. There was a team that ran it, there was a  
15 distributor that ran their business. But I took  
16 action immediately. And that was the one  
17 conversation that I do remember because of what I  
18 said, embarrassment in terms being reprimanded by  
19 HR.

20 So immediately I responded to that, because I  
21 don't appreciate any of that, and that's the  
22 complaint that I got. I did not know of the other  
23 complaints.

24 Q. So you -- you were talking about the October  
25 complaint from the Congressman Upton; right?

1 A. That's the one.

2 Q. And that was in October 2005?

3 A. Correct. I would say that's the one we  
4 talked about, I believe, October 2005.

5 Q. So you told Eric, "You need to be very  
6 serious about this," right? "I'm not gonna put up  
7 with this?"

8 A. Yes.

9 Q. But you didn't do anything else to cut him  
10 off; right?

11 A. No. I'm disciplining him. I'm letting him  
12 know this is very serious. And the team is managing  
13 it. I want to make sure that he understands that,  
14 look, it's -- go out -- I don't --

15 Look, I'm not sitting there taking one  
16 complaint and saying, oh, my God, in my wildest  
17 dreams, that this is what's going on. Because no  
18 one has brought any additional complaints.

19 But I'm trying to educate him is that please,  
20 make sure that you bring us good customers. And I  
21 don't care about -- you can be excited on the phone  
22 if you want to say, no, I did 18,000. I don't care  
23 about that. I care about long-standing customers.  
24 And I made it clear to him, and even in the e-mail,  
25 that's what I'm passionate about.

1 Q. Well, you care about him bringing in  
2 customers that stick, but it doesn't sound like care  
3 about the fact that he's had repeated complaints?

4 A. But I don't know that he's repeated  
5 complaints. That's what I'm trying to tell you.

6 One complaint came to me, I reacted  
7 immediately. And I did that if any complaint came  
8 to me. Any complaint came to me, I responded. I  
9 always went to legal with it.

10 From when OE tool launched end of 2003, to when  
11 I left, let's say two years later, there was just a  
12 handful of complaints that came to me. And every  
13 single one of them, every single one offended me  
14 that it came on my desk. And I immediately  
15 contacted legal or the representative that's  
16 managing it and sent information to the retailer and  
17 do whatever you need to do to fix the problem.

18 If I -- I -- I do believe that a retailer that  
19 has bad intentions and has been reprimanded and they  
20 don't fix it, they should be terminated. A retailer  
21 has good intentions, made a mistake, and they're  
22 going to rectify it. Okay, move forward. There was  
23 one complaint that came and I thought I acted  
24 absolutely promptly on that complaint.

25 Q. You thought you did enough?

1 A. Yes.

2 Q. To control that retailer going forward?

3 A. I sent a very strong message that, do it  
4 right, okay? sell correctly. And what I mean by  
5 that, I know about the door knockers. Not just  
6 today, even years before; okay. It's very simple to  
7 door knock, and their mentality to door knock.  
8 Easier to go get a customer. Don't take it the  
9 wrong way, but easier to get a customer in lower  
10 income areas. Easier to get a customer if they're  
11 in trailer parks for door knocking, because they  
12 want the service. They want -- they're always  
13 looking for the best offer.

14 It's very difficult for them to go out there  
15 and knock in great neighborhoods where they're gated  
16 and there's single family homes where customers have  
17 three to four TVs. And I'm just saying however  
18 you're sell things, whatever you're used to,  
19 education yourself. Go get good customers. That's  
20 what's important. It's good for you, it's good for  
21 us. This is how you're gonna grow your business.  
22 This is what we're interested in.

23 Q. Right. But these people were not knocking  
24 on doors. These OE retailers were calling people.  
25 They were taking phone sales, right?

1           A. No, I believe he was probably knocking on  
2 doors too. And I think he was doing direct mail.  
3 This is a -- no, but this is a great opportunity --

4           Here's the deal. I don't know exactly what  
5 he's doing. I was not involved. Okay. But if  
6 you're gonna ask me, you know, your door knocking,  
7 it kind of makes sense that you can use the OE tool  
8 to door knock.

9           Q. Well --

10          A. Why wouldn't you?

11          Q. And I don't -- I know the Court and probably  
12 Kathy wants a break. The Court is looking a  
13 little -- I mean I'm happy to continue, but it's  
14 important particularly to the Court reporter.

15           THE COURT: We need to give her a break.  
16 Court's in recess for ten minutes.

17          (A break was taken.)

18           THE COURT: All right. Please continue.

19 BY MS. HSIAO:

20          Q. So we were talking about Star Satellite.  
21 And these new retailers you were bringing on, there  
22 was a risk, obviously, but there were rewards as  
23 well; correct?

24          A. I didn't think there was any risk. They're  
25 retailers. And if I have to think that every

1 retailer is a risk -- I don't understand. We're  
2 bringing on retailers. Some of them are doing  
3 business with us. Okay. I haven't had any issues  
4 with them that is standing out.

5 And so if there's an opportunity to put them on  
6 the OE tool, great. If just like we're trying to  
7 bring on a retailer that's a local retailer, we feel  
8 that they can bring us good business, then yes, we  
9 bring them on. But I don't understand what you mean  
10 by risk.

11 Q. Well, and I didn't ask you I don't think,  
12 that you guys didn't do background checks on Star  
13 Satellite either; right?

14 A. I don't know. I couldn't answer you if we  
15 did or not.

16 Q. Even though they were taking people's credit  
17 card information, you didn't do a Dunn and  
18 Bradstreet check, for example?

19 A. I don't recall that.

20 Q. You did a credit check?

21 A. I cannot ask you if it was done on Star  
22 Satellite or not, I don't have --

23 Q. You don't know one way or the other?

24 A. I do not know.

25 Q. And it certainly wasn't part of the process

1 you were involved in I take it?

2 A. There was a group that went through the  
3 retailer application. It was called Central Setup.  
4 But they -- I don't think they did a background  
5 check; no.

6 Q. Now, Star Satellite stopped being an OE  
7 retailer while you were still at DISH; right? They  
8 were taken off the tool at the end of, I don't know,  
9 2005, 2006 maybe? They remained a TVRO retailer;  
10 correct?

11 A. Okay.

12 Q. And I know that this happened while you were  
13 gone, but I want to ask you whether you learned  
14 about it when you came back in 2009. Did you ever  
15 hear from Mr. Neylon that -- from an employee of  
16 Star Satellite named BC Smith, that Mr. Neylon  
17 learned that Star Satellite had activated 30,000  
18 accounts using illegal prerecorded calls?

19 A. I don't recall that at all.

20 Q. Nobody ever told you that?

21 A. Not that I recall.

22 Q. Do you remember a retailer called Vision  
23 Satellite from 2009 when you came back?

24 A. I could not tell you who they are.

25 Q. If I told you BC Smith was a principal of

1 vision Satellite, that doesn't ring a bell?

2 A. No, ma'am.

3 Q. So you didn't know that same guy who had  
4 been with Star Satellite showed up again in 2009 --

5 A. No, ma'am.

6 Q. -- as Vision Satellite?

7 A. No.

8 Q. And you back in 2009; right?

9 A. End of May 2009; correct.

10 Q. So in January 2009 you were not back yet?

11 A. No, I was not.

12 Q. So do you remember terminating Vision  
13 Satellite for being a robo call operation?

14 A. No, I do not recall that.

15 Q. We talked about Eric Myers himself being  
16 basically not a well-performing retailer, and then  
17 popping back up again as Star Satellite. And I just  
18 told you about BC Smith being part of Star Satellite  
19 popping up again as Vision Satellite.

20 Does that sound like a responsible way to run  
21 the OE retailer program? To keep allowing people  
22 back in that have been kicked out basically?

23 A. I can't comment on that. I -- I wasn't  
24 involved on Vision Satellite or BC Smith, so I don't  
25 want to comment on that. I don't know who they are.



1 Q. Okay. And that happened you think while you  
2 were gone from DISH?

3 A. Did it? I --

4 Q. Well, 2006 to 2009?

5 A. If it happened in that time, then yes, I was  
6 not there.

7 Q. I also wanted to, before I move on to  
8 Satellite Systems Now, I wanted to address your  
9 discussion with Mr. Ewald that you didn't know what  
10 the law was on prerecorded messaging; right? You  
11 didn't know whether it was illegal or not?

12 A. No, I -- I don't -- I'm not an expert on it.  
13 I did not study it. I was being very honest, I did  
14 not know all the laws. Obviously I know there are  
15 state and federal laws. That I would know. But I  
16 don't know exactly what the laws are. And I just  
17 referred that to legal and the people that would  
18 know it. That's what I did.

19 Q. Okay. I'm gonna show you what's been marked  
20 as Plaintiff's Exhibit 40. I don't think we have it  
21 in your binder. Erin is going to give it to you.  
22 And I will give you a moment to look at that.

23 Have you had a chance to look at that,  
24 Mr. Ahmed?

25 A. I'm looking at the first page.

1           Okay.

2           Q.   So PX40 has been admitted into evidence.  
3   And you see on the first page you were CC'd on an  
4   e-mail from Mary Davidson?

5           A.   Yes.

6           Q.   She was in Retail Services at the time?

7           A.   Yes.   She ran Retail Services.

8           Q.   And it looks like from this e-mail that  
9   there was this lengthy discussion between Planet  
10   Earth, which I believe was an OE retailer for a  
11   time, and Ms. Davidson, about whether prerecorded  
12   telemarketing calls are illegal.

13          And it says, (as read:)   You are right -- it  
14   says Mr. LaMar to Mary on the first page.   (As  
15   read:)   You are right.   It is against federal law to  
16   use an ADAD, which I believe is audit dialer.  
17   Autodialing Announcement Device, to make unsolicited  
18   advertisements.   If you would like to refer dealers  
19   to the rules on the FCC site they are at the FCC  
20   website.

21          So do you remember getting this?

22          A.   I can tell you right now that I don't  
23   remember this e-mail.   I really don't.

24          Q.   And if you look at the second page.   This is  
25   the original message from Mary Davidson to Mr. LaMar

1 on January 15th, 2003, at 12:22 p.m. Do you see  
2 where I'm looking?

3 A. At 12 --

4 Q. 12:22 p.m. It's the second message on that  
5 page.

6 No, I'm sorry, the third e-mail message on that  
7 page.

8 A. I don't see a 12:22. Okay. I'll look at it  
9 here.

10 Okay, I'm reading it.

11 Q. So you see in the middle Mary says Ricky,  
12 please get -- she says (as read:) Leaving  
13 prerecorded messages to cold call commercial  
14 purposes is illegal under federal law. I read the  
15 law myself.

16 So Ms. Davidson, who is in Retail Services,  
17 certainly knew what the law was; right?

18 A. On this she's saying -- it is from her to  
19 Ricky. And she's saying, "I read the law myself and  
20 prerecorded calls --" And she is -- I -- I read the  
21 next paragraph, and she's saying "You need to get  
22 opinion from your lawyer." Yes.

23 Q. Right. And then she says at the very top,  
24 (as read:) Before you get your wallet out and pay a  
25 lawyer, please feel free to call any and every

1     reputable publically traded telemarketing company in  
2     the country and ask if they believe prerecorded cold  
3     calls to sell satellite systems for your company and  
4     see what they say.

5             So she seems pretty clear she knows what the  
6     law is; right?

7             A. I cannot comment on that. It says she read  
8     the law. I don't know what her knowledge is. I'm  
9     not -- I don't want to comment on her knowledge.

10            Q. Well, you said you didn't know; right?

11            A. No, I did not know.

12            Q. And you relied on people like Ms. Davidson  
13     and the legal department to know; right?

14            A. That's correct. That's who I went to.

15            Q. These would have been the Retail Services  
16     people. These would have been the ones that you  
17     referred questions and complaints to; right?

18            A. That's correct.

19            Q. And asked what the law was?

20            A. I went -- if the complaint came to me, yes,  
21     I went to Retail Services, or I went -- and I went  
22     to legal.

23            Q. Now, you've seen a couple of complaints  
24     today about telemarketing by OE retailers. And I'm  
25     sure you read your deposition before you came here;

1 right?

2 A. Yes, I have.

3 Q. And I'm sure you know then that you told me  
4 when you were deposed that you were not aware that  
5 any one of them was using outbound telemarketing to  
6 sell DISH. Do you remember saying that?

7 A. You have to show me exactly what I said.

8 I -- I just want to make sure that's what I said.

9 Q. Well, we can look at your deposition if you  
10 like. I mean I don't want to be here too long.

11 A. Okay. Can you please show it to me.

12 Q. All right. Let's look at your deposition.

13 A. That's fine.

14 Q. On page 118, starting at line 18, I asked  
15 you: (As read:) So, were there -- were there any  
16 of the OE retailers that you were aware were using  
17 outbound telemarketing to sell DISH?

18 And you answer (as read:) No, I'm not aware of  
19 any one of them, any one of them.

20 That was your testimony; right?

21 A. That's correct. That's what I said.

22 Q. So today you know now that there were quite  
23 a few that were outbound telemarketing; isn't that  
24 right?

25 A. I know there's a complaint on Dish TV Now

1 about a telemarketing call. I know about a  
2 telemarketing call, a complaint as far as Star  
3 Satellite that came to me. And obviously you're  
4 gonna talk about SSN. I believe there was a  
5 complaint on SSN.

6 Q. Right. And Mr. Ewald asked you about the  
7 calls by Dish TV Now that were prerecorded calls  
8 that the Court found DISH liable for; right?

9 A. Yes.

10 Q. And the 43 million calls that Star Satellite  
11 made that DISH was found liable for; right?

12 A. Yes. That's what I've learned.

13 Q. And I take it you know now that Satellite  
14 Systems Network also made 381,811 calls to numbers  
15 on the Do Not Call Registry?

16 A. I'm aware of that; yes.

17 Q. And that was after you came back to DISH;  
18 right?

19 A. I learned of that, yes, during -- for this  
20 trial; yes.

21 Q. All right. Well, let's talk about Satellite  
22 Systems Network. I'm going to call them SSN if  
23 that's okay with the court reporter. There are a  
24 lot of S's, I don't want to get confused.

25 And I'm going to show you a timeline that we

1 have made. Oh, there's a timeline in your binder.  
2 SSN -- it's actually too long to fit on a giant  
3 board. It was 13 pages long, so we just had to  
4 print it out. 10 pages long.

5 A. Going to the big binder?

6 Q. In the small binder. It's in the very back.

7 A. Okay.

8 Q. Your Honor, do you have it?

9 THE COURT: No. I've got it on the screen.

10 Q. Okay. It looks better on the screen. But  
11 again, it's very wide.

12 So, Mr. Ahmed, Satellite Systems Network became  
13 a DISH retailer in 2001; right?

14 A. Yes. That's what it says here.

15 Q. And they were earning only \$75 per  
16 activation?

17 A. I would love to know exactly -- yes, that's  
18 what it says here, but I need to know exactly what  
19 that was for. What were they selling for us?

20 Q. Well, if you look at Exhibit 183, which is  
21 also in that small binder. Do you see on the  
22 timeline the exhibits are also cited in  
23 parentheticals? You see there's a parenthetical at  
24 the end of that June 4, 2001?

25 A. Yes.

1 Q. So if you want to refer to anything, the  
2 exhibit, PX number, is there?

3 A. Okay.

4 Q. But I just want to set the stage. I'm not  
5 going to ask you specifically about what was going  
6 on with SSN at that time. Did you find that  
7 document?

8 A. Yes. The one I'm looking at right here.

9 Q. So am I reading that right, \$75 per  
10 activation? They were expected to generate 1,500  
11 subscriptions a month?

12 A. Correct.

13 Q. Using mail and telemarketing?

14 A. Okay. Yes.

15 Q. Do you have any reason to believe they  
16 didn't do that?

17 A. I don't know if they did that. I don't know  
18 how many activations. This is a different program.

19 Q. Before the order entry program?

20 A. That's correct.

21 Q. All right. So let's move on to the next  
22 entry, and that's the March 11, 2002, in red?

23 A. Okay.

24 Q. DISH receives a complaint about Satellite  
25 Systems Network using prerecorded voice messages to



1 sell DISH. And this is the PX80 that you were  
2 looking at with Mr. Ewald.

3 A. Okay.

4 Q. Where Mr. Novak says that in general, state  
5 law frowns upon prerecorded telephones calls. So  
6 that happened; right?

7 A. Yes.

8 Q. You were aware of that complaint; correct?

9 A. Yes. I'm -- going through this whole trial?  
10 Yes, I've gone through that. Yes.

11 Q. And then on June 12th, 2002, I'm moving on  
12 to the next red flag, DISH letter to Satellite  
13 Systems Network indicating that SSN is violating its  
14 retailer agreement because it's not complying with  
15 applicable telemarketing laws. So that's PX187.

16 A. Okay.

17 Q. And that I guess was the response to the  
18 complaint?

19 A. Okay.

20 Q. So on November 6th, 2002, the Siebel  
21 database. You know what that is; right? DISH has a  
22 database Siebel where its employees type in things  
23 about their meetings and notes?

24 A. Okay.

25 Q. So the Siebel database on November 6, 2002,

1 shows that DISH executives visited SSN and reminded  
2 Alex Tehranchi that, "the entire executive group is  
3 watching close." And that's in PX188.

4 A. Is it -- it's not in this binder. Which one  
5 would it be in?

6 Q. Hold on, let me see if I can find it.

7 A. Okay.

8 Q. All right. We're gonna put it up on the  
9 screen so you can see it. And then we will get some  
10 copies.

11 All right. Let's move on to the next one while  
12 they're looking for it.

13 Now, you never visited SSN, did you?

14 A. Yes, I did. I went there once. I believe  
15 it was in 2004.

16 Q. So you weren't there during this 2002  
17 November meeting?

18 A. No. I met Alex Tehranchi once. I believe I  
19 went there in 2004, visiting the -- the west coast  
20 office, and they took me to meet him.

21 Q. Okay. Now, in June 25th -- on June 25th,  
22 2004, SSN was sued by the State of North Carolina  
23 for calling North Carolina numbers on the Do Not  
24 Call Registry and for making prerecorded  
25 telemarketing calls. Did you know about that?

1 A. Is it in the --

2 Q. Well, I'll look and see if I can find it for  
3 you, but did you know about it at the time?

4 A. It -- I don't -- it doesn't come back to me  
5 at all if I knew that. I'm just asking if it is  
6 part of the trial here, in some of the e-mails.  
7 That I would like to be totally upfront with it.  
8 But it doesn't ring a bell.

9 Q. It doesn't ring a bell for you now?

10 A. Correct. I just want to make sure I'm  
11 telling it correctly. It does not ring a bell.

12 Q. Okay. So going back to PX188. And we're  
13 going to try to blow this up on the screen. Can you  
14 scroll over until the date shows. It's there.

15 See it says (as read:) visit Satellite Systems  
16 Network. Issues with voice broadcasting. Ensure  
17 they are following rules and explain that entire  
18 executive group is watching close.

19 Do you see that?

20 A. Yes.

21 Q. And you see the date is November 6, 2002?

22 A. Okay.

23 Q. Do you have any reason to believe that  
24 didn't happen?

25 A. I -- this is the first time I'm seeing it.

1 Q. Your Honor, I think we'd like to admit  
2 PX188.

3 THE COURT: Any objection?

4 Q. Never mind, it's already in.

5 THE COURT: Is that right, Diane?

6 THE CLERK: I don't have it admitted. It  
7 was marked on 1/29, but I don't have it as admitted.

8 THE COURT: It will be admitted now.

9 MS. HSIAO: Thank you.

10 (Plaintiff's Exhibit PX188 admitted.)

11 Q. All right. So the North Carolina  
12 complaint --

13 MR. EWALD: Your Honor, I'm sorry, I  
14 couldn't hear you. I would just assert the same  
15 objection, for the record, that I did on the  
16 previous Siebel database on hearsay grounds. I know  
17 it will be overruled.

18 THE COURT: The objection is overruled.

19 He did not answer your question. The witness  
20 did not.

21 MS. HSIAO: I don't remember what it was.

22 THE COURT: Would you like to have it read  
23 back?

24 MS. HSIAO: No, I will scroll back.

25 BY MS. HSIAO:

1 Q. The November 6, 2002, meeting. You have no  
2 reason to believe that the executives went there and  
3 told him they were watching him?

4 A. I definitely was not there, so I don't know  
5 what it means by executives. Who they were.

6 Q. It wasn't you?

7 A. No, it was not.

8 Q. Was it Mike Mills?

9 A. No idea.

10 Q. And you don't have any reason to believe  
11 that they were incorrect when they said that SSN has  
12 issues with voice broadcasting; right?

13 A. There was -- in 2002 there was a complaint  
14 that came that I think we addressed it earlier, and  
15 that's the one that I knew about, yes. We talked  
16 about it earlier.

17 Q. All right. So the North Carolina lawsuit  
18 that I'm referring to. In your binder, the big one,  
19 there's a PX1086. If you could look at page 23,  
20 please. Do you see it?

21 A. Yes.

22 Q. You see under the very first e-mail at the  
23 top from Reji Musso -- I mean from Ron Dufault to  
24 Reji -- Lisa Vallejos and CC'ing Reji Musso. The  
25 attached is \$25,500 fine ordered against Vitana in

1 2004.

2 And then they say in the message (as read:) It  
3 is Satellite Systems Network. Owner is Alex  
4 Tehranchi. They were fined 25,500 by North Carolina  
5 in 2004 for TCPA violations. I've attached a couple  
6 of documents for your reading pleasure.

7 And you learned about that lawsuit; right?

8 A. No, I -- I don't know about this lawsuit.

9 Q. All right. So if you could turn to the next  
10 page of the timeline, which is page 2.

11 The first entry is June 28th, 2004. And Mr.  
12 Ewald asked you about this document. This is the  
13 one where Charlie Ergen received a voice message  
14 from SSN at the ranch selling DirectTV. Do you  
15 remember that?

16 A. Yes.

17 Q. And he wanted to know why DISH wasn't doing  
18 that also; right?

19 A. No. He wanted to know what the script was,  
20 because it was a great pitch, I believe, on DirectTV,  
21 and wanted to know if I could get ahold of the  
22 script.

23 Q. Right. He wanted to know (as read:) why  
24 don't we do the same thing they're doing? why  
25 should we let them sell only DirectTV?

1           A. I don't think he said that. He said, "Get  
2       ahold of the script. How are they pitching  
3       DirectTV."

4           Q. Let's look at that. That's PX190. Ergen so  
5       you were looking at this document before, right?

6           A. Yes.

7           Q. And you see in the e-mail on the middle of  
8       page 2, is an e-mail from Charlie Ergen to you, Jim  
9       DeFranco, Michael Schwimmer and Michael Kelly, on  
10      June 28, 2004, at 6:00 in the evening. And Ergen  
11      says (as read:) why don't we just copy their  
12      techniques? why should we let them sell 8,000 a  
13      month of our competition? All they do is call  
14      people with a script. I am sure they pick out  
15      cities with cable price increases or DTV launches  
16      local, et cetera.

17          Mr. Ergen said that; right?

18          A. That's his e-mail; right.

19          Q. So he thought it was a great idea what they  
20      were doing; isn't that true?

21          A. He's -- to me, I'm looking at it, he loves  
22      the script and how they pitched the competition. I  
23      don't think he's sitting there telling me go out and  
24      copy and start outbounding customers. I don't think  
25      that's the case. Matter of fact, you know, I think

1 SSN talks about that they're not going to do that,  
2 that's going to be less than 1 percent of their  
3 business.

4 Q. Well, what use is a script if you don't use  
5 it?

6 A. A script is how you sell when the customer  
7 calls in. It's a great script, and how they  
8 qualified a customer, how they're qualifying him for  
9 three TVs, et cetera.

10 Q. Well, the technique that DirectTV used with  
11 Mr. Ergen was to leave him a message on his  
12 answering machine; right? It was an outbound call  
13 to his answering machine; right?

14 A. He left him a voice mail.

15 Q. He didn't call asking for DirectTV, did he?

16 A. No, he did not.

17 Q. Of course not.

18 A. Okay.

19 Q. So he thought it was an excellent idea?

20 A. He loved the script. He can -- I'm not  
21 gonna comment on that.

22 Q. So in response to that, I'm looking at the  
23 timeline again.

24 A. Okay.

25 Q. The green bubble, July 19, 2004, you decide



1 to give Satellite Systems Network access to the  
2 order entry tool, and offer them \$150 to \$175 in  
3 activation payments for selling DISH instead of  
4 DirectTV. And then you tell Mike Oberbillig that you  
5 want at least 25 -- 2,500 activations from SSN in  
6 August. And that's at PX503 in your binder --

7 A. Okay.

8 Q. -- if you want to look at it.

9 A. Sure.

10 Q. Does that sound -- do you remember that?

11 A. What -- which one is it again?

12 Q. 503.

13 A. Okay. There we go.

14 Q. You see your e-mail on page 3? (As read:)  
15 Mike and Jim, please call Alex in the morning and  
16 give them some good news. We are increasing  
17 Satellite Systems Network's OE payment for \$150 to  
18 \$175 effective immediately.

19 And the subject is Satellite Systems Network OE  
20 tool. That was your e-mail; right?

21 A. That's correct.

22 Q. July 19, 2004?

23 A. Yes.

24 Q. And is that -- that sounds like it was your  
25 response to Mr. Ergen's encouragement that you get

1     them to sell DISH?

2           A. No, I think the -- no, not at all. I mean  
3     they're a large DirectTV account. Okay. I know my  
4     guys are telling me that they do good business. We  
5     know that DirectTV is supporting them. I'm not  
6     seeing any issues really out there. I have a  
7     sporadic issue, one complaint I believe. I don't  
8     know exactly what time it comes in. Okay. There's  
9     no red flags on it.

10           And it's not about outbounding. They're --  
11     it's not about outbounding. I mean I don't  
12     understand. They're -- my guys are most likely  
13     telling me, "This is how he's gonna advertise, he's  
14     doing tons of direct mail and all that." And I'm  
15     like, "Okay, you know what, DirectTV is doing  
16     business with him. Obviously they're one of his  
17     largest, if not just one of his largest accounts.  
18     They continue to do business with him. How do I get  
19     some of that business?"

20           This -- you're saying that every single one of  
21     his sales are outbound telemarketing. To me he's --  
22     he's doing telemarketing. And I think he said in  
23     DirectTV one of his sources is to telemarket  
24     customers, and that could be following the laws. I  
25     don't know. Okay.

1 Q. Let's look at the documents again,  
2 Mr. Ahmed.

3 A. Sure.

4 Q. PX190. The e-mail from Charlie that we were  
5 just looking at. PX190, Page 2. An e-mail from you  
6 to Charlie and others; right? June 28, 2004, you  
7 said (as read:) This is Satellite Systems Network  
8 in LA. They have been a DISH Network retailer since  
9 March of 2001.

10 And you describe their subscriber base of  
11 19,834 with a 1.72 percent churn since inception.  
12 Also that they are DirectTV's eighth largest  
13 independent retailer, doing 6,000 to 8,000 per  
14 month.

15 Then you say (as read:) They use message  
16 broadcasting with DirectTV as their primary source to  
17 generate sales.

18 You knew they were using message broadcasting?

19 A. Yes. For DirectTV that's what exactly  
20 what -- it says right there. And I wrote that. And  
21 that's information I probably got from Mike, and  
22 yes, I wrote that.

23 Q. And Mr. Ergen says (as read:) why don't we  
24 just copy their techniques. Right?

25 A. That's what he says.

1 Q. And so despite the stuff that we looked at  
2 on page 1 of your timeline, the complaint that you  
3 got about the prerecorded call, the message  
4 broadcasting, the lawsuit that was filed against  
5 Satellite Systems Network by the State the North  
6 Carolina and the injunction for prerecorded voice  
7 messaging, you bring them on the OE tool, raise  
8 their activation, and set them loose on the public;  
9 right. That's what happened; right?

10 A. I did not know about the lawsuit. Referring  
11 to the guys that are managing them, I'm trusting  
12 that they're doing the right thing. I'm not getting  
13 issues on my desk at all about Satellite Systems  
14 Network. And the biggest competitor, the competitor  
15 out there, is doing business with them. And there's  
16 no one coming to me that this is a major problem  
17 account at all. And that is a normal economics for  
18 an OE tool retailer that is doing business with  
19 DirectTV.

20 Q. So nobody -- nobody that works for you, not  
21 Mike Mills, not Mike Oberbillig, not Steve Keller,  
22 none of them are telling you what is going on?

23 A. They're not -- they're -- to me there's  
24 nothing that is an issue right now. At all.

25 Q. A lawsuit against --

1           A. I don't know about the lawsuit. No one has  
2 come to me about the lawsuit.

3           Q. Right. Nobody told you; right?

4           A. Right.

5           Q. Nobody in Retail Services told you?

6           A. I do not know about the lawsuit; correct.

7           Q. Well, but the letter, nobody told you about  
8 the letter?

9           A. Which letter?

10          Q. The one on June 12, 2002? That's in  
11 response to the complaint that was received on  
12 March 11, 2002? It's on the first page of the  
13 timeline?

14          A. Is that the one with Mary Davidson? The one  
15 complaint?

16          Q. Yeah. The first complaint?

17          A. And complaint happens, I immediately -- I  
18 think she tries to handle it, or we try to look into  
19 what is the situation. And then nothing else  
20 happens. And they're not even on my radar at all,  
21 because they're being managed by the west coast. I  
22 think at that time -- I believe at that time --  
23 well, I obviously didn't meet him. But there was no  
24 other issues that came about. And then there was  
25 another issue that came in 2004. I mean there's

1 nothing out there that's causing concern for me at  
2 all.

3 Q. Well, your executive team went to visit him  
4 on November 6, 2002, and noted he was doing voice  
5 broadcasting. And that they were watching him.  
6 Remember that?

7 A. I just read that. I don't know who the  
8 executive team -- what does -- I don't know who it  
9 is. I can't answer that. Because I don't know who  
10 went there. Who went there? That's what I need to  
11 know. First time I met him was in 2004, for about  
12 30 minutes. They introduced me to him. That's the  
13 only time I met Alex Tehranchi.

14 Q. I'm not saying you knew. This lawsuit is  
15 not specifically about you. This is about the  
16 company. So I don't know who the executive team  
17 is --

18 A. Right. From 2002 to 2004 I don't know if I  
19 communicated with anyone really. We launched a  
20 retailer, the regional guys are handling it.

21 Q. Okay. Safe to say --

22 A. I'm sorry, just --

23 Q. Go ahead.

24 A. I'm just saying, look, overseeing thousands  
25 of retailers, okay, national accounts. That's what

1 it was at that time. And the distributors. And  
2 spending a tremendous amount of time with those  
3 independent satellite dealers. Someone is on a  
4 certificate program that they just launched. The  
5 team is handling it. That's all I can tell you  
6 right now on them.

7 And then in 2004, they're proposed to go on the  
8 OE tool. And I approved them for the OE tool.  
9 There's no concerns right now for me. There's no  
10 issues coming about.

11 Q. That's clear. Let's look at the next  
12 document, which is PX656. And on page 2 of the  
13 timeline, the middle green box, September 14th to --  
14 September 14, 2004, to September 15, 2004, you're  
15 disappointed that Satellite systems Network is  
16 averaging only 350 activations a month on the OE  
17 tool. And they're doing 9,000 a month for DirectTV.  
18 So you increased their activation payments from 175  
19 to 200, and you're hoping to get between 2500 and  
20 3500 activations by October 2004. Does that sound  
21 right?

22 A. The field -- the field is coming to me and  
23 saying we are not competitive with DirectTV. There's  
24 no complaints coming on Satellite Systems Network.  
25 We're never gonna get their business. Okay. And

1     DirectTV is doing business with them. A very large,  
2     legitimate company at that time for me. Okay.

3             And so basically, we knew DirectTV was paying  
4     more. And the guys are saying, he's going to invest  
5     in DISH Network. And that's exactly what they're  
6     telling me. Because I would not go out there and  
7     just randomly increase anyone's payments if they're  
8     doing illegal stuff. It's not me.

9             The team is telling me he is going to invest in  
10    DISH, he is going to market DISH. And I'm like  
11    okay, if I get him \$25 more, can we get some of that  
12    business. Because you have a certain amount of  
13    advertising dollars, you have a certain amount of  
14    reps. He is going to dedicate more effort and time  
15    in DISH, or is he going to put all his efforts in  
16    DirectTV. That's all it is.

17            Q. And you knew they were voice broadcasting  
18    for DirectTV, right?

19            A. Yes, yes.

20            Q. You said that in the e-mail?

21            A. Yes.

22            Q. So you knew they were going to voice  
23    broadcasting for you; right?

24            A. No, not at all. Because to me, voice  
25    broadcasting doesn't make sense. It never made



1 sense. That's why I'm responding. It never made  
2 sense. It is ludicrous to get the customers, the  
3 right type of customers that even make sense.

4 That's -- you have to explain the product and  
5 that's why -- I grew up with the independent  
6 satellite dealers. Okay. which is explaining the  
7 product to the customer and the customer responding  
8 saying, "Yes, this is what I want." I don't believe  
9 that you can go out there, even at that time, and  
10 just blast anyone and expect to get a great  
11 customer. It doesn't make sense. It's evident in  
12 my conversation, the few I had with these guys when  
13 it came to me, "hey, I want good customers."

14 So there's-- I don't -- I'm not thinking that  
15 he's going to go out there and just voice broadcast  
16 DISH. He's out there saying that "I'm going to  
17 market DISH." And -- and my guys I know are telling  
18 me this probably, that "Hey, by the way, if you  
19 increase it, he's going to market, he's going to  
20 advertise, he's going to do TV commercials, he's  
21 going do direct mail."

22 Q. And they were going to generate for you ten  
23 times the number of activations that they were  
24 before September 2004; right? Using the same  
25 methods?

1           A. If you advertise on a national level, yes,  
2           that -- that could happen. Absolutely. Absolutely  
3           can.

4           Q. Okay. So you trusted that's how they were  
5           going to do it? That you remember that?

6           A. I'm just saying -- I will --

7           Q. I'm asking --

8           (Parties speaking simultaneously, court  
9           reporter requested clarification.)

10          A. I'm sorry. I will tell you, that I'm,  
11          today, or at that time, or if my guys are saying  
12          "He's going to voice broadcast DISH Network," not in  
13          my vocabulary. I don't understand the methodology,  
14          don't understand the laws, not interested in that  
15          business. Okay. Not interested in that business to  
16          get activations.

17          What he's doing, he is doing direct mail. He's  
18          doing print advertising. He is going to focus on  
19          that. Okay. And that's great for us.

20          Q. Okay. Well, so that's your testimony about  
21          what you believe was going on at that time; right?

22          A. Yes. For us, yes.

23          Q. So let's look back at the timeline. The red  
24          box, the next red flag, November 4, 2004, the State  
25          of Florida obtains a \$25,000 penalty and injunction

1 against SSN for prerecorded telemarketing calls and  
2 calls to the Registry. That's at PX191 of your  
3 binder. Did you know about that?

4 A. No, I did not.

5 Q. Nobody told you about that either?

6 A. No, ma'am.

7 Q. And I take it nobody else anybody else in  
8 the sales department?

9 A. That I don't know, but nobody told me.

10 Q. So they stayed on as a retailer?

11 A. Yes.

12 Q. And if you look at the top box, December 31,  
13 2004, SSN in 2004 activated 3,518 subscribers, and  
14 DISH paid them \$838,000 and -- \$838,803. Is that  
15 right?

16 A. Okay. I'm sorry, yes. Okay.

17 Q. So let's turn to the next page of the  
18 timeline.

19 A. Okay.

20 Q. A couple more red flags here. March 21st,  
21 2005, Satellite Systems Network settles with the  
22 State of North Carolina and pays \$15,000 and is  
23 enjoined from calling North Carolina numbers on the  
24 Do Not Call Registry. You see that?

25 A. Yes.

1 Q. But you didn't know about that either?

2 A. I -- no, I didn't know he settled or that  
3 there was anything with Indiana, that -- no.

4 Q. And then -- no, the Indiana one is the next  
5 one. That's September.

6 A. Okay.

7 Q. That's six months later. So this is the  
8 exchange of e-mails that you were talking about with  
9 Mr. Ewald, where the Indiana AG's Office contacted  
10 Scott Novak and said, "We're getting illegal  
11 autodialing calls," right? And those calls,  
12 everybody thought it was satellite systems  
13 Network's. Mike Mills said that. It turned out it  
14 was another robo dialing retailer, United Satellite.  
15 You remember that; right?

16 A. Yes.

17 Q. You say, in the blue box at the top on  
18 September 6, 2005, at ten in the morning (as read:)  
19 Apparently, we could not convince Alex. I'm so  
20 tired of this bull blank. I will deal with Novak  
21 and let legal handle it.

22 A. Okay.

23 Q. So clearly you were very frustrated with  
24 SSN; isn't that right?

25 A. That's a great e-mail. I'm glad I wrote

1 that. That's my language there, okay. No  
2 tolerance. A couple of complaints again coming to  
3 my desk. Immediately going to Scott Novak, what's  
4 going on. Calling the -- calling the region saying,  
5 "WHY am I getting a complaint? You guys are telling  
6 me he's doing great business. There should be no  
7 issue. Fix the problem. Okay. And if you're  
8 telling me that everything is set, Alex is doing  
9 everything correctly by the book, which he's telling  
10 us over and over everything is perfect. You guys  
11 are telling me that. Then why am I getting a  
12 complaint? And I'm not interested in any  
13 complaints, fix the problem."

14 That's exactly what I'm saying, I'm tired of  
15 this bull. And even two complaints, to me, even two  
16 complaints comes to my desk, I'm upset about. Okay.  
17 No retailer should be lying to me. If you're  
18 telling me you're doing everything by the book,  
19 that's great, you told me the truth, and I'm  
20 believing you and I helped you out here; okay.  
21 Because you're supposed to be doing it correctly,  
22 and that's what my field is probably telling me.

23 Q. In fact, your field told you that we -- they  
24 had addressed these problems with Alex many times,  
25 as recently as last week in person in Los Angeles.

1 And they stressed that he must follow the line if he  
2 wants continued support.

3 So this obviously had come up before and you  
4 said, "We couldn't convince him. I'm tired of  
5 this," right? You were very frustrated?

6 A. If they -- if they went out and he said,  
7 "I'm doing everything by the book. Okay.  
8 Absolutely following the laws perfect." Okay, then  
9 that's what you're telling me, everything is fine,  
10 then why am I getting a complaint? Why am I getting  
11 an e-mail from Novak? Not happy about it, not  
12 interested. Okay. Fix the problem. So I'm asking  
13 legal, what do I do here? Do I terminate him, do I  
14 put him on probation, what's the situation.

15 I -- to me, I'm absolutely on top of it.  
16 Meaning I'm not sitting around, I'm not looking --  
17 I'm immediately contacting legal saying, what is  
18 going on here. And I'm upset with the field. Why  
19 am I dealing with this issue? There's a couple of  
20 them that have come up and you're telling me he is  
21 okay. He's saying he is okay. That's -- that's  
22 what I'm talking about.

23 Q. And in fact, you said, I believe, that you  
24 were just going to leave it to legal to deal with  
25 him?

1           A. I mean I did -- I did that. I mean I  
2 referred to them at that time a lot, because I  
3 wanted their guidance. To me it was just not about  
4 my decision, I wanted feedback from legal. I  
5 thought that was very important. If there was  
6 feedback from Retail Services, I thought that would  
7 be important. And I would go to legal. Actually I  
8 went to legal most of the time.

9           Q. That's when Mr. Novak told you that in  
10 addition to everybody else telling SSN to clean up  
11 his act, that Charter Communications had actually  
12 gotten an injunction against SSN for illegal  
13 activity; they were calling people --

14          A. I read that in the e-mail.

15          Q. So that was another strike against them;  
16 right?

17          A. I don't know exactly what the Charter issue  
18 was, but yes, I did read that in the e-mail.

19          Q. So what did you do? Did you put them on  
20 probation?

21          A. I went to legal, I asked them for their  
22 advice. There's no doubt, this is over ten years  
23 ago, I'm probably very upset. I'm asking for their  
24 advice. They recommend probation. If there's one  
25 other situation it could lead to termination. I

1 agree with them. Okay. Absolutely agree with them.

2 And then I believe there was -- I can't  
3 remember, but I think Dana Steele came back and she  
4 said, no -- I recommended 30 to 60 days, she said a  
5 year. So I don't know exactly what happened as it  
6 relates to did we put them on 30 to 60 days or a  
7 year, because I left shortly afterwards. But I  
8 believe they fixed the issues, and it was not a  
9 major issue by the time I was gone, but I don't have  
10 the exact answer on that. But I did recommend 30 to  
11 60 day probation; yes.

12 Q. Okay. So that means you put them on hold?

13 A. I don't -- that I -- I don't believe they  
14 were put on hold.

15 Q. Do you hold their payments back?

16 A. You can hold their payments.

17 Q. But did you?

18 A. I don't remember if that happened. I'm  
19 sorry.

20 Q. You didn't terminate them?

21 A. I did not terminate them; no.

22 Q. You didn't cut them off the OE tool?

23 A. No, I don't believe I cut them off the OE  
24 tool.

25 Q. Or suspend some of their OE log-ins?



1           A. That I cannot -- no. I went to legal, asked  
2 their recommendation. It was very clear from Scott,  
3 I recommend probation, I totally agreed. I probably  
4 informed the field. They might have been copied.  
5 Great, probation. One issue, let him know he's  
6 telling me he's doing everything correctly, okay,  
7 he's following the laws. You guys are telling me  
8 he's doing that. That's fine, he can say that, but  
9 I'm not gonna tolerate it. One other issue, done,  
10 okay. And it's 30 to 60 days. Dana Steele is  
11 coming back saying 30 to 60 days is not enough. A  
12 year. If he has one issue in nine months we're  
13 gonna terminate him. And I believe that's what  
14 happened.

15           Q. Well, let see. So let's look at the  
16 timeline again. I can tell you that's not what  
17 happened. Because on October 27, 2005, there was  
18 another complaint that Eric Carlson received about a  
19 prerecorded message to a number on the Do Not Call  
20 Registry, and it was confirmed as being Satellite  
21 Systems Network.

22           And this time you said (as read:) This is  
23 Alex's last chance. Fix it or he gets a letter and  
24 will lead to termination. It's that simple.

25           Then you threatened to terminate both SSN and

1 United Satellite. You remember that; right?

2 A. Yes, I put that in the e-mail. Or something  
3 like that. I would love to pull that e-mail up.  
4 Because -- for this trial I did read those e-mails.

5 Q. It's at PX504 in your little binder.

6 A. Okay.

7 Q. The little one, not that one. It's tab 10  
8 in the little black one. Or we can blow it up on  
9 the screen.

10 A. No, I can read this.

11 Okay. I see in the middle what I say to them,  
12 it's an example of -- example of a complaint coming  
13 to me. You guys are responsible for it. Okay. Fix  
14 the problem. He's -- the retailer is saying they're  
15 doing nothing illegal. Fix the problem or I'm going  
16 terminate them. That's exactly what I'm saying.

17 Q. But that's what you said last time, isn't  
18 it?

19 A. Okay. You know what --

20 Q. It was before; right?

21 A. Yes, I could have. And we also found out  
22 that it wasn't SSN. So Oberbillig and Spitzer might  
23 be saying, "Listen, we had an issue. It's very  
24 confusing right now, but I'm telling you they're not  
25 doing anything wrong." And I'm giving them benefit

1 of the doubt saying, "All right. You have proved my  
2 wrong on the last one maybe, so here it is, one last  
3 shot. Okay. Because I'm not interested in this  
4 business."

5 Thank God I'm involved in this, because it is  
6 end of 2005. So what ended up happening?

7 Q. In fact, at the end of 2005 -- let's go to  
8 the next slide of the timeline, Andrea. I'm on page  
9 5 now of the timeline. We will put it up on the  
10 screen.

11 A. That would be great. Thank you. Okay.

12 Q. So Mike Oberbillig, this -- he verified the  
13 call was made by SSN. And that they were outbound  
14 calling all of their DirectTV sales. And says that  
15 he told Alex that he must stop -- I'm sorry. He  
16 must stop using message broadcasting and leaving  
17 messages even if he has following do not call lists  
18 and even if he has a prior relationship with that  
19 customer.

20 So Oberbillig sent that e-mail to you; right?

21 A. Okay.

22 Q. And that's it. You didn't put him on  
23 probation; right?

24 A. I don't know if they went on probation. I  
25 think they actually -- hopefully they fixed their

1 issues. Because I left right after that. I don't  
2 know how engaged I was, to be very honest. Okay. I  
3 know my direction was very clear to these guys.  
4 Okay. Guys don't want any issues coming on my  
5 desks. I don't need e-mails from Novak about a  
6 complaint. Okay. Manage the retailer, put it to  
7 bed. Make sure he's bringing us good business. And  
8 that was it. Okay. So I don't know if they did go  
9 on probation or not.

10 Q. Well, I'll tell you that they did not put  
11 them on hold, because in December 2005, or whenever  
12 they got paid, they got paid \$5.6 million for the  
13 24,300 activations that they brought in during that  
14 year.

15 A. Okay.

16 Q. Did you know that? You were still there;  
17 right?

18 A. Yeah. Probably not paying attention to it.  
19 There's other people that to transition, to be very  
20 honest. Okay.

21 But if that's 24,000 activations, it probably  
22 would equate to it with the residuals. But again,  
23 it gets down to that's just revenue. I would love  
24 someone to put up what actually the profit was, or  
25 what any retailer's profit was when bringing these

1 things up. I don't know. One document showed they  
2 had 1.72 churn. That means over 20 percent of the  
3 customers are churning out. So they're obviously --  
4 we're charging back a huge amount of that money too.

5 So I just don't know -- you know, yes, 5.68,  
6 but that's not the real number in my opinion. But I  
7 was gone right after that. My understanding was  
8 that they did solve some of their issues. That  
9 there were issues and then, you know, he moved on.  
10 I don't know.

11 Q. Well, you moved on?

12 A. I did move on. I don't know exactly what  
13 happened.

14 Q. And if you look at the timeline, and this  
15 will go a little faster during the time you weren't  
16 there. April 5, 2006, EchoStar is sued in a class  
17 action, and SSN is named as a defendant as well,  
18 because of their autodialing. That's the Spafford v  
19 EchoStar suit filed on April 5, 2006.

20 Then May 2006 through August 2006 DISH actually  
21 initiates a formal audit of SSN because of duplicate  
22 accounts and possible fraud and churn.

23 And if you look at the next page, page 6. On  
24 September 21st, 2006, DISH learns about the  
25 injunction against SSN.

1           Now, you were gone, you hadn't heard about any  
2 of this; right?

3           A. No. I didn't hear about this.

4           Q. So you -- let me ask you. You came back in  
5 2009. Satellite Systems Network was still an OE  
6 retailer?

7           A. Okay. Yes.

8           Q. So when you came back in 2009 from your  
9 hiatus at Marketing Guru, did you know about the  
10 2007 complaints, the stings of Satellite Systems  
11 Network by these consumers on this slide, by Gregory  
12 Fisher and Jeffrey Mitchell, and did you hear about  
13 the lawsuit?

14          A. No. No one brought it up. Satellite --  
15 never discussed Satellite Systems. They weren't  
16 even on my radar, to be honest with you, at all.

17          Q. Did you know that Satellite Systems Network  
18 got to go on DISH's annual retailer incentive trip  
19 in 2007?

20          A. I don't know if they attended that trip. If  
21 you're telling me they did, they did.

22          Q. So let's jump forward to 2009. Okay, this  
23 is page 8 of your timeline. You came back you said  
24 in May?

25          A. That's correct.

1 Q. Next page. I'm sorry, I skipped a page, I  
2 skipped page 7.

3 So page 7, the Spafford case settled. There's  
4 another telemarketing complaint by Angela Schooler  
5 in October. There's another telemarketing -- then  
6 DISH is paid -- Dish pays SSN. And there's another  
7 complaint in the beginning of 2009. But you didn't  
8 know about any of those complaints; right?

9 A. No, ma'am, I did not know.

10 Q. And when you came back, nobody said, "Oh,  
11 there's a whole bunch of stuff that has been going  
12 on with Satellite Systems Network?"

13 A. That is correct.

14 Q. So let's go to page 8 now. Satellite  
15 Systems Network claims they have signed up with  
16 PossibleNow. And that they don't have any of their  
17 calling lists, so they can't respond to DISH's  
18 questions about those complaints. You see that  
19 April 8, 2009?

20 A. Correct. Yes, I do.

21 Q. And then on May 9th, 2009, a consumer from  
22 North Carolina named Thomas Krakauer receives a call  
23 from Satellite Systems Network and complains to DISH  
24 about it.

25 Now, you may have heard -- did you hear that

1 Dr. Krakauer testified in this case?

2 A. I believe so; yes.

3 Q. He came here and he told his story. And it  
4 was established that not only did he get this call,  
5 but he received about ten other calls from Satellite  
6 systems Network that were actually calls to the Do  
7 Not Call Registry. His number was on the Registry  
8 and they called him anyway during 2010-2011. Did  
9 you know about that?

10 A. No, I did not.

11 Q. Nobody from Retail Services told you about  
12 the complaints?

13 A. I -- no one told me about SSN. I don't even  
14 know if I even thought about SSN. We had a team in  
15 OE channel, we had the field, we had Brian -- not  
16 even engaged with most of these guys.

17 Q. Okay. So, I mean, flipping through the  
18 timeline of page 8 and 9 are about the calls to  
19 Dr. Krakauer. And SSN continues to bring in  
20 subscribers through the OE tool and continues to be  
21 paid, you know, hundreds of thousands of dollars in  
22 payments for their activations.

23 Now, let's jump forward to 2011. Now, this  
24 lawsuit was being litigated at that time; right?  
25 And you were deposed I believe in 2012?



1 A. Okay.

2 Q. Did you realize in August 2011 that your  
3 legal department, in response to a telemarketing  
4 complaint, was just going to draft their "standard  
5 go after SSN letter"?

6 A. No.

7 Q. Did you know that they had a standard letter  
8 because there were some complaints for SSN?

9 A. I mean which letter are we talking about?

10 Q. I'm looking at what is PX199 in your binder.  
11 It's on the screen too.

12 A. Okay.

13 Q. (As read:) It's a TCPA frequent flier  
14 wanting money. He got a call from Satellite Systems  
15 Network he alleges is a violation. I will draft our  
16 standard go after SSN letter for you to review.

17 Did you ever see that?

18 A. I don't know which letter we're talking  
19 about.

20 Q. Do you know there's a standard go after SSN  
21 letter that the legal department has?

22 A. No, I do not.

23 Q. Well, it certainly seems like --

24 THE COURT: I'm sorry. He didn't answer  
25 whether he ever saw this e-mail.

1 Q. Did you ever see this e-mail?

2 A. No, I'm just seeing it right now.

3 Q. Do you know who Kimberly Berridge is?

4 A. No, I don't know Kimberly Berridge.

5 Q. Do you know who Brett Kitei is?

6 A. Yes, he's in our Legal Department.

7 Q. Does this look like an interoffice  
8 communication in the Legal Department about a  
9 complaint?

10 A. Well, I only know of dishnetwork.com. I  
11 didn't know people had EchoStar Communications. I  
12 don't know who Kimberly is.

13 Q. You know who Brett is?

14 A. Brett is in our Legal Department.

15 Q. And it says Kimberly is a litigation  
16 paralegal in the department?

17 A. Yes. I just don't know her.

18 Q. Sure. Your Honor, I'd like to offer PX199  
19 into evidence, please.

20 THE COURT: 199. Any objection?

21 MR. EWALD: No objection.

22 MS. HSIAO: While I'm at it I would like to  
23 offer all the other ones I have been using before I  
24 forget. PX154, PX503, PX504, PX657, PX557, PX187,  
25 PX1086, PX191, PX109, and PX622.

1 MR. EWALD: Your Honor, especially since it  
2 is the end of the day and it is a long list, would  
3 it be all right if I got back to you by tomorrow  
4 morning?

5 THE COURT: Yes.

6 BY MS. HSIAO:

7 Q. I'm gonna try to wrap it up, but I may not  
8 be able to.

9 A. I'll try to help you.

10 Q. I know. Right. You will.

11 2009, you came back, you cleaned up the OE  
12 channel; right?

13 A. Well, let's put it this way, I came back.  
14 As it relates to the OE channel, anyone that had  
15 high churn, high churn, probably got together with  
16 the team that was managing them, got together with  
17 Retail Services, and then went through the process  
18 of terminating them if they had high churn; yes.

19 Q. Well, you got rid of -- out of 72 retailers,  
20 you got rid of 36?

21 A. Personally me, no. What -- from what time?  
22 From when to when?

23 Q. January 2009 to the end of 2009. Let's look  
24 at PX730.

25 A. Sure.

1 Q. This is the presentation that Mr. Ewald  
2 promised you that we would present. So I don't want  
3 to disappoint him.

4 A. Okay. Can I spend a quick minute --

5 Q. Sure.

6 THE COURT: Counsel, we're not going late  
7 today.

8 Q. I'm aware. I may not be finish. I don't  
9 have very much more.

10 A. Go ahead.

11 Q. PX730, page 2. This presentation stays that  
12 (as read:) Compliance/legal was unhappy with legal  
13 issues as a result of illegal/shady marketing  
14 practices.

15 Was this presentation made by you or somebody  
16 that worked for you?

17 A. I don't know who -- honestly, I don't know  
18 who made this presentation.

19 Q. You've never seen it before?

20 A. I saw this -- okay, to be very honest, I saw  
21 it the last few days. Very briefly. And very  
22 surprised; yes.

23 Q. Well, would you agree that compliance and  
24 legal was unhappy with legal issues as a result of  
25 illegal/shady marketing practices?

1           A. I don't know who wrote this. I would love  
2 to know who wrote it. Because once, it's OE  
3 channel, that was underneath me, but it was --  
4 obviously, I didn't get this. So someone internal  
5 put this together.

6           But shady. People who have high churn, that's  
7 just a comment someone is making. Shady would be  
8 someone not giving disclosures to customers and  
9 they're eventually churning out. They're just not  
10 out there correctly selling our products. Somebody  
11 could be doing that.

12          Q. There were retailers doing that; right?

13          A. There were retailers that had a lot of high  
14 churn. A lot of them probably were not selling the  
15 product correctly to the customers. They were  
16 probably marketing to the wrong customers. Some of  
17 them we found out were selling to MDUs, okay. And  
18 those cause high churn. So that -- you know, just a  
19 comment someone has made here.

20          Q. And some of them were doing voice  
21 broadcasting and shock clock marketing and internet  
22 lead gen; is that correct?

23          A. Internet lead gen?

24          Q. If you look at page 3 of that presentation?

25          A. Yes, I'm looking at it. I don't know what

1 shock lock marketing is, to be honest with you.

2 Q. You know what voice broadcasting is?

3 A. Yes. Leaving a message.

4 Q. Or using a prerecorded message to call  
5 people? Robo calling?

6 A. Okay. Not a good form of marketing as well.

7 Q. (As read:) Fraud and customer satisfaction  
8 was high as partners were cutting corners and  
9 looking for the "cheap" acquisition.

10 That's what this says was happening in your  
11 tool; right?

12 A. Someone wrote this. I don't know what that  
13 means. What are the tactics that is referring to.  
14 I wish they would have been the tactics there. It  
15 says cheap acquisition, I don't know exactly what  
16 that means.

17 Q. Well, the tactics, I believe, are the shock  
18 clock market, internet lead gen, and voice  
19 broadcasting. Is that fair reading?

20 A. It's what's written. I -- I can't -- I  
21 don't know who was using what. All I can tell you  
22 is I came back, okay, and first thing I did was  
23 let's find out, are the retailers that have high  
24 churn, is that interesting to me? No, that's not  
25 interesting, because you know what, they're not

1 bringing us long-term customers. My mentality never  
2 changed. I didn't want any business with them.  
3 They can say we're gonna fix our problems, we're  
4 gonna market to better customer. Not interested.  
5 You had your opportunity. Talk to the group and  
6 terminated retailers. I don't think I terminated  
7 32, but I did terminate a good amount of retailers  
8 that accounted for 25 to 30,000 activations a month,  
9 which actually shows I'm not interested in --  
10 that's over 300,000 customers a year. And I'm not  
11 interested in that business.

12 Q. Right. If you look at page 13 of the  
13 presentation?

14 A. Yes.

15 Q. You actually say in January -- whoever says,  
16 January 2009, 76 partners selling through the tool.  
17 High churn, high fraud rate. 71,000 average channel  
18 activations. Low completion rates, 75 percent.  
19 Zero quality monitoring.

20 And then it says December 2009, 32 retailers.  
21 Lower churn. Fraud non-issue. 100K monthly channel  
22 activations. High complete rates, 85 percent.  
23 Channel QA scores above 90 percent.

24 So is that a fair reading of what you did when  
25 you came back?

1           A. I think the team -- the team did that. It's  
2 not me, it's the team. I think -- you know,  
3 guidance from me, but that's the team. And I'm glad  
4 there's tons of improvements here.

5           Q. So basically you cut it in half; right?

6           A. If those -- if that is accurate. I cannot  
7 tell you if we had 76 in January and if we ended up  
8 with 32. Okay. But I do know that I terminated  
9 retailers that had high churn that were not bringing  
10 us good customers.

11          Q. Okay. If you look at page 5 of the  
12 presentation. Key sales partner terminations. You  
13 see Vision Satellite?

14          A. Yes, ma'am.

15          Q. And that's the one we talked about before  
16 where BC Smith from Star Satellite went and started  
17 Vision Satellite. Do you remember that?

18          A. Yes, you told me that; yes.

19          Q. And he was -- that was a robo calling center  
20 and that was terminated; right?

21          A. That's what you said. I don't know what  
22 they are.

23          Q. What about Power Line. Do you know they  
24 were another voice broadcasting from Southern  
25 California?



1           A. I have no idea who Power Line is.

2           Q. You terminated them as well?

3           A. I don't know if I terminated them. The team  
4 could have terminated them. I didn't terminate 32  
5 retailers. I know I terminated five to six that  
6 were doing significant amount, which is 4 to 5,000  
7 activations. And the group as a whole, they -- the  
8 message was if they have high churn, okay, then  
9 start moving the process, which is terminate. I'm  
10 not interested in that business, doesn't matter who  
11 they are. They could be doing the best direct mail  
12 out there, okay, but they could be selling the  
13 customer totally incorrectly. They could be lying  
14 to the customer, not telling them that there's a DVR  
15 fee. They could be telling them that, you know,  
16 what you're pricing is going to be 49 -- or 29.99 at  
17 that time forever. who knows.

18           Okay. And that is shady. That is shady. And  
19 some of them could have been doing that. Could have  
20 been doing that. You know, and that doesn't help  
21 anyone. So that's -- I don't know what was going  
22 on. I looked at churn. See you later. And I don't  
23 know want the 350,000. And Mr. Ergen, if you're  
24 upset with me for not getting the 350, shame on me.  
25 I didn't want that.

1           Q. Your Honor, what time do you have? I was  
2 going to start another line --

3           THE COURT: It is 4:28, so we will break at  
4 this time. Court is adjourned.

5           (Court was adjourned for the day.)  
6  
7

8 I, KATHY J. SULLIVAN, CSR, RPR, CRR, Official Court  
9 Reporter, certify that the foregoing is a correct  
10 transcript from the record of proceedings in the  
11 above-entitled matter.  
12  
13  
14  
15

16                       This transcripts contains the  
17                       digital signature of:

18  
19                       Kathy J. Sullivan, CSR, RPR, CRR  
20                       License #084-002768  
21  
22  
23  
24  
25

KATHY J. SULLIVAN, CSR, RPR  
OFFICIAL COURT REPORTER

JA015835  
014557

EXHIBIT 774

EXHIBIT 774

JA015836  
014558

TX 102-015098

**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?

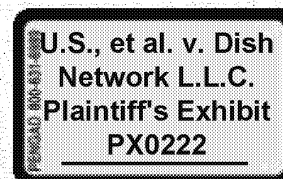
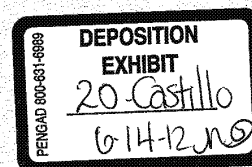
--- On Thu, 1/8/09, Eichhorn, Bert <Bert.Eichhorn@Dishnetwork.com> wrote:  
**From:** Eichhorn, Bert <Bert.Eichhorn@Dishnetwork.com>  
**Subject:** Re: progress  
**To:** man\_in\_castle@yahoo.com  
**Date:** Thursday, January 8, 2009, 12:48 AM

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

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](mailto:Bert.Eichhorn@Dishnetwork.com)> wrote:

From: Eichhorn, Bert <[Bert.Eichhorn@Dishnetwork.com](mailto:Bert.Eichhorn@Dishnetwork.com)>

Subject: Re: progress

To: [man\\_in\\_castle@yahoo.com](mailto: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 the 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](mailto:Bert.Eichhorn@Dishnetwork.com)> wrote:

From: Eichhorn, Bert <[Bert.Eichhorn@Dishnetwork.com](mailto:Bert.Eichhorn@Dishnetwork.com)>

Subject: Re: progress

To: [man\\_in\\_castle@yahoo.com](mailto: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 775

EXHIBIT 775

JA015839  
014561

TX 102-015101

**Musso, Reji**

---

**From:** Dufault, Ron  
**Sent:** Thursday, September 21, 2006 12:41 PM  
**To:** Vallejos, Lisa  
**Cc:** Musso, Reji  
**Subject:** RE: Your Free Dish  
**Attachments:** \$25,500 fine ordered against Vitana in 2004.doc; Consumer complaint with rebuttal by DTV saying they termed the retailer.doc

---

**Yes, I just cracked it.**

It is SATELLITE SYSTEMS NETWORK OE# 821970

Owner is ALEX TEHRANCHI

They were fined \$25,500.00 by North Carolina in 2004 for TCPA violations.

I've attached a couple documents for your reading pleasure.

THANKS

Ron Dufault  
Retail Services  
EchoStar Satellite L.L.C.  
303-723-3244

**Important Notice:** The contents of this electronic message and any attachments are intended only for the addressee and may contain confidential and privileged information. If you are not the addressee, you are notified that any transmission, distribution, downloading, printing or photocopying of the contents is strictly prohibited. If you have received this message in error, please notify the sender by return e-mail immediately and destroy all copies of the message and any attachments.

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

**From:** Vallejos, Lisa  
**Sent:** Thursday, September 21, 2006 11:13 AM  
**To:** Dufault, Ron  
**Subject:** FW: Your Free Dish

Hey Ron,

Did you have any luck finding who the retailer is tied to the website listed below?

Reji asked you about it yesterday.

Thank You,  
Lisa Vallejos  
DISH Network  
Retail Services - Risk Management

U.S., et al. v. Dish  
Network L.L.C.  
Plaintiff's Exhibit  
PX0542

The contents of this electronic message and any attachments are intended only for the addressee

1/21/2007

**PX0542-001**

Confidential-US v. DISH

DISH5-0000031799  
SLC\_ DNC\_Investigation 0010109  
9A015840  
014562

TX 102-015102

and may contain confidential and privileged information. If you are not the addressee, you are notified that any transmission, distribution, downloading, printing or photocopying of the contents is strictly prohibited. If you have received this message in error, please notify the sender by return e-mail immediately and destroy all copies of the message and any attachments.

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

**From:** Musso, Reji  
**Sent:** Thursday, September 21, 2006 11:12 AM  
**To:** Vallejos, Lisa  
**Subject:** RE: Your Free Dish

I saw this yesterday - I think Ron was going to try to find the owner.

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

---

**From:** Vallejos, Lisa  
**Sent:** Thursday, September 21, 2006 10:28 AM  
**To:** Musso, Reji  
**Subject:** Your Free Dish

Here is the website that I think Ron was looking into.  
 It is supposed to have the actual retailer name on it but this one does not.

<http://www.yourfreedish.tv>

Thank You,  
 Lisa Vallejos  
 DISH Network  
 Retail Services - Risk Management

The contents of this electronic message and any attachments are intended only for the addressee and may contain confidential and privileged information. If you are not the addressee, you are notified that any transmission, distribution, downloading, printing or photocopying of the contents is strictly prohibited. If you have received this message in error, please notify the sender by return e-mail immediately and destroy all copies of the message and any attachments.

1/31/2007

**PX0542-002**

Confidential-US v. DISH

DISH5-0000031800  
 SLC\_ DNC\_Investigation 0018110  
 014563

**TX 102-015103**



EXHIBIT 776

EXHIBIT 776

JA015842  
014564

TX 102-015104

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION**

UNITED STATES OF AMERICA and the  
STATES OF CALIFORNIA, ILLINOIS,  
NORTH CAROLINA, and OHIO,

Plaintiffs,

v.

DISH NETWORK L.L.C.,

Defendant.

Case No.:

**COMPLAINT**

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission (“FTC” or “Commission”), pursuant to Section 16(a)(1) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 56(a)(1), and Plaintiffs the States of California, Illinois, North Carolina, and Ohio (collectively the “State Plaintiffs”), pursuant to statutes as set forth below, for their complaint allege:

**JURISDICTION AND VENUE**

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355; 15 U.S.C. §§ 45(m)(1)(A), 53(b), 56(a) and 57b; and 47 U.S.C. § 227(f)(2); and over the state law claims pursuant to 28 U.S.C. § 1367. This action arises under 15 U.S.C. § 45(a) and 47 U.S.C. § 227(f)(2).

JA015843  
014565

TX 102-015105

2. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (c), 1395(a), 15 U.S.C.

§§ 53(b) and 6103(e), and 47 U.S.C. § 227(f)(4). A substantial part of the events or omissions giving rise to the claims alleged in this Complaint occurred in this District.

3. The State Plaintiffs notified the Federal Communications Commission of this civil action.

**FEDERAL PLAINTIFF**

4. Plaintiff, the United States of America, brings this action under Sections 5(a), 5(m)(1)(A), 13(b), 16(a) and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), 56(a) and 57b, and Section 6 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (the “Telemarketing Act”), 15 U.S.C. § 6105, to obtain monetary civil penalties, a permanent injunction, and other equitable relief from Defendant for violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC’s Telemarketing Sales Rule (the “TSR” or “Rule”), 16 C.F.R. Part 310, as amended by 68 Fed. Reg. 4580, 4669 (January 29, 2003).

**STATE PLAINTIFFS**

5. Plaintiff, the People of the State of California, by and through its attorney, Edmund G. Brown Jr., Attorney General of the State of California, is authorized by 47 U.S.C. § 227(f)(1) to file actions in federal district court to enjoin violations and enforce compliance with the Telephone Consumer Protection Act (“TCPA”) on behalf of residents of the State of California and to obtain actual damages or damages of \$500 for each violation and up to treble that amount for each violation committed willfully or knowingly. Plaintiff, the People of the State of California, by and through Edmund G. Brown Jr., Attorney General of the State of California, is authorized by California

Business & Professions Code Sections 17204 and 17593, and Sections 17206 and 17536, respectively, to obtain injunctive relief to halt acts of unfair competition and enforce compliance with California Business & Professions Code Sections 17200 and 17592 and for civil penalties of up to \$2,500.00 for each violation of Sections 17200 and 17592.

6. Plaintiff, The People of the State of Illinois, as *parens patriae*, by and through its Attorney General Lisa Madigan is authorized by 47 U.S.C. § 227(f)(1) to file actions in federal district court to enjoin violations of and enforce compliance with the TCPA on behalf of residents of the State of Illinois, and to obtain actual damages or damages of \$500 for each violation, and up to treble that amount for each violation committed willfully or knowingly. Plaintiff, The People of the State of Illinois, as *parens patriae*, by and through its Attorney General Lisa Madigan also is authorized by 815 ILCS 505/7 and 815 ILCS 305/30(d) to obtain injunctive and other relief to halt violations of and enforce compliance with 815 ILCS 505/1, *et seq.* and with 815 ILCS 305/1, *et seq.*
7. Plaintiff State of North Carolina, by and through its Attorney General Roy Cooper, is authorized by 47 U.S.C. § 227(f)(1) to file actions in federal district court to enjoin violations, obtain injunctive relief, civil penalties, attorneys fees and other equitable relief, and to enforce compliance with the TCPA on behalf of residents of the State of North Carolina, and to obtain actual damages or damages of \$500 for each violation, and up to treble that amount for each violation committed willfully or knowingly. Plaintiff State of North Carolina, by and through its Attorney General, is also authorized by N.C. Gen. Stat. § 75-105 to bring enforcement actions to enjoin violations of and enforce compliance with the North Carolina Telephone Solicitations Act, N.C. Gen. Stat. §§ 75-

100 *et seq.* and to obtain civil penalties of up to \$500 for the first violation of that Act, \$1,000 for the second violation, \$5,000 for the third and any other violations of the Act, and reasonable attorneys fees for willful violations.

8. Plaintiff, State of Ohio, by and through its Attorney General Richard Cordray, is authorized by 47 U.S.C. § 227(f)(1) to file actions in federal district court to enjoin violations of and enforce compliance with the TCPA on behalf of residents of the State of Ohio, and to obtain actual damages or damages of \$500 for each violation, and up to treble that amount for each violation committed willfully and knowingly. Plaintiff State of Ohio, by and through its Attorney General Richard Cordray, is also authorized to obtain declaratory judgments, enjoin violations, and seek orders for consumer damages, civil penalties and other relief for violations of the Ohio Consumer Sales Practice Act, Ohio Revised Code 1345.01 *et seq.* and the Ohio Telephone Solicitation Sales Act, Ohio Revised Code Section 4719.01 *et seq.*

**DEFENDANT**

9. DISH Network L.L.C. (“DISH Network”) is a Colorado company with its principal place of business at 9601 S. Meridian Blvd., Englewood, Colorado 80112. DISH Network transacts business in the Central District of Illinois.

**THE TELEMARKETING SALES RULE  
AND THE NATIONAL DO NOT CALL REGISTRY**

10. Congress directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15 U.S.C. §§ 6101-6108, in 1994. On August 16, 1995, the FTC adopted the Telemarketing Sales Rule (the

“Original TSR”), 16 C.F.R. Part 310, which became effective on December 31, 1995. On January 29, 2003, the FTC amended the TSR by issuing a Statement of Basis and Purpose (“SBP”) and the final amended TSR (the “Amended TSR”). 68 Fed. Reg. 4580, 4669.

11. Among other things, the Amended TSR established a “do not call” registry, maintained by the Commission (the “National Do Not Call Registry” or “Registry”), of consumers who do not wish to receive certain types of telemarketing calls. Consumers can register their telephone numbers on the Registry without charge either through a toll-free telephone call or over the Internet at [www.donotcall.gov](http://www.donotcall.gov).
12. Consumers who receive telemarketing calls to their registered numbers can complain of Registry violations the same way they registered: through a toll-free telephone call or over the Internet, or by otherwise contacting law enforcement authorities.
13. A “seller” is any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration. 16 C.F.R. § 310.2(z).
14. A “telemarketer” is any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor. 16 C.F.R. § 310.2(bb).
15. Since September 2, 2003, sellers, telemarketers, and other permitted organizations have been able to access the Registry over the Internet at [telemarketing.donotcall.gov](http://telemarketing.donotcall.gov) to download the registered numbers.
16. Since October 17, 2003, sellers and telemarketers have been prohibited from calling a number on the Registry, and sellers are prohibited from causing a telemarketer do so in violation of the Amended TSR. 16 C.F.R. § 310.4(b)(1)(iii)(B).

17. Since October 1, 2003, telemarketers have been prohibited from abandoning an outbound telephone call, and sellers are prohibited from causing a telemarketer to do so in violation of the Amended TSR. 16 C.F.R. § 310.4(b)(1)(iv). An outbound telephone call is abandoned if a person answers it and the telemarketer does not connect the call to a sales representative within two (2) seconds of the person's completed greeting. 16 C.F.R. § 310.4(b)(1)(iv).
18. The use of pre-recorded message telemarketing, where a sales pitch to a live consumer begins with or is made entirely by a pre-recorded message, violates the Amended TSR because the telemarketer is not connecting the call to a sales representative within two (2) seconds of the person's completed greeting.
19. It is a violation of the Amended TSR for any person to provide substantial assistance or support to any telemarketer when that person knows or consciously avoids knowing that the telemarketer is engaged in any practice that violates § 310.4 of the Amended TSR. 16 C.F.R. § 310.3(b).
20. Substantial assistance is more than a mere casual or incidental dealing with a seller or telemarketer that is unrelated to a violation of the Rule. TSR SBP, 60 Fed. Reg. 43842 at 43852 (Aug. 23, 1995).
21. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c), and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the Amended TSR constitutes an unfair or deceptive act or practice in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

22. Defendant DISH Network is a “seller” and a “telemarketer” engaged in “telemarketing,” as defined by the Amended TSR, 16 C.F.R. § 310.2. Defendant DISH Network is a seller, for example, since it provides satellite television programming to consumers. Defendant DISH Network is also a telemarketer, for example, since its employees, or call centers initiate or receive telephone calls to or from a consumer.

**THE TELEPHONE CONSUMER PROTECTION ACT**

23. The TCPA, enacted in 1991, amended the Communications Act of 1934 by adding 47 U.S.C. § 227, which requires the Federal Communications Commission (“FCC”) to

... initiate a rulemaking proceeding concerning the need to protect residential telephone subscribers’ privacy rights to avoid receiving telephone solicitations to which they object. ... The regulations required by [the TCPA] may require the establishment and operation of a single national database to compile a list of telephone numbers of residential subscribers who object to receiving telephone solicitations, and to make that compiled list and part thereof available for purchase. If the Commission determines to require such a database, such regulations shall- ... (F) prohibit any person from making or transmitting a telephone solicitation to the telephone number of any subscriber included in such database ... .

47 U.S.C. § 227(c)(1) and (c)(3).

24. In 1992, the FCC promulgated rules pursuant to the TCPA.
25. On June 26, 2003, the FCC revised its rules and promulgated new rules pursuant to the TCPA. These new rules provide for a national Do Not Call Registry.
26. A relevant FCC Do Not Call Rule, 47 C.F.R. § 64.1200(c), provides in part: “(c) No person or entity shall initiate any telephone solicitation, as defined in paragraph (f)(12) of this section, to . . . (2) A residential telephone subscriber who has registered his or her



telephone number on the national do-not-call registry of persons who do not wish to receive telephone solicitations that is maintained by the Federal Government.”

27. The TCPA itself and another relevant FCC Rule, 47 U.S.C. § 227(a)(4) and 47 C.F.R. § 64.1200(f)(12), respectively, provide in part: “The term telephone solicitation means the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person . . . .”
28. The TCPA itself and another relevant FCC Rule, 47 U.S.C. § 227(b)(1)(B) and 47 C.F.R. § 64.1200(a)(2), respectively, provide that it is unlawful for a person to: “Initiate any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party unless the call . . . [is specifically exempted by rule or order].”
29. The TCPA further provides in part:
- Whenever the attorney general of a State, or an official or agency designated by a State, has reason to believe that any person has engaged or is engaging in a pattern or practice of telephone calls or other transmissions to residents of that State in violation of this section or the regulations prescribed under this section, the State may bring a civil action on behalf of its residents to enjoin such calls, an action to recover for actual monetary loss or receive \$500 in damages for each violation, or both such actions. If the court finds the defendant willfully or knowingly violated such regulations, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under the preceding sentence.

47 U.S.C. § 227(f)(1).

30. This Court, in the exercise of its equitable jurisdiction, may award other ancillary relief to remedy injuries caused by DISH Network's violations of the TCPA.

**DEFENDANT'S BUSINESS PRACTICES**

31. Defendant DISH Network sells Dish Network satellite television programming to consumers throughout the United States.
32. Defendant DISH Network markets its programming through a variety of methods, including telemarketing.
33. (a) Defendant DISH Network engages in telemarketing directly to consumers.
- (b) Defendant DISH Network also markets its programming through a network of authorized dealers.
- (c) DISH Network is both a "seller" and a "telemarketer" within the meaning of the TSR.
34. DISH Network grants some authorized dealers the right and ability to conduct business through DISH Network's Order Entry System.
35. DISH Network provides installers or installation services to consumers who were solicited by some authorized dealers.
36. Since on or about October 17, 2003, DISH Network, directly and through one or more authorized dealers acting on its behalf, has initiated outbound telephone calls to numbers on the National Do Not Call Registry.
37. Defendant DISH Network entered into oral or written contracts with, among others, Vision Quest, a Michigan company, New Edge Satellite, also a Michigan company,

Planet Earth Satellite, an Arizona company, Dish TV Now, a North Carolina company, and Star Satellite, a Utah company (the “Marketing Dealers”).

38. The Marketing Dealers are or have been authorized dealers of DISH Network.
39. Through contracts with the Marketing Dealers and/or through other means, Defendant DISH Network authorizes the Marketing Dealers to market, promote and solicit orders for DISH Network or Dish Network programming, and to use the DISH Network or Dish Network trademark or trade name.
40. Marketing Dealers agree to market, promote, and solicit orders on behalf of DISH Network.
41. Defendant DISH Network has, directly or indirectly, offered to provide or provided financial payments to the Marketing Dealers.
42. Through contracts with the Marketing Dealers and/or through other means, Defendant DISH Network maintains sole discretion to set the price for the programming offered to consumers; maintains sole discretion to determine the type of programming offered to consumers; and maintains sole discretion to determine which proposed orders solicited by the Marketing Dealers will be accepted.
43. Through contracts with the Marketing Dealers and/or through other means, Defendant DISH Network pays commissions or other financial incentives to the Marketing Dealers for marketing, promoting or soliciting orders.
44. Through contracts with the Marketing Dealers and/or through other means, Defendant DISH Network has the right to terminate the Marketing Dealers.

45. DISH Network's authorized dealers hold themselves out as marketing DISH Network programming.
46. Since on or about October 1, 2003, the Marketing Dealers have engaged in telemarketing on behalf of Defendant DISH Network.
47. Since on or about October 17, 2003, Vision Quest, New Edge Satellite, and Planet Earth, acting on behalf of Defendant DISH Network, have directly, or through intermediaries, placed outbound calls to telephone numbers on the National Do Not Call Registry.
48. Since on or about October 1, 2003, Defendants Dish TV Now and Star Satellite, acting on behalf of Defendant DISH Network, have directly, or through intermediaries, abandoned outbound telemarketing calls to consumers by failing to connect the call to a representative within two (2) seconds of the consumer's completed greeting.
49. Since on or about October 1, 2003, Defendant DISH Network has received complaints from consumers stating that they received calls from Star Satellite LLC that delivered pre-recorded messages.
50. Since on or about October 1, 2003, Defendant DISH Network has received complaints from consumers stating that they received calls from Dish TV Now that delivered pre-recorded messages.
51. Since on or about October 1, 2003, Defendant DISH Network has provided substantial assistance or support to Star Satellite and/or Dish TV Now even though Defendant DISH Network knew or consciously avoided knowing that Star Satellite and/or Dish TV Now abandoned outbound telephone calls in violation of § 310.4(b)(1)(iv) of the TSR.

52. Defendant DISH Network has provided substantial assistance or support to the Marketing Dealers by, directly or indirectly, including but not limited to, making financial payments to the Marketing Dealers, allowing the Marketing Dealers to market DISH Network goods or services, allowing the Marketing Dealers to use the Dish Network trade name or trademark, entering into contracts with consumers contacted by the Marketing Dealers, collecting money from consumers contacted by the Marketing Dealers, providing services to consumers contacted by the Marketing Dealers, in some cases, granting some authorized dealers the right and ability to conduct business through DISH Network's Order/Entry System, and in some cases, providing installers so that consumers can receive Dish Network programming.
53. Defendant DISH Network has been the subject of law enforcement actions by the states of Missouri and Indiana alleging violations of state do not call laws.
54. Defendant DISH Network has received consumer complaints alleging that although the complaining consumer was on a do not call list or registry, the consumer still received a telemarketing call regarding Dish Network programming.
55. Defendant DISH Network has received consumer complaints alleging that the complaining consumers received telemarketing calls that delivered a pre-recorded message.
56. DISH Network failed to monitor and enforce Star Satellite's and/or Dish TV Now's compliance with the Amended TSR even though DISH Network was on notice of possible violations of the law.

57. DISH Network failed to implement an effective compliance program to monitor and enforce its authorized dealers' compliance with the Amended TSR, including that of the Marketing Dealers, even after it had received consumer complaints and had been the subject of two state law enforcement actions related to do not call violations.
58. Since on or about October 1, 2003, Defendant DISH Network caused the Marketing Dealers to engage in violations of the Amended TSR through a variety of acts or practices, including, but not limited to: (1) directly or indirectly offering to provide or providing financial payments for sales of Dish Network programming; (2) entering into relationships whereby the Marketing Dealers marketed on behalf of DISH Network; or (3) by directly or indirectly offering to provide or providing financial payments for sales of Dish Network programming, or by entering into relationships whereby the Marketing Dealers marketed on behalf of DISH Network, and failing to monitor and enforce compliance with the Amended TSR.
59. In order to attempt to sell its products and services, DISH Network directs telemarketing solicitations to, or causes them to be directed to, consumers in numerous states, including, but not limited to, California, Illinois, North Carolina, and Ohio.
60. Numerous California, Illinois, North Carolina, and Ohio consumers, as well as consumers in other states, have filed complaints with either the FTC or the offices of their respective Attorney General complaining that they have received telemarketing solicitations at their residential telephone numbers which had been previously registered with the National Do Not Call Registry and that such solicitations were made by or on behalf of DISH Network.

61. At all times relevant to this complaint, Defendant has maintained a substantial course of trade or business in the offering for sale and sale of goods or services via the telephone in or affecting commerce as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
62. Defendant has engaged in telemarketing by a plan, program or campaign conducted to induce the purchase of goods or services by use of one or more telephones and which involves more than one interstate call.

**VIOLATIONS OF THE TELEMARKETING SALES RULE**

**Count I**

**(By the United States – Violating the National Do Not Call Registry)**

63. In numerous instances, in connection with telemarketing, Defendant DISH Network engaged in or caused a telemarketer to engage in initiating an outbound telephone call to a person’s telephone number on the National Do Not Call Registry in violation of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B).

**Count II**

**(By the United States – Abandoning Calls)**

64. In numerous instances, in connection with telemarketing, Defendant DISH Network has abandoned or caused telemarketers to abandon an outbound telephone call by failing to connect the call to a sales representative within two (2) seconds of the completed greeting of the person answering the call, in violation of the TSR, 16 C.F.R. § 310.4(b)(1)(iv).

**Count III**  
**(By the United States – Assisting and Facilitating)**

65. Defendant DISH Network has provided substantial assistance or support to Star Satellite and/or Dish TV Now even though Defendant DISH Network knew or consciously avoided knowing Defendant Star Satellite and/or Dish TV Now abandoned outbound telephone calls in violation of § 310.4(b)(1)(iv) of the TSR. Defendant DISH Network, therefore, has violated 16 C.F.R. § 310.3(b).

**VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**

**COUNT IV**  
**(By the State Plaintiffs – Violating the National Do Not Call Registry)**

66. The People of the State of California, by Edmund G. Brown Jr., Attorney General of the State of California, the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, the People of the State of North Carolina by and through Roy Cooper, the Attorney General of North Carolina, and the People of the State of Ohio by Richard Cordray, Attorney General of the State of Ohio bring this count pursuant to the TCPA, complaining of Defendant DISH Network.
67. State Plaintiffs seek a permanent injunction and other equitable relief, based upon DISH Network's violations of the TCPA in connection with the placing of telemarketing solicitations to consumers whose telephone numbers have been registered with the National Do Not Call Registry.
68. DISH Network, either directly or indirectly as a result of a third party acting on its behalf, has violated 47 C.F.R. § 64.1200(c)(2) and 47 U.S.C. § 227(c), by engaging in a pattern or practice of initiating telephone solicitations to residential telephone subscribers,



including subscribers in California, Illinois, North Carolina, and Ohio whose telephone numbers were listed on the National Do Not Call Registry.

69. DISH Network's violations are willful and knowing.

**COUNT V**

**(By the State Plaintiffs – Violating the Prohibition against the Use of Artificial or Pre-Recorded Voices)**

70. The People of the State of California, by Edmund G. Brown Jr., Attorney General of the State of California, the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, the People of the State of North Carolina by and through Roy Cooper, the Attorney General of North Carolina, and the People of the State of Ohio by Richard Cordray, Attorney General of the State of Ohio, bring this count pursuant to the TCPA, complaining of Defendant DISH Network.
71. State Plaintiffs seek a permanent injunction and other equitable relief, based upon DISH Network's violations of the TCPA in connection with the initiation of telephone calls to residential telephone lines using artificial or prerecorded voices to deliver a message without the prior express consent of the called party and without falling within specific exemptions delineated within the TCPA.
72. DISH Network, either directly or indirectly as a result of a third party acting on its behalf, has violated 47 C.F.R. § 64.1200(a)(2) and 47 U.S.C. § 227(b)(1)(B), by engaging in a pattern or practice of initiating telephone solicitations to residential telephone lines, including lines in California, Illinois, North Carolina, and Ohio, using artificial or prerecorded voices to deliver a message without the prior express consent of the called

party and where the call was not initiated for emergency purposes or exempted by rule or order of the Federal Communications Commission under 47 U.S.C. § 227(b)(2)(B).

73. DISH Network's violations are willful and knowing.

**COUNT VI**

**(By State of California for Violations of California Business and Professions  
Code Section 17592 (California Do Not Call Law))**

74. California Business & Professions Code section 17592(a)(1) defines as a "telephone solicitor" any person or entity who, on his or her own behalf or through salespersons or agents, announcing devices, or otherwise, makes or causes a telephone call to be made to a California telephone number and seeks to rent, sell, promote, or lease goods or services during those calls.
75. California Business & Professions Code section 17592(c) prohibits telephone solicitors from making or causing to be made telephone calls to California telephone numbers listed on the National Do Not Call Registry and seeking to rent, sell, promote, or lease goods or services during those calls.
76. DISH Network, either directly or indirectly as a result of a third party acting on its behalf, is a telephone solicitor pursuant to California Business & Professions Code section 17592(a)(1), and has violated Section 17592(c)(1) by making or causing to be made telephone calls to California telephone numbers listed on the National Do Not Call Registry and seeking to rent, sell, promote, or lease goods or services during those calls.
77. Unless enjoined and restrained by order of the Court, Defendant will continue to engage in such violations.

**COUNT VII**  
**(By State of California for Violations of California Business and Professions**  
**Code Section 17200 (Unfair Competition))**

78. Beginning at an exact date unknown to plaintiff and continuing to the present, Defendant DISH Network has engaged in and continues to engage in unfair competition as defined in California Business & Professions Code section 17200. Defendant's acts of unfair competition include, but are not limited to, the following:
- (a) DISH Network, either directly or indirectly as a result of a third party acting on its behalf, has violated the TCPA at 47 U.S.C. § 227(c) and its regulations at 47 C.F.R. § 64.1200(c)(2), by engaging in a pattern or practice of initiating telephone solicitations to residential telephone subscribers, including subscribers in California, whose telephone numbers were listed on the National Do Not Call Registry.
  - (b) DISH Network, either directly or indirectly as a result of a third party acting on its behalf, has violated 47 C.F.R. § 64.1200(a)(2) and 47 U.S.C. § 227(b)(1)(B), by engaging in a pattern or practice of initiating telephone solicitations to residential telephone lines, including lines in California, using artificial or prerecorded voices to deliver a message without the prior express consent of the called party and where the call was not initiated for emergency purposes or exempted by rule or order of the Federal Communications Commission under 47 U.S.C. § 227(b)(2)(B).
  - (c) DISH Network, either directly or indirectly as a result of a third party acting on its behalf, has violated California Business & Professions Code section 17592(c)(1) by making or causing to be made telephone calls to California telephone numbers listed on

the National Do Not Call Registry and seeking to rent, sell, promote, or lease goods or services during those calls.

(d) DISH Network, either directly or indirectly as a result of a third party acting on its behalf, has violated California Civil Code section 1770(a)(22)(A), which makes it an unfair method of competition and unfair or deceptive act or practice to disseminate an unsolicited prerecorded message by telephone without an unrecorded, natural voice first informing the person answering the telephone of the name of the caller or the organization being represented, and either the address or telephone number of the caller, and without obtaining the consent of that person to listen to the prerecorded message.

79. Unless enjoined and restrained by order of the Court, Defendant will continue to engage in such violations.

**COUNT VIII**  
**(By State of North Carolina for**  
**Violations of General Statutes § 75-102)**

80. North Carolina General Statutes § 75-102(a) provides that no telephone solicitor shall make a telephone solicitation to a North Carolina telephone subscriber's telephone number if the subscriber's telephone number appears in the latest edition of the National Do Not Call Registry. N.C. Gen. Stat. § 75-102(d) also requires telephone solicitors to implement systems and procedures to prevent telephone solicitations to telephone subscribers whose numbers appear in the National Do Not Call Registry and to monitor and enforce compliance by its employees and independent contractors in those systems and procedures.

81. DISH Network, and/or third parties acting on DISH Network's behalf, has violated N.C. Gen. Stat. § 75-102(a) by making telephone solicitations to the telephone numbers of North Carolina telephone subscribers when those numbers were in the pertinent edition of the National Do Not Call Registry.
82. DISH Network also violated N.C. Gen. Stat. § 75-102(d) by failing to monitor and enforce compliance by its employees, agents, and independent contractors in that, as set forth above, those persons made numerous telephone solicitations to the telephone numbers of North Carolina telephone subscribers when those numbers were in the pertinent edition of the National Do Not Call Registry.
83. DISH Network willfully engaged in the actions and practices described above.

**COUNT IX**  
**(By State of North Carolina for**  
**Violations of General Statutes § 75-104)**

84. North Carolina General Statutes § 75-104 provides that, subject to some exceptions, no person may use an automatic dialing and recorded message player to make an unsolicited telephone call. One of those exceptions allows a person to make such calls if prior to the playing of the recorded message a live operator, among other things, states the nature and length in minutes of the recorded message, and asks for and receives prior approval to play the recorded message from the person receiving the call.
85. DISH Network, and/or third parties acting on DISH Network's behalf, has violated N.C. Gen. Stat. § 75-104 by using automatic dialing and recorded message players to make unsolicited telephone calls to North Carolina telephone subscribers without first having live operators inform the telephone subscribers of the nature and length of the recorded

message and asking for and obtaining permission to play the message from the person receiving the call, and otherwise not complying with any of the exceptions set forth in N.C. Gen. Stat. § 75-104.

86. DISH Network willfully engaged in the practices described above.

**COUNT X**  
**(By State of Illinois for Violations of 815 ILCS 305/30(b)**  
**and 815 ILCS 505/2Z)**

87. Illinois law, 815 ILCS 305/30(b), provides that no person shall play a prerecorded message placed by an autodialer without the consent of the called party.
88. A knowing violation of 815 ILCS 305/30(b) also is a violation of 815 ILCS 505/2Z, which violation, pursuant to 815 ILCS 505/7, empowers the Court to award, among other things, civil penalties, costs of suit, restitution, and a temporary, preliminary, or permanent injunction.
89. The Defendant, and/or third parties acting on its behalf, has violated 815 ILCS 305/30(b) and 815 ILCS 505/2Z by knowingly playing or causing to be played prerecorded messages placed by an autodialer without the consent of the called party.

**COUNT XI**  
**(By State of Ohio for Violations**  
**of the Ohio Consumer Sales Practices Act)**

90. The Ohio Consumer Sales Practices Act, Ohio Revised Code 1345.02 and 1345.03 prohibits “suppliers” from engaging in unfair, deceptive and unconscionable consumer sales practices. The Defendant is a “supplier” as that term is defined in Ohio Revised Code 1345.01(C), since Defendant engages in the business of effecting consumer transactions, either directly or indirectly, for purposes that are primarily personal, family

or household within the meaning as specified in Revised Code 1345.01(A) of the Consumer Sales Practices Act.

91. Defendant, either directly or as a result of a third party acting on its behalf, violated Ohio Revised Code Sections 1345.02(A) and 1345.03(A) by engaging in a pattern or practice of initiating telephone solicitations to residential telephone subscribers in the State of Ohio, whose telephone numbers were listed on the National Do Not Call Registry in violation of the TCPA, 47 U.S.C. § 227(c), and 47 C.F.R. 64.1200(c)(2) and/or in violation of the Telemarketing Sales Rule, 16 C.F.R. § 310.4(b)(1)(iii)(B).
92. Defendant, either directly or indirectly as a result of a third party acting on its behalf, violated Ohio Revised Code Sections 1345.02(A) and 1345.03(A) by engaging in a pattern or practice of initiating telephone calls to residential telephone lines using artificial or prerecorded voices to deliver a message without the prior express consent of the called party and without falling within specified exemptions delineated within the TCPA in violation of the TCPA, 47 U.S.C. 227(B)(1)(b) and 47 C.F.R. 64.1200(a)(2).

## **COUNT XII**

### **(By the State of Ohio for Violations of the Ohio Consumer Sales Practices Act and the Ohio Telephone Solicitation Sales Act)**

93. Ohio Revised Code Section 4719.02 prohibits a person from acting as a “telephone solicitor” without first having obtained a certificate of registration or a registration renewal from the Ohio Attorney General pursuant to section 4719.03 of the Revised Code. The Defendant is a “telephone solicitor” as that term is defined by Ohio Revised Code Section 4719.01(A)(8), in that the Defendant is a person that engages in telephone solicitations directly or through one or more salespersons either from a location in the

State of Ohio, or from a location outside the State of Ohio to persons in the State of Ohio, including, but not limited to, any such person that is an owner, operator, officer, or director of, partner in, or other individual engaged in the management activities of a business.

94. Pursuant to Ohio Revised Code Section 4719.14, a violation of section 4719.02 is an unfair or deceptive practice in violation of section 1345.02.
95. Defendant committed unfair and deceptive acts or practices in violation of Ohio Revised Code Sections 1345.02 and 4719.02 by acting as a telephone solicitor without first having obtained a certificate of registration from the Ohio Attorney General.

#### **CONSUMER INJURY**

96. Consumers in the United States have suffered and will suffer injury as a result of Defendant's violations of the TSR, the TCPA, California law, Illinois law, Ohio law, and North Carolina law. Absent injunctive relief by this Court, Defendant is likely to continue to injure consumers and harm the public interest.

#### **THIS COURT'S POWER TO GRANT RELIEF**

97. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other ancillary relief to prevent and remedy any violation of any provision of law enforced by the FTC.
98. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended, and as implemented by 16 C.F.R. § 1.98(d) (2008) and by 74 Fed. Reg. 857 (Jan. 9, 2009) (to be codified at 16 C.F.R. § 1.98(d)), authorizes this Court to award



monetary civil penalties of up to \$11,000 for each violation of the TSR on or before February 9, 2009, and up to \$16,000 for each violation of the TSR after February 9, 2009. Defendant's violations of the TSR were committed with the knowledge required by Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

99. This Court, in the exercise of its equitable jurisdiction, may award ancillary relief to remedy injury caused by Defendant's violations of the Rule and the FTC Act.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs requests that this Court, as authorized by Sections 5(a), 5(m)(1)(A), 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b) and 57b, and pursuant to its own equitable powers:

**Prayer by All Plaintiffs**

1. Enter judgment against Defendant and in favor of Plaintiffs for each violation alleged in this complaint;

**Prayer by Plaintiff United States of America**

2. Award Plaintiff, the United States of America, monetary civil penalties from Defendant for every violation of the TSR;
3. Enter a permanent injunction to prevent future violations of the TSR and the FTC Act by Defendant;

**Prayer by the State Plaintiffs**

4. Assess against Defendant and in favor of the State Plaintiffs damages of \$1,500 for each violation of the TCPA found by the Court to have been committed by Defendant willfully and knowingly; if the Court finds Defendant has engaged in violations of the TCPA

which are not willful and knowing, then assessing against Defendant damages of \$500 for each violation of the TCPA, as provided by 47 U.S.C. § 227;

5. Permanently enjoin Defendant from violating the TCPA, both generally, and specifically, by enumerating the acts in which Defendant is permanently enjoined from engaging;
6. Permanently enjoin Defendant from violating the TSR, the FTC Act, the TCPA, the relevant laws of California, Illinois, Ohio, and North Carolina;

**Prayer by Plaintiff State of California**

7. Permanently enjoin Defendant, its successors, agents, representatives, employees, and all persons who act in concert with Defendant from committing any acts of unfair competition as defined in Section 17200, or violations of the TCPA and California Do Not Call Law at Business & Professions Code Section 17592, including the violations alleged in Counts IV, V, VI, and VII pursuant to Business and Professions Code sections 17203 and 17593;
8. Enter an order pursuant to California Business & Professions Code section 17593 and Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended, and as implemented by 16 C.F.R. § 1.98(d) (2008) and by 74 Fed. Reg. 857 (Jan. 9, 2009) (to be codified at 16 C.F.R. § 1.98(d)), requiring that Defendant be ordered to pay a civil penalty to Plaintiff, the People of the State of California through the California Attorney General's Office, in the amount of Eleven Thousand Dollars (\$11,000) for each violation of Business & Professions Code section 17592 by Defendant on or before February 9, 2009, and in the amount of Sixteen Thousand Dollars (\$16,000)

for each violation of Business & Professions Code section 17592 by Defendant after February 9, 2009, according to proof;

9. Enter an order pursuant to California Business & Professions Code sections 17206 and 17536, requiring that Defendant be ordered to pay a civil penalty to Plaintiff, the People of the State of California through the California Attorney General's Office, in the amount of Two Thousand Five Hundred Dollars (\$2,500) for each violation of Business & Professions Code sections 17200 and 17592 by Defendant, according to proof;
10. Make such orders or judgments, pursuant to California Business & Professions Code sections 17206 and 17534, as may be necessary to restore to any person in interest any money or property which Defendant may have acquired either directly or indirectly from such persons by means of unfair competition, pursuant to California Business & Professions Code section 17203 or by violating section 17592;

**Prayer by Plaintiff State of Illinois**

11. Enter an order pursuant to 815 ILCS 505/7, 815 ILCS 505/2Z, and 815 ILCS 305/30(d) assessing a civil penalty in the amount of Fifty Thousand Dollars (\$50,000);

**Prayer by Plaintiff State of North Carolina**

12. Enter an order requiring Defendant to pay the State of North Carolina civil penalties in accordance with N.C. Gen. Stat. § 75-105, to pay the State of North Carolina reasonable attorneys fees for willful violations in accordance with N.C. Gen. Stat. § 75-105;

**Prayer by Plaintiff State of Ohio**

13. Enter an order pursuant to Ohio Revised Code Section 1345.07(A)(1) declaring that the acts and practices in which the Defendant engaged, as described in Counts XI and XII,

were in violation of the Ohio Consumer Sales Practices Act, Ohio Revised Code 1345.01 *et seq.*;

14. Permanently enjoin Defendant, its successors, agents, representatives, employees, and all person who act in concert with Defendant from engaging in unfair, deceptive or unconscionable acts or practices, including the conduct as specified in Counts IV, V, XI and XII, that are in violation of the Ohio Consumer Sales Practices Act, Ohio Revised Code 1345.01 *et seq.*, and from acting as a “telephone solicitor” in the State of Ohio without first having obtained a certificate of registration in violation of Revised Code Section 4719.02;
15. Enter an Order requiring Defendant to pay civil penalties to the Ohio Attorney General pursuant to Revised Code Section 1345.07, in the amount of twenty five thousand dollars (\$25,000) for each violation of the Ohio Consumer Sales Practices Act;
16. Enter an Order requiring the Defendant to pay civil penalties to the Ohio Attorney General pursuant to Revised Code Section 4719.12, in the amount of not less than one thousand nor more than twenty-five thousand for each violation of the Ohio Telephone Solicitation Sales Act and award to the Ohio Attorney General his costs and expenses of the investigation and reasonable attorney fees incurred in the prosecution;

**Prayer by All Plaintiffs**

17. Order Defendant to pay the costs of this action, including costs of investigation incurred by State Plaintiffs; and
18. Award Plaintiffs such other and additional relief as the Court may determine to be just and proper.

Dated: March 25, 2009

OF COUNSEL:

LOIS C. GREISMAN

Associate Director for Marketing Practices  
Federal Trade Commission

ALLEN HILE, JR.

Assistant Director  
Marketing Practices

RUSSELL DEITCH

GARY IVENS

Attorneys  
Federal Trade Commission  
600 Pennsylvania Ave. NW, Room 288  
Washington, DC 20580  
Telephone: 202-326-2585 (Deitch),  
202-326-2330 (Ivens)  
Fax: 202-326-3395

FOR THE UNITED STATES OF  
AMERICA:

MICHAEL F. HERTZ

Acting Assistant Attorney General

EUGENE M. THIROLF, Director

KENNETH L. JOST, Deputy Director  
Office of Consumer Litigation

/s Daniel K. Crane-Hirsch

DANIEL K. CRANE-HIRSCH

Lead counsel responsible for receipt of  
telephone conference calls pursuant to  
CDIL-LR 11.2 (2009)

Trial Attorney

Office of Consumer Litigation

U.S. Department of Justice

PO Box 386

Washington, DC 20044-0386

Telephone: 202-616-8242

Fax: 202-514-8742

[daniel.crane-hirsch@usdoj.gov](mailto:daniel.crane-hirsch@usdoj.gov)

/s James A. Lewis

JAMES A. LEWIS

Civil Division Chief

U.S. Attorney's Office for the Central District  
of Illinois

318 S. 6th St.

Springfield, IL 62701-1806

Telephone: 217-492-4450

Fax: 217-492-4512

[Jim.Lewis2@usdoj.gov](mailto:Jim.Lewis2@usdoj.gov)

*Signatures continue ...*

FOR THE PEOPLE OF THE STATE OF  
CALIFORNIA

EDMUND G. BROWN JR.  
Attorney General of the State of California

Albert Norman Shelden  
Deputy Attorney General

/s Albert Norman Shelden  
BY: Albert Norman Shelden  
Deputy Attorney General  
Consumer Law Section  
Office of the Attorney General  
110 W. "A" Street, Suite 1100  
San Diego, CA 92101-3702  
Telephone: 619-645-2089  
Fax: 619-645-2062  
[albert.shelden@doj.ca.gov](mailto:albert.shelden@doj.ca.gov)

FOR THE STATE OF OHIO

RICHARD CORDRAY  
Attorney General of Ohio

/s Erin B. Leahy  
Michael Ziegler  
Erin B. Leahy  
Assistant Attorneys General  
Consumer Protection Section  
Ohio Attorney General's Office  
30 E. Broad St., 14th Floor  
Columbus, OH 43215-3414  
Telephone: 614-466-3980 (Ziegler)  
614-752-4730 (Leahy)  
Fax: 866-768-2648  
[Michael.Ziegler@ohioattorneygeneral.gov](mailto:Michael.Ziegler@ohioattorneygeneral.gov)  
[Erin.Leahy@ohioattorneygeneral.gov](mailto:Erin.Leahy@ohioattorneygeneral.gov)

FOR THE PEOPLE OF THE STATE OF  
ILLINOIS

LISA MADIGAN  
Attorney General of Illinois

/s Elizabeth Blackston  
BY: Elizabeth Blackston, Assistant Attorney  
General; Chief, Consumer Fraud Bureau

/s Jeffrey M. Feltman  
BY: Jeffrey M. Feltman  
Illinois Bar No. 06237048  
Assistant Attorney General  
Consumer Fraud Bureau  
1001 E. Main St.  
Carbondale, IL 62901-3100  
Telephone: 618-529-6418  
Fax: 618-529-6403  
[jfeltman@atg.state.il.us](mailto:jfeltman@atg.state.il.us)

FOR THE STATE OF NORTH CAROLINA

ROY COOPER  
Attorney General of North Carolina

/s Kevin Anderson  
Kevin Anderson  
Assistant Attorney General  
Office of the Attorney General  
114 W. Edenton St.  
Raleigh, NC 27602-0629  
Telephone: 919-716-6000  
Fax: 919-716-6050  
[kander@ncdoj.gov](mailto:kander@ncdoj.gov)

<b>I. (a) PLAINTIFFS</b>	<b>DEFENDANTS</b>
(b) County of Residence of First Listed Plaintiff _____ (EXCEPT IN U.S. PLAINTIFF CASES)	County of Residence of First Listed Defendant _____ (IN U.S. PLAINTIFF CASES ONLY)
(c) Attorney's (Firm Name, Address, and Telephone Number)	NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.  Attorneys (If Known)

<b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)
<input type="checkbox"/> 1 U.S. Government Plaintiff	<b>PTF DEF</b>
<input type="checkbox"/> 2 U.S. Government Defendant	Citizen of This State <input type="checkbox"/> 1 <input type="checkbox"/> 1 Incorporated or Principal Place of Business In This State <input type="checkbox"/> 4 <input type="checkbox"/> 4
<input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)	Citizen of Another State <input type="checkbox"/> 2 <input type="checkbox"/> 2 Incorporated and Principal Place of Business In Another State <input type="checkbox"/> 5 <input type="checkbox"/> 5
<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	Citizen or Subject of a Foreign Country <input type="checkbox"/> 3 <input type="checkbox"/> 3 Foreign Nation <input type="checkbox"/> 6 <input type="checkbox"/> 6

<b>IV. NATURE OF SUIT</b> (Place an "X" in One Box Only)				
<b>CONTRACT</b>	<b>TORTS</b>	<b>FORFEITURE/PENALTY</b>	<b>BANKRUPTCY</b>	<b>OTHER STATUTES</b>
<input type="checkbox"/> 110 Insurance	<b>PERSONAL INJURY</b>	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 660 Occupational Safety/Health	<b>SOCIAL SECURITY</b>	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<b>LABOR</b>	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 720 Labor/Mgmt. Relations & Disclosure Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Security Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<input type="checkbox"/> 740 Railway Labor Act	<b>FEDERAL TAX SUITS</b>	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<b>IMMIGRATION</b>		<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 462 Naturalization Application		<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 465 Other Immigration Actions		<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 440 Other Civil Rights			
	<b>PRISONER PETITIONS</b>			
	<input type="checkbox"/> 510 Motions to Vacate Sentence			
	<b>Habeas Corpus:</b>			
	<input type="checkbox"/> 530 General			
	<input type="checkbox"/> 535 Death Penalty			
	<input type="checkbox"/> 540 Mandamus & Other			
	<input type="checkbox"/> 550 Civil Rights			
	<input type="checkbox"/> 555 Prison Condition			

<b>V. ORIGIN</b> (Place an "X" in One Box Only)	Appeal to District Judge from Magistrate Judgment
<input type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court
<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened
<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation
<input type="checkbox"/> 7	

<b>VI. CAUSE OF ACTION</b>	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
	Brief description of cause:

<b>VII. REQUESTED IN COMPLAINT:</b>	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	<b>DEMAND \$</b> Civil penalty	CHECK YES only if demanded in complaint: <b>JURY DEMAND:</b> <input type="checkbox"/> Yes <input type="checkbox"/> No
-------------------------------------	--	-----------------------------------	--

<b>VIII. RELATED CASE(S) IF ANY</b>	(See instructions):	JUDGE	DOCKET NUMBER
-------------------------------------	---------------------	-------	---------------

DATE	SIGNATURE OF ATTORNEY OF RECORD
------	---------------------------------

<b>FOR OFFICE USE ONLY</b>			
RECEIPT #	AMOUNT	APPLYING IFP	JUDGE
			MAG. JUDGE

JA015872  
014594

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553  
Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

JA015873  
014595

TX 102-015135



EXHIBIT *777*

EXHIBIT *777*

JA015874  
014596

TX 102-015136

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISION**

UNITED STATES OF AMERICA and the  
STATES OF CALIFORNIA, ILLINOIS,  
NORTH CAROLINA, and OHIO,

Plaintiffs,

v.

DISH NETWORK L.L.C.,

Defendant.

Case No. 3:09-cv-03073

**JURY DEMANDED  
EQUITABLE RELIEF SOUGHT**

**THIRD AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission ("FTC" or "Commission"), pursuant to Section 16(a)(1) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 56(a)(1), and Plaintiffs the States of California, Illinois, North Carolina, and Ohio (collectively the "State Plaintiffs"), pursuant to statutes as set forth below, for their third amended complaint allege:

**JURISDICTION AND VENUE**

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355; 15 U.S.C. §§ 45(m)(1)(A), 53(b), 56(a) and 57b; and 47 U.S.C. § 227(f)(2); and over the state law claims pursuant to 28 U.S.C. § 1367. This action arises under 15 U.S.C. § 45(a) and 47 U.S.C. § 227(f)(2).
2. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (c), 1395(a), 15 U.S.C. §§ 53(b) and 6103(e), and 47 U.S.C. § 227(f)(4). A substantial part of the events or omissions giving rise to the claims alleged in this Complaint occurred in this District.

**JA015875**  
014597

3. The State Plaintiffs notified the Federal Communications Commission of this civil action.

**FEDERAL PLAINTIFF**

4. Plaintiff, the United States of America, brings this action under Sections 5(a), 5(m)(1)(A), 13(b), 16(a) and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), 56(a) and 57b, and Section 6 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (the “Telemarketing Act”), 15 U.S.C. § 6105, to obtain monetary civil penalties, a permanent injunction, and other equitable relief from Defendant for violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC’s Telemarketing Sales Rule (the “TSR” or “Rule”), 16 C.F.R. Part 310, as amended by 68 Fed. Reg. 4580, 4669 (January 29, 2003).

**STATE PLAINTIFFS**

5. Plaintiff, the People of the State of California, by and through its attorney, Kamala D. Harris, Attorney General of the State of California, is authorized by 47 U.S.C. § 227(f)(1) to file actions in federal district court to enjoin violations and enforce compliance with the Telephone Consumer Protection Act (“TCPA”) on behalf of residents of the State of California and to obtain actual damages or damages of \$500 for each violation and up to treble that amount for each violation committed willfully or knowingly. Plaintiff, the People of the State of California, by and through Kamala D. Harris, Attorney General of the State of California, is authorized by California Business & Professions Code Sections 17204 and 17593, and Sections 17206 and 17536, respectively, to obtain injunctive relief to halt acts of unfair competition and enforce compliance with California Business &

Professions Code Sections 17200 and 17592 and for civil penalties of up to \$2,500.00 for each violation of Section 17200 and up to \$16,000 for each violation of 17592.

6. Plaintiff, The People of the State of Illinois, as *parens patriae*, by and through its Attorney General Lisa Madigan is authorized by 47 U.S.C. § 227(f)(1) to file actions in federal district court to enjoin violations of and enforce compliance with the TCPA on behalf of residents of the State of Illinois, and to obtain actual damages or damages of \$500 for each violation, and up to treble that amount for each violation committed willfully or knowingly. Plaintiff, The People of the State of Illinois, as *parens patriae*, by and through its Attorney General Lisa Madigan also is authorized by 815 ILCS 505/7 and 815 ILCS 305/30(d) to obtain injunctive and other relief to halt violations of and enforce compliance with 815 ILCS 505/1, *et seq.* and with 815 ILCS 305/1, *et seq.*
7. Plaintiff State of North Carolina, by and through its Attorney General Roy Cooper, is authorized by 47 U.S.C. § 227(f)(1) to file actions in federal district court to enjoin violations, obtain injunctive relief, civil penalties, attorneys fees and other equitable relief, and to enforce compliance with the TCPA on behalf of residents of the State of North Carolina, and to obtain actual damages or damages of \$500 for each violation, and up to treble that amount for each violation committed willfully or knowingly. Plaintiff State of North Carolina, by and through its Attorney General Roy Cooper also is authorized by N.C. Gen. Stat. § 75-105 to bring enforcement actions to enjoin violations of and enforce compliance with the North Carolina Telephone Solicitations Act, N.C. Gen. Stat. §§ 75-100 *et seq.* and to obtain civil penalties of up to \$500 for the first

violation of that Act, \$1,000 for the second violation, \$5,000 for the third and any other violations of the Act, and reasonable attorneys fees for willful violations.

8. Plaintiff, State of Ohio, by and through its Attorney General Mike DeWine, is authorized by 47 U.S.C. § 227(f)(1) to file actions in federal district court to enjoin violations of and enforce compliance with the TCPA on behalf of residents of the State of Ohio, and to obtain actual damages or damages of \$500 for each violation, and up to treble that amount for each violation committed willfully and knowingly. Plaintiff State of Ohio, by and through its Attorney General Mike DeWine, is also authorized to obtain declaratory judgments, enjoin violations, and seek orders for consumer damages, civil penalties and other relief for violations of the Ohio Consumer Sales Practice Act, Ohio Revised Code 1345.01 *et seq.*

**DEFENDANT**

9. DISH Network L.L.C. ("DISH Network") is a Colorado company with its principal place of business at 9601 S. Meridian Blvd., Englewood, Colorado 80112. DISH Network transacts business in the Central District of Illinois.

**THE TELEMARKETING SALES RULE  
AND THE NATIONAL DO NOT CALL REGISTRY**

10. Congress directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15 U.S.C. §§ 6101-6108, in 1994. On August 16, 1995, the FTC adopted the Telemarketing Sales Rule (the "Original TSR"), 16 C.F.R. Part 310, which became effective on December 31, 1995. On January 29, 2003, the FTC amended the TSR by issuing a Statement of Basis and

Purpose (“SBP”) and the final amended TSR (the “Amended TSR”). 68 Fed. Reg. 4580, 4669.

11. Among other things, the Amended TSR established a “do not call” registry, maintained by the Commission (the “National Do Not Call Registry” or “Registry”), of consumers who do not wish to receive certain types of telemarketing calls. Consumers can register their telephone numbers on the Registry without charge either through a toll-free telephone call or over the Internet at [www.donotcall.gov](http://www.donotcall.gov).
12. Consumers who receive telemarketing calls to their registered numbers can complain of Registry violations the same way they registered: through a toll-free telephone call or over the Internet, or by otherwise contacting law enforcement authorities.
13. A “seller” is any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration. 16 C.F.R. § 310.2(z).
14. A “telemarketer” is any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor. 16 C.F.R. § 310.2(bb).
15. Since September 2, 2003, sellers, telemarketers, and other permitted organizations have been able to access the Registry over the Internet at [telemarketing.donotcall.gov](http://telemarketing.donotcall.gov) to download the registered numbers.
16. Since October 17, 2003, sellers and telemarketers have been prohibited from calling a number on the Registry, and sellers are prohibited from causing a telemarketer do so in violation of the Amended TSR. 16 C.F.R. § 310.4(b)(1)(iii)(B).

17. Since December 31, 1995, sellers and telemarketers have been prohibited from initiating an outbound telephone call to any person who previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered. 16 C.F.R. § 310.4(b)(1)(iii)(A).
18. Since October 1, 2003, telemarketers have been prohibited from abandoning an outbound telephone call, and sellers are prohibited from causing a telemarketer to do so in violation of the Amended TSR. 16 C.F.R. § 310.4(b)(1)(iv). An outbound telephone call is abandoned if a person answers it and the telemarketer does not connect the call to a sales representative within two (2) seconds of the person's completed greeting. 16 C.F.R. § 310.4(b)(1)(iv).
19. The use of pre-recorded message telemarketing, where a sales pitch to a live consumer begins with or is made entirely by a pre-recorded message, violates the Amended TSR because the telemarketer is not connecting the call to a sales representative within two (2) seconds of the person's completed greeting.
20. It is a violation of the Amended TSR for any person to provide substantial assistance or support to any telemarketer when that person knows or consciously avoids knowing that the telemarketer is engaged in any practice that violates § 310.4 of the Amended TSR. 16 C.F.R. § 310.3(b).
21. Substantial assistance is more than a mere casual or incidental dealing with a seller or telemarketer that is unrelated to a violation of the Rule. TSR SBP, 60 Fed. Reg. 43842 at 43852 (Aug. 23, 1995).

22. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c), and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the Amended TSR constitutes an unfair or deceptive act or practice in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).
23. Defendant DISH Network is a “seller” and a “telemarketer” engaged in “telemarketing,” as defined by the Amended TSR, 16 C.F.R. § 310.2. Defendant DISH Network is a seller, for example, since it provides satellite television programming to consumers. Defendant DISH Network is also a telemarketer, for example, since its employees or call centers initiate or receive telephone calls to or from a consumer.

**THE TELEPHONE CONSUMER PROTECTION ACT**

24. The TCPA, enacted in 1991, amended the Communications Act of 1934 by adding 47 U.S.C. § 227, which requires the Federal Communications Commission (“FCC”) to

... initiate a rulemaking proceeding concerning the need to protect residential telephone subscribers’ privacy rights to avoid receiving telephone solicitations to which they object. ... The regulations required by [the TCPA] may require the establishment and operation of a single national database to compile a list of telephone numbers of residential subscribers who object to receiving telephone solicitations, and to make that compiled list and part thereof available for purchase. If the Commission determines to require such a database, such regulations shall- ... (F) prohibit any person from making or transmitting a telephone solicitation to the telephone number of any subscriber included in such database ... .

47 U.S.C. § 227(c)(1) and (c)(3).

25. In 1992, the FCC promulgated rules pursuant to the TCPA.
26. On June 26, 2003, the FCC revised its rules and promulgated new rules pursuant to the TCPA. These new rules provide for a national Do Not Call Registry.



27. A relevant FCC Do Not Call Rule, 47 C.F.R. § 64.1200(c), provides in part: “(c) No person or entity shall initiate any telephone solicitation, as defined in paragraph (f)(12) of this section, to . . . (2) A residential telephone subscriber who has registered his or her telephone number on the national do-not-call registry of persons who do not wish to receive telephone solicitations that is maintained by the Federal Government.”
28. The TCPA itself and another relevant FCC Rule, 47 U.S.C. § 227(a)(4) and 47 C.F.R. § 64.1200(f)(12), respectively, provide in part: “The term telephone solicitation means the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person . . . .”
29. The TCPA itself and another relevant FCC Rule, 47 U.S.C. § 227(b)(1)(B) and 47 C.F.R. § 64.1200(a)(2), respectively, provide that it is unlawful for a person to: “Initiate any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party unless the call . . . [is specifically exempted by rule or order].”
30. The TCPA further provides in part:

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

47 U.S.C. § 227(f)(1).

31. This Court, in the exercise of its equitable jurisdiction, may award other ancillary relief to remedy injuries caused by DISH Network's violations of the TCPA.

**DEFENDANT'S BUSINESS PRACTICES**

32. Defendant DISH Network sells Dish Network satellite television programming to consumers throughout the United States.
33. Defendant DISH Network markets its programming through a variety of methods, including telemarketing.
34. Defendant DISH Network and some of its authorized dealers maintain or cause to be maintained lists of phone numbers of persons who have stated that they do not wish to receive an outbound telephone call made by or on behalf of DISH Network.
35. (a) Defendant DISH Network engages in telemarketing directly to consumers.
- (b) Defendant DISH Network also markets its programming through a network of authorized dealers.
- (c) DISH Network is both a "seller" and a "telemarketer" within the meaning of the TSR.
36. DISH Network grants some authorized dealers the right and ability to conduct business through DISH Network's Order Entry System.
37. DISH Network provides installers or installation services to consumers who were solicited by some authorized dealers.

38. Since on or about October 17, 2003, DISH Network, directly and through one or more authorized dealers acting on its behalf, has initiated outbound telephone calls to numbers on the National Do Not Call Registry.
39. Since on or about October 17, 2003, DISH Network has initiated or caused to be initiated outbound telephone calls to phone numbers of persons who have stated that they do not wish to receive an outbound telephone call made by or on behalf of DISH Network.
40. Defendant DISH Network entered into oral or written contracts with, among others, Vision Quest, a Michigan company, New Edge Satellite, also a Michigan company, Planet Earth Satellite, an Arizona company, Dish TV Now, a North Carolina company, and Star Satellite, a Utah company (the "Marketing Dealers").
41. The Marketing Dealers are or have been authorized dealers of DISH Network.
42. Through contracts with the Marketing Dealers and/or through other means, Defendant DISH Network authorizes the Marketing Dealers to market, promote and solicit orders for DISH Network or Dish Network programming, and to use the DISH Network or Dish Network trademark or trade name.
43. Marketing Dealers agree to market, promote, and solicit orders on behalf of DISH Network.
44. Defendant DISH Network has, directly or indirectly, offered to provide or provided financial payments to the Marketing Dealers.
45. Through contracts with the Marketing Dealers and/or through other means, Defendant DISH Network maintains sole discretion to set the price for the programming offered to consumers; maintains sole discretion to determine the type of programming offered to

consumers; and maintains sole discretion to determine which proposed orders solicited by the Marketing Dealers will be accepted.

46. Through contracts with the Marketing Dealers and/or through other means, Defendant DISH Network pays commissions or other financial incentives to the Marketing Dealers for marketing, promoting or soliciting orders.
47. Through contracts with the Marketing Dealers and/or through other means, Defendant DISH Network has the right to terminate the Marketing Dealers.
48. DISH Network's authorized dealers hold themselves out as marketing DISH Network programming.
49. Since on or about October 1, 2003, the Marketing Dealers have engaged in telemarketing on behalf of Defendant DISH Network.
50. Since on or about October 17, 2003, Vision Quest, New Edge Satellite, and Planet Earth, acting on behalf of Defendant DISH Network, have directly, or through intermediaries, placed outbound calls to telephone numbers on the National Do Not Call Registry.
51. Since on or about October 1, 2003, Dish TV Now and Star Satellite, acting on behalf of Defendant DISH Network, have directly, or through intermediaries, abandoned outbound telemarketing calls to consumers by failing to connect the call to a representative within two (2) seconds of the consumer's completed greeting.
52. Since on or about October 1, 2003, Defendant DISH Network has received complaints from consumers stating that they received calls from Star Satellite LLC that delivered pre-recorded messages.

53. Since on or about October 1, 2003, Defendant DISH Network has received complaints from consumers stating that they received calls from Dish TV Now that delivered pre-recorded messages.
54. Since on or about October 1, 2003, Defendant DISH Network has provided substantial assistance or support to Star Satellite and/or Dish TV Now even though Defendant DISH Network knew or consciously avoided knowing that Star Satellite and/or Dish TV Now abandoned outbound telephone calls in violation of § 310.4(b)(1)(iv) of the TSR.
55. Defendant DISH Network has provided substantial assistance or support to the Marketing Dealers by, directly or indirectly, including but not limited to, making financial payments to the Marketing Dealers, allowing the Marketing Dealers to market DISH Network goods or services, allowing the Marketing Dealers to use the Dish Network trade name or trademark, entering into contracts with consumers contacted by the Marketing Dealers, collecting money from consumers contacted by the Marketing Dealers, providing services to consumers contacted by the Marketing Dealers, in some cases, granting some authorized dealers the right and ability to conduct business through DISH Network's Order/Entry System, and in some cases, providing installers so that consumers can receive Dish Network programming.
56. Defendant DISH Network has been the subject of law enforcement actions by the states of Missouri and Indiana alleging violations of state do not call laws.
57. Defendant DISH Network has received consumer complaints alleging that although the complaining consumer was on a do not call list or registry, the consumer still received a telemarketing call regarding Dish Network programming.

58. Defendant DISH Network has received consumer complaints alleging that the complaining consumers received telemarketing calls that delivered a pre-recorded message.
59. DISH Network failed to monitor and enforce Star Satellite's and/or Dish TV Now's compliance with the Amended TSR even though DISH Network was on notice of possible violations of the law.
60. DISH Network failed to implement an effective compliance program to monitor and enforce its authorized dealers' compliance with the Amended TSR, including that of the Marketing Dealers, even after it had received consumer complaints and had been the subject of two state law enforcement actions related to do not call violations.
61. Since on or about October 1, 2003, Defendant DISH Network caused the Marketing Dealers to engage in violations of the Amended TSR through a variety of acts or practices, including, but not limited to: (1) directly or indirectly offering to provide or providing financial payments for sales of Dish Network programming; (2) entering into relationships whereby the Marketing Dealers marketed on behalf of DISH Network; or (3) by directly or indirectly offering to provide or providing financial payments for sales of Dish Network programming, or by entering into relationships whereby the Marketing Dealers marketed on behalf of DISH Network, and failing to monitor and enforce compliance with the Amended TSR.
62. In order to attempt to sell its products and services, DISH Network directs telemarketing solicitations to, or causes them to be directed to, consumers in numerous states, including, but not limited to, California, Illinois, North Carolina, and Ohio.

63. Numerous California, Illinois, North Carolina, and Ohio consumers, as well as consumers in other states, have filed complaints with either the FTC or the offices of their respective Attorney General complaining that they have received telemarketing solicitations at their residential telephone numbers which had been previously registered with the National Do Not Call Registry and that such solicitations were made by or on behalf of DISH Network.
64. At all times relevant to this complaint, Defendant has maintained a substantial course of trade or business in the offering for sale and sale of goods or services via the telephone in or affecting commerce as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
65. Defendant has engaged in telemarketing by a plan, program or campaign conducted to induce the purchase of goods or services by use of one or more telephones and which involves more than one interstate call.

**VIOLATIONS OF THE TELEMARKETING SALES RULE**

**Count I  
(By the United States – Violating the National Do Not Call Registry)**

66. In numerous instances, in connection with telemarketing, Defendant DISH Network engaged in or caused a telemarketer to engage in initiating an outbound telephone call to a person's telephone number on the National Do Not Call Registry in violation of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B).

**Count II**  
**(By the United States – Violating the Entity-Specific Do-Not-Call Rule)**

67. In numerous instances, in connection with telemarketing, DISH Network has engaged in or caused other telemarketers to engage in initiating an outbound telephone call to a person who has previously stated that he or she does not wish to receive such a call made by or on behalf of DISH Network, in violation of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(A).

**Count III**  
**(By the United States – Abandoning Calls)**

68. In numerous instances, in connection with telemarketing, Defendant DISH Network has abandoned or caused telemarketers to abandon an outbound telephone call by failing to connect the call to a sales representative within two (2) seconds of the completed greeting of the person answering the call, in violation of the TSR, 16 C.F.R. § 310.4(b)(1)(iv).

**Count IV**  
**(By the United States – Assisting and Facilitating)**

69. Defendant DISH Network has provided substantial assistance or support to Star Satellite and/or Dish TV Now even though Defendant DISH Network knew or consciously avoided knowing Defendant Star Satellite and/or Dish TV Now abandoned outbound telephone calls in violation of § 310.4(b)(1)(iv) of the TSR. Defendant DISH Network, therefore, has violated 16 C.F.R. § 310.3(b).



**VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**

**COUNT V**

**(By the State Plaintiffs – Violating the National Do Not Call Registry)**

70. The People of the State of California, by Kamala D. Harris, Attorney General of the State of California, the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, the People of the State of North Carolina by and through Roy Cooper, the Attorney General of North Carolina, and the People of the State of Ohio by Mike DeWine, Attorney General of the State of Ohio bring this count pursuant to the TCPA, complaining of Defendant DISH Network.
71. State Plaintiffs seek a permanent injunction and other equitable relief, based upon DISH Network's violations of the TCPA in connection with the placing of telemarketing solicitations to consumers whose telephone numbers have been registered with the National Do Not Call Registry.
72. DISH Network, either directly or indirectly as a result of a third party acting on its behalf, has violated 47 C.F.R. § 64.1200(c)(2) and 47 U.S.C. § 227(c), by engaging in a pattern or practice of initiating telephone solicitations to residential telephone subscribers, including subscribers in California, Illinois, North Carolina, and Ohio whose telephone numbers were listed on the National Do Not Call Registry.
73. DISH Network's violations are willful and knowing.

**COUNT VI**  
**(By the State Plaintiffs – Violating the Prohibition against the Use of Artificial or Pre-Recorded Voices)**

74. The People of the State of California, by Kamala D. Harris, Attorney General of the State of California, the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, the People of the State of North Carolina by and through Roy Cooper, the Attorney General of North Carolina, and the People of the State of Ohio by Mike DeWine, Attorney General of the State of Ohio, bring this count pursuant to the TCPA, complaining of Defendant DISH Network.
75. State Plaintiffs seek a permanent injunction and other equitable relief, based upon DISH Network's violations of the TCPA in connection with the initiation of telephone calls to residential telephone lines using artificial or prerecorded voices to deliver a message without the prior express consent of the called party and without falling within specific exemptions delineated within the TCPA.
76. DISH Network, either directly or indirectly as a result of a third party acting on its behalf, has violated 47 C.F.R. § 64.1200(a)(2) and 47 U.S.C. § 227(b)(1)(B), by engaging in a pattern or practice of initiating telephone solicitations to residential telephone lines, including lines in California, Illinois, North Carolina, and Ohio, using artificial or prerecorded voices to deliver a message without the prior express consent of the called party and where the call was not initiated for emergency purposes or exempted by rule or order of the Federal Communications Commission under 47 U.S.C. § 227(b)(2)(B).
77. DISH Network's violations are willful and knowing.

**COUNT VII**  
**(By State of California for Violations of California Business and Professions**  
**Code Section 17592 (California Do Not Call Law))**

78. California Business & Professions Code section 17592(a)(1) defines as a “telephone solicitor” any person or entity who, on his or her own behalf or through salespersons or agents, announcing devices, or otherwise, makes or causes a telephone call to be made to a California telephone number and seeks to rent, sell, promote, or lease goods or services during those calls.
79. California Business & Professions Code section 17592(c) prohibits telephone solicitors from making or causing to be made telephone calls to California telephone numbers listed on the National Do Not Call Registry and seeking to rent, sell, promote, or lease goods or services during those calls.
80. DISH Network, either directly or indirectly as a result of a third party acting on its behalf, is a telephone solicitor pursuant to California Business & Professions Code section 17592(a)(1), and has violated Section 17592(c)(1) by making or causing to be made telephone calls to California telephone numbers listed on the National Do Not Call Registry and seeking to rent, sell, promote, or lease goods or services during those calls.
81. Unless enjoined and restrained by order of the Court, Defendant will continue to engage in such violations.

**COUNT VIII**  
**(By State of California for Violations of California Business and Professions**  
**Code Section 17200 (Unfair Competition))**

82. Beginning at an exact date unknown to plaintiff and continuing to the present, Defendant DISH Network has engaged in and continues to engage in unfair competition as defined in California Business & Professions Code section 17200. Defendant's acts of unfair competition include, but are not limited to, the following:

(a) DISH Network, either directly or indirectly as a result of a third party acting on its behalf, has violated the TCPA at 47 U.S.C. § 227(c) and its regulations at 47 C.F.R. § 64.1200(c)(2), by engaging in a pattern or practice of initiating telephone solicitations to residential telephone subscribers, including subscribers in California, whose telephone numbers were listed on the National Do Not Call Registry.

(b) DISH Network, either directly or indirectly as a result of a third party acting on its behalf, has violated 47 C.F.R. § 64.1200(a)(2) and 47 U.S.C. § 227(b)(1)(B), by engaging in a pattern or practice of initiating telephone solicitations to residential telephone lines, including lines in California, using artificial or prerecorded voices to deliver a message without the prior express consent of the called party and where the call was not initiated for emergency purposes or exempted by rule or order of the Federal Communications Commission under 47 U.S.C. § 227(b)(2)(B).

(c) DISH Network, either directly or indirectly as a result of a third party acting on its behalf, has violated California Business & Professions Code section 17592(c)(1) by making or causing to be made telephone calls to California telephone numbers listed on

the National Do Not Call Registry and seeking to rent, sell, promote, or lease goods or services during those calls.

(d) DISH Network, either directly or indirectly as a result of a third party acting on its behalf, has violated California Civil Code section 1770(a)(22)(A), which makes it an unfair method of competition and unfair or deceptive act or practice to disseminate an unsolicited prerecorded message by telephone without an unrecorded, natural voice first informing the person answering the telephone of the name of the caller or the organization being represented, and either the address or telephone number of the caller, and without obtaining the consent of that person to listen to the prerecorded message.

83. Unless enjoined and restrained by order of the Court, Defendant will continue to engage in such violations.

**COUNT IX**  
**(By State of North Carolina for**  
**Violations of General Statutes § 75-102)**

84. North Carolina General Statutes § 75-102(a) provides that no telephone solicitor shall make a telephone solicitation to a North Carolina telephone subscriber's telephone number if the subscriber's telephone number appears in the latest edition of the National Do Not Call Registry. N.C. Gen. Stat. § 75-102(d) also requires telephone solicitors to implement systems and procedures to prevent telephone solicitations to telephone subscribers whose numbers appear in the National Do Not Call Registry and to monitor and enforce compliance by its employees and independent contractors in those systems and procedures.

85. DISH Network, and/or third parties acting on DISH Network's behalf, has violated N.C. Gen. Stat. § 75-102(a) by making telephone solicitations to the telephone numbers of North Carolina telephone subscribers when those numbers were in the pertinent edition of the National Do Not Call Registry.
86. DISH Network also violated N.C. Gen. Stat. § 75-102(d) by failing to monitor and enforce compliance by its employees, agents, and independent contractors in that, as set forth above, those persons made numerous telephone solicitations to the telephone numbers of North Carolina telephone subscribers when those numbers were in the pertinent edition of the National Do Not Call Registry.
87. DISH Network willfully engaged in the actions and practices described above.

**COUNT X**  
**(By State of North Carolina for**  
**Violations of General Statutes § 75-104)**

88. North Carolina General Statutes § 75-104 provides that, subject to some exceptions, no person may use an automatic dialing and recorded message player to make an unsolicited telephone call. One of those exceptions allows a person to make such calls if prior to the playing of the recorded message a live operator, among other things, states the nature and length in minutes of the recorded message, and asks for and receives prior approval to play the recorded message from the person receiving the call.
89. DISH Network, and/or third parties acting on DISH Network's behalf, has violated N.C. Gen. Stat. § 75-104 by using automatic dialing and recorded message players to make unsolicited telephone calls to North Carolina telephone subscribers without first having live operators inform the telephone subscribers of the nature and length of the recorded

message and asking for and obtaining permission to play the message from the person receiving the call, and otherwise not complying with any of the exceptions set forth in N.C. Gen. Stat. § 75-104.

90. DISH Network willfully engaged in the practices described above.

**COUNT XI**  
**(By State of Illinois for Violations of 815 ILCS 305/30(b)**  
**and 815 ILCS 505/2Z)**

91. Illinois law, 815 ILCS 305/30(b), provides that no person shall play a prerecorded message placed by an autodialer without the consent of the called party.
92. A knowing violation of 815 ILCS 305/30(b) also is a violation of 815 ILCS 505/2Z, which violation, pursuant to 815 ILCS 505/7, empowers the Court to award, among other things, civil penalties, costs of suit, restitution, and a temporary, preliminary, or permanent injunction.
93. The Defendant, and/or third parties acting on its behalf, has violated 815 ILCS 305/30(b) and 815 ILCS 505/2Z by knowingly playing or causing to be played prerecorded messages placed by an autodialer without the consent of the called party.

**COUNT XII**  
**(By State of Ohio for Violations**  
**of the Ohio Consumer Sales Practices Act)**

94. The Ohio Consumer Sales Practices Act, Ohio Revised Code 1345.02 and 1345.03 prohibits “suppliers” from engaging in unfair, deceptive and unconscionable consumer sales practices. The Defendant is a “supplier” as that term is defined in Ohio Revised Code 1345.01(C), since Defendant engages in the business of effecting consumer transactions, either directly or indirectly, for purposes that are primarily personal, family

or household within the meaning as specified in Revised Code 1345.01(A) of the Consumer Sales Practices Act.

95. Defendant, either directly or as a result of a third party acting on its behalf, violated Ohio Revised Code Sections 1345.02(A) and 1345.03(A) by engaging in a pattern or practice of initiating telephone solicitations to residential telephone subscribers in the State of Ohio, whose telephone numbers were listed on the National Do Not Call Registry in violation of the TCPA, 47 U.S.C. § 227(c), and 47 C.F.R. 64.1200(c)(2) and/or in violation of the Telemarketing Sales Rule, 16 C.F.R. § 310.4(b)(1)(iii)(B).
96. Defendant, either directly or indirectly as a result of a third party acting on its behalf, violated Ohio Revised Code Sections 1345.02(A) and 1345.03(A) by engaging in a pattern or practice of initiating telephone calls to residential telephone lines using artificial or prerecorded voices to deliver a message without the prior express consent of the called party and without falling within specified exemptions delineated within the TCPA in violation of the TCPA, 47 U.S.C. 227(B)(1)(b) and 47 C.F.R. 64.1200(a)(2).

#### **CONSUMER INJURY**

97. Consumers in the United States have suffered and will suffer injury as a result of Defendant's violations of the TSR, the TCPA, California law, Illinois law, Ohio law, and North Carolina law. Absent injunctive relief by this Court, Defendant is likely to continue to injure consumers and harm the public interest.



**THIS COURT'S POWER TO GRANT RELIEF**

98. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other ancillary relief to prevent and remedy any violation of any provision of law enforced by the FTC.
99. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended, and as implemented by 16 C.F.R. § 1.98(d) (2008) and by 74 Fed. Reg. 857 (Jan. 9, 2009) (to be codified at 16 C.F.R. § 1.98(d)), authorizes this Court to award monetary civil penalties of up to \$11,000 for each violation of the TSR on or before February 9, 2009, and up to \$16,000 for each violation of the TSR after February 9, 2009. Defendant's violations of the TSR were committed with the knowledge required by Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).
100. This Court, in the exercise of its equitable jurisdiction, may award ancillary relief to remedy injury caused by Defendant's violations of the Rule and the FTC Act.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs requests that this Court, as authorized by Sections 5(a), 5(m)(1)(A), 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b) and 57b, and pursuant to its own equitable powers:

**Prayer by All Plaintiffs**

1. Enter judgment against Defendant and in favor of Plaintiffs for each violation alleged in this complaint;

**Prayer by Plaintiff United States of America**

2. Award Plaintiff, the United States of America, monetary civil penalties from Defendant for every violation of the TSR;
3. Enter a permanent injunction to prevent future violations of the TSR and the FTC Act by Defendant;

**Prayer by the State Plaintiffs**

4. Assess against Defendant and in favor of the State Plaintiffs damages of \$1,500 for each violation of the TCPA found by the Court to have been committed by Defendant willfully and knowingly; if the Court finds Defendant has engaged in violations of the TCPA which are not willful and knowing, then assessing against Defendant damages of \$500 for each violation of the TCPA, as provided by 47 U.S.C. § 227;
5. Permanently enjoin Defendant from violating the TCPA, both generally, and specifically, by enumerating the acts in which Defendant is permanently enjoined from engaging;
6. Permanently enjoin Defendant from violating the TSR, the FTC Act, the TCPA, the relevant laws of California, Illinois, Ohio, and North Carolina;

**Prayer by Plaintiff State of California**

7. Permanently enjoin Defendant, its successors, agents, representatives, employees, and all persons who act in concert with Defendant from committing any acts of unfair competition as defined in Section 17200, or violations of the TCPA and California Do Not Call Law at Business & Professions Code Section 17592, including the violations alleged in Counts V, VI, VII, and VIII pursuant to Business and Professions Code sections 17203 and 17593;

8. Enter an order pursuant to California Business & Professions Code section 17593 and Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended, and as implemented by 16 C.F.R. § 1.98(d) (2008) and by 74 Fed. Reg. 857 (Jan. 9, 2009) (to be codified at 16 C.F.R. § 1.98(d)), requiring that Defendant be ordered to pay a civil penalty to Plaintiff, the People of the State of California through the California Attorney General's Office, in the amount of Eleven Thousand Dollars (\$11,000) for each violation of Business & Professions Code section 17592 by Defendant on or before February 9, 2009, and in the amount of Sixteen Thousand Dollars (\$16,000) for each violation of Business & Professions Code section 17592 by Defendant after February 9, 2009, according to proof;
9. Enter an order pursuant to California Business & Professions Code sections 17206 and 17536, requiring that Defendant be ordered to pay a civil penalty to Plaintiff, the People of the State of California through the California Attorney General's Office, in the amount of Two Thousand Five Hundred Dollars (\$2,500) for each violation of Business & Professions Code sections 17200 and 17592 by Defendant, according to proof;
10. Make such orders or judgments, pursuant to California Business & Professions Code sections 17206 and 17534, as may be necessary to restore to any person in interest any money or property which Defendant may have acquired either directly or indirectly from such persons by means of unfair competition, pursuant to California Business & Professions Code section 17203 or by violating section 17592;

**Prayer by Plaintiff State of Illinois**

11. Enter an order pursuant to 815 ILCS 505/7, 815 ILCS 505/2Z, and 815 ILCS 305/30(d) assessing a civil penalty in the amount of Fifty Thousand Dollars (\$50,000);

**Prayer by Plaintiff State of North Carolina**

12. Enter an order requiring Defendant to pay the State of North Carolina civil penalties in accordance with N.C. Gen. Stat. § 75-105, to pay the State of North Carolina reasonable attorneys fees for willful violations in accordance with N.C. Gen. Stat. § 75-105;

**Prayer by Plaintiff State of Ohio**

13. Enter an order pursuant to Ohio Revised Code Section 1345.07(A)(1) declaring that the acts and practices in which the Defendant engaged, as described in Count XII, were in violation of the Ohio Consumer Sales Practices Act, Ohio Revised Code 1345.01 *et seq.*;
14. Permanently enjoin Defendant, its successors, agents, representatives, employees, and all person who act in concert with Defendant from engaging in unfair, deceptive or unconscionable acts or practices, including the conduct as specified in Counts V, VI and XII, that are in violation of the Ohio Consumer Sales Practices Act, Ohio Revised Code 1345.01 *et seq.*;
15. Enter an Order requiring Defendant to pay civil penalties to the Ohio Attorney General pursuant to Revised Code Section 1345.07, in the amount of twenty five thousand dollars (\$25,000) for each violation of the Ohio Consumer Sales Practices Act;

**Prayer by All Plaintiffs**

16. Order Defendant to pay the costs of this action, including costs of investigation incurred by State Plaintiffs; and

17. Award Plaintiffs such other and additional relief as the Court may determine to be just and proper.

Dated: February 27, 2015

OF COUNSEL:

LOIS C. GREISMAN  
Associate Director for Marketing Practices

ROBERTO ANGUIZOLA  
Assistant Director, Marketing Practices

RUSSELL DEITCH  
GARY IVENS  
Attorneys  
Federal Trade Commission  
600 Pennsylvania Ave. NW, Room 288  
Washington, DC 20580  
Telephone: 202-326-2585 (Deitch),  
202-326-2330 (Ivens)  
Fax: 202-326-3395

FOR THE UNITED STATES OF  
AMERICA:

JOYCE BRANDA  
Acting Assistant Attorney General

JONATHAN F. OLIN  
Deputy Assistant Attorney General

MICHAEL S. BLUME, Director

LISA K. HSIAO  
PATRICK R. RUNKLE  
SANG H. LEE  
Trial Attorneys  
Consumer Protection Branch  
U.S. Department of Justice  
PO Box 386  
Washington, DC 20044-0386  
Telephone: 202-532-4892 (Hsiao)  
202-532-4723 (Runkle)  
202-532-4793 (Lee)  
Fax: 202-514-8742  
[Lisa.K.Hsiao@usdoj.gov](mailto:Lisa.K.Hsiao@usdoj.gov)  
[Patrick.R.Runkle@usdoj.gov](mailto:Patrick.R.Runkle@usdoj.gov)  
[Sang.H.Lee@usdoj.gov](mailto:Sang.H.Lee@usdoj.gov)

GREG GILMORE  
Assistant U.S. Attorney  
U.S. Attorney's Office for C.D. Ill.  
318 S. 6th St.  
Springfield, IL 62701-1806  
Telephone: 217-492-4450  
Fax: 217-492-4512  
[Greg.Gilmore@usdoj.gov](mailto:Greg.Gilmore@usdoj.gov)

ERIC LONG  
Assistant U.S. Attorney  
U.S. Attorney's Office for the Central District  
of Illinois  
318 S. 6th St.  
Springfield, IL 62701-1806  
Telephone: 217-492-4450  
Fax: 217-492-4512  
[Eric.Long@usdoj.gov](mailto:Eric.Long@usdoj.gov)

FOR THE PEOPLE OF THE STATE OF  
CALIFORNIA

KAMALA D. HARRIS  
Attorney General of the State of California

/s/ Jon Worm  
JINSOOK OHTA  
JON WORM  
Deputy Attorney General  
Consumer Law Section  
Office of the Attorney General  
110 W. "A" Street, Suite 1100  
San Diego, CA 92101-3702  
Telephone: 619-645-3182 (Ohta)  
619-645-2067 (Worm)  
Fax: 619-645-2062  
[jinsook.ohata@doj.ca.gov](mailto:jinsook.ohata@doj.ca.gov)  
[jon.worm@doj.ca.gov](mailto:jon.worm@doj.ca.gov)

FOR THE STATE OF OHIO

MIKE DEWINE  
Attorney General of Ohio

MICHAEL ZIEGLER  
ERIN B. LEAHY  
Assistant Attorneys General  
Consumer Protection Section  
Ohio Attorney General's Office  
30 E. Broad St., 14th Floor

FOR THE PEOPLE OF THE STATE OF  
ILLINOIS

LISA MADIGAN  
Attorney General of Illinois

ELIZABETH BLACKSTON  
Assistant Attorney General; Chief, Consumer  
Fraud Bureau

PAUL A. ISAAC  
Assistant Attorney General  
Consumer Fraud Bureau  
500 South Second St.  
Springfield, IL 62706  
Telephone: 217-782-4436  
Fax: 217-782-1097  
[pisaac@atg.state.il.us](mailto:pisaac@atg.state.il.us)

FOR THE STATE OF NORTH CAROLINA

ROY COOPER  
Attorney General of North Carolina

David N. Kirkman  
Special Deputy Attorney General  
Consumer Protection Division  
Office of the Attorney General  
114 W. Edenton St.  
Raleigh, NC 27602-0629

Columbus, OH 43215-3414  
Telephone: 614-466-3980 (Ziegler)  
614-752-4730 (Leahy)  
Fax: 866-768-2648  
[Michael.Ziegler@ohioattorneygeneral.gov](mailto:Michael.Ziegler@ohioattorneygeneral.gov)  
[Erin.Leahy@ohioattorneygeneral.gov](mailto:Erin.Leahy@ohioattorneygeneral.gov)

Telephone: 919-716-6000  
Fax: 919-716-6050  
[dkirkman@ncdoj.gov](mailto:dkirkman@ncdoj.gov)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Third Amended Complaint was served via ECF this 27th day of February 2015, upon each of the persons listed below:

Joseph A. Boyle  
Lauri A. Mazzuchetti  
[jboyle@kelleydrye.com](mailto:jboyle@kelleydrye.com)  
[lmazzuchetti@kelleydrye.com](mailto:lmazzuchetti@kelleydrye.com)

Counsel for Dish Network, LLC

/s/ Jon Worm  
JON WORM



EXHIBIT 778

EXHIBIT 778

JA015906

TX 102-015168

**In the case of:**

*THOMAS H. KRAKAUER v*

*DISH NETWORK*

---

*BRUCE WERNER*

*March 17, 2015*



713 LeeStreet  
Charleston, WV 25301

(304) 344-8463  
schedulingrealtime@gmail.com

Realtimereporters.net

JA015907

TX 102-015169

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
3 Civil Action No. 1:114-cv-00333-CCE-JEP

4                   RULE 30(b)(6) VIDEOTAPE DEPOSITION OF:  
5                   BRUCE WERNER - March 17, 2015  
6                   DISH Network L.L.C.

7 THOMAS H. KRAKAUER, on behalf of a class of persons,  
8 Plaintiff,  
9 v.  
10 DISH NETWORK, L.L.C.,  
11 Defendant.

12                   PURSUANT TO NOTICE, the Rule 30(b)(6)  
13 videotape deposition of BRUCE WERNER was taken on  
14 behalf of the Plaintiff at 1900 Grant Street,  
15 8th Floor, Denver, Colorado 80203, on March 17, 2015,  
16 at 9:46 a.m., before Marchelle Hartwig, Certified  
17 Shorthand Reporter and Notary Public within Colorado.  
18  
19  
20  
21  
22  
23  
24

Realttime Reporters, LLC  
schedulingrealtime@gmail.com 304-344-8463

JA015908

TX 102-015170

<p>Page 2</p> <p>1 A P P E A R A N C E S</p> <p>2 For the Plaintiff:</p> <p>3 JOHN W. BARRETT, ESQ.</p> <p>4 Bailey &amp; Glasser, LLP</p> <p>5 209 Capitol Street</p> <p>6 Charleston, West Virginia 25301</p> <p>7 For the Defendant:</p> <p>8 BENJAMIN E. KERN, ESQ.</p> <p>9 Benesch, Friedlander, Coplan &amp; Aronoff, LLP</p> <p>10 41 South High Street</p> <p>11 Suite 2600</p> <p>12 Columbus, Ohio 43215</p> <p>13 BRETT KITEI, ESQ.</p> <p>14 DISH Network L.L.C.</p> <p>15 9601 South Meridian Boulevard</p> <p>16 Englewood, Colorado 80112</p> <p>17 Also Present:</p> <p>18 Shaun van der Veen, Videographer</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>Page 4</p> <p>1 Exhibit 18 Exhibit 194 - E-mail to Werner 54</p> <p>2 from Oberbillig, 1/30/07, Subject:</p> <p>3 Fw: Dish Network Auto Dialer</p> <p>4 calls [Indiana AG], with</p> <p>5 attached e-mails</p> <p>6 Exhibit 26 Letter to Steele from Tassi, 64</p> <p>7 1/3/06, Re: EchoStar Satellite,</p> <p>8 LLC CID Responses</p> <p>9 Exhibit 27 Letter to Tehranchi from Origer, 99</p> <p>10 12/28/06, Re: Notice of Complaint</p> <p>11 "Do Not Call" Violation</p> <p>12 Exhibit 28 Letter to Tehranchi from Origer, 99</p> <p>13 1/17/07 Re: Notice of Complaint</p> <p>14 "Do Not Call" Violation</p> <p>15 Exhibit 29 E-mail to Musso from Origer, 99</p> <p>16 2/15/07, Subject: Re: Satellite</p> <p>17 Systems Network, with attached</p> <p>18 e-mails</p> <p>19 Exhibit 30 Letter to Tehranchi from Origer, 67</p> <p>20 11/7/07, Re: Notice of Alleged</p> <p>21 Complaint "Do Not Call" Violation</p> <p>22 Exhibit 31 E-mail to alex@yourdish.tv from 65</p> <p>23 Jaworski, 1/2/08, Subject: Fw:</p> <p>24 Notice of Alleged Complaint</p> <p>"Do Not Call" Violation - Jeanette</p> <p>Payne, with attached e-mails</p> <p>Exhibit 33 Letter to Tehranchi from Musso, 78</p> <p>11/20/08, Re: Notice of Allegation -</p> <p>Telephone Consumer Protection Act</p> <p>(TCPA)</p> <p>Exhibit 34 E-mail to Snyder from Patty, 83</p> <p>5/28/09, Subject: Re: Satellite</p> <p>Systems Network - Krakauer DNC</p> <p>National 09 07 03, with attached</p> <p>e-mails</p>
<p>Page 3</p> <p>1 I N D E X</p> <p>2 EXAMINATION OF BRUCE WERNER: PAGE</p> <p>3 March 17, 2015</p> <p>4 By Mr. Barrett 8</p> <p>5 DEPOSITION EXHIBITS: INITIAL</p> <p>6 REFERENCE</p> <p>7 Exhibit 2 Expert Report of Anya Verkhovskaya, 112</p> <p>8 A.B. Data, Ltd.</p> <p>9 Exhibit 4 Exhibit 193 - EchoStar Retailer 19</p> <p>10 Agreement between EchoStar</p> <p>11 Satellite L.L.C. and Satellite</p> <p>12 Systems Network, 12/31/04</p> <p>13 Exhibit 6 DISH Network Retailer Agreement 21</p> <p>14 between DISH Network L.L.C. and</p> <p>15 Satellite Systems Network,</p> <p>16 12/31/10</p> <p>17 Exhibit 9 Exhibit 187 - Letter to Tehranchi 51</p> <p>18 from Davidson, 6/12/02, Re:</p> <p>19 Violation of the EchoSphere</p> <p>20 Retailer Agreement</p> <p>21 Exhibit 10 Facts Blast to Dear DISH Network 40</p> <p>22 Retailer from Clark, 7/10/02</p> <p>23 Exhibit 12 Exhibit 185 - Complaint 52</p> <p>24 Exhibit 13 Exhibit 186 - Judgment by Consent 54</p> <p>and Stipulated Permanent</p> <p>Injunction</p> <p>Exhibit 16 Exhibit 191 - Florida Department 52</p> <p>of Agriculture and Consumer</p> <p>Services Department Press</p> <p>Release, 11/4/04</p> <p>Exhibit 17 E-mail to Werner from Oberbillig, 60</p> <p>1/30/07, Subject: Fw:</p> <p>Telemarketing, with attached</p> <p>e-mails</p>	<p>Page 5</p> <p>1 Exhibit 35 E-mail to Laslo from Vendor 81</p> <p>2 Inquiries, 3/20/09, Subject: Fw:</p> <p>3 Telemarketing Issues, with</p> <p>4 attached e-mails</p> <p>5 Exhibit 36 Letter to Tehranchi from Musso, 81</p> <p>6 3/27/09, Re: Notice of Allegation -</p> <p>7 Telephone Consumer Protection Act</p> <p>8 (TCPA)</p> <p>9 Exhibit 37 E-mail to Vendor Inquiries from 75</p> <p>10 Sophie, 4/8/09, Subject: Fw:</p> <p>11 URGENT - Satellite Systems Network -</p> <p>12 Follow Up TCPA/DNC Issues 2 -</p> <p>13 11/20/08 and 03/27/09, with</p> <p>14 attached e-mails</p> <p>15 Exhibit 39 Letter to Tehranchi from Musso, 83</p> <p>16 5/27/09, Re: Notice of Alleged</p> <p>17 Complaint "Do Not Call" Violation</p> <p>18 Exhibit 42 E-mail to Chaykoski from Shaffer, 95</p> <p>19 5/4/10, Subject: Fw: TCPA -</p> <p>20 Campbell, Richard - Log ID: 26720,</p> <p>21 with attached e-mails</p> <p>22 Exhibit 43 E-mail to Shaffer, Vendor Inquiries, 95</p> <p>23 TCPA from Vendor Inquiries, 5/4/10,</p> <p>24 Subject: Re: TCPA - Campbell,</p> <p>Richard - Log ID: 26720, with</p> <p>attached e-mails</p> <p>Exhibit 44 Letter to Tehranchi from Musso, 95</p> <p>5/12/10, Re: Notice of Alleged</p> <p>Complaint "Do Not Call" Violation</p> <p>to the Pennsylvania Attorneys</p> <p>General</p> <p>Exhibit 45 E-mail to Rehan@yourdish.tv from 94</p> <p>Musso, 5/17/10, Subject: Re:</p> <p>Satellite Systems Network -</p> <p>Pennsylvania AG Complaint "Do Not</p> <p>Call" Violation - Campbell, with</p> <p>attached e-mails</p>

<p style="text-align: right;">Page 6</p> <p>1 Exhibit 47 Letter to To Whom It May Concern 99 from Mitchell, 8/16/11, Re: TCPA 2 Violations (again) 3 Exhibit 48 E-mail to Kitei from Berridge, 99 8/18/11, Subject: Re: Important! 4 New Document Uploaded to CSC Matter Management, with attached 5 e-mails 6 Exhibit 66 E-mail to Vendor Inquiries from 73 Musso, 10/15/08, Subject: Re: 7 Record #6186 - Kimble - 8 8257310011384746 - Schoolar, with attached e-mails 9 Exhibit 67 E-mail to Dougherty from Vendor 83 Inquiries, 5/19/09, Subject: 10 Re: TCPA - TCPA - 9194719459 - re thomas krakauer, with attached 11 e-mails 12 Exhibit 77 File Produced Natively - PowerPoint 104 Presentation 13 Exhibit 79 File Produced Natively - PowerPoint 104 Presentation 14 Exhibit 80 File Produced Natively - PowerPoint 104 Presentation 15 Exhibit 81 File Produced Natively - PowerPoint 104 Presentation 16 17 DEPOSITION EXHIBITS: (Previously Marked) 18 Exhibit 1 Plaintiff's Second Amended Notice 8 of Rule 30(b)(6) Deposition Duces 19 Tecum of DISH Network 20 21 22 23 24</p>	<p style="text-align: right;">Page 8</p> <p>1 reporter please swear in the witness. 2 BRUCE WERNER, 3 having been first duly sworn to state the whole truth, 4 testified as follows: 5 EXAMINATION 6 BY MR. BARRETT: 7 Q. Mr. Werner, good morning. 8 A. Good morning, sir. 9 Q. What is your full name? 10 A. My name is Bruce Marcel Werner. 11 Q. And what is your position at DISH 12 Network? 13 A. I'm a program manager. 14 Q. And you are here to testify as to several 15 topics that were set forth in the notice of 16 deposition, and you have that in front of you. It's 17 Exhibit 1. For our record, I want to make sure that I 18 understand that you are testifying on topic 1; is that 19 correct? 20 A. Yes, sir. 21 Q. A-a through d? 22 A. Yes, sir. 23 Q. 4-f and g? 24 A. Yes, sir.</p>
<p style="text-align: right;">Page 7</p> <p>1 WHEREUPON, the following proceedings were 2 taken pursuant to the Federal Rules of Civil 3 Procedure. 4 * * * * * 5 THE VIDEOGRAPHER: This is the videotaped 6 deposition of Bruce Werner, 30(b)(6) representative of 7 DISH Network, taken by the plaintiff in the matter of 8 Thomas H. Krakauer versus DISH Network L.L.C., being 9 Civil Action No. 1:14-cv-0333-CCE-JEP in the United 10 States District Court for the Middle District of North 11 Carolina, held at the offices of Hunter + Geist, Inc., 12 on this 17th day of March, 2015. 13 My name is Shaun van der Veen, and I am 14 the certified legal video specialist. The court 15 reporter is Marchelle Hartwig. We are now on the 16 record. The time is approximately 9:46 a.m. 17 Will counsel please introduce themselves 18 and who they represent. 19 MR. BARRETT: John Barrett for the 20 plaintiff. 21 MR. KERN: Ben Kern for DISH. 22 MR. KITEI: Brett Kitei, in-house counsel 23 for DISH. 24 THE VIDEOGRAPHER: Would the court</p>	<p style="text-align: right;">Page 9</p> <p>1 Q. 4-k and l? 2 MR. KERN: John, 4-i, also. 3 MR. BARRETT: 4-i, okay. 4 Q. (BY MR. BARRETT) 4-i, k and l? 5 A. Yes, sir. 6 MR. BARRETT: And I'm a little confused 7 here. Ben, your e-mail said Mr. Werner was 6 through 8 12, but also said Mr. Mills was 6. 9 MR. KERN: That's correct. 10 MR. BARRETT: Are they both testifying on 11 that topic? 12 MR. KERN: Yes. 13 Q. (BY MR. BARRETT) So 6 through 12? 14 A. Yes, sir. 15 MR. BARRETT: Did I leave anything out 16 there, Ben, do you know? 17 MR. KERN: You did not. Those are all 18 the categories that Mr. Werner is going to testify to. 19 MR. BARRETT: Okay. 20 Q. (BY MR. BARRETT) So program manager is 21 your job title; is that right? 22 A. Yes, sir. 23 Q. And you've had that job for how long? 24 A. A little over four years.</p>

<p style="text-align: right;">Page 10</p> <p>1 Q. Generally, what are your responsibilities 2 as program manager? 3 A. My job -- 4 Q. Yes. 5 A. -- description includes -- my job is to 6 facilitate a variety of conversations with the intent 7 of identifying and mitigating risks that are 8 associated with new customer activations, incentive 9 payments that we make for those activations, all based 10 on retailer agreements and business rules. And to say 11 "facilitate a conversation" is overlarge. 12 Q. Who -- do you share those 13 responsibilities with a peer? Do you divide them up, 14 for example, with you focusing on retailers and 15 another colleague focusing on other kinds of 16 retailers? 17 A. No. 18 Q. Okay. So you have the overall 19 responsibility for engaging in those conversations 20 that you described for all DISH retailers of any kind? 21 A. No. 22 Q. Okay. 23 A. Your -- the question before was do we 24 divide up? And the answer is no, we don't divide them</p>	<p style="text-align: right;">Page 12</p> <p>1 managed by Men Wang. 2 Q. Okay. 3 A. There is a group of people that do 4 reporting, and I'm not real close to the team so I 5 don't know what the reporting looks like in that 6 group, but they provide analytics functions for sales 7 operations. And I manage -- I don't manage. I'm a 8 program manager and I do different functions from 9 those three guys -- four guys -- four different -- 10 three different groups, rather. 11 Q. Okay. Thank you. 12 So in 2009, what was your position at 13 DISH Network? 14 A. In 2009, I was a general manager. 15 Q. And so I want to be fairly precise. 16 You've had this current position as program manager 17 for about four years. And I want to get an 18 understanding in 2009 through 2011 what your position 19 was and what your responsibilities were, so if you 20 could just describe that to me. 21 A. Prior to October 2010, I was general 22 manager of the audit, risk and compliance group. And 23 since roughly October, and I think that's the right 24 day, or approximate dates, rather, I've been a program</p>
<p style="text-align: right;">Page 11</p> <p>1 up, but it's more of the conversations that we have is 2 shared. We all -- through peers or through people 3 that work on the team, we work as a team. 4 Q. Who's on that team with you? 5 A. There is -- I think there is a total of 6 22 or 23 individuals on the team. 7 Q. Are you at the head of the team, so to 8 speak? 9 A. No, sir. 10 Q. Who is? 11 A. Our general manager manages the audit, 12 risk and compliance team. 13 Q. Who is that, the general manager? 14 A. Is Mark Weddle, W-e-d-d-l-e. 15 Q. And just give me a quick overview of the 16 structure of that team. You've got this gentleman, 17 Mr. Weddle, overseeing the team. You're a team 18 member. What are some of the other -- what's the 19 structure of it? 20 A. Mr. Weddle has, I guess, four different 21 groups that he's responsible for. An audit group is 22 supervised by Marques Mehlhorn. 23 Q. Okay. 24 A. There is a compliance team which is</p>	<p style="text-align: right;">Page 13</p> <p>1 manager. 2 Q. Why the change? 3 A. I think my -- as I evolved with the 4 company, I think they found better value in having me 5 focus on different elements of the team. 6 Q. Okay. So let's talk a little bit about 7 the -- well, I'm confused. I want to make sure I'm 8 covering the right topics here with you, but just give 9 me an overview of the development of the OE retailer 10 designation. When did an OE retailer designation come 11 into effect at DISH Network? 12 A. I don't know specifically. It was -- I 13 don't know the specific date -- early in the 2000s. I 14 don't know the specific date. 15 Q. Were you -- do you know why OE 16 retailers -- or do you know the history of how OE 17 retailers came into being? 18 A. As in the why? No. It clearly was -- I 19 would speculate. I don't know why. 20 Q. Okay. 21 MR. BARRETT: Mr. Mills is more of our OE 22 witness? 23 MR. KERN: He's closer to the OE program 24 as such, yes.</p>

<p style="text-align: right;">Page 14</p> <p>1 Q. (BY MR. BARRETT) All right. How does 2 DISH Network -- well, give me, if you can, just an 3 overview of any big-picture changes in the OE program 4 at DISH Network. And I realize that's a broad 5 question, but has DISH worked with OE retailers in 6 pretty much the same fashion since the OE retailer 7 program came into being? 8 A. I don't know what that means, "in the 9 same fashion." 10 Q. How does DISH Network work with OE 11 retailers today in terms of, you know, direct 12 involvement? 13 A. So it is a channel that allows a 14 retailer -- an OE retailer to use a tool, a specific 15 tool, to enter orders. They don't do installations 16 typically. But beyond that, we don't -- like, you 17 mean supervise what they do? 18 Q. Sales meetings, site visits, so on. 19 A. I don't know how we manage the 20 relationship with our OE partners. They have -- we 21 don't manage the OE retailers. We don't manage any of 22 our retailers, frankly. My understanding is we 23 provide a tool that allows them to do a sales-only 24 entry of an order.</p>	<p style="text-align: right;">Page 16</p> <p>1 providing the disclosures that need to be provided? 2 A. During -- well, when a new promotion 3 rolls out, we have a national quality assurance 4 program in place that one monitors some phone calls 5 that retailers -- with certain OE retailers that 6 submit calls, and we monitor those phone calls for 7 compliance. Some of those elements include ensuring 8 certain disclosures are made. 9 Beyond that, the OE retailer is 10 responsible for understanding -- any retailer is 11 responsible for disclosing the terms and conditions of 12 a sale, and we don't really manage that as a normal 13 course of business. 14 Q. What is your responsibility with respect 15 to monitoring these phone calls? Are you the guy who 16 makes sure that it happens? Do you have any 17 responsibility at all? 18 A. Today? 19 Q. Yes. 20 A. I have no responsibility for the 21 monitoring of our OE process. 22 Q. Sorry, I interrupted you. 23 A. Thank you. 24 No, I have no responsibility for</p>
<p style="text-align: right;">Page 15</p> <p>1 Q. Okay. We'll get to some documents. I'm 2 trying to kind of get an overview and then we'll dig 3 into the documents here. 4 Tell me your knowledge of how -- well, I 5 believe Mr. Mills would be the right guy to ask about 6 how new customers -- how OE retailers can access the 7 OE system. 8 MR. KERN: That's 2 or 3. 9 MR. BARRETT: Yeah, yeah. 10 Q. (BY MR. BARRETT) All right. Tell me, if 11 you will, about DISH's efforts to make sure that OE 12 retailers provide disclosures, any kind of 13 disclosures, to new customers that they sign up. 14 A. So you're asking about what mechanisms we 15 use? 16 Q. Sure. First of all, let's talk about 17 disclosures. DISH Network requires that OE retailers 18 make certain disclosures to new customers; is that 19 correct? 20 A. DISH, as a condition of our promotions, 21 requires all retailers to disclose the terms and 22 conditions of orders. 23 Q. And how -- with respect to OE retailers, 24 how does DISH Network make sure that they are</p>	<p style="text-align: right;">Page 17</p> <p>1 oversight of the OE sales process. 2 Q. In the period of 2009 through 2011, did 3 you have some responsibility for monitoring OE 4 retailer telephone calls? 5 A. Yes. 6 Q. And what was your responsibility? 7 A. As the general manager of the audit, risk 8 and compliance group, I had responsibility for 9 supervising folks that engaged or worked with our OE 10 partners to do a variety of functions. 11 Q. Okay. And, again, we have documents and 12 we'll go into that. 13 And you had mentioned "OE partners." Is 14 that a commonly used term at DISH Network, "OE 15 partners"? 16 A. I apologize for injecting a word. OE 17 retailers. I use those terms perhaps inappropriately, 18 but interchangeably. 19 Q. But OE partner is -- it's in the 20 documents and we'll get to that, but "OE partner" is a 21 term that is used to talk about OE retailers at DISH 22 Network. Is that fair? 23 A. Yes, I believe so. Yes. 24 Q. Okay. So you have some responsibility</p>

<p style="text-align: right;">Page 18</p> <p>1 for ensuring that retailers execute retailer 2 agreements with DISH Network; is that correct? 3 A. I'm sorry. Do that again. 4 Q. Yeah. Whose job is it to make sure that 5 OE retailers execute -- read, sign -- retailer 6 agreements with DISH Network? 7 A. You're asking who's responsible -- a 8 retailer is responsible for signing the agreement. 9 Q. Who's responsible for making sure that it 10 happens, that you have a signed agreement? 11 A. All of our retailers are independent 12 contractors. They're responsible for making sure they 13 sign it. 14 Q. I'm saying on the DISH Network side. 15 Somebody from DISH Network has to make sure that they 16 have a retailer agreement with the OE retailer, right? 17 A. I'm confused by the question. 18 Q. Sure. 19 A. There is some moving pieces there. 20 Q. Retailer agreement is between, on the one 21 hand, the retailer and DISH Network, right? 22 A. Okay. I mean, clarify. I mean, we have 23 agreements with retailers. 24 Q. Okay. So let's use Exhibit 4.</p>	<p style="text-align: right;">Page 20</p> <p>1 been the effective -- would the terms generally have 2 been the same? 3 A. Of -- 4 Q. The terms of this agreement generally be 5 the same as any agreement that was in effect in 2009? 6 A. Satellite Systems Network had an 7 agreement that was effective in 2009. I don't agree 8 that the terms would generally be the same. It's a 9 complex document. If there is -- I don't want to 10 characterize them as all the same. 11 Q. Who maintains files containing those 12 agreements at DISH Network? 13 A. There is no person that -- who's 14 responsible for maintaining retailer agreements. 15 Q. So if you were to say, Hey, I would like 16 to get the agreement from 2009 between DISH Network 17 and SSN, who would you ask? 18 A. There is a lot of people who could 19 answer -- who would be able to get that for you. 20 Q. So you could find that document, no 21 problem? 22 A. I would be able to find that document, 23 yes. 24 Q. Okay.</p>
<p style="text-align: right;">Page 19</p> <p>1 (Deposition Exhibit 4 was marked.) 2 Q. I'm going to hand you Exhibit 4. We're 3 jumping around a little bit. 4 A. Okay. 5 Q. Do you recognize Exhibit 4? 6 A. Yes, sir, I do. 7 Q. And this document has been provided and 8 identified in a U.S. v. DISH case. You see it's got 9 Exhibit 193, just for clarity. 10 MR. BARRETT: Ben, that is the exhibit 11 number that was assigned to this document in U.S. v. 12 DISH. 13 Q. (BY MR. BARRETT) This document was 14 identified as the operative retailer agreement between 15 DISH Network, or EchoStar at the time, and SSN. Is 16 that your understanding of what this document -- 17 A. During the period -- it became effective 18 December 31, 2004. 19 Q. And do you have any reason to believe 20 that this document was not effective in the period 21 2009 through 2011? 22 A. This particular document would not have 23 been in effect in 2009. 24 Q. Okay. What document -- what would have</p>	<p style="text-align: right;">Page 21</p> <p>1 (Deposition Exhibit 6 was marked.) 2 Q. I'm going to hand you Exhibit 6 and ask 3 you if you recognize that document. 4 A. Yes, sir, I do. 5 Q. And what is it? 6 A. This is the DISH Network retailer 7 agreement between EchoStar Satellite L.L.C., and 8 Satellite Systems Network effective December 31, 2010. 9 Q. And if you'll look under paragraph B on 10 the first page, can you -- would you agree with me 11 that that is the document that authorizes SSN to 12 market, promote and solicit orders for programming in 13 accordance with and subject to the terms and 14 conditions of this agreement? 15 A. Say that again. 16 Q. This is the document that authorizes 17 the -- SSN to "on a non-exclusive basis" -- do you see 18 that? 19 A. Yes, sir. 20 Q. -- "to market, promote and solicit orders 21 for Programming (as defined below) (an 'Authorized 22 Retailer'), in accordance with and subject to the 23 terms and conditions of this Agreement." 24 Did I read that correct?</p>



<p>Page 22</p> <p>1 A. You missed a few pieces at the beginning 2 of it. 3 Q. Okay. 4 A. This whole document -- this whole 5 document -- not just that phrase, but the whole 6 document covers the relationship. I think it's 7 important to recognize that the retailer is acting as 8 an independent contractor. 9 Q. I see. I did leave that out, you're 10 right. 11 A. Right. And he then -- the whole 12 description of this is that he desires to become -- 13 nobody is making him do it. He desires to become an 14 authorized, non-exclusive -- become an authorized -- 15 I'm sorry. Can I read that aloud -- 16 Q. Sure. 17 A. -- the whole thing, if you don't mind? 18 Q. Sure. 19 A. Subsection B, "Retailer, acting as an 20 independent contractor, desires to become authorized 21 on a non-exclusive basis to market, promote and 22 solicit orders for Programming (as defined below) (an 23 'Authorized Retailer'), in accordance with the 24 subject -- accordance with and subject to the terms</p>	<p>Page 24</p> <p>1 But he did ask "in your view," so if you 2 can answer, go ahead. 3 A. So do the question one more time. 4 Q. (BY MR. BARRETT) Yes. Does Exhibit 6, 5 this agreement, permit DISH Network to force -- 6 MR. BARRETT: Actually, let's read the 7 original question. I like the original question. 8 MR. KERN: Same objection once it's read. 9 (The last question was read back as 10 follows: "Does that authorize DISH Network to take 11 action to prohibit its dealers from engaging in 12 illegal telemarketing?") 13 A. No. I don't know -- the answer is no, 14 because I think the relationship -- retailers are 15 responsible for how they market their products. DISH 16 can take actions in response to, you know, if 17 something goes wrong or a telemarketing issue 18 occurs -- I'm sorry. If an illegal telemarketing 19 action occurs, DISH can take action with any 20 agreement, but I don't think -- DISH, I don't think, 21 takes -- doesn't demand retailers to do anything. 22 They do their own. We provide expectations in the 23 retailer agreement. 24 Q. (BY MR. BARRETT) What actions can DISH</p>
<p>Page 23</p> <p>1 and conditions of this Agreement." 2 Q. Okay. What is a Charlie Chat? Does that 3 name mean anything to you, that term? 4 A. Yes, it does. 5 Q. What is it? 6 A. Periodically, different functions or 7 different groups of our business sponsor broadcast 8 trainings, I guess, maybe updates for retailers and 9 other audiences. Charlie Chat is the title that's 10 been associated with those kind of somewhat informal 11 communications for years. 12 They are applicable to customers and 13 retailers and subsections of, you know, people that 14 sell Latino markets and that sort of thing, and I 15 think a lot of them have the title "Charlie Chat." 16 Q. In your view, does this retailer 17 agreement that we have just looked at, Exhibit 6 -- is 18 that Exhibit 6? 19 A. Yes, sir. 20 Q. Does that authorize DISH Network to take 21 action to prohibit its dealers from engaging in 22 illegal telemarketing? 23 MR. KERN: I'm going to object insofar as 24 it calls for a legal conclusion.</p>	<p>Page 25</p> <p>1 take? 2 A. For what? 3 Q. For when a retailer engages in illegal 4 telemarketing. 5 MR. KERN: Same objection. And to the 6 extent that we're asking what this document permits 7 DISH to do, if we can agree to a running objection, I 8 can allow -- if you're okay with that. 9 MR. BARRETT: Sure. 10 A. The retailer agreement allows this 11 agreement -- again, are we talking in general or are 12 we talking for Satellite Systems Network? 13 Q. (BY MR. BARRETT) Okay. Let's talk about 14 Satellite Systems Network. 15 A. Okay. This is the agreement I've got. 16 The agreement allows DISH, should violations of the 17 retailer agreement occur, to take action up to and 18 including termination. 19 Q. Can, under this agreement, DISH require 20 SSN to engage a third-party compliance outfit such as 21 PossibleNOW? 22 A. Does the agreement allow us to require 23 that? 24 Q. No. Does the agreement allow you to --</p>

<p style="text-align: right;">Page 26</p> <p>1 yes. Does the agreement allow DISH Network to require 2 that SSN engage a third-party compliance outfit such 3 as PossibleNOW? 4 A. In this agreement, it doesn't address the 5 PossibleNOW, but business rules are attached to or 6 referenced in the agreement, and those -- we have 7 business rules that require, not just SSN, but 8 retailers with certain thresholds of volume to engage 9 the services of PossibleNOW. 10 Q. In 2011, was SSN required to engage the 11 services of PossibleNOW? 12 A. I believe so. Again, it would have been 13 dependent on the volume, the sales volume. If they 14 did more than 50 a month, I think that qualified, so 15 they would have been required to participate with 16 PossibleNOW. 17 Q. How would DISH Network make sure that it 18 was participating with PossibleNOW? 19 A. I don't know. I think there is 20 probably -- whoever manages our relationship with 21 PossibleNOW would probably have been reporting. 22 Again, I wasn't responsible for the sales channel, so 23 to whether or not SSN, Satellite Systems Network, used 24 PossibleNOW or not, I don't know who would verify</p>	<p style="text-align: right;">Page 28</p> <p>1 7.3, you said? 2 Q. Yes, sir. 3 A. Thank you. And you said to myself or 4 aloud? 5 Q. Just to yourself. 6 MR. KERN: While he's reading, I'll 7 reiterate the objection to the extent that you're 8 going to ask him to interpret this document, that he's 9 not an attorney, to the extent that your questions 10 call for a legal conclusion. And then if we can keep 11 the running objection. 12 MR. BARRETT: Sure. 13 Q. (BY MR. BARRETT) Now, if you could just 14 read out loud, please, the sentence that begins with 15 the word "Furthermore." And I'm going to ask you a 16 couple of questions about that. 17 A. So fourth line down, "Furthermore, 18 Retailer shall take all actions and refrain from 19 taking any action, as requested by DISH in connection 20 with the marketing, advertisement, promotion, and/or 21 solicitation of orders for Programming and/or the 22 sale, lease or other transfer of DISH Systems, 23 Promotional Certificates and Prepaid Cards, and 24 Retailer shall cooperate by supplying DISH with any</p>
<p style="text-align: right;">Page 27</p> <p>1 that. I'm confident there was a process in place. I 2 don't know what that was. 3 Q. Okay. If you'll turn, please, to page 16 4 of Exhibit 6. 5 A. I'm sorry. 16? 6 Q. Yes, sir. Paragraph 7.3. 7 A. My page 16 -- 8 Q. I'm sorry. It's page 16 of 32. 9 A. I have an agreement that has page 16 of 10 39. 11 Q. Okay. 12 MR. KERN: Mine says 17 of 39 if you're 13 talking about 7.3. 14 MR. BARRETT: Okay. May I use this copy? 15 MR. KERN: Yes. 16 MR. BARRETT: Thanks. 17 THE VIDEOGRAPHER: Your microphone fell 18 off. 19 Q. (BY MR. BARRETT) Can you take just a 20 minute, please, to read paragraph 7.3 just to 21 yourself. 22 A. Page 17 now? 23 Q. Yes, sir. 24 A. Okay. I'm sorry. In subsection what?</p>	<p style="text-align: right;">Page 29</p> <p>1 information arising from or relating to those actions 2 within two days following a reasonable DISH request." 3 Q. And would you agree with me that that 4 gives DISH considerable power to ensure that its 5 authorized retailers do not engage in illegal 6 telemarketing? 7 A. I think that sentence speaks for itself. 8 I don't -- 9 Q. Would you agree with that statement, that 10 DISH does have considerable power to ensure that its 11 authorized retailers do not telemarket illegally? 12 MR. KERN: Objection as to form. 13 A. Are we talking about this sentence and 14 SSN? 15 Q. (BY MR. BARRETT) Well, just generally 16 speaking, I'm asking. And you've read the sentence 17 aloud. It says what it says. I'm not asking you to 18 read it again. I'm just saying, do you agree with the 19 statement that DISH had considerable power to ensure 20 that its authorized retailers did not engage in 21 illegal telemarketing? 22 MR. KERN: Same objection. 23 Answer to the extent that you understand 24 what that sentence means.</p>

<p style="text-align: right;">Page 30</p> <p>1 A. So this sentence, in my mind, has got 2 nothing to do with telemarketing, but it's got 3 everything to do with -- DISH is a big company like 4 Sears, like any big retailer in the world. And what 5 this sentence speaks to, for any -- to me, to any 6 retailer that chooses on an independent -- as an 7 independent contractor to sell DISH services, that 8 wants to do that, they desire to do it, as we read 9 earlier, these are rules that -- there are rules that 10 DISH puts in place to make sure that in the marketing 11 and advertising and promotion, that there is a 12 consistency as our sale processes are done across the 13 U.S. 14 It's a matter of -- this speaks to me -- 15 again, talking about this sentence, okay, if I've 16 got -- if we've got a promotion that goes out to the 17 street for 29.99, the independent retailer is obliged 18 to sell that product at 29.99. If a customer wants to 19 have ESPN, they have to buy it with the package that 20 ESPN comes with. They can't -- a retailer can't sell 21 that differently. 22 If a promotion requires a piece of 23 equipment to be installed for that promotion, a 24 retailer isn't allowed to install another receiver.</p>	<p style="text-align: right;">Page 32</p> <p>1 condition of doing business with us, SSN, you need to 2 show us that you are training your personnel in 3 telemarketing compliance? 4 A. Does this agreement -- I'm sorry. One 5 more time. 6 MR. BARRETT: Yeah. 7 (The last question was read back as 8 follows: "In your view, does this retailer agreement 9 give DISH the authority to say, As a condition of 10 doing business with us, SSN, you need to show us that 11 you are training your personnel in telemarketing 12 compliance?") 13 MR. KERN: Same objection. 14 A. And we're talking Satellite Systems 15 Network? 16 Q. (BY MR. BARRETT) Yes, sir. 17 A. Not all of our retailers? 18 Q. Yes, sir. 19 A. So our agreement requires that our 20 retailers need to be compliant with the law. We have 21 business rules that require, based on volume, 22 Satellite Systems Network needs to participate or work 23 with PossibleNOW. I don't know the business rules to 24 the detail that it requires Satellite Systems Network</p>
<p style="text-align: right;">Page 31</p> <p>1 It's managing the sales process. 2 This has got nothing to do with the color 3 of the van, the shirts they wear, the number of 4 employees, the process that they use to sell. It's 5 everything to do with the sales process, but I don't 6 think this sentence speaks to telemarketing in any 7 respect. 8 Q. (BY MR. BARRETT) Well, what it says is 9 it shall -- just reading it, "shall take all actions 10 and refrain from taking any action, as requested by 11 DISH in connection with the marketing, advertisement, 12 promotion and/or solicitation of orders for 13 Programming." I'll just stop there. 14 To me, when I read that, that invests or 15 vests considerable authority in DISH Network with 16 respect to its dealers to use telemarketing. Is that 17 an unfair understanding, in your review? 18 A. I don't know if that's unfair. I read it 19 this is focused on the sale of our equipment from 20 independent retailers that want to do the business, 21 and we have rules that say, If you're going to sell, 22 you're going to sell it our way. 23 Q. In your view, does this retailer 24 agreement give DISH the authority to say, As a</p>	<p style="text-align: right;">Page 33</p> <p>1 to do training or whatever. There are different 2 modules that I understand that Possible has -- 3 PossibleNOW has. 4 Our agreement doesn't require Satellite 5 Systems Network to do any training. They're 6 independent. They're an independent retailer. They 7 can do what they need to be able to -- they have an 8 opportunity to sell our product. It's up to them to 9 put the mechanisms in place that makes them compliant 10 with the law, and we have -- we provide an opportunity 11 to take advantage of our relationship that we have or 12 a retailer can have with PossibleNOW. I don't think 13 it requires anything except to be compliant with law. 14 Q. And I think you're answering a slightly 15 different question than the one I asked. I'm not 16 actually asking if the retailer agreement requires SSN 17 to show DISH that its personnel has engaged -- has 18 been trained in telemarketing compliance. I realize 19 this agreement does not say that. 20 I'm just asking you if this agreement 21 authorizes DISH to tell SSN, for example, Your 22 personnel must be trained in TCPA compliance. 23 MR. KERN: Same objection. 24 Q. (BY MR. BARRETT) As a condition of doing</p>

<p style="text-align: right;">Page 34</p> <p>1 business with us. In other words, the agreement 2 itself doesn't say that. I'm just saying, does it 3 give DISH the authority to tell SSN, Your personnel 4 must be trained in TCPA compliance? 5 MR. KERN: Same objection. 6 A. I don't believe it requires -- our 7 agreement doesn't require a retailer to do any 8 training. 9 Q. (BY MR. BARRETT) And I'm not saying that 10 it does. I'm saying, does it give DISH the authority 11 to tell SSN, You must undergo this training in TCPA 12 compliance in order to do business with us? 13 MR. KERN: Same objection. 14 A. I think in our agreement it's clear that 15 our retailer -- Satellite Systems Network is an 16 independent retailer. We don't tell -- we don't tell 17 them what to do. They need to be compliant with 18 whatever they do to sell the product. 19 Q. (BY MR. BARRETT) Well, you tell them 20 they need to use PossibleNOW, right? 21 A. Correct. 22 Q. So you can -- why can you not tell them, 23 You have to engage in telemarketing compliance 24 training?</p>	<p style="text-align: right;">Page 36</p> <p>1 Q. (BY MR. BARRETT) Why -- why -- why can 2 they tell them, You have to engage PossibleNOW, but 3 they can't tell them, You have to show us that your 4 personnel are trained in telemarketing compliance? 5 I'm having difficulty reconciling those two things and 6 understanding any difference between the two at all. 7 MR. KERN: Objection. Asked and 8 answered. Calls for a legal conclusion. 9 A. I can't answer the question. 10 Q. (BY MR. BARRETT) Do you know of any 11 retailers who -- OE retailers who use telemarketing 12 who were fined by DISH Network for engaging in illegal 13 telemarketing? 14 A. Since when? 15 Q. Let's say before December 31, 2011. 16 A. I know that at times, retailers have been 17 penalized for violations of TCPA. There is a bunch of 18 pieces, I think, attached to that. I don't remember 19 right now a specific retailer, but I know we have 20 penalized retailers for activity. 21 Q. Was SSN ever penalized for engaging in 22 illegal telemarketing by DISH Network? 23 A. I believe they were. I don't remember. 24 In the back of my head -- this is prior to 2011,</p>
<p style="text-align: right;">Page 35</p> <p>1 A. So I can create -- I'm sorry. What was 2 the question? 3 Q. Why can't DISH tell SSN, You need to show 4 us that you are training your personnel in 5 telemarketing compliance? 6 A. I'm going to go back to the same thing. 7 They're an independent business. They need to be 8 compliant with the laws. We don't tell retailers what 9 to do. 10 Q. But you just -- you told them that they 11 have to use PossibleNOW, right? Retailers have to 12 engage PossibleNOW if they're going to use 13 telemarketing at a certain volume. Is that correct? 14 A. That is correct, yes. 15 Q. So why can't -- can DISH Network also 16 tell this retailer, SSN, You have to show us that your 17 personnel are being trained in telemarketing 18 compliance as a condition of doing business? 19 MR. KERN: Objection. Asked and 20 answered. 21 A. I can't answer the question. You're -- 22 make sure -- what was -- the question was, why can't 23 DISH tell Satellite Systems Network? Because they're 24 an independent retailer.</p>	<p style="text-align: right;">Page 37</p> <p>1 though, I think. I believe there was a penalty that 2 was assessed. I don't know the details. 3 Q. Who would know that? 4 A. It would be in the compliance file that 5 was associated with Satellite Systems Network. 6 Q. SSN is not today a DISH Network retailer; 7 is that correct? 8 A. No, sir, they're not. 9 Q. And do you know why? 10 A. We placed the retailer on hold in 2003. 11 We essentially put them out of business in 2013 at the 12 direction of our counsel having to do with a Donaca 13 case that was out. 14 Q. Okay. I believe the first part of your 15 answer was you placed them on hold in 2003? 16 A. No. I'm sorry, 2013. I'm sorry. I 17 apologize. 2013. 18 Q. That's all right. 19 A. Good catch. Essentially that puts them 20 out of business. 21 Q. "Placed them on hold," is that the term 22 that you used? 23 A. Correct. We essentially limited access 24 to the tools. They couldn't do reconciliations based</p>

<p style="text-align: right;">Page 38</p> <p>1 off our documents. They were essentially out of 2 business. We put them out of business. Or I'm sorry, 3 we functionally terminated the agreement. 4 Q. Was -- that happened in 2013 on advice of 5 counsel, and I don't need to ask you about what that 6 advice was or any details about that. But I would 7 like to know if DISH Network had considered 8 terminating SSN prior to 2013. 9 A. I'm not aware of any conversation for 10 that. I don't know why it would do that. 11 Q. Okay. 12 MR. KERN: Need a break? 13 MR. BARRETT: Let's take a short break. 14 THE VIDEOGRAPHER: We are going off the 15 record. The time is 10:37. 16 (Recess taken, 10:37 a.m. to 10:44 a.m.) 17 THE VIDEOGRAPHER: We are back on the 18 record at 10:44. 19 Q. (BY MR. BARRETT) All right. Mr. Werner, 20 let's talk a little bit about monitoring of telephone 21 calls with respect to SSN back in 2009 through 2011, 22 that time frame. If DISH Network personnel wanted to 23 monitor any telephone call placed by SSN, how would 24 that happen?</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. (BY MR. BARRETT) Was there a way to -- 2 or could a DISH Network employee visit SSN's call 3 center and listen in on any calls at the call center? 4 MR. KERN: Objection. Foundation. 5 But go ahead. 6 A. So could a DISH employee listen to a 7 phone call at SSN's call center? 8 Q. (BY MR. BARRETT) Yes, sir. 9 A. I think so, yeah. 10 Q. Did that regularly happen? 11 A. There was a time -- I don't know dates 12 and I'm peripherally aware that we had field folks in 13 many of our OE call centers or the centers that are 14 associated with our OE retailers. I don't know that 15 it happened with Satellite Systems Network. 16 Q. Okay. I'll talk to Mr. Mills more about 17 that. 18 This is Exhibit 10. 19 (Deposition Exhibit 10 was marked.) 20 Q. Do you recognize Exhibit 10? 21 A. Yes, sir. 22 Q. What is it? 23 A. It's the first time I have seen this 24 document. This is a Facts Blast and it's dated</p>
<p style="text-align: right;">Page 39</p> <p>1 MR. KERN: John, if I could -- I'm fine 2 with the line of questioning. It seems as if this 3 relates to 4-e, which is Mr. Mill's category. 4 MR. BARRETT: Okay. 5 MR. KERN: I mean, just so long as we 6 don't get too far into the weeds -- 7 MR. BARRETT: Sure. 8 MR. KERN: -- I'm fine with Bruce 9 answering what he can answer. 10 MR. BARRETT: Sure. 11 A. So there would be -- typically there 12 would be one of two different ways. We would not be 13 able to listen to all of their phone calls. We're not 14 set up to be able to log into their switch or 15 whatever, listen to live calls or all calls. 16 We require OE retailers to provide -- we 17 require retailers to provide recorded phone calls for 18 us to be evaluated by our national QA group. So one 19 way we would do it is a request from our national QA 20 folks to provide a -- make available to us a copy of a 21 call. 22 If we received a complaint might be 23 another way where we would request a copy of a 24 recording.</p>	<p style="text-align: right;">Page 41</p> <p>1 July 10 from Chris Clark, vice president of special 2 distribution, titled "Important Telemarketing and 3 Advertising Clarification." 4 Q. Have you seen any updates to this 5 document? You said you haven't seen this document 6 before. Have you seen a document like it, just at a 7 later period of time? 8 A. Periodically -- again, today or -- 9 Q. Okay. Let's talk about before the end of 10 2011. 11 A. Okay. There have been in my time -- and 12 I kind of took this function. I was responsible for 13 the compliance functions as a general manager in 14 approximately 2006. Time since then, we have 15 published, not this -- republished this document. We 16 have published documents that deal with telemarketing 17 in a variety of different ways. 18 Q. Is that before 2011? What I'm trying to 19 get a handle on -- just kind of cut to the chase 20 maybe. Sorry if I'm asking thick questions, but I 21 just want to get a handle on what the written policies 22 were at DISH Network regarding telemarketing prior to 23 the end of 2011. Of course this document -- we have 24 this document, Exhibit 10. Are there other documents</p>

<p style="text-align: right;">Page 42</p> <p>1 that you're aware of?</p> <p>2 A. I'm confident there were other documents</p> <p>3 that addressed telemarketing. I can't tell you which</p> <p>4 ones or how frequently they were published. I know</p> <p>5 they were there.</p> <p>6 Q. Okay. As a part of DISH's business rules</p> <p>7 up until the end of 2011, was an OE retailer required</p> <p>8 to get DISH's express written consent -- and, again,</p> <p>9 I'm reading from this document, which I understand you</p> <p>10 haven't seen before. Was an OE retailer required to</p> <p>11 get DISH's express written consent to hire or use</p> <p>12 third parties such as third-party telemarketers?</p> <p>13 A. Were they required to use them?</p> <p>14 Q. Were they required to get DISH's express</p> <p>15 written consent to use them.</p> <p>16 A. The answer is yes.</p> <p>17 Q. And was that a policy that was consistent</p> <p>18 throughout the end of 2011?</p> <p>19 A. The answer is yes.</p> <p>20 Q. Whose job was it to be sure that in 2009</p> <p>21 through 2011 that OE retailers were obtaining DISH's</p> <p>22 written consent to use third-party telemarketers?</p> <p>23 A. So it would be the retailer's</p> <p>24 responsibility to tell DISH any time they used a third</p>	<p style="text-align: right;">Page 44</p> <p>1 A. Yes.</p> <p>2 Q. Okay. Let me ask you if you agree with</p> <p>3 this statement. If SSN were to obtain a new customer</p> <p>4 through illegal telemarketing and that was a new DISH</p> <p>5 customer back in 2000- -- let's say in 2010, would</p> <p>6 DISH Network be benefiting from SSN's illegal</p> <p>7 telemarketing?</p> <p>8 MR. KERN: Objection as to foundation.</p> <p>9 Calls for a legal conclusion.</p> <p>10 A. I don't know the benefit part, and I</p> <p>11 don't think there has been any evidence that there</p> <p>12 have been any illegal telemarketing sales associated</p> <p>13 with illegal -- we haven't talked about any specifics</p> <p>14 to talk about what was illegal telemarketing, so</p> <p>15 it's -- I've got to speculate. I can't answer the</p> <p>16 question.</p> <p>17 Q. (BY MR. BARRETT) And let me try to lay</p> <p>18 the foundation. An OE retailer's job is to -- broadly</p> <p>19 speaking, is to obtain new customers for DISH Network.</p> <p>20 Is that accurate?</p> <p>21 A. That's pretty narrow.</p> <p>22 Q. But is that one of their functions?</p> <p>23 A. Is to sell our product, yes.</p> <p>24 Q. Yes. So when an OE retailer signs up a</p>
<p style="text-align: right;">Page 43</p> <p>1 party for any sales functions. Or what does it say?</p> <p>2 Advertising -- I mean, they were -- any time they used</p> <p>3 a third party -- a retailer was required to tell DISH</p> <p>4 when they're using a third party, yeah.</p> <p>5 Q. Whose job at DISH was it to make sure</p> <p>6 that that happened?</p> <p>7 A. Again, we didn't --</p> <p>8 Q. It's a DISH policy. You have to get our</p> <p>9 written permission to use third-party telemarketers,</p> <p>10 so whose job is it -- was it in 2009 through 2011 to</p> <p>11 make sure that that happened?</p> <p>12 A. I don't think there was anybody that was</p> <p>13 tasked with that. We don't know who does</p> <p>14 telemarketing. And by that, I think you're talking</p> <p>15 outbound telemarketing, but whatever. We don't -- we</p> <p>16 don't know.</p> <p>17 Again, I'm back to the thing about</p> <p>18 they're independent contractors. They do their</p> <p>19 business, OE or otherwise, and I don't know that I was</p> <p>20 aware who did outbound telemarketing. Who was</p> <p>21 required to fulfill or send in forms or let us know?</p> <p>22 Nobody was required at DISH to do that.</p> <p>23 Q. In 2009 through 2011, you knew that SSN</p> <p>24 was using outbound telemarketing, right?</p>	<p style="text-align: right;">Page 45</p> <p>1 new customer, the business transaction is between the</p> <p>2 customer and DISH Network, right?</p> <p>3 A. One of the relationships is that, yeah.</p> <p>4 Q. The customer signs up directly with DISH</p> <p>5 through the OE system, right?</p> <p>6 A. Well, that's not direct. That's through</p> <p>7 the retailer.</p> <p>8 Q. Of course. Yes. But the retailer makes</p> <p>9 basically -- when a retailer calls up a potential new</p> <p>10 customer, the customer says, Yes, I'm interested, the</p> <p>11 retailer accesses the OE system, right, and enters</p> <p>12 information into the OE system. Then there is an</p> <p>13 agreement going forward, a business transaction</p> <p>14 between the customer and DISH Network. Is that an</p> <p>15 accurate description of how the OE system generally</p> <p>16 works?</p> <p>17 MR. KERN: Objection to form.</p> <p>18 A. Any customer that sets up for DISH --</p> <p>19 sets up for DISH service is -- well, depending on the</p> <p>20 promotion, a customer may be bound in a contractual</p> <p>21 relationship with DISH, yes.</p> <p>22 Q. (BY MR. BARRETT) Yes. Okay. So the</p> <p>23 customer has a contractual relationship with DISH.</p> <p>24 The customer obtained through -- by an OE retailer's</p>

<p style="text-align: right;">Page 46</p> <p>1 telemarketing enters into a contractual relationship 2 with DISH Network. Is that accurate? 3 A. I think that summarizes what I said, 4 yeah. 5 Q. Okay. So assume for a minute that an OE 6 retailer makes an illegal telemarketing call. Signs 7 up or obtains -- the customer who receives the call 8 says, Yes, I would like a DISH subscription. And as a 9 result of the telemarketing call, the customer enters 10 into a contractual relationship with DISH, right? My 11 question is: Is DISH benefiting from illegal 12 telemarketing under that example? 13 MR. KERN: Objection as to form, 14 foundation and calls for a legal conclusion. 15 A. I think that DISH has a customer. I 16 don't know what "benefited" means. 17 Q. (BY MR. BARRETT) Financial, gets money 18 as a new customer. 19 A. So there is an income. There is costs 20 associated. There is a relationship with the 21 customer, so the customer is going to benefit. There 22 is multiple touch points, yes. 23 Q. But does DISH benefit from that call -- 24 MR. KERN: Same objection.</p>	<p style="text-align: right;">Page 48</p> <p>1 Q. (BY MR. BARRETT) Okay. Let's say 2 that -- just assume that it is illegal. Assume that a 3 call to someone who is on the Do Not Call Registry is 4 placed and that that call is illegal. It's a 5 violation of the TCPA. And I realize you're not a 6 lawyer and I'm not asking you to opine on whether, in 7 fact, that call was illegal. I'm saying assume that 8 it is. 9 MR. KERN: Same objection. 10 Q. (BY MR. BARRETT) Does DISH benefit from 11 that illegal call when John Smith is signed up to a 12 long-term DISH Network satellite TV subscription? 13 MR. KERN: Same objection. 14 A. So do we benefit at the time of the sale? 15 Q. (BY MR. BARRETT) Ever. 16 A. Ever. It's possible. It's possible. 17 Q. It's pretty likely, isn't it? I mean, 18 I'm talking about a five-year subscription for 19 Mr. Smith. 20 A. Depending on the promotion that the -- in 21 your illustration, Satellite Systems Network, 22 depending on the promotion that they sold this 23 customer, there may be or may not be a commitment. 24 There may not be long term. It may be, you know --</p>
<p style="text-align: right;">Page 47</p> <p>1 Q. (BY MR. BARRETT) -- financially? 2 A. I believe DISH has a relationship with 3 our customers, and there is a long-term expectation 4 that there will be a benefit to it, yeah. 5 MR. KERN: John, are you asking whether 6 there is a benefit right then or ever? 7 MR. BARRETT: Ever. 8 Q. (BY MR. BARRETT) Let's say -- we'll be 9 more granular with my hypothetical. So SSN places a 10 call to a customer, John Smith. It's an illegal call. 11 John Smith is on the national Do Not Call Registry and 12 is receiving a telemarketing call. John Smith says, 13 Yes, I would like a DISH Network subscription. 14 SSN accesses the OE system to sign the 15 customer up, John Smith up to receive DISH Network 16 services, satellite TV subscription. John Smith pays 17 the bill on a monthly basis, is a long-time customer 18 of DISH Network. Five years he keeps this DISH 19 Network plan. Does DISH benefit from that illegal 20 call to Mr. Smith? 21 MR. KERN: Objection as to form, 22 foundation and calls for a legal conclusion. 23 A. So where I get hooked up on this is I 24 don't know what "illegal" is.</p>	<p style="text-align: right;">Page 49</p> <p>1 depending on the promotion. There is a lot of moving 2 pieces to it. 3 Q. Just assume it's a standard promotion, 4 and I realize there are different promotions. But 5 when DISH Network rolls out a motion, it doesn't roll 6 it out to lose money. It rolls it out to make money 7 and to gain new customers, and that's what it's in 8 business to do. I'm not judging that at all. But 9 assume it's a fairly standard promotion. 10 MR. KERN: Same objection, and I believe 11 asked and answered. 12 MR. BARRETT: I don't think so, because 13 we're getting into the weeds about whether this 14 promotion or that promotion. 15 Q. (BY MR. BARRETT) I'm just asking you to 16 assume it's a standard promotion. 17 A. Again, would DISH benefit from it? 18 Q. Yes. 19 A. If we have a subscriber, the intent is to 20 make money off of it. I don't think there is any 21 evidence, though, that -- and forgive me for jumping, 22 I've never seen more than an allegation that something 23 in violation of TCPA laws or whatever occurred. I 24 don't believe I've ever seen this hypothetical that if</p>

<p style="text-align: right;">Page 50</p> <p>1 a do-not-call violation occurred -- of all the -- in 2 that -- whatever that six-or-so years where I was 3 responsible for, or close to that, I don't think I saw 4 evidence that there were do-not-call violations. So 5 to be hypothetical about would we make money, perhaps. 6 Q. Do you have an opinion about whether SSN 7 engaged in illegal telemarketing? 8 MR. KERN: Objection. Calls for a legal 9 conclusion. 10 A. I don't have an opinion about it. 11 Q. (BY MR. BARRETT) Okay. Let me take 12 those exhibits, if I may. 13 You're welcome to look at this, but topic 14 4-a on our notice is disciplinary action taken against 15 SSN for engaging in noncompliant telemarketing or any 16 other violation of its retailer agreement. Can you 17 tell me about all such disciplinary action? 18 A. In -- over what period again? 19 Q. At any time in DISH's relationship with 20 SSN. 21 A. So to my knowledge, with the one 22 exception of a penalty, perhaps -- I don't recall the 23 details on that one -- I don't recall there was any 24 disciplinary action that we exercised against</p>	<p style="text-align: right;">Page 52</p> <p>1 Q. Okay. So you have no knowledge about 2 what the nature of the infraction that's referenced in 3 that letter is? 4 A. No, sir. 5 Q. All right. 6 (Deposition Exhibit 16 was marked.) 7 Q. I'm handing you Exhibit 16. Have you 8 seen Exhibit 16 before? 9 A. No, sir, I have not. 10 Q. Do you know who Vitana, V-i-t-a-n-a, 11 Financial Group is? 12 A. No, sir. 13 Q. There has been a statement that Vitana 14 Financial Group is another name that SSN did business 15 under. Do you have any knowledge of that? 16 MR. KERN: Objection. Foundation. 17 A. I'm not aware of Vitana Financial Group 18 at all. 19 (Deposition Exhibit 12 was marked.) 20 Q. (BY MR. BARRETT) I'm handing you 21 Exhibit 12. Without reading the entire document, 22 because it's quite long, are you familiar with 23 Exhibit 12? 24 A. Your question is am I familiar with this</p>
<p style="text-align: right;">Page 51</p> <p>1 Satellite Systems Network. 2 Q. And the penalty that you just mentioned 3 is the penalty that you were talking about earlier in 4 your testimony? 5 A. You mentioned it. I recall -- I would 6 have to research to make sure. 7 Q. And to determine whether, in fact, there 8 was a penalty, you would look at the compliance file 9 for SSN; is that right? 10 A. Correct. And a penalty may have nothing 11 do with DNC violations. 12 Q. What do you think it may have to do with? 13 A. I don't. I'm sorry, I can't -- I have a 14 blank. Even if there was one, I don't -- 15 Q. Okay. The next topic is "All 16 investigations of SSN relate to noncompliant 17 telemarketing or violations of SSN's Retailer 18 Agreement," and I have some documents that we can 19 review that will help us here. 20 A. Okay. 21 (Deposition Exhibit 9 was marked.) 22 Q. I'll hand you Exhibit 9. Have you seen 23 Exhibit 9 before? 24 A. I have not.</p>	<p style="text-align: right;">Page 53</p> <p>1 document? 2 Q. Yes, sir. 3 A. No, sir, I'm not. 4 Q. Are you aware if any enforcement 5 proceedings brought against Satellite Systems Network 6 in the state of North Carolina? 7 A. I'm not aware of that, no, sir. 8 Q. I just -- if I look at the caption of 9 this document there, it says State of North Carolina 10 versus Vitana Financial Group, a California 11 Corporation doing business as Satellite Systems 12 Network, LLC. It also mentions Direct Satellite 13 Network Solutions and Alex Tehranchi, individually and 14 as an agent and principal officer of Vitana. 15 Does that refresh your recollection as to 16 any connection between SSN and Vitana Financial Group? 17 A. I'm not aware of Vitana at all, so this 18 can't refresh me, no, sir. Forgive me, but does this 19 have anything to do with DISH? 20 Q. I don't know. We'll read the document 21 later and find out. 22 A. I'm sorry. Yeah. I just turned to a 23 page that says DirecTV on it. I just didn't know -- 24 Q. Right.</p>



<p style="text-align: right;">Page 54</p> <p>1 A. -- if it had to do with DISH or whatever.</p> <p>2 Q. Right. I'm not sure.</p> <p>3 A. Because they sold -- over time they sold</p> <p>4 different products, too.</p> <p>5 Q. Yes.</p> <p>6 (Deposition Exhibit 13 was marked.)</p> <p>7 Q. I'm handing you Exhibit 13. Take a look</p> <p>8 at that, if you will, to -- again, without reading the</p> <p>9 entire legal document. I'll represent that --</p> <p>10 Mr. Werner, that this is a -- as it's styled, a</p> <p>11 "Judgment by Consent and Stipulated Permanent</p> <p>12 Injunction," directed to, among others, Satellite</p> <p>13 Systems Network, LLC, and Alex Tehranchi. Were you</p> <p>14 aware of this document?</p> <p>15 A. No, sir. I'm back to I don't know</p> <p>16 anything about Vitana Financial Group and this</p> <p>17 document is unknown to me.</p> <p>18 Q. Do you have any knowledge of SSN being</p> <p>19 fined in the state of North Carolina for engaging in</p> <p>20 illegal telemarketing?</p> <p>21 A. I'm not aware of that, no, sir.</p> <p>22 (Deposition Exhibit 18 was marked.)</p> <p>23 Q. I'm handing you Exhibit 18. Have you --</p> <p>24 MR. KERN: I'm going to object to this</p>	<p style="text-align: right;">Page 56</p> <p>1 account, a Pacer account, can access.</p> <p>2 MR. KERN: Is Mr. Werner's name -- I</p> <p>3 mean, these are privileged documents and he would be</p> <p>4 testifying about privileged issues.</p> <p>5 MR. BARRETT: I think we better call the</p> <p>6 Court.</p> <p>7 MR. KERN: I think that's okay. Do you</p> <p>8 want to call them right this moment for it or would</p> <p>9 you rather call it at the end?</p> <p>10 MR. BARRETT: I'm not coming back out</p> <p>11 here. I mean, the witness can come to me in Boston or</p> <p>12 West Virginia, but I'm not coming back out.</p> <p>13 MR. KERN: Do you want to finish with his</p> <p>14 testimony and come back?</p> <p>15 MR. BARRETT: No. I want to stop right</p> <p>16 now. I'm going to ask all kinds of questions about</p> <p>17 these documents -- we have to resolve this -- with</p> <p>18 Mr. Mills, with anybody. It's public documents.</p> <p>19 MR. KERN: Give me 15 minutes --</p> <p>20 MR. BARRETT: Okay.</p> <p>21 MR. KERN: -- to discuss and then we'll</p> <p>22 come back to it.</p> <p>23 MR. BARRETT: Sure.</p> <p>24 THE VIDEOGRAPHER: This is the end --</p>
<p style="text-align: right;">Page 55</p> <p>1 document. That document, although the ledger is cut</p> <p>2 off, is subject to attorney-client privilege.</p> <p>3 MR. BARRETT: This is an exhibit that was</p> <p>4 in the public court file at the Central District of</p> <p>5 Illinois.</p> <p>6 MR. KERN: I'm aware of that.</p> <p>7 MR. BARRETT: You have the objection. I</p> <p>8 understand.</p> <p>9 MR. KERN: And so I'll instruct the</p> <p>10 witness not to answer questions about this document.</p> <p>11 MR. BARRETT: Despite the fact that's</p> <p>12 it's in the public court file?</p> <p>13 MR. KERN: That's right. I don't believe</p> <p>14 that the -- that the district court's decision to make</p> <p>15 this document -- over the properly asserted privilege</p> <p>16 objection to make it public has the effect of waiving</p> <p>17 the privilege in this case.</p> <p>18 MR. BARRETT: I'm not saying you waive</p> <p>19 the privilege. I'm saying it's a public document now.</p> <p>20 It's on the public court file. It's accessible by</p> <p>21 anyone. I understand your objection and I'm not going</p> <p>22 to assert that you have waived. I'm just intending to</p> <p>23 ask this witness questions about documents that are in</p> <p>24 the public domain and that anybody with a computer</p>	<p style="text-align: right;">Page 57</p> <p>1 Sorry, are we off the record?</p> <p>2 MR. BARRETT: Yes.</p> <p>3 THE VIDEOGRAPHER: This is the end of</p> <p>4 media unit 1 in the deposition of Bruce Werner. We</p> <p>5 are off the record at 11:17.</p> <p>6 (Recess taken, 11:17 a.m. to 11:30 a.m.)</p> <p>7 THE VIDEOGRAPHER: This is the beginning</p> <p>8 of media unit 2 in the deposition of Bruce Werner,</p> <p>9 30(b)(6) representative of DISH Network. The time is</p> <p>10 11:30 a.m.</p> <p>11 MR. BARRETT: So we're back after a short</p> <p>12 break. Ben, did you have an opportunity to consider</p> <p>13 your objection?</p> <p>14 MR. KERN: Yes, and we will maintain the</p> <p>15 objection. We can talk to the Court at the</p> <p>16 appropriate time.</p> <p>17 MR. BARRETT: And the basis for that is</p> <p>18 what?</p> <p>19 MR. KERN: That the compulsion of those</p> <p>20 documents was over our -- over DISH's properly made</p> <p>21 objection for privilege; that the -- and that law, we</p> <p>22 believe, would support the position that the -- that a</p> <p>23 compulsory production of documents wherein a</p> <p>24 reasonable assertion of privilege was made does not</p>

<p style="text-align: right;">Page 58</p> <p>1 waive the objection with respect to attorney-client 2 privilege or work product for future litigations. 3 And the documents that you were preparing 4 to show are clearly asking -- requesting legal advice 5 and giving legal advice. Documents that would -- 6 other than through the district court's decision to 7 force the production of those documents would never -- 8 well, would squarely fall within the attorney-client 9 privilege, and that the district court's decision made 10 in that case doesn't have the effect of waiving the 11 privilege for DISH in this case, which is exactly what 12 would happen if those documents are permitted to be -- 13 if questions are permitted to be asked about those 14 documents in this deposition. 15 MR. BARRETT: And my view is I would 16 respect the non-waiver if you would maintain that 17 you're not waiving any rights to assert that this 18 document is privileged or not waiving any rights to 19 object to this document's admissibility. 20 We're here at a deposition that was 21 noticed. That's our basis. We want to go forward 22 with the questioning and don't understand why 23 documents that are in the public court file that were 24 the subject of an unsuccessful-for-DISH motion to</p>	<p style="text-align: right;">Page 60</p> <p>1 document that we were just discussing regarding the 2 privilege is Exhibit 18. I won't ask questions about 3 it based upon your objection, but I would like for it 4 to be a part of our exhibits and we can store it in 5 some separate fashion so that we have a clear record, 6 again, without any waiver. 7 MR. KERN: Under seal with an agreement 8 that we have not waived. 9 MR. BARRETT: Well, we'll address the 10 seal issue later. Let's just keep it in that pile for 11 now. 12 Let's come back to this. I don't want to 13 catch you off guard in any way, but I just want to 14 make sure that we don't -- we've got a lot of 15 documents here to look through. I want to make sure 16 that we keep them in order and we know what we're 17 arguing over. 18 MR. KERN: Okay. 19 (Deposition Exhibit 17 was marked.) 20 Q. (BY MR. BARRETT) This is Exhibit 17. 21 Take a minute, if you will, please, to look through 22 this document. Do you -- have you seen this document 23 before, Exhibit 17? 24 A. Let me just double-check. I've got one</p>
<p style="text-align: right;">Page 59</p> <p>1 compel discovery would be anything less than fair game 2 here, so . . . 3 MR. KERN: And, again, it's -- that 4 decision by the district court to make those -- to put 5 those documents -- not only to put those documents -- 6 to make those -- to compel those documents but to 7 compel them in an unsealed manner, we believe to be 8 incorrect and the decision is still appealable. 9 MR. BARRETT: Okay. 10 MR. KERN: But it's not instantly 11 appealable, which is part of the problem. 12 MR. BARRETT: I'm communicating with Matt 13 Norris here. Just one second. 14 MR. KERN: In fact, John, these documents 15 never would have been produced in this case so that 16 questions could be asked about them. 17 Q. (BY MR. BARRETT) Do you have any 18 knowledge, Mr. Werner, of a complaint by the Indiana 19 Attorney General Offices against SSN relating to 20 illegal telemarketing? 21 A. When? 22 Q. In 2005. 23 A. I'm not, no, sir. 24 MR. BARRETT: And for our record, the</p>	<p style="text-align: right;">Page 61</p> <p>1 more thing I'm reading, if I can. 2 Q. Sure. 3 MR. BARRETT: Before I jump into 4 questions on that, Ben, I've heard from my local 5 counsel, Matt Norris, and we understand that the 6 procedure -- correct procedure is to at the end of the 7 deposition -- no need to adjourn it now, but at the 8 end of the deposition, we'll adjourn and file a motion 9 to compel or you can file a motion for a protective 10 order. I'm not sure which, and then we'll address 11 that issue down the road. In other words, no phone 12 call today with the Court. 13 MR. KERN: Okay. That seems reasonable. 14 Q. (BY MR. BARRETT) So Exhibit 17, do you 15 recognize that? 16 A. Not specifically, no, sir, I don't. 17 Q. Do you have any knowledge of a complaint 18 by a consumer named Jeff Lichtenstein? 19 A. Jeff Lichtenstein is an employee -- 20 appears to be -- I'm sorry -- is an employee of 21 1-800-Technostores, one of our -- potentially one of 22 our retailers. I'm not familiar with him at all. 23 Q. If you'll look, the retailer on the 24 second page of that exhibit, Leslie Fiedler,</p>

<p style="text-align: right;">Page 62</p> <p>1 identified as the retailer behind the call as 2 Satellite Systems Network -- it's on the second page 3 of Exhibit 17. Do you see that? 4 A. Yes, sir. 5 Q. And there is an e-mail from Amir Ahmed to 6 Mike Oberbillig and Steve Keller saying, "This is 7 Alex's last chance. Fix it or he gets a letter and 8 will lead to termination. It's that simple." 9 My question is: Did you have any 10 discussion with anyone at DISH Network regarding this 11 last chance that's referenced -- 12 MR. KERN: Before you -- 13 Q. (BY MR. BARRETT) -- in the e-mail? 14 MR. KERN: I apologize, John. Which page 15 are we -- 16 MR. BARRETT: The very top of the second 17 page. 18 MR. KERN: Oh, I see it. I see it. I 19 apologize. 20 A. All right. 21 Q. (BY MR. BARRETT) Did you have any 22 conversation with anyone at DISH Network about Alex's 23 last chance back in 2005? 24 A. I don't believe I was part of this</p>	<p style="text-align: right;">Page 64</p> <p>1 A. Regarding DISH product or -- 2 Q. Yes, sir. 3 A. I'm not specifically aware of that, no. 4 Q. I need that document back. 5 A. Yeah. 6 (Deposition Exhibit 26 was marked.) 7 Q. I'm handing you Exhibit 26. It's a 8 document regarding an investigation by the State of 9 Washington that involved EchoStar and SSN. And you 10 testified just a minute ago that you have no knowledge 11 of that, so I don't think I have to ask you any 12 questions about that. 13 Do you have any knowledge about an 14 investigation by the State of Vermont regarding SSN 15 and DISH? 16 A. Again, for the same period? 17 Q. It would have been -- yes, approximately 18 2005, 2006. 19 A. I don't have specific knowledge of that 20 one, no, sir. 21 Q. Any general knowledge? Is that the first 22 you've heard of it? 23 A. About a specific complaint? 24 Q. About a complaint -- about an</p>
<p style="text-align: right;">Page 63</p> <p>1 conversation at all. 2 Q. Okay. Alex would be Alex Tehranchi, 3 correct? 4 A. I can't tell you. 5 Q. Okay. You don't know -- you know Alex 6 Tehranchi, right? 7 A. I've heard of him. He's a name to me. 8 Q. You haven't met him in person? 9 A. No, sir, I have not. 10 Q. Have you spoken with him on the phone? 11 A. I don't believe so. I may have. I don't 12 have a specific recollection. 13 Q. Okay. The first -- on the first page up 14 at the top, did you have any conversation with anyone 15 at DISH Network about whether Alex at SSN needed to 16 stop using message broadcasting and leaving messages? 17 A. Again, I have no recollection of that in 18 a conversation with anybody about this particular 19 e-mail. 20 Q. Okay. Do you have any knowledge about an 21 investigation of or relating to SSN telemarketing 22 brought by the State of Washington? 23 A. In what period? 24 Q. 2006.</p>	<p style="text-align: right;">Page 65</p> <p>1 investigation by the State of Vermont regarding DISH 2 and SSN. 3 A. I'm not specifically familiar with that. 4 If there was an investigation, I'm not aware of that. 5 (Deposition Exhibit 31 was marked.) 6 Q. Exhibit 31. Have you seen Exhibit 31 7 before? 8 A. I may have seen this. 9 Q. It's a complaint involving a consumer 10 named Jeanette Payne. 11 A. Correct. I apologize. I was looking for 12 the name. I saw some documents in preparation for 13 this -- for this deposition. Ms. Payne was one of a 14 few allegations that were made in the life cycle of 15 that 2006 to more recent for Satellite Systems 16 Network. I think I've seen this document. 17 Q. Who is Patrick Jaworski? 18 A. Patrick -- today or then? He's the same 19 person. 20 Q. Okay. Back in 2007, who -- 21 A. He's an analyst in the -- in our 22 compliance group today. 23 Q. And on the second page, I notice that he 24 is requesting certain information in the bullet</p>

<p style="text-align: right;">Page 66</p> <p>1 points. Do you see the bullet points?</p> <p>2 A. With Do Not Call Policy, Proof of Do Not</p> <p>3 Call Registrations, that sort of thing?</p> <p>4 Q. Yes.</p> <p>5 A. Yes, sir.</p> <p>6 Q. So the request for proof of do-not-call</p> <p>7 policy, what do you understand that to be? That would</p> <p>8 be SSN's internal do-not-call policy?</p> <p>9 A. It's the policy that has to do with do</p> <p>10 not call, yes.</p> <p>11 Q. And proof of do-not-call registrations,</p> <p>12 what is that asking for?</p> <p>13 A. I'm not clear. I don't know.</p> <p>14 Q. "List of Affiliate Companies with the</p> <p>15 contact information including any 3rd party call</p> <p>16 centers and anyone generating leads on your behalf," I</p> <p>17 think that's fairly clear what we're asking for there.</p> <p>18 A. Yes, sir.</p> <p>19 Q. "All Outbound Telemarketing Scripts for</p> <p>20 employees and affiliates." So that is the sort of --</p> <p>21 that's a fairly common request that DISH would make to</p> <p>22 a dealer who is accused of violating telemarketing</p> <p>23 laws?</p> <p>24 A. That would be a list of documents we</p>	<p style="text-align: right;">Page 68</p> <p>1 A. Yes, sir.</p> <p>2 Q. So regarding Exhibit 30, DISH is making</p> <p>3 this request as authorized by its retailer agreement</p> <p>4 and its business rules. Is that fair to say?</p> <p>5 A. We're writing this letter based on the</p> <p>6 agreement and the business rules. It's also because</p> <p>7 of the complaint or the allegation that was made, but</p> <p>8 yeah.</p> <p>9 Q. Do you have any specific recollection of</p> <p>10 Ms. Payne's complaint?</p> <p>11 A. Again, I reviewed a series of</p> <p>12 correspondence last night. Forgive me, I don't know</p> <p>13 what the outcome was, specific outcome on it. I</p> <p>14 recall that it was one of a few instances with</p> <p>15 Satellite Systems Network where there was a --</p> <p>16 complaints were made, but the bottom line on it was it</p> <p>17 wasn't a do-not-call issue on this one. It was</p> <p>18 persistent -- frequent and persistent or rude. I</p> <p>19 forget what the situation was on this one.</p> <p>20 Q. What does that mean, "frequent and</p> <p>21 persistent"?</p> <p>22 A. Again, I'm not an attorney. I don't know</p> <p>23 what all the rules are about telemarketing and all,</p> <p>24 but when we receive complaints, we -- at the time, we</p>
<p style="text-align: right;">Page 67</p> <p>1 would ask a retailer to provide if there was an</p> <p>2 alleged violation which was given to us, yeah.</p> <p>3 Q. What happens to the retailer if the</p> <p>4 retailer doesn't provide this sort of information?</p> <p>5 A. So the -- we would -- it would be our</p> <p>6 normal process to be persistent to understand what</p> <p>7 happened on the call that was associated with the</p> <p>8 allegation. It would be our -- we would do our best</p> <p>9 to get information back from the retailer, you know,</p> <p>10 from Satellite Systems Network, What happened on this</p> <p>11 call? The intent of this is to find out what happened</p> <p>12 on the call.</p> <p>13 Q. A retailer can't just say -- just ignore</p> <p>14 this, right, this kind of communication?</p> <p>15 A. I don't know that "no" is the answer. I</p> <p>16 know, especially early in our process, there were --</p> <p>17 we were persistent. We had a good process and we were</p> <p>18 persistent in trying to understand what happened on</p> <p>19 each of the calls. I'm not aware of a retailer that</p> <p>20 ever said no.</p> <p>21 Q. Okay. I'm done with that one.</p> <p>22 (Deposition Exhibit 30 was marked.)</p> <p>23 Q. I'm handing you Exhibit 30. Have you</p> <p>24 seen this document before?</p>	<p style="text-align: right;">Page 69</p> <p>1 would categorize those based on the type of a</p> <p>2 violation of the TCPA, and some of those would include</p> <p>3 frequent and persistent, rude, failure to put on a</p> <p>4 do-not-call list, maybe those sort of things. But</p> <p>5 this was not a -- it turned out the investigation led</p> <p>6 to this not being a do-not-call violation</p> <p>7 specifically.</p> <p>8 Q. Okay. Do you know what the do not</p> <p>9 call -- federal do-not-call laws provide?</p> <p>10 A. Specifically?</p> <p>11 Q. Yes, sir.</p> <p>12 MR. KERN: Objection to the extent it</p> <p>13 calls for a legal conclusion, but in your --</p> <p>14 Q. (BY MR. BARRETT) Generally, do you know?</p> <p>15 A. I know some pieces of it. I don't know</p> <p>16 the detail, I mean, how it's enforced or penalties or</p> <p>17 things like that, you know, whatever.</p> <p>18 Q. Do you know what the Do Not Call Registry</p> <p>19 is?</p> <p>20 A. Yes.</p> <p>21 Q. And what is it?</p> <p>22 A. It's a --</p> <p>23 MR. KERN: Objection and running</p> <p>24 objection to the extent we're talking about this.</p>

<p style="text-align: right;">Page 70</p> <p>1 A. I understand it to be a federal 2 registration where consumers can add their phone 3 numbers so that on that registry they would be 4 prohibited -- people using telemarketing strategies 5 would not be allowed to contact customers, consumers. 6 Q. (BY MR. BARRETT) Do you know about 7 any -- are there any provisions that would allow a 8 telemarketer to call someone who is listed on the Do 9 Not Call Registry? 10 A. I know there are some exemptions. I 11 don't know what those are specifically such as a -- 12 Q. Do you know generally what they are? 13 A. I can think of one. Existing business 14 relationships, perhaps. 15 Q. What is that again? 16 A. My understanding is it to be an existing 17 business relationship, which in some jurisdictions may 18 allow somebody to contact a customer by use of the 19 phone. 20 Q. And do you know what an existing business 21 relationship is? 22 MR. KERN: Continue running objection. 23 Calls for a legal conclusion. 24 A. Not specifically.</p>	<p style="text-align: right;">Page 72</p> <p>1 this deposition? 2 A. I reviewed a bunch of documents. 3 Especially over the time that I've been with DISH, 4 I've seen a lot of documents during the time that's 5 covered when this all occurred. Specifically, I 6 reviewed documents including agreements, some 7 correspondence, a variety of things. 8 Q. Did you review any databases, computer 9 files? 10 A. When? 11 Q. In preparing for the deposition, however 12 long you've been preparing for the deposition. 13 A. We have provided -- I've helped -- 14 MR. KERN: That's not what he's talking 15 about. He's asking about our preparation for this 16 deposition. 17 A. No, I did not. I did not, no. 18 Q. (BY MR. BARRETT) Okay. And we have some 19 native files and we'll look at those that I want to 20 ask you some questions about to get a handle on what 21 they are. 22 Do you know if the documents that you 23 reviewed have been produced in the case -- in this 24 case?</p>
<p style="text-align: right;">Page 71</p> <p>1 Q. (BY MR. BARRETT) Generally? 2 A. If a -- if someone using a telephone to 3 contact a customer or a consumer, if they have an 4 existing relationship, they may be able to contact 5 those people. 6 Q. Do you know if there are any limits on 7 the period of time that the existing relationship can 8 exist? 9 A. I don't know specifically. I'm 10 comfortable that it varies, too, between different 11 states and such, so I don't know, no. 12 Q. So, in your view, if a retailer were to 13 have a business relationship with someone in 2003, 14 would that permit that retailer to -- and this person 15 with whom they had a relationship is on the national 16 Do Not Call Registry, would this retailer be permitted 17 to call that consumer back in 2010 on the basis of an 18 existing business relationship? 19 MR. KERN: Same objection. 20 A. I don't know. Perhaps. 21 Q. (BY MR. BARRETT) Okay. You were talking 22 a little bit earlier about documents that you 23 reviewed. I want to cover that with you. Do you 24 recall what documents you did review in preparing for</p>	<p style="text-align: right;">Page 73</p> <p>1 A. All the documents that were associated 2 with this case, to my knowledge, they have all been 3 produced, yes. 4 Q. Okay. 5 A. If I saw something in our prep, you've 6 got a copy of it, yeah. 7 Q. Sure. 8 (Deposition Exhibit 66 was marked.) 9 Q. I'm handing you Exhibit 66. 10 A. Do you want this one on the pile here? 11 Q. Yes, please. 12 Do you recognize this document? 13 A. Yes, sir, I do. 14 Q. And what is it? 15 A. It is a -- it's an e-mail string 16 involving an alleged TCPA violation by a person by the 17 name of Angela Schoolar. 18 Q. And what do you know about Ms. Schoolar's 19 allegations? 20 A. I'm reviewing the document. It appears 21 that the nature of her complaint was frequent and 22 persistent call. It's on page 2 at the bottom. 23 Q. Yes, sir. Do you see where you just 24 were, there are several categories listed below</p>

<p style="text-align: right;">Page 74</p> <p>1 "Frequent/Persistent Calls"? You see rude behavior, 2 lewd/obscene conduct, harassment, a malicious call 3 pattern and then caller hung up when asked for 4 identity or to be added to DNC, and there is yeses and 5 noes there. 6 Are those all of the categories that DISH 7 was using at this time to categorize the nature of a 8 complaint by a consumer? 9 A. This was -- yes. 10 Q. So tell me what kinds of calls are 11 encompassed in this frequent/persistent category. I 12 know what frequent means. Frequent means often, 13 regularly. Persistent means more than once, not 14 giving up, that type of thing, right? 15 A. That's my understanding. 16 MR. KERN: I'll object to the extent that 17 it calls for a legal conclusion. I think what you're 18 asking about is his understanding of what those 19 categories is. 20 MR. BARRETT: Sure. 21 MR. KERN: And you're fine to testify 22 about that. And a running objection to the extent 23 that we go through each one of these. 24 Q. (BY MR. BARRETT) So what does the</p>	<p style="text-align: right;">Page 76</p> <p>1 of the documents that you would have looked at in the 2 last few days preparing for your deposition? 3 A. Yes, sir, I believe I've seen this one. 4 Q. And this is, again, an e-mail regarding 5 the Scholar -- S-c-h-o-l-a-r in one e-mail and e-r 6 in another -- complaint; is that correct? 7 A. She is one of -- I'm sorry -- one of two 8 people that are mentioned in this e-mail, yeah. 9 Q. Complaint Type: Frequent persistent, FP, 10 right, on page 2? 11 A. I'm sorry. Where are you pointing? 12 Right. Oh, in the chart itself, yes. 13 Q. Of course you see the response from 14 Sophie. Who is Sophie? 15 A. Sophie was an employee of Satellite 16 Systems Network. 17 Q. And it would be Sophie Tehranchi? 18 A. You know, I never knew her last name. I 19 don't know. 20 Q. Okay. There is a response here from 21 Sophie at the top, "The contact name for the leads was 22 Jeff Rogers." If you look down below that -- 23 A. I'm sorry. We're on page 1? 24 Q. Yes, sir.</p>
<p style="text-align: right;">Page 75</p> <p>1 frequent/persistent category encompass to you? 2 A. I take it as being unwanted phone calls 3 in general. Even more than that, that the calls made 4 to a specific individual, in this case Ms. Scholar, 5 she believed that they were frequent, they were 6 perhaps persistent. She complained about the number 7 of times a call came through. 8 Q. What would the category be for someone 9 who calls and says, I received one call from somebody 10 selling me DISH Network and I'm on the DNC Registry. 11 I want to complain about that? Which category would 12 that type of complaint fit? 13 A. It's not one of these, clearly. 14 Frequent/persistent, rude behavior, lewd and obscene 15 harassment, doesn't fall into any of those categories. 16 Do-not-call violations themselves were handled 17 separately. Not separately, but they were -- because 18 they were a special -- they're pretty significant. 19 Ms. Scholar's, as were the other four or five that I 20 looked at or studied in preparation for this -- this 21 was for frequent and persistent calls, an allegation. 22 Q. Okay. I'm done with that. 23 (Deposition Exhibit 37 was marked.) 24 Q. I'm handing you Exhibit 37. Is that one</p>	<p style="text-align: right;">Page 77</p> <p>1 A. Okay. I'm sorry. Yes. 2 Q. And if you look down below that, the 3 second e-mail on the page requests information 4 regarding the origination of the lead. Do you see 5 that, the bullet? 6 A. Yes, sir. 7 Q. And Sophie responds, "The contact name 8 for the leads was Jeff Rogers." 9 Do you have any knowledge of whether Jeff 10 Rogers was ever approved to provide sales leads to 11 SSN? 12 A. I can say definitely that he was never 13 submitted for approval as a third party to provide 14 phone services for -- or make calls for -- or 15 associated with Satellite Systems Network. 16 Q. Was anyone ever approved by DISH 17 Network -- back up. 18 Did SSN ever request written approval 19 from DISH Network to use any third-party telemarketer? 20 A. The answer is yes. 21 Q. And who? 22 A. There was -- I know there was a request. 23 I know there was a request. This goes back six years 24 in my own head for this. I can't pull the name.</p>

<p style="text-align: right;">Page 78</p> <p>1 There was a vendor that they submitted -- and I don't 2 recall what they were submitted for, but they 3 submitted one -- a retailer -- I'm sorry -- one vendor 4 for use for -- they used a third-party request form 5 for one entity to work for them. 6 Q. And you're not sure what that entity was? 7 A. I'm pulling on my memory. I can't do it 8 right now. I apologize. 9 Q. Do you recall generally what that vendor 10 was going to do? 11 A. I apologize. I don't know. 12 Q. That's fine. 13 A. Again, I suspect that document was 14 provided. The request form was provided to you all. 15 Q. Okay. Done with that. 16 (Deposition Exhibit 33 was marked.) 17 Q. 33. 33 has a stray page on it. If I 18 could have that exhibit back. Exhibit 33 that I've 19 handed you is two pages long and it's Bates'd DISH 20 11-23851 through 23852. 21 Do you recognize this to be a letter from 22 DISH Network to Alex Tehranchi at SSN regarding the 23 Angela Schoolar complaint? 24 A. Yes, sir.</p>	<p style="text-align: right;">Page 80</p> <p>1 differently than frequent and persistent calls. I 2 believe that was your testimony. Do you recall that? 3 A. Yes. 4 Q. Okay. And now this letter says she 5 alleged that she received frequent, persistent calls 6 and then it further references her belief that these 7 calls were in violation of the TCPA regulations. 8 I guess what I'm getting at is I'm 9 confused by that. I don't understand why DISH would 10 categorize this complaint as a frequent and persistent 11 in one document, but reference TCPA violations in 12 another. I'm trying to understand how DISH used that 13 frequent and persistent category. 14 A. So to be real clear, the way the report 15 came to us -- that report came to us on a form that 16 had the categories on it. It's an allegation, and I 17 would offer that subsequent investigation revealed, 18 perhaps conversations with Ms. Schoolar, that there 19 may have been other things going on and that's what 20 was reflected in a letter that occurred later. 21 Again, as we asked for additional 22 information, we include that in our correspondence to 23 make sure we're complete in our investigation. 24 Q. Sure. Did SSN respond appropriately, in</p>
<p style="text-align: right;">Page 79</p> <p>1 Q. It's alleging that she received frequent, 2 persistent calls to her home number. And then in that 3 first paragraph it also says she believes these 4 attempts to contact her are in violation of the 5 Telephone Consumer Protection Act regulations. 6 Earlier we were talking about 7 Ms. Schoolar's complaints and we went over the 8 categories of her complaint and it was frequent and 9 persistent. That was the category into which her 10 complaint was placed. And here this letter references 11 possible or alleged violations of Telephone Consumer 12 Protection Act regulations. 13 A. Uh-huh. 14 Q. And so my question is: Was DISH using 15 this frequent/persistent category to refer to alleged 16 TCPA violations? 17 MR. KERN: Objection to form. 18 A. No. Do the question again. I don't know 19 if I understand it. 20 Q. (BY MR. BARRETT) Sure. In the earlier 21 correspondence that we looked at in the document that 22 we looked at, Ms. Schoolar's complaint was referred to 23 as "frequent and persistent," and you said that TCPA 24 was a different category because they were treated</p>	<p style="text-align: right;">Page 81</p> <p>1 DISH's estimation, to the Schoolar complaint? 2 A. I don't recall specifically how they 3 responded. I looked at some documents yesterday. I 4 don't recall that they did not respond. 5 Q. And -- 6 A. Sophie responded in that last thing we 7 looked at for Ms. Schoolar, I think, didn't she? 8 Q. Yes, sir. And it looks like from 9 Exhibit 37 there was a response explaining where the 10 lead came from and explaining -- providing some 11 additional explanation. 12 So I understand that DISH Network did not 13 discipline SSN for the Schoolar call in any way? 14 A. The result of our investigation, we found 15 this was not a do-not-call violation. It was one of 16 five or six over that six- or seven-year period, you 17 know, 2006 to 2012, whatever, yes. Or rather, we did 18 not discipline Satellite Systems Network for frequent 19 and persistent calls. Or this particular one, it was 20 alleged to be a frequent and persistent call. 21 (Deposition Exhibits 35 and 36 were 22 marked.) 23 Q. I'm handing you Exhibit 35 and also 24 Exhibit 36. Is this also a document -- this is a</p>

<p style="text-align: right;">Page 82</p> <p>1 complaint involving Kitty Fowler; is that correct?</p> <p>2 A. Which document?</p> <p>3 Q. It looks like both. 35 and 36 concern</p> <p>4 Ms. Fowler's complaint. Would you agree with that?</p> <p>5 A. Just a moment.</p> <p>6 Q. I don't really need to go into detail</p> <p>7 with questions about this, but I want to -- feel free</p> <p>8 to take your time to finish reading it, but I just</p> <p>9 want to ask you if DISH Network ever disciplined SSN</p> <p>10 relating to the Kitty Fowler complaint.</p> <p>11 A. DISH did not discipline Satellite Systems</p> <p>12 Network in this case. And this is another one, I</p> <p>13 think -- I would have to refer back, but I believe</p> <p>14 this one turned out to be -- again, this is</p> <p>15 persistent -- frequent and persistent, and I don't</p> <p>16 think there was an allegation that this was a do-not-</p> <p>17 call violation -- or I'm sorry. It was not</p> <p>18 specifically do not call.</p> <p>19 Q. Okay. I'm done with those. I'll take</p> <p>20 those back, if you don't mind.</p> <p>21 A. I put them in order for you.</p> <p>22 Q. I'm sorry, what was that? I missed that</p> <p>23 last comment.</p> <p>24 A. No. I just said I was going to -- I put</p>	<p style="text-align: right;">Page 84</p> <p>1 you three documents; 67, 39 and 34. These are</p> <p>2 documents pertaining to my client, Dr. Thomas</p> <p>3 Krakauer's complaints. I'm sure that you've read</p> <p>4 those in preparation for your deposition, but please</p> <p>5 take a minute just to confirm that for me.</p> <p>6 A. Yes, sir.</p> <p>7 Q. And my question for you is: Did DISH</p> <p>8 Network confirm that, with respect to Dr. Krakauer,</p> <p>9 SSN violated the TCPA?</p> <p>10 MR. KERN: Objection to the extent it</p> <p>11 calls for a legal conclusion.</p> <p>12 Answer if you can.</p> <p>13 A. My recollection of this one -- I don't</p> <p>14 recall how this was resolved. Okay? In fact, I don't</p> <p>15 think it's resolved at all. I don't think it was</p> <p>16 resolved as a do-not-call violation, but was, again,</p> <p>17 alleged -- what are they calling this one here? It</p> <p>18 was -- harassment, I think, was the issue on this one,</p> <p>19 which is a TCPA violation, but not a do-not-call</p> <p>20 violation.</p> <p>21 Q. (BY MR. BARRETT) So your position is</p> <p>22 that Dr. Krakauer did not allege a do-not-call</p> <p>23 violation. He alleged harassment?</p> <p>24 A. Without reviewing clearly all the</p>
<p style="text-align: right;">Page 83</p> <p>1 them in order for you, your forms.</p> <p>2 MR. BARRETT: If you want to take a</p> <p>3 break, we can take a break. It's 12:20. I'm fine to</p> <p>4 keep going, but it's up to you.</p> <p>5 MR. KERN: It's up to you. If you can</p> <p>6 go, I would rather keep going.</p> <p>7 THE DEPONENT: I'm good to go.</p> <p>8 MR. KITEI: Ten more minutes. The other</p> <p>9 guys are waiting, so . . .</p> <p>10 MR. KERN: How much longer do you think</p> <p>11 you have, even ballpark?</p> <p>12 MR. BARRETT: Another hour or two. A</p> <p>13 couple hours.</p> <p>14 MR. KERN: Do you want to stop for lunch</p> <p>15 and come back?</p> <p>16 MR. BARRETT: Your call. Let's stop.</p> <p>17 THE VIDEOGRAPHER: We are going off the</p> <p>18 record. The time is 12:19.</p> <p>19 (Recess taken, 12:19 p.m. to 1:22 p.m.)</p> <p>20 THE VIDEOGRAPHER: We are back on the</p> <p>21 record at 1:22.</p> <p>22 (Deposition Exhibits 34, 39 and 67 were</p> <p>23 marked.)</p> <p>24 Q. (BY MR. BARRETT) Mr. Werner, I'm handing</p>	<p style="text-align: right;">Page 85</p> <p>1 documents here, because this is just three of them, I</p> <p>2 recall that this was messages on the first document,</p> <p>3 the one -- document 67, it came to us as a harassment</p> <p>4 call.</p> <p>5 Q. Okay. Let's look at No. 67, the second</p> <p>6 page of it. Do you see the e-mail from Rebecca</p> <p>7 Dougherty to David Laslo?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Who's Ms. Dougherty?</p> <p>10 A. I don't know who that person is.</p> <p>11 Q. Do you know who Mr. Laslo is?</p> <p>12 A. I've heard his name. I can't say much</p> <p>13 more than that.</p> <p>14 Q. Okay. But is it fair to say that this</p> <p>15 e-mail communication is a communication from someone</p> <p>16 internally at DISH Network to another person</p> <p>17 internally at DISH Network documenting --</p> <p>18 A. Yes, it is.</p> <p>19 MR. KERN: The witness will be instructed</p> <p>20 to read the entire document before answering questions</p> <p>21 about it.</p> <p>22 A. Yes, sir.</p> <p>23 Q. (BY MR. BARRETT) Okay. Now that you've</p> <p>24 looked through the document again, what's your</p>



<p style="text-align: right;">Page 86</p> <p>1 understanding of Mr. Krakauer's -- Mr. Krakauer here 2 is -- Dr. Krakauer is what I refer to him as, but the 3 same person. What's your understanding of his 4 allegation regarding do-not-call violations? 5 A. He received a phone call from someone 6 that was purporting to be a DirecTV employee, and then 7 that person apparently had contacted DirecTV -- 8 contacted DirecTV to get some information from DirecTV 9 about Mr. Krakauer's account including, you know, 10 credit file information. It appears to be that a 11 qualification attempt was done for an account for 12 Mr. Krakauer, and we ran that down and we essentially 13 tracked that back to Satellite Systems Network. 14 Q. Sitting here today, do you know if 15 Mr. Krakauer had advised DISH Network that he was on 16 the national Do Not Call Registry? 17 A. I do not know that. 18 Q. Okay. Do you have any understanding 19 about whether in this lawsuit Dr. Krakauer has alleged 20 that he was on the Do Not Call Registry and received a 21 telemarketing call from SSN? 22 A. I am not clear. It's not clear to me. 23 Again, I reviewed a number of documents yesterday. 24 It's not clear to me whether or not those documents</p>	<p style="text-align: right;">Page 87</p> <p>1 included a statement from Mr. Krakauer that he was on 2 a do-not-call list, or the correspondence. I don't 3 recall that it said there was a clear do-not-call 4 violation. 5 Q. Let's look on the second page of 6 Exhibit 67 up toward the top. 7 A. I'm sorry, this is which one now? 8 Q. I'm sorry. Exhibit 67, the one you were 9 just looking at -- 10 A. Yes, sir. 11 Q. -- the second page, up toward the top, 12 the top third, I guess, do you see where it says, "DNC 13 List Consumer is on," and then it says "Internal" or 14 "National"? "Internal" and "National," rather? 15 A. I'm sorry. Show me again. I'm not clear 16 on what page you're talking about. Yes, sir. 17 Q. Does that not indicate to you that 18 Dr. Krakauer had advised DISH Network that he was on 19 the national Do Not Call Registry? 20 A. Yes, sir, it does. I missed that reading 21 that earlier. 22 Q. And up above that where you were just 23 reading, do you see where it says "Tracked by: TCPA"? 24 A. Yes, sir.</p>
<p style="text-align: right;">Page 88</p> <p>1 Q. What does that mean, "Tracked by: TCPA"? 2 A. I don't know. That was a -- 3 Ms. Dougherty made that note. I don't know what that 4 refers to specifically. 5 Q. Exhibit 39 is, of course, DISH's letter 6 to Tehranchis regarding the Krakauer complaint. Do 7 you see that? 8 A. Yes, sir. 9 Q. And then Exhibit 34 appears, to me, to be 10 the response from Patty with SSN regarding this 11 allegation; is that correct? 12 A. Let me scan it one more time, if I can, 13 to make sure. It appears to be that way. 14 MR. KERN: The witness will be instructed 15 to read it, read the document. 16 Q. (BY MR. BARRETT) My question for you -- 17 you've had a chance to read through that? 18 A. Yes, sir. 19 Q. My question for you is: When DISH 20 Network received this information, did it conclude 21 that SSN had violated the TCPA with respect to the 22 call to Dr. Krakauer that is referenced in these three 23 exhibits? 24 A. I don't know that we determined that it</p>	<p style="text-align: right;">Page 89</p> <p>1 was a violation. The information we received exposed 2 that there was a possible existing business 3 relationship, I think is what Sophie is saying, but I 4 don't know how that works. They responded to our 5 request and they shared this information. I don't 6 think we determined it was a violation or not. 7 Q. Okay. Let's talk about Exhibit 34. Do 8 you see that there, Exhibit 34? 9 A. Yes, sir. I've got it on top here. 10 Q. The first paragraph around the middle, 11 "Our lead from Mr. Krakauer was generated by us. We 12 sold him DirecTV back in April 2003 when we were a 13 DirecTV retailer." 14 So in DISH's opinion, does that fact as 15 stated here in this e-mail that SSN sold Dr. Krakauer 16 DirecTV back in 2003 -- does that constitute an 17 established business relationship that would allow SSN 18 to place the call to Dr. Krakauer? 19 MR. KERN: Objection. Calls for a legal 20 conclusion. 21 A. I don't know what decision or how the 22 decision was arrived at in this particular case, but 23 the allegation or the claim that there was an existing 24 relationship seems to be something that was evaluated</p>

<p style="text-align: right;">Page 90</p> <p>1 at the time.</p> <p>2 Q. (BY MR. BARRETT) So there was -- to your</p> <p>3 knowledge, was there any follow-up after -- by DISH</p> <p>4 Network after it received --</p> <p>5 A. Again, I saw a bunch of documents. I</p> <p>6 don't think there was any documents beyond this. You</p> <p>7 would have had those.</p> <p>8 Q. So from the standpoint of investigating</p> <p>9 this alleged violation, as far as DISH was concerned,</p> <p>10 the response that it received that is Exhibit 34 was</p> <p>11 satisfactory?</p> <p>12 MR. KERN: Objection as to form.</p> <p>13 A. I don't know if I like that it's</p> <p>14 sufficient or satisfactory, and I don't know -- this</p> <p>15 is where our investigation perhaps ended, yes.</p> <p>16 Q. (BY MR. BARRETT) DISH Network concluded</p> <p>17 that there was no reason to further investigate after</p> <p>18 receiving Exhibit 34, correct?</p> <p>19 A. I don't believe there are additional</p> <p>20 documents to that effect.</p> <p>21 Q. But you're here to testify with respect</p> <p>22 to DISH Network's investigations of alleged TCPA</p> <p>23 violations committed by SSN, so I'm not asking you</p> <p>24 about documents. I'm asking, do you have any</p>	<p style="text-align: right;">Page 92</p> <p>1 to where Sophie indicated that she had a -- their</p> <p>2 company had a relationship with PossibleNOW?</p> <p>3 A. I saw a bunch of e-mails yesterday. I</p> <p>4 can't specifically say there was one that specifically</p> <p>5 Sophie said. There was an acknowledgment that they</p> <p>6 had had PossibleNOW or subscribed to PossibleNOW as</p> <p>7 of -- I think it was October 2008.</p> <p>8 Q. Knowing what you know now from reading</p> <p>9 these three documents, did SSN violate the TCPA when</p> <p>10 it called Dr. Krakauer --</p> <p>11 MR. KERN: Objection. Calls for a legal</p> <p>12 conclusion.</p> <p>13 Q. (BY MR. BARRETT) -- in May of 2009?</p> <p>14 MR. KERN: Objection. Calls for a legal</p> <p>15 conclusion.</p> <p>16 A. The information that we evaluated, we</p> <p>17 looked at, is as it is on this e-mail. The call was</p> <p>18 made to Mr. Krakauer. I don't know if it was in</p> <p>19 violation or not. I'll leave it at that.</p> <p>20 Q. (BY MR. BARRETT) Why would it not be in</p> <p>21 violation? The statement on the e-mail that we</p> <p>22 reviewed indicates that Dr. Krakauer was on the</p> <p>23 national DNC list, and I'll represent to you that he</p> <p>24 was --</p>
<p style="text-align: right;">Page 91</p> <p>1 knowledge of whether DISH Network performed any</p> <p>2 further investigation after -- regarding the Krakauer</p> <p>3 allegations after it received the e-mail that is</p> <p>4 Exhibit 34?</p> <p>5 A. I don't believe we did.</p> <p>6 Q. Did DISH Network have any information as</p> <p>7 of May 28, 2009, that SSN was scrubbing its leads</p> <p>8 against the national Do Not Call Registry?</p> <p>9 A. As of that time, I believe we were aware</p> <p>10 that Satellite Systems Network had a relationship with</p> <p>11 PossibleNOW.</p> <p>12 Q. Okay. But you'll see here in this first</p> <p>13 paragraph of Exhibit 34, it says, "We do not have a</p> <p>14 date for scrubbing this lead through PossibleNow</p> <p>15 because at the time we were not a PossibleNow member."</p> <p>16 So does that change your answer?</p> <p>17 A. I reviewed documents yesterday where</p> <p>18 Sophie, in earlier correspondence, acknowledged that</p> <p>19 she had a relationship with PossibleNOW. At the</p> <p>20 time -- if she admits that she didn't have a</p> <p>21 relationship with PossibleNOW at that time, I can't</p> <p>22 speak to why. It was our expectation and our belief</p> <p>23 that she had a relationship with PossibleNOW.</p> <p>24 Q. What document is it that you're referring</p>	<p style="text-align: right;">Page 93</p> <p>1 A. Okay.</p> <p>2 Q. -- at that time. That he received a call</p> <p>3 from SSN, SSN reported that they did not scrub the DNC</p> <p>4 Registry because they didn't have a relationship with</p> <p>5 PossibleNOW, but that they had done business with</p> <p>6 Dr. Krakauer back in April of 2003. So those facts,</p> <p>7 does that indicate to you -- to DISH Network that this</p> <p>8 call was a violation of the TCPA?</p> <p>9 MR. KERN: Objection. Calls for a legal</p> <p>10 conclusion.</p> <p>11 A. In considering all that information and</p> <p>12 including the fact that there was a prior existing</p> <p>13 relationship at the time, we made the decision that it</p> <p>14 was something we were not going to pursue or do</p> <p>15 additional investigations, more accurately.</p> <p>16 Q. (BY MR. BARRETT) Was that the correct --</p> <p>17 I mean, that really doesn't answer my question. My</p> <p>18 question is: Did DISH Network conclude that the call</p> <p>19 was in violation of the TCPA?</p> <p>20 MR. KERN: Same objection.</p> <p>21 A. I don't think we determined it was a</p> <p>22 violation, but rather that -- I think we were</p> <p>23 satisfied that the call was made not as a violation.</p> <p>24 Q. (BY MR. BARRETT) Okay. DISH concluded</p>

<p style="text-align: right;">Page 94</p> <p>1 that because of the previous business transaction 2 between Dr. Krakauer and SSN; is that correct? 3 A. Looking at the documents that are here, 4 that's my conclusion, yes. 5 (Deposition Exhibit 45 was marked.) 6 Q. I'm handing you Exhibit 45. I don't need 7 to ask -- I don't intend to ask you detailed questions 8 about this document, but what I would like to know is 9 did the allegation that is contained in this document 10 lead to any disciplinary action by DISH Network 11 against SSN? 12 A. Let me read the document, if I can. 13 Q. Sure. 14 A. Yes, sir. 15 Q. Any disciplinary action by DISH Network 16 against SSN with respect to any allegation contained 17 in that document? 18 A. I don't see a customer name on this. A 19 couple of things on this. I don't notice a name 20 specifically, so how it would have been researched, I 21 would like to have a name. 22 Second, it's worth noting we're talking 23 about a long period of time where Satellite Systems 24 Network was a retailer. Ms. Musso is calling out that</p>	<p style="text-align: right;">Page 96</p> <p>1 Q. And if you'll look, please, at Exhibit 42 2 on the second page -- 3 A. Hang on just a second. 42. Yes, sir. 4 Q. Do you see the description of the 5 complaint? 6 A. The one below the line that starts with 7 "Nature of the complaint"? 8 Q. Yes. And on down a little bit further, 9 do you see the "As stated in the Attorney General's 10 complaint"? 11 A. Yes, sir. 12 Q. Can you read that aloud, please? 13 A. "As stated in the Attorney General's 14 complaint - Issue was rude behavior by an agent. The 15 agent appears to be a sales partner agent as he told 16 the customer he worked for Direct TV, then proceeded 17 to try to get the customer to switch from Direct TV to 18 DISH Network. The complaint came from" -- correct me 19 if I miss it. Part of the letters are cut off here. 20 "The Complaint came from a call back the agent made 21 after the customer declined the switch. That call 22 ended" -- the next word -- "then the agent called back 23 and when" -- I can't make out that last word there -- 24 customer answered, the agent yelled, 'I love it' and</p>
<p style="text-align: right;">Page 95</p> <p>1 it's been a long time since there was any issues with 2 Satellite Systems Network. To me, that's noting -- 3 worth noting. 4 Is there a customer name on this I can 5 look at? 6 Q. I don't see one. 7 MR. KERN: Customer name on Exhibit 45? 8 MR. BARRETT: Yeah. 9 MR. KERN: Campbell. 10 MR. BARRETT: Campbell, okay. Thank you. 11 A. Oh, okay. 12 Q. (BY MR. BARRETT) I've got four Campbell 13 documents that I can -- before I ask you any questions 14 about that, let me give you some more documents, to be 15 fair. 16 (Deposition Exhibits 42 through 44 were 17 marked.) 18 Q. I'm handing you 42, 43, 44. Just let me 19 know whenever you're ready. 20 A. Yes, sir. 21 Q. Okay. Do you see -- first of all, these 22 e-mails -- these are documents concerning a complaint 23 by Richard Campbell, correct? 24 A. Yes, sir.</p>	<p style="text-align: right;">Page 97</p> <p>1 hung. The customer filed the complaint with the AG 2 over this one harassing phone call." 3 Q. Okay. Do you see above where -- at the 4 top of that page, it says, "DNC List Consumer is on," 5 it says, National, State and Internal. Do you see 6 that? 7 A. Yes, sir, I do. 8 Q. And then down below that, below the 9 paragraphs that you just read, there is also an 10 indication that the telephone number that was dialed 11 is on the national Do Not Call Registry. Do you see 12 that? 13 A. Where just below it says, "Phone Number 14 Csg Account No."? 15 Q. Yes, sir. 16 A. I see an entry. It says, "Do Not Solicit 17 Dnc List Name, Us State, Dnc Us State," date added to 18 the DNC. 19 Q. You don't need to read that whole line. 20 A. Yes, I see that, though. Yeah. 21 Q. Yes. My question is: Do you have any 22 reason to believe that this number was not on the 23 national Do Not Call Registry? 24 A. No, sir, I don't.</p>

<p style="text-align: right;">Page 98</p> <p>1 Q. And are you aware of any response by SSN 2 to -- first of all, backing up, this complaint was 3 tied to SSN, correct? 4 A. The e-mail appears to indicate -- well, 5 yes, it was tied to Satellite Systems Network. Yes, 6 sir. 7 Q. And are you aware of any response from 8 Satellite Systems Network regarding these allegations? 9 A. So the answer is yes. 10 Q. What is the response? 11 A. This is for Campbell, right? This letter 12 was -- this e-mail was initiated on May 4 and reviewed 13 that e-mail, called Campbell, from Reji Musso to Rehan 14 at Satellite Systems Network on the 17th of May. 15 Q. I'm not sure what you were referring to. 16 If you could refer to the document numbers, exhibit 17 numbers. And also my question is whether SSN 18 responded to any communications from DISH Network 19 about these allegations. 20 A. So Exhibit 45 is an e-mail that 21 originated with Serena Snyder on or about the 13th of 22 May. Serena Snyder sent an e-mail to Sophie regarding 23 an AG complaint. Sophie did her search and reviewed 24 this earlier. I don't know if her response was in</p>	<p style="text-align: right;">Page 100</p> <p>1 defendant's privilege designation by consent of court 2 order. These are documents that fall within the same 3 discussion that we had earlier, and I'm going to 4 instruct Mr. Werner not to answer questions about 5 these two documents, 47 and 48. The rest of them are 6 fine. 7 MR. BARRETT: 47, I don't really 8 understand why that would be privileged. That's a 9 letter from a consumer to DISH Network. 10 MR. KERN: If you would give me a minute 11 to review it. 12 MR. BARRETT: Sure. 13 MR. KERN: Can we go off for one minute? 14 MR. BARRETT: Sure. 15 THE VIDEOGRAPHER: We are going off the 16 record. The time is 2:01. 17 (Recess taken, 2:01 p.m. to 2:05 p.m.) 18 THE VIDEOGRAPHER: This is the beginning 19 of media unit 3 in the deposition of Bruce Werner, 20 30(b)(6) representative of DISH Network. We are on 21 the record at 2:05. 22 MR. KERN: John, right before we went 23 off, you presented Exhibits 47 and 48, among other 24 exhibits. After my -- after you pointed out and my</p>
<p style="text-align: right;">Page 99</p> <p>1 response to our original correspondence or if it was 2 in response to the correspondence regarding the AG 3 complaint, but they did respond. 4 Q. I don't see any discussion between anyone 5 at DISH, at least in these e-mails, and anyone at SSN 6 regarding -- regarding the SSN caller stating that he 7 worked for DirecTV and then proceeded to try to get 8 the customer to switch from DirecTV to DISH Network. 9 I don't see any communication between DISH Network and 10 SSN regarding that being a problem. 11 A. In this set of correspondence, I don't 12 see it either. 13 Q. Are you aware of any other document that 14 would indicate that DISH Network called SSN out for 15 that kind of conduct? 16 A. I'm not aware, no, sir. 17 (Deposition Exhibits 27 through 29 and 47 18 and 48 were marked.) 19 Q. I'm handing you 47, 48, 29 -- 20 MR. KERN: 29, you said? 21 MR. BARRETT: Yes. 22 Q. (BY MR. BARRETT) -- 27 and 28. 23 MR. KERN: John, with respect to 48 and 24 47, both of these documents are produced over</p>	<p style="text-align: right;">Page 101</p> <p>1 independent review of Exhibit 47, we have made an 2 independent determination that this document is not 3 properly marked as privileged. I believe the reason 4 that it was originally marked was that it related to a 5 settlement offer. Obviously that's not 6 attorney-client privileged. 7 So this is -- Exhibit 47, you're free to 8 ask questions about and we withdraw the -- certainly 9 withdraw in this case any claim of privilege to that 10 document, so I apologize for the interruption. 11 MR. BARRETT: That's all right. 48? 12 MR. KERN: 48 remains. 13 MR. BARRETT: Okay. So no questions 14 permitted with respect to 48? 15 MR. KERN: At this very moment, that's 16 correct. 17 MR. BARRETT: Okay. 18 Q. (BY MR. BARRETT) So Jeffrey Mitchell in 19 Exhibit 47, are you aware of how Mr. Mitchell's 20 allegation was resolved? 21 A. I do not know, sir. 22 Q. Are you aware of how it was investigated 23 by DISH Network? 24 A. I would assume that we would follow our</p>

<p style="text-align: right;">Page 102</p> <p>1 normal procedure, which would include, you know, 2 reviewing the documents, contacting the retailer, 3 getting an explanation for the process, that sort of 4 thing. 5 Q. Exhibit 29, the date on that is -- this 6 is an e-mail -- February 15, 2007. Look, if you will, 7 at the third paragraph of Ms. Musso's e-mail to 8 Mr. Origer, O-r-i-g-e-r. 9 A. Yes, sir. 10 Q. There is a question from Mr. Origer about 11 SSN. "What is the detail on the allegations on this 12 account?" Then the response from Ms. Musso is there. 13 It says -- down in the third paragraph -- "Brian tells 14 me that they are doing well and going on the incentive 15 trip, so once again this is a business decision. I 16 guess we just need to let the attorney know that as 17 far as we know, they have righted the wrongs." 18 Do you have any understanding of what 19 Ms. Musso is talking about when she says "this is a 20 business decision"? 21 MR. KERN: Objection. Calls for 22 speculation. 23 Answer if you can. 24 Q. (BY MR. BARRETT) Do you know?</p>	<p style="text-align: right;">Page 104</p> <p>1 Whether or not we took action or not was a decision 2 based on the facts, not on the relationship we have or 3 the volume that was sold by that retailer. 4 Q. (BY MR. BARRETT) Okay. 5 (Deposition Exhibit 77 was marked.) 6 Q. 77. I don't need to go into detail on 7 this document other than to ask you if this is a 8 PowerPoint presentation that DISH Network provided at 9 Team Summit in the year 2013, which is what the first 10 page indicates. 11 A. Yes, sir, it is. 12 Q. Okay. 13 (Deposition Exhibit 79 was marked.) 14 Q. 79 looks like another similar report, but 15 I cannot find a date on there. I'm going to ask if 16 you know what year Exhibit 79 would have been 17 presented at Team Summit. Do you know what year? 18 A. Based on this document, I can't tell you 19 what year it is. I could do some research and find 20 out when this was created. Off the top of my head, I 21 can't tell you. It would be late 2000s, 2009, '10, 22 '11, something. I don't know. I would have to check. 23 (Deposition Exhibits 80 and 81 were 24 marked.)</p>
<p style="text-align: right;">Page 103</p> <p>1 A. No, sir, I don't know what she 2 specifically is talking about here. 3 Q. Was "business decision," that term, used 4 in the compliance context at DISH Network when talking 5 about alleged violations of telemarketing laws by 6 dealers? 7 MR. KERN: Objection as to form. 8 Answer the question if you understand it. 9 A. That's where I was going. I don't think 10 I understand the question. 11 Q. (BY MR. BARRETT) Well, I can ask it 12 better. Would DISH Network make business decisions 13 whether to discipline dealers who violate the TCPA 14 based upon the volume of business generated by those 15 dealers? 16 MR. KERN: Objection to foundation and 17 form. 18 Q. (BY MR. BARRETT) In other words, would 19 it treat dealers who sell a lot of subscriptions 20 differently than it would dealers who don't? 21 MR. KERN: Same objection. 22 A. No, sir. We applied a consistent set of 23 rules. Specifically when it came to "do not call," we 24 researched allegations as thoroughly as we did.</p>	<p style="text-align: right;">Page 105</p> <p>1 Q. Same question about 80. 2 MR. KERN: Are you just asking the date 3 on 81? 4 MR. BARRETT: Yes. 81 should be pretty 5 easy, but we're on 80. 6 Q. (BY MR. BARRETT) Do you know the date of 7 80? 8 A. No, sir, I don't. 9 Q. 81 appears to be 2009, according to the 10 document itself. And I just want to ask you, is this 11 a PowerPoint presentation that you provided at Team 12 Summit in 2009? 13 A. No. 81? 14 Q. Yes, sir. 15 A. Yes, sir, it is. 16 Q. Getting back to our notice. I think I'm 17 done with paper documents for now. 18 Total compensation paid annually to SSN 19 for generating DISH subscribers is one of the topics 20 that you were to testify about. What can you tell me 21 about that? 22 A. I can tell you that at the request of 23 counsel, I prepared a document -- or had a query done 24 and I summarized by year from 2007 to 2012, I think,</p>

<p style="text-align: right;">Page 106</p> <p>1 incentive payments that were made to Satellite Systems 2 Network. 3 Q. Okay. 4 MR. BARRETT: Do we have that with us or 5 how should we handle that? 6 MR. KERN: It's one of the produced 7 documents. 8 MR. BARRETT: It was? Okay. 9 MR. KERN: Yes. 10 MR. BARRETT: It has been produced? 11 MR. KERN: And I may have it. No, I 12 don't have it in this, but it has been produced. 13 MR. BARRETT: Okay. Got it. Yes. 14 Q. (BY MR. BARRETT) The number of new DISH 15 subscribers generated annually -- this is topic 4-g in 16 the notice -- do you have that information or was that 17 also provided separately? 18 A. That was on that same document, yes, sir. 19 Q. Here's the notice in case you need it. 20 Dates SSN operated as a retailer. Again, 21 that's been provided, I believe. 22 MR. KERN: That's right. 23 Q. (BY MR. BARRETT) We've talked about 24 requests by SSN for approval of any third-party vendor</p>	<p style="text-align: right;">Page 108</p> <p>1 specifically Satellite Systems Network did not 2 direct -- to my knowledge have ever directed a 3 retailer to a lead generator along the way. 4 Q. No. 7 is "The manner and means of 5 utilizing records or information to determine whether 6 a consumer has subscribed to DISH Network services, 7 and the dates of any subscriptions." 8 So how would -- what can you tell me 9 about that? 10 A. So if you were to ask -- so you have a 11 phone number, you want me to see if it's associated 12 with an account, there's a couple of different ways we 13 could do it. There is a couple of different systems 14 we could do it. It's a matter of just querying a 15 desktop. Well, a database, essentially. Put the 16 phone number in and it will tell me if it's associated 17 with a subscriber or subscriber accounts. A phone 18 number could be associated with more than one account 19 over time. 20 Q. Has DISH Network done that work in 21 connection with this case? 22 A. The Krakauer case? 23 Q. Yes. 24 A. I believe in our research specifically</p>
<p style="text-align: right;">Page 107</p> <p>1 or lead generator and any response by DISH to those 2 requests. You testified earlier that you believe that 3 there was one time that SSN had made such a request, 4 but you're not sure who it was or when it was made? 5 A. I can tell you who it is. 6 Q. Okay. 7 A. Just as you asked the second time, 8 Exclaim Marketing. 9 Q. What was Exclaim Marketing? 10 A. It's the name associated with the request 11 to use the third-party form -- again, one of the 12 documents I saw yesterday. I'm not clear what their 13 specific role was, but Exclaim Marketing was it. I 14 think that's been produced also. 15 Q. Do you know when it was, when they were 16 to provide services for SSN? 17 A. No, sir. I can look at the document. 18 That will refresh us both. But no, I don't know right 19 now. 20 Q. 4-1 is "All efforts by DISH to direct SSN 21 to, or suggest that SSN utilized any third-party 22 vendor or lead generator." 23 What can you tell me about that? 24 A. DISH does not direct any retailer --</p>	<p style="text-align: right;">Page 109</p> <p>1 regarding Mr. Krakauer's case or his -- the allegation 2 he did, I'm sure we did. 3 Q. With respect to any other potential class 4 member, should there be a class? 5 A. It would -- the answer -- if there 6 were -- the class -- now, we're talking about do not 7 call now, right. "Class"? I don't know what that 8 means. 9 Q. Okay. 10 A. Help me out. I don't understand the 11 question. I apologize. 12 Q. I'm just wondering if in connection with 13 this case, the Krakauer case, generally, this 14 litigation -- 15 A. Okay. 16 Q. -- if DISH Network has utilized its 17 internal records or information to determine whether 18 any person has subscribed to DISH Network services. 19 A. I would -- are there specifics? Again, I 20 don't know. 21 Q. Just generally. 22 A. If I was given a phone number, I could 23 determine if there was a credit account, it was their 24 business account associated with the phone number.</p>

<p style="text-align: right;">Page 110</p> <p>1 Q. Have you done that with respect -- or has 2 DISH Network done that with respect to anyone other 3 than Dr. Krakauer, to your knowledge? 4 A. I believe all of the claims, the 5 allegations that you recently -- the Cambell, the 6 other accounts -- or the allegations you've presented, 7 all of those, at least, have been -- we looked at 8 those. I don't know what else there would be. If 9 there are specifics, I could perhaps tell you. 10 Q. Okay. No. 8 -- we'll leave that where it 11 is, but No. 8 is "The manner and means of determining 12 whether any person or entity called by SSN consented 13 to receive a telemarketing call from SSN or any other 14 entity." 15 So what can you tell me about that? 16 A. I'm sorry. One more time. I'm still 17 back on the other one there. 18 Q. Sure. The topic is "The manner and means 19 of determining whether any person or entity called by 20 SSN consented to receive a telemarketing call from SSN 21 or any other entity." 22 A. So my understanding is that SSN had -- 23 what's the word -- not opt-ins, but they had -- they 24 were -- read that one more time. I'll grab the phrase</p>	<p style="text-align: right;">Page 112</p> <p>1 A. I don't believe so. I don't know. 2 Q. No. 10 is "All facts supporting DISH's 3 eleventh affirmative defense," which is the defense of 4 consent that's asserted in the answer. What can you 5 tell me there? 6 A. About what was in our statement? 7 Q. Yeah. About all of the facts that 8 support DISH's eleventh affirmative defense (consent). 9 A. Respectfully, I don't recall what was 10 alleged or what was printed in that. Can I refer to a 11 copy or -- do you have one? 12 Q. I can do that. I can also ask this, I 13 guess, a different way. Let's call this No. 2. 14 (Deposition Exhibit 2 was marked.) 15 MR. BARRETT: And I only have one copy. 16 It's 500 pages long. 17 Q. (BY MR. BARRETT) Mr. Werner, I'll just 18 represent to you and counsel that that is a copy of an 19 expert report that was provided in this case by Anya 20 Verkhovskaya, V-e-r-k-h-o-v-s-k-a-y-a, that lists 21 certain telephone calls that were placed by SSN. And 22 the reason it's so long is it literally lists all of 23 the telephone numbers that were dialed and the calls 24 that were placed.</p>
<p style="text-align: right;">Page 111</p> <p>1 that's in that sentence here. 2 Q. Sure. Why don't we put it in front of 3 you there, No. 8. Exhibit 1, No. 8. 4 A. And I apologize for being so sloppy 5 there. 6 Q. That's all right. Not at all. 7 A. It's my understanding that Satellite 8 Systems Network had consents for all of the calls that 9 they made. That was my understanding. So to the 10 extent that -- determining whether or not they had 11 any, they told us they did. 12 Q. What do you base your understanding on 13 that they had consent for all of the calls? 14 A. I don't think I ever had a conversation 15 with anybody at Satellite Systems Network, but I -- 16 and I can't tell you a single conversation where that 17 was noted, but I think it was -- we knew that they 18 had -- they had purported to us that they had consents 19 for the calls that they made. 20 Q. In writing or orally? 21 A. I don't recall. I don't recall. 22 Q. But as far as documentation goes, does 23 DISH have any documentation that SSN had consent to 24 place telemarketing calls?</p>	<p style="text-align: right;">Page 113</p> <p>1 And my question to you is: Does DISH 2 Network have any evidence that any person in those -- 3 in those records, in that Exhibit 2, consented to 4 receive telemarketing calls from DISH Network or SSN? 5 MR. KERN: I'm going to object to the 6 question insofar as it's nearly impossible to answer, 7 particularly for him. It's an unfair question. 8 If you can look through there and know 9 from those telephone numbers whether any particular 10 one has a consent, I'm okay with him trying. But I'm 11 not sure -- well, if that's the exercise you would 12 like him to go through. You can look through every 13 one of them and see if, in your recollection, there is 14 a consent. But beyond that, I think the papers to be 15 passed back and forth would probably be a better way 16 to have that question answered. 17 MR. BARRETT: I mean, we're here on a 18 topic that has been noticed as "All facts supporting 19 DISH's eleventh affirmative defense, consent, also the 20 ninth affirmative defense, EBR, so I want those facts. 21 Whatever those are -- I haven't seen any -- I want 22 them. 23 MR. KERN: What was the date of that 24 particular report?</p>

<p style="text-align: right;">Page 114</p> <p>1 MR. BARRETT: I don't know. 2 MR. KERN: Was it -- 3 MR. BARRETT: It would have been about 4 three weeks ago, maybe a month ago. It would be at 5 the end. I can take a look, if you would like. 6 MR. KERN: I'll also object to the 7 prematurity of having to give a definitive answer on 8 that particular point. 9 MR. BARRETT: It's January 30, 2015. So 10 I do want all of those facts. I'm entitled to all of 11 those facts and I don't have all of those facts. DISH 12 Network has had all of the information it needs from 13 us to answer that question. 14 So if the witness isn't prepared to tell 15 me who DISH Network has consent for or had an EBR with 16 at the time of these calls, that's fine. Just tell me 17 that. But I believe I am entitled to that information 18 and this has been a duly noticed deposition on that 19 topic. 20 MR. KERN: And to the extent that you 21 know it -- if you are not prepared to answer that all 22 facts question, then you're not, and we'll obviously 23 have to deal with it a different way, you know, 24 through -- and I suspect it will be through the papers</p>	<p style="text-align: right;">Page 116</p> <p>1 A. Okay. 2 Q. Probably -- I believe there is 80,000- 3 plus. 4 A. Okay. 5 Q. So we've reviewed the Facts Blast from 6 2002. I'll skip that. I want to talk to you about 7 some native files to try to get an understanding of 8 what some of these Excel files are. 9 A. Okay. 10 Q. So I'll get them up on the screen. I'm 11 showing you D-KRAK 667. That's an Excel file. Do you 12 see that on the screen? 13 A. I'm sorry. I was looking -- 14 Q. Do you see that on the screen? 15 A. What's that? I'm sorry. 16 Q. The document is 667 up at the top? 17 A. Yeah, I see the file name. Yes. 18 Q. Do you know what this document is? 19 A. It may be an extract of a portion of a 20 track of some type having to do with phone calls. I 21 don't specifically know what it is. 22 Q. Would this be DISH's internal DNC data? 23 A. How large is the file? How many lines 24 are there?</p>
<p style="text-align: right;">Page 115</p> <p>1 being passed back and forth. But, you know, I'm 2 comfortable enough saying that he is not going to be 3 able to answer that question, as we sit here today. 4 MR. BARRETT: Okay. 5 MR. KERN: But you're welcome to look 6 through every single one of these numbers and see if 7 you know the answer. 8 A. I apologize. I would prefer not to go 9 through the exercise. 10 Q. (BY MR. BARRETT) All right. 11 A. A list of phone numbers -- let me look at 12 the data first. 13 MR. KERN: I think this is one of those 14 things that if ultimately you're dissatisfied with the 15 content of the papers being passed back and forth, 16 then I'll have to revisit the quality of the 17 preparation for him to be able to answer as to 18 those -- as to that tome of numbers, but we'll have to 19 see. 20 Q. (BY MR. BARRETT) Okay. No further 21 questions, then, on that. 22 A. Just a question, how many phone numbers 23 are there here, or entries are there? 24 Q. I don't know.</p>	<p style="text-align: right;">Page 117</p> <p>1 Q. There are 337. 2 A. I'm comfortable saying there are more 3 than 337 individuals that have requested not to be on 4 our -- not to be contacted by DISH. 5 MR. KERN: I'll object insofar as this 6 topic related to the internal do-not-call list was 7 dealt with by Mr. Montano, but to the extent that you 8 can answer these questions, I think it's okay. 9 Q. (BY MR. BARRETT) 695, it's an Excel 10 spreadsheet. Do you recognize this document? 11 A. On the sheets on the bottom, do they give 12 us any more, sheet 2 and sheet 3? This looks like a 13 pivot off of an original document. I don't know what 14 that is, sir. 15 Q. Okay. 721, do you recognize this? 16 A. Scroll to the right a little bit farther. 17 No, sir, I don't know what this is. 18 Q. 742. One of these tabs says "Blacklist." 19 Do you recognize it? 20 A. No, sir, I don't. 21 Q. Do you know of any blacklist that is 22 maintained at DISH respecting authorized retailers or 23 lead generators? 24 A. We don't -- we don't have -- we do not --</p>



<p style="text-align: right;">Page 118</p> <p>1 DISH does not keep a blacklist of anything, to my 2 knowledge. 3 Q. This is internal stings, consumer stings, 4 consumer ID'd retailer tabs on 744, which is another 5 Excel spreadsheet. Do you know what this document is? 6 A. Scroll to the right. It appears -- no, I 7 don't know what this is. It could be a tracker for -- 8 I don't know what it is for sure. 9 MR. KERN: The witness will be instructed 10 not to speculate. If you know what it is, you know 11 what it is. If you don't know what it is, you don't 12 know what it is. 13 A. I don't know what it is. 14 Q. (BY MR. BARRETT) Closed accounts as of 15 1/23/09, do you know what this document is? It's 763. 16 A. No, sir. 17 Q. 764, PossibleNOW Program for DISH Network 18 Retailers. What is this document? 19 A. I don't know. I haven't seen this 20 document. 21 Q. 829, do you recognize this document? 22 A. No, sir, I don't. 23 Q. Do you know what a pivot list is, 24 p-i-v-o-t, pivot?</p>	<p style="text-align: right;">Page 120</p> <p>1 Complaints. Red line, Retailers Identified. 2 A. Yes, sir, I see that. 3 Q. Have you seen this document before? 4 A. I don't believe so, sir. 5 Q. Or reports of this nature? 6 A. Over time, DISH has maintained different 7 documents and done manipulation and reporting off of 8 it for a variety of purposes. This looks like it's 9 about tracking something about TCPA. I don't know 10 what this document is specifically or how it was 11 generated or why, or much less when it was done. 12 Q. How about 1612? 13 A. I'm not familiar with this document. 14 Q. If you look under column B at the top on 15 line 2, "Process Type: Raw file scrub." It says 16 "Satellite Systems Network project paramount, campaign 17 paramount, call list paramount." Do you have any idea 18 what that is telling me there? 19 A. No, sir. I don't know what this is. 20 Q. Does DISH Network maintain any kind of 21 documentation indicating that a particular dealer has 22 scrubbed a list against the DNC Registry? 23 A. The -- if one of our retailers engaged 24 the services of PossibleNOW, the PossibleNOW and/or</p>
<p style="text-align: right;">Page 119</p> <p>1 A. I know in Excel a function can be done to 2 extract information by manipulating the data. Pivot 3 reports, I've heard that. I don't know what that term 4 is there. 5 Q. 841, do you know what this document is? 6 No? 7 A. I'm sorry, I didn't hear the question. 8 Q. Do you know what that document is? 9 A. No. I'm sorry. I don't know this 10 document, sir. 11 Q. 848, TCPA Tracking Chart. Do you see 12 that down at the bottom left? 13 A. I do, sir. 14 Q. Sheet 1, database dump. Do you know what 15 this document is? 16 A. Specifically I cannot tell you, sir. No, 17 sir. 18 Q. Generally, what is it? 19 A. Again, I don't want to speculate 20 generally. I don't know what the file is. It's got a 21 lot of data. It looks like phone numbers and stuff, 22 but I don't know what it is. 23 Q. How about this page here with the chart? 24 TCPA Tracking, do you see that? Black line, TCPA</p>	<p style="text-align: right;">Page 121</p> <p>1 the retailer would have those records, but DISH 2 doesn't get a record of their -- the work that they do 3 with PossibleNOW. Again, we don't manage that 4 relationship, so we don't expect reporting. 5 MR. BARRETT: Okay. That's all I've got. 6 Thank you very much. You are done. 7 THE DEPONENT: My pleasure. 8 THE VIDEOGRAPHER: This concludes today's 9 deposition of Bruce Werner, 30(b)(6) representative of 10 DISH Network, and the end of media unit 3 of 3. We 11 are off the record at 2:45. 12 WHEREUPON, the within proceedings were 13 concluded at the approximate hour of 2:45 p.m. on the 14 17th day of March, 2015. 15 16 17 18 19 20 21 22 23 24</p>

<p>Page 122</p> <p>1 I, BRUCE WERNER, do hereby certify that I 2 have read the above and foregoing deposition and that 3 the same is a true and accurate transcription of my 4 testimony, except for attached amendments, if any. 5 Amendments attached ( ) Yes ( ) No 6 7 8 9 10 11 12 13 The signature above of BRUCE WERNER was 14 subscribed and sworn to before me in the county of 15 _____, state of Colorado, this _____ day of 16 _____, 2015. 17 18 19 20 21 22 23 24</p>	<p>_____ BRUCE WERNER</p> <p>_____ Notary Public My commission expires</p> <p>Thomas H. Krakauer 3/17/15 (mh)</p>
<p>Page 123</p> <p>REPORTER'S CERTIFICATE</p> <p>STATE OF COLORADO )  ) ss. CITY AND COUNTY OF DENVER )</p> <p>I, MARCHELLE HARTWIG, Certified Shorthand Reporter and Notary Public, ID 20014012312, State of Colorado, do hereby certify that previous to the commencement of the examination, the said BRUCE WERNER was duly sworn by me to testify to the truth in relation to the matters in controversy between the parties hereto; that the said deposition was taken in machine shorthand by me at the time and place aforesaid and was thereafter reduced to typewritten form; that the foregoing is a true transcript of the questions asked, testimony given, and proceedings had.</p> <p>I further certify that I am not employed by, related to, nor of counsel for any of the parties herein, nor otherwise interested in the outcome of this litigation.</p> <p>IN WITNESS WHEREOF, I have affixed my signature this 25th day of March, 2015. My commission expires April 19, 2017.</p> <p><input checked="" type="checkbox"/> Reading and Signing was requested. <input type="checkbox"/> Reading and Signing was waived. <input type="checkbox"/> Reading and Signing is not required.</p>	<p><i>Marchelle Hartwig</i></p>

1	2	3	4	5	6	7	8	9	A
1 8:17,18 57:4 76:23 111:3 119:14 1-800- technostores 61:21 1/23/09 118:15 10 40:18,19,20 41:1, 24 104:21 112:2 10:37 38:15,16 10:44 38:16,18 11 104:22 11-23851 78:20 11:17 57:5,6 11:30 57:6,10 12 9:8,13 52:19,21, 23 12:19 83:18,19 12:20 83:3 13 54:6,7 13th 98:21 15 56:19 102:6 16 27:3,5,7,8,9 52:6, 7,8 1612 120:12 17 27:12,22 60:19, 20,23 61:14 62:3 17th 7:12 98:14 121:14 18 54:22,23 60:2 193 19:9 1:14-cv-0333-cce- jep 7:9 1:22 83:19,21	2 15:8 57:8 73:22 76:10 112:13,14 113:3 117:12 120:15 2000- 44:5 2000s 13:13 104:21 2002 116:6 2003 37:10,15 71:13 89:12,16 93:6 2004 19:18 2005 59:22 62:23 64:18 2006 41:14 63:24 64:18 65:15 81:17 2007 65:20 102:6 105:24 2008 92:7 2009 12:12,14,18 17:2 19:21,23 20:5, 7,16 38:21 42:20 43:10,23 91:7 92:13 104:21 105:9,12 2010 12:21 21:8 44:5 71:17 2011 12:18 17:2 19:21 26:10 36:15, 24 38:21 41:10,18, 23 42:7,18,21 43:10,23 2012 81:17 105:24 2013 37:11,16,17 38:4,8 104:9 2015 7:12 114:9 121:14 22 11:6 23 11:6	23852 78:20 26 64:6,7 27 99:17,22 28 91:7 99:22 29 99:17,19,20 102:5 29.99 30:17,18 2:01 100:16,17 2:05 100:17,21 2:45 121:11,13 3 15:8 100:19 117:12 121:10 30 67:22,23 68:2 114:9 30(b)(6) 7:6 57:9 100:20 121:9 31 19:18 21:8 36:15 65:5,6 32 27:8 33 78:16,17,18 337 117:1,3 34 83:22 84:1 88:9 89:7,8 90:10,18 91:4,13 35 81:21,23 82:3 36 81:21,24 82:3 37 75:23,24 81:9 39 27:10,12 83:22 84:1 88:5 3rd 66:15 4 18:24 19:1,2,5	98:12 4-a 50:14 4-e 39:3 4-f 8:23 4-g 106:15 4-i 9:2,3,4 4-k 9:1 4-l 107:20 42 95:16,18 96:1,3 43 95:18 44 95:16,18 45 94:5,6 95:7 98:20 47 99:17,19,24 100:5,7,23 101:1,7, 19 48 99:18,19,23 100:5,23 101:11,12, 14 5 26:14 500 112:16 6 9:7,8,13 21:1,2 23:17,18 24:4 27:4 66 73:8,9 667 116:11,16 67 83:22 84:1 85:3,5 87:6,8 695 117:9 7 108:4	7.3 27:6,13,20 28:1 721 117:15 742 117:18 744 118:4 763 118:15 764 118:17 77 104:5,6 79 104:13,14,16 8 110:10,11 111:3 80 104:23 105:1,5,7 80,000- 116:2 81 104:23 105:3,4,9, 13 829 118:21 841 119:5 848 119:11 9 51:21,22,23 9:46 7:16 A 8:21 a.m. 7:16 38:16 57:6,10 access 15:6 37:23 56:1 accesses 45:11 47:14 accessible 55:20 accordance 21:13, 22 22:23,24					

<p><b>account</b> 56:1 86:9, 11 97:14 102:12 108:12,18 109:23, 24</p> <p><b>accounts</b> 108:17 110:6 118:14</p> <p><b>accurate</b> 44:20 45:15 46:2</p> <p><b>accurately</b> 93:15</p> <p><b>accused</b> 66:22</p> <p><b>acknowledged</b> 91:18</p> <p><b>acknowledgment</b> 92:5</p> <p><b>Act</b> 79:5,12</p> <p><b>acting</b> 22:7,19</p> <p><b>action</b> 7:9 23:21 24:11,19 25:17 28:19 31:10 50:14, 17,24 94:10,15 104:1</p> <p><b>actions</b> 24:16,24 28:18 29:1 31:9</p> <p><b>activations</b> 10:8,9</p> <p><b>activity</b> 36:20</p> <p><b>add</b> 70:2</p> <p><b>added</b> 74:4 97:17</p> <p><b>additional</b> 80:21 81:11 90:19 93:15</p> <p><b>address</b> 26:4 60:9 61:10</p> <p><b>addressed</b> 42:3</p> <p><b>adjourn</b> 61:7,8</p> <p><b>admissibility</b> 58:19</p> <p><b>admits</b> 91:20</p> <p><b>advantage</b> 33:11</p> <p><b>advertisement</b> 28:20 31:11</p>	<p><b>advertising</b> 30:11 41:3 43:2</p> <p><b>advice</b> 38:4,6 58:4, 5</p> <p><b>advised</b> 86:15 87:18</p> <p><b>Affiliate</b> 66:14</p> <p><b>affiliates</b> 66:20</p> <p><b>affirmative</b> 112:3,8 113:19,20</p> <p><b>AG</b> 97:1 98:23 99:2</p> <p><b>agent</b> 53:14 96:14, 15,20,22,24</p> <p><b>agree</b> 20:7 21:10 25:7 29:3,9,18 44:2 82:4</p> <p><b>agreement</b> 18:8,10, 16,20 19:14 20:4,5, 7,16 21:7,14,23 23:1,17 24:5,20,23 25:10,11,15,16,17, 19,22,24 26:1,4,6 27:9 31:24 32:4,8, 19 33:4,16,19,20 34:1,7,14 38:3 45:13 50:16 51:18 60:7 68:3,6</p> <p><b>agreements</b> 10:10 18:2,6,23 20:12,14 72:6</p> <p><b>ahead</b> 24:2 40:5</p> <p><b>Ahmed</b> 62:5</p> <p><b>Alex</b> 53:13 54:13 63:2,5,15 78:22</p> <p><b>Alex's</b> 62:7,22</p> <p><b>allegation</b> 49:22 67:8 68:7 75:21 80:16 82:16 86:4 88:11 89:23 94:9,16 101:20 109:1</p> <p><b>allegations</b> 65:14</p>	<p>73:19 91:3 98:8,19 102:11 103:24 110:5,6</p> <p><b>allege</b> 84:22</p> <p><b>alleged</b> 67:2 73:16 79:11,15 80:5 81:20 84:17,23 86:19 90:9,22 103:5 112:10</p> <p><b>alleging</b> 79:1</p> <p><b>allowed</b> 30:24 70:5</p> <p><b>aloud</b> 22:15 28:4 29:17 96:12</p> <p><b>Amir</b> 62:5</p> <p><b>analyst</b> 65:21</p> <p><b>analytics</b> 12:6</p> <p><b>and/or</b> 28:20,21 31:12 120:24</p> <p><b>Angela</b> 73:17 78:23</p> <p><b>annually</b> 105:18 106:15</p> <p><b>answering</b> 33:14 39:9 85:20</p> <p><b>Anya</b> 112:19</p> <p><b>apologize</b> 17:16 37:17 62:14,19 65:11 78:8,11 101:10 109:11 111:4 115:8</p> <p><b>apparently</b> 86:7</p> <p><b>appealable</b> 59:8,11</p> <p><b>appears</b> 61:20 73:20 86:10 88:9,13 96:15 98:4 105:9 118:6</p> <p><b>applicable</b> 23:12</p> <p><b>applied</b> 103:22</p> <p><b>appropriately</b> 80:24</p>	<p><b>approval</b> 77:13,18 106:24</p> <p><b>approved</b> 77:10,16</p> <p><b>approximate</b> 12:24 121:13</p> <p><b>approximately</b> 7:16 41:14 64:17</p> <p><b>April</b> 89:12 93:6</p> <p><b>arguing</b> 60:17</p> <p><b>arising</b> 29:1</p> <p><b>arrived</b> 89:22</p> <p><b>assert</b> 55:22 58:17</p> <p><b>asserted</b> 55:15 112:4</p> <p><b>assertion</b> 57:24</p> <p><b>assessed</b> 37:2</p> <p><b>assigned</b> 19:11</p> <p><b>assume</b> 46:5 48:2,7 49:3,9,16 101:24</p> <p><b>assurance</b> 16:3</p> <p><b>attached</b> 26:5 36:18</p> <p><b>attempt</b> 86:11</p> <p><b>attempts</b> 79:4</p> <p><b>attorney</b> 28:9 59:19 68:22 96:9,13 102:16</p> <p><b>attorney-client</b> 55:2 58:1,8 101:6</p> <p><b>audiences</b> 23:9</p> <p><b>audit</b> 11:11,21 12:22 17:7</p> <p><b>authority</b> 31:15,24 32:9 34:3,10</p> <p><b>authorize</b> 23:20 24:10</p>	<p><b>authorized</b> 21:21 22:14,20,23 29:5, 11,20 68:3 117:22</p> <p><b>authorizes</b> 21:11, 16 33:21</p> <p><b>aware</b> 38:9 40:12 42:1 43:20 52:17 53:4,7,17 54:14,21 55:6 64:3 65:4 67:19 91:9 98:1,7 99:13,16 101:19,22</p> <hr/> <p style="text-align: center;"><b>B</b></p> <hr/> <p><b>back</b> 24:9 32:7 35:6 36:24 38:17,21 43:17 44:5 54:15 56:10,12,14,22 57:11 60:12 62:23 64:4 65:20 67:9 71:17 77:17,23 78:18 82:13,20 83:15,20 86:13 89:12,16 93:6 96:20,22 105:16 110:17 113:15 115:1,15</p> <p><b>backing</b> 98:2</p> <p><b>ballpark</b> 83:11</p> <p><b>Barrett</b> 7:19 8:6 9:3, 4,6,10,13,15,19,20 13:21 14:1 15:9,10 19:10,13 24:4,6,24 25:9,13 27:14,16,19 28:12,13 29:15 31:8 32:6,16 33:24 34:9, 19 36:1,10 38:13,19 39:4,7,10 40:1,8 44:17 45:22 46:17 47:1,7,8 48:1,10,15 49:12,15 50:11 52:20 55:3,7,11,18 56:5,10,15,20,23 57:2,11,17 58:15 59:9,12,17,24 60:9, 20 61:3,14 62:13,</p>
--	---	---	--	---

<p>16,21 69:14 70:6 71:1,21 72:18 74:20,24 79:20 83:2,12,16,24 84:21 85:23 88:16 90:2,16 92:13,20 93:16,24 95:8,10,12 99:21,22 100:7,12,14 101:11, 13,17,18 102:24 103:11,18 104:4 105:4,6 106:4,8,10, 13,14,23 112:15,17 113:17 114:1,3,9 115:4,10,20 117:9 118:14 121:5</p> <p><b>base</b> 111:12</p> <p><b>based</b> 10:9 32:21 37:24 60:3 68:5 69:1 103:14 104:2, 18</p> <p><b>basically</b> 45:9</p> <p><b>basis</b> 21:17 22:21 47:17 57:17 58:21 71:17</p> <p><b>Bates'd</b> 78:19</p> <p><b>beginning</b> 22:1 57:7 100:18</p> <p><b>begins</b> 28:14</p> <p><b>behalf</b> 66:16</p> <p><b>behavior</b> 74:1 75:14 96:14</p> <p><b>beings</b> 115:15</p> <p><b>belief</b> 80:6 91:22</p> <p><b>believed</b> 75:5</p> <p><b>believes</b> 79:3</p> <p><b>Ben</b> 7:21 9:7,16 19:10 57:12 61:4</p> <p><b>benefit</b> 44:10 46:21, 23 47:4,6,19 48:10, 14 49:17</p> <p><b>benefited</b> 46:16</p>	<p><b>benefiting</b> 44:6 46:11</p> <p><b>big</b> 30:3,4</p> <p><b>big-picture</b> 14:3</p> <p><b>bill</b> 47:17</p> <p><b>bit</b> 13:6 19:3 38:20 71:22 96:8 117:16</p> <p><b>Black</b> 119:24</p> <p><b>blacklist</b> 117:18,21 118:1</p> <p><b>blank</b> 51:14</p> <p><b>Blast</b> 40:24 116:5</p> <p><b>Boston</b> 56:11</p> <p><b>bottom</b> 68:16 73:22 117:11 119:12</p> <p><b>bound</b> 45:20</p> <p><b>break</b> 38:12,13 57:12 83:3</p> <p><b>Brett</b> 7:22</p> <p><b>Brian</b> 102:13</p> <p><b>broad</b> 14:4</p> <p><b>broadcast</b> 23:7</p> <p><b>broadcasting</b> 63:16</p> <p><b>broadly</b> 44:18</p> <p><b>brought</b> 53:5 63:22</p> <p><b>Bruce</b> 7:6 8:2,10 39:8 57:4,8 100:19 121:9</p> <p><b>bullet</b> 65:24 66:1 77:5</p> <p><b>bunch</b> 36:17 72:2 90:5 92:3</p> <p><b>business</b> 10:10 16:13 23:7 26:5,7 31:20 32:1,10,21,23 34:1,12 35:7,18</p>	<p>37:11,20 38:2 42:6 43:19 45:1,13 49:8 52:14 53:11 68:4,6 70:13,17,20 71:13, 18 89:2,17 93:5 94:1 102:15,20 103:3,12,14 109:24</p> <p><b>buy</b> 30:19</p> <hr/> <p><b>C</b></p> <hr/> <p><b>California</b> 53:10</p> <p><b>call</b> 28:10 38:23 39:21 40:2,3,7,13 46:6,7,9,23 47:10, 11,12,20 48:3,4,7, 11 56:5,8,9 61:12 62:1 66:2,3,10,15 67:7,11,12 69:9,18 70:8,9 71:16,17 73:22 74:2 75:7,9 81:13,20 82:17,18 83:16 85:4 86:5,16, 20,21 87:19 88:22 89:18 91:8 92:17 93:2,8,18,23 96:20, 21 97:2,11,23 103:23 109:7 110:13,20 112:13 120:17</p> <p><b>called</b> 92:10 96:22 98:13 99:14 110:12, 19</p> <p><b>caller</b> 74:3 99:6</p> <p><b>calling</b> 84:17 94:24</p> <p><b>calls</b> 16:4,6,15 17:4 23:24 36:8 38:21 39:13,15,17 40:3 44:9 45:9 46:14 47:22 50:8 67:19 69:13 70:23 74:1, 10,17 75:2,3,9,21 77:14 79:2 80:1,5,7 81:19 84:11 89:19 92:11,14 93:9 102:21 111:8,13,19,</p>	<p>24 112:21,23 113:4 114:16 116:20</p> <p><b>Cambell</b> 110:5</p> <p><b>campaign</b> 120:16</p> <p><b>Campbell</b> 95:9,10, 12,23 98:11,13</p> <p><b>caption</b> 53:8</p> <p><b>Cards</b> 28:23</p> <p><b>Carolina</b> 7:11 53:6, 9 54:19</p> <p><b>case</b> 19:8 37:13 55:17 58:10,11 59:15 72:23,24 73:2 75:4 82:12 89:22 101:9 106:19 108:21,22 109:1,13 112:19</p> <p><b>catch</b> 37:19 60:13</p> <p><b>categories</b> 9:18 73:24 74:6,19 75:15 79:8 80:16</p> <p><b>categorize</b> 69:1 74:7 80:10</p> <p><b>category</b> 39:3 74:11 75:1,8,11 79:9,15,24 80:13</p> <p><b>center</b> 40:3,7</p> <p><b>centers</b> 40:13 66:16</p> <p><b>Central</b> 55:4</p> <p><b>Certificates</b> 28:23</p> <p><b>certified</b> 7:14</p> <p><b>chance</b> 62:7,11,23 88:17</p> <p><b>change</b> 13:2 91:16</p> <p><b>channel</b> 14:13 26:22</p> <p><b>characterize</b> 20:10</p> <p><b>Charlie</b> 23:2,9,15</p>	<p><b>chart</b> 76:12 119:11, 23</p> <p><b>chase</b> 41:19</p> <p><b>Chat</b> 23:2,9,15</p> <p><b>check</b> 104:22</p> <p><b>chooses</b> 30:6</p> <p><b>Chris</b> 41:1</p> <p><b>Civil</b> 7:2,9</p> <p><b>claim</b> 89:23 101:9</p> <p><b>claims</b> 110:4</p> <p><b>Clarification</b> 41:3</p> <p><b>clarify</b> 18:22</p> <p><b>clarity</b> 19:9</p> <p><b>Clark</b> 41:1</p> <p><b>class</b> 109:3,4,6,7</p> <p><b>clear</b> 34:14 60:5 66:13,17 80:14 86:22,24 87:3,15 107:12</p> <p><b>client</b> 84:2</p> <p><b>close</b> 12:4 50:3</p> <p><b>Closed</b> 118:14</p> <p><b>closer</b> 13:23</p> <p><b>colleague</b> 10:15</p> <p><b>color</b> 31:2</p> <p><b>column</b> 120:14</p> <p><b>comfortable</b> 71:10 115:2 117:2</p> <p><b>comment</b> 82:23</p> <p><b>commitment</b> 48:23</p> <p><b>committed</b> 90:23</p> <p><b>common</b> 66:21</p> <p><b>commonly</b> 17:14</p> <p><b>communicating</b> 59:12</p>
---	--	--	---	---

<b>communication</b> 67:14 85:15 99:9 <b>communications</b> 23:11 98:18 <b>Companies</b> 66:14 <b>company</b> 13:4 30:3 92:2 <b>compel</b> 59:1,6,7 61:9 <b>compensation</b> 105:18 <b>complain</b> 75:11 <b>complained</b> 75:6 <b>complaint</b> 39:22 59:18 61:17 64:23, 24 65:9 68:7,10 73:21 74:8 75:12 76:6,9 78:23 79:8, 10,22 80:10 81:1 82:1,4,10 88:6 95:22 96:5,7,10,14, 18,20 97:1 98:2,23 99:3 <b>complaints</b> 68:16, 24 79:7 84:3 120:1 <b>complete</b> 80:23 <b>complex</b> 20:9 <b>compliance</b> 11:12, 24 12:22 16:7 17:8 25:20 26:2 32:3,12 33:18,22 34:4,12,23 35:5,18 36:4 37:4 41:13 51:8 65:22 103:4 <b>compliant</b> 32:20 33:9,13 34:17 35:8 <b>compulsion</b> 57:19 <b>compulsory</b> 57:23 <b>computer</b> 55:24 72:8	<b>concern</b> 82:3 <b>concerned</b> 90:9 <b>conclude</b> 88:20 93:18 <b>concluded</b> 90:16 93:24 121:13 <b>concludes</b> 121:8 <b>conclusion</b> 23:24 28:10 36:8 44:9 46:14 47:22 50:9 69:13 70:23 74:17 84:11 89:20 92:12, 15 93:10 94:4 <b>condition</b> 15:20 32:1,9 33:24 35:18 <b>conditions</b> 15:22 16:11 21:14,23 23:1 <b>conduct</b> 74:2 99:15 <b>confident</b> 27:1 42:2 <b>confirm</b> 84:5,8 <b>confused</b> 9:6 13:7 18:17 80:9 <b>connection</b> 28:19 31:11 53:16 108:21 109:12 <b>consent</b> 42:8,11, 15,22 54:11 100:1 111:13,23 112:4,8 113:10,14,19 114:15 <b>consented</b> 110:12, 20 113:3 <b>consents</b> 111:8,18 <b>considerable</b> 29:4, 10,19 31:15 <b>considered</b> 38:7 <b>consistency</b> 30:12 <b>consistent</b> 42:17 103:22	<b>constitute</b> 89:16 <b>consumer</b> 61:18 65:9 71:3,17 74:8 79:5,11 87:13 97:4 100:9 108:6 118:3,4 <b>consumers</b> 70:2,5 <b>contact</b> 66:15 70:5, 18 71:3,4 76:21 77:7 79:4 <b>contacted</b> 86:7,8 117:4 <b>contacting</b> 102:2 <b>contained</b> 94:9,16 <b>content</b> 115:15 <b>context</b> 103:4 <b>Continue</b> 70:22 <b>contractor</b> 22:8,20 30:7 <b>contractors</b> 18:12 43:18 <b>contractual</b> 45:20, 23 46:1,10 <b>conversation</b> 10:11 38:9 62:22 63:1,14,18 111:14, 16 <b>conversations</b> 10:6,19 11:1 80:18 <b>cooperate</b> 28:24 <b>copy</b> 27:14 39:20, 23 73:6 112:11,15, 18 <b>Corporation</b> 53:11 <b>correct</b> 8:19 9:9 15:19 18:2 21:24 34:21 35:13,14 37:7,23 51:10 61:6 63:3 65:11 76:6 82:1 88:11 90:18 93:16 94:2 95:23	96:18 98:3 101:16 <b>correspondence</b> 68:12 72:7 79:21 80:22 87:2 91:18 99:1,2,11 <b>costs</b> 46:19 <b>counsel</b> 7:17,22 37:12 38:5 61:5 105:23 112:18 <b>couple</b> 28:16 83:13 94:19 108:12,13 <b>court</b> 7:10,14,24 55:4,12,20 56:6 57:15 58:23 59:4 61:12 100:1 <b>court's</b> 55:14 58:6, 9 <b>cover</b> 71:23 <b>covered</b> 72:5 <b>covering</b> 13:8 <b>covers</b> 22:6 <b>create</b> 35:1 <b>created</b> 104:20 <b>credit</b> 86:10 109:23 <b>Csg</b> 97:14 <b>current</b> 12:16 <b>customer</b> 10:8 30:18 44:3,5 45:1,2, 4,10,14,18,20,23,24 46:7,9,15,18,21 47:10,15,17 48:23 70:18 71:3 94:18 95:4,7 96:16,17,21, 24 97:1 99:8 <b>customers</b> 15:6,13, 18 23:12 44:19 47:3 49:7 70:5 <b>cut</b> 41:19 55:1 96:19 <b>cycle</b> 65:14	<hr/> <b>D</b> <hr/> <b>D-krak</b> 116:11 <b>data</b> 115:12 116:22 119:2,21 <b>database</b> 108:15 119:14 <b>databases</b> 72:8 <b>date</b> 13:13,14 91:14 97:17 102:5 104:15 105:2,6 113:23 <b>dated</b> 40:24 <b>dates</b> 12:24 40:11 106:20 108:7 <b>David</b> 85:7 <b>day</b> 7:12 12:24 121:14 <b>days</b> 29:2 76:2 <b>deal</b> 41:16 114:23 <b>dealer</b> 66:22 120:21 <b>dealers</b> 23:21 24:11 31:16 103:6,13,15, 19,20 <b>dealt</b> 117:7 <b>December</b> 19:18 21:8 36:15 <b>decision</b> 55:14 58:6,9 59:4,8 89:21, 22 93:13 102:15,20 103:3 104:1 <b>decisions</b> 103:12 <b>declined</b> 96:21 <b>defendant's</b> 100:1 <b>defense</b> 112:3,8 113:19,20 <b>defined</b> 21:21 22:22 <b>definitive</b> 114:7
--	---	--	---	--

<b>demand</b> 24:21 <b>dependent</b> 26:13 <b>depending</b> 45:19 48:20,22 49:1 <b>DEPONENT</b> 83:7 121:7 <b>deposition</b> 7:6 8:16 19:1 21:1 40:19 51:21 52:6,19 54:6, 22 57:4,8 58:14,20 60:19 61:7,8 64:6 65:5,13 67:22 72:1, 11,12,16 73:8 75:23 76:2 78:16 81:21 83:22 84:4 94:5 95:16 99:17 100:19 104:5,13,23 112:14 114:18 121:9 <b>der</b> 7:13 <b>describe</b> 12:20 <b>description</b> 10:5 22:12 45:15 96:4 <b>designation</b> 13:10 100:1 <b>desire</b> 30:8 <b>desires</b> 22:12,13,20 <b>desktop</b> 108:15 <b>detail</b> 32:24 69:16 82:6 102:11 104:6 <b>detailed</b> 94:7 <b>details</b> 37:2 38:6 50:23 <b>determination</b> 101:2 <b>determine</b> 51:7 108:5 109:17,23 <b>determined</b> 88:24 89:6 93:21 <b>determining</b> 110:11,19 111:10	<b>development</b> 13:9 <b>dialed</b> 97:10 112:23 <b>difference</b> 36:6 <b>differently</b> 30:21 80:1 103:20 <b>difficulty</b> 36:5 <b>dig</b> 15:2 <b>direct</b> 14:11 45:6 53:12 96:16,17 107:20,24 108:2 <b>directed</b> 54:12 108:2 <b>direction</b> 37:12 <b>directly</b> 45:4 <b>Directv</b> 53:23 86:6, 7,8 89:12,13,16 99:7,8 <b>disciplinary</b> 50:14, 17,24 94:10,15 <b>discipline</b> 81:13,18 82:11 103:13 <b>disciplined</b> 82:9 <b>disclose</b> 15:21 <b>disclosing</b> 16:11 <b>disclosures</b> 15:12, 13,17,18 16:1,8 <b>discovery</b> 59:1 <b>discuss</b> 56:21 <b>discussing</b> 60:1 <b>discussion</b> 62:10 99:4 100:3 <b>DISH</b> 7:7,8,21,23 8:11 10:20 12:13 13:11 14:2,4,5,10 15:17,20,24 17:14, 21 18:2,6,14,15,21 19:8,12,15 20:12,16 21:6 23:20 24:5,10,	15,19,20,24 25:7, 16,19 26:1,17 28:19,22,24 29:2,4, 10,19 30:3,7,10 31:11,15,24 32:9 33:17,21 34:3,10 35:3,15,23 36:12,22 37:6 38:7,22 40:2,6 41:22 42:24 43:3,5, 8,22 44:4,6,19 45:2, 4,14,18,19,21,23 46:2,8,10,11,15,23 47:2,13,15,18,19 48:10,12 49:5,17 53:19 54:1 57:9 58:11 62:10,22 63:15 64:1,15 65:1 66:21 68:2 72:3 74:6 75:10 77:16,19 78:19,22 79:14 80:9,12 81:12 82:9, 11 84:7 85:16,17 86:15 87:18 88:19 90:3,9,16,22 91:1,6 93:7,18,24 94:10,15 96:18 98:18 99:5,8, 9,14 100:9,20 101:23 103:4,12 104:8 105:19 106:14 107:1,20,24 108:6,20 109:16,18 110:2 111:23 113:1, 4 114:11,15 117:4, 22 118:1,17 120:6, 20 121:1,10 <b>DISH'S</b> 15:11 42:6, 8,11,14,21 50:19 57:20 81:1 88:5 89:14 112:2,8 113:19 116:22 <b>dissatisfied</b> 115:14 <b>distribution</b> 41:2 <b>district</b> 7:10 55:4, 14 58:6,9 59:4 <b>divide</b> 10:13,24 <b>Dnc</b> 51:11 74:4	75:10 87:12 92:23 93:3 97:4,17,18 116:22 120:22 <b>do-not-</b> 82:16 <b>do-not-call</b> 50:1,4 66:6,8,11 68:17 69:4,6,9 75:16 81:15 84:16,19,22 86:4 87:2,3 117:6 <b>document</b> 19:7,11, 13,16,20,22,24 20:9,20,22 21:3,11, 16 22:4,5,6 25:6 28:8 40:24 41:5,6, 15,23,24 42:9 52:21 53:1,9,20 54:9,14, 17 55:1,10,15,19 58:18 60:1,22 64:4, 8 65:16 67:24 73:12,20 78:13 79:21 80:11 81:24 82:2 85:2,3,20,24 88:15 91:24 94:8,9, 12,17 98:16 99:13 101:2,10 104:7,18 105:10,23 106:18 107:17 116:16,18 117:10,13 118:5,15, 18,20,21 119:5,8, 10,15 120:3,10,13 <b>document's</b> 58:19 <b>documentation</b> 111:22,23 120:21 <b>documenting</b> 85:17 <b>documents</b> 15:1,3 17:11,20 38:1 41:16,24 42:2 51:18 55:23 56:3,17,18 57:20,23 58:3,5,7, 12,14,23 59:5,6,14 60:15 65:12 66:24 71:22,24 72:2,4,6, 22 73:1 76:1 81:3 84:1,2 85:1 86:23, 24 90:5,6,20,24	91:17 92:9 94:3 95:13,14,22 99:24 100:2,5 102:2 105:17 106:7 107:12 120:7 <b>domain</b> 55:24 <b>Donaca</b> 37:12 <b>double-check</b> 60:24 <b>Dougherty</b> 85:7,9 88:3 <b>duly</b> 8:3 114:18 <b>dump</b> 119:14 <hr/> <b>E</b> <hr/> <b>e-mail</b> 9:7 62:5,13 63:19 73:15 76:4,5, 8 77:3 85:6,15 89:15 91:3 92:17,21 98:4,12,13,20,22 102:6,7 <b>e-mails</b> 92:3 95:22 99:5 <b>e-r</b> 76:5 <b>earlier</b> 30:9 51:3 71:22 79:6,20 87:21 91:18 98:24 100:3 107:2 <b>early</b> 13:13 67:16 <b>easy</b> 105:5 <b>EBR</b> 113:20 114:15 <b>Echostar</b> 19:15 21:7 64:9 <b>effect</b> 13:11 19:23 20:5 55:16 58:10 90:20 <b>effective</b> 19:17,20 20:1,7 21:8 <b>efforts</b> 15:11
---	--	--	---	--

<p>107:20</p> <p><b>elements</b> 13:5 16:7</p> <p><b>eleventh</b> 112:3,8 113:19</p> <p><b>employee</b> 40:2,6 61:19,20 76:15 86:6</p> <p><b>employees</b> 31:4 66:20</p> <p><b>encompass</b> 75:1</p> <p><b>encompassed</b> 74:11</p> <p><b>end</b> 41:9,23 42:7,18 56:9,24 57:3 61:6,8 114:5 121:10</p> <p><b>ended</b> 90:15 96:22</p> <p><b>enforced</b> 69:16</p> <p><b>enforcement</b> 53:4</p> <p><b>engage</b> 25:20 26:2, 8,10 29:5,20 34:23 35:12 36:2</p> <p><b>engaged</b> 17:9 33:17 50:7 120:23</p> <p><b>engages</b> 25:3</p> <p><b>engaging</b> 10:19 23:21 24:11 36:12, 21 50:15 54:19</p> <p><b>ensure</b> 29:4,10,19</p> <p><b>ensuring</b> 16:7 18:1</p> <p><b>enter</b> 14:15</p> <p><b>enters</b> 45:11 46:1,9</p> <p><b>entire</b> 52:21 54:9 85:20</p> <p><b>entitled</b> 114:10,17</p> <p><b>entity</b> 78:5,6 110:12,14,19,21</p> <p><b>entries</b> 115:23</p> <p><b>entry</b> 14:24 97:16</p>	<p><b>equipment</b> 30:23 31:19</p> <p><b>ESPN</b> 30:19,20</p> <p><b>essentially</b> 37:11, 19,23 38:1 86:12 108:15</p> <p><b>established</b> 89:17</p> <p><b>estimation</b> 81:1</p> <p><b>evaluated</b> 39:18 89:24 92:16</p> <p><b>evidence</b> 44:11 49:21 50:4 113:2</p> <p><b>evolved</b> 13:3</p> <p><b>EXAMINATION</b> 8:5</p> <p><b>Excel</b> 116:8,11 117:9 118:5 119:1</p> <p><b>exception</b> 50:22</p> <p><b>Exclaim</b> 107:8,9,13</p> <p><b>execute</b> 18:1,5</p> <p><b>exemptions</b> 70:10</p> <p><b>exercise</b> 113:11 115:9</p> <p><b>exercised</b> 50:24</p> <p><b>exhibit</b> 8:17 18:24 19:1,2,5,9,10 21:1,2 23:17,18 24:4 27:4 40:18,19,20 41:24 51:21,22,23 52:6,7, 8,19,21,23 54:6,7, 22,23 55:3 60:2,19, 20,23 61:14,24 62:3 64:6,7 65:5,6 67:22, 23 68:2 73:8,9 75:23,24 78:16,18 81:9,23,24 87:6,8 88:5,9 89:7,8 90:10, 18 91:4,13 94:5,6 95:7 96:1 98:16,20 101:1,7,19 102:5 104:5,13,16 111:3 112:14 113:3</p>	<p><b>exhibits</b> 50:12 60:4 81:21 83:22 88:23 95:16 99:17 100:23, 24 104:23</p> <p><b>exist</b> 71:8</p> <p><b>existing</b> 70:13,16, 20 71:4,7,18 89:2, 23 93:12</p> <p><b>expect</b> 121:4</p> <p><b>expectation</b> 47:3 91:22</p> <p><b>expectations</b> 24:22</p> <p><b>expert</b> 112:19</p> <p><b>explaining</b> 81:9,10</p> <p><b>explanation</b> 81:11 102:3</p> <p><b>exposed</b> 89:1</p> <p><b>express</b> 42:8,11,14</p> <p><b>extent</b> 25:6 28:7,9 29:23 69:12,24 74:16,22 84:10 111:10 114:20 117:7</p> <p><b>extract</b> 116:19 119:2</p> <hr/> <p><b>F</b></p> <hr/> <p><b>facilitate</b> 10:6,11</p> <p><b>fact</b> 48:7 51:7 55:11 59:14 84:14 89:14 93:12</p> <p><b>facts</b> 40:24 93:6 104:2 112:2,7 113:18,20 114:10, 11,22 116:5</p> <p><b>failure</b> 69:3</p> <p><b>fair</b> 17:22 59:1 68:4 85:14 95:15</p>	<p><b>fairly</b> 12:15 49:9 66:17,21</p> <p><b>fall</b> 58:8 75:15 100:2</p> <p><b>familiar</b> 52:22,24 61:22 65:3 120:13</p> <p><b>farther</b> 117:16</p> <p><b>fashion</b> 14:6,9 60:5</p> <p><b>February</b> 102:6</p> <p><b>federal</b> 7:2 69:9 70:1</p> <p><b>feel</b> 82:7</p> <p><b>fell</b> 27:17</p> <p><b>Fiedler</b> 61:24</p> <p><b>field</b> 40:12</p> <p><b>file</b> 37:4 51:8 55:4, 12,20 58:23 61:8,9 86:10 116:11,17,23 119:20 120:15</p> <p><b>filed</b> 97:1</p> <p><b>files</b> 20:11 72:9,19 116:7,8</p> <p><b>Financial</b> 46:17 52:11,14,17 53:10, 16 54:16</p> <p><b>financially</b> 47:1</p> <p><b>find</b> 20:20,22 53:21 67:11 104:15,19</p> <p><b>fine</b> 39:1,8 74:21 78:12 83:3 100:6 114:16</p> <p><b>fined</b> 36:12 54:19</p> <p><b>finish</b> 56:13 82:8</p> <p><b>fit</b> 75:12</p> <p><b>five-year</b> 48:18</p> <p><b>Fix</b> 62:7</p> <p><b>focus</b> 13:5</p>	<p><b>focused</b> 31:19</p> <p><b>focusing</b> 10:14,15</p> <p><b>folks</b> 17:9 39:20 40:12</p> <p><b>follow</b> 101:24</p> <p><b>follow-up</b> 90:3</p> <p><b>force</b> 24:5 58:7</p> <p><b>forget</b> 68:19</p> <p><b>forgive</b> 49:21 53:18 68:12</p> <p><b>form</b> 29:12 45:17 46:13 47:21 78:4,14 79:17 80:15 90:12 103:7,17 107:11</p> <p><b>forms</b> 43:21 83:1</p> <p><b>forward</b> 45:13 58:21</p> <p><b>found</b> 13:4 81:14</p> <p><b>foundation</b> 40:4 44:8,18 46:14 47:22 52:16 103:16</p> <p><b>fourth</b> 28:17</p> <p><b>Fowler</b> 82:1,10</p> <p><b>Fowler's</b> 82:4</p> <p><b>FP</b> 76:9</p> <p><b>frame</b> 38:22</p> <p><b>frankly</b> 14:22</p> <p><b>free</b> 82:7 101:7</p> <p><b>frequent</b> 68:18,20 69:3 73:21 74:12 75:5,21 76:9 79:1,8, 23 80:1,5,10,13 81:18,20 82:15</p> <p><b>frequent/ persistent</b> 74:1,11 75:1,14 79:15</p> <p><b>frequently</b> 42:4</p>
--	---	--	--	--



front 8:16 111:2	giving 58:5 74:14	75:15 84:18,23 85:3	59:20	86:8,10 88:20 89:1, 5 91:6 92:16 93:11 106:16 108:5 109:17 114:12,17 119:2
fulfill 43:21	good 8:7,8 37:19 67:17 83:7	Hartwig 7:15	illegally 29:11	infrac tion 52:2
full 8:9	grab 110:24	head 11:7 36:24 77:24 104:20	Illinois 55:5	initiated 98:12
function 41:12 119:1	granular 47:9	hear 119:7	illustration 48:21	injecting 17:16
functionally 38:3	group 11:21 12:3,6, 22 17:8 39:18 52:11,14,17 53:10, 16 54:16 65:22	heard 61:4 63:7 64:22 85:12 119:3	important 22:7 41:2	Injunction 54:12
functions 12:6,8 17:10 23:6 41:13 43:1 44:22	groups 11:21 12:10 23:7	held 7:11	impossible 113:6	install 30:24
future 58:2	guard 60:13	helped 72:13	in-house 7:22	installations 14:15
<b>G</b>	guess 11:20 23:8 80:8 87:12 102:16 112:13	Hey 20:15	inappropriately 17:17	installed 30:23
gain 49:7	guy 15:5 16:15	hire 42:11	incentive 10:8 102:14 106:1	instances 68:14
game 59:1	guys 12:9 83:9	history 13:16	include 16:7 69:2 80:22 102:1	instantly 59:10
Geist 7:11	<b>H</b>	hold 37:10,15,21	included 87:1	instruct 55:9 100:4
general 11:11,13 12:14,21 17:7 25:11 41:13 59:19 64:21 75:3	hand 18:21 19:2 21:2 51:22	home 79:2	includes 10:5	instructed 85:19 88:14 118:9
General's 96:9,13	handed 78:19	hooked 47:23	including 25:18 66:15 72:6 86:9 93:12	intend 94:7
generally 10:1 20:1,4,8 29:15 45:15 69:14 70:12 71:1 78:9 109:13,21 119:18,20	handing 52:7,20 54:7,23 64:7 67:23 73:9 75:24 81:23 83:24 94:6 95:18 99:19	hour 83:12 121:13	income 46:19	intending 55:22
generated 89:11 103:14 106:15 120:11	handle 41:19,21 72:20 106:5	hours 83:13	incorrect 59:8	intent 10:6 49:19 67:11
generating 66:16 105:19	handled 75:16	hung 74:3 97:1	independent 18:11 22:8,20 30:6,7,17 31:20 33:6 34:16 35:7,24 43:18 101:1,2	interchangeably 17:18
generator 107:1,22 108:3	Hang 96:3	Hunter 7:11	Indiana 59:18	interested 45:10
generators 117:23	happen 38:24 40:10 58:12	hypothetical 47:9 49:24 50:5	indicating 120:21	internal 66:8 87:13, 14 97:5 109:17 116:22 117:6 118:3
gentleman 11:16	happened 38:4 40:15 43:6,11 67:7, 10,11,18	<b>I</b>	indication 97:10	internally 85:16,17
give 11:15 13:8 14:2 31:24 32:9 34:3,10 56:19 95:14 100:10 114:7 117:11	harassing 97:2	ID'D 118:4	individual 75:4	interpret 28:8
	harassment 74:2	idea 120:17	individually 53:13	interrupted 16:22
		identified 19:8,14 62:1 120:1	individuals 11:6 117:3	interruption 101:10
		identifying 10:7	informal 23:10	introduce 7:17
		identity 74:4	information 29:1 45:12 65:24 66:15 67:4,9 77:3 80:22	investigate 90:17
		ignore 67:13		investigated 101:22
		illegal 23:22 24:12, 18 25:3 29:5,21 36:12,22 44:4,6,12, 13,14 46:6,11 47:10,19,24 48:2,4, 7,11 50:7 54:20		

<b>investigating</b> 90:8 <b>investigation</b> 63:21 64:8,14 65:1, 4 69:5 80:17,23 81:14 90:15 91:2 <b>investigations</b> 51:16 90:22 93:15 <b>invests</b> 31:14 <b>involved</b> 64:9 <b>involvement</b> 14:12 <b>involving</b> 65:9 73:16 82:1 <b>issue</b> 24:17 60:10 61:11 68:17 84:18 96:14 <b>issues</b> 56:4 95:1 <hr/> <b>J</b> <hr/> <b>January</b> 114:9 <b>Jaworski</b> 65:17 <b>Jeanette</b> 65:10 <b>Jeff</b> 61:18,19 76:22 77:8,9 <b>Jeffrey</b> 101:18 <b>job</b> 9:21,23 10:3,5 18:4 42:20 43:5,10 44:18 <b>John</b> 7:19 9:2 39:1 47:5,10,11,12,15,16 48:11 59:14 62:14 99:23 100:22 <b>judging</b> 49:8 <b>Judgment</b> 54:11 <b>July</b> 41:1 <b>jump</b> 61:3 <b>jumping</b> 19:3 49:21 <b>jurisdictions</b> 70:17	<hr/> <b>K</b> <hr/> <b>Keller</b> 62:6 <b>Kern</b> 7:21 9:2,9,12, 17 13:23 15:8 23:23 24:8 25:5 27:12,15 28:6 29:12,22 32:13 33:23 34:5,13 35:19 36:7 38:12 39:1,5,8 40:4 44:8 45:17 46:13,24 47:5,21 48:9,13 49:10 50:8 52:16 54:24 55:6,9, 13 56:2,7,13,19,21 57:14,19 59:3,10,14 60:7,18 61:13 62:12,14,18 69:12, 23 70:22 71:19 72:14 74:16,21 79:17 83:5,10,14 84:10 85:19 88:14 89:19 90:12 92:11, 14 93:9,20 95:7,9 99:20,23 100:10,13, 22 101:12,15 102:21 103:7,16,21 105:2 106:6,9,11,22 113:5,23 114:2,6,20 115:5,13 117:5 118:9 <b>kind</b> 10:20 15:2,12 23:10 41:12,19 67:14 99:15 120:20 <b>kinds</b> 10:15 56:16 74:10 <b>Kitei</b> 7:22 83:8 <b>Kitty</b> 82:1,10 <b>knew</b> 43:23 76:18 111:17 <b>Knowing</b> 92:8 <b>knowledge</b> 15:4 50:21 52:1,15 54:18 59:18 61:17 63:20 64:10,13,19,21 73:2	77:9 90:3 91:1 108:2 110:3 118:2 <b>Krakauer</b> 7:8 84:8, 22 86:1,2,12,15,19 87:1,18 88:6,22 89:11,15,18 91:2 92:10,18,22 93:6 94:2 108:22 109:13 110:3 <b>Krakauer's</b> 84:3 86:1,9 109:1 <hr/> <b>L</b> <hr/> <b>L.L.C.</b> 7:8 21:7 <b>large</b> 116:23 <b>Laslo</b> 85:7,11 <b>late</b> 104:21 <b>Latino</b> 23:14 <b>law</b> 32:20 33:10,13 57:21 <b>laws</b> 35:8 49:23 66:23 69:9 103:5 <b>lawsuit</b> 86:19 <b>lawyer</b> 48:6 <b>lay</b> 44:17 <b>lead</b> 62:8 77:4 81:10 89:11 91:14 94:10 107:1,22 108:3 117:23 <b>leads</b> 66:16 76:21 77:8,10 91:7 <b>lease</b> 28:22 <b>leave</b> 9:15 22:9 92:19 110:10 <b>leaving</b> 63:16 <b>led</b> 69:5 <b>ledger</b> 55:1	<b>left</b> 119:12 <b>legal</b> 7:14 23:24 28:10 36:8 44:9 46:14 47:22 50:8 54:9 58:4,5 69:13 70:23 74:17 84:11 89:19 92:11,14 93:9 <b>Leslie</b> 61:24 <b>letter</b> 52:3 62:7 68:5 78:21 79:10 80:4,20 88:5 98:11 100:9 <b>letters</b> 96:19 <b>lewd</b> 75:14 <b>lewd/obscene</b> 74:2 <b>Lichtenstein</b> 61:18,19 <b>life</b> 65:14 <b>limited</b> 37:23 <b>limits</b> 71:6 <b>lines</b> 116:23 <b>list</b> 66:14,24 69:4 87:2,13 92:23 97:4, 17 115:11 117:6 118:23 120:17,22 <b>listed</b> 70:8 73:24 <b>listen</b> 39:13,15 40:3,6 <b>lists</b> 112:20,22 <b>literally</b> 112:22 <b>litigation</b> 109:14 <b>litigations</b> 58:2 <b>live</b> 39:15 <b>LLC</b> 53:12 54:13 <b>local</b> 61:4 <b>log</b> 39:14 <b>long</b> 9:23 39:5 48:24 52:22 72:12	78:19 94:23 95:1 112:16,22 <b>long-term</b> 47:3 48:12 <b>long-time</b> 47:17 <b>longer</b> 83:10 <b>looked</b> 23:17 75:20 76:1 79:21,22 81:3, 7 85:24 92:17 110:7 <b>lose</b> 49:6 <b>lot</b> 20:18 23:15 49:1 60:14 72:4 103:19 119:21 <b>loud</b> 28:14 <b>love</b> 96:24 <b>lunch</b> 83:14 <hr/> <b>M</b> <hr/> <b>made</b> 16:8 57:20,24 58:9 65:14 68:7,16 75:3 88:3 92:18 93:13,23 96:20 101:1 106:1 107:3,4 111:9,19 <b>maintain</b> 57:14 58:16 120:20 <b>maintained</b> 117:22 120:6 <b>maintaining</b> 20:14 <b>maintains</b> 20:11 <b>make</b> 8:17 10:9 13:7 15:11,18,24 18:4,15 26:17 30:10 35:22 39:20 43:5,11 49:6, 20 50:5 51:6 55:14, 16 59:4,6 60:14,15 66:21 77:14 80:23 88:13 96:23 103:12 <b>makes</b> 16:16 33:9 45:8 46:6
--	--	---	--	---

<p><b>making</b> 18:9,12 22:13 68:2</p> <p><b>malicious</b> 74:2</p> <p><b>manage</b> 12:7 14:19, 21 16:12 121:3</p> <p><b>managed</b> 12:1</p> <p><b>manager</b> 8:13 9:20 10:2 11:11,13 12:8, 14,16,22 13:1 17:7 41:13</p> <p><b>manages</b> 11:11 26:20</p> <p><b>managing</b> 31:1</p> <p><b>manipulating</b> 119:2</p> <p><b>manipulation</b> 120:7</p> <p><b>manner</b> 59:7 108:4 110:11,18</p> <p><b>Marcel</b> 8:10</p> <p><b>March</b> 7:12 121:14</p> <p><b>Marchelle</b> 7:15</p> <p><b>Mark</b> 11:14</p> <p><b>marked</b> 19:1 21:1 40:19 51:21 52:6,19 54:6,22 60:19 64:6 65:5 67:22 73:8 75:23 78:16 81:22 83:23 94:5 95:17 99:18 101:3,4 104:5,13,24 112:14</p> <p><b>market</b> 21:12,20 22:21 24:15</p> <p><b>marketing</b> 28:20 30:10 31:11 107:8, 9,13</p> <p><b>markets</b> 23:14</p> <p><b>Marques</b> 11:22</p> <p><b>Matt</b> 59:12 61:5</p>	<p><b>matter</b> 7:7 30:14 108:14</p> <p><b>means</b> 14:8 29:24 46:16 74:12,13 108:4 109:8 110:11, 18</p> <p><b>mechanisms</b> 15:14 33:9</p> <p><b>media</b> 57:4,8 100:19 121:10</p> <p><b>meetings</b> 14:18</p> <p><b>Mehlhorn</b> 11:22</p> <p><b>member</b> 11:18 91:15 109:4</p> <p><b>memory</b> 78:7</p> <p><b>Men</b> 12:1</p> <p><b>mentioned</b> 17:13 51:2,5 76:8</p> <p><b>mentions</b> 53:12</p> <p><b>message</b> 63:16</p> <p><b>messages</b> 63:16 85:2</p> <p><b>met</b> 63:8</p> <p><b>microphone</b> 27:17</p> <p><b>middle</b> 7:10 89:10</p> <p><b>Mike</b> 62:6</p> <p><b>Mill's</b> 39:3</p> <p><b>Mills</b> 9:8 13:21 15:5 40:16 56:18</p> <p><b>mind</b> 22:17 30:1 82:20</p> <p><b>Mine</b> 27:12</p> <p><b>minute</b> 27:20 46:5 60:21 64:10 84:5 100:10,13</p> <p><b>minutes</b> 56:19 83:8</p> <p><b>missed</b> 22:1 82:22</p>	<p>87:20</p> <p><b>Mitchell</b> 101:18</p> <p><b>Mitchell's</b> 101:19</p> <p><b>mitigating</b> 10:7</p> <p><b>modules</b> 33:2</p> <p><b>moment</b> 56:8 82:5 101:15</p> <p><b>money</b> 46:17 49:6, 20 50:5</p> <p><b>monitor</b> 16:6 38:23</p> <p><b>monitoring</b> 16:15, 21 17:3 38:20</p> <p><b>monitors</b> 16:4</p> <p><b>Montano</b> 117:7</p> <p><b>month</b> 26:14 114:4</p> <p><b>monthly</b> 47:17</p> <p><b>morning</b> 8:7,8</p> <p><b>motion</b> 49:5 58:24 61:8,9</p> <p><b>moving</b> 18:19 49:1</p> <p><b>multiple</b> 46:22</p> <p><b>Musso</b> 94:24 98:13 102:12,19</p> <p><b>Musso's</b> 102:7</p> <hr/> <p><b>N</b></p> <hr/> <p><b>named</b> 61:18 65:10</p> <p><b>narrow</b> 44:21</p> <p><b>national</b> 16:3 39:18,19 47:11, 71:15 86:16 87:14, 19 91:8 92:23 97:5, 11,23</p> <p><b>native</b> 72:19 116:7</p> <p><b>nature</b> 52:2 73:21 74:7 96:7 120:5</p>	<p><b>needed</b> 63:15</p> <p><b>Network</b> 7:7,8 8:12 12:13 13:11 14:2,4, 10 15:17,24 17:14, 22 18:2,6,14,15,21 19:15 20:6,12,16 21:6,8 23:20 24:5, 10 25:12,14 26:1, 17,23 31:15 32:15, 22,24 33:5 34:15 35:15,23 36:12,22 37:5,6 38:7,22 40:2, 15 41:22 44:6,19 45:2,14 46:2 47:13, 15,18,19 48:12,21 49:5 51:1 53:5,12, 13 54:13 57:9 62:2, 10,22 63:15 65:16 67:10 68:15 75:10 76:16 77:15,17,19 78:22 81:12,18 82:9,12 84:8 85:16, 17 86:13,15 87:18 88:20 90:4,16 91:1, 6,10 93:7,18 94:10, 15,24 95:2 96:18 98:5,8,14,18 99:8,9, 14 100:9,20 101:23 103:4,12 104:8 106:2 108:1,6,20 109:16,18 110:2 111:8,15 113:2,4 114:12,15 118:17 120:16,20 121:10</p> <p><b>Network's</b> 90:22</p> <p><b>night</b> 68:12</p> <p><b>ninth</b> 113:20</p> <p><b>noes</b> 74:5</p> <p><b>non-exclusive</b> 21:17 22:14,21</p> <p><b>non-waiver</b> 58:16</p> <p><b>noncompliant</b> 50:15 51:16</p> <p><b>normal</b> 16:12 67:6 102:1</p>	<p><b>Norris</b> 59:13 61:5</p> <p><b>North</b> 7:10 53:6,9 54:19</p> <p><b>note</b> 88:3</p> <p><b>noted</b> 111:17</p> <p><b>notice</b> 8:15 50:14 65:23 94:19 105:16 106:16,19</p> <p><b>noticed</b> 58:21 113:18 114:18</p> <p><b>noting</b> 94:22 95:2,3</p> <p><b>number</b> 19:11 31:3 75:6 79:2 86:23 97:10,13,22 106:14 108:11,16,18 109:22,24</p> <p><b>numbers</b> 70:3 98:16,17 112:23 113:9 115:6,11,18, 22 119:21</p> <hr/> <p><b>O</b></p> <hr/> <p><b>O-r-i-g-e-r</b> 102:8</p> <p><b>Oberbillig</b> 62:6</p> <p><b>object</b> 23:23 54:24 58:19 74:16 113:5 114:6 117:5</p> <p><b>objection</b> 24:8 25:5,7 28:7,11 29:12,22 32:13 33:23 34:5,13 35:19 36:7 40:4 44:8 45:17 46:13,24 47:21 48:9,13 49:10 50:8 52:16 55:7,16, 21 57:13,15,21 58:1 60:3 69:12,23,24 70:22 71:19 74:22 79:17 84:10 89:19 90:12 92:11,14 93:9,20 102:21 103:7,16,21</p>
--	--	---	---	--

<p><b>obliged</b> 30:17</p> <p><b>obscene</b> 75:14</p> <p><b>obtain</b> 44:3,19</p> <p><b>obtained</b> 45:24</p> <p><b>obtaining</b> 42:21</p> <p><b>obtains</b> 46:7</p> <p><b>occur</b> 25:17</p> <p><b>occurred</b> 49:23 50:1 72:5 80:20</p> <p><b>occurs</b> 24:18,19</p> <p><b>October</b> 12:21,23 92:7</p> <p><b>OE</b> 13:9,10,15,16, 21,23 14:3,5,6,10, 14,20,21 15:6,7,11, 17,23 16:5,9,21 17:1,3,9,13,14,16, 19,20,21 18:5,16 36:11 39:16 40:13, 14 42:7,10,21 43:19 44:18,24 45:5,11, 12,15,24 46:5 47:14</p> <p><b>offer</b> 80:17 101:5</p> <p><b>officer</b> 53:14</p> <p><b>offices</b> 7:11 59:19</p> <p><b>operated</b> 106:20</p> <p><b>operations</b> 12:7</p> <p><b>operative</b> 19:14</p> <p><b>opine</b> 48:6</p> <p><b>opinion</b> 50:6,10 89:14</p> <p><b>opportunity</b> 33:8, 10 57:12</p> <p><b>opt-ins</b> 110:23</p> <p><b>orally</b> 111:20</p> <p><b>order</b> 14:24 34:12 60:16 61:10 82:21 83:1 100:2</p>	<p><b>orders</b> 14:15 15:22 21:12,20 22:22 28:21 31:12</p> <p><b>Origer</b> 102:8,10</p> <p><b>original</b> 24:7 99:1 117:13</p> <p><b>originally</b> 101:4</p> <p><b>originated</b> 98:21</p> <p><b>origination</b> 77:4</p> <p><b>outbound</b> 43:15, 20,24 66:19</p> <p><b>outcome</b> 68:13</p> <p><b>outfit</b> 25:20 26:2</p> <p><b>overlarge</b> 10:11</p> <p><b>overseeing</b> 11:17</p> <p><b>oversight</b> 17:1</p> <p><b>overview</b> 11:15 13:9 14:3 15:2</p> <hr/> <p><b>P</b></p> <hr/> <p><b>p-i-v-o-t</b> 118:24</p> <p><b>p.m.</b> 83:19 100:17 121:13</p> <p><b>Pacer</b> 56:1</p> <p><b>package</b> 30:19</p> <p><b>pages</b> 78:19 112:16</p> <p><b>paid</b> 105:18</p> <p><b>paper</b> 105:17</p> <p><b>papers</b> 113:14 114:24 115:15</p> <p><b>paragraph</b> 21:9 27:6,20 79:3 89:10 91:13 102:7,13</p> <p><b>paragraphs</b> 97:9</p> <p><b>paramount</b> 120:16, 17</p>	<p><b>part</b> 37:14 42:6 44:10 59:11 60:4 62:24 96:19</p> <p><b>participate</b> 26:15 32:22</p> <p><b>participating</b> 26:18</p> <p><b>parties</b> 42:12</p> <p><b>partner</b> 17:19,20 96:15</p> <p><b>partners</b> 14:20 17:10,13,15</p> <p><b>party</b> 43:1,3,4 66:15 77:13</p> <p><b>passed</b> 113:15 115:1,15</p> <p><b>Patrick</b> 65:17,18</p> <p><b>pattern</b> 74:3</p> <p><b>Patty</b> 88:10</p> <p><b>payments</b> 10:9 106:1</p> <p><b>Payne</b> 65:10,13</p> <p><b>Payne's</b> 68:10</p> <p><b>pays</b> 47:16</p> <p><b>peer</b> 10:13</p> <p><b>peers</b> 11:2</p> <p><b>penalized</b> 36:17,20, 21</p> <p><b>penalties</b> 69:16</p> <p><b>penalty</b> 37:1 50:22 51:2,3,8,10</p> <p><b>people</b> 11:2 12:3 20:18 23:13 70:4 71:5 76:8</p> <p><b>performed</b> 91:1</p> <p><b>period</b> 17:2 19:17, 20 41:7 50:18 63:23 64:16 71:7 81:16 94:23</p>	<p><b>Periodically</b> 23:6 41:8</p> <p><b>peripherally</b> 40:12</p> <p><b>Permanent</b> 54:11</p> <p><b>permission</b> 43:9</p> <p><b>permit</b> 24:5 71:14</p> <p><b>permits</b> 25:6</p> <p><b>permitted</b> 58:12,13 71:16 101:14</p> <p><b>persistent</b> 67:6,17, 18 68:18,21 69:3 73:22 74:13 75:6,21 76:9 79:2,9,23 80:1, 5,10,13 81:19,20 82:15</p> <p><b>person</b> 20:13 63:8 65:19 71:14 73:16 85:10,16 86:3,7 109:18 110:12,19 113:2</p> <p><b>personnel</b> 32:2,11 33:17,22 34:3 35:4, 17 36:4 38:22</p> <p><b>pertaining</b> 84:2</p> <p><b>phone</b> 16:4,6,15 39:13,17 40:7 61:11 63:10 70:2,19 75:2 77:14 86:5 97:2,13 108:11,16,17 109:22,24 115:11, 22 116:20 119:21</p> <p><b>phrase</b> 22:5 110:24</p> <p><b>piece</b> 30:22</p> <p><b>pieces</b> 18:19 22:1 36:18 49:2 69:15</p> <p><b>pile</b> 60:10 73:10</p> <p><b>pivot</b> 117:13 118:23,24 119:2</p> <p><b>place</b> 16:4 27:1 30:10 33:9 89:18 111:24</p>	<p><b>places</b> 47:9</p> <p><b>plaintiff</b> 7:7,20</p> <p><b>plan</b> 47:19</p> <p><b>pleasure</b> 121:7</p> <p><b>point</b> 114:8</p> <p><b>pointed</b> 100:24</p> <p><b>pointing</b> 76:11</p> <p><b>points</b> 46:22 66:1</p> <p><b>policies</b> 41:21</p> <p><b>policy</b> 42:17 43:8 66:2,7,8,9</p> <p><b>portion</b> 116:19</p> <p><b>position</b> 8:11 12:12,16,18 57:22 84:21</p> <p><b>Possiblenow</b> 25:21 26:3,5,9,11, 16,18,21,24 32:23 33:3,12 34:20 35:11,12 36:2 91:11,14,15,19,21, 23 92:2,6 93:5 118:17 120:24 121:3</p> <p><b>potential</b> 45:9 109:3</p> <p><b>potentially</b> 61:21</p> <p><b>power</b> 29:4,10,19</p> <p><b>Powerpoint</b> 104:8 105:11</p> <p><b>precise</b> 12:15</p> <p><b>prefer</b> 115:8</p> <p><b>prematurity</b> 114:7</p> <p><b>prep</b> 73:5</p> <p><b>Prepaid</b> 28:23</p> <p><b>preparation</b> 65:12 72:15 75:20 84:4 115:17</p>
--	---	---	--	---

<p><b>prepared</b> 105:23 114:14,21</p> <p><b>preparing</b> 58:3 71:24 72:11,12 76:2</p> <p><b>presentation</b> 104:8 105:11</p> <p><b>presented</b> 100:23 104:17 110:6</p> <p><b>president</b> 41:1</p> <p><b>pretty</b> 14:6 44:21 48:17 75:18 105:4</p> <p><b>previous</b> 94:1</p> <p><b>principal</b> 53:14</p> <p><b>printed</b> 112:10</p> <p><b>prior</b> 12:21 36:24 38:8 41:22 93:12</p> <p><b>privilege</b> 55:2,15, 17,19 57:21,24 58:2,9,11 60:2 100:1 101:9</p> <p><b>privileged</b> 56:3,4 58:18 100:8 101:3,6</p> <p><b>problem</b> 20:21 59:11 99:10</p> <p><b>procedure</b> 7:3 61:6 102:1</p> <p><b>proceeded</b> 96:16 99:7</p> <p><b>proceedings</b> 7:1 53:5 121:12</p> <p><b>process</b> 16:21 17:1 27:1 31:1,4,5 67:6, 16,17 102:3 120:15</p> <p><b>processes</b> 30:12</p> <p><b>produced</b> 59:15 72:23 73:3 99:24 106:6,10,12 107:14</p> <p><b>product</b> 30:18 33:8 34:18 44:23 58:2</p>	<p>64:1</p> <p><b>production</b> 57:23 58:7</p> <p><b>products</b> 24:15 54:4</p> <p><b>program</b> 8:13 9:20 10:2 12:8,16,24 13:23 14:3,7 16:4 118:17</p> <p><b>programming</b> 21:12,21 22:22 28:21 31:13</p> <p><b>prohibit</b> 23:21 24:11</p> <p><b>prohibited</b> 70:4</p> <p><b>project</b> 120:16</p> <p><b>promote</b> 21:12,20 22:21</p> <p><b>promotion</b> 16:2 28:20 30:11,16,22, 23 31:12 45:20 48:20,22 49:1,3,9, 14,16</p> <p><b>Promotional</b> 28:23</p> <p><b>promotions</b> 15:20 49:4</p> <p><b>proof</b> 66:2,6,11</p> <p><b>properly</b> 55:15 57:20 101:3</p> <p><b>Protection</b> 79:5,12</p> <p><b>protective</b> 61:9</p> <p><b>provide</b> 12:6 14:23 15:12 24:22 33:10 39:16,17,20 67:1,4 69:9 77:10,13 107:16</p> <p><b>provided</b> 16:1 19:7 72:13 78:14 104:8 105:11 106:17,21 112:19</p>	<p><b>providing</b> 16:1 81:10</p> <p><b>provisions</b> 70:7</p> <p><b>public</b> 55:4,12,16, 19,20,24 56:18 58:23</p> <p><b>published</b> 41:15,16 42:4</p> <p><b>pull</b> 77:24</p> <p><b>pulling</b> 78:7</p> <p><b>purported</b> 111:18</p> <p><b>purporting</b> 86:6</p> <p><b>purposes</b> 120:8</p> <p><b>pursuant</b> 7:2</p> <p><b>pursue</b> 93:14</p> <p><b>put</b> 33:9 37:11 38:2 59:4,5 69:3 82:21, 24 108:15 111:2</p> <p><b>puts</b> 30:10 37:19</p> <hr/> <p><b>Q</b></p> <hr/> <p><b>QA</b> 39:18,19</p> <p><b>qualification</b> 86:11</p> <p><b>qualified</b> 26:14</p> <p><b>quality</b> 16:3 115:16</p> <p><b>query</b> 105:23</p> <p><b>querying</b> 108:14</p> <p><b>question</b> 10:23 14:5 18:17 24:3,7,9 32:7 33:15 35:2,21, 22 36:9 44:16 46:11 52:24 62:9 79:14,18 84:7 88:16,19 93:17,18 97:21 98:17 102:10 103:8, 10 105:1 109:11 113:1,6,7,16 114:13,22 115:3,22</p>	<p>119:7</p> <p><b>questioning</b> 39:2 58:22</p> <p><b>questions</b> 28:9,16 41:20 55:10,23 56:16 58:13 59:16 60:2 61:4 64:12 72:20 82:7 85:20 94:7 95:13 100:4 101:8,13 115:21 117:8</p> <p><b>quick</b> 11:15</p> <hr/> <p><b>R</b></p> <hr/> <p><b>ran</b> 86:12</p> <p><b>Raw</b> 120:15</p> <p><b>read</b> 18:5 21:24 22:15 24:6,8,9 27:20 28:14 29:16, 18 30:8 31:14,18 32:7 53:20 84:3 85:20 88:15,17 94:12 96:12 97:9,19 110:24</p> <p><b>reading</b> 28:6 31:9 42:9 52:21 54:8 61:1 82:8 87:20,23 92:8</p> <p><b>ready</b> 95:19</p> <p><b>real</b> 12:4 80:14</p> <p><b>realize</b> 14:4 33:18 48:5 49:4</p> <p><b>reason</b> 19:19 90:17 97:22 101:3 112:22</p> <p><b>reasonable</b> 29:2 57:24 61:13</p> <p><b>Rebecca</b> 85:6</p> <p><b>recall</b> 50:22,23 51:5 68:14 71:24 78:2,9 80:2 81:2,4 84:14 85:2 87:3 111:21</p>	<p>112:9</p> <p><b>receive</b> 47:15 68:24 110:13,20 113:4</p> <p><b>received</b> 39:22 75:9 79:1 80:5 86:5,20 88:20 89:1 90:4,10 91:3 93:2</p> <p><b>receiver</b> 30:24</p> <p><b>receives</b> 46:7</p> <p><b>receiving</b> 47:12 90:18</p> <p><b>recent</b> 65:15</p> <p><b>recently</b> 110:5</p> <p><b>recess</b> 38:16 57:6 83:19 100:17</p> <p><b>recognize</b> 19:5 21:3 22:7 40:20 61:15 73:12 78:21 117:10,15,19 118:21</p> <p><b>recollection</b> 53:15 63:12,17 68:9 84:13 113:13</p> <p><b>reconciliations</b> 37:24</p> <p><b>reconciling</b> 36:5</p> <p><b>record</b> 7:16 8:17 38:15,18 57:1,5 59:24 60:5 83:18,21 100:16,21 121:2,11</p> <p><b>recorded</b> 39:17</p> <p><b>recording</b> 39:24</p> <p><b>records</b> 108:5 109:17 113:3 121:1</p> <p><b>Red</b> 120:1</p> <p><b>refer</b> 79:15 82:13 86:2 98:16 112:10</p> <p><b>reference</b> 80:11</p>
---	--	---	---	---

<b>referenced</b> 26:6 52:2 62:11 88:22 <b>references</b> 79:10 80:6 <b>referred</b> 79:22 <b>referring</b> 91:24 98:15 <b>refers</b> 88:4 <b>reflected</b> 80:20 <b>refrain</b> 28:18 31:10 <b>refresh</b> 53:15,18 107:18 <b>registration</b> 70:2 <b>registrations</b> 66:3, 11 <b>registry</b> 47:11 48:3 69:18 70:3,9 71:16 75:10 86:16,20 87:19 91:8 93:4 97:11,23 120:22 <b>regularly</b> 40:10 74:13 <b>regulations</b> 79:5, 12 80:7 <b>Rehan</b> 98:13 <b>reiterate</b> 28:7 <b>Reji</b> 98:13 <b>relate</b> 51:16 <b>related</b> 101:4 117:6 <b>relates</b> 39:3 <b>relating</b> 29:1 59:19 63:21 82:10 <b>relationship</b> 14:20 22:6 24:14 26:20 33:11 45:21,23 46:1,10,20 47:2 50:19 70:17,21 71:4,7,13,15,18 89:3,17,24 91:10,	19,21,23 92:2 93:4, 13 104:2 121:4 <b>relationships</b> 45:3 70:14 <b>remains</b> 101:12 <b>remember</b> 36:18, 23 <b>report</b> 80:14,15 104:14 112:19 113:24 <b>reported</b> 93:3 <b>reporter</b> 7:15 8:1 <b>reporting</b> 12:4,5 26:21 120:7 121:4 <b>reports</b> 119:3 120:5 <b>represent</b> 7:18 54:9 92:23 112:18 <b>representative</b> 7:6 57:9 100:20 121:9 <b>republished</b> 41:15 <b>request</b> 29:2 39:19, 23 66:6,21 68:3 77:18,22,23 78:4,14 89:5 105:22 107:3, 10 <b>requested</b> 28:19 31:10 117:3 <b>requesting</b> 58:4 65:24 <b>requests</b> 77:3 106:24 107:2 <b>require</b> 25:19,22 26:1,7 32:21 33:4 34:7 39:16,17 <b>required</b> 26:10,15 42:7,10,13,14 43:3, 21,22 <b>requires</b> 15:17,21 30:22 32:19,24 33:13,16 34:6	<b>research</b> 51:6 104:19 108:24 <b>researched</b> 94:20 103:24 <b>resolve</b> 56:17 <b>resolved</b> 84:14,15, 16 101:20 <b>respect</b> 15:23 16:14 31:7,16 38:21 58:1, 16 84:8 88:21 90:21 94:16 99:23 101:14 109:3 110:1,2 <b>Respectfully</b> 112:9 <b>respecting</b> 117:22 <b>respond</b> 80:24 81:4 99:3 <b>responded</b> 81:3,6 89:4 98:18 <b>responds</b> 77:7 <b>response</b> 24:16 76:13,20 81:9 88:10 90:10 98:1,7,10,24 99:1,2 102:12 107:1 <b>responsibilities</b> 10:1,13 12:19 <b>responsibility</b> 10:19 16:14,17,20, 24 17:3,6,8,24 42:24 <b>responsible</b> 11:21 16:10,11 18:7,8,9, 12 20:14 24:15 26:22 41:12 50:3 <b>rest</b> 100:5 <b>result</b> 46:9 81:14 <b>retailer</b> 10:10 13:9, 10 14:6,14 16:9,10 17:4 18:1,5,8,16,20, 21 19:14 20:14 21:6 22:7,19 23:16 24:23 25:3,10,17 28:18,24	30:4,6,17,20,24 31:23 32:8 33:6,12, 16 34:7,15,16 35:16,24 36:19 37:6,10 42:7,10 43:3 44:24 45:7,8,9, 11 46:6 50:16 51:17 61:23 62:1 67:1,3,4, 9,13,19 68:3 71:12, 14,16 78:3 89:13 94:24 102:2 104:3 106:20 107:24 108:3 118:4 121:1 <b>Retailer'</b> 21:22 22:23 <b>retailer's</b> 42:23 44:18 45:24 <b>retailers</b> 10:14,16, 20 13:16,17 14:5, 11,21,22 15:6,12, 17,21,23 16:5 17:17,21 18:1,5,11, 23 23:8,13 24:14,21 26:8 29:5,11,20 31:20 32:17,20 35:8,11 36:11,16,20 39:16,17 40:14 42:21 61:22 117:22 118:18 120:1,23 <b>revealed</b> 80:17 <b>review</b> 31:17 51:19 71:24 72:8 100:11 101:1 <b>reviewed</b> 68:11 71:23 72:2,6,23 86:23 91:17 92:22 98:12,23 116:5 <b>reviewing</b> 73:20 84:24 102:2 <b>revisit</b> 115:16 <b>Richard</b> 95:23 <b>righted</b> 102:17 <b>rights</b> 58:17,18	<b>risk</b> 11:12 12:22 17:7 <b>risks</b> 10:7 <b>road</b> 61:11 <b>Rogers</b> 76:22 77:8, 10 <b>role</b> 107:13 <b>roll</b> 49:5 <b>rolls</b> 16:3 49:5,6 <b>roughly</b> 12:23 <b>rude</b> 68:18 69:3 74:1 75:14 96:14 <b>rules</b> 7:2 10:10 26:5,7 30:9 31:21 32:21,23 42:6 68:4, 6,23 103:23 <b>running</b> 25:7 28:11 69:23 70:22 74:22 <hr/> <p style="text-align: center;"><b>S</b></p> <hr/> <b>S-c-h-o-o-l-a-r</b> 76:5 <b>sale</b> 16:12 28:22 30:12 31:19 48:14 <b>sales</b> 12:6 14:18 17:1 26:13,22 31:1, 5 43:1 44:12 77:10 96:15 <b>sales-only</b> 14:23 <b>satellite</b> 20:6 21:7,8 25:12,14 26:23 32:14,22,24 33:4 34:15 35:23 37:5 40:15 47:16 48:12, 21 51:1 53:5,11,12 54:12 62:2 65:15 67:10 68:15 76:15 77:15 81:18 82:11 86:13 91:10 94:23 95:2 98:5,8,14
---	---	--	--	--

30(b)(6)  
BRUCE WERNER - March 17, 2015

106:1 108:1 111:7, 15 120:16 <b>satisfactory</b> 90:11, 14 <b>satisfied</b> 93:23 <b>scan</b> 88:12 <b>Scholar</b> 73:17 75:4 76:5 78:23 80:18 81:1,7,13 <b>Scholar's</b> 73:18 75:19 79:7,22 <b>screen</b> 116:10,12, 14 <b>Scripts</b> 66:19 <b>Scroll</b> 117:16 118:6 <b>scrub</b> 93:3 120:15 <b>scrubbed</b> 120:22 <b>scrubbing</b> 91:7,14 <b>seal</b> 60:7,10 <b>search</b> 98:23 <b>Sears</b> 30:4 <b>sell</b> 23:14 30:7,18, 20 31:4,21,22 33:8 34:18 44:23 103:19 <b>selling</b> 75:10 <b>send</b> 43:21 <b>sentence</b> 28:14 29:7,13,16,24 30:1, 5,15 31:6 111:1 <b>separate</b> 60:5 <b>separately</b> 75:17 106:17 <b>Serena</b> 98:21,22 <b>series</b> 68:11 <b>service</b> 45:19 <b>services</b> 26:9,11 30:7 47:16 77:14	107:16 108:6 109:18 120:24 <b>set</b> 8:15 39:14 99:11 103:22 <b>sets</b> 45:18,19 <b>settlement</b> 101:5 <b>seven-year</b> 81:16 <b>share</b> 10:12 <b>shared</b> 11:2 89:5 <b>Shaun</b> 7:13 <b>sheet</b> 117:12 119:14 <b>sheets</b> 117:11 <b>shirts</b> 31:3 <b>short</b> 38:13 57:11 <b>show</b> 32:2,10 33:17 35:3,16 36:3 58:4 87:15 <b>showing</b> 116:11 <b>side</b> 18:14 <b>sign</b> 15:13 18:5,13 47:14 <b>signed</b> 18:10 48:11 <b>significant</b> 75:18 <b>signing</b> 18:8 <b>signs</b> 44:24 45:4 46:6 <b>similar</b> 104:14 <b>simple</b> 62:8 <b>single</b> 111:16 115:6 <b>sir</b> 8:8,20,22,24 9:5, 14,22 11:9 19:6 21:4,19 23:19 27:6, 23 28:2 32:16,18 37:8 40:8,21 52:4,9, 12 53:2,3,7,18 54:15,21 59:23	61:16 62:4 63:9 64:2,20 66:5,18 68:1 69:11 73:13,23 76:3,24 77:6 78:24 81:8 84:6 85:8,22 87:10,16,20,24 88:8,18 89:9 94:14 95:20,24 96:3,11 97:7,15,24 98:6 99:16 101:21 102:9 103:1,22 104:11 105:8,14,15 106:18 107:17 117:14,17, 20 118:16,22 119:10,13,16,17 120:2,4,19 <b>sit</b> 115:3 <b>site</b> 14:18 <b>Sitting</b> 86:14 <b>situation</b> 68:19 <b>six-</b> 81:16 <b>six-or-so</b> 50:2 <b>skip</b> 116:6 <b>slightly</b> 33:14 <b>sloppy</b> 111:4 <b>Smith</b> 47:10,11,12, 15,16,20 48:11,19 <b>Snyder</b> 98:21,22 <b>sold</b> 48:22 54:3 89:12,15 104:3 <b>solicit</b> 21:12,20 22:22 97:16 <b>solicitation</b> 28:21 31:12 <b>Solutions</b> 53:13 <b>Sophie</b> 76:14,15, 17,21 77:7 81:6 89:3 91:18 92:1,5 98:22,23 <b>sort</b> 23:14 66:3,20 67:4 69:4 102:3	<b>speak</b> 11:8 91:22 <b>speaking</b> 29:16 44:19 <b>speaks</b> 29:7 30:5, 14 31:6 <b>special</b> 41:1 75:18 <b>specialist</b> 7:14 <b>specific</b> 13:13,14 14:14 36:19 63:12 64:19,23 68:9,13 75:4 107:13 <b>specifically</b> 13:12 61:16 64:3 65:3 69:7,10 70:11,24 71:9 72:5 81:2 82:18 88:4 92:4 94:20 103:2,23 108:1,24 116:21 119:16 120:10 <b>specifics</b> 44:13 109:19 110:9 <b>speculate</b> 13:19 44:15 118:10 119:19 <b>speculation</b> 102:22 <b>spoken</b> 63:10 <b>sponsor</b> 23:7 <b>spreadsheet</b> 117:10 118:5 <b>squarely</b> 58:8 <b>SSN</b> 19:15 20:17 21:11,17 25:20 26:2,7,10,23 29:14 32:1,10 33:16,21 34:3,11 35:3,16 36:21 37:6 38:8,21, 23 43:23 44:3 47:9, 14 50:6,15,20 51:9, 16 52:14 53:16 54:18 59:19 63:15, 21 64:9,14 65:2 77:11,18 78:22	80:24 81:13 82:9 84:9 86:21 88:10,21 89:15,17 90:23 91:7 92:9 93:3 94:2,11, 16 98:1,3,17 99:5,6, 10,14 102:11 105:18 106:20,24 107:3,16,20,21 110:12,13,20,22 111:23 112:21 113:4 <b>SSN'S</b> 40:2,7 44:6 51:17 66:8 <b>standard</b> 49:3,9,16 <b>standpoint</b> 90:8 <b>starts</b> 96:6 <b>state</b> 8:3 53:6,9 54:19 63:22 64:8,14 65:1 97:5,17 <b>stated</b> 89:15 96:9, 13 <b>statement</b> 29:9,19 44:3 52:13 87:1 92:21 112:6 <b>states</b> 7:10 71:11 <b>stating</b> 99:6 <b>Steve</b> 62:6 <b>stings</b> 118:3 <b>Stipulated</b> 54:11 <b>stop</b> 31:13 56:15 63:16 83:14,16 <b>store</b> 60:4 <b>strategies</b> 70:4 <b>stray</b> 78:17 <b>street</b> 30:17 <b>string</b> 73:15 <b>structure</b> 11:16,19 <b>studied</b> 75:20
---	--	---	--	--

Realtime Reporters, LLC 13 Index: satisfactory—studied  
schedulingrealtime@gmail.com 304-344-8463

JA015952

TX 102-015214

30(b)(6)  
BRUCE WERNER - March 17, 2015

<b>stuff</b> 119:21 <b>styled</b> 54:10 <b>subject</b> 21:13,22 22:24 55:2 58:24 <b>submit</b> 16:6 <b>submitted</b> 77:13 78:1,2,3 <b>subscribed</b> 92:6 108:6 109:18 <b>subscriber</b> 49:19 108:17 <b>subscribers</b> 105:19 106:15 <b>subscription</b> 46:8 47:13,16 48:12,18 <b>subscriptions</b> 103:19 108:7 <b>subsection</b> 22:19 27:24 <b>subsections</b> 23:13 <b>subsequent</b> 80:17 <b>sufficient</b> 90:14 <b>suggest</b> 107:21 <b>summarized</b> 105:24 <b>summarizes</b> 46:3 <b>Summit</b> 104:9,17 105:12 <b>supervise</b> 14:17 <b>supervised</b> 11:22 <b>supervising</b> 17:9 <b>supplying</b> 28:24 <b>support</b> 57:22 112:8 <b>supporting</b> 112:2 113:18	<b>suspect</b> 78:13 114:24 <b>swear</b> 8:1 <b>switch</b> 39:14 96:17, 21 99:8 <b>sworn</b> 8:3 <b>system</b> 15:7 45:5, 11,12,15 47:14 <b>systems</b> 20:6 21:8 25:12,14 26:23 28:22 32:14,22,24 33:5 34:15 35:23 37:5 40:15 48:21 51:1 53:5,11 54:13 62:2 65:15 67:10 68:15 76:16 77:15 81:18 82:11 86:13 91:10 94:23 95:2 98:5,8,14 106:1 108:1,13 111:8,15 120:16 <hr/> <b>T</b> <hr/> <b>tabs</b> 117:18 118:4 <b>takes</b> 24:21 <b>taking</b> 28:19 31:10 <b>talk</b> 13:6 15:16 17:21 25:13 38:20 40:16 41:9 44:14 57:15 89:7 116:6 <b>talked</b> 44:13 106:23 <b>talking</b> 25:11,12 27:13 29:13 30:15 32:14 43:14 48:18 51:3 69:24 71:21 72:14 79:6 87:16 94:22 102:19 103:2, 4 109:6 <b>tasked</b> 43:13 <b>TCPA</b> 33:22 34:4,11 36:17 48:5 49:23	69:2 73:16 79:16,23 80:7,11 84:9,19 87:23 88:1,21 90:22 92:9 93:8,19 103:13 119:11,24 120:9 <b>team</b> 11:3,4,6,7,12, 16,17,24 12:4 13:5 104:9,17 105:11 <b>Tehranchi</b> 53:13 54:13 63:2,6 76:17 78:22 <b>Tehranchis</b> 88:6 <b>telemarket</b> 29:11 <b>telemarketer</b> 70:8 77:19 <b>telemarketers</b> 42:12,22 43:9 <b>telemarketing</b> 23:22 24:12,17,18 25:4 29:6,21 30:2 31:6,16 32:3,11 33:18 34:23 35:5, 13,17 36:4,11,13,22 41:2,16,22 42:3 43:14,15,20,24 44:4,7,12,14 46:1,6, 9,12 47:12 50:7,15 51:17 54:20 59:20 63:21 66:19,22 68:23 70:4 86:21 103:5 110:13,20 111:24 113:4 <b>telephone</b> 17:4 38:20,23 71:2 79:5, 11 97:10 112:21,23 113:9 <b>telling</b> 120:18 <b>tells</b> 102:13 <b>Ten</b> 83:8 <b>term</b> 17:14,21 23:3 37:21 48:24 103:3 119:3	<b>terminated</b> 38:3 <b>terminating</b> 38:8 <b>termination</b> 25:18 62:8 <b>terms</b> 14:11 15:21 16:11 17:17 20:1,4, 8 21:13,23 22:24 <b>testified</b> 8:4 64:10 107:2 <b>testify</b> 8:14 9:18 74:21 90:21 105:20 <b>testifying</b> 8:18 9:10 56:4 <b>testimony</b> 51:4 56:14 80:2 <b>thick</b> 41:20 <b>thing</b> 22:17 23:14 35:6 43:17 61:1 66:3 74:14 81:6 102:4 <b>things</b> 36:5 69:4,17 72:7 80:19 94:19 115:14 <b>third-party</b> 25:20 26:2 42:12,22 43:9 77:19 78:4 106:24 107:11,21 <b>Thomas</b> 7:8 84:2 <b>thresholds</b> 26:8 <b>tied</b> 98:3,5 <b>time</b> 7:16 19:15 24:3 32:5 38:15,22 40:11,23 41:7,11,14 42:24 43:2 48:14 50:19 54:3 57:9,16 68:24 71:7 72:3,4 74:7 82:8 83:18 88:12 90:1 91:9,15, 20,21 93:2,13 94:23 95:1 100:16 107:3,7 108:19 110:16,24 114:16 120:6	<b>times</b> 36:16 75:7 <b>title</b> 9:21 23:9,15 <b>titled</b> 41:2 <b>today</b> 14:11 16:18 37:6 41:8 61:12 65:18,22 86:14 115:3 <b>today's</b> 121:8 <b>told</b> 35:10 96:15 111:11 <b>tome</b> 115:18 <b>tool</b> 14:14,15,23 <b>tools</b> 37:24 <b>top</b> 62:16 63:14 76:21 87:6,11,12 89:9 97:4 104:20 116:16 120:14 <b>topic</b> 8:18 9:11 50:13 51:15 106:15 110:18 113:18 114:19 117:6 <b>topics</b> 8:15 13:8 105:19 <b>total</b> 11:5 105:18 <b>touch</b> 46:22 <b>track</b> 116:20 <b>tracked</b> 86:13 87:23 88:1 <b>tracker</b> 118:7 <b>tracking</b> 119:11,24 120:9 <b>trained</b> 33:18,22 34:4 35:17 36:4 <b>training</b> 32:2,11 33:1,5 34:8,11,24 35:4 <b>trainings</b> 23:8 <b>transaction</b> 45:1,
--	---	---	--	---



<p>13 94:1</p> <p><b>transfer</b> 28:22</p> <p><b>treat</b> 103:19</p> <p><b>treated</b> 79:24</p> <p><b>trip</b> 102:15</p> <p><b>truth</b> 8:3</p> <p><b>turn</b> 27:3</p> <p><b>turned</b> 53:22 69:5 82:14</p> <p><b>TV</b> 47:16 48:12 96:16,17</p> <p><b>type</b> 69:1 74:14 75:12 76:9 116:20 120:15</p> <p><b>typically</b> 14:16 39:11</p> <hr/> <p><b>U</b></p> <hr/> <p><b>U.S.</b> 19:8,11 30:13</p> <p><b>Uh-huh</b> 79:13</p> <p><b>ultimately</b> 115:14</p> <p><b>undergo</b> 34:11</p> <p><b>understand</b> 8:18 29:23 33:2 42:9 55:8,21 58:22 61:5 66:7 67:6,18 70:1 79:19 80:9,12 81:12 100:8 103:8,10 109:10</p> <p><b>understanding</b> 12:18 14:22 16:10 19:16 31:17 36:6 70:16 74:15,18 86:1,3,18 102:18 110:22 111:7,9,12 116:7</p> <p><b>unfair</b> 31:17,18 113:7</p>	<p><b>unit</b> 57:4,8 100:19 121:10</p> <p><b>United</b> 7:9</p> <p><b>unknown</b> 54:17</p> <p><b>unsealed</b> 59:7</p> <p><b>unsuccessful-for-dish</b> 58:24</p> <p><b>unwanted</b> 75:2</p> <p><b>updates</b> 23:8 41:4</p> <p><b>utilized</b> 107:21 109:16</p> <p><b>utilizing</b> 108:5</p> <hr/> <p><b>V</b></p> <hr/> <p><b>V-e-r-k-h-o-v-s-k-a-y-a</b> 112:20</p> <p><b>V-i-t-a-n-a</b> 52:10</p> <p><b>van</b> 7:13 31:3</p> <p><b>varies</b> 71:10</p> <p><b>variety</b> 10:6 17:10 41:17 72:7 120:8</p> <p><b>Veen</b> 7:13</p> <p><b>vendor</b> 78:1,3,9 106:24 107:22</p> <p><b>verify</b> 26:24</p> <p><b>Verkhovskaya</b> 112:20</p> <p><b>Vermont</b> 64:14 65:1</p> <p><b>versus</b> 7:8 53:10</p> <p><b>vests</b> 31:15</p> <p><b>vice</b> 41:1</p> <p><b>video</b> 7:14</p> <p><b>view</b> 23:16 24:1 31:23 32:8 58:15 71:12</p>	<p><b>violate</b> 92:9 103:13</p> <p><b>violated</b> 84:9 88:21</p> <p><b>violating</b> 66:22</p> <p><b>violation</b> 48:5 49:23 50:1,16 67:2 69:2,6 73:16 79:4 80:7 81:15 82:17 84:16,19,20,23 87:4 89:1,6 90:9 92:19, 21 93:8,19,22,23</p> <p><b>violations</b> 25:16 36:17 50:4 51:11,17 75:16 79:11,16 80:11 86:4 90:23 103:5</p> <p><b>Virginia</b> 56:12</p> <p><b>visit</b> 40:2</p> <p><b>visits</b> 14:18</p> <p><b>Vitana</b> 52:10,13,17 53:10,14,16,17 54:16</p> <p><b>volume</b> 26:8,13 32:21 35:13 103:14 104:3</p> <hr/> <p><b>W</b></p> <hr/> <p><b>W-e-d-d-l-e</b> 11:14</p> <p><b>waiting</b> 83:9</p> <p><b>waive</b> 55:18 58:1</p> <p><b>waived</b> 55:22 60:8</p> <p><b>waiver</b> 60:6</p> <p><b>waiving</b> 55:16 58:10,17,18</p> <p><b>Wang</b> 12:1</p> <p><b>wanted</b> 38:22</p> <p><b>Washington</b> 63:22 64:9</p> <p><b>ways</b> 39:12 41:17</p>	<p>108:12</p> <p><b>wear</b> 31:3</p> <p><b>Weddle</b> 11:14,17,20</p> <p><b>weeds</b> 39:6 49:13</p> <p><b>weeks</b> 114:4</p> <p><b>Werner</b> 7:6 8:2,7,10 9:7,18 38:19 54:10 57:4,8 59:18 83:24 100:4,19 112:17 121:9</p> <p><b>Werner's</b> 56:2</p> <p><b>West</b> 56:12</p> <p><b>withdraw</b> 101:8,9</p> <p><b>wondering</b> 109:12</p> <p><b>word</b> 17:16 28:15 96:22,23 110:23</p> <p><b>words</b> 34:1 61:11 103:18</p> <p><b>work</b> 11:3 14:10 32:22 58:2 78:5 108:20 121:2</p> <p><b>worked</b> 14:5 17:9 96:16 99:7</p> <p><b>works</b> 45:16 89:4</p> <p><b>world</b> 30:4</p> <p><b>worth</b> 94:22 95:3</p> <p><b>writing</b> 68:5 111:20</p> <p><b>written</b> 41:21 42:8, 11,15,22 43:9 77:18</p> <p><b>wrong</b> 24:17</p> <p><b>wrongs</b> 102:17</p> <hr/> <p><b>Y</b></p> <hr/> <p><b>year</b> 104:9,16,17,19 105:24</p> <p><b>years</b> 9:24 12:17 23:11 47:18 50:2</p>	<p>77:23</p> <p><b>yelled</b> 96:24</p> <p><b>yeses</b> 74:4</p> <p><b>yesterday</b> 81:3 86:23 91:17 92:3 107:12</p>
---	--	--	--	---

JA015955

TX 102-015217

EXHIBIT 779

EXHIBIT 779

JA015956  
014677

TX 102-015218

**INTENTIONALLY OMITTED**

JA015957  
014678

**TX 102-015219**

EXHIBIT 780

EXHIBIT 780

JA015958  
014679

TX 102-015220



Retail Services  
9601 S. Meridian Blvd.  
Englewood, Colorado 80112

November 7, 2007

Via Facsimile: 949-643-7173  
Via E-Mail: alex@yourdish.tv

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

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

Dear Mr. Tehranchi:

Please be advised that a complaint has been filed by Ms. Jeanette Payne, a consumer, against EchoStar Satellite L.L.C. ("DISH Network"). Ms. Payne is alleging that she had received a call to her home phone number of 317-845-8854 with a caller identification of 800-338-3409. The call was made on September 21, 2006 from a sales representative named Justin Blake. Ms. Payne believes this attempt to contact to be in violation of Telecommunications Consumer Protection Act regulations.

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

Within five (5) days of receipt of this letter please provide EchoStar Legal Department the specifics of this allegation and any and all corrective measures implemented for the purpose of eliminating this type of consumer interaction. Also provide proof of your compliance with all outbound telemarketing laws, including, but not limited to your Do Not Call Policy, Proof of Do Not Call Registrations, a list of Affiliate Companies with contact information and Outbound Telemarketing Scripts and Caller Identification Numbers for you and your affiliates. This information should be forwarded to:

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

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

Page 1 of 2

Krakauer-DOJ-00114562

Confidential-US v. DISH



DISH5-0000012552

SLC\_ DNC\_Investigation 0000230  
JAN 15 2008  
014680

TX 102-015221

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

Thank you for your attention to this matter.

  
\_\_\_\_\_  
Robb Origer  
Vice President  
Retail Services  
EchoStar Satellite L.L.C.

cc: Emily Pastorius

EXHIBIT 781

EXHIBIT 781

JA015961  
014682

TX 102-015223



TX 102-015224

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

**From:** Kelly, Michael ( EVP )

**Sent:** Tuesday, June 29, 2004 4:40 PM

**To:** Parekh, Maulik

**Subject:** FW: churn- Satellite Systems Network 821970

see below...

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

**From:** Ergen, Charlie

**Sent:** Monday, June 28, 2004 6:00 PM

**To:** Ahmed, Amir; DeFranco, Jim; Schwimmer, Michael; Kelly, Michael ( EVP )

**Subject:** RE: churn- Satellite Systems Network 821970

why dont we just copy their techniques...why should we let them sell 8K a month of our competition..

all they do is call people with a script...i am sure they pick out ciites with cable price increases or where dtv launches locals..etc

c

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

**From:** Ahmed, Amir

**Sent:** Monday, June 28, 2004 5:57 PM

**To:** Ergen, Charlie; DeFranco, Jim; Schwimmer, Michael; Kelly, Michael ( EVP )

**Subject:** FW: churn- Satellite Systems Network 821970

This is Satellite Systems Network in LA. They have been a DISH Network Retailer since March of 2001. They have a subscriber base of 19,834 with a 1.72% churn since inception. Satellite Systems is also DTV 8<sup>th</sup> largest independent retailer (6k – 8K per month). They use message broadcasting with DTV as their primary source to generate sales.

June DISH Network Activation Projection – 500

I will have our Sacramento Management Team schedule a visit ASAP to check out their sales techniques, and I will be calling the owner Alex to address selling Dish to Apts.

**PX0190-002**

CONFIDENTIAL

DISH9-0012174  
SLC\_ DNC\_ Investigation 0007364  
JRA015963  
014684

**TX 102-015225**

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

**From:** Ergen, Charlie

**Sent:** Monday, June 28, 2004 2:14 PM

**To:** DeFranco, Jim; Kelly, Michael ( EVP ); Ahmed, Amir; Schwimmer, Michael

**Subject:** churn

had a call on my answering machine at the ranch this weekend.

good script...and said i was eligible for 3 free rooms to tv ..and a surround sound system...

# is 800-615-3941 promo code PR46

when i called they tried to sell me dtv..but when i said i lived in an apartment...well they said they could sell me dishnetwork since dtv didnt sell to apt's..

of course if i say i have had dtv..they will try to sell me dish or visa versa..

check them out

who is it..what is their churn with us?..or does a distributor sell to them?

**PX0190-003**

CONFIDENTIAL

DISH9-0012175  
SLC\_ DNC\_ Investigation 0007365  
JAO 15964  
014685

**TX 102-015226**

EXHIBIT 782

EXHIBIT 782

JA015965  
014686

TX 102-015227

UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS  
SPRINGFIELD DIVISIONUNITED STATES OF AMERICA and the  
STATES OF CALIFORNIA, ILLINOIS,  
NORTH CAROLINA, and OHIO,

Plaintiffs,

v.

DISH NETWORK, LLC,

Defendant.

Case No. 3:09-cv-03073-SEM-TSH

**PLAINTIFFS' SUPPLEMENTAL  
BRIEF PURSUANT TO ORDER 422**

Plaintiffs submit this brief in response to the Court's July 8, 2014 order (d/e 422). As discussed below, the U.S. Supreme Court's recent decisions in *Decker v. Northwest Environmental Defense Center*, 568 U.S. \_\_\_, 133 S. Ct. 1326 (2013), and *Christopher v. SmithKline Beecham Corp.*, 567 U.S. \_\_\_, 132 S. Ct. 2156 (2012), do not change this Court's obligation under *Auer v. Robbins*, 519 U.S. 452 (1997), to give deference to the Federal Trade Commission's ("FTC") interpretation of the word "cause" in the Telemarketing Sales Rule ("TSR"), 16 C.F.R. § 310.4.

The majority opinion, concurrence, and dissent in *Decker* all make clear that the doctrine of deference to an agency's interpretation of its regulations, which originated nearly 70 years ago in *Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410 (1945), is very much alive. Because the Supreme Court has overruled neither *Auer* nor *Seminole Rock*, and lower courts must "leav[e] to [the Supreme] Court the prerogative of overruling its own decisions,"<sup>1</sup> *Agostini v. Felton*, 521

---

<sup>1</sup> Internal quotations and citations omitted throughout except where noted.

U.S. 203, 237 (1997), this Court must defer to the FTC's interpretation of its regulations. Also, this case is particularly ill-suited as a vehicle for revisiting *Auer* deference because Congress, in a statute, specifically approved the TSR.

Moreover, these recent Supreme Court decisions do not merit departure from the law of the case. This Court already found in *United States v. Dish Network*, 667 F. Supp. 2d 952, 959 (C.D. Ill. 2009) ("Opinion 20") that, under the plain meaning of the word "cause," a seller can cause TSR violations "by retaining [a] telemarketer and authorizing [a] telemarketer to market the seller's products and services." Finally, under any meaning of the verb "cause," Dish caused the violations Plaintiffs presented in their summary judgment motion.

**1. THIS COURT MUST FOLLOW AUER UNLESS AND UNTIL THE SUPREME COURT OVERRULES IT, WHICH THE COURT HAS NOT DONE**

In *Auer*, the Supreme Court unanimously found that the Secretary of Labor's interpretation of the Department of Labor's own regulations was entitled to deference by the courts. 519 U.S. at 461-63. Citing its 50-year-old *Seminole Rock* decision, the Court held that the agency's interpretation of its own regulation controls "unless plainly erroneous or inconsistent with the regulation." *Id.* The *Auer* Court found that this standard was "easily met" because the regulatory phrase in question "comfortably bears" the meaning that the agency gave it. *Id.* The Court further noted that the agency's interpretation, although advanced in a legal brief, was "in no sense a *post hoc* rationalizatio[n] advanced by an agency seeking to defend past agency action against attack. . . . There is simply no reason to suspect that the interpretation does not reflect the agency's fair and considered judgment on the matter in question." *Id.*

The Seventh Circuit has applied the principle of deference from *Auer* and *Seminole Rock* many times in precedential opinions. *E.g.*, *United States v. Raupp*, 677 F.3d 756, 758 (7th Cir. 2012), *cert. denied*, 133 S. Ct. 610 (2012) ("Decisions such as *Auer* . . . and *Homemakers North*

*Shore, Inc. v. Bowen*, 832 F.2d 408 (7th Cir. 1987), hold that, when an agency interprets one of its own regulations, the agency’s understanding prevails unless it contradicts the text of the regulation.”); *Paragon Health Network, Inc. v. Thompson*, 251 F.3d 1141 (7th Cir. 2001).

**a. Decker Requires This Court to Afford Auer Deference to FTC’s Interpretation of Its Regulation**

In 2013, the Supreme Court affirmed the principle of *Auer* deference, declaring that “[i]t is well established that an agency’s interpretation need not be the only possible reading of a regulation—or even the best one—to prevail. When an agency interprets its own regulation, the Court, as a general rule, defers to it unless that interpretation is ‘plainly erroneous or inconsistent with the regulation.’” *Decker*, 133 S. Ct. at 1337 (2013) (quoting *Auer*, 519 U.S. at 461). The majority opinion in *Decker* was authored by Justice Kennedy and joined by the Chief Justice as well as five other Justices: Thomas, Ginsburg, Alito, Sotomayor, and Kagan.

The Chief Justice wrote a concurrence, joined only by Justice Alito, commenting on the possibility of the Supreme Court revisiting *Auer* should the right case present itself. *Id.* at 1338-39. Justice Scalia, writing a dissent only for himself, criticized *Auer*—which he himself authored—on separation-of-powers grounds because of his belief that “the power to write a law and the power to interpret it cannot rest in the same hands.” *Id.* at 1339-44. In spite of this, however, all of the Justices recognized that *Auer* is the law of the land. The concurrence and dissent in *Decker* do not change this because neither commanded a majority.

Put simply, the Supreme Court has not overturned *Auer*. Lower courts “should follow the [Supreme Court] case which directly controls, leaving to [the Supreme] Court the prerogative of overruling its own decisions.” *Agostini*, 521 U.S. at 237; *Levine v. Heffernan*, 864 F.2d 457, 461 (7th Cir. 1988) (“[O]nly the Supreme Court may overrule one of its own precedents.”). Indeed, despite the suggestions in *Decker* that some justices may be interested in revisiting the issue in

the future, the Seventh Circuit continues to apply *Auer* deference without questioning its continued validity. *Bryn Mawr Care, Inc. v. Sebelius*, 749 F.3d 592, 597 (7th Cir. 2014). As it did in Opinion 20, this Court must therefore continue to defer to FTC’s interpretation of the TSR.

**b. *Christopher* Is Not to the Contrary**

In *Christopher*, decided the year before *Decker*, the Justices did not reject *Auer* deference, but rather—drawing on language from *Auer* and other cases—held that the agency’s interpretation of the regulation at issue did not merit *Auer* deference in the first place. The issue in *Christopher*, a private-party lawsuit, was whether pharmaceutical “detailers,” who promote prescription pharmaceuticals to doctors’ offices, were exempt from the Fair Labor Standards Act’s (“FLSA”) minimum wage and maximum hours requirements. *See* 29 U.S.C. §§ 206–207; *Christopher*, 132 S. Ct. 2156, 2161. “Outside sales[people]” are generally exempt from those requirements as part of the statute, and the Department of Labor in a regulation defines “outside sales[person]” as “any employee . . . [w]hose primary duty is . . . making sales.” 29 C.F.R. § 541.500(a). The Supreme Court recounted that for many years the Department of Labor’s interpretation of this regulation had effectively exempted detailers from FLSA’s requirements. *Christopher*, 132 S. Ct. at 2163 (“[T]he Department has stressed [since the 1940s] that this requirement is met whenever an employee in some sense makes a sale.”).

However, beginning in 2009, the Department of Labor filed a series of amicus briefs announcing that pharmaceutical detailers were not exempt, offering a different interpretation of its regulation. *Id.* In a 5-4 decision, the Supreme Court did not accord *Auer* deference to the new interpretation. *Id.* The Court rejected *Auer* deference mostly due to what it perceived as unfairness to the industry, noting that the agency’s shift in position exposed the industry to “massive liability” for acts taken before the agency changed its position and that the industry



“had little reason to suspect” that its longstanding prior practice “transgressed the FLSA.” *Id.* The Court also found relevant that the Department of Labor never brought an enforcement action against the pharmaceutical industry related to detailers and had essentially “acquiesced in the sales practices of the drug industry for over seventy years.” *Id.*

## **2. NONE OF THE EXCEPTIONS TO AUER DEFERENCE APPLY**

In contrast to the concerns animating the majority opinion in *Christopher* and the dissent in *Decker*, FTC’s interpretation of “cause” in the TSR, which reflects the plain language of the regulation, has been consistent since the beginning of its Registry and TSR enforcement in 2003, and FTC’s position in this case does not represent a change in prior practice or a *post hoc* justification adopted in response to litigation. Hence, none of the recognized exceptions to *Auer* deference apply.

### **a. FTC’s Interpretation of “Cause” Is Not Plainly Erroneous or Inconsistent With the Regulation**

The complaint in this case alleges that Dish “caused” its “Dealers” to violate the TSR by: (1) directly or indirectly offering to provide or providing financial payments for sales of Dish programming; (2) entering into relationships whereby the dealer marketed on behalf of Dish; or (3) by doing either (1) or (2) and failing to monitor and enforce compliance with the Amended TSR. Complaint (d/e 1) ¶ 58. This interpretation is harmonious with the regulation: the Seventh Circuit has recognized for many years that a federal law may place civil-penalty liability on a party who is a “cause in fact” of a violation, even if a third party performs the act itself.<sup>2</sup> *United States v. Tex-Tow, Inc.*, 589 F.2d 1310, 1314 (7th Cir. 1978) (“Although a third party may be

---

<sup>2</sup> As FTC has explained many times and this Court already found, the TSR is not a strict liability law because it offers a safe harbor for compliance. Opinion 20 at 11-12.

responsible for the immediate act or omission which ‘caused’ the spill, Tex-Tow was engaged in the activity or enterprise which ‘caused’ the spill.”).

Moreover, FTC’s interpretation of “cause” is consistent with the regulation because, as appropriate for consumer protection laws like the FTC Act and the TSR, the most logical and efficacious reading of the TSR imposes liability on the least cost avoider—the seller who provides financial incentives for companies to do marketing in the first place. The seller alone is in the best position to monitor the manner in which its products are marketed, both because it has reason to know who is marketing its products and services and because it benefits most substantially from those marketing activities. Any other approach would amount to a game of whack-a-mole.

For example, as this case amply demonstrates, the TSR would be thwarted if the government were required to sue each marketer separately rather than bring an action against the ultimate seller. Sellers may have thousands of “independent” marketers, and suing one or a few of them is unlikely to make a substantive difference for consumer privacy because another marketer can simply spring up in its place and violate the law. Also, in a large network of marketers, it can be difficult and inefficient for the government to identify which marketers are violating the law. Sellers instead are in the best position to monitor and enforce compliance of their own marketers. A seller’s ploy of creating and maintaining an attenuated relationship with a marketer that induces sales of the seller’s products—and creates a revenue stream running directly to the seller—should not insulate that seller from liability for invading consumers’ privacy rights.

Indeed, under Dish’s favored interpretation, the seller would not be liable as long as the seller did not tell the telemarketer to break the law or give the telemarketer an unscrubbed calling

list—even if the telemarketer *is* breaking the law, and even if the telemarketer *is* using unscrubbed calling lists. This interpretation is erroneous and inconsistent with the regulation because, among many other reasons, it would run contrary to the purpose of the TSR and its authorizing statutes, which is to reduce the number of unwanted telemarketing calls that consumers receive. Dish’s interpretation would allow sellers to contract with fraudsters and others with histories of illegal telemarketing—as Dish did, *see* discussion *infra* Section 4—and then avoid liability by looking the other way while those entities sell their products using tactics that Congress has specifically forbidden.

**b. FTC’s Interpretation of “Cause” Has Been Consistent**

Far from being a “*post hoc* justification” or a “change in prior practice,” FTC’s interpretation of the TSR has been consistent, giving ample notice to sellers like Dish that they may be liable for the telemarketing activities of the entities doing marketing of the their products and services. *See Christopher*, 132 S. Ct. at 2167 (discussing “adequacy of notice to regulated parties” as a factor in according deference to an agency’s interpretation). In addition to the plain language of the TSR, which this Court already found put the industry on notice of FTC’s interpretation, Opinion 20 at 21, FTC also informed the industry of its interpretation before it started enforcing the Registry provisions of the TSR. In a 2003 guidance issued before the Registry went into effect and before the illegal calls described in Plaintiffs’ summary judgment motion, FTC stated:

If a seller or telemarketer calls a consumer who has placed his number on the National Registry . . . the seller and telemarketer may be liable for a Rule violation. . . . If the seller had written Do Not Call procedures, but the telemarketer ignored them, the telemarketer will be liable for the Rule violation; the seller also might be liable, unless it could demonstrate that it monitored and enforced Do Not Call compliance and otherwise implemented its written procedures.

FTC, Complying with the Telemarketing Sales Rule (Oct. 2, 2003), *available at* <https://web.archive.org/web/20031002020012/http://www.ftc.gov/bcp/online/pubs/buspubs/tsrcomp.htm>. The impact of this statement is unmistakable—a seller can be liable for its telemarketers’ illegal calls unless it shows it satisfies the safe harbor.

Furthermore, the Department of Justice, on referral from FTC, *see* 15 U.S.C. § 56(a)(1), has filed numerous actions over the past decade in which it alleged that a seller “caused” the violations of outside marketers by agreeing to pay financial incentives to the marketer, by entering into relationships where the marketer performed marketing services on behalf of the seller, and/or by failing to monitor outside marketers for compliance with the TSR. *Compare Christopher*, 132 S. Ct. at 2168 (finding it “even more important” that the Department of Labor “never initiated any enforcement actions . . . suggest[ing] that it thought the industry was acting unlawfully”) with Complaint ¶ 18, *United States v. Flagship Resort Dev. Corp.*, No. 1:05-CV-00981 (D.N.J. filed Feb. 16, 2005) (alleging that seller caused its telemarketer to violate the TSR by agreeing to pay for marketing services) (d/e 14-7); Complaint ¶¶ 35, 42-44, 48-49, *United States v. DIRECTV, Inc.*, No. 8:05-CV-1211 (C.D. Cal. filed Dec. 12, 2005) (alleging that Dish’s largest satellite-television competitor, DIRECTV, caused its dealers to violate the TSR, where it entered into contracts with its dealers or paid the dealers to market its services, and the dealers violated the TSR); Complaint ¶¶ 25, 28, 32, *United States v. ADT Sec. Servs., Inc.*, No. 9:07-CV-81051-WJZ (S.D. Fla. filed Nov. 6, 2007) (alleging that alarm-monitoring company caused its dealers to violate the TSR, where it operated national network of dealers, authorized them to solicit customers, and paid them for opening new security system accounts, and they violated the TSR) (d/e 14-8).

As FTC's interpretation has not wavered, "there is no indication that [FTC's] current view is a change from prior practice or a *post hoc* justification adopted in response to litigation. The opposite is the case. The agency has been consistent in its view." *Decker*, 133 S. Ct. at 1337-38. The Court must therefore afford FTC's interpretation deference.

**c. This Case Does Not Raise the Concerns of the *Decker* Dissent Because Congress Specifically Approved the TSR**

Even if the *Decker* dissent and concurrence could be read to question the validity of *Auer* deference, FTC's interpretation of "cause" would still govern because, unlike many of the federal agency regulations discussed in the case law, Congress specifically "ratified" the language of the do-not-call provision of the TSR in a statute signed into law by the President. National Do Not Call Registry, Pub. L. No. 108-82, 117 Stat. 1006 (Sept. 29, 2003) ("The do-not-call registry provision of the Telemarketing Sales Rule (16 C.F.R. 310.4(b)(1)(iii)), which was promulgated by the Federal Trade Commission, effective March 31, 2003, is ratified.").

Furthermore, Congress has passed and the President has signed other legislation evincing Congress's clear intent that the do-not-call provisions of the TSR be enforced as FTC wrote them, including the "cause" language at issue here. In 2003, Congress passed the Do-Not-Call Implementation Act, which authorized FTC to collect fees from telemarketers to implement the Registry and directed the Federal Communications Commission to write a do-not-call rule that was consistent "with the rule promulgated by the Federal Trade Commission (16 CFR 310.4(b))." 15 U.S.C. § 6152. In 2007, Congress subsequently made changes to the TSR by statute that superseded some of FTC's TSR regulations, 15 U.S.C. § 6155, but did not change the "cause" language—thereby endorsing FTC's long-standing interpretation that "[t]he Do Not Call Rule applies to all players in the marketing chain, including retailers and their telemarketers." See Press Release, FTC, DirecTV to Pay \$5.3 Million Penalty For Do Not Call Violations (Dec.

13, 2005), available at <http://www.ftc.gov/news-events/press-releases/2005/12/directv-pay-53-million-penalty-do-not-call-violations> (d/e 14-9); *cf. Forest Grove Sch. Dist. v. T. A.*, 557 U.S. 230, 239-240 (2009) (holding that, when it legislates, “Congress is presumed to be aware of an administrative or judicial interpretation of a statute”).

Given the text and the purpose of Congress’ enactments, none of the concerns voiced by Justice Scalia’s dissent in *Decker* is present here. The Legislative Branch has explicitly approved the do-not-call provisions of the TSR—and the Executive Branch has been trying to enforce those provisions as to Dish and its unlawful telemarketing for nearly a decade now.

### **3. THIS COURT ALREADY HELD THAT FTC’S INTERPRETATION OF “CAUSE” COMPORTS WITH THE PLAIN MEANING OF THE REGULATION**

In Opinion 20, the Court extensively analyzed the word “cause” and found that FTC’s interpretation comported with the plain meaning of the term, which is “to bring about a consequence.” Opinion 20 at 10-14. Among other things, the Court compared the do-not-call provision of the TSR with the assisting and facilitating provision, 16 C.F.R. § 310.3(b), which the Court found did require “both a degree of connection between the action and the rule violation and the actor’s intent.” *Id.* Applying the rule against surplusage, the Court reasoned that FTC’s failure to add similar limiting language to the “cause” provision indicated that it did not intend to limit the scope of “cause”—“for example, earth’s gravity causes objects to fall.” *Id.* When Dish moved to certify an interlocutory appeal, the Court reiterated its conclusion simply but directly: “The FTC interpretation of the TSR was consistent with the plain meaning of the verb ‘cause.’” Opinion 32 at 7. The Court therefore did not—and need not now—rely on *Auer* deference at all.

Furthermore, the Court’s interpretation of the plain meaning of “cause” is the law of the case, and there is no reason to revisit it as there has been no intervening change in the law, the

facts, or the procedural posture of the case. *Tice v. Am. Airlines, Inc.*, 373 F.3d 851, 853 (7th Cir. 2004). “[A] successor judge should not reconsider the decision of a transferor judge at the same hierarchical level of the judiciary when a case is transferred” so that “a change of judges mid-way through a case will not mean going back to square one.” *Brengettcy v. Horton*, 423 F.3d 674, 680 (7th Cir. 2005) (Wood, J.).

Moreover, neither *Christopher* nor *Decker* gives the Court a reason to change the law of the case or to revisit its denial of Dish’s motion to certify an interlocutory appeal. Earlier this year, the Seventh Circuit explored in depth the circumstances in which an intervening change of controlling precedent could warrant a district court reconsidering an earlier ruling. *Kathrein v. City of Evanston, Ill.*, 752 F.3d 680 (7th Cir. 2014). The court of appeals held that “a decision of the Supreme Court . . . that is inconsistent with [an earlier] decision” could justify abandonment of the law of the case, but explained that an intervening decision is inconsistent only if it “clearly alter[s] the law underlying the decision.” *Id.* at 685-86. As explained above, *Christopher* and *Decker* do not “clearly alter” *Auer* deference—if anything, they affirm its continuing applicability to this case—and no intervening opinion of the Supreme Court or the Seventh Circuit has considered the meaning of “cause” in the TSR. The Court therefore has no “good reason” to depart from its earlier rulings due to these intervening decisions. *Id.*

**4. UNDER ANY INTERPRETATION OF “CAUSE,” DISH CAUSED THE DEALER VIOLATIONS IN PLAINTIFFS’ SUMMARY JUDGMENT MOTION**

Finally, it is unnecessary to revisit the applicability of *Auer* deference to this case because the undisputed facts in Plaintiffs’ summary judgment motion establish that, under any interpretation of the verb “cause,” Dish caused the dealer telemarketing violations described in Plaintiffs’ motion.

First, Dish has not disputed that, when they made the illegal calls described in Plaintiffs' summary judgment motion, the six Dish dealers that made those calls had active contracts with Dish that permitted them to perform telemarketing to sell Dish service nationwide. Dish's Opp. to Pls.' Mot. for Summ. J., Additional Material Facts 182, 188; Dish's Resps. to Pls.' Statement of Material Facts ("Dish Resps. to PUF") 193, 229, 261, 293, 316, 370 (d/e 369 at 63-64, 69-70, 74-75, 78-79, 123-24, 159-60).<sup>3</sup> It is further uncontroverted that, when the illegal calls were made, Dish gave these six dealers access to an exclusive system Dish created and maintained called the "OE" system, which served as an Internet telesales portal for the telemarketing agents at the dealers' call centers. Dish Resps. to PUF 192, 240, 268, 294, 321, 369 (d/e 369 at 63, 111, 114, 115, 119, 123).

The OE portal, among other things, walked the dealers' telesales agents through all steps of the sales process, including telling the telesales agents what to say to the consumers they called and allowing the dealers' telemarketing agents to enter into contracts and take money on Dish's behalf. Dish Resps. to PUF 139, 140, 147, 148, 149, 150 (d/e 369 at 55-57). The OE system also provided an online calendar by which the Dish dealer telesales agent would bind Dish itself to a specific date and time where it would install Dish service. Dish Resp. to PUF 146 (d/e 369 at 56). The uncontroverted evidence, therefore, shows that the OE system provided the framework for the telemarketing calls that the OE dealers made, and that Dish caused these

---

<sup>3</sup> Although Dish categorized some of the facts cited in this section as "disputed," Dish's disputes are not genuine because they: (a) relate to issues tangential to the fact itself; (b) do not state what Dish believes is incorrect about the fact; and/or (c) do not cite to anything in the record contradicting the evidence Plaintiffs presented. *See* CDIL-LR 7.1(D)(2)(b)(2), (3) ("Each claim of disputed fact must be supported by evidentiary documentation referenced by specific page."). For example, Dish does not dispute that it had marketing contracts with all six dealers mentioned in Plaintiffs' motion, nor does Dish meaningfully dispute the facts of the OE system as Plaintiffs described them. Instead, Dish disputes minor aspects of the interpretation of its contractual language and minor aspects of how the OE system functioned, none of which are relevant to the core issues presented by this case.



dealers' illegal calls by providing access to this telesales system and paying the dealers substantial incentives for signing up new customers using this system.

Furthermore, Dish "caused the [violations] in a perfectly good sense of the word," *see Scottsdale Indem. Co. v. Vill. of Crestwood*, 673 F.3d 715, 720 (7th Cir. 2012), by continuing to pay incentives and allow these six entities to market nationally, even after it knew or should have known that they were committing widespread telemarketing violations. As for four of the six dealers in Plaintiffs' summary judgment motion—Satellite Systems Network, National Satellite Systems, Star Satellite, and American Satellite—Dish had undisputed actual knowledge that those dealers were engaged in forbidden telemarketing practices long before they made the millions of illegal calls in Plaintiffs' summary judgment motion. Dish Resps. to PUF 233-35, 238, 239-41, 244, 245, 266-69, 289, 298-300, 302-03, 371 (d/e 369 at 71, 72, 77-78, 110, 111, 113-14, 116, 117, 124).

As for JSR Enterprises, Dish contracted with the firm in 2006 knowing that JSR's only marketing method was outbound telemarketing, and Dish also knew that JSR was autodialing 750,000 people every week from cold-calling lists purchased from real-estate companies. Dish Resps. to PUF 315, 316-17, 352 (d/e 369 at 78-79, 119, 121). Despite this knowledge, in August 2006, Dish brought JSR on as an OE dealer anyway. Dish Resp. to PUF 321 (d/e 369 at 119). Dish took no meaningful steps to ensure JSR obeyed the law when it marketed Dish service, *see* Dish Resp. to PUF 312, 314-15, 319, 321-24, 326, 328-34, 354, 359 (d/e 369 at 119-21)—exactly the type of conduct FTC told the industry in 2003 would make a seller responsible for the TSR violations of its telemarketers, *see* FTC, *Complying with the Telemarketing Sales Rule* ("[T]he seller also might be liable [for a TSR violation of its telemarketer], unless it could demonstrate that it monitored and enforced Do Not Call compliance and otherwise implemented

its written procedures.”). Subsequently, Dish acquired actual knowledge about a month after JSR started on the OE program that it was using illegal telemarketing, but Dish allowed the firm to continue selling for another five months—causing millions more illegal calls—before Dish took any action. *Id.*

As for Dish TV Now, which was the first Dish OE dealer, the principals of the firm had multiple federal felony fraud convictions and had been enjoined by the Eastern District of Virginia from violating the FTC Act long before Dish allowed them to pilot the OE program. Dish Resps. to PUF 184-87 (d/e 369 at 106-07). Yet Dish took no steps to ensure that the firm’s telemarketing practices would comply with the law. Dish Resps. to PUF 188, 198, 199 (d/e 369 at 107-08). And Dish acquired actual knowledge by at least September 2004 that Dish TV Now was using prerecorded messages to sell Dish service, yet did nothing. Dish Resps. to PUF 161, 206, 215, 216, 227 (d/e 369 at 59, 66, 67-68, 109).

Dish’s uncontested knowledge of these dealers’ activities—combined with its continued renewals of its contracts with those entities, continued incentive payments to those entities, and continued provision of unlimited OE portal access to those entities—caused their TSR violations, and no reasonable factfinder could disagree. Under any interpretation of the word “cause,” therefore, the Court should find that Dish caused these dealers to violate the TSR.

Dated: August 8, 2014

Respectfully,

OF COUNSEL:

FOR THE UNITED STATES:

LOIS C. GREISMAN  
Associate Director for Marketing Practices

STUART F. DELERY  
Assistant Attorney General

ROBERTO ANGUIZOLA  
Assistant Director, Marketing Practices

JONATHAN F. OLIN  
Deputy Assistant Attorney General

RUSSELL DEITCH  
GARY IVENS  
Attorneys  
Federal Trade Commission  
600 Pennsylvania Ave. NW, Room 288  
Washington, DC 20580  
Telephone: 202-326-2585 (Deitch),  
202-326-2330 (Ivens)  
Fax: 202-326-3395

MICHAEL S. BLUME, Director

/s/ Sang H. Lee  
LISA K. HSIAO  
PATRICK R. RUNKLE  
SANG H. LEE  
Trial Attorneys  
Consumer Protection Branch  
U.S. Department of Justice  
PO Box 386  
Washington, DC 20044-0386  
Telephone: 202-532-4892 (Hsiao)  
202-532-4723 (Runkle)  
202-532-4793 (Lee)  
Fax: 202-514-8742  
[Lisa.K.Hsiao@usdoj.gov](mailto:Lisa.K.Hsiao@usdoj.gov)  
[Patrick.R.Runkle@usdoj.gov](mailto:Patrick.R.Runkle@usdoj.gov)  
[Sang.H.Lee@usdoj.gov](mailto:Sang.H.Lee@usdoj.gov)

GREG GILMORE  
Assistant U.S. Attorney  
U.S. Attorney's Office for C.D. Ill.  
318 S. 6th St.  
Springfield, IL 62701-1806  
Telephone: 217-492-4450  
Fax: 217-492-4512  
[Greg.Gilmore@usdoj.gov](mailto:Greg.Gilmore@usdoj.gov)

FOR THE PEOPLE OF THE STATE OF  
CALIFORNIA

KAMALA D. HARRIS  
Attorney General of the State of California  
JINSOOK OHTA  
Deputy Attorney General  
Consumer Law Section

FOR THE PEOPLE OF THE STATE OF  
ILLINOIS

LISA MADIGAN  
Attorney General of Illinois  
ELIZABETH BLACKSTON  
Assistant Attorney General; Chief, Consumer  
Fraud Bureau

Office of the Attorney General  
110 W. "A" Street, Suite 1100  
San Diego, CA 92101-3702  
Telephone: 619-645-2089  
Fax: 619-645-2062  
[jinsook.ohata@doj.ca.gov](mailto:jinsook.ohata@doj.ca.gov)

PAUL A. ISAAC  
Assistant Attorney General  
Consumer Fraud Bureau  
500 South Second St.  
Springfield, IL 62706  
Telephone: 217-782-4436  
Fax: 217-782-1097  
[pisaac@atg.state.il.us](mailto:pisaac@atg.state.il.us)

FOR THE STATE OF OHIO

FOR THE STATE OF NORTH CAROLINA

MIKE DEWINE  
Attorney General of Ohio  
MICHAEL ZIEGLER  
ERIN B. LEAHY  
Assistant Attorneys General  
Consumer Protection Section  
Ohio Attorney General's Office  
30 E. Broad St., 14th Floor  
Columbus, OH 43215-3414  
Telephone: 614-466-3980 (Ziegler)  
614-752-4730 (Leahy)  
Fax: 866-768-2648  
[Michael.Ziegler@ohioattorneygeneral.gov](mailto:Michael.Ziegler@ohioattorneygeneral.gov)  
[Erin.Leahy@ohioattorneygeneral.gov](mailto:Erin.Leahy@ohioattorneygeneral.gov)

ROY COOPER  
Attorney General of North Carolina  
DAVID KIRKMAN  
Assistant Attorney General  
Office of the Attorney General  
114 W. Edenton St.  
Raleigh, NC 27699-9001  
Telephone: 919-716-6000  
Fax: 919-716-6050  
[dkirkman@ncdoj.gov](mailto:dkirkman@ncdoj.gov)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Plaintiffs' Supplemental Brief Pursuant to Order 422 was served via ECF this 8th day of August 2014, upon each of the persons listed below:

Joseph A. Boyle  
Lauri A. Mazzuchetti  
[jboyle@kelleydrye.com](mailto:jboyle@kelleydrye.com)  
[lmazzuchetti@kelleydrye.com](mailto:lmazzuchetti@kelleydrye.com)

Counsel for Dish Network, LLC

s/ Sang H. Lee  
SANG H. LEE