
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

Form 10-Q

(Mark One)

**QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
FOR THE QUARTERLY PERIOD ENDED SEPTEMBER 30, 2020.**

OR

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
FOR THE TRANSITION PERIOD FROM _____ TO _____**

Commission File Number: 001-39144

DISH Network Corporation

(Exact name of registrant as specified in its charter)

Nevada
(State or other jurisdiction of incorporation or organization)

88-0336997
(I.R.S. Employer Identification No.)

**9601 South Meridian Boulevard
Englewood, Colorado**
(Address of principal executive offices)

80112
(Zip code)

(303) 723-1000
(Registrant's telephone number, including area code)

Not Applicable
(Former name, former address and former fiscal year, if changed since last report)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Class A common stock, \$0.01 par value	DISH	The Nasdaq Stock Market L.L.C.

Securities registered pursuant to Section 12(g) of the Act: **None**

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

As of October 22, 2020, the registrant's outstanding common stock consisted of 287,530,751 shares of Class A common stock and 238,435,208 shares of Class B common stock.

TABLE OF CONTENTS

PART I — FINANCIAL INFORMATION

	Disclosure Regarding Forward-Looking Statements	i
Item 1.	Financial Statements	
	Condensed Consolidated Balance Sheets — September 30, 2020 and December 31, 2019 (Unaudited)	1
	Condensed Consolidated Statements of Operations and Comprehensive Income (Loss). For the Three and Nine Months Ended September 30, 2020 and 2019 (Unaudited)	2
	Condensed Consolidated Statements of Changes in Stockholders' Equity (Deficit). For the Three and Nine Months Ended September 30, 2020 and 2019 (Unaudited)	3
	Condensed Consolidated Statements of Cash Flows For the Nine Months Ended September 30, 2020 and 2019 (Unaudited)	5
	Notes to Condensed Consolidated Financial Statements (Unaudited)	6
Item 2.	Management's Discussion and Analysis of Financial Condition and Results of Operations	78
Item 3.	Quantitative and Qualitative Disclosures About Market Risk	120
Item 4.	Controls and Procedures	120

PART II — OTHER INFORMATION

Item 1.	Legal Proceedings	120
Item 1A.	Risk Factors	120
Item 2.	Unregistered Sales of Equity Securities and Use of Proceeds	121
Item 3.	Defaults Upon Senior Securities	None
Item 4.	Mine Safety Disclosures	None
Item 5.	Other Information	121
Item 6.	Exhibits	124
	Signatures	125

PART I — FINANCIAL INFORMATION

DISCLOSURE REGARDING FORWARD-LOOKING STATEMENTS

Unless otherwise required by the context, in this report, the words “DISH Network,” the “Company,” “we,” “our” and “us” refer to DISH Network Corporation and its subsidiaries and “DISH DBS” refers to DISH DBS Corporation, a wholly-owned, indirect subsidiary of DISH Network, and its subsidiaries.

This Quarterly Report on Form 10-Q contains “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995, including, in particular, statements about our plans, objectives and strategies, growth opportunities in our industries and businesses, our expectations regarding future results, financial condition, liquidity and capital requirements, our estimates regarding the impact of regulatory developments and legal proceedings, and other trends and projections. Forward-looking statements are not historical facts and may be identified by words such as “future,” “anticipate,” “intend,” “plan,” “goal,” “seek,” “believe,” “estimate,” “expect,” “predict,” “will,” “would,” “could,” “can,” “may,” and similar terms. These forward-looking statements are based on information available to us as of the date of this Quarterly Report on Form 10-Q and represent management’s current views and assumptions. Forward-looking statements are not guarantees of future performance, events or results and involve known and unknown risks, uncertainties and other factors, which may be beyond our control. Accordingly, actual performance, events or results could differ materially from those expressed or implied in the forward-looking statements due to a number of factors, including, but not limited to, the following:

Competition and Economic Risks

- As the pay-TV industry has matured and bundled offers combining video, broadband and/or wireless services have become more prevalent and competitive, we face intense and increasing competition from providers of video, broadband and/or wireless services, which may require us to further increase subscriber acquisition and retention spending or accept lower subscriber activations and higher subscriber churn.
- Changing consumer behavior and competition from digital media companies that provide or facilitate the delivery of video content via the Internet may reduce our subscriber activations and may cause our subscribers to purchase fewer services from us or to cancel our services altogether, resulting in less revenue to us.
- Economic weakness and uncertainty may adversely affect our ability to grow or maintain our business.
- The COVID-19 pandemic and its impact on the economic environment generally, and on us specifically, have adversely impacted our business. Furthermore, any continuation or worsening of the pandemic and economic environment could have a material adverse effect on our business, financial condition and results of operations.
- Our competitors may be able to leverage their relationships with programmers to reduce their programming costs and/or offer exclusive content that will place them at a competitive advantage to us.
- Our over-the-top (“OTT”) SLING TV Internet-based services face certain risks, including, among others, significant competition.
- If government regulations relating to the Internet change, we may need to alter the manner in which we conduct our SLING TV business, and/or incur greater operating expenses to comply with those regulations.
- Changes in how network operators handle and charge for access to data that travels across their networks could adversely impact our business.
- We face increasing competition from other distributors of unique programming services such as foreign language, sports programming and original content that may limit our ability to maintain subscribers that desire these unique programming services.

Operational and Service Delivery Risks

- If our operational performance and customer satisfaction were to deteriorate, our subscriber activations and our subscriber churn rate may be negatively impacted, which could in turn adversely affect our revenue.
- If our subscriber activations decrease, or if our subscriber churn rate, subscriber acquisition costs or retention costs increase, our financial performance will be adversely affected.
- Programming expenses are increasing and may adversely affect our future financial condition and results of operations.
- We depend on others to provide the programming that we offer to our subscribers and, if we fail to obtain or lose access to certain programming, our subscriber activations and our subscriber churn rate may be negatively impacted.
- We may not be able to obtain necessary retransmission consent agreements at acceptable rates, or at all, from local network stations.
- We may be required to make substantial additional investments to maintain competitive programming offerings.
- Any failure or inadequacy of our information technology infrastructure and communications systems or those of third parties that we use in our operations, including, without limitation, those caused by cyber-attacks or other malicious activities, could disrupt or harm our business.
- Through the MNSA, we depend on NTM to provide services to our retail wireless customers, and any system failure related to NTM's wireless network, interruption in the services provided by NTM and/or the termination of the MNSA could negatively impact our subscriber activations and our subscriber churn rate, which in turn could have a material adverse effect on our business, financial condition and results of operations.
- Technology in the pay-TV industry changes rapidly, and our success may depend in part on our timely introduction and implementation of, and effective investment in, new competitive products and services, and our failure to do so could cause our products and services to become obsolete and could negatively impact our business.
- We rely on a single vendor or a limited number of vendors to provide certain key products or services to us such as information technology support, billing systems and security access devices, and the inability of these key vendors to meet our needs could have a material adverse effect on our business.
- We rely on a few suppliers and in some cases a single supplier for many components of our new set-top boxes, and any reduction or interruption in supplies or significant increase in the price of supplies could have a negative impact on our business.
- Our programming signals are subject to theft, and we are vulnerable to other forms of fraud that could require us to make significant expenditures to remedy.
- We depend on independent third parties to solicit orders for our DISH TV services that represent a meaningful percentage of our total gross new DISH TV subscriber activations.
- We have limited satellite capacity and failures or reduced capacity could adversely affect our DISH TV services.
- Our owned and leased satellites are subject to construction, launch, operational and environmental risks that could limit our ability to utilize these satellites.

- Satellite anomalies or technological failures could adversely affect the value of a particular satellite or result in a complete loss. Some of the satellites acquired pursuant to the Master Transaction Agreement have experienced anomalies that may affect their useful lives or prohibit us from operating them to their currently expected capacity, and one or more of the satellites may suffer a technological failure, either of which could have an adverse effect on our business, financial condition and results of operations.
- We generally do not carry commercial in-orbit insurance on any of the satellites that we own and could face significant impairment charges if any of our owned satellites fail.
- We may have potential conflicts of interest with EchoStar Corporation (“EchoStar”) due to our common ownership and management.
- We rely on key personnel and the loss of their services may negatively affect our business.

Acquisition and Capital Structure Risks

- We have made substantial investments to acquire certain wireless spectrum licenses and other related assets. In addition, we have made substantial non-controlling investments in the Northstar Entities and the SNR Entities related to AWS-3 wireless spectrum licenses.
- We face certain risks related to our non-controlling investments in the Northstar Entities and the SNR Entities, which may have a material adverse effect on our business, results of operations and financial condition.
- To the extent that we commercialize our wireless spectrum licenses, we will face certain risks entering and competing in the wireless services industry and operating a facilities-based wireless services business.
- Our wireless spectrum licenses are subject to certain interim and final build-out requirements, as well as certain renewal requirements. The failure to meet such build-out and/or renewal requirements may have a material adverse effect on our business, results of operations and financial condition.
- We rely on highly skilled personnel for our wireless business, including without limitation our ability to meet build-out requirements, and if we are unable to hire and retain key personnel or hire qualified personnel then our wireless business may be adversely affected.
- We may fail to realize all of the anticipated benefits of the Boost Mobile Acquisition.
- The integration of the BSS Business may not be as successful as anticipated.
- We may fail to realize all of the anticipated benefits of the Master Transaction Agreement.
- Despite the acquisition of additional satellites acquired pursuant to the Master Transaction Agreement, we continue to have limited satellite capacity, and failures or reduced capacity could adversely affect our DISH TV services.
- Current DISH Network stockholders have reduced ownership and voting interest in and exercise less influence over management of DISH Network following the closing of the Master Transaction Agreement.
- If we were to take certain actions that could cause the Distribution to become taxable to EchoStar, we may be required to indemnify EchoStar for any resulting tax liability, and the indemnity amounts could be substantial.
- We may pursue acquisitions and other strategic transactions to complement or expand our business that may not be successful, and we may lose up to the entire value of our investment in these acquisitions and transactions.

- We may need additional capital, which may not be available on acceptable terms or at all, to continue investing in our business and to finance acquisitions and other strategic transactions.
- We have substantial debt outstanding and may incur additional debt.
- The conditional conversion features of our 3 3/8% Convertible Notes due 2026 (the “Convertible Notes due 2026”) and our 2 3/8% Convertible Notes due 2024 (the “Convertible Notes due 2024,” and collectively with the Convertible Notes due 2026, the “Convertible Notes”), if triggered, may adversely affect our financial condition.
- The convertible note hedge and warrant transactions that we entered into in connection with the offering of the Convertible Notes due 2026 may affect the value of the Convertible Notes due 2026 and our Class A common stock.
- We are subject to counterparty risk with respect to the convertible note hedge transactions.
- From time to time a portion of our investment portfolio may be invested in securities that have limited liquidity and may not be immediately accessible to support our financing needs, including investments in public companies that are highly speculative and have experienced and continue to experience volatility.
- It may be difficult for a third party to acquire us, even if doing so may be beneficial to our shareholders, because of our ownership structure.
- We are controlled by one principal stockholder who is also our Chairman.

Legal and Regulatory Risks

- The rulings in the Telemarketing litigation requiring us to pay up to an aggregate amount of \$280 million and imposing certain injunctive relief against us, if upheld, would have a material adverse effect on our cash, cash equivalents and marketable investment securities balances and our business operations.
- Our business depends on certain intellectual property rights and on not infringing the intellectual property rights of others.
- We are, and may become, party to various lawsuits which, if adversely decided, could have a significant adverse impact on our business, particularly lawsuits regarding intellectual property.
- Our ability to distribute video content via the Internet, including our SLING TV services, involves regulatory risk.
- Changes in the Cable Act of 1992 (“Cable Act”), and/or the rules of the Federal Communications Commission (“FCC”) that implement the Cable Act, may limit our ability to access programming from cable-affiliated programmers at nondiscriminatory rates.
- The injunction against our retransmission of distant networks, which is currently waived, may be reinstated.
- We are subject to significant regulatory oversight, and changes in applicable regulatory requirements, including any adoption or modification of laws or regulations relating to the Internet, could adversely affect our business.
- Our DISH TV services depend on FCC licenses that can expire or be revoked or modified and applications for FCC licenses that may not be granted.

[Table of Contents](#)

- We are subject to digital high-definition (“HD”) “carry-one, carry-all” requirements that cause capacity constraints.
- Our business, investor confidence in our financial results and stock price may be adversely affected if our internal controls are not effective.
- We may face other risks described from time to time in periodic and current reports we file with the Securities and Exchange Commission (“SEC”).

Other factors that could cause or contribute to such differences include, but are not limited to, those discussed under the caption “Risk Factors” in Part II, Item 1A of our Quarterly Report on Form 10-Q for the quarter ended March 31, 2020 and June 30, 2020, and in Part I, Item 1A of our most recent Annual Report on Form 10-K (the “10-K”) filed with the SEC, those discussed in “Management’s Discussion and Analysis of Financial Condition and Results of Operations” herein and in the 10-K and those discussed in other documents we file with the SEC. All cautionary statements made or referred to herein should be read as being applicable to all forward-looking statements wherever they appear. Investors should consider the risks and uncertainties described or referred to herein and should not place undue reliance on any forward-looking statements. The forward-looking statements speak only as of the date made, and we expressly disclaim any obligation to update these forward-looking statements.

Item 1. FINANCIAL STATEMENTS

DISH NETWORK CORPORATION
CONDENSED CONSOLIDATED BALANCE SHEETS
(Dollars in thousands, except share amounts)
(Unaudited)

	As of	
	September 30, 2020	December 31, 2019
Assets		
<i>Current Assets:</i>		
Cash and cash equivalents	\$ 1,811,308	\$ 2,443,643
Marketable investment securities	983,859	416,704
Trade accounts receivable, net of allowance for credit losses and allowance for doubtful accounts of \$64,614 and \$19,280, respectively	1,143,500	588,358
Inventory	516,216	322,898
Other current assets	550,588	243,497
Total current assets	5,005,471	4,015,100
<i>Noncurrent Assets:</i>		
Restricted cash, cash equivalents and marketable investment securities	108,388	61,067
Property and equipment, net	2,226,423	2,706,182
FCC authorizations	26,665,485	25,779,503
Other investment securities	148,246	160,074
Operating lease assets	112,922	144,330
Other noncurrent assets, net	1,031,216	228,264
Intangible assets, net (Note 8)	802,286	136,415
Total noncurrent assets	31,094,966	29,215,835
Total assets	\$ 36,100,437	\$ 33,230,935
Liabilities and Stockholders' Equity (Deficit)		
<i>Current Liabilities:</i>		
Trade accounts payable	\$ 747,533	\$ 280,645
Deferred revenue and other	861,843	681,484
Accrued programming	1,330,687	1,308,531
Accrued interest	189,762	236,087
Other accrued expenses	1,307,666	817,978
Current portion of long-term debt and finance lease obligations	2,092,638	1,171,366
Total current liabilities	6,530,129	4,496,091
<i>Long-Term Obligations, Net of Current Portion:</i>		
Long-term debt and finance lease obligations, net of current portion	11,989,762	12,968,229
Deferred tax liabilities	3,635,500	2,870,655
Operating lease liabilities	73,057	84,795
Long-term deferred revenue and other long-term liabilities	546,527	695,018
Total long-term obligations, net of current portion	16,244,846	16,618,697
Total liabilities	22,774,975	21,114,788
Commitments and Contingencies (Note 11)		
Redeemable noncontrolling interests (Note 2)	633,949	552,075
<i>Stockholders' Equity (Deficit):</i>		
Class A common stock, \$.01 par value, 1,600,000,000 shares authorized, 287,530,751 and 284,603,818 shares issued and outstanding, respectively	2,875	2,846
Class B common stock, \$.01 par value, 800,000,000 shares authorized, 238,435,208 shares issued and outstanding	2,384	2,384
Additional paid-in capital	5,045,237	4,947,007
Accumulated other comprehensive income (loss)	(1,583)	(18)
Accumulated earnings (deficit)	7,642,343	6,612,302
Total DISH Network stockholders' equity (deficit)	12,691,256	11,564,521
Noncontrolling interests	257	(449)
Total stockholders' equity (deficit)	12,691,513	11,564,072
Total liabilities and stockholders' equity (deficit)	\$ 36,100,437	\$ 33,230,935

The accompanying notes are an integral part of these condensed consolidated financial statements.

DISH NETWORK CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
AND COMPREHENSIVE INCOME (LOSS)
(Dollars in thousands, except per share amounts)
(Unaudited)

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2020	2019	2020	2019
Revenue:				
Service revenue	\$ 4,222,145	\$ 3,117,191	\$ 10,537,999	\$ 9,427,533
Equipment sales and other revenue	309,446	51,172	398,071	139,286
Total revenue	<u>4,531,591</u>	<u>3,168,363</u>	<u>10,936,070</u>	<u>9,566,819</u>
Costs and Expenses (exclusive of depreciation):				
Cost of services	2,488,969	2,041,578	6,505,116	6,354,770
Cost of sales - equipment and other	515,643	55,753	586,672	147,210
Selling, general and administrative expenses	516,648	447,959	1,376,861	1,251,893
Impairment of long-lived assets (Note 2)	-	-	356,418	-
Depreciation and amortization	199,083	154,181	518,027	457,022
Total costs and expenses	<u>3,720,343</u>	<u>2,699,471</u>	<u>9,343,094</u>	<u>8,210,895</u>
Operating income (loss)	<u>811,248</u>	<u>468,892</u>	<u>1,592,976</u>	<u>1,355,924</u>
Other Income (Expense):				
Interest income	1,647	32,301	21,440	65,944
Interest expense, net of amounts capitalized	6,778	(6,027)	(20,322)	(17,598)
Other, net	(13,200)	(1,796)	(11,592)	10,124
Total other income (expense)	<u>(4,775)</u>	<u>24,478</u>	<u>(10,474)</u>	<u>58,470</u>
Income (loss) before income taxes	806,473	493,370	1,582,502	1,414,394
Income tax (provision) benefit, net	(273,514)	(116,213)	(469,864)	(335,372)
Net income (loss)	532,959	377,157	1,112,638	1,079,022
Less: Net income (loss) attributable to noncontrolling interests, net of tax	28,360	23,853	82,597	68,914
Net income (loss) attributable to DISH Network	<u>\$ 504,599</u>	<u>\$ 353,304</u>	<u>\$ 1,030,041</u>	<u>\$ 1,010,108</u>
Weighted-average common shares outstanding - Class A and B common stock:				
Basic	<u>525,532</u>	<u>477,495</u>	<u>524,329</u>	<u>471,736</u>
Diluted	<u>583,957</u>	<u>535,746</u>	<u>582,595</u>	<u>530,041</u>
Earnings per share - Class A and B common stock:				
Basic net income (loss) per share attributable to DISH Network	<u>\$ 0.96</u>	<u>\$ 0.74</u>	<u>\$ 1.96</u>	<u>\$ 2.14</u>
Diluted net income (loss) per share attributable to DISH Network	<u>\$ 0.86</u>	<u>\$ 0.66</u>	<u>\$ 1.77</u>	<u>\$ 1.91</u>
Comprehensive Income (Loss):				
Net income (loss)	\$ 532,959	\$ 377,157	\$ 1,112,638	\$ 1,079,022
<i>Other comprehensive income (loss):</i>				
Foreign currency translation adjustments	1,411	(237)	(1,735)	(52)
Unrealized holding gains (losses) on available-for-sale debt securities	(21)	(211)	(62)	1,180
Recognition of previously unrealized (gains) losses on available-for-sale securities included in net income (loss)	43	(2)	(11)	(298)
Deferred income tax (expense) benefit, net	(352)	49	243	(208)
Total other comprehensive income (loss), net of tax	1,081	(401)	(1,565)	622
Comprehensive income (loss)	534,040	376,756	1,111,073	1,079,644
Less: Comprehensive income (loss) attributable to noncontrolling interests, net of tax	28,360	23,853	82,597	68,914
Comprehensive income (loss) attributable to DISH Network	<u>\$ 505,680</u>	<u>\$ 352,903</u>	<u>\$ 1,028,476</u>	<u>\$ 1,010,730</u>

The accompanying notes are an integral part of these condensed consolidated financial statements.

DISH NETWORK CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY (DEFICIT)

(In thousands)

(Unaudited)

	Class A and B Common Stock	Additional Paid-In Capital	Accumulated Other Comprehensive Income (Loss)	Accumulated Earnings (Deficit)	Noncontrolling Interests	Total	Redeemable Noncontrolling Interests
Balance, December 31, 2018	\$ 4,679	\$ 3,379,093	\$ (874)	\$ 5,212,790	\$ (1,499)	\$ 8,594,189	\$ 460,068
Issuance of Class A common stock:							
Exercise of stock awards	—	227	—	—	—	227	—
Employee Stock Purchase Plan	2	4,520	—	—	—	4,522	—
Non-cash, stock-based compensation	—	11,537	—	—	—	11,537	—
Change in unrealized holding gains (losses) on available-for-sale debt securities, net	—	—	1,006	—	—	1,006	—
Deferred income tax (expense) benefit attributable to other comprehensive income (loss)	—	—	(236)	—	—	(236)	—
Foreign currency translation	—	—	47	—	—	47	—
Net income (loss) attributable to noncontrolling interests	—	—	—	—	164	164	21,374
Net income (loss) attributable to DISH Network	—	—	—	339,761	—	339,761	—
Balance, March 31, 2019	\$ 4,681	\$ 3,395,377	\$ (57)	\$ 5,552,551	\$ (1,335)	\$ 8,951,217	\$ 481,442
Issuance of Class A common stock:							
Exercise of stock awards	6	18,620	—	—	—	18,626	—
Employee benefits	11	26,993	—	—	—	27,004	—
Employee Stock Purchase Plan	1	4,040	—	—	—	4,041	—
Non-cash, stock-based compensation	—	12,105	—	—	—	12,105	—
Change in unrealized holding gains (losses) on available-for-sale debt securities, net	—	—	89	—	—	89	—
Deferred income tax (expense) benefit attributable to other comprehensive income (loss)	—	—	(21)	—	—	(21)	—
Foreign currency translation	—	—	138	—	—	138	—
Net income (loss) attributable to noncontrolling interests	—	—	—	—	269	269	23,254
Net income (loss) attributable to DISH Network	—	—	—	317,043	—	317,043	—
Balance, June 30, 2019	\$ 4,699	\$ 3,457,135	\$ 149	\$ 5,869,594	\$ (1,066)	\$ 9,330,511	\$ 504,696
Issuance of Class A common stock:							
Exercise of stock awards	1	77	—	—	—	78	—
Employee Stock Purchase Plan	1	4,536	—	—	—	4,537	—
Non-cash, stock-based compensation	—	(15,348)	—	—	—	(15,348)	—
Change in unrealized holding gains (losses) on available-for-sale debt securities, net	—	—	(213)	—	—	(213)	—
Deferred income tax (expense) benefit attributable to other comprehensive income (loss)	—	—	49	—	—	49	—
Foreign currency translation	—	—	(237)	—	—	(237)	—
Master Transaction Agreement, net of deferred tax of \$166,161	229	496,916	—	—	—	497,145	—
Other	—	(1,142)	—	—	—	(1,142)	—
Net income (loss) attributable to noncontrolling interests	—	—	—	—	344	344	23,509
Net income (loss) attributable to DISH Network	—	—	—	353,304	—	353,304	—
Balance, September 30, 2019	\$ 4,930	\$ 3,942,174	\$ (252)	\$ 6,222,898	\$ (722)	\$ 10,169,028	\$ 528,205

The accompanying notes are an integral part of these condensed consolidated financial statements.

DISH NETWORK CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY (DEFICIT) - Continued
(In thousands)
(Unaudited)

	Class A and B Common Stock	Additional Paid-In Capital	Accumulated Other Comprehensive Income (Loss)	Accumulated Earnings (Deficit)	Noncontrolling Interests	Total	Redeemable Noncontrolling Interests
Balance, December 31, 2019	\$ 5,230	\$ 4,947,007	\$ (18)	\$ 6,612,302	\$ (449)	\$ 11,564,072	\$ 552,075
Issuance of Class A common stock:							
Exercise of stock awards	—	395	—	—	—	395	—
Employee Stock Purchase Plan	3	5,127	—	—	—	5,130	—
Non-cash, stock-based compensation	—	16,418	—	—	—	16,418	—
Change in unrealized holding gains (losses) on available-for-sale debt securities, net	—	—	(208)	—	—	(208)	—
Deferred income tax (expense) benefit attributable to other comprehensive income (loss)	—	—	49	—	—	49	—
Foreign currency translation	—	—	375	—	—	375	—
Net income (loss) attributable to noncontrolling interests	—	—	—	—	263	263	—
Net income (loss) attributable to DISH Network	—	—	—	73,099	—	73,099	25,912
Balance, March 31, 2020	\$ 5,233	\$ 4,968,947	\$ 198	\$ 6,685,401	\$ (186)	\$ 11,659,593	\$ 577,987
Issuance of Class A common stock:							
Exercise of stock awards	3	(663)	—	—	—	(660)	—
Employee benefits	8	28,293	—	—	—	28,301	—
Employee Stock Purchase Plan	2	4,209	—	—	—	4,211	—
Non-cash, stock-based compensation	—	18,393	—	—	—	18,393	—
Change in unrealized holding gains (losses) on available-for-sale debt securities, net	—	—	113	—	—	113	—
Deferred income tax (expense) benefit attributable to other comprehensive income (loss)	—	—	546	—	—	546	—
Foreign currency translation	—	—	(3,521)	—	—	(3,521)	—
Net income (loss) attributable to noncontrolling interests	—	—	—	—	235	235	—
Net income (loss) attributable to DISH Network	—	—	—	452,343	—	452,343	27,828
Other	—	—	—	—	(17)	(17)	—
Balance, June 30, 2020	\$ 5,246	\$ 5,019,179	\$ (2,664)	\$ 7,137,744	\$ 32	\$ 12,159,537	\$ 605,815
Issuance of Class A common stock:							
Exercise of stock awards	12	8,353	—	—	—	8,365	—
Employee Stock Purchase Plan	1	4,570	—	—	—	4,571	—
Non-cash, stock-based compensation	—	13,135	—	—	—	13,135	—
Change in unrealized holding gains (losses) on available-for-sale debt securities, net	—	—	22	—	—	22	—
Deferred income tax (expense) benefit attributable to other comprehensive income (loss)	—	—	(352)	—	—	(352)	—
Foreign currency translation	—	—	1,411	—	—	1,411	—
Net income (loss) attributable to noncontrolling interests	—	—	—	—	225	225	—
Net income (loss) attributable to DISH Network	—	—	—	504,599	—	504,599	28,134
Balance, September 30, 2020	\$ 5,259	\$ 5,045,237	\$ (1,583)	\$ 7,642,343	\$ 257	\$ 12,691,513	\$ 633,949

The accompanying notes are an integral part of these condensed consolidated financial statements.

DISH NETWORK CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)
(Unaudited)

	For the Nine Months Ended September 30,	
	2020	2019
Cash Flows From Operating Activities:		
Net income (loss)	\$ 1,112,638	\$ 1,079,022
<i>Adjustments to reconcile net income (loss) to net cash flows from operating activities:</i>		
Depreciation and amortization	518,027	457,022
Impairment of long-lived assets (Note 2)	356,418	—
Realized and unrealized losses (gains) on investments and derivatives	12,273	(4,757)
Non-cash, stock-based compensation	47,946	8,294
Deferred tax expense (benefit)	765,088	174,842
Allowance for credit losses and allowance for doubtful accounts, respectively	24,648	6,155
Change in long-term deferred revenue and other long-term liabilities	(240,302)	170,257
Other, net	(3,828)	101,828
Changes in current assets and current liabilities, net	124,783	35,966
Net cash flows from operating activities	2,717,691	2,028,629
Cash Flows From Investing Activities:		
Purchases of marketable investment securities	(1,549,857)	(631,236)
Sales and maturities of marketable investment securities	968,976	1,624,451
Purchases of property and equipment	(309,549)	(461,402)
Capitalized interest related to FCC authorizations (Note 2)	(646,265)	(734,631)
Purchases of FCC authorizations, including deposits (Note 11)	(317,190)	(12,155)
Sprint asset acquisition (Note 5)	(1,312,500)	—
Other, net	(14,108)	72,764
Net cash flows from investing activities	(3,180,493)	(142,209)
Cash Flows From Financing Activities:		
Redemption and repurchases of senior notes	(1,100,000)	(1,317,372)
Repayment of long-term debt and finance lease obligations	(77,280)	(21,112)
Proceeds from issuance of 7 3/8% Senior Notes due 2028	1,000,000	—
Net proceeds from Class A common stock options exercised and stock issued under the Employee Stock Purchase Plan	22,012	32,031
Debt issuance costs	(1,670)	—
Other, net	1	(4,072)
Net cash flows from financing activities	(156,937)	(1,310,525)
Net increase (decrease) in cash, cash equivalents, restricted cash and cash equivalents	(619,739)	575,895
Cash, cash equivalents, restricted cash and cash equivalents, beginning of period (Note 6)	2,504,320	887,924
Cash, cash equivalents, restricted cash and cash equivalents, end of period (Note 6)	<u>\$ 1,884,581</u>	<u>\$ 1,463,819</u>

The accompanying notes are an integral part of these condensed consolidated financial statements.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

1. Organization and Business Activities

Principal Business

DISH Network Corporation is a holding company. Its subsidiaries (which together with DISH Network Corporation are referred to as “DISH Network,” the “Company,” “we,” “us” and/or “our,” unless otherwise required by the context) operate two primary business segments, Pay-TV and Wireless. Our wireless business segment operates in two business units, Retail Wireless and 5G Network Deployment.

Pay-TV

We offer pay-TV services under the DISH® brand and the SLING® brand (collectively “Pay-TV” services). The DISH branded pay-TV service consists of, among other things, FCC licenses authorizing us to use direct broadcast satellite (“DBS”) and Fixed Satellite Service (“FSS”) spectrum, our owned and leased satellites, receiver systems, broadcast operations, customer service facilities, a leased fiber optic network, in-home service and call center operations, and certain other assets utilized in our operations (“DISH TV”). We also design, develop and distribute receiver systems and provide digital broadcast operations, including satellite uplinking/downlinking, transmission and other services to third-party pay-TV providers. The SLING branded pay-TV services consist of, among other things, multichannel, live-linear streaming OTT Internet-based domestic, international and Latino video programming services (“SLING TV”). As of September 30, 2020, we had 11.423 million Pay-TV subscribers in the United States, including 8.965 million DISH TV subscribers and 2.458 million SLING TV subscribers.

Wireless – Retail Wireless

As a result of the Boost Mobile Acquisition and the Ting Mobile Acquisition (as defined below), we have entered the retail wireless business. See Note 5 for further information. We offer nationwide prepaid and postpaid retail wireless services to subscribers under our Boost Mobile and Ting Mobile brands, as well as a competitive portfolio of wireless devices. Prepaid wireless subscribers generally include customers who pay in advance for monthly access to wireless talk, text, and data services. Postpaid wireless subscribers generally include subscribers who are qualified to pay after receiving wireless talk, text, and data services. We currently operate our retail wireless business unit as a mobile virtual network operator (“MVNO”) while we build our 5G broadband network. We acquired over 9 million subscribers as a result of the Boost Mobile Acquisition and acquired over 200,000 subscribers as a result of the Ting Mobile Acquisition. Our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss) includes the results of the Boost Mobile Acquisition from July 1, 2020 and Ting Mobile Acquisition from August 1, 2020. As of September 30, 2020, we had 9.418 million retail wireless subscribers.

Wireless – 5G Network Deployment

Since 2008, we have directly invested over \$11 billion to acquire certain wireless spectrum licenses and related assets and made over \$10 billion in non-controlling investments in certain entities, for a total of over \$21 billion. The \$21 billion of investments related to wireless spectrum licenses does not include \$5 billion of capitalized interest related to the carrying value of such licenses. See Note 2 for further information on capitalized interest.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

DISH Network Spectrum

We have directly invested over \$11 billion to acquire certain wireless spectrum licenses and related assets. These wireless spectrum licenses are subject to certain interim and final build-out requirements, as well as certain renewal requirements. In March 2017, we notified the FCC that we planned to deploy a narrowband IoT network on certain of these wireless licenses, which was to be the first phase of our network deployment (“First Phase”). We expected to complete the First Phase by March 2020, with subsequent phases to be completed thereafter. In light of, among other things, certain developments related to the Sprint-TMUS merger, during the first quarter 2020, we determined that the revision of certain of our build-out deadlines was probable and, therefore, we no longer intended to complete our narrowband IoT deployment. The FCC issued an Order effectuating the build-out deadline changes contemplated above on September 11, 2020. During the first quarter 2020, we impaired certain assets that would not be utilized in our 5G broadband network deployment (“5G Network Deployment”), resulting in a \$253 million non-cash impairment charge in “Impairment of long-lived assets” on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss). We have issued requests for information and proposals (“RFI/Ps”) to various vendors in the wireless industry and are in the process of selecting certain vendors as we move forward with our 5G Network Deployment. We currently expect expenditures for our 5G Network Deployment to be approximately \$10 billion, excluding capitalized interest. We will need to make significant additional investments or partner with others to, among other things, commercialize, build-out, and integrate these licenses and related assets, and any additional acquired licenses and related assets; and comply with regulations applicable to such licenses. Depending on the nature and scope of such commercialization, build-out, integration efforts, and regulatory compliance, any such investments or partnerships could vary significantly.

In addition, as we consider our options for the commercialization of our wireless spectrum, we will incur significant additional expenses and will have to make significant investments related to, among other things, research and development, wireless testing and wireless network infrastructure. We may also determine that additional wireless spectrum licenses may be required to commercialize our wireless business and to compete with other wireless service providers. See Note 2 and Note 11 for further information.

DISH Network Non-Controlling Investments in the Northstar Entities and the SNR Entities Related to AWS-3 Wireless Spectrum Licenses

During 2015, through our wholly-owned subsidiaries American AWS-3 Wireless II L.L.C. (“American II”) and American AWS-3 Wireless III L.L.C. (“American III”), we initially made over \$10 billion in certain non-controlling investments in Northstar Spectrum, LLC (“Northstar Spectrum”), the parent company of Northstar Wireless, L.L.C. (“Northstar Wireless,” and collectively with Northstar Spectrum, the “Northstar Entities”), and in SNR Wireless HoldCo, LLC (“SNR HoldCo”), the parent company of SNR Wireless LicenseCo, LLC (“SNR Wireless,” and collectively with SNR HoldCo, the “SNR Entities”), respectively. On October 27, 2015, the FCC granted certain AWS-3 wireless spectrum licenses (the “AWS-3 Licenses”) to Northstar Wireless and to SNR Wireless, respectively, which are recorded in “FCC authorizations” on our Condensed Consolidated Balance Sheets. Under the applicable accounting guidance in Accounting Standards Codification 810, *Consolidation* (“ASC 810”), Northstar Spectrum and SNR HoldCo are considered variable interest entities and, based on the characteristics of the structure of these entities and in accordance with the applicable accounting guidance, we consolidate these entities into our financial statements. See Note 2 for further information.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

The AWS-3 Licenses are subject to certain interim and final build-out requirements, as well as certain renewal requirements. The Northstar Entities and/or the SNR Entities may need to raise significant additional capital in the future, which may be obtained from third party sources or from us, so that the Northstar Entities and the SNR Entities may commercialize, build-out and integrate these AWS-3 Licenses, comply with regulations applicable to such AWS-3 Licenses, and make any potential Northstar Re-Auction Payment and SNR Re-Auction Payment for the AWS-3 licenses retained by the FCC. Depending upon the nature and scope of such commercialization, build-out, integration efforts, regulatory compliance, and potential Northstar Re-Auction Payment and SNR Re-Auction Payment, any loans, equity contributions or partnerships could vary significantly. There can be no assurance that we will be able to obtain a profitable return on our non-controlling investments in the Northstar Entities and the SNR Entities. See Note 11 for further information.

Recent Developments

We accounted for the Boost Mobile Acquisition and Ting Mobile Acquisition (as defined below) as business combinations. The identifiable assets acquired and liabilities assumed were recorded at their preliminary fair values as of the acquisition date and are consolidated into our financial statements. Our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss) includes the results of the Boost Mobile Acquisition from July 1, 2020 and the Ting Mobile Acquisition from August 1, 2020. See Note 5 for further information.

Sprint Asset Acquisition

Asset Purchase Agreement

On July 26, 2019, we entered into an Asset Purchase Agreement (the “APA”) with T-Mobile US, Inc. (“TMUS”) and Sprint Corporation (“Sprint” and together with TMUS, the “Sellers” and given the consummation of the Sprint-TMUS merger, sometimes referred to as “NTM”) to acquire from NTM certain assets and liabilities associated with Sprint’s Boost Mobile and Sprint-branded prepaid mobile services businesses (the “Prepaid Business”) for an aggregate purchase price of \$1.4 billion as adjusted for specific categories of net working capital on the Closing Date (the “Boost Mobile Acquisition”). Effective July 1, 2020 (the “Closing Date”), upon the terms and subject to the conditions set forth in the APA and in accordance with the Final Judgment (as defined below), we and NTM completed the Boost Mobile Acquisition.

In connection with the Boost Mobile Acquisition and the consummation of the Sprint-TMUS merger, we, TMUS, Sprint, Deutsche Telekom AG (“DT”) and SoftBank Group Corporation (“SoftBank”) came to an agreement with the United States Department of Justice (the “DOJ”) on key terms and approval of the Transaction Agreements (as defined below) and our wireless service business and spectrum. On July 26, 2019, we, TMUS, Sprint, DT and SoftBank (collectively, the “Defendants”) entered into a Stipulation and Order (the “Stipulation and Order”) with the DOJ binding the Defendants to a Proposed Final Judgment (the “Proposed Final Judgment”) which memorialized the agreement between the DOJ and the Defendants. The Stipulation and Order and the Proposed Final Judgment were filed in the United States District Court for the District of Columbia (the “District Court”) on July 26, 2019 and on April 1, 2020, the Proposed Final Judgment was entered with the District Court (the Proposed Final Judgment as so entered with the District Court, the “Final Judgment”) and the Sellers consummated the Sprint-TMUS merger.

The term of the Final Judgment is seven years from the date of its entry with the District Court or five years if the DOJ gives notice that the divestitures, build-outs and other requirements have been completed to its satisfaction. A Monitoring Trustee has been appointed by the District Court that has the power and authority to monitor the Defendants’ compliance with the Final Judgment and settle disputes among the Defendants regarding compliance with the provisions of the Final Judgment and may recommend action to the DOJ in the event a party fails to comply with the Final Judgment. See Note 5 for further information on the Stipulation and Order and the Final Judgment, and our build-out commitments.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

Also in connection with the closing of the Boost Mobile Acquisition, we and NTM entered into a transition services agreement under which we will receive certain transitional services (the “TSA”), a master network services agreement for the provision of network services by NTM to us (the “MNSA”), an option agreement entitling us to acquire certain decommissioned cell sites and retail stores of NTM (the “Option Agreement”) and an agreement under which we would purchase all of Sprint’s 800 MHz spectrum licenses, totaling approximately 13.5 MHz of nationwide wireless spectrum for an additional approximately \$3.59 billion (the “Spectrum Purchase Agreement”) and together with the APA, the TSA, the MNSA and the Option Agreement, the “Transaction Agreements”). See Note 5 for further information on the Transaction Agreements.

Ting Mobile Acquisition

On August 1, 2020, we entered into an asset purchase agreement with Tucows Inc. (“Tucows”) pursuant to which we purchased the assets of Ting Mobile, including over 200,000 Ting Mobile subscribers (the “Ting Mobile Acquisition”). In addition, we entered into a services agreement pursuant to which Tucows will act as a mobile virtual network enabler for certain of our retail wireless subscribers. The consideration for the Ting Mobile Acquisition is an earn out provision and the fair value of the earn out provision has been assigned to a customer relationship intangible that is recorded in “Intangible assets” on our Condensed Consolidated Balance Sheets. See Note 5 for further information.

2. Summary of Significant Accounting Policies

Basis of Presentation

The accompanying unaudited Condensed Consolidated Financial Statements have been prepared in accordance with accounting principles generally accepted in the United States (“GAAP”) and with the instructions to Form 10-Q and Article 10 of Regulation S-X for interim financial information. Accordingly, these statements do not include all of the information and notes required for complete financial statements prepared under GAAP. In our opinion, all adjustments (consisting of normal recurring adjustments) considered necessary for a fair presentation have been included. Our results of operations for the interim periods presented are not necessarily indicative of the results that may be expected for the full year. For further information, refer to the Consolidated Financial Statements and notes thereto included in our Annual Report on Form 10-K for the year ended December 31, 2019. Certain prior period amounts have been reclassified to conform to the current period presentation.

Specifically, as a result of our entrance into the retail wireless industry, we have reclassified certain items on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss). The reclassifications include:

- (a) “Subscriber-related revenue” has been retitled “Service revenue.”
- (b) “Subscriber-related expenses” has been retitled “Cost of services.”
- (c) “Satellite and transmission expenses” has been reclassified to “Cost of services.”
- (d) A new caption entitled “Selling, general and administrative expenses” has been created that includes historical “General and administrative expenses,” as well as “Subscriber acquisition costs.”

All prior periods have been reclassified to conform to the current period presentation for these changes.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

Principles of Consolidation

We consolidate all majority owned subsidiaries, investments in entities in which we have controlling influence and variable interest entities where we have been determined to be the primary beneficiary. Minority interests are recorded as noncontrolling interests or redeemable noncontrolling interests. See below for further information. Non-consolidated investments are accounted for using the equity method when we have the ability to significantly influence the operating decisions of the investee. When we do not have the ability to significantly influence the operating decisions of an investee, these equity securities are classified as either marketable investment securities or other investments and recorded at fair value with changes recognized in “Other, net” within “Other Income (Expense)” on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss). All significant intercompany accounts and transactions have been eliminated in consolidation.

Redeemable Noncontrolling Interests

Northstar Wireless. Northstar Wireless is a wholly-owned subsidiary of Northstar Spectrum, which is an entity owned by Northstar Manager, LLC (“Northstar Manager”) and us. Under the applicable accounting guidance in ASC 810, Northstar Spectrum is considered a variable interest entity and, based on the characteristics of the structure of this entity and in accordance with the applicable accounting guidance, we consolidate Northstar Spectrum into our financial statements. The Northstar Operative Agreements, as amended, provide for, among other things, that after the fifth and sixth anniversaries of the grant of the AWS-3 Licenses to Northstar Wireless (and in certain circumstances, prior to the fifth anniversary of the grant of the AWS-3 Licenses to Northstar Wireless), Northstar Manager has the ability, but not the obligation, to require Northstar Spectrum to purchase Northstar Manager’s ownership interests in Northstar Spectrum (the “Northstar Put Right”) for a purchase price that equals its equity contribution to Northstar Spectrum plus a fixed annual rate of return. The fifth and sixth anniversaries of the grant of the AWS-3 Licenses to Northstar Wireless are in the fourth quarter 2020 and fourth quarter 2021, respectively.

In the event that the Northstar Put Right is exercised by Northstar Manager, the consummation of the sale will be subject to FCC approval. Northstar Spectrum does not have a call right with respect to Northstar Manager’s ownership interests in Northstar Spectrum. Although Northstar Manager is the sole manager of Northstar Spectrum, Northstar Manager’s ownership interest is considered temporary equity under the applicable accounting guidance and is thus recorded as part of “Redeemable noncontrolling interests” in the mezzanine section of our Condensed Consolidated Balance Sheets. Northstar Manager’s ownership interest in Northstar Spectrum was initially accounted for at fair value. Subsequently, Northstar Manager’s ownership interest in Northstar Spectrum is increased by the fixed annual rate of return through “Redeemable noncontrolling interests” on our Condensed Consolidated Balance Sheets, with the offset recorded in “Net income (loss) attributable to noncontrolling interests, net of tax” on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss). The operating results of Northstar Spectrum attributable to Northstar Manager are recorded as “Redeemable noncontrolling interests” on our Condensed Consolidated Balance Sheets, with the offset recorded in “Net income (loss) attributable to noncontrolling interests, net of tax” on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss). See Note 11 for further information.

SNR Wireless. SNR Wireless is a wholly-owned subsidiary of SNR HoldCo, which is an entity owned by SNR Wireless Management, LLC (“SNR Management”) and us. Under the applicable accounting guidance in ASC 810, SNR HoldCo is considered a variable interest entity and, based on the characteristics of the structure of this entity and in accordance with the applicable accounting guidance, we consolidate SNR HoldCo into our financial statements. The SNR Operative Agreements, as amended, provide for, among other things, that after the fifth and sixth anniversaries of the grant of the AWS-3 Licenses to SNR Wireless (and in certain circumstances, prior to the fifth anniversary of the grant of the AWS-3 Licenses to SNR Wireless), SNR Management has the ability, but not the obligation, to require SNR HoldCo to purchase SNR Management’s ownership interests in SNR HoldCo (the “SNR Put Right”) for a purchase price that equals its equity contribution to SNR HoldCo plus a fixed annual rate of return. The fifth and sixth anniversaries of the grant of the AWS-3 Licenses to SNR Wireless are in the fourth quarter 2020 and fourth quarter 2021, respectively.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

In the event that the SNR Put Right is exercised by SNR Management, the consummation of the sale will be subject to FCC approval. SNR HoldCo does not have a call right with respect to SNR Management's ownership interests in SNR HoldCo. Although SNR Management is the sole manager of SNR HoldCo, SNR Management's ownership interest is considered temporary equity under the applicable accounting guidance and is thus recorded as part of "Redeemable noncontrolling interests" in the mezzanine section of our Condensed Consolidated Balance Sheets. SNR Management's ownership interest in SNR HoldCo was initially accounted for at fair value. Subsequently, SNR Management's ownership interest in SNR HoldCo is increased by the fixed annual rate of return through "Redeemable noncontrolling interests" on our Condensed Consolidated Balance Sheets, with the offset recorded in "Net income (loss) attributable to noncontrolling interests, net of tax" on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss). The operating results of SNR HoldCo attributable to SNR Management are recorded as "Redeemable noncontrolling interests" on our Condensed Consolidated Balance Sheets, with the offset recorded in "Net income (loss) attributable to noncontrolling interests, net of tax" on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss). See Note 11 for further information.

As of September 30, 2020 and December 31, 2019, Northstar Manager's ownership interest in Northstar Spectrum and SNR Management's ownership interest in SNR HoldCo was \$634 million and \$552 million, respectively, recorded as "Redeemable noncontrolling interests" on our Condensed Consolidated Balance Sheets.

Use of Estimates

The preparation of financial statements in conformity with GAAP requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expense for each reporting period. Estimates are used in accounting for, among other things, allowances for credit losses (including those related to our installment billing programs), self-insurance obligations, deferred taxes and related valuation allowances, uncertain tax positions, loss contingencies, fair value of financial instruments, fair value of options granted under our stock-based compensation plans, fair value of assets and liabilities acquired in business combinations, the fair value of our option to purchase TMUS's 800 MHz spectrum, relative standalone selling prices of performance obligations, finance leases, asset impairments, estimates of future cash flows used to evaluate and recognize impairments, useful lives of property, equipment and intangible assets, independent third-party retailer incentives, programming expenses and subscriber lives. Economic conditions may increase the inherent uncertainty in the estimates and assumptions indicated above. Actual results may differ from previously estimated amounts, and such differences may be material to our condensed consolidated financial statements. Estimates and assumptions are reviewed periodically, and the effects of revisions are reflected prospectively in the period they occur.

Marketable Investment Securities

All equity securities are carried at fair value, with changes in fair value recognized in "Other, net" within "Other Income (Expense)" on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss).

All debt securities are classified as available-for-sale and are recorded at fair value. Historically, we reported temporary unrealized gains and losses as a separate component of "Accumulated other comprehensive income (loss)" within "Total stockholders' equity (deficit)," net of related deferred income tax on our Condensed Consolidated Balance Sheets. Subsequent to the adoption of ASU 2016-13 *Financial Instruments – Credit Losses, Measurement of Credit Losses on Financial Instruments* ("ASU 2016-13") during the first quarter of 2020, we report the temporary unrealized gains and losses related to changes in market conditions of marketable debt securities as a separate component of "Accumulated other comprehensive income (loss)" within "Total stockholders' equity (deficit)," net of related deferred income tax on our Condensed Consolidated Balance Sheets. The corresponding changes in the fair value of marketable debt securities, which are determined to be company specific credit losses are recorded in "Other, net" within "Other Income (Expense)" on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss).

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

We evaluate our debt investment portfolio to determine whether declines in the fair value of these securities are related to credit loss. Management estimates credit losses on marketable debt securities utilizing a credit loss impairment model on a quarterly basis. We estimate the expected credit losses, measured over the contractual life of marketable debt securities considering relevant issuer specific factors, including, but not limited to, a decrease in credit ratings or an entities ability to pay.

Trade Accounts Receivable

General Accounts Receivable

Prior to January 1, 2020, management estimated the amount of allowance for doubtful accounts for potential non-collectability of accounts receivable based upon past collection experience and consideration of other relevant factors.

Subsequent to January 1, 2020 due to the adoption of ASU 2016-13, trade accounts receivable are recorded at amortized cost less an allowance for expected credit losses that are not expected to be recovered. We maintain allowances for credit losses resulting from the expected failure or inability of our customers to make required payments. We recognize the allowance for expected credit losses at inception and reassess quarterly based on management's expectation of the asset's collectability. Management estimates credit losses on financial assets, including our trade accounts receivable, utilizing a current expected credit loss impairment model. We estimate the expected credit losses, measured over the contractual life of an asset considering relevant historical loss information, credit quality of the customer base, current economic conditions and forecasts of future economic conditions.

In determining the allowance for credit losses, management groups similar types of financial assets with consistent risk characteristics. Pools identified by management include but are not limited to residential customers, commercial customers and advertising services. The risk characteristics of the financial asset portfolios are monitored by management and reviewed periodically. The forecasts for future economic conditions are based on several factors including, but not limited to, changes in the unemployment rate, external economic forecasts and current collection rates. Our estimates of the allowance for credit losses may not be indicative of our actual credit losses requiring additional charges to be incurred to reflect the actual amount collected.

BoostUP! Receivable

We offer certain long term customers of Boost Mobile the option to pay for their devices under an installment plan ("BoostUP!"), which is generally over a period of 18 months. The BoostUP! receivable is presented in our Condensed Consolidated Balance Sheets at its net realizable value, which is net of an allowance for credit losses. The allowance for credit losses is estimated based on among other factors, historical loss information and current economic conditions as well as forecasts in the future economic conditions. As of September 30, 2020, "Trade accounts receivable, net" on our Condensed Consolidated Balance Sheets includes \$148 million of BoostUP! receivables, net of allowance for credit losses of \$21 million.

Customers that participate in the BoostUP! program typically make a down payment and satisfy their obligation by providing equal monthly payments during the duration of their financing arrangement. As Boost customers are on a month to month contract for service with Boost and the BoostUP! arrangement provides that upon an installment plan customer's termination of the service the installment balance becomes due and payable immediately, we do not impute interest on these instruments as the financial instruments are short term in nature.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

Inventory

Inventory is stated at the lower of cost or net realizable value. Cost is determined using the first-in, first-out method. The cost of manufactured inventory includes the cost of materials, labor, freight-in, royalties and manufacturing overhead. Net realizable value is calculated as the estimated selling price less reasonable costs necessary to complete, sell, transport and dispose of the inventory.

Derivative Instrument

We have the option to purchase certain TMUS 800 MHz spectrum licenses from TMUS at a fixed price in the future. See Note 5 for further information. This instrument meets the definition of a derivative and was valued as part of the business combination at fair value in the Condensed Consolidated Balance Sheets. All subsequent changes in the derivative's fair value are recorded in "Other, net" in our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss).

Impairment of Long-Lived Assets

We review our long-lived assets and identifiable finite-lived intangible assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. For assets which are held and used in operations, the asset would be impaired if the carrying amount of the asset (or asset group) exceeded its undiscounted future net cash flows. Once an impairment is determined, the actual impairment recognized is the difference between the carrying amount and the fair value as estimated using one of the following approaches: income, cost and/or market. Assets which are to be disposed of are reported at the lower of the carrying amount or fair value less costs to sell. The carrying amount of a long-lived asset or asset group is considered impaired when the anticipated undiscounted cash flows from such asset or asset group is less than its carrying amount. In that event, a loss is recorded in "Impairment of long-lived assets" on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss) based on the amount by which the carrying amount exceeds the fair value of the long-lived asset or asset group. Fair value, using the income approach, is determined primarily using a discounted cash flow model that uses the estimated cash flows associated with the asset or asset group under review, discounted at a rate commensurate with the risk involved. Fair value, utilizing the cost approach, is determined based on the replacement cost of the asset reduced for, among other things, depreciation and obsolescence. Fair value, utilizing the market approach, benchmarks the fair value against the carrying amount. See Note 8 for further information.

DBS Satellites. We currently evaluate our DBS satellite fleet for impairment as one asset group whenever events or changes in circumstances indicate that its carrying amount may not be recoverable. We do not believe any triggering event has occurred which would indicate impairment as of September 30, 2020 or December 31, 2019. We will continue to monitor the DBS satellite fleet for indicators of impairment, including monitoring the impact of the COVID-19 pandemic on all aspects of our business.

AWS-4 Satellites. We historically have evaluated our AWS-4 satellite fleet for impairment whenever events or changes in circumstances indicate that its carrying amount may not be recoverable. In light of, among other things, certain developments related to the Sprint-TMUS merger, during the first quarter 2020, we determined that revisions to the AWS-4 build-out deadlines were probable, which we determined to be a triggering event. Accordingly, we quantitatively assessed the value of the AWS-4 satellites (T1 and D1) and wrote down the fair value of the satellites to their estimated fair value of zero, resulting in a \$103 million non-cash impairment charge in "Impairment of long-lived assets" on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss). We did not believe any triggering event occurred which would indicate impairment as of December 31, 2019. See Note 8 for further information.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

Narrowband IoT network. As discussed in Note 11 we were in the process of deploying a narrowband IoT network. We paused work on the narrowband IoT deployment in October 2019. In light of, among other things, certain developments related to the Sprint-TMUS merger, during the first quarter 2020, we determined that the revision of certain of our build-out deadlines were probable. Based on this, we no longer intended to complete our narrowband IoT deployment, which we considered a triggering event. As such, during the first quarter 2020, we reviewed the capitalized costs of equipment, labor and other assets related to the narrowband IoT deployment, including our operating lease assets, and impaired those items that would not be utilized in our ongoing 5G Network Deployment, resulting in a \$253 million non-cash impairment charge in “Impairment of long-lived assets” on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss). See Note 8 and Note 9 for further information.

Impairment of long-lived assets recorded during the nine months ended September 30, 2020 consisted of the following:

	For the Nine Months Ended	
	September 30, 2020	
	(In thousands)	
T1 satellite	\$	48,120
D1 satellite		55,000
Construction in progress related to narrowband IoT deployment		226,742
Operating lease assets related to narrowband IoT deployment		26,556
Impairment of long-lived assets	\$	356,418

Boost Mobile Intangible Assets and Goodwill. Intangible assets include subscriber relationships, the Boost Mobile tradename and certain below market contracts. The intangible assets will be amortized over their respective useful lives which range from one to 10 years. Goodwill represents the excess of the consideration transferred over the estimated fair values of assets acquired and liabilities assumed.

Ting Mobile Intangible Assets. The preliminary fair value of the customer relationships and the trade name at the acquisition date of Ting Mobile were recorded in “Intangible assets” on our Condensed Consolidated Balance Sheets. These assets will be amortized over their respective useful lives which range from two to 10 years.

Capitalized Interest

We capitalize interest associated with the acquisition or construction of certain assets, including, among other things, our wireless spectrum licenses, build-out costs associated with our network deployment and satellites. Capitalization of interest begins when, among other things, steps are taken to prepare the asset for its intended use and ceases when the asset is ready for its intended use or when these activities are substantially suspended.

We are currently preparing for the commercialization of our AWS-4, H Block, 700 MHz, 600 MHz and MVDDS wireless spectrum licenses, and interest expense related to their carrying amount is being capitalized. In addition, the FCC has granted certain AWS-3 Licenses to Northstar Wireless and to SNR Wireless, respectively, in which we have made certain non-controlling investments. Northstar Wireless and SNR Wireless are preparing for the commercialization of their AWS-3 Licenses and interest expense related to their carrying amount is also being capitalized. As the carrying amount of the licenses, discussed above, exceeded the carrying value of our long-term debt and finance lease obligations, materially all of our interest expense is being capitalized.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

Business Combinations

When we acquire a business, we allocate the purchase price to the various components of the acquisition based upon the fair value of each component using various valuation techniques, including the market approach, income approach and/or cost approach. The accounting standard for business combinations requires identifiable assets, liabilities, noncontrolling interests and goodwill acquired to be recorded at fair value. Transaction costs related to the acquisition of the business are expensed as incurred. Costs associated with the issuance of debt associated with a business combination are capitalized and included as a yield adjustment to the underlying debt's stated rate. Acquired intangible assets other than goodwill are amortized over their estimated useful lives unless the lives are determined to be indefinite. Amortization of these intangible assets in general are recorded on a straight-line basis over an average finite useful life primarily ranging from approximately one to 20 years or in relation to the estimated discounted cash flows over the life of the intangible asset. See Note 5 for further information on the Sprint Asset Acquisition and Ting Mobile Acquisition.

Fair Value Measurements

We determine fair value based on the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants. Market or observable inputs are the preferred source of values, followed by unobservable inputs or assumptions based on hypothetical transactions in the absence of market inputs. We apply the following hierarchy in determining fair value:

- Level 1, defined as observable inputs being quoted prices in active markets for identical assets;
- Level 2, defined as observable inputs other than quoted prices included in Level 1, including quoted prices for similar assets and liabilities in active markets; quoted prices for identical or similar instruments in markets that are not active; and derivative financial instruments indexed to marketable investment securities; and
- Level 3, defined as unobservable inputs for which little or no market data exists, consistent with reasonably available assumptions made by other participants therefore requiring assumptions based on the best information available.

As of September 30, 2020 and December 31, 2019, the carrying amount for cash and cash equivalents, trade accounts receivable (net of allowance for credit losses or net of allowance for doubtful accounts) and current liabilities (excluding the "Current portion of long-term debt and finance lease obligations") was equal to or approximated fair value due to their short-term nature or proximity to current market rates. See Note 6 for the fair value of our marketable investment securities and derivative instruments.

Fair values for our publicly traded debt securities are based on quoted market prices, when available. The fair values of private debt are based on, among other things, available trade information, and/or an analysis in which we evaluate market conditions, related securities, various public and private offerings, and other publicly available information.

In performing this analysis, we make various assumptions regarding, among other things, credit spreads, and the impact of these factors on the value of the debt securities. See Note 10 for the fair value of our long-term debt.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

Revenue Recognition

Pay-TV Segment

Our Pay-TV segment revenue is primarily derived from Pay-TV programming services that we provide to our subscribers. We also generate revenue from equipment rental fees and other hardware related fees, including DVRs and fees from subscribers with multiple receivers; advertising services; fees earned from our in-home service operations; broadband services; warranty services; sales of digital receivers and related equipment to third-party pay-TV providers; satellite uplink and telemetry, tracking and control (“TT&C”) services; and revenue from in-home services. See Note 13 for further information, including revenue disaggregated by major source.

Our residential video subscribers contract for individual services or combinations of services, as discussed above, the majority of which are generally distinct and are accounted for as separate performance obligations. We consider our installations for first time DISH TV subscribers to be a service. However, since we provide a significant integration service combining the installation with programming services, we have concluded that the installation is not distinct from programming and thus the installation and programming services are accounted for as a single performance obligation. We generally satisfy these performance obligations and recognize revenue as the services are provided, for example as the programming is broadcast to subscribers, as this best represents the transfer of control of the services to the subscriber.

In cases where a subscriber is charged certain nonrefundable upfront fees, those fees are generally considered to be material rights to the subscriber related to the subscriber’s option to renew without having to pay an additional fee upon renewal. These fees are deferred and recognized over the estimated period of time during which the fee remains material to the customer, which we estimate to be less than one year. Revenues arising from our in-home services that are separate from the initial installation, such as mounting a TV on a subscriber’s wall, are generally recognized when these services are performed.

For our residential video subscribers, we have concluded that the contract term under Accounting Standard Codification Topic 606, *Revenue from Contracts with Customers* (“ASC 606”), is one month and as a result the revenue recognized for these subscribers for a given month is equal to the amount billed in that month, except for certain nonrefundable upfront fees that are accounted for as material rights, as discussed above.

Revenues from our advertising services are typically recognized as the advertisements are broadcast. Sales of equipment to subscribers or other third parties are recognized when control is transferred under the contract. Revenue from our commercial video subscribers typically follows the residential model described above, with the exception that the contract term for most of our commercial subscribers exceeds one month and can be multiple years in length. However, commercial subscribers typically do not receive time-limited discounts or free service periods and accordingly, while they may have multiple performance obligations, revenue is equal to the amount billed in a given month.

Wireless Segment

Our Wireless segment revenue is primarily derived from providing wireless services and selling wireless devices to prepaid and postpaid subscribers. The majority of our subscribers are prepaid under the Boost brand with a smaller subset of postpaid subscribers serviced under the Ting Mobile brand. Prepaid customers prepay for their monthly service on a month-to-month contract. Postpaid customers are those for which the individual is qualified to pay for their service after it has been provided. For both our prepaid and postpaid customers the contract term was determined to be one month.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

We have both an indirect sales channel, which includes third-party owned retail stores and big box stores, as well as a direct sales channel, which services customers online. Through the indirect sales channel, we utilize direct distribution partners to facilitate product delivery to the third party Boost retailers. Although our wireless business offers both products and services, we have determined that no bundled arrangements exist as the wireless device and service sold are sold at different times, and in the case of the indirect sales channel, have different customers. In the indirect channel, the customer for the wireless device is the direct distribution partner whereas for the service the customer is the end consumer. Service revenues may also include other value added services to customers, which may be recorded either gross or net within our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss) depending on whether DISH is deemed to be the principal or agent in the relationship with the customer. Service revenues are recognized when the service has been provided and no further obligation exists. Concessions given to customers are recorded as a reduction to revenue.

Equipment revenues are primarily related to the sale of wireless devices. Equipment revenue is recognized when control of the product is transferred to our customer, either the direct distribution partner for the indirect sales channel or the end user in the direct sales channel. Sales of equipment in the indirect sales channel often include credits subsequently paid to the direct distribution partner as a reimbursement for any discount promotions offered to the end consumer. These credits (payments to a customer) are accounted for as variable consideration when estimating the amount of revenue to recognize from the sales of equipment to indirect dealers and are estimated based on historical experience and other factors, such as expected promotional activity. For wireless devices sold with a right of return, we defer a portion of equipment revenue and cost of sales to reflect this variable consideration.

Contract Balances

The timing of revenue recognition generally differs from the timing of invoicing to customers. When revenue is recognized prior to invoicing, we record a receivable. When revenue is recognized subsequent to invoicing, we record deferred revenue. Our residential video subscribers are typically billed monthly, and the contract balances for those customers arise from the timing of the monthly billing cycle. Our current wireless subscribers, the majority of which are prepaid, generate deferred revenue. We do not adjust the amount of consideration for financing impacts as we apply a practical expedient when we anticipate that the period between transfer of goods and services and eventual payment for those goods and services will be less than one year. See Note 13 for further information, including balance and activity detail about our allowance for credit losses and deferred revenue related to contracts with subscribers.

Assets Recognized Related to the Costs to Obtain a Contract with a Subscriber

We recognize an asset for the incremental costs of obtaining a contract with a subscriber if we expect the benefit of those costs to be longer than one year. We have determined that certain sales incentive programs in both our Pay-TV and Wireless segments, including those with our independent third-party retailers, meet the requirements to be capitalized, and payments made under these programs are capitalized and amortized to expense over the estimated subscriber life. During the three months ended September 30, 2020 and 2019, we capitalized \$131 million and \$67 million, respectively, under these programs. The amortization expense related to these programs was \$43 million and \$21 million for the three months ended September 30, 2020 and 2019, respectively. During the nine months ended September 30, 2020 and 2019, we capitalized \$213 million and \$159 million, respectively, under these programs. The amortization expense related to these programs was \$99 million and \$52 million for the nine months ended September 30, 2020 and 2019, respectively. As of September 30, 2020 and December 31, 2019, we had a total of \$414 million and \$300 million, respectively, capitalized on our Condensed Consolidated Balance Sheets. These amounts are capitalized in "Other current assets" and "Other noncurrent assets, net" on our Condensed Consolidated Balance Sheets, and then amortized in "Selling, general and administrative expenses" on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss).

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

Leases

Lessee

We enter into operating and finance leases for, among other things, satellites, office space, warehouses and distribution centers, vehicles, wireless towers and other equipment. Our leases have remaining lease terms from one to seven years, some of which include renewal options, and some of which include options to terminate the leases within one year.

We determine if an arrangement is a lease and classify that lease as either an operating or finance lease at inception. Operating leases are included in “Operating lease assets,” “Other accrued expenses” and “Operating lease liabilities” on our Condensed Consolidated Balance Sheets. Finance leases are included in “Property and equipment, net,” “Current portion of long-term debt and finance lease obligations” and “Long-term debt and finance lease obligations, net of current portion” on our Condensed Consolidated Balance Sheets. Leases with an initial term of 12 months or less are not recorded on the balance sheet and we recognize lease expense for these leases on a straight-line basis over the lease term on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss). See Note 8 for further information on our lease expenses.

Right of use (“ROU”) assets represent our right to use an underlying asset for the lease term and lease liabilities represent the present value of our obligation to make lease payments arising from the lease. Operating lease ROU assets and liabilities are recognized at commencement date based on the present value of lease payments over the lease term. When our leases do not provide an implicit rate, we use our incremental borrowing rate based on the information available at commencement date in determining the present value of lease payments. The operating lease ROU asset also includes the impact of prepaid or deferred lease payments. The length of our lease term may include options to extend or terminate the lease when it is reasonably certain that we will exercise that option. Lease expense for operating lease payments is recognized on a straight-line basis over the lease term.

We currently lease and historically have leased certain assets from EchoStar, including, among other things, satellites, office space and data centers. See Note 14 for further information on our Related Party Transactions with EchoStar. On May 19, 2019, we entered into a Master Transaction Agreement with EchoStar and effective September 10, 2019, certain satellites and real estate assets leased from EchoStar were transferred to us. See Note 14 for further information on the Master Transaction Agreement.

We have lease agreements with lease and non-lease components, which are generally accounted for separately. Our variable lease payments are immaterial and our lease agreements do not contain any material residual value guarantees or material restrictive covenants.

DISH TV subscribers have the choice of leasing or purchasing the satellite receiver and other equipment necessary to receive our DISH TV services. Most of our new DISH TV subscribers choose to lease equipment and thus we retain title to such equipment. Equipment leased to new and existing DISH TV subscribers is capitalized and depreciated over their estimated useful lives.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

For equipment leased to new and existing DISH TV subscribers, we made an accounting policy election to combine the equipment with our programming services as a single performance obligation in accordance with the revenue recognition guidance as the programming services are the predominant component. The revenue related to equipment leased to new and existing DISH TV subscribers would have otherwise been accounted for as an operating lease.

Impact of Adoption of ASU 2016-02

In February 2016, the Financial Accounting Standards Board (“FASB”) issued ASU 2016-02 *Leases* (“ASU 2016-02”) and has modified the standard thereafter. We adopted ASU 2016-02, as modified, on January 1, 2019 using the modified retrospective method. Under the modified retrospective method, we applied the new guidance to all leases that commenced before and were existing as of January 1, 2019.

The adoption of ASU 2016-02 had no impact on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss) and cash flows from operating, investing and financing activities on our Condensed Consolidated Statements of Cash Flows.

Cost of Services

“Cost of services” on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss) principally include Pay-TV programming expenses and other operating costs related to our Pay-TV segment, costs of wireless services (including costs incurred under the MNSA), as well as costs associated with our SLING TV services.

The cost of television programming distribution rights is generally incurred on a per subscriber basis and various upfront carriage payments are recognized when the related programming is distributed to subscribers. Long-term flat rate programming contracts are generally charged to expense using the straight-line method over the term of the agreement. The cost of television programming rights to distribute live sporting events for a season or tournament is charged to expense using the straight-line method over the course of the season or tournament. Costs incurred under the MNSA are recognized as the services are performed or as incurred. The cost of broadband services is expensed monthly and generally incurred on a per subscriber basis.

Cost of Sales – Equipment and Other

“Cost of sales – equipment and other” on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss) principally includes the cost of wireless devices and other related items as well as costs related to the non-subsidized sales of Pay-TV equipment. Costs are generally recognized as products are delivered to customers and the related revenue is recognized.

Advertising Costs

We recognize advertising expense when incurred as selling, general and administrative expense. Advertising expenses totaled \$160 million and \$141 million for each of the three months ended September 30, 2020 and 2019, respectively. Advertising expenses totaled \$381 million and \$375 million for each of the nine months ended September 30, 2020 and 2019, respectively.

Research and Development

Research and development costs are expensed as incurred. Research and development costs totaled \$6 million and \$4 million for the three months ended September 30, 2020 and 2019, respectively. Research and development costs totaled \$17 million and \$15 million for the nine months ended September 30, 2020 and 2019, respectively.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

3. Basic and Diluted Net Income (Loss) Per Share

We present both basic earnings per share (“EPS”) and diluted EPS. Basic EPS excludes potential dilution and is computed by dividing “Net income (loss) attributable to DISH Network” by the weighted-average number of common shares outstanding for the period. Diluted EPS reflects the potential dilution that could occur if stock awards were exercised and if our Convertible Notes were converted. The potential dilution from stock awards is accounted for using the treasury stock method based on the average market value of our Class A common stock. The potential dilution from conversion of the Convertible Notes is accounted for using the if-converted method, which requires that all of the shares of our Class A common stock issuable upon conversion of the Convertible Notes will be included in the calculation of diluted EPS assuming conversion of the Convertible Notes at the beginning of the reporting period (or at time of issuance, if later).

The following table presents EPS amounts for all periods and the basic and diluted weighted-average shares outstanding used in the calculation.

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2020	2019	2020	2019
Net income (loss)	\$ 532,959	\$ 377,157	\$ 1,112,638	\$ 1,079,022
Less: Net income (loss) attributable to noncontrolling interests, net of tax	28,360	23,853	82,597	68,914
Net income (loss) attributable to DISH Network - Basic	504,599	353,304	1,030,041	1,010,108
Interest on dilutive Convertible Notes, net of tax (1)	—	—	—	—
Net income (loss) attributable to DISH Network - Diluted	\$ 504,599	\$ 353,304	\$ 1,030,041	\$ 1,010,108
Weighted-average common shares outstanding - Class A and B common stock:				
Basic (2)	525,532	477,495	524,329	471,736
Dilutive impact of Convertible Notes	58,192	58,192	58,192	58,192
Dilutive impact of stock awards outstanding	233	59	74	113
Diluted	<u>583,957</u>	<u>535,746</u>	<u>582,595</u>	<u>530,041</u>
Earnings per share - Class A and B common stock:				
Basic net income (loss) per share attributable to DISH Network	\$ 0.96	\$ 0.74	\$ 1.96	\$ 2.14
Diluted net income (loss) per share attributable to DISH Network	\$ 0.86	\$ 0.66	\$ 1.77	\$ 1.91

- (1) For both the three and nine months ended September 30, 2020 and 2019, materially all of our interest expense was capitalized. See Note 2 for further information.
- (2) The increase resulted from the Master Transaction Agreement, as discussed in Note 14, and the stock rights offering as disclosed in our Annual Report on Form 10-K for the year ended December 31, 2019.

Certain stock awards to acquire our Class A common stock are not included in the weighted-average common shares outstanding above, as their effect is anti-dilutive. In addition, vesting of performance based options and rights to acquire shares of our Class A common stock granted pursuant to our performance based stock incentive plans (“Restricted Performance Units”) are both contingent upon meeting certain goals, some of which are not yet probable of being achieved. Furthermore, the warrants that we issued to certain option counterparties in connection with the Convertible Notes due 2026 are only exercisable at their expiration if the market price per share of our Class A common stock is greater than the strike price of the warrants, which is approximately \$86.08 per share, subject to adjustments. As a consequence, the following are not included in the diluted EPS calculation.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

	As of September 30,	
	2020	2019
	(In thousands)	
Anti-dilutive stock awards	8,761	5,181
Performance based options (1)	5,317	8,418
Restricted Performance Units/Awards	1,787	1,516
Common stock warrants	46,029	46,029
Total	61,894	61,144

(1) The decrease primarily resulted from certain performance based options that vested during the three months ended September 30, 2020.

4. Supplemental Data - Statements of Cash Flows

The following table presents certain supplemental cash flow and other non-cash data. See Note 9 for supplemental cash flow and non-cash data related to leases.

	For the Nine Months Ended		September 30,	
	2020		2019	
	(In thousands)			
Cash paid for interest (including capitalized interest)	\$ 647,572		\$ 737,311	
Cash received for interest	5,512		38,101	
Cash paid for income taxes	22,939		26,304	
Capitalized interest (1)	685,749		743,864	
Master Transaction Agreement, net of deferred tax of \$166,161 (2)	—		497,145	
Employee benefits paid in Class A common stock	28,301		27,004	
Vendor financing	74,895		—	

(1) See Note 2 for further information.

(2) See Note 14 for further information.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

5. Acquisitions

When we acquire a business we recognize the assets acquired, liabilities assumed and any noncontrolling interests at fair value. We expense all transaction costs related to the acquisition as incurred.

Sprint Asset Acquisition

Asset Purchase Agreement

Effective on July 1, 2020, upon the terms and subject to the conditions set forth in the APA and in accordance with the Final Judgment, we completed the Boost Mobile Acquisition. The completion of the Boost Mobile Acquisition means that, among other things, DISH Network officially entered into the retail wireless market, serving more than 9 million customers under the Boost Mobile brand.

Consideration Transferred

The acquisition date fair value of consideration transferred in the Boost Mobile Acquisition totaled \$1.346 billion, summarized in the following table:

	As of July 1, 2020	
	(In thousands)	
Cash consideration (1)	\$	1,400,000
Net working capital (2)		33,524
Other funding (3)		(87,500)
Total consideration transferred	\$	<u>1,346,024</u>

- (1) Represents agreed upon purchase price pursuant to the APA paid to TMUS on July 1, 2020.
- (2) Represents estimated net working capital acquired under the APA. We have not settled the net working capital under the APA as certain amounts are currently in dispute and could ultimately change the net working capital settlement.
- (3) Represents receipt of payment from Softbank in connection with the Boost Mobile Acquisition on July 1, 2020.

Fair Value of Assets Acquired and Liabilities Assumed

We accounted for the Boost Mobile Acquisition as a business combination. The identifiable assets acquired and liabilities assumed were recorded at their preliminary fair values as of the acquisition date and are consolidated into our financial statements. The assignment of fair market value requires significant judgments regarding the estimates and assumptions used to value the acquired assets and liabilities assumed. For the preliminary fair values of the assets acquired and liabilities assumed, we utilized the cost, income and market approaches from the perspective of a market participant.

The following table summarizes the preliminary fair values for each major class of assets acquired and liabilities assumed at the acquisition date. We used third party valuation professionals to aid in the determination of the estimated fair value of certain assets acquired and liabilities assumed. We are in the process of finalizing the purchase price allocation associated with this transaction, including income tax related amounts. As such, the preliminary purchase allocation set forth below are subject to revision as additional information is obtained and the valuation process is completed.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

	As of July 1, 2020	
	(In thousands)	
Trade accounts receivable	\$	518,476
Inventory		141,718
Other current assets		3,000
Intangibles		591,000
Goodwill		87,530
Other noncurrent assets		713,000
Total assets		2,054,724
Trade accounts payable		451,967
Deferred revenue and other		174,733
Other accrued expenses		82,000
Total liabilities		708,700
Total purchase price	\$	1,346,024

Acquired Receivables. The fair value of assets acquired, which represents the gross contractual amount, include accounts receivable of \$539 million, with an associated allowance for credit losses of \$21 million. Accounts receivable is comprised of receivables due from master agents, BoostUp! receivables and other receivables. See Note 2 for further discussion of BoostUP! receivables.

Inventory. Inventory assets include \$142 million of wireless devices.

Intangible Assets and Goodwill. Intangible assets includes \$458 million of subscriber relationships, the Boost tradename of \$96 million and certain below market contracts for \$37 million. The intangible assets will be amortized over their respective useful lives which range from one to ten years. Goodwill has an assigned value of \$88 million, which represents the excess of the consideration transferred over the estimated fair values of assets acquired and liabilities assumed. The preliminary goodwill recognized includes, among other things, the assembled workforce of Boost Mobile and intangible assets that do not qualify for separate recognition. The goodwill resulting from the Boost Mobile Acquisition included in the wireless segment is expected to be deductible for tax purposes. All of the goodwill acquired is allocated to the Retail Wireless reporting unit.

Other Noncurrent Assets. Other noncurrent assets includes our option to purchase certain TMUS's 800 MHz spectrum licenses with an assigned fair value of \$713 million. This instrument meets the definition of a derivative and all subsequent changes in the derivative's fair value are recorded in "Other, net" in our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss) until the option is either exercised or expires.

Liabilities. Liabilities include accounts payable, deferred revenue and accrued expenses.

Indemnification Assets and Contingent Liabilities. Pursuant to the APA, TMUS agreed to indemnify us against certain specified matters and losses. As of the closing of the transaction and September 30, 2020, we have not recorded either an indemnification asset or liability as the potential liabilities and associated reimbursement by TMUS cannot be reasonably estimated. We expect that any liability incurred related to these indemnified matters would be indemnified and reimbursed by TMUS. See Note 11 for further information.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

Sales of equipment to indirect dealers often include credits subsequently paid to the dealer as a reimbursement for promotions offered to the end consumer. These credits are accounted for as variable consideration when estimating the amount of revenue to recognize from the sales of equipment to indirect dealers. At acquisition, we recorded a contingent obligation related to these credits, based upon historical experience and other factors, such as expected promotional activity. This amount is recorded in “Other accrued expenses” on our Condensed Consolidated Balance Sheets.

Transaction Costs

We recognized transaction costs of \$1 million and \$11 million for the three and nine months ended September 30, 2020, respectively. These costs are primarily related to professional service costs which are recorded in “Selling, general and administrative expenses” in our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss).

Ting Mobile Acquisition

On August 1, 2020, we completed the Ting Mobile Acquisition. In addition, we entered into a services agreement pursuant to which Tucows will act as a mobile virtual network enabler for certain of our retail wireless subscribers. The consideration for the Ting Mobile Acquisition is an earn out provision and the fair value of the earn out provision has been assigned to a customer relationship intangible that is recorded in “Intangible assets” on our Condensed Consolidated Balance Sheets. See Note 5 for further information.

Pro Forma Information

The following pro forma financial information gives effect to the transactions as if they had been completed as of January 1, 2019. The unaudited pro forma information was based on the historical results of DISH Network and the estimated Boost Mobile Acquisition and the Ting Mobile Acquisition results. The results of the Boost Mobile Acquisition were adjusted to include the estimated expense associated with an MNSA arrangement and certain selling, general and administrative expenses that historically were not recorded within the Prepaid Business’ financial statements. The results of the Ting Mobile Acquisition were adjusted for the consideration given for the earn out provision. The pro forma results do not include any anticipated synergies or other expected benefits of the acquisitions.

	For the Three Months Ended		For the Nine Months Ended	
	September 30,		September 30,	
	2020	2019	2020	2019
	(In thousands)			
Total revenue	\$ 4,537,708	\$ 4,410,580	\$ 13,484,804	\$ 13,403,813
Net income (loss) attributable to DISH Network	\$ 515,183	\$ 293,514	\$ 849,744	\$ 808,825

Assumptions and nonrecurring pro forma adjustments include:

- Boost network costs were estimated based on the forecasted costs on a per subscriber basis that DISH expects to incur prospectively to utilize the TMUS network.
- Boost selling, general and administrative expenses were estimated based on the costs to be incurred by DISH per the TSA arrangement with TMUS.
- Transaction costs of \$1 million and \$11 million for the three and nine months ended September 30, 2020, respectively, were recorded in “Selling, general and administrative expenses” in our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss) and are not recurring.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

The selective unaudited pro forma condensed financial information is provided for informational purposes and does not represent the actual results from operation had the transaction occurred on January 1, 2019.

Agreements in Connection with the APA

In connection with the Boost Mobile Acquisition and the consummation of the Sprint-TMUS merger, we, TMUS, Sprint, DT and SoftBank came to an agreement with the DOJ on key terms and approval of the Transaction Agreements and our wireless service business and spectrum. On July 26, 2019, the Defendants entered into the Stipulation and Order with the DOJ binding the Defendants to the Proposed Final Judgment, which memorialized the agreement between the DOJ and the Defendants. The Stipulation and Order and the Proposed Final Judgment were filed in the District Court on July 26, 2019 and on April 1, 2020, the Final Judgment was entered with the District Court.

The term of the Final Judgment is seven years from the date of its entry with the District Court or five years if the DOJ gives notice that the divestitures, build-outs and other requirements have been completed to its satisfaction. A Monitoring Trustee has been appointed by the District Court that has the power and authority to monitor the Defendants' compliance with the Final Judgment and settle disputes among the Defendants regarding compliance with the provisions of the Final Judgment and may recommend action to the DOJ in the event a party fails to comply with the Final Judgment.

Also in connection with the closing of the Boost Mobile Acquisition, we and NTM entered into the TSA, the MNSA, the Option Agreement, and the Spectrum Purchase Agreement for an additional approximately \$3.59 billion.

Transition Services Agreement

TMUS and DISH Network entered into a TSA upon the Closing Date of the Boost Mobile Acquisition, pursuant to which TMUS provides certain transition services to us for the Prepaid Business for a period of two years from July 1, 2020. Additionally, under the Final Judgment, we may apply to the DOJ for one or more extensions of the term of the TSA, which the DOJ can approve or deny in its sole discretion, and the TSA contemplates the option to renew the TSA for a third or additional years. The transition services are provided at cost, which shall not exceed a specific amount in the first year, plus certain pass-through costs and out-of-pocket expenses, during the first two years. If any transition services are renewed for a third year, the transition services will be provided at cost plus a certain mark-up, plus certain additional costs.

Master Network Services Agreement

TMUS and DISH Network entered into an MNSA upon the Closing Date of the Boost Mobile Acquisition, pursuant to which we also receive network services from NTM for a period of seven years. As set forth in the MNSA, NTM provides to us, among other things, (i) legacy network services for Boost Mobile and certain other prepaid end users on the Sprint network, (ii) NTM network services for certain end users that have been migrated to the NTM network or provisioned on the NTM network by or on behalf of us and (iii) infrastructure mobile network operator services to assist in the access and integration of our network.

Pursuant to the terms of the MNSA, we face certain restrictions on making offerings that may combine the access to services provided under the MNSA with access to the facilities or services provided by certain third parties, subject to certain exceptions and carve-outs. We have the right to offer differentiated pricing, products and features to our end users under our brands in conjunction with the services provided under the MNSA, subject to certain qualifications and restrictions. We have certain restrictions on our ability to wholesale, sub-distribute or resell the services provided under the MNSA to third parties. During and after the term of the MNSA, NTM has agreed to certain restrictions with respect to the use of certain information in the targeting of customers.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

In the event of a “change of control” of DISH Network, the MNSA will terminate upon the earlier of two years following the consummation of the change of control or the date on which the MNSA would have otherwise terminated or expired in accordance with its terms. However, we would remain able to provision new users for six months after the change of control and also retain access to roaming services on the NTM network for both new and existing users for the remainder of the original term of the MNSA. Generally, a change of control would occur in the first 36 months of the term of the MNSA if (A) certain “permitted owners” no longer own 50% or more of our voting power or a person or group of persons who are not permitted owners beneficially owns more than 50% of our aggregate economic value or (B) we sell more than 50% of our wireless communications business assets (excluding our wireless terrestrial spectrum licenses and entities that own our wireless terrestrial spectrum licenses). A permitted owner generally includes Charles W. Ergen (including his family and certain related trusts and entities) and certain financial investors. Following the first 36 months of the term of the MNSA (or earlier in certain circumstances), a change of control would generally occur if any restricted persons own (1) more than 50% of our voting power or economic value or (2) a majority of our wireless communications business assets (excluding our wireless terrestrial spectrum licenses and entities that own our wireless terrestrial spectrum licenses). A “restricted person” generally includes certain U.S. wireless providers and U.S. cable companies (with certain exceptions), as well as any other entities that do not enter into a network usage agreement with NTM restricting such person from generally engaging in certain activities that are detrimental to the NTM network.

Spectrum Purchase Agreement

Pursuant to the Spectrum Purchase Agreement that was entered into upon the Closing Date of the Boost Mobile Acquisition, we are expected to purchase all of Sprint’s 800 MHz spectrum (approximately 13.5 MHz of nationwide spectrum). The covered spectrum must be divested within the later of three years from the Closing Date and five days after receipt of FCC approval for the transfer, following an application for FCC approval to be filed three years following the closing of the Sprint-TMUS merger. The DOJ may in its sole discretion agree to extend the deadline for the spectrum divestiture for up to 60 days pursuant to the Final Judgment. NTM may exercise an option to lease back 4 MHz (2 MHz downlink + 2 MHz uplink) of the spectrum for two years following the closing of the 800 MHz spectrum sale at the same per-Pop rate used to calculate the purchase price paid by us to NTM – a rate of approximately \$68 million per year.

We and NTM have made customary representations, warranties and covenants pursuant to the Spectrum Purchase Agreement, including representations by NTM regarding the validity of the licenses for the purchased spectrum. Pursuant to the Spectrum Purchase Agreement, we and NTM each indemnify the other against losses suffered as a result of breaches of the other’s representations and warranties or covenants. The indemnification provisions are subject to certain deductible and cap limitations and time limitations with respect to recovery for losses.

If we breach the Spectrum Purchase Agreement prior to the closing or fail to deliver the purchase price following the satisfaction or waiver of all closing conditions, our sole liability to NTM will be to pay NTM a fee of approximately \$72 million. If NTM fails to sell the spectrum to us following the satisfaction or waiver of all closing conditions, our sole recourse will be to seek specific performance, and if (and only if) specific performance is unavailable, to seek damages of up to approximately \$72 million.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

Option Agreement

The Option Agreement, which was entered into upon the Closing Date of the Boost Mobile Acquisition, provides us an exclusive option to assume certain assets and liabilities under certain circumstances for any of the cell sites and retail stores that NTM decommissions during the term of the Option Agreement. NTM must make a minimum of 20,000 cell sites and 400 retail stores available to us pursuant to the Final Judgment. With respect to each decommissioned site, we may choose to acquire: (a) only the lease for such site, (b) the lease and a predetermined list of equipment at the site or (c) the lease and all of the equipment at the site. Under the Final Judgment, NTM must provide a detailed schedule which identifies each cell site that is scheduled to be decommissioned within five years of the Closing Date. The Option Agreement will remain in place for five years following the Closing Date.

Agreement with the DOJ: The Stipulation and Order and the Final Judgment

Certain of the provisions of the Stipulation and Order and the Final Judgment are also reflected in the terms of the Transaction Agreements. In addition to the terms reflected in the Transaction Agreements, the Stipulation and Order and the Final Judgment provide for other rights and obligations of the Sellers and us, including the following:

- For a period of one year after the Closing Date, if we determine that certain assets not included in the divestiture were previously used by the Prepaid Business and are reasonably necessary for the continued competitiveness of the Prepaid Business, subject to certain carve-outs, we may request that such assets be transferred to us, which the DOJ can approve or deny in its sole discretion.
- Within one year of the Closing Date, we are required to offer nationwide postpaid retail mobile wireless service.
- If we elect not to purchase the 800 MHz licenses pursuant to the Spectrum Purchase Agreement, we must pay \$360 million (equal to 10% of the Spectrum Purchase Agreement purchase price) to the United States. However, we will not be required to make such payment if we have deployed a core network and offered 5G service to at least 20% of the U.S. population within three years of the Closing Date.
- If we buy the 800 MHz spectrum pursuant to the Spectrum Purchase Agreement but fail to deploy all of the 800 MHz spectrum licenses for use in the provision of retail mobile wireless services by the expiration of the Final Judgment, the DOJ may require us to forfeit to the FCC any of the 800 MHz licenses for spectrum that are not being used to provide retail mobile wireless services, unless we are already providing nationwide retail wireless service.
- We and NTM were required to negotiate in good faith to reach an agreement for NTM to lease some or all of our 600 MHz spectrum licenses for deployment to retail consumers by NTM. On September 11, 2020, we and T-Mobile entered into an agreement to lease a portion of our 600 MHz spectrum licenses for an annual lease payment of approximately \$56 million.
- We and NTM must agree to support eSIM technology on smartphones.
- The Sellers must introduce the suppliers and distributors of the Prepaid Business to us and the Sellers may not interfere in our negotiations with such suppliers and distributors.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

- On the first day of the fiscal quarter following the entry of the Final Judgment and of each 180-day period thereafter, we are obligated to provide the DOJ with a description of our deployment efforts over the prior quarter including: (i) the number of towers and small cells deployed, (ii) the spectrum bands on which we have deployed equipment, (iii) progress in obtaining devices that operate on our spectrum frequencies, (iv) POPs coverage of our network, (v) the number of our mobile wireless subscriptions, (vi) the amount of traffic transmitted to our subscribers using our network and using NTM's network, and (vii) whether there are or have been any efforts by NTM to interfere with our efforts to deploy and operate our network.
- We cannot sell, lease or otherwise provide the right to use any of the divested assets to any national facilities-based mobile wireless provider and may not sell any of the divested assets or similar assets back to TMUS during the term of the Final Judgment, except that we may lease back to NTM up to 4 MHz of the 800 MHz spectrum we will acquire (as discussed above).
- We must comply with the June 14, 2023 AWS-4, Lower 700 MHz E Block, AWS H Block, and nationwide 5G broadband network build-out commitments made to the FCC, subject to verification by the FCC (as described below). If we fail to comply with such build-out commitments, we may be subject to civil contempt in addition to the substantial voluntary contributions and license forfeitures described below if we fail to meet these commitments (as described below).

FCC Build-Out Commitments

In a letter filed with the FCC on July 26, 2019, we voluntarily committed to deploy a nationwide 5G broadband network and meet revised timelines relating to the build-out of our AWS-4, Lower 700 MHz E Block, AWS H Block and 600 MHz spectrum assets, subject to certain penalties. Pursuant to these commitments, we requested multi-year extensions to deploy our AWS-4, Lower 700 MHz E Block, and AWS H Block spectrum, and we have committed to build-out our 600 MHz licenses on an accelerated schedule to better align with our 5G deployment. We have also committed to offer 5G broadband service to certain population coverage targets, along with minimum core network, tower and spectrum use targets, and have waived our right to deploy any technology of our choice under the FCC's "flexible use" rules with respect to these spectrum bands. Failure to meet the various commitments would require us to pay voluntary contributions totaling up to \$2.2 billion to the FCC and would subject certain licenses in the AWS-4, Lower 700 MHz E Block, and AWS H Block spectrum to forfeiture. We have also agreed not to sell our AWS-4 and 600 MHz spectrum for six years without prior DOJ and FCC approval (unless such sale is part of a change of control of DISH Network). Additionally, we have agreed not to lease a certain percentage of network capacity on our AWS-4 and 600 MHz spectrum for six years to the three largest U.S. wireless carriers (i.e., AT&T, Verizon and NTM), without prior FCC approval. On November 5, 2019, the FCC released an Order that, among other things, approved the Sprint-TMUS merger, tolled our existing March 7, 2020 build-out deadline for our AWS-4 and Lower 700 MHz E Block Licenses, and directed the FCC's Wireless Telecommunications Bureau to adopt our commitments after a 30 day review period (the "FCC Merger Order").

On September 11, 2020, the FCC's Wireless Telecommunications Bureau issued an Order adopting these commitments. Our 5G deployment obligations for each of the four spectrum bands are generally set forth below.

- With respect to the 600 MHz licenses, we must offer 5G broadband service to at least 70% of the U.S. population and have deployed a core network no later than June 14, 2023, and offer 5G broadband service to at least 75% of the population in each Partial Economic Area (which are service areas established by the FCC) no later than June 14, 2025. Note that these commitments are earlier than the current 600 MHz Final Build-Out Requirement date of June 2029. See below for further information.
- With respect to the AWS-4 licenses, we must offer 5G broadband service to at least 20% of the U.S. population and have deployed a core network no later than June 14, 2022, and offer 5G broadband service to at least 70% of the U.S. population no later than June 14, 2023.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

- With respect to the Lower 700 MHz E Block licenses, we must offer 5G broadband service to at least 20% of the U.S. population who are covered by such licenses and have deployed a core network no later than June 14, 2022, and offer 5G broadband service to at least 70% of the U.S. population who are covered by such licenses no later than June 14, 2023.
- With respect to the AWS H Block licenses, we must offer 5G broadband service to at least 20% of the U.S. population and have deployed a core network no later than June 14, 2022, and offer 5G broadband service to at least 70% of the U.S. population no later than June 14, 2023.

6. Marketable Investment Securities, Restricted Cash and Cash Equivalents, and Other Investment Securities

Our marketable investment securities, restricted cash and cash equivalents, and other investment securities consisted of the following:

	As of	
	September 30, 2020	December 31, 2019
	(In thousands)	
Marketable investment securities:		
Current marketable investment securities:		
Strategic - available-for-sale	\$ 195	\$ 196
Other	983,664	416,508
Total current marketable investment securities	983,859	416,704
Restricted marketable investment securities (1)	35,115	390
Total marketable investment securities	1,018,974	417,094
Restricted cash and cash equivalents (1)	73,273	60,677
Other investment securities:		
Other investment securities	148,246	160,074
Total other investment securities	148,246	160,074
Total marketable investment securities, restricted cash and cash equivalents, and other investment securities	\$ 1,240,493	\$ 637,845

(1) Restricted marketable investment securities and restricted cash and cash equivalents are included in “Restricted cash, cash equivalents and marketable investment securities” on our Condensed Consolidated Balance Sheets.

Marketable Investment Securities

Our marketable investment securities portfolio may consist of debt and equity instruments. All equity securities are carried at fair value, with changes in fair value recognized in “Other, net” within “Other Income (Expense)” on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss). All debt securities are classified as available-for-sale and are recorded at fair value. We report the temporary unrealized gains and losses related to changes in market conditions of marketable debt securities as a separate component of “Accumulated other comprehensive income (loss)” within “Total stockholders’ equity (deficit),” net of related deferred income tax on our Condensed Consolidated Balance Sheets. The corresponding changes in the fair value of marketable debt securities, which are determined to be company specific credit losses are recorded in “Other, net” within “Other Income (Expense)” on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss). See Note 2 for further information.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

Current Marketable Investment Securities – Strategic

Our current strategic marketable investment securities portfolio includes and may include strategic and financial debt and/or equity investments in private and public companies that are highly speculative and have experienced and continue to experience volatility. As of September 30, 2020, this portfolio consisted of securities of a small number of issuers, and as a result the value of that portfolio depends, among other things, on the performance of those issuers. The fair value of certain of the debt and equity securities in this portfolio can be adversely impacted by, among other things, the issuers' respective performance and ability to obtain any necessary additional financing on acceptable terms, or at all.

Current Marketable Investment Securities - Other

Our current other marketable investment securities portfolio includes investments in various debt instruments including, among others, commercial paper, corporate securities and United States treasury and/or agency securities.

Commercial paper consists mainly of unsecured short-term, promissory notes issued primarily by corporations with maturities ranging up to 365 days. Corporate securities consist of debt instruments issued by corporations with various maturities normally less than 18 months. U.S. Treasury and agency securities consist of debt instruments issued by the federal government and other government agencies.

Restricted Cash, Cash Equivalents and Marketable Investment Securities

As of September 30, 2020 and December 31, 2019, our restricted marketable investment securities, together with our restricted cash and cash equivalents, included amounts required as collateral for our letters of credit and trusts.

Other Investment Securities

We have strategic investments in certain debt and/or equity securities that are included in noncurrent "Other investment securities" on our Condensed Consolidated Balance Sheets. Our debt securities are classified as available-for-sale and our equity securities are accounted for using the equity method of accounting or recorded at fair value. Certain of our equity method investments are detailed below.

NagraStar L.L.C. As a result of the completion of the share exchange on February 28, 2017, we own a 50% interest in NagraStar L.L.C. ("NagraStar"), a joint venture that is our primary provider of encryption and related security systems intended to assure that only authorized customers have access to our programming.

Invidi Technologies Corporation. In November 2016, we, DIRECTV, LLC, a wholly-owned indirect subsidiary of AT&T Inc., and Cavendish Square Holding B.V., an affiliate of WPP plc, entered into a series of agreements to acquire Invidi Technologies Corporation ("Invidi"), an entity that provides proprietary software for the addressable advertising market. The transaction closed in January 2017.

TerreStar Solutions, Inc. In March 2019, we closed a transaction with TerreStar Solutions, Inc. ("TSI") to acquire additional equity securities of TSI, an entity that holds certain 2 GHz wireless spectrum licenses in Canada, in exchange for certain Canadian assets, including, among other things, a portion of the satellite capacity on our T1 satellite, which we had acquired from TerreStar Networks, Inc. in 2012.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

Our ability to realize value from our strategic investments in securities that are not publicly traded depends on the success of the issuers' businesses and their ability to obtain sufficient capital, on acceptable terms or at all, and to execute their business plans. Because private markets are not as liquid as public markets, there is also increased risk that we will not be able to sell these investments, or that when we desire to sell them we will not be able to obtain fair value for them.

Unrealized Gains (Losses) on Marketable Investment Securities

As of September 30, 2020 and December 31, 2019, we had accumulated net unrealized gains of less than \$1 million. These amounts, net of related tax effect, were accumulated net unrealized gains of less than \$1 million. All of these amounts are included in "Accumulated other comprehensive income (loss)" within "Total stockholders' equity (deficit)." The components of our available-for-sale investments are summarized in the table below.

	<u>As of September 30,</u>				<u>As of December 31,</u>			
	<u>2020</u>				<u>2019</u>			
	<u>Marketable Investment Securities</u>	<u>Unrealized</u>		<u>Net</u>	<u>Marketable Investment Securities</u>	<u>Unrealized</u>		<u>Net</u>
		<u>Gains</u>	<u>Losses</u>			<u>Gains</u>	<u>Losses</u>	
				(In thousands)				
Debt securities (including restricted):								
U.S. Treasury and agency securities	\$ 302,754	\$ 18	\$ —	\$ 18	\$ 10,016	\$ 32	\$ —	\$ 32
Commercial paper	652,953	—	—	—	369,397	2	—	2
Corporate securities	62,748	5	(1)	4	28,796	4	(1)	3
Other	519	—	—	—	8,885	58	—	58
Total	<u>\$ 1,018,974</u>	<u>\$ 23</u>	<u>\$ (1)</u>	<u>\$ 22</u>	<u>\$ 417,094</u>	<u>\$ 96</u>	<u>\$ (1)</u>	<u>\$ 95</u>

As of September 30, 2020, restricted and non-restricted marketable investment securities included debt securities of \$1.019 billion with contractual maturities within one year. Actual maturities may differ from contractual maturities as a result of our ability to sell these securities prior to maturity.

Fair Value Measurements

Our investments measured at fair value on a recurring basis were as follows:

	<u>As of</u>							
	<u>September 30, 2020</u>				<u>December 31, 2019</u>			
	<u>Total</u>	<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u>	<u>Total</u>	<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u>
								(In thousands)
Cash equivalents (including restricted)	<u>\$ 1,750,477</u>	<u>\$ 963,274</u>	<u>\$ 787,203</u>	<u>\$ —</u>	<u>\$ 2,436,545</u>	<u>\$ 246,876</u>	<u>\$ 2,189,669</u>	<u>\$ —</u>
Debt securities (including restricted):								
U.S. Treasury and agency securities	\$ 302,754	\$ 302,754	\$ —	\$ —	\$ 10,016	\$ 10,016	\$ —	\$ —
Commercial paper	652,953	—	652,953	—	369,397	—	369,397	—
Corporate securities	62,748	—	62,748	—	28,796	—	28,796	—
Other	519	—	324	195	8,885	—	8,689	196
Total	<u>\$ 1,018,974</u>	<u>\$ 302,754</u>	<u>\$ 716,025</u>	<u>\$ 195</u>	<u>\$ 417,094</u>	<u>\$ 10,016</u>	<u>\$ 406,882</u>	<u>\$ 196</u>

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

Derivative Instruments

We have the option to purchase certain TMUS's 800 MHz spectrum licenses from TMUS at a fixed price in the future. See Note 5 for further information. This instrument meets the definition of a derivative and was valued as part of the business combination at fair value in the Condensed Consolidated Balance Sheets. All subsequent changes in the derivative's fair value are recorded in "Other, net" in our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss) until the option is either exercised or expires. We account for our option to purchase certain TMUS's 800 MHz spectrum licenses under the Spectrum Purchase Agreement as a Level 3 derivative.

Gains and Losses on Sales and Changes in Carrying Amounts of Investments

"Other, net" within "Other Income (Expense)" included on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss) is as follows:

Other, net:	For the Three Months Ended		For the Nine Months Ended	
	September 30,		September 30,	
	2020	2019	2020	2019
	(In thousands)			
Marketable investment securities - realized and unrealized gains (losses)	\$ 87	\$ 1,346	\$ 177	\$ 5,240
Derivative instruments - net realized and/or unrealized gains (losses)	(12,450)	—	(12,450)	—
Costs related to early redemption of debt	—	(44)	—	(483)
Equity in earnings (losses) of affiliates	(824)	(5,467)	(221)	(4,476)
Other	(13)	2,369	902	9,843
Total	\$ (13,200)	\$ (1,796)	\$ (11,592)	\$ 10,124

7. Inventory

Inventory consisted of the following:

	As of	
	September 30,	December 31,
	2020	2019
	(In thousands)	
Finished goods	\$ 470,980	\$ 255,155
Work-in-process and service repairs	29,000	34,120
Raw materials	16,236	33,623
Total inventory	\$ 516,216	\$ 322,898

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

8. Property and Equipment and Intangible Assets

Property and equipment consisted of the following:

	Depreciable Life (In Years)		As of	
			September 30, 2020	December 31, 2019
			(In thousands)	
Equipment leased to customers	2	- 5	\$ 1,772,000	\$ 1,861,668
Satellites (1)	2	- 15	1,734,025	1,855,096
Satellites acquired under finance lease agreements	10	- 15	888,940	888,940
Furniture, fixtures, equipment and other	2	- 20	2,073,041	2,010,094
Buildings and improvements	5	- 40	354,739	349,347
Land		-	17,810	17,810
Construction in progress (1)		-	109,018	278,083
Total property and equipment			6,949,573	7,261,038
Accumulated depreciation			(4,723,150)	(4,554,856)
Property and equipment, net			<u>\$ 2,226,423</u>	<u>\$ 2,706,182</u>

- (1) During the nine months ended September 30, 2020, we wrote down the T1 satellite net book value of \$48 million (net of accumulated depreciation of \$18 million) and the D1 satellite net book value of \$55 million to their estimated fair value of zero. In addition, during the nine months ended September 30, 2020, we impaired \$227 million for capitalized costs of equipment, labor and other assets related to the narrowband IoT deployment that would not be utilized in our 5G Network Deployment. As a result, we recorded a \$330 million non-cash impairment charge in “Impairment of long-lived assets” on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss). See Note 2 for further information.

Construction in progress consisted of the following:

	As of	
	September 30, 2020	December 31, 2019
	(In thousands)	
Software	\$ 43,011	\$ 51,493
Wireless (1)	40,952	207,814
Other	25,055	18,776
Total construction in progress	<u>\$ 109,018</u>	<u>\$ 278,083</u>

- (1) During the nine months ended September 30, 2020, we impaired the capitalized costs of equipment, labor and other assets related to the narrowband IoT deployment that would not be utilized in our 5G Network Deployment, resulting in a \$227 million non-cash impairment charge in “Impairment of long-lived assets” on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss). See Note 2 for further information.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

Depreciation and amortization expense consisted of the following:

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2020	2019	2020	2019
	(In thousands)			
Equipment leased to customers	\$ 71,568	\$ 91,090	\$ 220,797	\$ 287,109
Satellites (1)	50,193	25,321	152,530	62,956
Buildings, furniture, fixtures, equipment and other	32,303	36,239	97,679	100,713
Intangible assets	45,019	1,531	47,021	6,244
Total depreciation and amortization	\$ 199,083	\$ 154,181	\$ 518,027	\$ 457,022

(1) The increase resulted from the Master Transaction Agreement pursuant to which, on September 10, 2019, certain satellites were transferred to us. See Note 14 for further information.

Cost of sales and operating expense categories included in our accompanying Condensed Consolidated Statements of Operations and Comprehensive Income (Loss) do not include depreciation expense related to satellites or equipment leased to customers.

Pay-TV Satellites. We currently utilize 13 satellites in geostationary orbit approximately 22,300 miles above the equator, eight of which we own and depreciate over their estimated useful life. We currently utilize certain capacity on one satellite that we lease from EchoStar, which is accounted for as an operating lease. We also lease four satellites from third parties: Ciel II, which is accounted for as an operating lease, and Anik F3, Nimiq 5 and QuetzSat-1, which are accounted for as financing leases and are depreciated over their economic life.

As of September 30, 2020, our pay-TV satellite fleet consisted of the following:

Satellites	Launch Date	Degree Orbital Location	Lease Termination Date
Owned:			
EchoStar VII (1)	February 2002	119	N/A
EchoStar X (1)	February 2006	110	N/A
EchoStar XI (1)	July 2008	110	N/A
EchoStar XIV (1)	March 2010	119	N/A
EchoStar XV	July 2010	61.5	N/A
EchoStar XVI (1)	November 2012	61.5	N/A
EchoStar XVIII	June 2016	61.5	N/A
EchoStar XXIII (1)	March 2017	67.9	N/A
Leased from EchoStar (2):			
EchoStar IX	August 2003	121	Month to month
Leased from Other Third Party:			
Anik F3	April 2007	118.7	April 2022
Ciel II	December 2008	129	January 2022
Nimiq 5 (1)	September 2009	72.7	September 2024
QuetzSat-1 (1)	September 2011	77	November 2021

- (1) Pursuant to the Master Transaction Agreement, on September 10, 2019, these satellites and satellite service agreements were transferred to us. See Note 14 for further information.
- (2) See Note 14 for further information on our Related Party Transactions with EchoStar.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

Effective September 10, 2019, pursuant to the Master Transaction Agreement, the EchoStar XII satellite was transferred to us. During October 2019, the EchoStar XII satellite was de-orbited.

Intangible Assets

As of September 30, 2020 and December 31, 2019, our identifiable intangibles subject to amortization consisted of the following:

	As of			
	September 30, 2020		December 31, 2019	
	Intangible Assets	Accumulated Amortization	Intangible Assets	Accumulated Amortization
	(In thousands)			
Technology-based	\$ 63,078	\$ (58,194)	\$ 63,077	\$ (57,414)
Trademarks	133,428	(37,259)	37,010	(32,619)
Contract-based	41,500	(13,750)	4,500	(4,500)
Customer relationships	515,576	(55,984)	23,633	(23,633)
Total	\$ 753,582	\$ (165,187)	\$ 128,220	\$ (118,166)

- (1) The increase in intangible assets resulted from the completion of the Boost Mobile Acquisition and the Ting Mobile Acquisition. See Note 5 for further information.

These identifiable intangibles are included in “Intangible assets” on our Consolidated Balance Sheets. Amortization expense of these intangible assets in general is recorded on a straight-line basis over an average finite useful life primarily ranging from approximately one to 20 years. Amortization expense was \$45 million and \$2 million, for the three months ended September 30, 2020 and 2019, respectively. Amortization expense was \$47 million and \$6 million, for the nine months ended September 30, 2020 and 2019, respectively. The increase in amortization expense primarily resulted from the Boost Mobile Acquisition and the Ting Mobile Acquisition.

Estimated future amortization of our identifiable intangible assets as of September 30, 2020 is as follows (in thousands):

For the Years Ended December 31,	
	(In thousands)
2020 (for the remaining three months)	\$ 45,850
2021	157,105
2022	130,198
2023	127,809
2024	69,512
Thereafter	57,921
Total	\$ 588,395

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

Goodwill

Goodwill represents the excess of the consideration transferred over the estimated fair values of assets acquired and liabilities assumed and is not subject to amortization but is subject to impairment testing annually or whenever indicators of impairment arise. The non-recurring measurement of fair value of this asset is classified as Level 3 in the fair value hierarchy. As of September 30, 2020 and December 31, 2019, our goodwill was \$214 million and \$126 million, respectively, which primarily relates to our wireless segment. The increase in goodwill resulted from the completion of the Boost Mobile Acquisition. See Note 5 for further information.

9. Leases*Lessee*

We enter into operating and finance leases for, among other things, satellites, office space, warehouses and distribution centers, vehicles, wireless towers and other equipment. Our leases have remaining lease terms from one to seven years, some of which include renewal options, and some of which include options to terminate the leases within one year.

Our Anik F3, Nimiq 5 and QuetzSat-1 satellites are accounted for as financing leases. Substantially all of our remaining leases are accounted for as operating leases.

The components of lease expense were as follows:

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2020	2019	2020	2019
	(In thousands)			
Operating lease cost (1)	\$ 18,281	\$ 40,831	\$ 54,130	\$ 205,815
Short-term lease cost (2)	2,726	2,915	8,284	9,141
Finance lease cost:				
Amortization of right-of-use assets	17,829	7,187	53,488	17,100
Interest on lease liabilities	5,070	2,352	16,326	4,632
Total finance lease cost	22,899	9,539	69,814	21,732
Total lease costs	<u>\$ 43,906</u>	<u>\$ 53,285</u>	<u>\$ 132,228</u>	<u>\$ 236,688</u>

- (1) Pursuant to the Master Transaction Agreement, effective September 10, 2019, approximately \$495 million of previously reported operating lease assets and the related liabilities for satellites and real estate assets were transferred to us. See Note 14 for further information. These satellite and real estate assets are no longer included in "Operating lease assets," "Other current liabilities" and "Operating lease liabilities," but rather in "Property and equipment, net" on our Condensed Consolidated Balance Sheets. Lease expense related to these satellites and real estate assets for the three and nine months ended September 30, 2019 was \$25 million and \$159 million, respectively.
- (2) Leases that have terms of 12 months or less.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

Supplemental cash flow information related to leases was as follows:

	For the Nine Months Ended September 30,	
	2020	2019
	(In thousands)	
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows from operating leases	\$ 54,611	\$ 209,435
Operating cash flows from finance leases	\$ 16,326	\$ 4,637
Financing cash flows from finance leases	\$ 47,301	\$ 17,681
Right-of-use assets obtained in exchange for lease obligations:		
Operating leases	\$ 41,665	\$ 110,235
Finance leases	\$ —	\$ 187,339
Right-of-use assets and liabilities recognized at January 1, 2019 upon adoption of ASC 842	—	\$ 733,584

Supplemental balance sheet information related to leases was as follows:

	As of	
	September 30, 2020	December 31, 2019
	(In thousands)	
Operating Leases:		
Operating lease assets (1)	\$ 112,922	\$ 144,330
Other current liabilities	\$ 59,228	\$ 57,910
Operating lease liabilities	73,057	84,795
Total operating lease liabilities	\$ 132,285	\$ 142,705
Finance Leases:		
Property and equipment, gross	\$ 889,708	\$ 890,598
Accumulated depreciation	(736,462)	(683,271)
Property and equipment, net	\$ 153,246	\$ 207,327
Other current liabilities	\$ 66,075	\$ 61,493
Other long-term liabilities	118,318	171,706
Total finance lease liabilities	\$ 184,393	\$ 233,199
Weighted Average Remaining Lease Term:		
Operating leases	2.9 years	3.1 years
Finance leases	3.2 years	3.8 years
Weighted Average Discount Rate:		
Operating leases	4.3%	5.0%
Finance leases	10.4%	10.2%

- (1) During the nine months ended September 30, 2020, we impaired the operating lease assets related to the narrowband IoT deployment that would not be utilized in our 5G Network Deployment, resulting in a \$27 million non-cash impairment charge in “Impairment of long-lived assets” on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss). See Note 2 for further information.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

Maturities of lease liabilities as of September 30, 2020 were as follows:

For the Years Ending December 31,	Maturities of Lease Liabilities		
	Operating Leases	Finance Leases	Total
	(In thousands)		
2020 (remaining three months)	\$ 17,461	\$ 15,961	\$ 33,422
2021	58,963	82,610	141,573
2022	33,785	48,306	82,091
2023	15,723	40,942	56,665
2024	9,337	30,707	40,044
Thereafter	4,523	—	4,523
Total lease payments	139,792	218,526	358,318
Less: Imputed interest	(7,507)	(34,133)	(41,640)
Total	132,285	184,393	316,678
Less: Current portion	(59,228)	(66,075)	(125,303)
Long-term portion of lease obligations	<u>\$ 73,057</u>	<u>\$ 118,318</u>	<u>\$ 191,375</u>

10. Long-Term Debt and Finance Lease Obligations

Fair Value of our Long-Term Debt

The following table summarizes the carrying amount and fair value of our debt facilities as of September 30, 2020 and December 31, 2019:

	As of			
	September 30, 2020		December 31, 2019	
	Carrying Amount	Fair Value	Carrying Amount	Fair Value
	(In thousands)			
5 1/8% Senior Notes due 2020 (1)	\$ —	\$ —	\$ 1,100,000	\$ 1,110,208
6 3/4% Senior Notes due 2021 (2)	2,000,000	2,055,660	2,000,000	2,109,420
5 7/8% Senior Notes due 2022	2,000,000	2,090,160	2,000,000	2,129,580
5% Senior Notes due 2023	1,500,000	1,533,990	1,500,000	1,543,770
5 7/8% Senior Notes due 2024	2,000,000	2,064,700	2,000,000	2,049,080
2 3/8% Convertible Notes due 2024	1,000,000	910,700	1,000,000	918,720
7 3/4% Senior Notes due 2026	2,000,000	2,202,920	2,000,000	2,128,900
3 3/8% Convertible Notes due 2026	3,000,000	2,757,390	3,000,000	2,907,870
7 3/8% Senior Notes due 2028	1,000,000	1,032,270	—	—
Other notes payable	80,718	80,718	70,946	70,946
Subtotal	<u>14,580,718</u>	<u>\$ 14,728,508</u>	<u>14,670,946</u>	<u>\$ 14,968,494</u>
Unamortized debt discount on the Convertible Notes	(657,591)		(735,811)	
Unamortized deferred financing costs and other debt discounts, net	(25,120)		(28,739)	
Finance lease obligations (3)	184,393		233,199	
Total long-term debt and finance lease obligations (including current portion)	<u>\$ 14,082,400</u>		<u>\$ 14,139,595</u>	

- (1) On May 1, 2020, we redeemed the principal balance of our 5 1/8% Senior Notes due 2020.
- (2) Our 6 3/4% Senior Notes due 2021 mature on June 1, 2021 and have been reclassified to “Current portion of long-term debt and finance lease obligations” on our Condensed Consolidated Balance Sheets as of September 30, 2020.
- (3) Disclosure regarding fair value of finance leases is not required.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

We estimated the fair value of our publicly traded long-term debt using market prices in less active markets (Level 2).

7 3/8% Senior Notes due 2028

On July 1, 2020, we issued \$1.0 billion aggregate principal amount of our 7 3/8% Senior Notes due July 1, 2028. Interest accrues at an annual rate of 7 3/8% and is payable semi-annually in cash, in arrears on January 1 and July 1 of each year, commencing on January 1, 2021.

The 7 3/8% Senior Notes are redeemable, in whole or in part, at any time prior to July 1, 2023 at a redemption price equal to 100% of the principal amount plus a “make-whole” premium, as defined in the related indenture, together with accrued and unpaid interest. On or after July 1, 2023, we may redeem the Notes, in whole or in part, at any time at the redemption prices specified under the related indenture, together with accrued and unpaid interest. Prior to July 1, 2023, we may also redeem up to 35% of the 7 3/8% Senior Notes at a specified premium with the net cash proceeds from certain equity offerings or capital contributions.

Our 7 3/8% Senior Notes are:

- general unsecured senior obligations of DISH DBS Corporation (“DISH DBS”);
- ranked equally in right of payment with all of DISH DBS’ and the guarantors’ existing and future unsecured senior debt; and
- ranked effectively junior to our and the guarantors’ current and future secured senior indebtedness up to the value of the collateral securing such indebtedness.

The indenture related to our 7 3/8% Senior Notes contains restrictive covenants that, among other things, impose limitations on the ability of DISH DBS and its restricted subsidiaries to:

- incur additional debt;
- pay dividends or make distributions on DISH DBS’ capital stock or repurchase DISH DBS’ capital stock;
- make certain investments;
- create liens or enter into sale and leaseback transactions;
- enter into transactions with affiliates;
- merge or consolidate with another company; and
- transfer or sell assets.

In the event of a change of control, as defined in the related indenture, we would be required to make an offer to repurchase all or any part of a holder’s 7 3/8% Senior Notes at a purchase price equal to 101% of the aggregate principal amount thereof, together with accrued and unpaid interest thereon, to the date of repurchase.

11. Commitments and Contingencies

Commitments

Our purchase obligations increased during the third quarter 2020 as a result of the Boost Mobile Acquisition and the Ting Mobile Acquisition.

As of September 30, 2020 our future purchase obligations were \$1.959 billion for the remaining three months of 2020, \$61 million for 2021, \$27 million for 2022, \$9 million for 2023, for a total of \$2.056 billion.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

Purchase Obligations

Our 2020 purchase obligations primarily consist of binding purchase orders for certain fixed contractual commitments to purchase programming content, receiver systems and related equipment, broadband equipment, digital broadcast operations, transmission costs, streaming delivery technology and infrastructure, engineering services, and other products and services related to the operation of our Pay-TV services. In addition, our 2020 purchase obligations also include wireless devices related to our retail wireless business as well as transition services. Furthermore, our 2020 purchase obligations include equipment related to our 5G Network Deployment, such as software and hardware necessary to complete our wireless broadband network. Our purchase obligations may fluctuate significantly from period to period due to, among other things, management's timing of payments and inventory purchases as well as expenditures related to our wireless projects and 5G Network Deployment, and can materially impact our future operating asset and liability balances, and our future working capital requirements.

Wireless – 5G Network Deployment

Since 2008, we have directly invested over \$11 billion to acquire certain wireless spectrum licenses and related assets and made over \$10 billion in non-controlling investments in certain entities, for a total of over \$21 billion. The \$21 billion of investments related to wireless spectrum licenses does not include \$5 billion of capitalized interest related to the carrying value of such licenses. See Note 2 for further information on capitalized interest.

Recent Wireless Spectrum Acquisitions

37 GHz, 39 GHz and 47 GHz. The auction for the Upper Microwave Flexible Use Service licenses in the 37 GHz, 39 GHz and 47 GHz bands ("Auction 103") began on December 10, 2019 and ended January 30, 2020. On March 12, 2020, the FCC announced that Window Wireless L.L.C. ("Window"), a wholly-owned subsidiary of DISH Network, was the winning bidder of 50 wireless spectrum licenses in the 37-39 GHz band and 2,601 wireless spectrum licenses in the 47 GHz band, for a total of 2,651 wireless spectrum licenses, with Window's aggregate winning bids totaling approximately \$203 million. On October 22, 2019, we paid \$68 million to the FCC as a deposit for Auction 103. On April 9, 2020, we paid the remaining balance of our winning bids of approximately \$135 million. On June 4, 2020, the FCC issued an order granting Window's application to acquire the 37 GHz, 39 GHz and 47 GHz licenses (the "37 GHz, 39 GHz and 47 GHz Licenses").

3550-3650 MHz. The auction for the Priority Access Licenses for the 3550-3650 MHz band ("Auction 105") began on July 23, 2020 and ended on August 25, 2020. On September 2, 2020, the FCC announced that Wetterhorn Wireless L.L.C. ("Wetterhorn"), a wholly-owned subsidiary of DISH Network, was the winning bidder of 5,492 Priority Access Licenses in the 3550-3650 MHz band, with Wetterhorn's aggregate winning bids totaling approximately \$913 million. During the second and third quarters 2020, we paid \$83 million and \$100 million, respectively, to the FCC for our winning bids. These amounts are included in "Other current assets" on our Condensed Consolidated Balance Sheets as of September 30, 2020. On October 1, 2020, we paid the remaining balance of our winning bids of approximately \$730 million. The FCC has not yet issued the licenses to Wetterhorn.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

Wireless Spectrum Licenses

These wireless spectrum licenses are subject to certain interim and final build-out requirements, as well as certain renewal requirements that are summarized in the table below:

	As of September 30, 2020	Build-Out Deadlines		Expiration Date
	Carrying Amount (In thousands)	Interim	Final	
Owned:				
DBS Licenses (1)	\$ 677,409			
700 MHz Licenses	711,871	June 14, 2022 (2)	June 14, 2023 (5)	June 2023
AWS-4 Licenses	1,940,000	June 14, 2022 (2)	June 14, 2023 (5)	June 2023
H Block Licenses	1,671,506	June 14, 2022 (2)	June 14, 2023 (5)	June 2023
600 MHz Licenses	6,211,154	June 14, 2023 (3)	June 14, 2025 (6)	June 2029
MVDDS Licenses (1)	24,000			August 2024
LMDS Licenses (1)	—			September 2028
28 GHz Licenses	2,883		October 2, 2029 (7)	October 2029
24 GHz Licenses	11,772		December 11, 2029 (7)	December 2029
37 GHz, 30 GHz and 47 GHz Licenses	202,533		June 4, 2030 (7)	June 2030
Subtotal	<u>11,453,128</u>			
Non-controlling Investments:				
AWS-3 Licenses	9,890,389	October 2021 (4)	October 2027 (8)	October 2027 (8)
Capitalized Interest	5,321,968			
Total	<u>\$ 26,665,485</u>			

- (1) The build-out deadlines for these licenses have been met.
- (2) For these licenses, we must offer 5G broadband service to at least 20% of the U.S. population and have developed a core network by this date.
- (3) For these licenses, we must offer 5G broadband service to at least 70% of the U.S. population and have developed a core network by this date.
- (4) For these licenses, Northstar Wireless and SNR Wireless must provide reliable signal coverage and offer service to at least 40% of the population of each license area by this date.
- (5) For these licenses, we must offer 5G broadband service to 70% of the U.S. population by this date.
- (6) For these licenses, we must offer 5G broadband service to at least 75% of the population in each Partial Economic Area (which are service areas established by the FCC) by this date.
- (7) There are a variety of build-out options and associated build-out metrics associated with these licenses.
- (8) For these licenses, Northstar Wireless and SNR Wireless must provide reliable signal coverage and offer service to at least 75% of the population of each license area by this date. If the AWS-3 interim build-out requirement is not met, the AWS-3 expiration date and the AWS-3 final build-out requirement may be accelerated by two years (from October 2027 to October 2025) for each AWS-3 License area in which Northstar Wireless and SNR Wireless do not meet the requirement.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

Commercialization of Our Wireless Spectrum Licenses and Related Assets. In March 2017, we notified the FCC that we planned to deploy a narrowband IoT network on certain of these wireless licenses, which was to be the First Phase. We expected to complete the First Phase by March 2020, with subsequent phases to be completed thereafter. In light of, among other things, certain developments related to the Sprint-TMUS merger, during the first quarter 2020, we determined that the revision of certain of our build-out deadlines was probable and, therefore, we no longer intended to complete our narrowband IoT deployment. The FCC issued an Order effectuating the build-out deadline changes contemplated above on September 11, 2020. During the first quarter 2020, we impaired certain assets that would not be utilized in our 5G Network Deployment, resulting in a \$253 million non-cash impairment charge in “Impairment of long-lived assets” on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss). We have issued RFI/Ps to various vendors in the wireless industry and are in the process of selecting certain vendors as we move forward with our 5G Network Deployment. We currently expect expenditures for our 5G Network Deployment to be approximately \$10 billion, excluding capitalized interest. See Note 2 for further information.

We will need to make significant additional investments or partner with others to, among other things, commercialize, build-out, and integrate these licenses and related assets, and any additional acquired licenses and related assets; and comply with regulations applicable to such licenses. Depending on the nature and scope of such commercialization, build-out, integration efforts, and regulatory compliance, any such investments or partnerships could vary significantly. In addition, as we consider our options for the commercialization of our wireless spectrum, we will incur significant additional expenses and will have to make significant investments related to, among other things, research and development, wireless testing and wireless network infrastructure. We may also determine that additional wireless spectrum licenses may be required to commercialize our wireless business and to compete with other wireless service providers. For example, on September 22, 2020, we filed an application with the FCC to participate as a potential bidder in the upcoming wireless spectrum auction for the Flexible-Use Service Licenses in the 3.7-3.98 GHz Band (“Auction 107”). The auction is scheduled to commence on December 8, 2020. The FCC determined that bidding in this auction will be “anonymous,” which means that prior to and during the course of the auction the FCC will not make public any information about a specific applicant’s upfront deposit or its bids. In addition, FCC rules restrict information that bidders may disclose about their participation in the auction.

We may need to raise significant additional capital in the future to fund the efforts described above, which may not be available on acceptable terms or at all. There can be no assurance that we will be able to develop and implement a business model that will realize a return on these wireless spectrum licenses or that we will be able to profitably deploy the assets represented by these wireless spectrum licenses, which may affect the carrying amount of these assets and our future financial condition or results of operations.

DISH Network Non-Controlling Investments in the Northstar Entities and the SNR Entities Related to AWS-3 Wireless Spectrum Licenses

Non-Controlling Investments

During 2015, through our wholly-owned subsidiaries American II and American III, we initially made over \$10 billion in certain non-controlling investments in Northstar Spectrum, the parent company of Northstar Wireless, and in SNR HoldCo, the parent company of SNR Wireless, respectively. Under the applicable accounting guidance in ASC 810, Northstar Spectrum and SNR HoldCo are considered variable interest entities and, based on the characteristics of the structure of these entities and in accordance with the applicable accounting guidance, we consolidate these entities into our financial statements. See Note 2 for further information.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

Northstar Investment. Through American II, we own a non-controlling interest in Northstar Spectrum, which is comprised of 85% of the Class B Common Interests and 100% of the Class A Preferred Interests of Northstar Spectrum. Northstar Manager is the sole manager of Northstar Spectrum and owns a controlling interest in Northstar Spectrum, which is comprised of 15% of the Class B Common Interests of Northstar Spectrum. As of March 31, 2018, the total equity contributions from American II and Northstar Manager to Northstar Spectrum were approximately \$7.621 billion and \$133 million, respectively.

As of March 31, 2018, the total loans from American II to Northstar Wireless under the Northstar Credit Agreement (as defined below) for payments to the FCC related to the Northstar Licenses (as defined below) were approximately \$500 million. See below for further information.

SNR Investment. Through American III, we own a non-controlling interest in SNR HoldCo, which is comprised of 85% of the Class B Common Interests and 100% of the Class A Preferred Interests of SNR HoldCo. SNR Management is the sole manager of SNR HoldCo and owns a controlling interest in SNR HoldCo, which is comprised of 15% of the Class B Common Interests of SNR HoldCo. As of March 31, 2018, the total equity contributions from American III and SNR Management to SNR HoldCo were approximately \$5.590 billion and \$93 million, respectively. As of March 31, 2018, the total loans from American III to SNR Wireless under the SNR Credit Agreement (as defined below) for payments to the FCC related to the SNR Licenses (as defined below) were approximately \$500 million. See below for further information.

AWS-3 Auction

Northstar Wireless and SNR Wireless each filed applications with the FCC to participate in Auction 97 (the “AWS-3 Auction”) for the purpose of acquiring certain AWS-3 Licenses. Each of Northstar Wireless and SNR Wireless applied to receive bidding credits of 25% as designated entities under applicable FCC rules.

Northstar Wireless was the winning bidder for AWS-3 Licenses with gross winning bid amounts totaling approximately \$7.845 billion, which after taking into account a 25% bidding credit, was approximately \$5.884 billion. SNR Wireless was the winning bidder for AWS-3 Licenses with gross winning bid amounts totaling approximately \$5.482 billion, which after taking into account a 25% bidding credit, was approximately \$4.112 billion. In addition to the net winning bids, SNR Wireless made a bid withdrawal payment of approximately \$8 million.

FCC Order and October 2015 Arrangements. On August 18, 2015, the FCC released a *Memorandum Opinion and Order*, FCC 15-104 (the “Order”) in which the FCC determined, among other things, that DISH Network has a controlling interest in, and is an affiliate of, Northstar Wireless and SNR Wireless, and therefore DISH Network’s revenues should be attributed to them, which in turn makes Northstar Wireless and SNR Wireless ineligible to receive the 25% bidding credits (approximately \$1.961 billion for Northstar Wireless and \$1.370 billion for SNR Wireless).

Letters Exchanged between Northstar Wireless and the FCC Wireless Bureau. As outlined in letters exchanged between Northstar Wireless and the Wireless Telecommunications Bureau of the FCC (the “FCC Wireless Bureau”), Northstar Wireless paid the gross winning bid amounts for 261 AWS-3 Licenses (the “Northstar Licenses”) totaling approximately \$5.619 billion through the application of funds already on deposit with the FCC. Northstar Wireless also notified the FCC that it would not be paying the gross winning bid amounts for 84 AWS-3 Licenses totaling approximately \$2.226 billion.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

As a result of the nonpayment of those gross winning bid amounts, the FCC retained those licenses and Northstar Wireless owed the FCC an additional interim payment of approximately \$334 million (the “Northstar Interim Payment”), which is equal to 15% of \$2.226 billion. The Northstar Interim Payment was recorded as an expense during the fourth quarter 2015. Northstar Wireless immediately satisfied the Northstar Interim Payment through the application of funds already on deposit with the FCC and an additional loan from American II of approximately \$69 million. As a result, the FCC will not deem Northstar Wireless to be a “current defaulter” under applicable FCC rules.

In addition, the FCC Wireless Bureau acknowledged that Northstar Wireless’ nonpayment of those gross winning bid amounts does not constitute action involving gross misconduct, misrepresentation or bad faith. Therefore, the FCC concluded that such nonpayment will not affect the eligibility of Northstar Wireless, its investors (including DISH Network) or their respective affiliates to participate in future spectrum auctions (including Auction 1000 and any re-auction of the AWS-3 licenses retained by the FCC). At this time, DISH Network (through itself, a subsidiary or another entity in which it may hold a direct or indirect interest) expects to participate in any re-auction of those AWS-3 licenses.

If the winning bids from re-auction or other award of the AWS-3 licenses retained by the FCC are greater than or equal to the winning bids of Northstar Wireless, no additional amounts will be owed to the FCC. However, if those winning bids are less than the winning bids of Northstar Wireless, then Northstar Wireless will be responsible for the difference less any overpayment of the Northstar Interim Payment (which will be recalculated as 15% of the winning bids from re-auction or other award) (the “Northstar Re-Auction Payment”). For example, if the winning bids in a re-auction are \$1, the Northstar Re-Auction Payment would be approximately \$1.892 billion, which is calculated as the difference between \$2.226 billion (the Northstar winning bid amounts) and \$1 (the winning bids from re-auction) less the resulting \$334 million overpayment of the Northstar Interim Payment. As discussed above, at this time, DISH Network (through itself, a subsidiary or another entity in which it may hold a direct or indirect interest) expects to participate in any re-auction. We cannot predict with any degree of certainty the timing or outcome of any re-auction or the amount of any Northstar Re-Auction Payment.

DISH Network Guaranty in Favor of the FCC for Certain Northstar Wireless Obligations. On October 1, 2015, DISH Network entered into a guaranty in favor of the FCC (the “FCC Northstar Guaranty”) with respect to the Northstar Interim Payment (which was satisfied on October 1, 2015) and any Northstar Re-Auction Payment. The FCC Northstar Guaranty provides, among other things, that during the period between the due date for the payments guaranteed under the FCC Northstar Guaranty and the date such guaranteed payments are paid: (i) Northstar Wireless’ payment obligations to American II under the Northstar Credit Agreement will be subordinated to such guaranteed payments; and (ii) DISH Network or American II will withhold exercising certain rights as a creditor of Northstar Wireless.

Letters Exchanged between SNR Wireless and the FCC Wireless Bureau. As outlined in letters exchanged between SNR Wireless and the FCC Wireless Bureau, SNR Wireless paid the gross winning bid amounts for 244 AWS-3 Licenses (the “SNR Licenses”) totaling approximately \$4.271 billion through the application of funds already on deposit with the FCC and a portion of an additional loan from American III in an aggregate amount of approximately \$344 million (which included an additional bid withdrawal payment of approximately \$3 million). SNR Wireless also notified the FCC that it would not be paying the gross winning bid amounts for 113 AWS-3 Licenses totaling approximately \$1.211 billion.

As a result of the nonpayment of those gross winning bid amounts, the FCC retained those licenses and SNR Wireless owed the FCC an additional interim payment of approximately \$182 million (the “SNR Interim Payment”), which is equal to 15% of \$1.211 billion. The SNR Interim Payment was recorded as an expense during the fourth quarter 2015. SNR Wireless immediately satisfied the SNR Interim Payment through a portion of an additional loan from American III in an aggregate amount of approximately \$344 million. As a result, the FCC will not deem SNR Wireless to be a “current defaulter” under applicable FCC rules.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

In addition, the FCC Wireless Bureau acknowledged that SNR Wireless' nonpayment of those gross winning bid amounts does not constitute action involving gross misconduct, misrepresentation or bad faith. Therefore, the FCC concluded that such nonpayment will not affect the eligibility of SNR Wireless, its investors (including DISH Network) or their respective affiliates to participate in future spectrum auctions (including Auction 1000 and any re-auction of the AWS-3 licenses retained by the FCC). At this time, DISH Network (through itself, a subsidiary or another entity in which it may hold a direct or indirect interest) expects to participate in any re-auction of those AWS-3 licenses.

If the winning bids from re-auction or other award of the AWS-3 licenses retained by the FCC are greater than or equal to the winning bids of SNR Wireless, no additional amounts will be owed to the FCC. However, if those winning bids are less than the winning bids of SNR Wireless, then SNR Wireless will be responsible for the difference less any overpayment of the SNR Interim Payment (which will be recalculated as 15% of the winning bids from re-auction or other award) (the "SNR Re-Auction Payment"). For example, if the winning bids in a re-auction are \$1, the SNR Re-Auction Payment would be approximately \$1.029 billion, which is calculated as the difference between \$1.211 billion (the SNR winning bid amounts) and \$1 (the winning bids from re-auction) less the resulting \$182 million overpayment of the SNR Interim Payment. As discussed above, at this time, DISH Network (through itself, a subsidiary or another entity in which it may hold a direct or indirect interest) expects to participate in any re-auction. We cannot predict with any degree of certainty the timing or outcome of any re-auction or the amount of any SNR Re-Auction Payment.

DISH Network Guaranty in Favor of the FCC for Certain SNR Wireless Obligations. On October 1, 2015, DISH Network entered into a guaranty in favor of the FCC (the "FCC SNR Guaranty") with respect to the SNR Interim Payment (which was satisfied on October 1, 2015) and any SNR Re-Auction Payment. The FCC SNR Guaranty provides, among other things, that during the period between the due date for the payments guaranteed under the FCC SNR Guaranty and the date such guaranteed payments are paid: (i) SNR Wireless' payment obligations to American III under the SNR Credit Agreement will be subordinated to such guaranteed payments; and (ii) DISH Network or American III will withhold exercising certain rights as a creditor of SNR Wireless.

FCC Licenses. On October 27, 2015, the FCC granted the Northstar Licenses to Northstar Wireless and the SNR Licenses to SNR Wireless, respectively, which are recorded in "FCC authorizations" on our Condensed Consolidated Balance Sheets. The AWS-3 Licenses are subject to certain interim and final build-out requirements. By October 2021, Northstar Wireless and SNR Wireless must provide reliable signal coverage and offer service to at least 40% of the population in each area covered by an individual AWS-3 License (the "AWS-3 Interim Build-Out Requirement"). By October 2027, Northstar Wireless and SNR Wireless must provide reliable signal coverage and offer service to at least 75% of the population in each area covered by an individual AWS-3 License (the "AWS-3 Final Build-Out Requirement"). If the AWS-3 Interim Build-Out Requirement is not met, the AWS-3 License term and the AWS-3 Final Build-Out Requirement may be accelerated by two years (from October 2027 to October 2025) for each AWS-3 License area in which Northstar Wireless and SNR Wireless do not meet the requirement.

If the AWS-3 Final Build-Out Requirement is not met, the authorization for each AWS-3 License area in which Northstar Wireless and SNR Wireless do not meet the requirement may terminate. These wireless spectrum licenses expire in October 2027 unless they are renewed by the FCC. There can be no assurances that the FCC will renew these wireless spectrum licenses.

Qui Tam. On September 23, 2016, the United States District Court for the District of Columbia unsealed a qui tam complaint that was filed by Vermont National Telephone Company ("Vermont National") against us; our wholly-owned subsidiaries, American AWS-3 Wireless I L.L.C., American II, American III, and DISH Wireless Holding L.L.C.; Charles W. Ergen (our Chairman) and Cantey M. Ergen (a member of our board of directors); Northstar Wireless; Northstar Spectrum; Northstar Manager; SNR Wireless; SNR HoldCo; SNR Management; and certain other parties. See "Contingencies – Litigation – Vermont National Telephone Company" for further information.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

D.C. Circuit Court Opinion. On August 29, 2017, the United States Court of Appeals for the District of Columbia Circuit (the “D.C. Circuit”) in *SNR Wireless LicenseCo, LLC, et al. v. Federal Communications Commission*, 868 F.3d 1021 (D.C. Cir. 2017) (the “Appellate Decision”) affirmed the Order in part, and remanded the matter to the FCC to give Northstar Wireless and SNR Wireless an opportunity to seek to negotiate a cure of the issues identified by the FCC in the Order (a “Cure”). On January 26, 2018, SNR Wireless and Northstar Wireless filed a petition for a writ of certiorari, asking the United States Supreme Court to hear an appeal from the Appellate Decision, which the United States Supreme Court denied on June 25, 2018.

Order on Remand. On January 24, 2018, the FCC released an Order on Remand, DA 18-70 (the “Order on Remand”) purporting to establish a procedure to afford Northstar Wireless and SNR Wireless the opportunity to implement a Cure pursuant to the Appellate Decision. The Order on Remand provided that Northstar Wireless and SNR Wireless each had until April 24, 2018 to file the necessary documentation to demonstrate that, in light of such changes, each of Northstar Wireless and SNR Wireless qualifies for the very small business bidding credit that it sought in the AWS-3 Auction. Additionally, the Order on Remand provides that if either Northstar Wireless or SNR Wireless needs additional time to negotiate new or amended agreements, it may request to extend the deadline for such negotiations for an additional 45 days (extending the deadline to June 8, 2018). On April 16, 2018, the FCC approved Northstar Wireless’ and SNR Wireless’ requests to extend the deadline for such negotiations for an additional 45 days to June 8, 2018. On June 8, 2018, Northstar Wireless and SNR Wireless each filed amended agreements to demonstrate that, in light of such changes, each of Northstar Wireless and SNR Wireless qualifies for the very small business bidding credit that it sought in the AWS-3 Auction. The Order on Remand also provided, among other things, until July 23, 2018 for certain third-parties to file comments about any changes to the agreements proposed by Northstar Wireless and SNR Wireless and several third-parties filed comments (with one opposition). On October 22, 2018, Northstar Wireless and SNR Wireless filed a response to the third-party comments.

Northstar Wireless and SNR Wireless have filed a Joint Application for Review of the Order on Remand requesting, among other things, an iterative negotiation process with the FCC regarding a Cure, which was denied on July 12, 2018.

Northstar Operative Agreements

Northstar LLC Agreement. Northstar Spectrum is governed by a limited liability company agreement by and between American II and Northstar Manager (the “Northstar Spectrum LLC Agreement”). Pursuant to the Northstar Spectrum LLC Agreement, American II and Northstar Manager made pro-rata equity contributions in Northstar Spectrum.

On March 31, 2018, American II, Northstar Spectrum, and Northstar Manager amended and restated the Northstar Spectrum LLC Agreement, to, among other things: (i) exchange \$6.870 billion of the amounts outstanding and owed by Northstar Wireless to American II pursuant to the Northstar Credit Agreement (as defined below) for 6,870,493 Class A Preferred Interests in Northstar Spectrum (the “Northstar Preferred Interests”); (ii) replace the existing investor protection provisions with the investor protections described by the FCC in Baker Creek Communications, LLC, Memorandum Opinion and Order, 13 FCC Rcd 18709, 18715 (1998); (iii) delete the obligation of Northstar Manager to consult with American II regarding budgets and business plans; and (iv) remove the requirement that Northstar Spectrum’s systems be interoperable with ours.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

The Northstar Preferred Interests: (a) are non-voting; (b) have a 12 percent mandatory quarterly distribution, which can be paid in cash or additional face amount of Northstar Preferred Interests at the sole discretion of Northstar Manager; and (c) have a liquidation preference equal to the then-current face amount of the Northstar Preferred Interests plus accrued and unpaid mandatory quarterly distributions in the event of certain liquidation events or deemed liquidation events (e.g., a merger or dissolution of Northstar Spectrum, or a sale of substantially all of Northstar Spectrum's assets). As a result of the exchange noted in (i) above, a principal amount of \$500 million of debt remains under the Northstar Credit Agreement, as described below.

On June 7, 2018, American II, Northstar Spectrum, and Northstar Manager amended and restated the Second Amended and Restated Limited Liability Company Agreement, dated March 31, 2018, by and among American II, Northstar Spectrum, and Northstar Manager, to, among other things: (i) reduce the mandatory quarterly distribution for the Northstar Preferred Interests from 12 percent to eight percent from and after June 7, 2018; (ii) increase the window for Northstar Manager to "put" its interest in Northstar Spectrum to Northstar Spectrum after October 27, 2020 from 30 days to 90 days; (iii) provide an additional 90-day window for Northstar Manager to put its interest in Northstar Spectrum to Northstar Spectrum commencing on October 27, 2021; (iv) provide a right for Northstar Manager to require an appraisal of the fair market value of its interest in Northstar Spectrum at any time from October 27, 2022 through October 27, 2024, coupled with American II having the right to accept the offer to sell from Northstar Manager; (v) allow Northstar Manager to sell its interest in Northstar Spectrum without American II's consent any time after October 27, 2020 (previously October 27, 2025); (vi) allow Northstar Spectrum to conduct an initial public offering without American II's consent any time after October 27, 2022 (previously October 27, 2029); (vii) remove American II's rights of first refusal with respect to Northstar Manager's sale of its interest in Northstar Spectrum or Northstar Spectrum's sale of any AWS-3 Licenses; and (viii) remove American II's tag along rights with respect to Northstar Manager's sale of its interest in Northstar Spectrum.

Northstar Wireless Credit Agreement. On October 1, 2015, American II, Northstar Wireless and Northstar Spectrum amended the First Amended and Restated Credit Agreement dated October 13, 2014, by and among American II, as Lender, Northstar Wireless, as Borrower, and Northstar Spectrum, as Guarantor (as amended, the "Northstar Credit Agreement"), to provide, among other things, that: (i) the Northstar Interim Payment and any Northstar Re-Auction Payment will be made by American II directly to the FCC and will be deemed as loans under the Northstar Credit Agreement; (ii) the FCC is a third-party beneficiary with respect to American II's obligation to pay the Northstar Interim Payment and any Northstar Re-Auction Payment; (iii) in the event that the winning bids from re-auction or other award of the AWS-3 licenses retained by the FCC are less than the winning bids of Northstar Wireless, the purchaser, assignee or transferee of any AWS-3 Licenses from Northstar Wireless is obligated to pay its pro-rata share of the difference (and Northstar Wireless remains jointly and severally liable for such pro-rata share); and (iv) during the period between the due date for the payments guaranteed under the FCC Northstar Guaranty (as discussed below) and the date such guaranteed payments are paid, Northstar Wireless' payment obligations to American II under the Northstar Credit Agreement will be subordinated to such guaranteed payments.

On March 31, 2018, American II, Northstar Wireless, and Northstar Spectrum amended and restated the Northstar Credit Agreement, to, among other things: (i) lower the interest rate on the remaining \$500 million principal balance under the Northstar Credit Agreement from 12 percent per annum to six percent per annum; (ii) eliminate the higher interest rate that would apply in the case of an event of default; and (iii) modify and/or remove certain obligations of Northstar Wireless to prepay the outstanding loan amounts.

On June 7, 2018, American II, Northstar Wireless, and Northstar Spectrum amended and restated the Northstar Credit Agreement to, among other things: (i) extend the maturity date on the remaining loan balance from seven years to ten years; and (ii) remove the obligation of Northstar Wireless to obtain American II's consent for unsecured financing and equipment financing in excess of \$25 million.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

SNR Operative Agreements

SNR LLC Agreement. SNR HoldCo is governed by a limited liability company agreement by and between American III and SNR Management (the “SNR HoldCo LLC Agreement”). Pursuant to the SNR HoldCo LLC Agreement, American III and SNR Management made pro-rata equity contributions in SNR HoldCo.

On March 31, 2018, American III, SNR Holdco, SNR Wireless Management, and John Muleta amended and restated the SNR HoldCo LLC Agreement, to, among other things: (i) exchange \$5.065 billion of the amounts outstanding and owed by SNR Wireless to American III pursuant to the SNR Credit Agreement (as defined below) for 5,065,415 Class A Preferred Interests in SNR Holdco (the “SNR Preferred Interests”); (ii) replace the existing investor protection provisions with the investor protections described by the FCC in Baker Creek Communications, LLC, Memorandum Opinion and Order, 13 FCC Rcd 18709, 18715 (1998); (iii) delete the obligation of SNR Management to consult with American III regarding budgets and business plans; and (iv) remove the requirement that SNR Management’s systems be interoperable with ours. The SNR Preferred Interests: (a) are non-voting; (b) have a 12 percent mandatory quarterly distribution, which can be paid in cash or additional face amount of SNR Preferred Interests at the sole discretion of SNR Management; and (c) have a liquidation preference equal to the then-current face amount of the SNR Preferred Interests plus accrued and unpaid mandatory quarterly distributions in the event of certain liquidation events or deemed liquidation events (e.g., a merger or dissolution of SNR Holdco, or a sale of substantially all of SNR Holdco’s assets). As a result of the exchange noted in (i) above, a principal amount of \$500 million of debt remains under the SNR Credit Agreement, as described below.

On June 7, 2018, American III, SNR Holdco, SNR Management, and John Muleta amended and restated the Second Amended and Restated Limited Liability Company Agreement, dated March 31, 2018, by and among American III, SNR Holdco, SNR Management and John Muleta, to, among other things: (i) reduce the mandatory quarterly distribution for the SNR Preferred Interests from 12 percent to eight percent from and after June 7, 2018; (ii) increase the window for SNR Management to “put” its interest in SNR Holdco to SNR Holdco after October 27, 2020 from 30 days to 90 days; (iii) provide an additional 90-day window for SNR Management to put its interest in SNR Holdco to SNR Holdco commencing on October 27, 2021; (iv) provide a right for SNR Management to require an appraisal of the fair market value of its interest in SNR Holdco at any time from October 27, 2022 through October 27, 2024, coupled with American III having the right to accept the offer to sell from SNR Management; (v) allow SNR Management to sell its interest in SNR Holdco without American III’s consent any time after October 27, 2020 (previously October 27, 2025); (vi) allow SNR Holdco to conduct an initial public offering without American III’s consent any time after October 27, 2022 (previously October 27, 2029); (vii) remove American III’s rights of first refusal with respect to SNR Management’s sale of its interest in SNR Holdco or SNR Holdco’s sale of any AWS-3 Licenses; and (viii) remove American III’s tag along rights with respect to SNR Management’s sale of its interest in SNR Holdco.

SNR Credit Agreement. On October 1, 2015, American III, SNR Wireless and SNR HoldCo amended the First Amended and Restated Credit Agreement dated October 13, 2014, by and among American III, as Lender, SNR Wireless, as Borrower, and SNR HoldCo, as Guarantor (as amended, the “SNR Credit Agreement”), to provide, among other things, that: (i) the SNR Interim Payment and any SNR Re-Auction Payment will be made by American III directly to the FCC and will be deemed as loans under the SNR Credit Agreement; (ii) the FCC is a third-party beneficiary with respect to American III’s obligation to pay the SNR Interim Payment and any SNR Re-Auction Payment; (iii) in the event that the winning bids from re-auction or other award of the AWS-3 licenses retained by the FCC are less than the winning bids of SNR Wireless, the purchaser, assignee or transferee of any AWS-3 Licenses from SNR Wireless is obligated to pay its pro-rata share of the difference (and SNR Wireless remains jointly and severally liable for such pro-rata share); and (iv) during the period between the due date for the payments guaranteed under the FCC SNR Guaranty (as discussed below) and the date such guaranteed payments are paid, SNR Wireless’ payment obligations to American III under the SNR Credit Agreement will be subordinated to such guaranteed payments.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

On March 31, 2018, American III, SNR Wireless, and SNR Holdco amended and restated the SNR Credit Agreement, to, among other things: (i) lower the interest rate on the remaining \$500 million principal balance under the SNR Credit Agreement from 12 percent per annum to six percent per annum; (ii) eliminate the higher interest rate that would apply in the case of an event of default; and (iii) modify and/or remove certain obligations of SNR Wireless to prepay the outstanding loan amounts.

On June 7, 2018, American III, SNR Wireless, and SNR Holdco amended and restated the SNR Credit Agreement to, among other things: (i) extend the maturity date on the remaining loan balance from seven years to ten years; and (ii) remove the obligation of SNR Wireless to obtain American III's consent for unsecured financing and equipment financing in excess of \$25 million.

As of September 30, 2020 and December 31, 2019, Northstar Manager's ownership interest in Northstar Spectrum and SNR Management's ownership interest in SNR HoldCo was \$634 million and \$552 million, respectively, recorded as "Redeemable noncontrolling interests" on our Condensed Consolidated Balance Sheets.

The Northstar Entities and/or the SNR Entities may need to raise significant additional capital in the future, which may be obtained from third party sources or from us, so that the Northstar Entities and the SNR Entities may commercialize, build-out and integrate these AWS-3 Licenses, comply with regulations applicable to such AWS-3 Licenses, and make any potential Northstar Re-Auction Payment and SNR Re-Auction Payment for the AWS-3 licenses retained by the FCC. Depending upon the nature and scope of such commercialization, build-out, integration efforts, regulatory compliance, and potential Northstar Re-Auction Payment and SNR Re-Auction Payment, any loans, equity contributions or partnerships could vary significantly. There can be no assurance that we will be able to obtain a profitable return on our non-controlling investments in the Northstar Entities and the SNR Entities.

Contingencies

Separation Agreement

On January 1, 2008, we completed the distribution of our technology and set-top box business and certain infrastructure assets (the "Spin-off") into a separate publicly-traded company, EchoStar. In connection with the Spin-off, we entered into a separation agreement with EchoStar that provides, among other things, for the division of certain liabilities, including liabilities resulting from litigation. Under the terms of the separation agreement, EchoStar has assumed certain liabilities that relate to its business, including certain designated liabilities for acts or omissions that occurred prior to the Spin-off. Certain specific provisions govern intellectual property related claims under which, generally, EchoStar will only be liable for its acts or omissions following the Spin-off and we will indemnify EchoStar for any liabilities or damages resulting from intellectual property claims relating to the period prior to the Spin-off, as well as our acts or omissions following the Spin-off. On February 28, 2017, we and EchoStar and certain of our respective subsidiaries completed the transactions contemplated by the Share Exchange Agreement (the "Share Exchange Agreement") that was previously entered into on January 31, 2017 (the "Share Exchange"), pursuant to which certain assets that were transferred to EchoStar in the Spin-off were transferred back to us. On September 10, 2019, we and EchoStar and certain of our respective subsidiaries completed the transactions contemplated by the Master Transaction Agreement (the "Master Transaction Agreement") that was previously entered into on May 19, 2019, pursuant to which certain assets that were transferred to EchoStar in the Spin-off were transferred back to us. The Share Exchange Agreement and the Master Transaction Agreement contain additional indemnification provisions between us and EchoStar for certain liabilities and legal proceedings.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

Litigation

We are involved in a number of legal proceedings (including those described below) concerning matters arising in connection with the conduct of our business activities. Many of these proceedings are at preliminary stages, and many of these proceedings seek an indeterminate amount of damages. We regularly evaluate the status of the legal proceedings in which we are involved to assess whether a loss is probable or there is a reasonable possibility that a loss or an additional loss may have been incurred and to determine if accruals are appropriate. If accruals are not appropriate, we further evaluate each legal proceeding to assess whether an estimate of the possible loss or range of possible loss can be made.

For certain cases described on the following pages, management is unable to provide a meaningful estimate of the possible loss or range of possible loss because, among other reasons, (i) the proceedings are in various stages; (ii) damages have not been sought; (iii) damages are unsupported and/or exaggerated; (iv) there is uncertainty as to the outcome of pending appeals or motions; (v) there are significant factual issues to be resolved; and/or (vi) there are novel legal issues or unsettled legal theories to be presented or a large number of parties. For these cases, however, management does not believe, based on currently available information, that the outcomes of these proceedings will have a material adverse effect on our financial condition, though the outcomes could be material to our operating results for any particular period, depending, in part, upon the operating results for such period.

Broadband iTV

On December 19, 2019, Broadband iTV, Inc. filed a complaint against our wholly-owned subsidiary DISH Network L.L.C. in the United States District Court for the Western District of Texas. The complaint alleges infringement of United States Patent No. 10,028,026 (the “026 patent”), entitled “System for addressing on-demand TV program content on TV services platform of a digital TV services provider”; United States Patent No. 10,506,269 (the “269 patent”), entitled “System for addressing on-demand TV program content on TV services platform of a digital TV services provider”; United States Patent No. 9,998,791 (“the 791 patent”), entitled “Video-on-demand content delivery method for providing video-on-demand services to TV service subscribers”; and United States Patent No. 9,648,388 (the “388 patent”), entitled “Video-on-demand content delivery system for providing video-on-demand services to TV services subscribers.” Generally, the asserted patents relate to providing video on demand content to subscribers.

On July 10, 2020, July 20, 2020, July 24, 2020 and July 31, 2020, DISH Network L.L.C. filed petitions with the United States Patent and Trademark Office challenging the validity of, respectively, the 026 patent, the 791 patent, the 269 patent and the 388 patent.

We intend to vigorously defend this case. In the event that a court ultimately determines that we infringe the asserted patents, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could require us to materially modify certain features that we currently offer to consumers. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages. Each of the plaintiffs is an entity that seeks to license a patent portfolio without itself practicing any of the claims recited therein.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

Cedar Lane

On October 13, 2020, Cedar Lane Technologies filed a complaint against our wholly owned subsidiary, DISH Network L.L.C., in the United States District Court for the Western District of Texas. The complaint alleges infringement of United States Patent No. 6,502,194 (the “194 patent”), entitled “System for playback of network audio material on demand”; United States Patent No. 6,526,411 (the “411 patent”), entitled “System and method for creating dynamic playlists”; United States Patent No. 6,721,489 (the “489 patent”), entitled “Play list manager”; United States Patent No. 7,173,177 (the “177 patent”), entitled “User interface for simultaneous management of owned and unowned inventory”; United States Patent No. 7,642,443 (the “443 patent”), entitled “User interface for simultaneous management of owned and unowned inventory”; and United States Patent No. 8,165,867 (the “867 patent”), entitled “Methods for translating a device command.” Generally, the asserted patents relate to streaming digital audio to a home audio system; aspects of play lists and purchased content; and voice control. Cedar Lane Technologies is a non-practicing entity that has filed more than 75 patent infringement lawsuits.

We intend to vigorously defend this case. In the event that a court ultimately determines that we infringe the asserted patents, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could require us to materially modify certain features that we currently offer to consumers. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages. Each of the plaintiffs is an entity that seeks to license a patent portfolio without itself practicing any of the claims recited therein.

City of Hallandale Beach Police Officers’ and Firefighters’ Personnel Retirement Trust

On July 2, 2019, a putative class action lawsuit was filed by a purported EchoStar stockholder in the District Court of Clark County, Nevada under the caption *City of Hallandale Beach Police Officers’ and Firefighters’ Personnel Retirement Trust v. Ergen, et al.*, Case No. A-19-797799-B. The lawsuit named as defendants Mr. Ergen, the other members of the EchoStar Board, as well as EchoStar, certain of its officers, DISH Network and certain of DISH Network’s and EchoStar’s affiliates. Plaintiff alleges, among other things, breach of fiduciary duties in approving the transactions contemplated under the Master Transaction Agreement for inadequate consideration and pursuant to an unfair and conflicted process, and that EchoStar, DISH Network and certain other defendants aided and abetted such breaches. In the operative First Amended Complaint, filed on October 11, 2019, the plaintiff dropped as defendants the EchoStar board members other than Mr. Ergen. The trial of this matter is scheduled to start sometime during the five-week “stack” beginning September 7, 2021. See Note 14 for further information on the Master Transaction Agreement. Plaintiff seeks equitable relief, including the issuance of additional DISH Network Class A Common Stock, monetary relief and other costs and disbursements, including attorneys’ fees.

We intend to vigorously defend this case, but cannot predict with any degree of certainty the outcome of this suit or determine the extent of any potential liability or damages.

ClearPlay, Inc.

On March 13, 2014, ClearPlay, Inc. (“ClearPlay”) filed a complaint against us, our wholly-owned subsidiary DISH Network L.L.C., EchoStar, and its then wholly-owned subsidiary EchoStar Technologies L.L.C., in the United States District Court for the District of Utah. The complaint alleges willful infringement of United States Patent Nos. 6,898,799 (the “799 patent”), entitled “Multimedia Content Navigation and Playback”; 7,526,784 (the “784 patent”), entitled “Delivery of Navigation Data for Playback of Audio and Video Content”; 7,543,318 (the “318 patent”), entitled “Delivery of Navigation Data for Playback of Audio and Video Content”; 7,577,970 (the “970 patent”), entitled “Multimedia Content Navigation and Playback”; and 8,117,282 (the “282 patent”), entitled “Media Player Configured to Receive Playback Filters From Alternative Storage Mediums.” ClearPlay alleges that the AutoHop™ feature of our Hopper set-top box infringes the asserted patents. On February 11, 2015, the case was stayed pending various third-party challenges before the United States Patent and Trademark Office regarding the validity of certain of the patents asserted in the action.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

In those third-party challenges, the United States Patent and Trademark Office found that all claims of the 282 patent are unpatentable, and that certain claims of the 784 patent and 318 patent are unpatentable. ClearPlay appealed as to the 784 patent and the 318 patent, and on August 23, 2016, the United States Court of Appeals for the Federal Circuit affirmed the findings of the United States Patent and Trademark Office. On October 31, 2016, the stay was lifted. On October 16, October 21 and November 2, 2020, DISH Network L.L.C. filed petitions with the United States Patent and Trademark Office requesting ex parte reexamination of the validity of, respectively, the 784 patent, the 799 patent and the 318 patent; and on November 3, 2020, the United States Patent and Trademark Office granted the request for reexamination of the 784 patent. The trial has been reset for July 26, 2021. The report issued by ClearPlay's damages expert contends that ClearPlay is entitled to \$543 million in damages.

We intend to vigorously defend this case. In the event that a court ultimately determines that we infringe the asserted patents, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could require us to materially modify certain features that we currently offer to consumers. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

Contemporary Display LLC

On June 4, 2018, Contemporary Display LLC ("Contemporary") filed a complaint against us and DISH Network L.L.C. in the United States District Court for the Western District of Texas. The complaint alleges infringement of United States Patent No. 6,028,643 (the "643 patent"), entitled "Multiple-Screen Video Adapter with Television Tuner"; United States Patent No. 6,429,903 (the "903 patent"), entitled "Video Adapter for Supporting at Least One Television Monitor"; United States Patent No. 6,492,997 (the "997 patent"), entitled "Method and System for Providing Selectable Programming in a Multi-Screen Mode"; United States Patent No. 7,500,202 (the "202 patent"), "Remote Control for Navigating Through Content in an Organized and Categorized Fashion"; and United States Patent No. 7,809,842 (the "842 patent"), entitled "Transferring Sessions Between Devices." The 643 patent and the 903 patent are directed to video adapters for use with multiple displays. The 997 patent is directed to a system for presenting multiple video programs on a display device simultaneously. The 202 patent is directed to a remote control for interacting with a set-top box having programmable features and "operational controls" on at least three sides of the remote control. The 842 patent is directed to a system for managing online communication sessions between multiple devices. Contemporary is an entity that seeks to license a patent portfolio without itself practicing any of the claims recited therein.

In a First Amended Complaint filed on August 6, 2018, Contemporary added our wholly-owned subsidiary DISH Network L.L.C. as a defendant. In a Second Amended Complaint filed on October 9, 2018, Contemporary named only our wholly-owned subsidiary DISH Network L.L.C. as a defendant and dropped certain indirect infringement allegations. On June 10, 2019, DISH Network L.L.C. filed petitions with the United States Patent and Trademark Office challenging the validity of the asserted claims of the 842 patent, the 903 patent, the 643 patent and the 997 patent. On December 13, 2019 and January 7, 2020, the United States Patent and Trademark Office agreed to institute proceedings on each of our petitions. Following Contemporary's decision not to file Patent Owner Responses to DISH Network L.L.C.'s petitions on the 842 patent and the 903 patent, on April 24, 2020, the United States Patent and Trademark Office entered judgments granting those petitions and canceling the challenged claims of those patents. On July 11, 2019, the Court entered an order staying the case pending resolution of the petitions. On January 31, 2020, pursuant to the parties' joint motion, the Court dismissed all claims arising from the 202 patent, and extended its stay of the litigation pending non-appealable determinations on all of the petitions before the United States Patent and Trademark Office.

We intend to vigorously defend this case. In the event that a court ultimately determines that we infringe the asserted patents, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could require us to materially modify certain features that we currently offer to consumers. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

Customedia Technologies, L.L.C.

On February 10, 2016, Customedia Technologies, L.L.C. (“Customedia”) filed a complaint against us and our wholly-owned subsidiary DISH Network L.L.C. in the United States District Court for the Eastern District of Texas. The complaint alleges infringement of four patents: United States Patent No. 8,719,090 (the “090 patent”); United States Patent No. 9,053,494 (the “494 patent”); United States Patent No. 7,840,437 (the “437 patent”); and United States Patent No. 8,955,029 (the “029 patent”). Each patent is entitled “System for Data Management And On-Demand Rental And Purchase Of Digital Data Products.” Customedia alleges infringement in connection with our addressable advertising services, our DISH Anywhere feature, and our Pay-Per-View and video-on-demand offerings. Customedia is an entity that seeks to license a patent portfolio without itself practicing any of the claims recited therein.

In December 2016 and January 2017, DISH Network L.L.C. filed petitions with the United States Patent and Trademark Office challenging the validity of the asserted claims of each of the asserted patents. On June 12, 2017, the United States Patent and Trademark Office agreed to institute proceedings on our petitions challenging the 090 patent and the 437 patent; on July 18, 2017, it agreed to institute proceedings on our petitions challenging the 029 patent; and on July 28, 2017, it agreed to institute proceedings on our petitions challenging the 494 patent. These instituted proceedings cover all asserted claims of each of the asserted patents. The litigation in the District Court has been stayed since August 8, 2017 pending resolution of the proceedings at the United States Patent and Trademark Office.

Pursuant to an agreement between the parties, on December 20, 2017, DISH Network L.L.C. dismissed its petitions challenging the 029 patent in the United States Patent and Trademark Office, and on January 9, 2018, the parties dismissed their claims, counterclaims and defenses as to that patent in the litigation. On March 5, 2018, the United States Patent and Trademark Office conducted a trial on the remaining petitions. On June 11, 2018, the United States Patent and Trademark Office issued final written decisions on DISH Network L.L.C.’s petitions challenging the 090 patent and it invalidated all of the asserted claims. On July 25, 2018, the United States Patent and Trademark Office issued final written decisions on DISH Network L.L.C.’s petitions challenging the 437 patent and the 494 patent and it invalidated all of the asserted claims. Customedia appealed its losses before the United States Patent and Trademark Office. The Court of Appeals for the Federal Circuit heard oral argument on November 6, 2019 on the appeal involving the 437 patent, and summarily affirmed the patent’s invalidity on November 8, 2019. On January 7, 2020, Customedia petitioned the Court of Appeals for rehearing or rehearing en banc, raising issues about the constitutionality of the appointment of the administrative patent judges that heard the petition before the Patent and Trademark Office, but the Court of Appeals denied rehearing on March 5, 2020. On July 31, 2020, Customedia filed a petition with the United States Supreme Court asking it to hear a further appeal, but its petition was denied on October 13, 2020.

The Court of Appeals heard oral argument on the appeal involving the 090 patent and the 494 patent on December 3, 2019, and affirmed those patents’ invalidity on March 6, 2020. On May 5, 2020, Customedia filed petitions in the Federal Circuit for rehearing and rehearing en banc, seeking to reverse our appellate victories on the 090 and 494 patents, but those petitions were denied on June 9, 2020.

We intend to vigorously defend this case. In the event that a court ultimately determines that we infringe the asserted patents, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could require us to materially modify certain features that we currently offer to consumers. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

Innovative Foundry Technologies LLC

On December 20, 2019, Innovative Foundry Technologies LLC filed a complaint against us (as well as Semiconductor Manufacturing International Corporation; Broadcom Incorporated; Broadcom Corporation; and Cypress Semiconductor Corporation) in the United States District Court for the Western District of Texas. The complaint alleges infringement of United States Patent No. 6,580,122 (the “122 patent”), entitled “Transistor Device Having an Enhanced Width Dimension and a Method of Making Same”; United States Patent No. 6,806,126 (the “126 patent”), entitled “Method of Manufacturing a Semiconductor Component”; United States Patent No. 6,933,620 (the “620 patent”), entitled “Semiconductor Component and Method of Manufacture”; and United States Patent No. 7,009,226 (the “226 patent”), entitled “In-Situ Nitride/Oxynitride Processing with Reduced Deposition Surface Pattern Sensitivity.” On April 9, 2020, Semiconductor Manufacturing International Corporation filed a petition with the United States Patent and Trademark Office challenging the validity of the asserted claims of the 226 patent, and on April 14, 2020, it filed petitions challenging the validity of the asserted claims of the 126 patent and 620 patent.

We intend to vigorously defend this case. In the event that a court ultimately determines that we infringe the asserted patents, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could require us to materially modify certain features that we currently offer to consumers. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages. Each of the plaintiffs is an entity that seeks to license a patent portfolio without itself practicing any of the claims recited therein.

Mobile Networking Solutions

On August 12, 2019, Mobile Networking Solutions, LLC (“Mobile Networking Solutions”) filed a complaint against our wholly-owned subsidiary Sling Media L.L.C. for infringement of two patents: United States Patent No. 7,543,177 (the “177 patent”) and United States Patent No. 7,958,388 (the “388 patent”), each entitled “Methods and Systems for a Storage System.” Mobile Networking Solutions alleges infringement in connection with Sling Media L.L.C.’s use of a Hadoop Distributed File System for storage and processing of large data files. Pursuant to a stipulation of the parties, on December 16, 2019, the Court entered an order staying the case for six months so the parties may discuss settling the case. On May 12, 2020, pursuant to the parties’ joint request, the Court ordered dismissal of the case with prejudice. This matter is now concluded.

Multimedia Content Management LLC

On July 25, 2018, Multimedia Content Management LLC (“Multimedia”) filed a complaint against us in the United States District Court for the Western District of Texas. Multimedia alleges that we infringe United States Patent No. 8,799,468 (the “468 patent”), entitled “System for Regulating Access to and Distributing Content in a Network,” and United States Patent No. 9,465,925 (the “925 patent”), entitled “System for Regulating Access to and Distributing Content in a Network,” in connection with impulse pay per view content offerings on certain set-top boxes. Multimedia is an entity that seeks to license a patent portfolio without itself practicing any of the claims recited therein. On March 7, 2019, pursuant to stipulation, the Court substituted our wholly-owned subsidiary DISH Network L.L.C. as the defendant in our place. On April 23, 2019, DISH Network L.L.C. filed petitions with the United States Patent and Trademark Office challenging the validity of the asserted claims of each of the asserted patents. On November 13, 2019, the United States Patent and Trademark Office denied institution on both of the petitions. On December 13, 2019, DISH Network L.L.C. filed a motion for reconsideration, which the United States Patent and Trademark Office denied on March 10, 2020. On March 26, 2020, pursuant to the parties’ joint request, the Court dismissed the matter with prejudice. This matter is now concluded.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

Realtime Data LLC and Realtime Adaptive Streaming LLC

On June 6, 2017, Realtime Data LLC d/b/a IXO (“Realtime”) filed an amended complaint in the United States District Court for the Eastern District of Texas (the “Original Texas Action”) against us; our wholly-owned subsidiaries DISH Network L.L.C., DISH Technologies L.L.C. (then known as EchoStar Technologies L.L.C.), Sling TV L.L.C. and Sling Media L.L.C.; EchoStar, and EchoStar’s wholly-owned subsidiary Hughes Network Systems, L.L.C. (“HNS”); and Arris Group, Inc. Realtime’s initial complaint in the Original Texas Action, filed on February 14, 2017, had named only EchoStar and HNS as defendants.

The amended complaint in the Original Texas Action alleges infringement of United States Patent No. 8,717,204 (the “204 patent”), entitled “Methods for encoding and decoding data”; United States Patent No. 9,054,728 (the “728 patent”), entitled “Data compression systems and methods”; United States Patent No. 7,358,867 (the “867 patent”), entitled “Content independent data compression method and system”; United States Patent No. 8,502,707 (the “707 patent”), entitled “Data compression systems and methods”; United States Patent No. 8,275,897 (the “897 patent”), entitled “System and methods for accelerated data storage and retrieval”; United States Patent No. 8,867,610 (the “610 patent”), entitled “System and methods for video and audio data distribution”; United States Patent No. 8,934,535 (the “535 patent”), entitled “Systems and methods for video and audio data storage and distribution”; and United States Patent No. 8,553,759 (the “759 patent”), entitled “Bandwidth sensitive data compression and decompression.” Realtime alleges that we, Sling TV, Sling Media and Arris streaming video products and services compliant with various versions of the H.264 video compression standard infringe the 897 patent, the 610 patent and the 535 patent, and that the data compression system in Hughes’ products and services infringe the 204 patent, the 728 patent, the 867 patent, the 707 patent and the 759 patent.

On July 19, 2017, the Court severed Realtime’s claims against us, DISH Network L.L.C., Sling TV L.L.C., Sling Media L.L.C. and Arris Group, Inc. (alleging infringement of the 897 patent, the 610 patent and the 535 patent) from the Original Texas Action into a separate action in the United States District Court for the Eastern District of Texas (the “Second Texas Action”). On August 31, 2017, Realtime dismissed the claims against us, Sling TV L.L.C., Sling Media Inc., and Sling Media L.L.C. from the Second Texas Action and refiled these claims (alleging infringement of the 897 patent, the 610 patent and the 535 patent) against Sling TV L.L.C., Sling Media Inc., and Sling Media L.L.C. in a new action in the United States District Court for the District of Colorado (the “Colorado Action”). Also on August 31, 2017, Realtime dismissed DISH Technologies L.L.C. from the Original Texas Action, and on September 12, 2017, added it as a defendant in an amended complaint in the Second Texas Action. On November 6, 2017, Realtime filed a joint motion to dismiss the Second Texas Action without prejudice, which the Court entered on November 8, 2017.

On October 10, 2017, Realtime Adaptive Streaming LLC (“Realtime Adaptive Streaming”) filed suit against our wholly-owned subsidiaries DISH Network L.L.C. and DISH Technologies L.L.C., as well as Arris Group, Inc., in a new action in the United States District Court for the Eastern District of Texas (the “Third Texas Action”), alleging infringement of the 610 patent and the 535 patent. Also on October 10, 2017, an amended complaint was filed in the Colorado Action, substituting Realtime Adaptive Streaming as the plaintiff instead of Realtime, and alleging infringement of only the 610 patent and the 535 patent, but not the 897 patent. On November 6, 2017, Realtime Adaptive Streaming filed a joint motion to dismiss the Third Texas Action without prejudice, which the court entered on November 8, 2017. Also on November 6, 2017, Realtime Adaptive Streaming filed a second amended complaint in the Colorado Action, adding our wholly-owned subsidiaries DISH Network L.L.C. and DISH Technologies L.L.C., as well as Arris Group, Inc., as defendants.

As a result, neither we nor any of our subsidiaries is a defendant in the Original Texas Action; the Court has dismissed without prejudice the Second Texas Action and the Third Texas Action; and our wholly-owned subsidiaries DISH Network L.L.C., DISH Technologies L.L.C., Sling TV L.L.C. and Sling Media L.L.C. as well as Arris Group, Inc., are defendants in the Colorado Action, which now has Realtime Adaptive Streaming as the named plaintiff.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

On July 3, 2018, Sling TV L.L.C., Sling Media L.L.C., DISH Network L.L.C., and DISH Technologies L.L.C. filed petitions with the United States Patent and Trademark Office challenging the validity of each of the asserted patents. On January 31, 2019, the United States Patent and Trademark Office agreed to institute proceedings on our petitions challenging all asserted claims of each of the asserted patents, and it held trial on the petitions on December 5, 2019. On January 17, 2020, the United States Patent and Trademark Office terminated the petitions as time-barred, but issued a final written decision invalidating the 535 patent to third parties that had timely joined in our petition (and, on January 10, 2020, issued a final written decision invalidating the 535 patent in connection with a third party's independent petition). On March 16, 2020, Sling TV L.L.C., Sling Media L.L.C., DISH Network L.L.C., and DISH Technologies L.L.C. filed a notice of appeal from the terminated petitions to the United States Court of Appeals for the Federal Circuit. On June 29, 2020, the United States Patent and Trademark Office filed a notice of intervention in the appeal. The appeal has been fully briefed since September 9, 2020. The Colorado Action in the district court has been stayed since February 26, 2019, pending resolution of the petitions. On August 7, 2020, the United States Patent and Trademark Office granted a request for ex parte reexamination of the validity of the 610 patent.

Realtime Adaptive Streaming is an entity that seeks to license an acquired patent portfolio without itself practicing any of the claims recited therein.

We intend to vigorously defend this case. In the event that a court ultimately determines that we infringe the asserted patents, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could require us to materially modify certain features that we currently offer to consumers. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

Sound View Innovations, LLC

On December 30, 2019, Sound View Innovations, LLC filed one complaint against our wholly-owned subsidiaries DISH Network L.L.C. and DISH Technologies L.L.C. and a second complaint against our wholly-owned subsidiary Sling TV L.L.C. in the United States District Court for the District of Colorado. The complaint against DISH Network L.L.C. and DISH Technologies L.L.C. alleges infringement of United States Patent No. 6,502,133 (the "133 patent"), entitled "Real-Time Event Processing System with Analysis Engine Using Recovery Information" and both complaints allege infringement of United States Patent No. 6,708,213 (the "213 patent"), entitled "Method for Streaming Multimedia Information Over Public Networks"; United States Patent No. 6,757,796 (the "796 patent"), entitled "Method and System for Caching Streaming Live Broadcasts transmitted Over a Network"; and United States Patent No. 6,725,456 (the "456 patent"), entitled "Methods and Apparatus for Ensuring Quality of Service in an Operating System."

On May 21, 2020, June 3, 2020, June 5, 2020 and July 10, 2020, DISH Network L.L.C., DISH Technologies L.L.C. and Sling TV L.L.C. filed petitions with the United States Patent and Trademark Office challenging the validity of, respectively, the 213 patent, the 133 patent, the 456 patent and the 796 patent.

We intend to vigorously defend these cases. In the event that a court ultimately determines that we infringe the asserted patents, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could require us to materially modify certain features that we currently offer to consumers. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages. Each of the plaintiffs is an entity that seeks to license a patent portfolio without itself practicing any of the claims recited therein.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

Telemarketing Litigation

On March 25, 2009, our wholly-owned subsidiary DISH Network L.L.C. was sued in a civil action by the United States Attorney General and several states in the United States District Court for the Central District of Illinois (the “FTC Action”), alleging violations of the Telephone Consumer Protection Act (“TCPA”) and the Telemarketing Sales Rule (“TSR”), as well as analogous state statutes and state consumer protection laws. The plaintiffs alleged that we, directly and through certain independent third-party retailers and their affiliates, committed certain telemarketing violations.

On December 23, 2013, the plaintiffs filed a motion for summary judgment, which indicated for the first time that the state plaintiffs were seeking civil penalties and damages of approximately \$270 million and that the federal plaintiff was seeking an unspecified amount of civil penalties (which could substantially exceed the civil penalties and damages being sought by the state plaintiffs). The plaintiffs were also seeking injunctive relief that if granted would, among other things, enjoin DISH Network L.L.C., whether acting directly or indirectly through authorized telemarketers or independent third-party retailers, from placing any outbound telemarketing calls to market or promote its goods or services for five years, and enjoin DISH Network L.L.C. from accepting activations or sales from certain existing independent third-party retailers and from certain new independent third-party retailers, except under certain circumstances. We also filed a motion for summary judgment, seeking dismissal of all claims. On December 12, 2014, the Court issued its opinion with respect to the parties’ summary judgment motions. The Court found that DISH Network L.L.C. was entitled to partial summary judgment with respect to one claim in the action. In addition, the Court found that the plaintiffs were entitled to partial summary judgment with respect to ten claims in the action, which included, among other things, findings by the Court establishing DISH Network L.L.C.’s liability for a substantial amount of the alleged outbound telemarketing calls by DISH Network L.L.C. and certain of its independent third-party retailers that were the subject of the plaintiffs’ motion. The Court did not issue any injunctive relief and did not make any determination on civil penalties or damages, ruling instead that the scope of any injunctive relief and the amount of any civil penalties or damages were questions for trial.

The first phase of the bench trial took place January 19, 2016 through February 11, 2016, and the second phase took place October 25, 2016 through November 2, 2016.

On June 5, 2017, the Court issued Findings of Fact and Conclusions of Law and entered Judgment ordering DISH Network L.L.C. to pay an aggregate amount of \$280 million to the federal and state plaintiffs. The Court also issued a Permanent Injunction (the “Injunction”) against DISH Network L.L.C. that imposes certain ongoing compliance requirements on DISH Network L.L.C., which include, among other things: (i) the retention of a telemarketing-compliance expert to prepare a plan to ensure that DISH Network L.L.C. and certain independent third-party retailers will continue to comply with telemarketing laws and the Injunction; (ii) certain telemarketing records retention and production requirements; and (iii) certain compliance reporting and monitoring requirements. In addition to the compliance requirements under the Injunction, within ninety (90) days after the effective date of the Injunction, DISH Network L.L.C. is required to demonstrate that it and certain independent third-party retailers are in compliance with the Safe Harbor Provisions of the TSR and TCPA and have made no prerecorded telemarketing calls during the five (5) years prior to the effective date of the Injunction (collectively, the “Demonstration Requirements”). If DISH Network L.L.C. fails to prove that it meets the Demonstration Requirements, it will be barred from conducting any outbound telemarketing for two (2) years. If DISH Network L.L.C. fails to prove that a particular independent third-party retailer meets the Demonstration Requirements, DISH Network L.L.C. will be barred from accepting orders from that independent third-party retailer for two (2) years. On July 3, 2017, DISH Network L.L.C. filed two motions with the Court: (1) to alter or amend the Judgment or in the alternative to amend the Findings of Fact and Conclusions of Law; and (2) to clarify, alter and amend the Injunction. On August 10, 2017, the Court: (a) denied the motion to alter or amend the Judgment or in the alternative to amend the Findings of Fact and Conclusions of Law; and (b) allowed, in part, the motion to clarify, alter and amend the Injunction, and entered an Amended Permanent Injunction (the “Amended Injunction”).

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

Among other things, the Amended Injunction provided DISH Network L.L.C. a thirty (30) day extension to meet the Demonstration Requirements, expanded the exclusion of certain independent third-party retailers from the Demonstration Requirements, and clarified that, with regard to independent third-party retailers, the Amended Injunction only applied to their telemarketing of DISH TV goods and services. On October 10, 2017, DISH Network L.L.C. filed a notice of appeal to the United States Court of Appeals for the Seventh Circuit, which heard oral argument on September 17, 2018. On March 26, 2020, the United States Court of Appeals for the Seventh Circuit issued an opinion largely affirming DISH Network L.L.C.'s liability, but vacating and remanding the damages award. On June 25, 2020, the United States Court of Appeals for the Seventh Circuit denied DISH Network L.L.C.'s petition for rehearing and/or rehearing en banc. Pursuant to the parties' stipulation, on July 13, 2020, the Court entered a schedule for additional briefing on the remanded damages issue, which schedule has been extended at the parties' requests to accommodate settlement discussions.

Our total accrual at September 30, 2020 and December 31, 2019 related to the FTC Action was \$280 million, which was recorded in prior periods and is included in "Other accrued expenses" on our Condensed Consolidated Balance Sheets. Any eventual payments made with respect to the FTC Action may not be deductible for tax purposes, which had a negative impact on our effective tax rate for the year ended December 31, 2017. The tax deductibility of any eventual payments made with respect to the FTC Action may change, based upon, among other things, further developments in the FTC Action, including final adjudication of the FTC Action.

We may also from time to time be subject to private civil litigation alleging telemarketing violations. For example, a portion of the alleged telemarketing violations by an independent third-party retailer at issue in the FTC Action are also the subject of a certified class action filed against DISH Network L.L.C. in the United States District Court for the Middle District of North Carolina (the "Krakauer Action"). Following a five-day trial, on January 19, 2017, a jury in that case found that the independent third-party retailer was acting as DISH Network L.L.C.'s agent when it made the 51,119 calls at issue in that case, and that class members are eligible to recover \$400 in damages for each call made in violation of the TCPA. On May 22, 2017, the Court ruled that the violations were willful and knowing, and trebled the damages award to \$1,200 for each call made in violation of TCPA. On April 5, 2018, the Court entered a \$61 million judgment in favor of the class. DISH Network L.L.C. appealed and on May 30, 2019, the United States Court of Appeals for the Fourth Circuit affirmed. On October 15, 2019, DISH Network L.L.C. filed a petition for writ of certiorari, requesting that the United States Supreme Court agree to hear a further appeal but it denied the petition on December 16, 2019. On January 21, 2020, DISH Network L.L.C. filed a second notice of appeal relating to the district court's orders on the claims administration process to identify, and disburse funds to, individual class members. On June 29, 2020, Krakauer filed a motion to dismiss the appeal for lack of jurisdiction. The district court currently is deciding how to handle the \$10.76 million in disburseable judgment funds for which no corresponding class member was identified, but has indicated that it will not refund those monies to DISH Network L.L.C. During the third quarter 2019, the judgment was paid to the court.

We intend to vigorously defend these cases. We cannot predict with any degree of certainty the outcome of these suits.

Telemarketing Shareholder Derivative Litigation

On October 19, 2017, Plumbers Local Union No. 519 Pension Trust Fund ("Plumbers Local 519"), a purported shareholder of the Company, filed a putative shareholder derivative action in the District Court for Clark County, Nevada alleging, among other things, breach of fiduciary duty claims against the following current and former members of the Company's Board of Directors: Charles W. Ergen; James DeFranco; Cantey M. Ergen; Steven R. Goodbarn; David K. Moskowitz; Tom A. Ortolfo; Carl E. Vogel; George R. Brokaw; and Gary S. Howard (collectively, the "Director Defendants"). In its complaint, Plumbers Local 519 contends that, by virtue of their alleged failure to appropriately ensure the Company's compliance with telemarketing laws, the Director Defendants exposed the Company to liability for telemarketing violations, including those in the Krakauer Action. It also contends that the Director Defendants caused the Company to pay improper compensation and benefits to themselves and others who allegedly breached their fiduciary duties to the Company.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

Plumbers Local 519 alleges causes of action for breach of fiduciary duties of loyalty and good faith, gross mismanagement, abuse of control, corporate waste and unjust enrichment. Plumbers Local 519 is seeking an unspecified amount of damages.

On November 13, 2017, City of Sterling Heights Police and Fire Retirement System (“Sterling Heights”), a purported shareholder of the Company, filed a putative shareholder derivative action in the District Court for Clark County, Nevada. Sterling Heights makes substantially the same allegations as Plumbers Union 519, and alleges causes of action against the Director Defendants for breach of fiduciary duty, waste of corporate assets and unjust enrichment. Sterling Heights is seeking an unspecified amount of damages. Pursuant to a stipulation of the parties, on January 4, 2018, the District Court agreed to consolidate the Sterling Heights action with the Plumbers Local 519 action, and on January 12, 2018, the derivative plaintiffs filed an amended consolidated complaint that largely duplicates the original Plumbers Local 519 complaint. Our Board of Directors has established a Special Litigation Committee to review the factual allegations and legal claims in this action. On May 15, 2018, the District Court granted the Special Litigation Committee’s motion to stay the case pending its investigation. The Special Litigation Committee’s report was filed on November 27, 2018, and recommended that the Company not pursue the claims asserted by the derivative plaintiffs. On December 20, 2018, the Special Litigation Committee filed a motion seeking deferral to its determination that the claims should be dismissed. Following a two-day evidentiary hearing on July 6-7, 2020, on July 17, 2020, the District Court entered an order granting the Special Litigation Committee’s motion. On August 25, 2020, the derivative plaintiffs filed a notice of appeal to the Nevada Supreme Court.

We cannot predict with any degree of certainty the outcome of these suits or determine the extent of any potential liability or damages.

TQ Delta, LLC

On July 17, 2015, TQ Delta, LLC (“TQ Delta”) filed a complaint against us and our wholly-owned subsidiaries DISH DBS Corporation and DISH Network L.L.C. in the United States District Court for the District of Delaware. The Complaint alleges infringement of United States Patent No. 6,961,369 (the “369 patent”), which is entitled “System and Method for Scrambling the Phase of the Carriers in a Multicarrier Communications System”; United States Patent No. 8,718,158 (the “158 patent”), which is entitled “System and Method for Scrambling the Phase of the Carriers in a Multicarrier Communications System”; United States Patent No. 9,014,243 (the “243 patent”), which is entitled “System and Method for Scrambling Using a Bit Scrambler and a Phase Scrambler”; United States Patent No. 7,835,430 (the “430 patent”), which is entitled “Multicarrier Modulation Messaging for Frequency Domain Received Idle Channel Noise Information”; United States Patent No. 8,238,412 (the “412 patent”), which is entitled “Multicarrier Modulation Messaging for Power Level per Subchannel Information”; United States Patent No. 8,432,956 (the “956 patent”), which is entitled “Multicarrier Modulation Messaging for Power Level per Subchannel Information”; and United States Patent No. 8,611,404 (the “404 patent”), which is entitled “Multicarrier Transmission System with Low Power Sleep Mode and Rapid-On Capability.” On September 9, 2015, TQ Delta filed a first amended complaint that added allegations of infringement of United States Patent No. 9,094,268 (the “268 patent”), which is entitled “Multicarrier Transmission System With Low Power Sleep Mode and Rapid-On Capability.” On May 16, 2016, TQ Delta filed a second amended complaint that added EchoStar Corporation and its then wholly-owned subsidiary EchoStar Technologies L.L.C. as defendants. TQ Delta alleges that our satellite TV service, Internet service, set-top boxes, gateways, routers, modems, adapters and networks that operate in accordance with one or more Multimedia over Coax Alliance Standards infringe the asserted patents. TQ Delta has filed actions in the same court alleging infringement of the same patents against Comcast Corp., Cox Communications, Inc., DirecTV, Time Warner Cable Inc. and Verizon Communications, Inc. TQ Delta is an entity that seeks to license an acquired patent portfolio without itself practicing any of the claims recited therein.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

On July 14, 2016, TQ Delta stipulated to dismiss with prejudice all claims related to the 369 patent and the 956 patent. On July 20, 2016, we filed petitions with the United States Patent and Trademark Office challenging the validity of all of the patent claims of the 404 patent and the 268 patent that have been asserted against us. Third parties have filed petitions with the United States Patent and Trademark Office challenging the validity of all of the patent claims that have been asserted against us in the action. On November 4, 2016, the United States Patent and Trademark Office agreed to institute proceedings on the third-party petitions related to the 158 patent, the 243 patent, the 412 patent and the 430 patent.

On December 20, 2016, pursuant to a stipulation of the parties, the Court stayed the case until the resolution of all petitions to the United States Patent and Trademark Office challenging the validity of all of the patent claims at issue. On January 19, 2017, the United States Patent and Trademark Office granted our motions to join the instituted petitions on the 430 and 158 patents.

On February 9, 2017, the United States Patent and Trademark Office agreed to institute proceedings on our petition related to the 404 patent, and on February 13, 2017, the United States Patent and Trademark Office agreed to institute proceedings on our petition related to the 268 patent. On February 27, 2017, the United States Patent and Trademark Office granted our motions to join the instituted petitions on the 243 and 412 patents. On October 26, 2017, the United States Patent and Trademark Office issued final written decisions on the petitions challenging the 158 patent, the 243 patent, the 412 patent and the 430 patent, and it invalidated all of the asserted claims of those patents. On February 7, 2018, the United States Patent and Trademark Office issued final written decisions on the petitions challenging the 404 patent, and it invalidated all of the asserted claims of that patent on the basis of our petition. On February 10, 2018, the United States Patent and Trademark Office issued a final written decision on our petition challenging the 268 patent, and it invalidated all of the asserted claims. On March 12, 2018, the United States Patent and Trademark Office issued a final written decision on a third-party petition challenging the 268 patent, and it invalidated all of the asserted claims. All asserted claims have now been invalidated by the United States Patent and Trademark Office. TQ Delta has filed notices of appeal from the final written decisions adverse to it. On May 9, 2019, the United States Court of Appeals for the Federal Circuit affirmed the invalidity of the 430 patent and the 412 patent. On July 10, 2019, the United States Court of Appeals for the Federal Circuit affirmed the invalidity of the asserted claims of the 404 patent. On July 15, 2019, the United States Court of Appeals for the Federal Circuit affirmed the invalidity of the asserted claims of the 268 patent. On November 22, 2019, the United States Court of Appeals for the Federal Circuit reversed the invalidity finding on the 243 patent and the 158 patent, and then, on March 29, 2020, denied a petition for panel rehearing as to those findings.

We intend to vigorously defend this case. In the event that a court ultimately determines that we infringe the asserted patents, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could require us to materially modify certain features that we currently offer to consumers. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

Turner Network Sales

On October 6, 2017, Turner Network Sales, Inc. (“Turner”) filed a complaint against our wholly-owned subsidiary DISH Network L.L.C. in the United States District Court for the Southern District of New York. The operative First Amended Complaint alleges that DISH Network L.L.C. improperly calculated and withheld licensing fees owing to Turner in connection with its carriage of CNN and other networks. On December 14, 2017, DISH Network L.L.C. filed its operative first amended counterclaims against Turner. In the counterclaims, DISH Network L.L.C. seeks a declaratory judgment that it properly calculated the licensing fees owed to Turner for carriage of CNN, and also alleges claims for unrelated breaches of the parties’ affiliation agreement. In its October 1, 2018 damage expert’s report, Turner claimed damages of \$159 million, plus \$24 million in interest. On September 27, 2019, the Court granted, in part, Turner’s motion for summary judgment, holding, in part, that Turner was entitled to recover approximately \$20 million in license fee payments that DISH Network L.L.C. had withheld after it discovered previous over-payments. On February 12, 2020, the parties filed a stipulation to dismiss certain of their respective claims. Trial on the remaining claims in this matter has been re-set for March 1, 2021, where DISH Network L.L.C.’s incremental exposure (per Turner’s damages expert’s amended report) is approximately \$206 million.

We intend to vigorously defend this case. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

Uniloc

On January 31, 2019, Uniloc 2017 LLC (“Uniloc”) filed a complaint against our wholly-owned subsidiary Sling TV L.L.C. in the United States District Court for the District of Colorado. The Complaint alleges infringement of United States Patent No. 6,519,005 (the “005 patent”), which is entitled “Method of Concurrent Multiple-Mode Motion Estimation for Digital Video”; United States Patent No. 6,895,118 (the “118 patent”), which is entitled “Method of Coding Digital Image Based on Error Concealment”; United States Patent No. 9,721,273 (the “273 patent”), which is entitled “System and Method for Aggregating and Providing Audio and Visual Presentations Via a Computer Network”; and United States Patent No. 8,407,609 (the “609 patent”), which is entitled “System and Method for Providing and Tracking the Provision of Audio and Visual Presentations Via a Computer Network.” Uniloc is an entity that seeks to license an acquired patent portfolio without itself practicing any of the claims recited therein.

On June 25, 2019, Sling TV L.L.C. filed a petition with the United States Patent and Trademark Office challenging the validity of all of the asserted claims of the 005 patent. On July 19, 2019 and July 22, 2019, respectively, Sling TV L.L.C. filed petitions with the United States Patent and Trademark Office challenging the validity of all asserted claims of the 273 patent and the 609 patent. On August 12, 2019, Sling TV L.L.C. filed a petition with the United States Patent and Trademark Office challenging the validity of all of the asserted claims of the 118 patent. On October 18, 2019, pursuant to a stipulation of the parties, the Court entered a stay of the trial proceedings. On January 9, 2020, the United States Patent and Trademark Office agreed to institute proceedings on the petition challenging the 005 patent. On January 15, 2020, the United States Patent and Trademark Office agreed to institute proceedings on the petition challenging the 273 patent. On February 4, 2020, the United States Patent and Trademark Office agreed to institute proceedings on the petition challenging the 609 patent. On February 25, 2020, the United States Patent and Trademark Office declined to institute proceedings on the petition challenging the 118 patent.

We intend to vigorously defend this case. In the event that a court ultimately determines that we infringe the asserted patents, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could require us to materially modify certain features that we currently offer to consumers. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

Vermont National Telephone Company

On September 23, 2016, the United States District Court for the District of Columbia unsealed a qui tam complaint that was filed by Vermont National against us; our wholly-owned subsidiaries, American AWS-3 Wireless I L.L.C., American II, American III, and DISH Wireless Holding L.L.C.; Charles W. Ergen (our Chairman) and Cantey M. Ergen (a member of our board of directors); Northstar Wireless; Northstar Spectrum; Northstar Manager; SNR Wireless; SNR HoldCo; SNR Management; and certain other parties. The complaint was unsealed after the United States Department of Justice notified the Court that it had declined to intervene in the action. The complaint is a civil action that was filed under seal on May 13, 2015 by Vermont National, which participated in the AWS-3 Auction through its wholly-owned subsidiary, VTel Wireless. The complaint alleges violations of the federal civil False Claims Act (the “FCA”) based on, among other things, allegations that Northstar Wireless and SNR Wireless falsely claimed bidding credits of 25% in the AWS-3 Auction when they were allegedly under the de facto control of DISH Network and, therefore, were not entitled to the bidding credits as designated entities under applicable FCC rules. Vermont National seeks to recover on behalf of the United States government approximately \$10 billion, which reflects the \$3.3 billion in bidding credits that Northstar Wireless and SNR Wireless claimed in the AWS-3 Auction, trebled under the FCA. Vermont National also seeks civil penalties of not less than \$5,500 and not more than \$11,000 for each violation of the FCA. On March 2, 2017, the United States District Court for the District of Columbia entered a stay of the litigation until such time as the United States Court of Appeals for the District of Columbia (the “D.C. Circuit”) issued its opinion in *SNR Wireless LicenseCo, LLC, et al. v. F.C.C.* The D.C. Circuit issued its opinion on August 29, 2017 and remanded the matter to the FCC for further proceedings. See “Commitments – DISH Network Non-Controlling Investments in the Northstar Entities and the SNR Entities Related to AWS-3 Wireless Spectrum Licenses” above for further information.

Thereafter, the Court maintained the stay until October 26, 2018. On February 11, 2019, the Court granted Vermont National’s unopposed motion for leave to file an amended complaint. On March 28, 2019, the defendants filed a motion to dismiss Vermont National’s amended complaint, which has been fully briefed since June 3, 2019.

We intend to vigorously defend this case. We cannot predict with any degree of certainty the outcome of this proceeding or determine the extent of any potential liability or damages.

Waste Disposal Inquiry

The California Attorney General and the Alameda County (California) District Attorney are investigating whether certain of our waste disposal policies, procedures and practices are in violation of the California Business and Professions Code and the California Health and Safety Code. We expect that these entities will seek injunctive and monetary relief. The investigation appears to be part of a broader effort to investigate waste handling and disposal processes of a number of industries. While we are unable to predict the outcome of this investigation, we do not believe that the outcome will have a material effect on our results of operations, financial condition or cash flows.

Other

In addition to the above actions, we are subject to various other legal proceedings and claims that arise in the ordinary course of business, including, among other things, disputes with programmers regarding fees. In our opinion, the amount of ultimate liability with respect to any of these actions is unlikely to materially affect our financial condition, results of operations or liquidity, though the outcomes could be material to our operating results for any particular period, depending, in part, upon the operating results for such period.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

12. Segment Reporting

Operating segments are components of an enterprise for which separate financial information is available and regularly evaluated by the chief operating decision maker(s) of an enterprise. Operating income is the primary measure used by our chief operating decision maker to evaluate segment operating performance. We currently operate two primary business segments: (1) Pay-TV; and (2) Wireless. See Note 1 for further information.

All other and eliminations primarily include intersegment eliminations related to intercompany debt and the related interest income and interest expense, which are eliminated in consolidation.

The total assets, revenue and operating income by segment were as follows:

	As of	
	September 30, 2020	December 31, 2019
	(In thousands)	
Total assets:		
Pay-TV	\$ 33,706,649	\$ 31,531,612
Wireless	28,717,584	25,686,381
Eliminations	(26,323,796)	(23,987,058)
Total assets	\$ 36,100,437	\$ 33,230,935

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2020	2019	2020	2019
	(In thousands)			
Revenue:				
Pay-TV	\$ 3,190,664	\$ 3,169,967	\$ 9,595,131	\$ 9,569,972
Wireless	1,341,512	64	1,343,893	187
Eliminations	(585)	(1,668)	(2,954)	(3,340)
Total revenue	\$ 4,531,591	\$ 3,168,363	\$ 10,936,070	\$ 9,566,819
Operating income (loss):				
Pay-TV	\$ 803,817	\$ 491,696	\$ 2,040,970	\$ 1,406,179
Wireless (1)	7,431	(22,804)	(447,994)	(50,255)
Eliminations	—	—	—	—
Total operating income (loss)	\$ 811,248	\$ 468,892	\$ 1,592,976	\$ 1,355,924

(1) The nine months ended September 30, 2020 were negatively impacted by “Impairment of long-lived assets” of \$356 million, resulting from non-cash impairments of the T1 satellite and D1 satellites, as well as capitalized costs of equipment, labor and other assets and operating lease assets related to the narrowband IoT deployment that would not be utilized in our 5G Network Deployment. See Note 2 for further information.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

Geographic Information. Revenue is attributed to geographic regions based upon the location where the goods and services are provided. All service revenue was derived from the United States. Substantially all of our long-lived assets reside in the United States.

The following table summarizes revenue by geographic region:

Revenue:	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2020	2019	2020	2019
	(In thousands)			
United States	\$ 4,516,475	\$ 3,156,853	\$ 10,899,922	\$ 9,533,647
Canada and Mexico	15,116	11,510	36,148	33,172
Total revenue	\$ 4,531,591	\$ 3,168,363	\$ 10,936,070	\$ 9,566,819

The revenue from external customers disaggregated by major revenue source was as follows:

Category:	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2020	2019	2020	2019
	(In thousands)			
Pay-TV video and related revenue	\$ 3,139,575	\$ 3,117,191	\$ 9,455,429	\$ 9,427,533
Wireless services and related revenue	1,082,570	—	1,082,570	—
Pay-TV equipment sales and other revenue	51,089	52,776	139,702	142,439
Wireless equipment sales and other revenue	258,942	64	261,323	187
Eliminations equipment sales and other revenue	(585)	(1,668)	(2,954)	(3,340)
Total	\$ 4,531,591	\$ 3,168,363	\$ 10,936,070	\$ 9,566,819

All revenues during the three and nine months ended September 30, 2020 and 2019 were primarily derived from our Pay-TV segment.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

13. Contract Balances

Our valuation and qualifying accounts as of September 30, 2020 were as follows:

Allowance for credit losses	Balance at Beginning of Period	Current Period Provision for Expected Credit Losses	Write-offs Charged Against Allowance	Balance at End of Period
	(In thousands)			
For the nine months ended September 30, 2020	\$ 19,280	\$ 60,964	\$ (15,630)	\$ 64,614

Deferred revenue related to contracts with our customers is recorded in “Deferred revenue and other” and “Long-term deferred revenue and other long-term liabilities” on our Condensed Consolidated Balance Sheets. Changes in deferred revenue related to contracts with our customers were as follows:

	Contract Liabilities
	(In thousands)
Balance as of December 31, 2019	\$ 613,272
Recognition of unearned revenue	(6,457,508)
Deferral of revenue	6,627,478
Balance as of September 30, 2020	<u>\$ 783,242</u>

We apply a practical expedient and do not disclose the value of the remaining performance obligations for contracts that are less than one year in duration, which represent a substantial majority of our revenue. As such, the amount of revenue related to unsatisfied performance obligations is not necessarily indicative of our future revenue.

14. Related Party Transactions**Master Transaction Agreement**

On May 19, 2019, we entered into the Master Transaction Agreement with EchoStar.

Pursuant to the Master Transaction Agreement, among other things: (i) EchoStar carried out an internal reorganization in which certain assets and liabilities of the EchoStar Satellite Services segment, the business segment of EchoStar that provides broadcast satellite operations and satellite services, as well as certain related licenses, real estate properties and employees (together, the “BSS Business”) were transferred to Newco (the “Pre-Closing Restructuring”); (ii) EchoStar distributed all outstanding shares of common stock, par value \$0.001 per share, of Newco (such stock, “Newco Common Stock”) on a pro rata basis (the “Distribution”), to the holders of record of Class A common stock, par value \$0.001 per share, of EchoStar and Class B common stock, par value \$0.001 per share, of EchoStar; and (iii) upon the consummation of the Pre-Closing Restructuring and the Distribution, Merger Sub merged with and into Newco (the “Merger”) such that, upon consummation of the Merger, Merger Sub ceased to exist and Newco continued as our wholly-owned subsidiary.

Effective September 10, 2019, pursuant to the terms and subject to the conditions set forth in the Master Transaction Agreement, in consideration for the Merger, we issued 22,937,188 shares of our Class A common stock to the holders of Newco Common Stock at a ratio of 0.23523769 of our Class A common stock for each outstanding share of Newco Common Stock. The transaction was structured as a tax-free spin-off and merger.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

In addition, as the result of the Merger, we, EchoStar and, as relevant, certain of our or their respective subsidiaries, entered into ancillary agreements involving tax, employment and intellectual property matters, which set forth certain rights and obligations of us and EchoStar and our and their respective subsidiaries related to the Merger with respect to, among other things: (i) the payment of tax liability refunds, and the filing of tax returns related to Newco and the BSS Business; (ii) the allocation of employment-related assets and liabilities between us and EchoStar; (iii) certain employee compensation, equity awards, benefit plans, programs and arrangements relating to employees who are expected to be transferred to us pursuant to the Merger; (iv) a cross-license between us and EchoStar for certain intellectual property either transferred to us as part of the Merger or retained by EchoStar that is also used in the BSS Business; and (v) the provision of certain telemetry, tracking and control services by us and our subsidiaries to EchoStar and its subsidiaries.

The description of the Master Transaction Agreement in this section is qualified in its entirety by reference to the complete text of the Master Transaction Agreement, a copy of which is filed as Exhibit 2.1 to our Quarterly Report on Form 10-Q for the quarter ended June 30, 2019.

The Merger was accounted for as an asset purchase, as substantially all of the fair value of the gross assets acquired was concentrated in a group of similar identifiable assets. As the Merger was between entities that were under common control, we recorded the assets and liabilities received under the Merger at EchoStar's historical cost basis, with the offsetting amount recorded in "Additional paid-in capital" on our Condensed Consolidated Balance Sheets. A significant portion of the assets received under the Merger were historically leased to us by EchoStar. As these assets and the related liabilities have been transferred to us pursuant to the Master Transaction Agreement, they are no longer be included in "Operating lease assets," "Other current liabilities" and "Operating lease liabilities," but rather in "Property and equipment, net" on our Condensed Consolidated Balance Sheets.

Spin-off from EchoStar

Following the Spin-off, we and EchoStar have operated as separate publicly-traded companies and neither entity has any ownership interest in the other. However, a substantial majority of the voting power of the shares of both companies is owned beneficially by Charles W. Ergen, our Chairman, and by certain entities established by Mr. Ergen for the benefit of his family.

Related Party Transactions with EchoStar

In connection with and following the Spin-off, we and EchoStar have entered into certain agreements pursuant to which we obtain certain products, services and rights from EchoStar, EchoStar obtains certain products, services and rights from us, and we and EchoStar have indemnified each other against certain liabilities arising from our respective businesses. Pursuant to the Share Exchange Agreement, among other things, EchoStar transferred to us certain assets and liabilities of the EchoStar technologies and EchoStar broadcasting businesses. Pursuant to the Master Transaction Agreement, among other things, EchoStar transferred to us certain assets and liabilities of its EchoStar Satellite Services segment. In connection with the Share Exchange and the Master Transaction Agreement, we and EchoStar and certain of their subsidiaries entered into certain agreements covering, among other things, tax matters, employee matters, intellectual property matters and the provision of transitional services. In addition, certain agreements that we had with EchoStar have terminated, and we entered into certain new agreements with EchoStar. We also may enter into additional agreements with EchoStar in the future. The following is a summary of the terms of our principal agreements with EchoStar that may have an impact on our financial condition and results of operations.

"Trade accounts receivable"

As of September 30, 2020 and December 31, 2019, trade accounts receivable from EchoStar was \$4 million and \$1 million, respectively. These amounts are recorded in "Trade accounts receivable" on our Condensed Consolidated Balance Sheets.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

“Trade accounts payable”

As of September 30, 2020 and December 31, 2019, trade accounts payable to EchoStar was \$10 million. These amounts are recorded in “Trade accounts payable” on our Condensed Consolidated Balance Sheets.

“Equipment sales and other revenue”

During both of the three months ended September 30, 2020 and 2019, we received \$2 million for services provided to EchoStar. During the nine months ended September 30, 2020 and 2019, we received \$6 million and \$5 million, respectively, for services provided to EchoStar. These amounts are recorded in “Equipment sales and other revenue” on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss). The agreements pertaining to these revenues are discussed below.

Real Estate Lease Agreements. We have entered into lease agreements pursuant to which we lease certain real estate to EchoStar. The rent on a per square foot basis for each of the leases is comparable to per square foot rental rates of similar commercial property in the same geographic areas, and EchoStar is responsible for its portion of the taxes, insurance, utilities and maintenance of the premises. The term of each lease is set forth below:

- *El Paso Lease Agreement.* During 2012, we began leasing certain space at 1285 Joe Battle Blvd., El Paso, Texas to EchoStar for an initial period ending on August 1, 2015, which also provides EchoStar with renewal options for four consecutive three-year terms. During the second quarter 2015, EchoStar exercised its first renewal option for a period ending on August 1, 2018 and in April 2018 EchoStar exercised its second renewal option for a period ending in August 2021.
- *90 Inverness Lease Agreement.* In connection with the completion of the Share Exchange, effective March 1, 2017, EchoStar leases certain space from us at 90 Inverness Circle East, Englewood, Colorado for a period ending in February 2022. EchoStar has the option to renew this lease for four three-year periods.
- *Cheyenne Lease Agreement.* In connection with the completion of the Share Exchange, effective March 1, 2017, EchoStar leases certain space from us at 530 EchoStar Drive, Cheyenne, Wyoming for a period ending in February 2019. In August 2018, EchoStar exercised its option to renew this lease for a one-year period ending in February 2020. EchoStar has the option to renew this lease for 12 one-year periods. In connection with the Master Transaction Agreement, we and EchoStar amended this lease to provide EchoStar with certain space for a period ending in September 2021, with the option for EchoStar to renew for a one-year period upon 180 days’ written notice prior to the end of the term.
- *Gilbert Lease Agreement.* In connection with the completion of the Share Exchange, effective March 1, 2017, EchoStar leased certain space from us at 801 N. DISH Dr., Gilbert, Arizona for a period ending in March 2019. EchoStar exercised its option to renew this lease for a one-year period ending in February 2020. This lease was terminated effective September 10, 2019.
- *American Fork Occupancy License Agreement.* In connection with the completion of the Share Exchange, effective March 1, 2017, we acquired the lease for certain space at 796 East Utah Valley Drive, American Fork, Utah, and we sublease certain space at this location to EchoStar for a period ending in August 2017. In June 2017, EchoStar exercised its five-year renewal option for a period ending in August 2022. This lease was terminated effective March 2019.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

Collocation and Antenna Space Agreements. In connection with the completion of the Share Exchange, effective March 1, 2017, we entered into certain agreements pursuant to which we will provide certain collocation and antenna space to HNS through February 2022 at the following locations: Cheyenne, Wyoming; Gilbert, Arizona; New Braunfels, Texas; Monee, Illinois; Englewood, Colorado; and Spokane, Washington. During August 2017, we entered into certain other agreements pursuant to which we will provide certain collocation and antenna space to HNS through August 2022 at the following locations: Monee, Illinois and Spokane, Washington. HNS has the option to renew each of these agreements for four three-year periods. HNS may terminate certain of these agreements with 180 days' prior written notice to us at the following locations: New Braunfels, Texas; Englewood, Colorado; and Spokane, Washington. In September 2019, in connection with the Master Transaction Agreement, we entered into an agreement pursuant to which we provide HNS with certain additional collocation space in Cheyenne, Wyoming for a period ending in September 2020, with the option for HNS to renew for a one-year period, with prior written notice no more than 120 days but no less than 90 days prior to the end of the term. In October 2019, HNS provided a termination notice for its New Braunfels, Texas agreement to be effective May 2020. The fees for the services provided under these agreements depend, among other things, on the number of racks leased and/or antennas present at the location.

Also in connection with the Master Transaction Agreement, in September 2019, we entered into an agreement pursuant to which we will provide HNS with antenna space and power in Cheyenne, Wyoming for a period of five years commencing no later than October 2020, with four three-year renewal terms, with prior written notice no more than 120 days but no less than 90 days prior to the end of the then-current term.

TT&C Agreement – Master Transaction Agreement. In September 2019, in connection with the Master Transaction Agreement, we entered into an agreement pursuant to which we provide TT&C services to EchoStar for a period ending in September 2021, with the option for EchoStar to renew for a one-year period upon written notice at least 90 days prior to the initial expiration (the "MTA TT&C Agreement"). The fees for services provided under the MTA TT&C Agreement are calculated at either: (i) a fixed fee or (ii) cost plus a fixed margin, which will vary depending on the nature of the services provided. Either party is able to terminate the MTA TT&C Agreement for any reason upon 12 months' notice.

"Cost of services"

During the three months ended September 30, 2020 and 2019, we incurred \$5 million and \$31 million, respectively, of costs for services provided to us by EchoStar. During the nine months ended September 30, 2020 and 2019, we incurred \$15 million and \$191 million, respectively, of costs for services provided to us by EchoStar. EchoStar was the supplier of the vast majority of our transponder capacity. On May 19, 2019, we entered into a Master Transaction Agreement pursuant to which, on September 10, 2019, certain of these satellites were transferred to us (see below). See above for further information on the Master Transaction Agreement. These amounts are recorded in "Cost of services" on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss). The agreements pertaining to these expenses are discussed below.

Hughes Broadband Distribution Agreement. Effective October 1, 2012, dishNET Satellite Broadband L.L.C. ("dishNET Satellite Broadband"), our indirect wholly-owned subsidiary, and HNS entered into a Distribution Agreement (the "Distribution Agreement") pursuant to which dishNET Satellite Broadband has the right, but not the obligation, to market, sell and distribute the HNS satellite Internet service (the "Service"). dishNET Satellite Broadband pays HNS a monthly per subscriber wholesale service fee for the Service based upon the subscriber's service level, and, beginning January 1, 2014, certain volume subscription thresholds. The Distribution Agreement also provides that dishNET Satellite Broadband has the right, but not the obligation, to purchase certain broadband equipment from HNS to support the sale of the Service. On February 20, 2014, dishNET Satellite Broadband and HNS amended the Distribution Agreement which, among other things, extended the initial term of the Distribution Agreement through March 1, 2024.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

Thereafter, the Distribution Agreement automatically renews for successive one year terms unless either party gives written notice of its intent not to renew to the other party at least 180 days before the expiration of the then-current term. Upon expiration or termination of the Distribution Agreement, the parties will continue to provide the Service to the then-current dishNET subscribers pursuant to the terms and conditions of the Distribution Agreement.

During the first quarter 2017, we transitioned our wholesale arrangement with Hughes under the Distribution Agreement to an authorized representative arrangement and entered into the MSA with HNS. See “*Hughes Broadband Master Services Agreement*” below for further information.

Satellite Capacity Leased from EchoStar. We have entered into certain satellite capacity agreements pursuant to which we lease certain capacity on certain satellites owned or leased by EchoStar. The fees for the services provided under these satellite capacity agreements depend, among other things, upon the orbital location of the applicable satellite, the number of transponders that are leased on the applicable satellite and the length of the lease. See “Pay-TV Satellites” in Note 8 for further information. The term of each lease is set forth below:

- *EchoStar VII, X, XI and XIV.* On March 1, 2014, we began leasing all available capacity from EchoStar on the EchoStar VII, X, XI and XIV satellites. The term of each satellite capacity agreement generally terminates upon the earlier of: (i) the end-of-life of the satellite; (ii) the date the satellite fails; or (iii) a certain date, which depends upon, among other things, the estimated useful life of the satellite. We generally have the option to renew each satellite capacity agreement on a year-to-year basis through the end of the respective satellite’s life. There can be no assurance that any options to renew such agreements will be exercised. The satellite capacity agreement for EchoStar VII expired on June 30, 2018. On May 19, 2019, we entered into a Master Transaction Agreement pursuant to which, on September 10, 2019, these satellites were transferred to us. See above for further information on the Master Transaction Agreement.
- *EchoStar IX.* We lease certain satellite capacity from EchoStar on EchoStar IX. Subject to availability, we generally have the right to continue to lease satellite capacity from EchoStar on EchoStar IX on a month-to-month basis.
- *EchoStar XVI.* In December 2009, we entered into a transponder service agreement with EchoStar to lease all of the capacity on EchoStar XVI, a DBS satellite, after its service commencement date. EchoStar XVI was launched in November 2012 to replace EchoStar XV at the 61.5 degree orbital location and is currently in service. Effective December 21, 2012, we and EchoStar amended the transponder service agreement to, among other things, change the initial term to generally expire upon the earlier of: (i) the end-of-life or replacement of the satellite; (ii) the date the satellite fails; (iii) the date the transponder(s) on which service is being provided under the agreement fails; or (iv) four years following the actual service commencement date. In July 2016, we and EchoStar amended the transponder service agreement to, among other things, extend the initial term by one additional year and to reduce the term of the first renewal option by one year. Prior to expiration of the initial term, we had the option to renew for an additional five-year period. In May 2017, we exercised our first renewal option for an additional five-year period ending in January 2023. We also have the option to renew for an additional five-year period prior to expiration of the first renewal period in January 2023. There can be no assurance that the option to renew this agreement will be exercised. During 2018, we and EchoStar further amended the agreement to, among other things, allow us to place and use certain satellites at the 61.5 degree orbital location. On May 19, 2019, we entered into a Master Transaction Agreement pursuant to which, on September 10, 2019, this satellite was transferred to us. See above for further information on the Master Transaction Agreement.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

Nimiq 5 Agreement. During 2009, EchoStar entered into a fifteen-year satellite service agreement with Telesat Canada (“Telesat”) to receive service on all 32 DBS transponders on the Nimiq 5 satellite at the 72.7 degree orbital location (the “Telesat Transponder Agreement”). During 2009, EchoStar also entered into a satellite service agreement (the “DISH Nimiq 5 Agreement”) with us, pursuant to which we received service from EchoStar on all 32 of the DBS transponders covered by the Telesat Transponder Agreement.

Under the terms of the DISH Nimiq 5 Agreement, we made certain monthly payments to EchoStar that commenced in 2009 when the Nimiq 5 satellite was placed into service and continued through the service term, which expired ten years following the date the Nimiq 5 satellite was placed into service. Upon expiration of the initial term, we have the option to renew on a year-to-year basis through the end-of-life of the Nimiq 5 satellite. On May 19, 2019, we entered into a Master Transaction Agreement pursuant to which, on September 10, 2019, the Telesat Transponder Agreement was transferred to us. In September 2019, we and EchoStar entered into an agreement whereby we compensate EchoStar for retaining certain obligations to Telesat related to our performance under the Telesat Transponder Agreement. See above for further information on the Master Transaction Agreement.

QuetzSat-1 Lease Agreement. During 2008, EchoStar entered into a ten-year satellite service agreement with SES Latin America S.A. (“SES”), which provided, among other things, for the provision by SES to EchoStar of service on 32 DBS transponders on the QuetzSat-1 satellite (“SES Transponder Agreement”). During 2008, EchoStar also entered into a transponder service agreement (“QuetzSat-1 Transponder Agreement”) with us pursuant to which we received service from EchoStar on 24 DBS transponders. QuetzSat-1 was launched on September 29, 2011 and was placed into service during the fourth quarter 2011 at the 67.1 degree orbital location. In January 2013, QuetzSat-1 was moved to the 77 degree orbital location and we commenced commercial operations at that location in February 2013. During the first quarter 2013, we and EchoStar entered into an agreement pursuant to which we subleased five DBS transponders back to EchoStar.

Unless earlier terminated under the terms and conditions of the SES Transponder Agreement and QuetzSat-1 Transponder Agreement, the initial service term will expire in November 2021. Upon expiration of the initial term, we have the option to renew the SES Transponder Agreement on a year-to-year basis through the end-of-life of the QuetzSat-1 satellite. There can be no assurance that any options to renew the SES Transponder Agreement will be exercised. On May 19, 2019, we entered into a Master Transaction Agreement pursuant to which, on September 10, 2019, the SES Transponder Agreement was transferred to us. See above for further information on the Master Transaction Agreement.

TT&C Agreement. Effective January 1, 2012, we entered into a TT&C agreement pursuant to which we receive TT&C services from EchoStar for certain satellites (the “TT&C Agreement”). In February 2018, we amended the TT&C Agreement to, among other things, extend the term for one-year with four automatic one-year renewal periods. The fees for services provided under the TT&C Agreement are calculated at either: (i) a fixed fee; or (ii) cost plus a fixed margin, which will vary depending on the nature of the services provided. We and EchoStar are able to terminate the TT&C Agreement for any reason upon 12 months’ notice. On May 19, 2019, we entered into a Master Transaction Agreement pursuant to which, on September 10, 2019, the assets and employees that provide these services were transferred to us. See above for further information on the Master Transaction Agreement.

“Cost of sales – equipment and other”

During the three months ended September 30, 2020 and 2019, we incurred \$1 million and \$4 million, respectively, for satellite hosting, operations and maintenance services as well as transmission of certain data. During the nine months ended September 30, 2020 and 2019, we incurred \$3 million and \$4 million, respectively, for satellite hosting, operations and maintenance services as well as transmission of certain data. These amounts are recorded in “Cost of sales – equipment and other” on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss). The agreements pertaining to these expenses are discussed below.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

DBSD North America Agreement. On March 9, 2012, we completed the DBSD Transaction. During the second quarter 2011, EchoStar acquired Hughes. Prior to our acquisition of DBSD North America and EchoStar's acquisition of Hughes, DBSD North America and HNS entered into an agreement pursuant to which HNS provides, among other things, hosting, operations and maintenance services for DBSD North America's satellite gateway and associated ground infrastructure. This agreement generally may be terminated by us at any time for convenience.

TerreStar Agreement. On March 9, 2012, we completed the TerreStar Transaction. Prior to our acquisition of substantially all the assets of TerreStar and EchoStar's acquisition of Hughes, TerreStar and HNS entered into various agreements pursuant to which HNS provides, among other things, hosting, operations and maintenance services for TerreStar's satellite gateway and associated ground infrastructure. These agreements generally may be terminated by us at any time for convenience.

Hughes Equipment and Services Agreement. In February 2019, we and HNS entered into an agreement pursuant to which HNS will provide us with HughesNet Service and HughesNet equipment for the transmission of certain data related to our 5G Network Deployment. This agreement has an initial term of five years with automatic renewal for successive one-year terms unless terminated by DISH Network with at least 180 days' written notice to us or by us with at least 365 days' written notice to DISH Network.

"Selling, general and administrative expenses"

During the three months ended September 30, 2020 and 2019, we incurred \$3 million and \$6 million, respectively, for selling, general and administrative expenses for services provided to us by EchoStar. During the nine months ended September 30, 2020 and 2019, we incurred \$10 million and \$17 million, respectively, for selling, general and administrative expenses for services provided to us by EchoStar. These amounts are recorded in "Selling, general and administrative expenses" on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss). The agreements pertaining to these expenses are discussed below.

Real Estate Lease Agreements. We have entered into lease agreements pursuant to which we lease certain real estate from EchoStar. The rent on a per square foot basis for each of the leases is comparable to per square foot rental rates of similar commercial property in the same geographic area, and EchoStar is responsible for its portion of the taxes, insurance, utilities and maintenance of the premises. The term of each lease is set forth below:

- *Meridian Lease Agreement.* The lease for all of 9601 S. Meridian Blvd. in Englewood, Colorado was for a period ending on December 31, 2019. In December 2019, we and EchoStar amended this lease to, among other things, extend the term thereof for one additional year until December 31, 2020.
- *Santa Fe Lease Agreement.* The lease for all of 5701 S. Santa Fe Dr. in Littleton, Colorado was for a period ending on December 31, 2018. In December 2018, we and EchoStar amended this lease to, among other things, extend the term thereof for one additional year until December 31, 2019. On May 19, 2019, we entered into a Master Transaction Agreement pursuant to which, on September 10, 2019, this real estate was transferred to us. See above for further information on the Master Transaction Agreement.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

- *Cheyenne Lease Agreement.* The lease for certain space at 530 EchoStar Drive in Cheyenne, Wyoming is for a period ending on December 31, 2031. In connection with the completion of the Share Exchange, EchoStar transferred ownership of a portion of this property to us, and, effective March 1, 2017, we and EchoStar amended this lease agreement to (i) terminate the lease of certain space at the portion of the property that was transferred to us and (ii) provide for the continued lease to us of certain space at the portion of the property that EchoStar retained. On May 19, 2019, we entered into a Master Transaction Agreement pursuant to which, on September 10, 2019, this real estate was transferred to us. See above for further information on the Master Transaction Agreement.
- *100 Inverness Lease Agreement.* In connection with the completion of the Share Exchange, effective March 1, 2017, we lease certain space from EchoStar at 100 Inverness Terrace East, Englewood, Colorado for a period ending in December 2020. This agreement may be terminated by either party upon 180 days' prior notice.

Professional Services Agreement. Prior to 2010, in connection with the Spin-off, we entered into various agreements with EchoStar including the Transition Services Agreement, Satellite Procurement Agreement and Services Agreement, which all expired on January 1, 2010 and were replaced by a Professional Services Agreement. During 2009, we and EchoStar agreed that EchoStar shall continue to have the right, but not the obligation, to receive the following services from us, among others, certain of which were previously provided under the Transition Services Agreement: information technology, travel and event coordination, internal audit, legal, accounting and tax, benefits administration, program acquisition services and other support services. Additionally, we and EchoStar agreed that we shall continue to have the right, but not the obligation, to engage EchoStar to manage the process of procuring new satellite capacity for us (previously provided under the Satellite Procurement Agreement) and receive logistics, procurement and quality assurance services from EchoStar (previously provided under the Services Agreement) and other support services. The Professional Services Agreement renewed on January 1, 2020 for an additional one-year period until January 1, 2021 and renews automatically for successive one-year periods thereafter, unless terminated earlier by either party upon at least 60 days' notice. However, either party may terminate the Professional Services Agreement in part with respect to any particular service it receives for any reason upon at least 30 days' notice. In connection with the completion of the Share Exchange on February 28, 2017, DISH Network and EchoStar amended the Professional Services Agreement to, among other things, provide certain transition services to each other related to the Share Exchange Agreement. In addition, on May 19, 2019, we entered into a Master Transaction Agreement, pursuant to which, effective September 10, 2019, DISH Network and EchoStar amended the Professional Services Agreement to, among other things, provide certain transition services to each other related to the Master Transaction Agreement and to remove certain services no longer necessary as a result of the Master Transaction Agreement. See above for further information on the Master Transaction Agreement. During March 2020, we and EchoStar added a service under the Professional Services Agreement whereby we provide EchoStar with rights to use certain satellite capacity in exchange for certain credits to amounts owed by us to EchoStar under the TerreStar Agreement described above.

Revenue for services provided by us to EchoStar under the Professional Services Agreement is recorded in "Equipment sales and other revenue" on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss).

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

Other Agreements - EchoStar

Tax Sharing Agreement. In connection with the Spin-off, we entered into a tax sharing agreement (the “Tax Sharing Agreement”) with EchoStar which governs our respective rights, responsibilities and obligations after the Spin-off with respect to taxes for the periods ending on or before the Spin-off. Generally, all pre-Spin-off taxes, including any taxes that are incurred as a result of restructuring activities undertaken to implement the Spin-off, are borne by us, and we will indemnify EchoStar for such taxes. However, we are not liable for and will not indemnify EchoStar for any taxes that are incurred as a result of the Spin-off or certain related transactions failing to qualify as tax-free distributions pursuant to any provision of Section 355 or Section 361 of the Internal Revenue Code of 1986, as amended (the “Code”) because of: (i) a direct or indirect acquisition of any of EchoStar’s stock, stock options or assets; (ii) any action that EchoStar takes or fails to take; or (iii) any action that EchoStar takes that is inconsistent with the information and representations furnished to the Internal Revenue Service (“IRS”) in connection with the request for the private letter ruling, or to counsel in connection with any opinion being delivered by counsel with respect to the Spin-off or certain related transactions. In such case, EchoStar is solely liable for, and will indemnify us for, any resulting taxes, as well as any losses, claims and expenses. The Tax Sharing Agreement will only terminate after the later of the full period of all applicable statutes of limitations, including extensions, or once all rights and obligations are fully effectuated or performed.

In light of the Tax Sharing Agreement, among other things, and in connection with our consolidated federal income tax returns for certain tax years prior to and for the year of the Spin-off, during the third quarter 2013, we and EchoStar agreed upon a supplemental allocation of the tax benefits arising from certain tax items resolved in the course of the IRS’ examination of these consolidated tax returns. As a result, we agreed to pay EchoStar \$84 million of the tax benefit we received or will receive. This resulted in a reduction of our recorded unrecognized tax benefits and this amount was reclassified to a long-term payable to EchoStar within “Long-term deferred revenue and other long-term liabilities” on our Condensed Consolidated Balance Sheets during the third quarter 2013. Any payment to EchoStar, including accrued interest, will be made at such time as EchoStar would have otherwise been able to realize such tax benefit.

In addition, during the third quarter 2013, we and EchoStar agreed upon a tax sharing arrangement for filing certain combined state income tax returns and a method of allocating the respective tax liabilities between us and EchoStar for such combined returns, through the taxable period ending on December 31, 2017 (the “State Tax Arrangement”). During the third quarter 2018, we and EchoStar amended the Tax Sharing Agreement and the 2013 agreements (the “Amendment”).

Under the Amendment, among other things, we are entitled to apply the benefit of EchoStar’s 2009 net operating losses to our federal tax return for the year ended December 31, 2008, in exchange for paying EchoStar over time the value of the net annual federal income taxes paid by EchoStar that would have been otherwise offset by their 2009 net operating loss. In addition, the Amendment extends the term of the State Tax Arrangement for filing certain combined state income tax returns to the earlier to occur of (1) termination of the Tax Sharing Agreement, (2) a change in control of either us or EchoStar or, (3) for any particular state, if we and EchoStar no longer file a combined tax return for such state.

We and EchoStar file combined income tax returns in certain states. In 2015 and 2014, EchoStar earned and recognized a tax benefit for certain state income tax credits that EchoStar estimates it would be unable to utilize in the future if it had filed separately from us. We expect to utilize these tax credits to reduce our state income tax payable in the future. Any payments made to EchoStar related to the utilization of these credits will be recorded as a reduction to “Additional paid-in capital” on our Condensed Consolidated Balance Sheets.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

Tax Matters Agreement – Share Exchange. In connection with the completion of the Share Exchange, we and EchoStar entered into a Tax Matters Agreement, which governs certain rights, responsibilities and obligations with respect to taxes of the Transferred Businesses pursuant to the Share Exchange. Generally, EchoStar is responsible for all tax returns and tax liabilities for the Transferred Businesses for periods prior to the Share Exchange, and we are responsible for all tax returns and tax liabilities for the Transferred Businesses from and after the Share Exchange. Both we and EchoStar have made certain tax-related representations and are subject to various tax-related covenants after the consummation of the Share Exchange. Both we and EchoStar have agreed to indemnify each other if there is a breach of any such tax representation or violation of any such tax covenant and that breach or violation results in the Share Exchange not qualifying for tax free treatment for the other party. In addition, we have agreed to indemnify EchoStar if the Transferred Businesses are acquired, either directly or indirectly (e.g., via an acquisition of us), by one or more persons and such acquisition results in the Share Exchange not qualifying for tax free treatment. The Tax Matters Agreement supplements the Tax Sharing Agreement described above, which continues in full force and effect.

Tax Matters Agreement – Master Transaction Agreement. In connection with the completion of the Master Transaction Agreement, we and EchoStar entered into a Tax Matters Agreement, which governs certain rights, responsibilities and obligations with respect to taxes of the BSS Business pursuant to the Master Transaction Agreement. Generally, EchoStar is responsible for all tax returns and tax liabilities for the BSS Business for periods prior to the Master Transaction Agreement, and we are responsible for all tax returns and tax liabilities for the BSS Business from and after the Master Transaction Agreement. Both we and EchoStar have made certain tax-related representations in contemplation of the Master Transaction Agreement. Both we and EchoStar have agreed to indemnify each other if there is a breach of any such tax representation and that breach results in the Master Transaction Agreement not qualifying for tax free treatment for the other party. In addition, we have agreed to indemnify EchoStar if the BSS Business are acquired, either directly or indirectly (e.g., via an acquisition of us), by one or more persons and such acquisition results in the Master Transaction Agreement not qualifying for tax free treatment. The Tax Matters Agreement - Master Transaction Agreement supplements the Tax Sharing Agreement described above, which continues in full force and effect.

Patent Cross-License Agreements. In December 2011, we and EchoStar entered into separate patent cross-license agreements with the same third party whereby: (i) EchoStar and such third-party licensed their respective patents to each other subject to certain conditions; and (ii) we and such third-party licensed our respective patents to each other subject to certain conditions (each, a “Cross-License Agreement”). Each Cross License Agreement covers patents acquired by the respective party prior to January 1, 2017 and aggregate payments under both Cross-License Agreements total less than \$10 million. Each Cross License Agreement also contains an option to extend each Cross-License Agreement to include patents acquired by the respective party prior to January 1, 2022. In December 2016, we and EchoStar independently exercised our respective options to extend each Cross-License Agreement. The aggregate additional payments to such third-party was less than \$3 million. Since the aggregate payments under both Cross-License Agreements were based on the combined annual revenues of us and EchoStar, we and EchoStar agreed to allocate our respective payments to such third party based on our respective percentage of combined total revenue.

Rovi License Agreement. On August 19, 2016, we entered into a ten-year patent license agreement (the “Rovi License Agreement”) with Rovi Corporation (“Rovi”) and, for certain limited purposes, EchoStar. EchoStar is a party to the Rovi License Agreement solely with respect to certain provisions relating to the prior patent license agreement between EchoStar and Rovi. There are no payments between us and EchoStar under the Rovi License Agreement.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

Hughes Broadband Master Services Agreement. In March 2017, DISH Network L.L.C. (“DNLLC”) and HNS entered into the MSA pursuant to which DNLLC, among other things: (i) has the right, but not the obligation, to market, promote and solicit orders for the Hughes broadband satellite service and related equipment; and (ii) installs Hughes service equipment with respect to activations generated by DNLLC. Under the MSA, HNS will make certain payments to DNLLC for each Hughes service activation generated, and installation performed, by DNLLC. Payments from HNS for services provided are recorded in “Service revenue” on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss). For each of the three months ended September 30, 2020 and 2019, these payments were \$4 million. For the nine months ended September 30, 2020 and 2019, these payments were \$13 million and \$15 million, respectively. The MSA has an initial term of five years with automatic renewal for successive one-year terms. After the first anniversary of the MSA, either party has the ability to terminate the MSA, in whole or in part, for any reason upon at least 90 days’ notice to the other party. Upon expiration or termination of the MSA, HNS will continue to provide the Hughes service to subscribers and make certain payments to DNLLC pursuant to the terms and conditions of the MSA. For the three months ended September 30, 2020 and 2019, we purchased broadband equipment from HNS of \$4 million and \$2 million, respectively, under the MSA. For the nine months ended September 30, 2020 and 2019, we purchased broadband equipment from HNS of \$11 million and \$10 million, under the MSA, respectively.

Employee Matters Agreement – Share Exchange. In connection with the completion of the Share Exchange, effective March 1, 2017, we and EchoStar entered into an Employee Matters Agreement that addresses the transfer of employees from EchoStar to us, including certain benefit and compensation matters and the allocation of responsibility for employee-related liabilities relating to current and past employees of the Transferred Businesses. We assumed employee-related liabilities relating to the Transferred Businesses as part of the Share Exchange, except that EchoStar will be responsible for certain existing employee-related litigation as well as certain pre-Share Exchange compensation and benefits for employees transferring to us in connection with the Share Exchange.

Employee Matters Agreement – Master Transaction Agreement. In connection with the completion of the Master Transaction Agreement, effective September 10, 2019, we and EchoStar entered into an Employee Matters Agreement that addresses the transfer of employees from EchoStar to us, including certain benefit and compensation matters and the allocation of responsibility for employee-related liabilities relating to current and past employees of the BSS Business. We assumed employee-related liabilities relating to the BSS Business as part of the Master Transaction Agreement, except that EchoStar will be responsible for certain existing employee-related litigation as well as certain pre-Master Transaction Agreement compensation and benefits for employees transferring to us in connection with the Master Transaction Agreement.

Intellectual Property and Technology License Agreement – Share Exchange. In connection with the completion of the Share Exchange, effective March 1, 2017, we and EchoStar entered into an Intellectual Property and Technology License Agreement (“IPTLA”), pursuant to which we and EchoStar license to each other certain intellectual property and technology. The IPTLA will continue in perpetuity, unless mutually terminated by the parties. Pursuant to the IPTLA, EchoStar granted to us a license to its intellectual property and technology for use by us, among other things, in connection with our continued operation of the Transferred Businesses acquired pursuant to the Share Exchange Agreement, including a limited license to use the “EHOSTAR” trademark during a transition period. EchoStar retains full ownership of the “EHOSTAR” trademark. In addition, we granted a license back to EchoStar, among other things, for the continued use of all intellectual property and technology transferred to us pursuant to the Share Exchange Agreement that is used in EchoStar’s retained businesses.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

Intellectual Property and Technology License Agreement – Master Transaction Agreement. In connection with the completion of the Master Transaction Agreement, effective September 10, 2019, we and EchoStar entered into an IPTLA (the “MTA IPTLA”), pursuant to which we and EchoStar license to each other certain intellectual property and technology. The MTA IPTLA will continue in perpetuity, unless mutually terminated by the parties. Pursuant to the MTA IPTLA, EchoStar granted to us a license to its intellectual property and technology for use by us, among other things, in connection with our continued operation of the BSS Business acquired pursuant to the Master Transaction Agreement, including a limited license to use the “ESS” and “ECHOSTAR SATELLITE SERVICES” trademarks during a transition period. EchoStar retains full ownership of the “ESS” and “ECHOSTAR SATELLITE SERVICES” trademarks. In addition, we granted a license back to EchoStar, among other things, for the continued use of all intellectual property and technology transferred to us pursuant to the Master Transaction Agreement that is used in EchoStar’s retained businesses.

Related Party Transactions with NagraStar L.L.C.

As a result of the completion of the Share Exchange on February 28, 2017, we own a 50% interest in NagraStar, a joint venture that is our primary provider of encryption and related security systems intended to assure that only authorized customers have access to our programming. Certain payments related to NagraStar are recorded in “Cost of services” on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss). In addition, certain other payments are initially included in “Inventory” and are subsequently capitalized as “Property and equipment, net” on our Condensed Consolidated Balance Sheets or expensed as “Selling, general and administrative expenses” or “Cost of services” on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss) when the equipment is deployed. We record all payables in “Trade accounts payable” or “Other accrued expenses” on our Condensed Consolidated Balance Sheets. Our investment in NagraStar is accounted for using the equity method.

The table below summarizes our transactions with NagraStar:

	For the Three Months Ended		For the Nine Months Ended	
	September 30,		September 30,	
	2020	2019	2020	2019
	(In thousands)			
Purchases (including fees):				
Purchases from NagraStar	\$ 14,073	\$ 14,434	\$ 41,424	\$ 43,148
	As of			
	September 30,	December 31,		
	2020	2019		
	(In thousands)			
Amounts Payable and Commitments:				
Amounts payable to NagraStar	\$ 8,745	\$ 9,630		
Commitments to NagraStar	\$ 4,260	\$ 4,893		

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued
(Unaudited)

Related Party Transactions with Dish Mexico

Dish Mexico, S. de R.L. de C.V. (“Dish Mexico”) is an entity that provides direct-to-home satellite services in Mexico, which is owned 49% by EchoStar. We provide certain broadcast services and certain satellite services to Dish Mexico, which are recorded in “Equipment sales and other revenue” on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss).

The table below summarizes our transactions with Dish Mexico:

	For the Three Months Ended		For the Nine Months Ended	
	September 30,		September 30,	
	2020	2019	2020	2019
	(In thousands)			
Sales:				
Satellite capacity	\$ 5,462	\$ 1,275	\$ 16,387	\$ 1,275
Uplink services	1,207	1,406	3,876	4,222
Total	<u>\$ 6,669</u>	<u>\$ 2,681</u>	<u>\$ 20,263</u>	<u>\$ 5,497</u>
	As of			
	September 30,	December 31,		
	2020	2019		
	(In thousands)			
Amounts Receivable:				
Satellite capacity receivable	\$ 13,686	\$ 5,866		
Uplink amounts receivable from Dish Mexico	2,603	1,191		
	<u>\$ 16,289</u>	<u>\$ 7,057</u>		

Item 2. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

You should read the following management’s discussion and analysis of our financial condition and results of operations together with the condensed consolidated financial statements and notes to our financial statements included elsewhere in this Quarterly Report on Form 10-Q. This management’s discussion and analysis is intended to help provide an understanding of our financial condition, changes in financial condition and results of our operations and contains forward-looking statements that involve risks and uncertainties. The forward-looking statements are not historical facts, but rather are based on current expectations, estimates, assumptions and projections about our industry, business and future financial results. Our actual results could differ materially from the results contemplated by these forward-looking statements due to a number of factors, including those discussed under the caption “Item 1A. Risk Factors” in our Quarterly Report on Form 10-Q for the quarter ended March 31, 2020 and June 30, 2020, and in our Annual Report on Form 10-K for the year ended December 31, 2019. Furthermore, such forward-looking statements speak only as of the date of this Quarterly Report on Form 10-Q, and we expressly disclaim any obligation to update any forward-looking statements.

Overview

We currently operate two primary business segments, Pay-TV and Wireless. Our Wireless segment consists of two business units, the Retail Wireless business unit and the 5G Network Deployment business unit.

Our Pay-TV business strategy is to be the best provider of video services in the United States by providing products with the best technology, outstanding customer service, and great value. We promote our Pay-TV services as providing our subscribers with a better “price-to-value” relationship than those available from other subscription television service providers. In connection with the growth in OTT industry, we promote our SLING TV services primarily to consumers who do not subscribe to traditional satellite and cable pay-TV services.

Our Wireless business strategy is to commercialize our wireless spectrum licenses and related assets to deploy a 5G broadband network (“5G Network Deployment”) and offer a 5G broadband service. We are obligated by the FCC to offer 5G broadband service to certain population coverage targets and minimum core network, tower and spectrum use targets. We have issued requests for information and proposals (“RFI/Ps”) to various vendors in the wireless industry and are in the process of selecting certain vendors as we move forward with our 5G Network Deployment. In addition, we offer prepaid and postpaid retail wireless services to subscribers under our Boost Mobile and Ting Mobile brands, as well as a competitive portfolio of wireless devices. We offer customers value by providing choice and flexibility in our wireless service. We offer competitive consumer plans with no annual service contracts.

Financial Highlights

2020 Third Quarter Consolidated Results of Operations and Key Operating Metrics

- Revenue of \$4.532 billion
- Net income attributable to DISH Network of \$505 million and basic and diluted earnings per share of common stock of \$0.96 and \$0.86, respectively
- Addition of approximately 116,000 net Pay-TV subscribers
- Loss of approximately 87,000 net DISH TV subscribers
- Addition of approximately 203,000 net SLING TV subscribers
- Pay-TV ARPU of \$91.79
- Gross new DISH TV subscriber activations of approximately 292,000
- DISH TV churn rate of 1.41%
- DISH TV SAC of \$864
- Obtained over 9 million wireless subscribers through business combinations
- Gross new wireless subscriber activations of approximately 1.104 million
- Loss of approximately 212,000 net wireless subscribers
- Wireless ARPU of \$38.17

Item 2. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS – Continued

- Wireless churn rate of 4.64%

Consolidated Financial Condition as of September 30, 2020

- Cash, cash equivalents and current marketable investment securities of \$2.795 billion
- Total assets of \$36.100 billion
- Total long-term debt and finance lease obligations of \$14.082 billion

Recent Developments

COVID-19 Update

A novel strain of coronavirus which causes the disease COVID-19 has resulted in a worldwide health pandemic. To date, COVID-19 has surfaced in nearly all regions around the world and resulted in global travel restrictions and business slowdowns or shutdowns. The COVID-19 pandemic has also created unanticipated circumstances and uncertainty, disruption, and significant volatility in the economic environment generally, which have and may continue to adversely affect our business operations and may materially and adversely affect our business, financial condition and results of operations. As the COVID-19 pandemic continues, many of our customers are impacted by recommendations and/or mandates from federal, state, and local authorities to practice social distancing, to refrain from gathering in groups and, in some areas, to refrain from non-essential movements outside of their homes. Governmental authorities are taking various actions in an effort to slow the spread of COVID-19. COVID-19 has impacted our business, in particular the following areas:

- In response to the outbreak and business disruption, first and foremost, we have prioritized the health and safety of our employees. We have implemented increased health and safety practices including, increased use of personal protective equipment for employees to protect them and our subscribers, and temperature checks at certain locations.
- With respect to our wireless business, in March we provided access to certain of our wireless spectrum licenses to AT&T and T-Mobile for no cost for a 60-day period and NorthStar Wireless and SNR Wireless also provided access to certain of their wireless spectrum licenses at no cost to Verizon for a 60-day period. We extended access to certain wireless licenses for T-Mobile, this agreement expired on June 30, 2020. We are continuing our focus on our wireless initiatives, including our 5G Network Deployment.
- Our commercial business is impacted as many bars, restaurants, and other commercial establishments have been and continue to be recommended and/or mandated to suspend all non-essential “in-person” business operations and/or operate at reduced capacity. In addition, airlines and hotels significantly reduced operations as a result of government actions and/or related lower consumer demand.
- Beginning in the second half of March 2020, COVID-19 and the related governmental recommendations and/or mandates created reduced in person selling opportunities, and a reduction in customers’ willingness to open direct mail marketing and allow in-home technicians into their homes. As a result, we reduced our marketing expenditures and our gross new DISH TV subscribers began to decrease.
- Our retail wireless business was impacted as governmental recommendations and/or mandates caused temporary retail store closures and reduced in person selling opportunities.
- Our OnTech Smart Services and DISH Smart Home Services brands were impacted as in-home installation and support has been impacted by government actions and/or related lower consumer demand for these services.

Item 2. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS – Continued

- Widespread unemployment may impact our subscribers’ ability to pay for the services they receive and, as a result, we have increased our allowance for credit losses as a component of “Trade accounts receivable, net” as of September 30, 2020 on our Condensed Consolidated Balance Sheets. We continue to monitor the health of our business, including the potential impact of widespread unemployment on our subscribers’ ability to pay for the services they receive.
- Our supply chain has been impacted by COVID-19, and there have been and could be additional significant and unanticipated interruptions and/or delays in the supply of materials and/or equipment across our supply chain, due to, among other things, surges in COVID-19. Furthermore, we may not be able to diversify sources of supply in a timely manner to mitigate these interruptions and/or delays. These interruptions and/or delays in our supply chain could have a material adverse effect on our business, including our Pay-TV and Retail Wireless operations, our ability to meet our build-out requirement deadlines for our wireless spectrum licenses and our 5G Network Deployment generally.
- Due to the current economic climate, combined with changing needs of our customers and how we can best serve them, during the second quarter of 2020, we made the decision to reevaluate our organization. This included a focused set of staffing reductions to align our workforce to best serve our customers.

We continue to monitor the rapidly evolving situation and guidance from international and domestic authorities, including federal, state and local public health agencies and may take additional actions based on their recommendations. In these circumstances, there may be developments beyond our control requiring us to adjust our operating plan. As such, given the dynamic nature of this situation, we cannot reasonably estimate the impacts of COVID-19 on our financial condition, results of operations or cash flows in the future.

Acquisitions

We accounted for the Boost Mobile Acquisition and Ting Mobile Acquisition (as defined below) as business combinations. The identifiable assets acquired and liabilities assumed were recorded at their preliminary fair values as of the acquisition date and are consolidated into our financial statements. Our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss) includes the results of the Boost Mobile Acquisition from July 1, 2020 and the Ting Mobile Acquisition from August 1, 2020. See Note 5 in the Notes to our Condensed Consolidated Financial Statements for further information.

Sprint Asset Acquisition

Asset Purchase Agreement. On July 26, 2019, we entered into an Asset Purchase Agreement (the “APA”) with T-Mobile US, Inc. (“TMUS”) and Sprint Corporation (“Sprint” and together with TMUS, the “Sellers” and given the consummation of the Sprint-TMUS merger, sometimes referred to as “NTM”) to acquire from NTM certain assets and liabilities associated with Sprint’s Boost Mobile and Sprint-branded prepaid mobile services businesses (the “Prepaid Business”) for an aggregate purchase price of \$1.4 billion as adjusted for specific categories of net working capital on the Closing Date (the “Boost Mobile Acquisition”). Effective July 1, 2020 (the “Closing Date”), upon the terms and subject to the conditions set forth in the APA and in accordance with the Final Judgment (as defined below), we and NTM completed the Boost Mobile Acquisition.

Item 2. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS – Continued

In connection with the Boost Mobile Acquisition and the consummation of the Sprint-TMUS merger, we, TMUS, Sprint, Deutsche Telekom AG (“DT”) and SoftBank Group Corporation (“SoftBank”) came to an agreement with the United States Department of Justice (the “DOJ”) on key terms and approval of the Transaction Agreements (as defined below) and our wireless service business and spectrum. On July 26, 2019, we, TMUS, Sprint, DT and SoftBank (collectively, the “Defendants”) entered into a Stipulation and Order (the “Stipulation and Order”) with the DOJ binding the Defendants to a Proposed Final Judgment (the “Proposed Final Judgment”) which memorialized the agreement between the DOJ and the Defendants. The Stipulation and Order and the Proposed Final Judgment were filed in the United States District Court for the District of Columbia (the “District Court”) on July 26, 2019 and on April 1, 2020, the Proposed Final Judgment was entered with the District Court (the Proposed Final Judgment as so entered with the District Court, the “Final Judgment”) and the Sellers consummated the Sprint-TMUS merger.

Ting Mobile Acquisition

On August 1, 2020, we entered into an asset purchase agreement with Tucows Inc. (“Tucows”) pursuant to which we purchased the assets of Ting Mobile, including over 200,000 Ting Mobile subscribers (the “Ting Mobile Acquisition”). In addition, we entered into a services agreement pursuant to which Tucows will act as a mobile virtual network enabler for certain of our retail wireless subscribers. The consideration for the Ting Mobile Acquisition is an earn out provision and the fair value of the earn out provision has been assigned to a customer relationship intangible that is recorded in “Intangible assets” on our Condensed Consolidated Balance Sheets. See Note 5 in the Notes to our Condensed Consolidated Financial Statements for further information.

EXPLANATION OF KEY METRICS AND OTHER ITEMS

Service revenue. “Service revenue” consists principally of Pay-TV subscriber revenue and fixed monthly recurring charges for wireless voice, text, and data services and other fees earned from our retail wireless business unit. Certain of the amounts included in “Service revenue” are not recurring on a monthly basis.

Equipment sales and other revenue. “Equipment sales and other revenue” principally includes the sale of wireless devices and the non-subsidized sales of Pay-TV equipment.

Cost of services. “Cost of services” principally include Pay-TV programming expenses and other operating costs related to our Pay-TV segment, costs of wireless services (including costs incurred under the MNSA), as well as costs associated with our SLING TV services.

Cost of sales - equipment and other. “Cost of sales – equipment and other” principally includes the cost of wireless devices and other related items as well as costs related to the non-subsidized sales of Pay-TV equipment. Costs are generally recognized as products are delivered to customers and the related revenue is recognized.

Selling, general and administrative expenses. “Selling, general and administrative expenses” consists primarily of direct sales costs, advertising, third-party commissions related to the acquisition of subscribers, costs related to the installation of our Pay-TV subscribers, the cost of subsidized sales of Pay-TV equipment and employee-related costs associated with administrative services such as legal, information systems, and accounting and finance.

Interest expense, net of amounts capitalized. “Interest expense, net of amounts capitalized” primarily includes interest expense (net of capitalized interest), prepayment premiums, amortization of debt discounts and debt issuance costs associated with our long-term debt, and interest expense associated with our finance lease obligations.

Item 2. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS – Continued

Other, net. The main components of “Other, net” are gains and losses realized on the sale and/or conversion of marketable and non-marketable investment securities and derivative instruments, impairment of marketable and non-marketable investment securities, unrealized gains and losses from changes in fair value of certain marketable investment securities and derivative instruments, and equity in earnings and losses of our affiliates.

Earnings before interest, taxes, depreciation and amortization (“EBITDA”). EBITDA is defined as “Net income (loss) attributable to DISH Network” plus “Interest expense, net of amounts capitalized” net of “Interest income,” “Income tax (provision) benefit, net” and “Depreciation and amortization.” This “non-GAAP measure” is reconciled to “Net income (loss) attributable to DISH Network” in our discussion of “Results of Operations” below.

Operating income before depreciation and amortization (“OIBDA”). OIBDA is defined as “Operating income (loss)” plus “Depreciation and amortization.” This “non-GAAP measure” is reconciled to “Operating income (loss)” in our discussion of “Results of Operations” below.

DISH TV subscribers. We include customers obtained through direct sales, independent third-party retailers and other independent third-party distribution relationships in our DISH TV subscriber count. We also provide DISH TV services to hotels, motels and other commercial accounts. For certain of these commercial accounts, we divide our total revenue for these commercial accounts by \$34.99, and include the resulting number, which is substantially smaller than the actual number of commercial units served, in our DISH TV subscriber count.

SLING TV subscribers. We include customers obtained through direct sales and third-party marketing agreements in our SLING TV subscriber count. SLING TV subscribers are recorded net of disconnects. SLING TV customers receiving service for no charge, under certain new subscriber promotions, are excluded from our SLING TV subscriber count. For customers who subscribe to multiple SLING TV packages, each customer is only counted as one SLING TV subscriber.

Pay-TV subscribers. Our Pay-TV subscriber count includes all DISH TV and SLING TV subscribers discussed above. For customers who subscribe to both our DISH TV services and our SLING TV services, each subscription is counted as a separate Pay-TV subscriber.

Pay-TV average monthly revenue per subscriber (“Pay-TV ARPU”). We are not aware of any uniform standards for calculating ARPU and believe presentations of ARPU may not be calculated consistently by other companies in the same or similar businesses. We calculate Pay-TV average monthly revenue per Pay-TV subscriber, or Pay-TV ARPU, by dividing average monthly Pay-TV “Service revenue,” excluding revenue from broadband services, for the period by our average number of Pay-TV subscribers for the period. The average number of Pay-TV subscribers is calculated for the period by adding the average number of Pay-TV subscribers for each month and dividing by the number of months in the period. The average number of Pay-TV subscribers for each month is calculated by adding the beginning and ending Pay-TV subscribers for the month and dividing by two. SLING TV subscribers on average purchase lower priced programming services than DISH TV subscribers, and therefore, as SLING TV subscribers increase, it has had a negative impact on Pay-TV ARPU.

DISH TV average monthly subscriber churn rate (“DISH TV churn rate”). We are not aware of any uniform standards for calculating subscriber churn rate and believe presentations of subscriber churn rates may not be calculated consistently by different companies in the same or similar businesses. We calculate DISH TV churn rate for any period by dividing the number of DISH TV subscribers who terminated service during the period by the average number of DISH TV subscribers for the same period, and further dividing by the number of months in the period. The average number of DISH TV subscribers is calculated for the period by adding the average number of DISH TV subscribers for each month and dividing by the number of months in the period. The average number of DISH TV subscribers for each month is calculated by adding the beginning and ending DISH TV subscribers for the month and dividing by two.

Item 2. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS – Continued

DISH TV SAC. Subscriber acquisition cost measures are commonly used by those evaluating traditional companies in the pay-TV industry. We are not aware of any uniform standards for calculating the “average subscriber acquisition costs per new DISH TV subscriber activation,” or DISH TV SAC, and we believe presentations of pay-TV SAC may not be calculated consistently by different companies in the same or similar businesses. Our DISH TV SAC is calculated using all of costs of acquiring DISH TV subscribers (e.g., subsidized equipment, advertising, installation, commissions and direct sales, etc.) which are included in “Selling, general and administrative expenses,” plus capitalized payments made under certain sales incentive programs and the value of equipment capitalized under our lease program for new DISH TV subscribers, divided by gross new DISH TV subscriber activations. We include all new DISH TV subscribers in our calculation, including DISH TV subscribers added with little or no subscriber acquisition costs. Although we no longer have a separate line item for subscriber acquisition costs on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss), our methodology for calculating DISH TV SAC is unchanged from prior periods.

Wireless subscribers. We include prepaid and postpaid customers obtained through direct sales, independent third-party retailers and other independent third-party distribution relationships in our wireless subscriber count.

Wireless average monthly revenue per subscriber (“Wireless ARPU”). We calculate average monthly revenue per wireless subscriber, or Wireless ARPU, by dividing average monthly retail wireless “Service revenue” for the period by our average number of wireless subscribers for the period. The average number of wireless subscribers is calculated for the period by adding the average number of wireless subscribers for each month and dividing by the number of months in the period. The average number of wireless subscribers for each month is calculated by adding the beginning and ending wireless subscribers for the month and dividing by two.

Wireless average monthly subscriber churn rate (“Wireless churn rate”). We calculate our “Wireless churn rate” for any period by dividing the number of wireless subscribers who terminated service during the period by the average number of wireless subscribers for the same period, and further dividing by the number of months in the period. The average number of wireless subscribers is calculated for the period by adding the average number of wireless subscribers for each month and dividing by the number of months in the period. The average number of wireless subscribers for each month is calculated by adding the beginning and ending wireless subscribers for the month and dividing by two.

Free cash flow. We define free cash flow as “Net cash flows from operating activities” less “Purchases of property and equipment” and “Capitalized interest related to FCC authorizations,” as shown on our Condensed Consolidated Statements of Cash Flows.

Item 2. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS – Continued

RESULTS OF OPERATIONS – Segments

Business Segments

We currently operate two primary business segments: (1) our Pay-TV segment; and (2) our Wireless segment. Our Wireless segment consists of two business units, the Retail Wireless business unit and 5G Network Deployment business unit. Revenue and operating income by segment are shown in the table below:

Three Months Ended September 30, 2020 Compared to the Three Months Ended September 30, 2019.

	For the Three Months Ended September 30,		Variance	
	2020	2019	Amount	%
	(In thousands)			
Revenue:				
Pay-TV	\$ 3,190,664	\$ 3,169,967	\$ 20,697	0.7
Wireless	1,341,512	64	1,341,448	*
Eliminations	(585)	(1,668)	1,083	64.9
Total revenue	\$ 4,531,591	\$ 3,168,363	\$ 1,363,228	43.0
Operating income (loss):				
Pay-TV	\$ 803,817	\$ 491,696	\$ 312,121	63.5
Wireless	7,431	(22,804)	30,235	*
Eliminations	—	—	—	*
Total operating income (loss)	\$ 811,248	\$ 468,892	\$ 342,356	73.0

Total revenue. Our consolidated revenue totaled \$4.532 billion for the three months ended September 30, 2020, an increase of \$1.363 billion or 43.0% compared to the same period in 2019. The increase primarily resulted from the completion of the Boost Mobile Acquisition.

Total operating income (loss). Our consolidated operating income totaled \$811 million for the three months ended September 30, 2020, an increase of \$342 million or 73.0% compared to the same period in 2019. The change primarily resulted from an increase in operating income from our Pay-TV segment.

Item 2. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS – Continued

Nine Months Ended September 30, 2020 Compared to the Nine Months Ended September 30, 2019.

	For the Nine Months Ended September 30,		Variance	
	2020	2019	Amount	%
	(In thousands)			
Revenue:				
Pay-TV	\$ 9,595,131	\$ 9,569,972	\$ 25,159	0.3
Wireless	1,343,893	187	1,343,706	*
Eliminations	(2,954)	(3,340)	386	11.6
Total revenue	<u>\$ 10,936,070</u>	<u>\$ 9,566,819</u>	<u>\$ 1,369,251</u>	<u>14.3</u>
Operating income (loss):				
Pay-TV	\$ 2,040,970	\$ 1,406,179	\$ 634,791	45.1
Wireless	(447,994)	(50,255)	(397,739)	*
Eliminations	—	—	—	*
Total operating income (loss)	<u>\$ 1,592,976</u>	<u>\$ 1,355,924</u>	<u>\$ 237,052</u>	<u>17.5</u>

Total revenue. Our consolidated revenue totaled \$10.936 billion for the nine months ended September 30, 2020, an increase of \$1.369 billion or 14.3% compared to the same period in 2019. The increase primarily resulted from the completion of the Boost Mobile Acquisition.

Total operating income (loss). Our consolidated operating income totaled \$1.593 billion for the nine months ended September 30, 2020, an increase of \$237 million or 17.5% compared to the same period in 2019. The change primarily resulted from an increase in the operating income from our Pay-TV segment, partially offset by an increase in operating losses associated with our Wireless segment, principally related to an “Impairment of long-lived assets” of \$356 million in the first quarter of 2020.

Item 2. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS – Continued

Pay-TV Segment

We are the nation’s fourth largest pay-TV provider and offer pay-TV services under the DISH® brand and the SLING® brand (collectively “Pay-TV” services). The DISH branded pay-TV service consists of, among other things, Federal Communications Commission (“FCC”) licenses authorizing us to use direct broadcast satellite (“DBS”) and Fixed Satellite Service (“FSS”) spectrum, our owned and leased satellites, receiver systems, broadcast operations, customer service facilities, a leased fiber optic network, in-home service and call center operations, and certain other assets utilized in our operations (“DISH TV”). We also design, develop and distribute receiver systems and provide digital broadcast operations, including satellite uplinking/downlinking, transmission and other services to third-party pay-TV providers. The SLING branded pay-TV services consist of, among other things, multichannel, live-linear streaming over-the-top (“OTT”), Internet-based domestic, international and Latino video programming services (“SLING TV”). As of September 30, 2020, we had 11.423 million Pay-TV subscribers in the United States, including 8.965 million DISH TV subscribers and 2.458 million SLING TV subscribers.

Competition has intensified in recent years as the pay-TV industry has matured. To differentiate our DISH TV services from our competitors, we offer the Hopper whole-home DVR and have continued to add functionality and simplicity for a more intuitive user experience. Our Hopper and Joey® whole-home DVR promotes a suite of integrated features and functionality designed to maximize the convenience and ease of watching TV anytime and anywhere. It also has several innovative features that a consumer can use, at his or her option, to watch and record television programming, through their televisions, streaming media devices, tablets, phones and computers. The Hopper 3, among other things, features 16 tuners, delivers an enhanced 4K Ultra HD experience, and supports up to seven TVs simultaneously.

We market our SLING TV services primarily to consumers who do not subscribe to traditional satellite and cable pay-TV services. Our SLING TV services require an Internet connection and are available on multiple streaming-capable devices including streaming media devices, TVs, tablets, computers, game consoles and phones. We offer SLING International, SLING Latino and SLING domestic video programming services.

Our domestic SLING TV services have a single-stream service branded SLING Orange and a multi-stream service branded SLING Blue, which includes, among other things, the ability to stream on up to three devices simultaneously. We face competition from providers of video content distributed over the Internet including services with live-linear television programming, as well as single programmer offerings and offerings of large libraries of on-demand content, including in certain cases original content. These providers include, among others, Netflix, Hulu, Apple, Amazon, Alphabet, Disney, AT&T, ViacomCBS, STARZ, Peacock, Fubo and Philo. Many of these companies have larger customer bases, stronger brand recognition and greater financial, marketing and other resources than we do. In addition, traditional providers of video entertainment, including broadcasters, cable channels and MVPDs, are increasing their Internet-based video offerings. Some of these services charge nominal or no fees for access to their content, which could adversely affect demand for our Pay-TV services. Moreover, new technologies have been, and will likely continue to be, developed that further increase the number of competitors we face with respect to video services, including competition from piracy-based video offerings.

This competition, among other things, has caused the rate of growth in subscribers to our SLING TV services to decrease. In June 2018, we launched additional SLING TV services which include offering consumers a la carte channel subscriptions, access to pay-per-view events and movies, and access to free content. There can be no assurance that these additional services and other offers will positively affect our results of operations or our net SLING TV subscribers.

Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS – Continued

Trends in our Pay-TV Segment

Competition

Competition has intensified in recent years as the pay-TV industry has matured. With respect to our DISH TV services, we and our competitors increasingly must seek to attract a greater proportion of new subscribers from each other's existing subscriber bases rather than from first-time purchasers of pay-TV services.

We incur significant costs to retain our existing DISH TV subscribers, mostly as a result of upgrading their equipment to next generation receivers, primarily including our Hopper receivers, and by providing retention credits. Our DISH TV subscriber retention costs may vary significantly from period to period.

Many of our competitors have been especially aggressive by offering discounted programming and services for both new and existing subscribers, including bundled offers combining broadband, video and/or wireless services and other promotional offers. Certain competitors have been able to subsidize the price of video services with the price of broadband and/or wireless services.

Our Pay-TV services also face increased competition from programmers and other companies who distribute video directly to consumers over the Internet. Our SLING TV services face increased competition from content providers and other companies, as well as traditional satellite television providers, cable companies and large telecommunications companies that are increasing their Internet-based video offerings. We also face competition from providers of video content distributed over the Internet including services with live-linear television programming, as well as single programmer offerings and offerings of large libraries of on-demand content, including in certain cases original content. These providers include, among others, Netflix, Hulu, Apple, Amazon, Alphabet, Disney, Verizon, AT&T, ViacomCBS, STARZ, Peacock, Fubo and Philo. Furthermore, our DISH TV services face increased competition as programming offered over the Internet has become more prevalent and consumers are spending an increasing amount of time accessing video content via the Internet on their mobile devices.

Significant changes in consumer behavior with regard to the means by which consumers obtain video entertainment and information in response to digital media competition could have a material adverse effect on our business, results of operations and financial condition or otherwise disrupt our business. In particular, consumers have shown increased interest in viewing certain video programming in any place, at any time and/or on any broadband-connected device they choose. Online content providers may cause our subscribers to disconnect our DISH TV services ("cord cutting"), downgrade to smaller, less expensive programming packages ("cord shaving") or elect to purchase through these online content providers a certain portion of the services that they would have historically purchased from us, such as pay per view movies, resulting in less revenue to us.

Mergers and acquisitions, joint ventures and alliances among cable television providers, telecommunications companies, programming providers and others may result in, among other things, greater scale and financial leverage and increase the availability of offerings from providers capable of bundling video, broadband and/or wireless services in competition with our services and may exacerbate the risks described in our public filings. In October 2016, AT&T announced its acquisition of Time Warner, which was completed in June 2018. In December 2017, Walt Disney Company announced its acquisition of certain assets of Twenty-First Century Fox, Inc., which was completed in March 2019. These transactions may affect us adversely by, among other things, making it more difficult for us to obtain access to certain programming networks on nondiscriminatory and fair terms, or at all. For example, in connection with AT&T's acquisition of Time Warner, Turner sent all of its distributors written, irrevocable offers to submit disputes over the price and other terms of Turner programming to binding arbitration and to guarantee continued access to that programming while any arbitration is pending. However, in October 2018, AT&T removed its HBO and Cinemax channels, which are not part of Turner, from our DISH TV and SLING TV programming lineup, as we and AT&T have been unable to negotiate the terms and conditions of a new programming carriage contract.

Item 2. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS – Continued

We implement new marketing promotions from time to time that are intended to increase our Pay-TV subscriber activations. For our DISH TV services, we have launched various marketing promotions offering certain DISH TV programming packages without a price increase for a commitment period. We also launched our Flex Pack skinny bundle with a core package of programming consisting of more than 50 channels and the choice of one of ten themed add-on channel packs, which include, among others, local broadcast networks and kids and general entertainment programming. Subscribers can also add or remove additional channel packs to best suit their entertainment needs. In addition, certain streaming apps, including, among others, Netflix, Amazon Prime Video and YouTube, have been integrated into select Hopper receiver systems. While we plan to implement new marketing efforts for our DISH TV services, there can be no assurance that we will ultimately be successful in increasing our gross new DISH TV subscriber activations.

Additionally, in response to our efforts, we may face increased competitive pressures, including aggressive marketing and retention efforts, bundled discount offers combining broadband, video and/or wireless services and other discounted promotional offers.

For our SLING TV services, we offer a personalized TV experience with a customized channel line-up and two of the lowest priced multichannel live-linear online streaming services in the industry, our SLING Orange service and our SLING Blue service. While we plan to implement new marketing efforts for our SLING TV services, there can be no assurance that we will ultimately be successful in increasing our net SLING TV subscriber activations.

Our Pay-TV subscriber base has been declining due to, among other things, the factors described above. There can be no assurance that our Pay-TV subscriber base will not continue to decline and that the pace of such decline will not accelerate. As our Pay-TV subscriber base continues to decline, it could have a material adverse long-term effect on our business, results of operations, financial condition and cash flow.

Programming

Our ability to compete successfully will depend, among other things, on our ability to continue to obtain desirable programming and deliver it to our subscribers at competitive prices. Programming costs represent a large percentage of our “Cost of services” and the largest component of our total expense. We expect these costs to continue to increase due to contractual price increases and the renewal of long-term programming contracts on less favorable pricing terms and certain programming costs are rising at a much faster rate than wages or inflation. In particular, the rates we are charged for retransmitting local broadcast channels have been increasing substantially and may exceed our ability to increase our prices to our customers. Going forward, our margins may face pressure if we are unable to renew our long-term programming contracts on acceptable pricing and other economic terms or if we are unable to pass these increased programming costs on to our customers.

Increases in programming costs have caused us to increase the rates that we charge to our subscribers, which could in turn cause our existing Pay-TV subscribers to disconnect our service or cause potential new Pay-TV subscribers to choose not to subscribe to our service. Additionally, even if our subscribers do not disconnect our services, they may purchase through new and existing online content providers a certain portion of the services that they would have historically purchased from us, such as pay-per-view movies, resulting in less revenue to us.

Item 2. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS – Continued

Furthermore, our net Pay-TV subscriber additions, gross new DISH TV subscriber activations, and DISH TV churn rate may be negatively impacted if we are unable to renew our long-term programming carriage contracts before they expire. In the past, our net Pay-TV subscriber additions, gross new DISH TV subscriber activations, and DISH TV churn rate have been negatively impacted as a result of programming interruptions and threatened programming interruptions in connection with the scheduled expiration of programming carriage contracts with content providers. For example, in June 2018 and November 2018, Univision Communications Inc. (“Univision”) removed certain of its channels from our DISH TV and SLING TV programming lineup. On March 26, 2019, we and Univision signed a new programming carriage contract which restored certain of these Univision channels to our DISH TV programming lineup. In October 2018, AT&T removed its HBO and Cinemax channels from our DISH TV and SLING TV programming lineup, as we and AT&T have been unable to negotiate the terms and conditions of a new programming carriage contract. AT&T offers its programming, including its HBO and Cinemax channels, directly to consumers over the Internet and provides HBO for free to its subscribers under certain offers. In July 2019, Fox Regional Sports Networks (“RSNs”) also removed certain of its channels from our DISH TV and SLING TV programming lineup. In August 2019, Sinclair Broadcast Group acquired the Fox RSNs. We experienced a higher DISH TV churn rate, higher net Pay-TV subscriber losses and lower gross new DISH TV subscriber activations during 2018 and 2019, when Univision, AT&T and Sinclair RSNs removed certain of their channels from our DISH TV and SLING TV programming lineup. There can be no assurance that channel removals, such as the removal of the channels discussed above or others, will not have a material adverse effect on our business, results of operations and financial condition or otherwise disrupt our business.

We cannot predict with any certainty the impact to our net Pay-TV subscriber additions, gross new DISH TV subscriber activations, and DISH TV churn rate resulting from additional programming interruptions or threatened programming interruptions that may occur in the future. As a result, we may at times suffer from periods of lower net Pay-TV subscriber additions or higher net Pay-TV subscriber losses.

Operations and Customer Service

While competitive factors have impacted the entire pay-TV industry, our relative performance has also been driven by issues specific to us. In the past, our subscriber growth has been adversely affected by signal theft and other forms of fraud and by our operational inefficiencies. For our DISH TV services, in order to combat signal theft and improve the security of our broadcast system, we use microchips embedded in credit card sized access cards, called “smart cards,” or security chips in our DBS receiver systems to control access to authorized programming content (“Security Access Devices”). We expect that future replacements of these devices may be necessary to keep our system secure. To combat other forms of fraud, among other things, we monitor our independent third-party distributors’ and independent third-party retailers’ adherence to our business rules. Furthermore, for our SLING TV services, we encrypt programming content and use digital rights management software to, among other things, prevent unauthorized access to our programming content.

While we have made improvements in responding to and dealing with customer service issues, we continue to focus on the prevention of these issues, which is critical to our business, financial condition and results of operations. To improve our operational performance, we continue to make investments in staffing, training, information systems, and other initiatives, primarily in our call center and in-home service operations. These investments are intended to help combat inefficiencies introduced by the increasing complexity of our business, improve customer satisfaction, reduce churn, increase productivity, and allow us to scale better over the long run. We cannot be certain, however, that our spending will ultimately be successful in improving our operational performance.

Item 2. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS – Continued

Master Transaction Agreement

On May 19, 2019, we and our wholly-owned subsidiary BSS Merger Sub Inc., (“Merger Sub”), entered into a Master Transaction Agreement (the “Master Transaction Agreement”) with EchoStar and EchoStar BSS Corporation, a wholly-owned subsidiary of EchoStar (“Newco”).

Pursuant to the Master Transaction Agreement, among other things: (i) EchoStar carried out an internal reorganization in which certain assets and liabilities of the EchoStar Satellite Services segment, the business segment of EchoStar that provides broadcast satellite operations and satellite services, as well as certain related licenses, real estate properties and employees (together, the “BSS Business”) were transferred to Newco (the “Pre-Closing Restructuring”); (ii) EchoStar distributed all outstanding shares of common stock, par value \$0.001 per share, of Newco (such stock, “Newco Common Stock”) on a pro rata basis (the “Distribution”), to the holders of record of Class A common stock, par value \$0.001 per share, of EchoStar and Class B common stock, par value \$0.001 per share, of EchoStar; and (iii) upon the consummation of the Pre-Closing Restructuring and the Distribution, Merger Sub merged with and into Newco (the “Merger”) such that, upon consummation of the Merger, Merger Sub ceased to exist and Newco continued as our wholly-owned subsidiary.

Effective September 10, 2019, pursuant to the terms and subject to the conditions set forth in the Master Transaction Agreement, in consideration for the Merger, we issued 22,937,188 shares of our Class A common stock to the holders of Newco Common Stock at a ratio of 0.23523769 of our Class A common stock for each outstanding share of Newco Common Stock. The transaction was structured as a tax-free spin-off and merger.

In addition, as the result of the Merger, we, EchoStar and, as relevant, certain of our or their respective subsidiaries, entered into ancillary agreements involving tax, employment and intellectual property matters, which set forth certain rights and obligations of us and EchoStar and our and their respective subsidiaries related to the Merger with respect to, among other things: (i) the payment of tax liability refunds, and the filing of tax returns related to Newco and the BSS Business; (ii) the allocation of employment-related assets and liabilities between us and EchoStar; (iii) certain employee compensation, equity awards, benefit plans, programs and arrangements relating to employees who are expected to be transferred to us pursuant to the Merger; (iv) a cross-license between us and EchoStar for certain intellectual property either transferred to us as part of the Merger or retained by EchoStar that is also used in the BSS Business; and (v) the provision of certain telemetry, tracking and control services by us and our subsidiaries to EchoStar and its subsidiaries.

The description of the Master Transaction Agreement in this section is qualified in its entirety by reference to the complete text of the Master Transaction Agreement, a copy of which is filed as Exhibit 2.1 to our Quarterly Report on Form 10-Q for the quarter ended June 30, 2019.

The Merger was accounted for as an asset purchase, as substantially all of the fair value of the gross assets acquired was concentrated in a group of similar identifiable assets. As the Merger was between entities that were under common control, we recorded the assets and liabilities received under the Merger at EchoStar’s historical cost basis, with the offsetting amount recorded in “Additional paid-in capital” on our Condensed Consolidated Balance Sheets. A significant portion of the assets received under the Merger were historically leased to us by EchoStar. As these assets and the related liabilities have been transferred to us pursuant to the Master Transaction Agreement, they are no longer be included in “Operating lease assets,” “Other current liabilities” and “Operating lease liabilities,” but rather in “Property and equipment, net” on our Condensed Consolidated Balance Sheets.

Item 2. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS – Continued

RESULTS OF OPERATIONS – PAY-TV Segment

Three Months Ended September 30, 2020 Compared to the Three Months Ended September 30, 2019.

Statements of Operations Data	For the Three Months Ended September 30,		Variance	
	2020	2019	Amount	%
	(In thousands)			
Revenue:				
Service revenue	\$ 3,139,575	\$ 3,117,191	\$ 22,384	0.7
Equipment sales and other revenue	51,089	52,776	(1,687)	(3.2)
Total revenue	<u>3,190,664</u>	<u>3,169,967</u>	<u>20,697</u>	0.7
Costs and expenses:				
Cost of services	1,822,440	2,044,339	(221,899)	(10.9)
% of Service revenue	58.0 %	65.6 %		
Cost of sales - equipment and other	31,044	43,517	(12,473)	(28.7)
Selling, general and administrative expenses	381,116	440,431	(59,315)	(13.5)
% of Total revenue	11.9 %	13.9 %		
Depreciation and amortization	152,247	149,984	2,263	1.5
Total costs and expenses	<u>2,386,847</u>	<u>2,678,271</u>	<u>(291,424)</u>	(10.9)
Operating income (loss)	<u>\$ 803,817</u>	<u>\$ 491,696</u>	<u>\$ 312,121</u>	63.5
Other data:				
Pay-TV subscribers, as of period end (in millions) **	11.423	12.180	(0.757)	(6.2)
DISH TV subscribers, as of period end (in millions) **	8.965	9.494	(0.529)	(5.6)
SLING TV subscribers, as of period end (in millions)	2.458	2.686	(0.228)	(8.5)
Pay-TV subscriber additions (losses), net (in millions)	0.116	0.148	(0.032)	(21.6)
DISH TV subscriber additions (losses), net (in millions)	(0.087)	(0.066)	(0.021)	(31.8)
SLING TV subscriber additions (losses), net (in millions)	0.203	0.214	(0.011)	(5.1)
Pay-TV ARPU	\$ 91.79	\$ 85.29	\$ 6.50	7.6
DISH TV subscriber additions, gross (in millions)	0.292	0.416	(0.124)	(29.8)
DISH TV churn rate	1.41 %	1.69 %	(0.28)%	(16.6)
DISH TV SAC	\$ 864	\$ 827	\$ 37	4.5
Purchases of property and equipment	90,948	116,227	(25,279)	(21.7)
OIBDA	\$ 956,064	\$ 641,680	\$ 314,384	49.0

* Percentage is not meaningful.

**During the first quarter 2020, we removed approximately 250,000 subscribers representing commercial accounts impacted by COVID-19 from our ending Pay-TV subscriber count. During the second and third quarters 2020, 45,000 and 35,000, respectively, of these subscribers came off pause or had temporary rate relief end and are included in our ending Pay-TV subscriber count as of September 30, 2020. See “Results of Operations – Pay-TV subscribers” for further information.

Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS – Continued

Pay TV subscribers

DISH TV subscribers. We lost approximately 87,000 net DISH TV subscribers during the three months ended September 30, 2020 compared to the loss of approximately 66,000 net DISH TV subscribers during the same period in 2019. This increase in net DISH TV subscriber losses primarily resulted from lower gross new DISH TV subscriber activations, partially offset by a lower DISH TV churn rate.

SLING TV subscribers. We added approximately 203,000 net SLING TV subscribers during the three months ended September 30, 2020 compared to the addition of approximately 214,000 net SLING TV subscribers during the same period in 2019. This decrease in net SLING TV subscriber additions was primarily related to lower SLING TV subscriber activations, increased competition, including competition from other subscription video on-demand and live-linear OTT service providers, and delays and cancellations of sporting events as a result of COVID-19.

DISH TV subscribers, gross. During the three months ended September 30, 2020, we activated approximately 292,000 gross new DISH TV subscribers compared to approximately 416,000 gross new DISH TV subscribers during the same period in 2019, a decrease of 29.8%. This decrease in our gross new DISH TV subscriber activations was primarily related to the impact of COVID-19. Beginning in the second half of March 2020, COVID-19 and the related governmental recommendations and/or mandates created reduced in person selling opportunities, and a reduction in customers' willingness to open direct mail marketing and allow in-home technicians into their homes as well as delays and cancellations of sporting events. As a result, beginning in the first quarter 2020, we reduced our marketing expenditures and our gross new DISH TV subscribers began to decrease. We continue to assess the impact of COVID-19 and cannot predict with certainty the impact to our gross new DISH TV subscribers as a result of, among other things, higher unemployment and lower discretionary spending and reduced ability to perform our in-home service operations due to the impact of social distancing. In addition, our gross new DISH TV subscriber activations continue to be negatively impacted by stricter customer acquisition policies for our DISH TV subscribers, including an emphasis on acquiring higher quality subscribers, and by increased competitive pressures, including aggressive short term introductory pricing and bundled offers combining broadband, video and/or wireless services and other discounted promotional offers, and channel removals.

DISH TV churn rate. Our DISH TV churn rate for the three months ended September 30, 2020 was 1.41% compared to 1.69% for the same period in 2019. This decrease primarily resulted from the impact of COVID-19, including, among other things, the recommendations and/or mandates from federal, state, and local authorities that customers refrain from non-essential movements outside of their homes and the resulting increased consumption of our Pay-TV services. In addition, COVID-19 had an impact on competitive pressures due to, among other things, a reduction in customers' willingness to allow competitors' technicians into their homes. We continue to assess the impact of COVID-19 and cannot predict with certainty the impact to our DISH TV churn rate as a result of, among other things, higher unemployment and lower discretionary spending and reduced ability to perform our in-home service operations due to the impact of social distancing. In addition, this decrease also resulted from our emphasis on acquiring and retaining higher quality subscribers. Our DISH TV churn rate continues to be adversely impacted by external factors, such as, among other things, increased competitive pressures, including aggressive marketing, bundled discount offers combining broadband, video and/or wireless services and other discounted promotional offers, as well as cord cutting. Our DISH TV churn rate is also impacted by internal factors, such as, among other things, our ability to consistently provide outstanding customer service, price increases, programming interruptions in connection with the scheduled expiration of certain programming carriage contracts, our ability to control piracy and other forms of fraud and the level of our retention efforts.

Item 2. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS – Continued

Beginning in March 2020, several federal, state, and local government agencies implemented recommendations, guidelines, and orders regarding “social distancing” in an attempt to slow or stop the spread of COVID-19. As a result of these actions, many bars, restaurants, and other commercial establishments have been and continue to be recommended and/or ordered to suspend all non-essential “in-person” business operations and/or operate at reduced capacity. In addition, airlines and hotels significantly reduced operations as a result of government actions and/or related lower consumer demand. In an effort to avoid charging commercial customers for services in their establishments which are no longer open to the public, we have paused service or provided temporary rate relief for certain of those commercial accounts. For certain commercial accounts, each subscription is counted as one Pay-TV subscriber. For other commercial accounts, as discussed above, we divide our total revenue for these commercial accounts by \$34.99, and include the resulting number, which is substantially smaller than the actual number of commercial units served, in our Pay-TV subscriber count. During the first quarter 2020, we removed 250,000 subscribers from our ending Pay-TV subscriber count for commercial accounts we placed on pause, or received reduced revenue, or we anticipate the account to disconnect due to COVID-19. During the second and third quarters 2020, 45,000 and 35,000, respectively, of these subscribers came off pause or had temporary rate relief and 17,000 and 5,000, respectively, of these subscribers disconnected.

We have not incurred and do not expect to incur any significant expenses in connection with the return of these commercial accounts and accordingly, these commercial accounts were added to our ending subscriber count and were not recorded as gross new Pay-TV subscriber activations. We cannot predict when the remaining commercial accounts will be able to fully reopen, how many will return or when they may return to active subscriber status, and there can be no assurance that they will return. We continue to assess the impact of COVID-19 and cannot predict with certainty the impact to our subscriber base, gross new DISH TV subscribers and our DISH TV churn rate as a result of, among other things, higher unemployment and lower discretionary spending and our reduced ability to perform our in-home service operations due to the impact of social distancing. As such, given the dynamic nature of this situation, we cannot reasonably estimate the impacts of COVID-19 on our financial condition and results of operations.

We cannot predict with any certainty the impact to our net Pay-TV subscriber additions, gross new DISH TV subscriber activations, and DISH TV subscriber churn rate resulting from programming interruptions or threatened programming interruptions that may occur in the future. As a result, we may at times suffer from periods of lower net Pay-TV subscriber additions or higher net Pay-TV subscriber losses.

We have not always met our own standards for performing high-quality installations, effectively resolving subscriber issues when they arise, answering subscriber calls in an acceptable timeframe, effectively communicating with our subscriber base, reducing calls driven by the complexity of our business, improving the reliability of certain systems and subscriber equipment and aligning the interests of certain independent third-party retailers and installers to provide high-quality service. Most of these factors have affected both gross new DISH TV subscriber activations as well as DISH TV subscriber churn rate. Our future gross new DISH TV subscriber activations and our DISH TV subscriber churn rate may be negatively impacted by these factors, which could in turn adversely affect our revenue.

Service revenue. “Service revenue” totaled \$3.140 billion for the three months ended September 30, 2020, an increase of \$22 million or 0.7% compared to the same period in 2019. The increase in “Service revenue” compared to the same period in 2019 was primarily related to an increase in Pay-TV ARPU, discussed below, partially offset by lower average Pay-TV subscriber base.

Pay-TV ARPU. Pay-TV ARPU was \$91.79 during the three months ended September 30, 2020 versus \$85.29 during the same period in 2019. The \$6.50 or 7.6% increase in Pay-TV ARPU was primarily attributable to the DISH TV programming package price increases in the first quarter 2020 and 2019, the SLING TV programming package price increases in the first quarter 2020 and fourth quarter 2019, and an increase in revenue related to advertising sales. In addition, Pay-TV ARPU for the three months ended September 30, 2020 was positively impacted by fewer commercial accounts compared to the same period in 2019. Commercial accounts have lower Pay-TV ARPU than residential subscribers, and therefore, the decrease in commercial accounts had a positive impact on Pay-TV ARPU.

Item 2. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS – Continued

Cost of services. “Cost of services” totaled \$1.822 billion during the three months ended September 30, 2020, a decrease of \$222 million or 10.9% compared to the same period in 2019. The decrease in “Cost of services” was primarily attributable to a lower average Pay-TV subscriber base, a decrease in variable and retention costs per subscriber, lower programming costs per subscriber and the reduction of expense associated with the transfer of certain assets to us pursuant to the Master Transaction Agreement. Variable and retention costs per subscriber decreased due to, among other things, increased operational efficiencies, including a focused set of staffing reductions, and fewer customer upgrades. Programming costs per subscriber decreased during the three months ended September 30, 2020 due to, among others, Sinclair RSN’s removal of certain of their channels from our programming lineup in July 2019 and multiple one-time programming adjustments. These decreases were partially offset by increases in programming costs per subscriber related to rate increases in certain of our programming contracts, including the renewal of certain contracts at higher rates, particularly for local broadcast channels. “Cost of services” represented 58.0% and 65.6% of “Service revenue” during the three months ended September 30, 2020 and 2019, respectively. See Note 14 in the Notes to our Condensed Consolidated Financial Statements for further information on the Master Transaction Agreement.

In the normal course of business, we enter into contracts to purchase programming content in which our payment obligations are generally contingent on the number of Pay-TV subscribers to whom we provide the respective content. Our “Cost of services” have and will continue to face further upward pressure from price increases and the renewal of long-term programming contracts on less favorable pricing terms. In addition, our programming expenses will increase to the extent we are successful in growing our Pay-TV subscriber base.

Selling, general and administrative expenses. “Selling, general and administrative expenses” totaled \$381 million during the three months ended September 30, 2020, a \$59 million or 13.5% decrease compared to the same period in 2019. This change was primarily driven by a decrease in subscriber acquisition costs resulting from fewer gross new DISH TV subscriber activations, and by cost cutting initiatives in the Pay-TV segment, including a focused set of staffing reductions.

DISH TV SAC. DISH TV SAC was \$864 during the three months ended September 30, 2020 compared to \$827 during the same period in 2019, an increase of \$37 or 4.5%. This change was primarily attributable to an increase in advertising costs per subscriber.

During the three months ended September 30, 2020 and 2019, the amount of equipment capitalized under our lease program for new DISH TV subscribers totaled \$49 million and \$66 million, respectively. This decrease in capital expenditures primarily resulted from a decrease in gross new DISH TV subscriber activations.

To remain competitive, we upgrade or replace subscriber equipment periodically as technology changes, and the costs associated with these upgrades may be substantial. To the extent technological changes render a portion of our existing equipment obsolete, we would be unable to redeploy all returned equipment and consequently would realize less benefit from the DISH TV SAC reduction associated with redeployment of that returned lease equipment.

Our “DISH TV SAC” may materially increase in the future to the extent that we, among other things, transition to newer technologies, introduce more aggressive promotions, or provide greater equipment subsidies. See further information under “*Liquidity and Capital Resources – Subscriber Acquisition and Retention Costs.*”

Item 2. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS – Continued

Nine Months Ended September 30, 2020 Compared to the Nine Months Ended September 30, 2019.

Statements of Operations Data	For the Nine Months Ended September 30,		Variance	
	2020	2019	Amount	%
	(In thousands)			
Revenue:				
Service revenue	\$ 9,455,429	\$ 9,427,533	\$ 27,896	0.3
Equipment sales and other revenue	139,702	142,439	(2,737)	(1.9)
Total revenue	9,595,131	9,569,972	25,159	0.3
Costs and expenses:				
Cost of services	5,838,595	6,354,775	(516,180)	(8.1)
% of Service revenue	61.7 %	67.4 %		
Cost of sales - equipment and other	89,881	133,584	(43,703)	(32.7)
Selling, general and administrative expenses	1,160,791	1,223,037	(62,246)	(5.1)
% of Total revenue	12.1 %	12.8 %		
Depreciation and amortization	464,894	452,397	12,497	2.8
Total costs and expenses	7,554,161	8,163,793	(609,632)	(7.5)
Operating income (loss)	\$ 2,040,970	\$ 1,406,179	\$ 634,791	45.1
Other data:				
Pay-TV subscribers, as of period end (in millions) **	11.423	12.180	(0.757)	(6.2)
DISH TV subscribers, as of period end (in millions) **	8.965	9.494	(0.529)	(5.6)
SLING TV subscribers, as of period end (in millions)	2.458	2.686	(0.228)	(8.5)
Pay-TV subscriber additions (losses), net (in millions)	(0.393)	(0.142)	(0.251)	*
DISH TV subscriber additions (losses), net (in millions)	(0.259)	(0.411)	0.152	37.0
SLING TV subscriber additions (losses), net (in millions)	(0.134)	0.269	(0.403)	*
Pay-TV ARPU	\$ 90.88	\$ 85.55	\$ 5.33	6.2
DISH TV subscriber additions, gross (in millions)	0.859	1.007	(0.148)	(14.7)
DISH TV churn rate	1.36 %	1.64 %	(0.28)%	(17.1)
DISH TV SAC	\$ 854	\$ 813	\$ 41	5.0
Purchases of property and equipment	244,744	300,169	(55,425)	(18.5)
OIBDA	\$ 2,505,864	\$ 1,858,576	\$ 647,288	34.8

* Percentage is not meaningful.

**During the first quarter 2020, we removed approximately 250,000 subscribers representing commercial accounts impacted by COVID-19 from our ending Pay-TV subscriber count. During the second and third quarters 2020, 45,000 and 35,000, respectively, of these subscribers came off pause or had temporary rate relief end and are included in our ending Pay-TV subscriber count as of September 30, 2020. The effect of the removal of these 250,000 subscribers as of March 31, 2020 and the addition of these 80,000 subscribers as of September 30, 2020 was excluded from the calculation of our gross new Pay-TV subscriber activations, net Pay-TV subscriber additions/losses and Pay-TV churn rate for the nine months ended September 30, 2020. See “Results of Operations – Pay-TV subscribers” for further information.

Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS – Continued

Pay TV subscribers

DISH TV subscribers. We lost approximately 259,000 net DISH TV subscribers during the nine months ended September 30, 2020 compared to the loss of approximately 411,000 net DISH TV subscribers during the same period in 2019. This decrease in net DISH TV subscriber losses primarily resulted from a lower DISH TV churn rate, partially offset by lower gross new DISH TV subscriber activations.

SLING TV subscribers. We lost approximately 134,000 net SLING TV subscribers during the nine months ended September 30, 2020 compared to the addition of approximately 269,000 net SLING TV subscribers during the same period in 2019. This decrease in net SLING TV subscriber additions was primarily related to lower SLING TV subscriber activations, increased competition, including competition from other subscription video on-demand and live-linear OTT service providers, and delays and cancellations of sporting events as a result of COVID-19.

DISH TV subscribers, gross. During the nine months ended September 30, 2020, we activated approximately 859,000 gross new DISH TV subscribers compared to approximately 1.007 million gross new DISH TV subscribers during the same period in 2019, a decrease of 14.7%. This decrease in our gross new DISH TV subscriber activations was primarily related to the impact of COVID-19. Beginning in the second half of March 2020, COVID-19 and the related governmental recommendations and/or mandates created reduced in person selling opportunities, and a reduction in customers' willingness to open direct mail marketing and allow in-home technicians into their homes as well as delays and cancellations of sporting events. As a result, beginning in the first quarter 2020, we reduced our marketing expenditures and our gross new DISH TV subscribers began to decrease. We continue to assess the impact of COVID-19 and cannot predict with certainty the impact to our gross new DISH TV subscribers as a result of, among other things, higher unemployment and lower discretionary spending and reduced ability to perform our in-home service operations due to the impact of social distancing. In addition, our gross new DISH TV subscriber activations continue to be negatively impacted by stricter customer acquisition policies for our DISH TV subscribers, including an emphasis on acquiring higher quality subscribers, and by increased competitive pressures, including aggressive short term introductory pricing and bundled offers combining broadband, video and/or wireless services and other discounted promotional offers, and channel removals.

DISH TV churn rate. Our DISH TV churn rate for the nine months ended September 30, 2020 was 1.36% compared to 1.64% for the same period in 2019. This decrease primarily resulted from the impact of COVID-19, including, among other things, the recommendations and/or mandates from federal, state, and local authorities that customers refrain from non-essential movements outside of their homes and the resulting increased consumption of our Pay-TV services. In addition, COVID-19 had an impact on competitive pressures due to, among other things, a reduction in customers' willingness to allow competitors' technicians into their homes and delays and cancellations of sporting events that reduced the attractiveness of competitors' promotional offers and services. Furthermore, our DISH TV churn rate for the nine months ended September 30, 2019 was negatively impacted by Univision's removal of certain of their channels from our programming lineup. We continue to assess the impact of COVID-19 and cannot predict with certainty the impact to our DISH TV churn rate as a result of, among other things, higher unemployment and lower discretionary spending and reduced ability to perform our in-home service operations due to the impact of social distancing. In addition, this decrease also resulted from our emphasis on acquiring and retaining higher quality subscribers. Our DISH TV churn rate continues to be adversely impacted by external factors, such as, among other things, increased competitive pressures, including aggressive marketing, bundled discount offers combining broadband, video and/or wireless services and other discounted promotional offers, as well as cord cutting. Our DISH TV churn rate is also impacted by internal factors, such as, among other things, our ability to consistently provide outstanding customer service, price increases, programming interruptions in connection with the scheduled expiration of certain programming carriage contracts, our ability to control piracy and other forms of fraud and the level of our retention efforts.

Item 2. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS – Continued

Beginning in March 2020, several federal, state, and local government agencies implemented recommendations, guidelines, and orders regarding “social distancing” in an attempt to slow or stop the spread of COVID-19. As a result of these actions, many bars, restaurants, and other commercial establishments have been and continue to be recommended and/or ordered to suspend all non-essential “in-person” business operations and/or operate at reduced capacity. In addition, airlines and hotels significantly reduced operations as a result of government actions and/or related lower consumer demand. In an effort to avoid charging commercial customers for services in their establishments which are no longer open to the public, we have paused service or provided temporary rate relief for certain of those commercial accounts. For certain commercial accounts, each subscription is counted as one Pay-TV subscriber. For other commercial accounts, as discussed above, we divide our total revenue for these commercial accounts by \$34.99, and include the resulting number, which is substantially smaller than the actual number of commercial units served, in our Pay-TV subscriber count. During the first quarter 2020, we removed 250,000 subscribers from our ending Pay-TV subscriber count for commercial accounts we placed on pause, or received reduced revenue, or we anticipate the account to disconnect due to COVID-19. During the second and third quarters 2020, 45,000 and 35,000, respectively, of these subscribers came off pause or had temporary rate relief and 17,000 and 5,000, respectively, of these subscribers disconnected.

We have not incurred and do not expect to incur any significant expenses in connection with the return of these commercial accounts and accordingly, these commercial accounts were added to our ending subscriber count and were not recorded as gross new Pay-TV subscriber activations. We cannot predict when the remaining commercial accounts will be able to fully reopen, how many will return or when they may return to active subscriber status, and there can be no assurance that they will return. We continue to assess the impact of COVID-19 and cannot predict with certainty the impact to our subscriber base, gross new DISH TV subscribers and our DISH TV churn rate as a result of, among other things, higher unemployment and lower discretionary spending and our reduced ability to perform our in-home service operations due to the impact of social distancing. As such, given the dynamic nature of this situation, we cannot reasonably estimate the impacts of COVID-19 on our financial condition and results of operations.

Service revenue. “Service revenue” totaled \$9.455 billion for the nine months ended September 30, 2020, an increase of \$28 million or 0.3% compared to the same period in 2019. The increase in “Service revenue” compared to the same period in 2019 was primarily related to an increase in Pay-TV ARPU discussed below, partially offset by a lower average Pay-TV subscriber base.

Pay-TV ARPU. Pay-TV ARPU was \$90.88 during the nine months ended September 30, 2020 versus \$85.55 during the same period in 2019. The \$5.33 or 6.2% increase in Pay-TV ARPU was primarily attributable to the DISH TV programming package price increases in the first quarter 2020 and 2019, the SLING TV programming package price increases in the first quarter 2020 and fourth quarter 2019 and fewer commercial accounts compared to the same period in 2019, which have lower Pay-TV ARPU than residential subscribers.

Item 2. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS – Continued

Cost of services. “Cost of services” totaled \$5.839 billion during the nine months ended September 30, 2020, a decrease of \$516 million or 8.1% compared to the same period in 2019. The decrease in “Cost of services” was primarily attributable to a lower average Pay-TV subscriber base, lower programming costs per subscriber and the reduction of expense associated with the transfer of certain assets to us pursuant to the Master Transaction Agreement. Programming costs per subscriber decreased during the nine months ended September 30, 2020 due to, among others, Sinclair RSN’s removal of certain of their channels from our programming lineup in July 2019 and multiple one-time programming adjustments in the third quarter 2020. These decreases were partially offset by increases in programming costs per subscriber related to rate increases in certain of our programming contracts, including the renewal of certain contracts at higher rates, particularly for local broadcast channels. “Cost of services” represented 61.7% and 67.4% of “Service revenue” during the nine months ended September 30, 2020 and 2019, respectively. See Note 14 in the Notes to our Condensed Consolidated Financial Statements for further information on the Master Transaction Agreement.

Selling, general and administrative expenses. “Selling, general and administrative expenses” totaled \$1.161 billion during the nine months ended September 30, 2020, a \$62 million or 5.1% decrease compared to the same period in 2019. This change was primarily driven by a decrease in subscriber acquisition costs resulting from fewer gross new DISH TV subscriber activations, and by cost cutting initiatives in the Pay-TV segment, including a focused set of staffing reductions.

DISH TV SAC. DISH TV SAC was \$854 during the nine months ended September 30, 2020 compared to \$813 during the same period in 2019, an increase of \$41 or 5.0%. This change was primarily attributable to fewer commercial additions compared to the same period in 2019, which historically have lower DISH TV SAC than residential activations, and an increase in advertising costs per subscriber.

During the nine months ended September 30, 2020 and 2019, the amount of equipment capitalized under our lease program for new DISH TV subscribers totaled \$120 million and \$143 million, respectively. This decrease in capital expenditures primarily resulted from a decrease in gross new DISH TV subscriber activations.

Item 2. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS – Continued**Wireless Segment**

Our wireless business segment operates in two business units, Retail Wireless and 5G Network Deployment. Revenue, operating income and purchases of property and equipment by business unit are shown in the table below:

<u>Three Months Ended September 30, 2020</u>	<u>Retail Wireless</u>	<u>5G Network Deployment</u>	<u>Total Wireless</u>
		(In thousands)	
Total revenue	\$ 1,338,167	\$ 3,345	\$ 1,341,512
Operating income (loss)	\$ 34,858	\$ (27,427)	\$ 7,431
Purchases of property and equipment	\$ —	\$ 21,884	\$ 21,884

<u>Nine Months Ended September 30, 2020</u>	<u>Retail Wireless</u>	<u>5G Network Deployment</u>	<u>Total Wireless</u>
		(In thousands)	
Total revenue	\$ 1,338,167	\$ 5,726	\$ 1,343,893
Operating income (loss)	\$ 19,323	\$ (467,317)	\$ (447,994)
Purchases of property and equipment	\$ —	\$ 64,805	\$ 64,805

Wireless – Retail Wireless

As a result of the Boost Mobile Acquisition and the Ting Mobile Acquisition, we have entered the retail wireless business. See Note 5 for further information. We offer nationwide prepaid and postpaid retail wireless services to subscribers under our Boost Mobile and Ting Mobile brands, as well as a competitive portfolio of wireless devices. Prepaid wireless subscribers generally include customers who pay in advance for monthly access to wireless talk, text, and data services.

Postpaid wireless subscribers generally include subscribers who are qualified to pay after receiving wireless talk, text, and data services. We currently operate our retail wireless business unit as a mobile virtual network operator (“MVNO”) while we build our 5G broadband network. We acquired over 9 million subscribers as a result of the Boost Mobile Acquisition and acquired over 200,000 subscribers as a result of the Ting Mobile Acquisition. Our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss) includes the results of the Boost Mobile Acquisition from July 1, 2020 and Ting Mobile Acquisition from August 1, 2020. As of September 30, 2020, we had 9.418 million retail wireless subscribers.

Currently, we offer wireless customers competitive consumer plans with no annual service contracts and monthly service plans offered range from \$10 for 1GB of high-speed data and unlimited talk and text to \$60 for unlimited data, talk and text. Boost Mobile features a “Shrink It!” plan whereby the longer a customer stays with Boost Mobile, the less they pay for a similar level of service.

Boost Mobile operates within the prepaid wireless space. Customers pay in advance for monthly access to talk, text and data. Prepaid Wireless is a mature market with moderate year-over-year organic growth. Primary competitors to Boost Mobile include Metro PCS (owned by T-Mobile), Cricket Wireless (owned by AT&T) and Tracfone Wireless. Verizon announced its acquisition of Tracfone Wireless in September 2020. Verizon, AT&T, and T-Mobile are currently the only nationwide Mobile Network Operators (“MNO’s”) in the United States and are the three largest providers of retail wireless services in the United States.

Item 2. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS – Continued

Wireless – 5G Network Deployment

Since 2008, we have directly invested over \$11 billion to acquire certain wireless spectrum licenses and related assets and made over \$10 billion in non-controlling investments in certain entities, for a total of over \$21 billion. The \$21 billion of investments related to wireless spectrum licenses does not include \$5 billion of capitalized interest related to the carrying value of such licenses. See Note 2 “*Capitalized Interest*” in the Notes to our Condensed Consolidated Financial Statements for further information on capitalized interest.

DISH Network Spectrum

We have directly invested over \$11 billion to acquire certain wireless spectrum licenses and related assets. These wireless spectrum licenses are subject to certain interim and final build-out requirements, as well as certain renewal requirements. In March 2017, we notified the FCC that we planned to deploy a narrowband IoT network on certain of these wireless licenses, which was to be the first phase of our network deployment (“First Phase”). We expected to complete the First Phase by March 2020, with subsequent phases to be completed thereafter. In light of, among other things, certain developments related to the Sprint-TMUS merger, during the first quarter 2020, we determined that the revision of certain of our build-out deadlines was probable and, therefore, we no longer intended to complete our narrowband IoT deployment. The FCC issued an Order effectuating the build-out deadline changes contemplated above on September 11, 2020.

During the first quarter 2020, we impaired certain assets that would not be utilized in our 5G broadband network deployment (“5G Network Deployment”), resulting in a \$253 million non-cash impairment charge in “Impairment of long-lived assets” on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss). We have issued RFI/Ps to various vendors in the wireless industry and are in the process of selecting certain vendors as we move forward with our 5G Network Deployment. We currently expect expenditures for our 5G Network Deployment to be approximately \$10 billion, excluding capitalized interest. We will need to make significant additional investments or partner with others to, among other things, commercialize, build-out, and integrate these licenses and related assets, and any additional acquired licenses and related assets; and comply with regulations applicable to such licenses.

Depending on the nature and scope of such commercialization, build-out, integration efforts, and regulatory compliance, any such investments or partnerships could vary significantly. In addition, as we consider our options for the commercialization of our wireless spectrum, we will incur significant additional expenses and will have to make significant investments related to, among other things, research and development, wireless testing and wireless network infrastructure. We may also determine that additional wireless spectrum licenses may be required to commercialize our wireless business and to compete with other wireless service providers. See Note 2 “*Capitalized Interest*” and Note 11 “*Commitments and Contingencies – Commitments – Wireless – DISH Network Spectrum*” in the Notes to our Condensed Consolidated Financial Statements for further information.

Item 2. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS – Continued

DISH Network Non-Controlling Investments in the Northstar Entities and the SNR Entities Related to AWS-3 Wireless Spectrum Licenses

During 2015, through our wholly-owned subsidiaries American AWS-3 Wireless II L.L.C. (“American II”) and American AWS-3 Wireless III L.L.C. (“American III”), we initially made over \$10 billion in certain non-controlling investments in Northstar Spectrum, LLC (“Northstar Spectrum”), the parent company of Northstar Wireless, L.L.C. (“Northstar Wireless,” and collectively with Northstar Spectrum, the “Northstar Entities”), and in SNR Wireless HoldCo, LLC (“SNR HoldCo”), the parent company of SNR Wireless LicenseCo, LLC (“SNR Wireless,” and collectively with SNR HoldCo, the “SNR Entities”), respectively. On October 27, 2015, the FCC granted certain AWS-3 wireless spectrum licenses (the “AWS-3 Licenses”) to Northstar Wireless and to SNR Wireless, respectively, which are recorded in “FCC authorizations” on our Condensed Consolidated Balance Sheets. Under the applicable accounting guidance in Accounting Standards Codification 810, *Consolidation* (“ASC 810”), Northstar Spectrum and SNR HoldCo are considered variable interest entities and, based on the characteristics of the structure of these entities and in accordance with the applicable accounting guidance, we consolidate these entities into our financial statements. See Note 2 in the Notes to our Condensed Consolidated Financial Statements for further information.

The AWS-3 Licenses are subject to certain interim and final build-out requirements, as well as certain renewal requirements. The Northstar Entities and/or the SNR Entities may need to raise significant additional capital in the future, which may be obtained from third party sources or from us, so that the Northstar Entities and the SNR Entities may commercialize, build-out and integrate these AWS-3 Licenses, comply with regulations applicable to such AWS-3 Licenses, and make any potential Northstar Re-Auction Payment and SNR Re-Auction Payment for the AWS-3 licenses retained by the FCC. Depending upon the nature and scope of such commercialization, build-out, integration efforts, regulatory compliance, and potential Northstar Re-Auction Payment and SNR Re-Auction Payment, any loans, equity contributions or partnerships could vary significantly. See Note 11 “*Commitments and Contingencies – DISH Network Non-Controlling Investments in the Northstar Entities and the SNR Entities Related to AWS-3 Wireless Spectrum Licenses*” in the Notes to our Condensed Consolidated Financial Statements for further information.

We may need to raise significant additional capital in the future to fund the efforts described above, which may not be available on acceptable terms or at all. There can be no assurance that we, the Northstar Entities and/or the SNR Entities will be able to develop and implement business models that will realize a return on these wireless spectrum licenses or that we, the Northstar Entities and/or the SNR Entities will be able to profitably deploy the assets represented by these wireless spectrum licenses, which may affect the carrying amount of these assets and our future financial condition or results of operations. See Note 11 “*Commitments and Contingencies*” in the Notes to our Condensed Consolidated Financial Statements for further information.

Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS – Continued
RESULTS OF OPERATIONS – Wireless Segment – Retail Wireless Business Unit
Three Months Ended September 30, 2020 Compared to the Three Months Ended September 30, 2019.

Statements of Operations Data	For the Three Months Ended September 30,		Variance	
	2020	2019	Amount	%
	(In thousands)			
Revenue:				
Service revenue	\$ 1,082,570	\$ —	\$ 1,082,570	*
Equipment sales and other revenue	255,597	—	255,597	*
Total revenue	1,338,167	—	1,338,167	*
Costs and expenses:				
Cost of services	666,534	—	666,534	*
% of Service revenue	61.6 %	* %		
Cost of sales - equipment and other	481,121	—	481,121	*
Selling, general and administrative expenses	111,617	—	111,617	*
% of Total revenue	8.3 %	* %		
Depreciation and amortization	44,037	—	44,037	*
Total costs and expenses	1,303,309	—	1,303,309	*
Operating income (loss)	\$ 34,858	\$ —	\$ 34,858	*
Other data:				
Wireless subscribers, as of period end (in millions)	9.418	—	9.418	*
Wireless subscriber additions, gross (in millions)	1.104	—	1.104	*
Wireless subscriber additions (losses), net (in millions)	(0.212)	—	(0.212)	*
Wireless ARPU	\$ 38.17	\$ —	\$ 38.17	*
Wireless churn rate	4.64 %	— %	4.64 %	*
OIBDA	\$ 78,895	\$ —	\$ 78,895	*

* Percentage is not meaningful.

The above includes the results of the Boost Mobile Acquisition from July 1, 2020 and the Ting Mobile Acquisition from August 1, 2020. During the third quarter 2020, we added over 9 million wireless subscribers as a result of acquisitions and lost 212,000 net wireless subscribers as a result of implementing certain operational changes. We are currently in the process of integrating our retail wireless operations and making certain operational changes to enhance profitability. We are working to ensure that the customers we acquire and retain are profitable under our MVNO economics. As an example, certain subscribers that use high amounts of data, may be profitable for an MNO, but are not profitable under an MVNO.

Item 2. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS – Continued

Nine Months Ended September 30, 2020 Compared to the Nine Months Ended September 30, 2019.

Statements of Operations Data	For the Nine Months Ended September 30,		Variance	
	2020	2019	Amount	%
	(In thousands)			
Revenue:				
Service revenue	\$ 1,082,570	\$ —	\$ 1,082,570	*
Equipment sales and other revenue	255,597	—	255,597	*
Total revenue	1,338,167	—	1,338,167	*
Costs and expenses:				
Cost of services	666,534	—	666,534	*
% of Service revenue	61.6 %	* %		
Cost of sales - equipment and other	481,122	—	481,122	*
Selling, general and administrative expenses	127,151	—	127,151	*
% of Total revenue	9.5 %	* %		
Depreciation and amortization	44,037	—	44,037	*
Total costs and expenses	1,318,844	—	1,318,844	*
Operating income (loss)	\$ 19,323	\$ —	\$ 19,323	*
Other data:				
Wireless subscribers, as of period end (in millions)	9.418	—	9.418	*
Wireless subscriber additions, gross (in millions)	1.104	—	1.104	*
Wireless subscriber additions (losses), net (in millions)	(0.212)	—	(0.212)	*
Wireless ARPU	\$ 38.17	—	\$ 38.17	*
Wireless churn rate	4.64 %	—	4.64 %	*
OIBDA	\$ 63,360	—	\$ 63,360	*

* Percentage is not meaningful.

The nine months ended September 30, 2020 includes the activity from the Boost Mobile Acquisition on July 1, 2020 and the Ting Mobile Acquisition on August 1, 2020, as well as certain transaction costs that took place prior to the Boost Mobile Acquisition which are recorded in “Selling, general and administrative expenses” in our Condensed Consolidated Statements of Operations.

Item 2. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS – Continued

RESULTS OF OPERATIONS – Wireless Segment – 5G Network Deployment Business Unit

Three Months Ended September 30, 2020 Compared to the Three Months Ended September 30, 2019.

Statements of Operations Data	For the Three Months Ended September 30,		Variance	
	2020	2019	Amount	%
	(In thousands)			
Revenue:				
Equipment sales and other revenue	3,345	64	3,281	*
Total revenue	3,345	64	3,281	*
Costs and expenses:				
Cost of sales - equipment and other	3,478	9,480	(6,002)	(63.3)
Selling, general and administrative expenses	24,495	9,191	15,304	*
Depreciation and amortization	2,799	4,197	(1,398)	(33.3)
Total costs and expenses	30,772	22,868	7,904	34.6
Operating income (loss)	\$ (27,427)	\$ (22,804)	\$ (4,623)	(20.3)
Other data:				
Purchases of property and equipment	\$ 21,884	\$ 63,453	\$ (41,569)	(65.5)
OIBDA	\$ (24,628)	\$ (18,607)	\$ (6,021)	(32.4)

* Percentage is not meaningful.

Equipment sales and other revenue. “Equipment sales and other revenue” totaled \$3 million for the three months ended September 30, 2020, an increase of \$3 million compared to the same period in 2019. This increase primarily resulted from leasing a portion of our 600MHz spectrum licenses to TMUS, which began on September 11, 2020. The spectrum lease with TMUS will result in \$56 million of annual revenue during its 42 month term, subject to our right to terminate individual licenses prior to 42 months. The specific termination rights vary by license.

Selling, general and administrative expenses “Selling, general and administrative expenses” totaled \$24 million during the three months ended September 30, 2020, a \$15 million increase compared to the same period in 2019. This increase was primarily driven by an increase in general and administrative expenses related to our 5G Network Deployment.

Purchases of property and equipment. “Purchases of property and equipment” totaled \$22 million for the three months ended September 30, 2020, a decrease of \$42 million compared to the same period in 2019. The three months ended September 30, 2019 was impacted by capital expenditures related to our narrowband IoT deployment for which we determined in the first quarter of 2020 that we would no longer complete. See Note 2 in the Notes to our Condensed Consolidated Financial Statements for further information. Capital expenditures for the three months ended September 30, 2020 are related to our 5G Network Deployment. We anticipate expenditures for our 5G Network Deployment to remain at a similar level during the fourth quarter 2020, and increase substantially during the second half of 2021 as we ramp up the build-out phase of our 5G Network Deployment.

Item 2. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS – Continued

Nine Months Ended September 30, 2020 Compared to the Nine Months Ended September 30, 2019.

Statements of Operations Data	For the Nine Months Ended September 30,		Variance	
	2020	2019	Amount	%
	(In thousands)			
Revenue:				
Equipment sales and other revenue	5,726	187	5,539	*
Total revenue	5,726	187	5,539	*
Costs and expenses:				
Cost of sales - equipment and other	15,669	13,626	2,043	15.0
Selling, general and administrative expenses	91,860	32,191	59,669	*
Depreciation and amortization	9,096	4,625	4,471	96.7
Impairment of long-lived assets	356,418	—	356,418	*
Total costs and expenses	473,043	50,442	422,601	*
Operating income (loss)	\$ (467,317)	\$ (50,255)	\$ (417,062)	*
Other data:				
Purchases of property and equipment	\$ 64,805	\$ 161,233	\$ (96,428)	(59.8)
OIBDA	\$ (458,221)	\$ (45,630)	\$ (412,591)	*

* Percentage is not meaningful.

Equipment sales and other revenue. “Equipment sales and other revenue” totaled \$6 million for the nine months ended September 30, 2020, an increase of \$6 million compared to the same period in 2019. This increase primarily resulted from leasing a portion of our 600MHz spectrum licenses to TMUS, which began on September 11, 2020. The spectrum lease with TMUS will result in \$56 million of annual revenue during its 42 month term, subject to our right to terminate individual licenses prior to 42 months. The specific termination rights vary by license.

Selling, general and administrative expenses “Selling, general and administrative expenses” totaled \$92 million during the nine months ended September 30, 2020, a \$60 million increase compared to the same period in 2019. This increase was primarily driven by an increase in general and administrative expenses related to our 5G Network Deployment.

Impairment of long-lived assets. “Impairment of long-lived assets” of \$356 million during the nine months ended September 30, 2020 resulted from impairments of the T1 satellite and D1 satellites, as well as certain wireless equipment and operating lease assets related to our narrowband IoT deployment which we no longer intend to complete. See Note 2 in the Notes to our Condensed Consolidated Financial Statements for further information.

Purchases of property and equipment. “Purchases of property and equipment” totaled \$65 million for the nine months ended September 30, 2020, a decrease of \$96 million compared to the same period in 2019. The nine months ended September 30, 2019 was impacted by capital expenditures related to our narrowband IoT deployment for which we determined in the first quarter of 2020 that we would no longer complete. See Note 2 in the Notes to our Condensed Consolidated Financial Statements for further information. Capital expenditures for the three months ended September 30, 2020 are related to our 5G Network Deployment. We anticipate expenditures for our 5G Network Deployment to remain at a similar level during the fourth quarter 2020, and increase substantially during the second half of 2021 as we ramp up the build-out phase of our 5G Network Deployment.

Item 2. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS – Continued

OTHER CONSOLIDATED RESULTS

Three Months Ended September 30, 2020 Compared to the Three Months Ended September 30, 2019.

Statements of Operations Data	For the Three Months Ended September 30,		Variance	
	2020	2019	Amount	%
	(In thousands)			
Operating income (loss)	\$ 811,248	\$ 468,892	\$ 342,356	73.0
Other income (expense):				
Interest income	1,647	32,301	(30,654)	(94.9)
Interest expense, net of amounts capitalized	6,778	(6,027)	12,805	*
Other, net	(13,200)	(1,796)	(11,404)	*
Total other income (expense)	(4,775)	24,478	(29,253)	*
Income (loss) before income taxes	806,473	493,370	313,103	63.5
Income tax (provision) benefit, net	(273,514)	(116,213)	(157,301)	*
Effective tax rate	33.9 %	23.6 %		
Net income (loss)	532,959	377,157	155,802	41.3
Less: Net income (loss) attributable to noncontrolling interests, net of tax	28,360	23,853	4,507	18.9
Net income (loss) attributable to DISH Network	\$ 504,599	\$ 353,304	\$ 151,295	42.8

* Percentage is not meaningful.

Interest income. “Interest income” totaled \$2 million during the three months ended September 30, 2020, a decrease of \$31 million or 94.9% compared to the same period in 2019. This decrease primarily resulted from lower average cash and marketable investment securities balances and lower percentage returns earned on our cash and marketable investment securities during the three months ended September 30, 2020.

Interest expense, net of amounts capitalized. “Interest expense, net of amounts capitalized” totaled a negative \$7 million during the three months ended September 30, 2020, a decrease in expense of \$13 million compared to the same period in 2019. This decrease was primarily related to a reversal of interest expense previously accrued on uncertain tax positions that was released during the three months ended September 30, 2020. For the three months ended September 30, 2020 and 2019, materially all of our interest expense was capitalized. See Note 2 in the Notes to our Condensed Consolidated Financial Statements for further information.

Income tax (provision) benefit, net. Our income tax provision was \$274 million during the three months ended September 30, 2020, an increase of \$157 million compared to the same period in 2019. The increase in the provision was primarily related to an increase in “Income (loss) before income taxes” and an increase in our effective tax rate due to changes in the state tax rates applied to our deferred taxes as a result of the Boost Mobile Acquisition, partially offset by a benefit recognized for the carryback of net operating losses under The Coronavirus Aid Relief and Economic Security Act (the “CARES Act”).

Item 2. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS – Continued

Nine Months Ended September 30, 2020 Compared to the Nine Months Ended September 30, 2019.

Statements of Operations Data	For the Nine Months Ended September 30,		Variance	
	2020	2019	Amount	%
	(In thousands)			
Operating income (loss)	\$ 1,592,976	\$ 1,355,924	\$ 237,052	17.5
Other income (expense):				
Interest income	21,440	65,944	(44,504)	(67.5)
Interest expense, net of amounts capitalized	(20,322)	(17,598)	(2,724)	(15.5)
Other, net	(11,592)	10,124	(21,716)	*
Total other income (expense)	(10,474)	58,470	(68,944)	*
Income (loss) before income taxes	1,582,502	1,414,394	168,108	11.9
Income tax (provision) benefit, net	(469,864)	(335,372)	(134,492)	(40.1)
Effective tax rate	29.7 %	23.7 %		
Net income (loss)	1,112,638	1,079,022	33,616	3.1
Less: Net income (loss) attributable to noncontrolling interests, net of tax	82,597	68,914	13,683	19.9
Net income (loss) attributable to DISH Network	\$ 1,030,041	\$ 1,010,108	\$ 19,933	2.0

* Percentage is not meaningful.

Interest income. “Interest income” totaled \$21 million during the nine months ended September 30, 2020, a decrease of \$45 million or 67.5% compared to the same period in 2019. This decrease primarily resulted from lower average cash and marketable investment securities balances and lower percentage returns earned on our cash and marketable investment securities during the nine months ended September 30, 2020.

Income tax (provision) benefit, net. Our income tax provision was \$470 million during the nine months ended September 30, 2020, an increase of \$134 million compared to the same period in 2019. The increase in the provision was primarily related to an increase in “Income (loss) before income taxes” and an increase in our effective tax rate due to changes in the state tax rates applied to our deferred taxes as a result of the Boost Mobile Acquisition, partially offset by a benefit recognized for the carryback of net operating losses under the CARES Act.

Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS – Continued***Non-GAAP Performance Measures and Reconciliation***

It is management's intent to provide non-GAAP financial information to enhance the understanding of our GAAP financial information, and it should be considered by the reader in addition to, but not instead of, the financial statements prepared in accordance with GAAP. Each non-GAAP financial measure is presented along with the corresponding GAAP measure so as not to imply that more emphasis should be placed on the non-GAAP measure. We believe that providing these non-GAAP measures in addition to the GAAP measures allows management, investors and other users of our financial information to more fully and accurately assess both consolidated and segment performance. The non-GAAP financial information presented may be determined or calculated differently by other companies and may not be directly comparable to that of other companies.

Consolidated EBITDA

Consolidated EBITDA is not a measure determined in accordance with GAAP and should not be considered a substitute for operating income, net income or any other measure determined in accordance with GAAP. Consolidated EBITDA is used as a measurement of operating efficiency and overall financial performance and we believe it is a helpful measure for those evaluating operating performance in relation to our competitors. Conceptually, EBITDA measures the amount of income generated each period that could be used to service debt, pay taxes and fund capital expenditures. EBITDA should not be considered in isolation or as a substitute for measures of performance prepared in accordance with GAAP.

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2020	2019	2020	2019
	(In thousands)			
Consolidated EBITDA	\$ 968,771	\$ 597,424	\$ 2,016,814	\$ 1,754,156
Interest, net	8,425	26,274	1,118	48,346
Income tax (provision) benefit, net	(273,514)	(116,213)	(469,864)	(335,372)
Depreciation and amortization	(199,083)	(154,181)	(518,027)	(457,022)
Net income (loss) attributable to DISH Network	\$ 504,599	\$ 353,304	\$ 1,030,041	\$ 1,010,108

The changes in Consolidated EBITDA during the three and nine months ended September 30, 2020, compared to the same periods in 2019, were primarily a result of the factors described in connection with operating revenues and operating expenses.

Segment OIBDA

Segment OIBDA, which is presented below, is a non-GAAP measure and does not purport to be an alternative to operating income (loss) as a measure of operating performance. We believe this measure is useful to management, investors and other users of our financial information in evaluating operating profitability of our business segments on a more variable cost basis as it excludes the depreciation and amortization expenses related primarily to capital expenditures and acquisitions for those business segments, as well as in evaluating operating performance in relation to our competitors. Segment OIBDA is calculated by adding back depreciation and amortization expense to segment operating income (loss). See Note 12 to the Notes to our Condensed Consolidated Financial Statements for further information.

Item 2. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS – Continued

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2020	2019	2020	2019
	(In thousands)			
Pay-TV OIBDA	\$ 956,064	\$ 641,680	\$ 2,505,864	\$ 1,858,576
Depreciation and amortization	152,247	149,984	464,894	452,397
Segment operating income (loss)	<u>\$ 803,817</u>	<u>\$ 491,696</u>	<u>\$ 2,040,970</u>	<u>\$ 1,406,179</u>
Retail Wireless OIBDA	\$ 78,895	\$ -	\$ 63,360	\$ —
Depreciation and amortization	44,037	-	44,037	—
Segment operating income (loss)	<u>\$ 34,858</u>	<u>\$ -</u>	<u>\$ 19,323</u>	<u>\$ —</u>
5G Network Deployment OIBDA	\$ (24,628)	\$ (18,607)	\$ (458,221)	\$ (45,630)
Depreciation and amortization	2,799	4,197	9,096	4,625
Segment operating income (loss)	<u>\$ (27,427)</u>	<u>\$ (22,804)</u>	<u>\$ (467,317)</u>	<u>\$ (50,255)</u>
Consolidated OIBDA	\$ 1,010,331	\$ 623,073	\$ 2,111,003	\$ 1,812,946
Depreciation and amortization	199,083	154,181	518,027	457,022
Consolidated operating income (loss)	<u>\$ 811,248</u>	<u>\$ 468,892</u>	<u>\$ 1,592,976</u>	<u>\$ 1,355,924</u>

LIQUIDITY AND CAPITAL RESOURCES
Cash, Cash Equivalents and Current Marketable Investment Securities

We consider all liquid investments purchased within 90 days of their maturity to be cash equivalents. See Note 5 in the Notes to our Condensed Consolidated Financial Statements for further information regarding our marketable investment securities. As of September 30, 2020, our cash, cash equivalents and current marketable investment securities totaled \$2.795 billion compared to \$2.860 billion as of December 31, 2019, a decrease of \$65 million. This decrease in cash, cash equivalents and current marketable investment securities primarily resulted from the closing of the Boost Mobile Acquisition for a net aggregate purchase price of \$1.312 billion, cash used for the redemption of our 5 1/8% Senior Notes due 2020 with an aggregate principal balance of \$1.1 billion, capital expenditures of \$956 million (including capitalized interest related to FCC authorizations), and a \$317 million payment to the FCC for the 3550-3650 MHz Licenses and the 37 GHz, 39 GHz and 47 GHz Licenses. These decreases were partially offset by cash generated from operating activities of \$2.718 billion and \$998 million in net proceeds from the issuance of our 7 3/8% Senior Notes due 2028.

Cash Flow

The following discussion highlights our cash flow activities during the nine months ended September 30, 2020.

Cash flows from operating activities

For the nine months ended September 30, 2020, we reported “Net cash flows from operating activities” of \$2.718 billion primarily attributable to \$2.752 billion of “Net income (loss)” adjusted to exclude the non-cash items for “Depreciation and amortization” expense, “Impairment of long-lived assets” and “Deferred tax expense (benefit).” In addition, “Net cash flows from operating activities” was impacted by the timing difference between book expense and cash payments, including income taxes.

Item 2. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS – Continued

Cash flows from investing activities

For the nine months ended September 30, 2020, we reported outflows from “Net cash flows from investing activities” of \$3.180 billion primarily related to the closing of the Boost Mobile Acquisition for a net aggregate purchase price of \$1.312 billion, capital expenditures of \$956 million (including capitalized interest related to FCC authorizations), \$581 million in net purchases of marketable investment securities, and a \$317 million payment to the FCC for the 3550-3650 MHz Licenses and the 37 GHz, 39 GHz and 47 GHz Licenses. The capital expenditures included \$646 million of capitalized interest related to FCC authorizations, \$165 million for new and existing DISH TV subscriber equipment, \$65 million for wireless equipment and \$80 million of other corporate capital expenditures.

Cash flows from financing activities

For the nine months ended September 30, 2020, we reported outflows from “Net cash flows from financing activities” of \$157 million primarily related to the redemption of our 5 1/8% Senior Notes due 2020 with an aggregate principal balance of \$1.1 billion and repayment of long-term debt and finance lease obligations of \$77 million, partially offset by \$998 million in net proceeds from the issuance of our 7 3/8% Senior Notes due 2028.

Free Cash Flow

We define free cash flow as “Net cash flows from operating activities” less “Purchases of property and equipment,” and “Capitalized interest related to FCC authorizations,” as shown on our Condensed Consolidated Statements of Cash Flows. We believe free cash flow is an important liquidity metric because it measures, during a given period, the amount of cash generated that is available to repay debt obligations, make investments (including strategic wireless investments), fund acquisitions and for certain other activities. Free cash flow is not a measure determined in accordance with GAAP and should not be considered a substitute for “Operating income,” “Net income,” “Net cash flows from operating activities” or any other measure determined in accordance with GAAP. Since free cash flow includes investments in operating assets, we believe this non-GAAP liquidity measure is useful in addition to the most directly comparable GAAP measure “Net cash flows from operating activities.”

Free cash flow can be significantly impacted from period to period by changes in “Net income (loss)” adjusted to exclude certain non-cash charges, operating assets and liabilities, “Purchases of property and equipment,” and “Capitalized interest related to FCC authorizations.” These items are shown in the “Net cash flows from operating activities” and “Net cash flows from investing activities” sections on our Condensed Consolidated Statements of Cash Flows included herein. Operating asset and liability balances can fluctuate significantly from period to period and there can be no assurance that free cash flow will not be negatively impacted by material changes in operating assets and liabilities in future periods, since these changes depend upon, among other things, management’s timing of payments and control of inventory levels, and cash receipts. In addition to fluctuations resulting from changes in operating assets and liabilities, free cash flow can vary significantly from period to period depending upon, among other things, net Pay-TV subscriber additions (losses), subscriber revenue, DISH TV subscriber churn, subscriber acquisition and retention costs including amounts capitalized under our equipment lease programs for DISH TV subscribers, operating efficiencies, increases or decreases in purchases of property and equipment, expenditures related to the commercialization of our wireless spectrum and other factors.

Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS – Continued

The following table reconciles free cash flow to “Net cash flows from operating activities.”

	For the Nine Months Ended September 30,	
	2020	2019
	<small>(In thousands)</small>	
Free cash flow	\$ 1,761,877	\$ 832,596
Add back:		
Purchases of property and equipment (including capitalized interest related to FCC authorizations)	955,814	1,196,033
Net cash flows from operating activities	<u>\$ 2,717,691</u>	<u>\$ 2,028,629</u>

Operational Liquidity

We make general investments in property such as satellites, set-top boxes, information technology and facilities that support our overall Pay-TV business. We also will need to make significant additional investments or partner with others to, among other things, commercialize, build-out, and integrate our wireless spectrum licenses and related assets. Moreover, since we are primarily a subscriber-based company, we also make subscriber-specific investments to acquire new subscribers and retain existing subscribers. While the general investments may be deferred without impacting the business in the short-term, the subscriber-specific investments are less discretionary. Our overall objective is to generate sufficient cash flow over the life of each subscriber to provide an adequate return against the upfront investment. Once the upfront investment has been made for each subscriber, the subsequent cash flow is generally positive, but there can be no assurances that over time we will recoup or earn a return on the upfront investment.

There are a number of factors that impact our future cash flow compared to the cash flow we generate at a given point in time. The first factor is our DISH TV churn rate and how successful we are at retaining our current Pay-TV subscribers. To the extent we lose Pay-TV subscribers from our existing base, the positive cash flow from that base is correspondingly reduced. The second factor is how successful we are at maintaining our service margins. To the extent our “Cost of services” grow faster than our “Service revenue,” the amount of cash flow that is generated per existing subscriber is reduced. Our service margins have been reduced by, among other things, a shift to lower priced Pay-TV programming packages and higher programming costs. The third factor is the rate at which we acquire new subscribers. The faster we acquire new subscribers, the more our positive ongoing cash flow from existing subscribers is offset by the negative upfront cash flow associated with acquiring new subscribers. Conversely, the slower we acquire subscribers, the more our operating cash flow is enhanced in that period. Finally, our future cash flow is impacted by the rate at which we make general investments (including significant investments in wireless), incur expenditures related to the commercialization of our wireless licenses (including any expenditures associated with the deployment of our wireless networks), incur litigation expense, and any cash flow from financing activities. Declines in our Pay-TV subscriber base and subscriber related-margins continue to negatively impact our cash flow, and there can be no assurances that these declines will not continue.

Item 2. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS – Continued

Subscriber Base

DISH TV subscribers. We lost approximately 259,000 net DISH TV subscribers during the nine months ended September 30, 2020 compared to the loss of approximately 411,000 net DISH TV subscribers during the same period in 2019. This decrease in net DISH TV subscriber losses primarily resulted from a lower DISH TV churn rate, partially offset by lower gross new DISH TV subscriber activations.

SLING TV subscribers. We lost approximately 134,000 net SLING TV subscribers during the nine months ended September 30, 2020 compared to the addition of approximately 269,000 net SLING TV subscribers during the same period in 2019. This decrease in net SLING TV subscriber additions was primarily related to lower SLING TV subscriber activations, increased competition, including competition from other subscription video on-demand and live-linear OTT service providers, and delays and cancellations of sporting events as a result of COVID-19.

Wireless subscribers. During the third quarter 2020, we added over 9 million wireless subscribers as a result of acquisitions and lost 212,000 net wireless subscribers as a result of implementing certain operational changes.

See “Results of Operations” above for further information.

Subscriber Acquisition and Retention Costs

We incur significant upfront costs to acquire subscribers, including advertising, independent third-party retailer incentives, payments made to third-parties, equipment subsidies, installation services, and/or new customer promotions. While we attempt to recoup these upfront costs over the lives of their subscription, there can be no assurance that we will be successful in achieving that objective. With respect to our DISH TV services, we employ business rules such as minimum credit requirements for prospective customers and contractual commitments to receive service for a minimum term. We strive to provide outstanding customer service to increase the likelihood of customers keeping their Pay-TV services over longer periods of time. Subscriber acquisition costs for SLING TV subscribers are significantly lower than those for DISH TV subscribers. Our subscriber acquisition costs may vary significantly from period to period.

We incur significant costs to retain our existing DISH TV subscribers, mostly as a result of upgrading their equipment to next generation receivers, primarily including our Hopper receivers, and by providing retention credits. As with our subscriber acquisition costs, our retention upgrade spending includes the cost of equipment and installation services. In certain circumstances, we also offer programming at no additional charge and/or promotional pricing for limited periods to existing customers in exchange for a contractual commitment to receive service for a minimum term. A component of our retention efforts includes the installation of equipment for customers who move. Our DISH TV subscriber retention costs may vary significantly from period to period.

Seasonality

Historically, the first half of the year generally produces fewer gross new DISH TV subscriber activations than the second half of the year, as is typical in the pay-TV industry. In addition, the first and fourth quarters generally produce a lower DISH TV churn rate than the second and third quarters. However, in recent years, as the pay-TV industry has matured, we and our competitors increasingly must seek to attract a greater proportion of new subscribers from each other’s existing subscriber bases rather than from first-time purchasers of pay-TV services. As a result, historical trends in seasonality described above may not be indicative of future trends. Our net SLING TV subscriber additions are impacted by, among other things, certain major sporting events and other major television events. Due to the COVID-19 pandemic the historical trends discussed above, for both gross new DISH TV subscriber activations and net SLING TV subscriber additions, may not be indicative of future trends.

Item 2. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS – Continued

Satellites

Operation of our DISH TV services requires that we have adequate satellite transmission capacity for the programming that we offer. Moreover, current competitive conditions require that we continue to expand our offering of new programming. While we generally have had in-orbit satellite capacity sufficient to transmit our existing channels and some backup capacity to recover the transmission of certain critical programming, our backup capacity is limited. In the event of a failure or loss of any of our owned or leased satellites, we may need to acquire or lease additional satellite capacity or relocate one of our other satellites and use it as a replacement for the failed or lost satellite. Such a failure could result in a prolonged loss of critical programming or a significant delay in our plans to expand programming as necessary to remain competitive and cause us to expend a significant portion of our cash to acquire or lease additional satellite capacity.

Security Systems

Increases in theft of our signal or our competitors’ signals could, in addition to reducing gross new subscriber activations, also cause subscriber churn to increase. We use Security Access Devices in our DBS receiver systems to control access to authorized programming content. Furthermore, for our SLING TV services, we encrypt programming content and use digital rights management software to, among other things, prevent unauthorized access to our programming content. Our signal encryption has been compromised in the past and may be compromised in the future even though we continue to respond with significant investment in security measures, such as Security Access Device replacement programs and updates in security software, that are intended to make signal theft more difficult. It has been our prior experience that security measures may only be effective for short periods of time or not at all and that we remain susceptible to additional signal theft. We expect that future replacements of Security Access Devices may be necessary to keep our system secure. We cannot ensure that we will be successful in reducing or controlling theft of our programming content and we may incur additional costs in the future if our system’s security is compromised.

Covenants and Restrictions Related to our Long-Term Debt

We are subject to the covenants and restrictions set forth in the indentures related to our long-term debt. In particular, the indentures related to our outstanding senior notes issued by DISH DBS Corporation (“DISH DBS”) contain restrictive covenants that, among other things, impose limitations on the ability of DISH DBS and its restricted subsidiaries to: (i) incur additional indebtedness; (ii) enter into sale and leaseback transactions; (iii) pay dividends or make distributions on DISH DBS’ capital stock or repurchase DISH DBS’ capital stock; (iv) make certain investments; (v) create liens; (vi) enter into certain transactions with affiliates; (vii) merge or consolidate with another company; and (viii) transfer or sell assets. Should we fail to comply with these covenants, all or a portion of the debt under the senior notes and our other long-term debt could become immediately payable. The senior notes also provide that the debt may be required to be prepaid if certain change-in-control events occur. In addition, the 3 3/8% Convertible Notes due 2026 (the “Convertible Notes due 2026”) and the 2 3/8% Convertible Notes due 2024 (the “Convertible Notes due 2024,” and collectively with the Convertible Notes due 2026, the “Convertible Notes”) provide that, if a “fundamental change” (as defined in the related indenture) occurs, holders may require us to repurchase for cash all or part of their Convertible Notes. As of the date of filing of this Quarterly Report on Form 10-Q, we and DISH DBS were in compliance with the covenants and restrictions related to our respective long-term debt.

Other

We are also vulnerable to fraud, particularly in the acquisition of new subscribers. While we are addressing the impact of subscriber fraud through a number of actions, there can be no assurance that we will not continue to experience fraud, which could impact our subscriber growth and churn. Economic weakness may create greater incentive for signal theft, piracy and subscriber fraud, which could lead to higher subscriber churn and reduced revenue.

Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS – Continued

Obligations and Future Capital Requirements

Contractual Obligations

Our purchase obligations increased during the third quarter 2020 as a result of the Boost Mobile Acquisition and the Ting Mobile Acquisition.

As of September 30, 2020, our future purchase obligations were \$1.959 billion for the remaining three months of 2020, \$61 million for 2021, \$27 million for 2022, \$9 million for 2023, for a total of \$2.056 billion.

Purchase Obligations

Our 2020 purchase obligations primarily consist of binding purchase orders for certain fixed contractual commitments to purchase programming content, receiver systems and related equipment, broadband equipment, digital broadcast operations, transmission costs, streaming delivery technology and infrastructure, engineering services, and other products and services related to the operation of our Pay-TV services. In addition, our 2020 purchase obligations also include wireless devices related to our retail wireless business as well as transition services. Furthermore, our 2020 purchase obligations include equipment related to our 5G Network Deployment, such as software and hardware necessary to complete our wireless broadband network. Our purchase obligations may fluctuate significantly from period to period due to, among other things, management's timing of payments and inventory purchases as well as expenditures related to our wireless projects and 5G Network Deployment, and can materially impact our future operating asset and liability balances, and our future working capital requirements.

Future Capital Requirements

We expect to fund our future working capital, capital expenditures and debt service requirements from cash generated from operations, existing cash, cash equivalents and marketable investment securities balances, and cash generated through raising additional capital. We will need to make significant additional investments to, among other things, commercialize, build-out, and integrate our wireless spectrum licenses and related assets. The amount of capital required to fund our future working capital and capital expenditure needs varies, depending on, among other things, the rate at which we deploy our 5G network and the rate at which we acquire new subscribers and the cost of subscriber acquisition and retention, including capitalized costs associated with our new and existing subscriber equipment lease programs. Certain of our capital expenditures for 2020 are expected to be driven by the rate at which we deploy our 5G network as well as costs associated with subscriber premises equipment. These expenditures are necessary for the deployment of our 5G network as well as to operate and maintain our DISH TV services. Consequently, we consider them to be non-discretionary. Our capital expenditures vary depending on the number of satellites leased or under construction at any point in time and could increase materially as a result of increased competition, significant satellite failures, or economic weakness and uncertainty. Our DISH TV subscriber base has been declining and there can be no assurance that our DISH TV subscriber base will not continue to decline and that the pace of such decline will not accelerate. In the event that our DISH TV subscriber base continues to decline, it will have a material adverse long-term effect on our cash flow. In addition, the rulings in the Telemarketing litigation requiring us to pay up to an aggregate amount of \$280 million and imposing certain injunctive relief against us, for which we have filed a petition for rehearing and rehearing en banc, if upheld, would have a material adverse effect on our cash, cash equivalents and marketable investment securities balances and our business operations. Furthermore, the Northstar and SNR Operative Agreements, as amended, provide for, among other things, the SNR Put Right and the Northstar Put Right for a purchase price that equals the equity contribution to Northstar Spectrum and SNR HoldCo, respectively, plus a fixed annual rate of return. As of September 30, 2020, Northstar Manager's ownership interest in Northstar Spectrum and SNR Management's ownership interest in SNR HoldCo was \$634 million, recorded as "Redeemable noncontrolling interests" on our Condensed Consolidated Balance Sheets.

Item 2. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS – Continued

We expect to incur capital expenditures in 2020 related to the commercialization of our existing wireless spectrum licenses, including capital expenditures associated with our wireless projects and 5G Network Deployment, and potential purchase of additional wireless spectrum licenses, discussed below. The amount of capital required will also depend on the levels of investment necessary to support potential strategic initiatives that may arise from time to time. These factors, including a reduction in our available future cash flows, could require that we raise additional capital in the future.

Volatility in the financial markets has made it more difficult at times for issuers of high-yield indebtedness, such as us, to access capital markets at acceptable terms. These developments may have a significant effect on our cost of financing and our liquidity position.

Sprint Asset Acquisition

Asset Purchase Agreement

Effective on July 1, 2020, upon the terms and subject to the conditions set forth in the APA and in accordance with the Final Judgment, we completed the Boost Mobile Acquisition.

Our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss) includes the results of the Boost Mobile Acquisition from the Closing Date forward. We accounted for the Boost Mobile Acquisition as a business combination. The identifiable assets acquired and liabilities assumed were recorded at their preliminary fair values as of the acquisition date and are consolidated into our financial statements. See Note 5 in the Notes to our Condensed Consolidated Financial Statements for further information.

In connection with the Boost Mobile Acquisition and the consummation of the Sprint-TMUS merger, we, TMUS, Sprint, DT and SoftBank came to an agreement with the DOJ on key terms and approval of the Transaction Agreements and our wireless service business and spectrum. On July 26, 2019, the Defendants entered into the Stipulation and Order with the DOJ binding the Defendants to the Proposed Final Judgment, which memorialized the agreement between the DOJ and the Defendants. The Stipulation and Order and the Proposed Final Judgment were filed in the District Court on July 26, 2019 and on April 1, 2020, the Final Judgment was entered with the District Court.

The term of the Final Judgment is seven years from the date of its entry with the District Court or five years if the DOJ gives notice that the divestitures, build-outs and other requirements have been completed to its satisfaction. A Monitoring Trustee has been appointed by the District Court that has the power and authority to monitor the Defendants’ compliance with the Final Judgment and settle disputes among the Defendants regarding compliance with the provisions of the Final Judgment and may recommend action to the DOJ in the event a party fails to comply with the Final Judgment.

Also in connection with the closing of the Boost Mobile Acquisition, we and NTM entered into the TSA, the MNSA, the Option Agreement, and the Spectrum Purchase Agreement for an additional approximately \$3.59 billion. See Note 11 “*Commitments and Contingencies – Commitments – Sprint Asset Acquisition*” in the Notes to our Condensed Consolidated Financial Statements for further information on the Transaction Agreements.

Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS – Continued

Agreement with the DOJ: The Stipulation and Order and the Final Judgment

Certain of the provisions of the Stipulation and Order and the Final Judgment are also reflected in the terms of the Transaction Agreements. In addition to the terms reflected in the Transaction Agreements, the Stipulation and Order and the Final Judgment provide for other rights and obligations of the Sellers and us, including the following:

- For a period of one year after the Closing Date, if we determine that certain assets not included in the divestiture were previously used by the Prepaid Business and are reasonably necessary for the continued competitiveness of the Prepaid Business, subject to certain carve-outs, we may request that such assets be transferred to us, which the DOJ can approve or deny in its sole discretion.
- Within one year of the Closing Date, we are required to offer nationwide postpaid retail mobile wireless service.
- If we elect not to purchase the 800 MHz licenses pursuant to the Spectrum Purchase Agreement, we must pay \$360 million (equal to 10% of the Spectrum Purchase Agreement purchase price) to the United States. However, we will not be required to make such payment if we have deployed a core network and offered 5G service to at least 20% of the U.S. population within three years of the Closing Date.
- If we buy the 800 MHz spectrum pursuant to the Spectrum Purchase Agreement but fail to deploy all of the 800 MHz spectrum licenses for use in the provision of retail mobile wireless services by the expiration of the Final Judgment, the DOJ may require us to forfeit to the FCC any of the 800 MHz licenses for spectrum that are not being used to provide retail mobile wireless services, unless we are already providing nationwide retail wireless service.
- We and NTM were required to negotiate in good faith to reach an agreement for NTM to lease some or all of our 600 MHz spectrum licenses for deployment to retail consumers by NTM. On September 11, 2020, we and T-Mobile entered into an agreement to lease a portion of our 600 MHz spectrum licenses for an annual lease payment of approximately \$56 million.
- We and NTM must agree to support eSIM technology on smartphones.
- The Sellers must introduce the suppliers and distributors of the Prepaid Business to us and the Sellers may not interfere in our negotiations with such suppliers and distributors.
- On the first day of the fiscal quarter following the entry of the Final Judgment and of each 180-day period thereafter, we are obligated to provide the DOJ with a description of our deployment efforts over the prior quarter including: (i) the number of towers and small cells deployed, (ii) the spectrum bands on which we have deployed equipment, (iii) progress in obtaining devices that operate on our spectrum frequencies, (iv) POPs coverage of our network, (v) the number of our mobile wireless subscriptions, (vi) the amount of traffic transmitted to our subscribers using our network and using NTM's network, and (vii) whether there are or have been any efforts by NTM to interfere with our efforts to deploy and operate our network.
- We cannot sell, lease or otherwise provide the right to use any of the divested assets to any national facilities-based mobile wireless provider and may not sell any of the divested assets or similar assets back to TMUS during the term of the Final Judgment, except that we may lease back to NTM up to 4 MHz of the 800 MHz spectrum we will acquire (as discussed above).
- We must comply with the June 14, 2023 AWS-4, Lower 700 MHz E Block, AWS H Block, and nationwide 5G broadband network build-out commitments made to the FCC, subject to verification by the FCC (as described below). If we fail to comply with such build-out commitments, we may be subject to civil contempt in addition to the substantial voluntary contributions and license forfeitures described below if we fail to meet these commitments (as described below).

Item 2. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS – Continued

FCC Build-Out Commitments

In a letter filed with the FCC on July 26, 2019, we voluntarily committed to deploy a nationwide 5G broadband network and meet revised timelines relating to the build-out of our AWS-4, Lower 700 MHz E Block, AWS H Block and 600 MHz spectrum assets, subject to certain penalties. Pursuant to these commitments, we requested multi-year extensions to deploy our AWS-4, Lower 700 MHz E Block, and AWS H Block spectrum, and we have committed to build-out our 600 MHz licenses on an accelerated schedule to better align with our 5G deployment. We have also committed to offer 5G broadband service to certain population coverage targets, along with minimum core network, tower and spectrum use targets, and have waived our right to deploy any technology of our choice under the FCC’s “flexible use” rules with respect to these spectrum bands. Failure to meet the various commitments would require us to pay voluntary contributions totaling up to \$2.2 billion to the FCC and would subject certain licenses in the AWS-4, Lower 700 MHz E Block, and AWS H Block spectrum to forfeiture. We have also agreed not to sell our AWS-4 and 600 MHz spectrum for six years without prior DOJ and FCC approval (unless such sale is part of a change of control of DISH Network). Additionally, we have agreed not to lease a certain percentage of network capacity on our AWS-4 and 600 MHz spectrum for six years to the three largest U.S. wireless carriers (i.e., AT&T, Verizon and NTM), without prior FCC approval. On November 5, 2019, the FCC released an Order that, among other things, approved the Sprint-TMUS merger, tolled our existing March 7, 2020 build-out deadline for our AWS-4 and Lower 700 MHz E Block Licenses, and directed the FCC’s Wireless Telecommunications Bureau to adopt our commitments after a 30 day review period (the “FCC Merger Order”).

On September 11, 2020, the FCC’s Wireless Telecommunications Bureau issued an Order adopting these commitments. Our 5G deployment obligations for each of the four spectrum bands are generally set forth below.

- With respect to the 600 MHz licenses, we must offer 5G broadband service to at least 70% of the U.S. population and have deployed a core network no later than June 14, 2023, and offer 5G broadband service to at least 75% of the population in each Partial Economic Area (which are service areas established by the FCC) no later than June 14, 2025. Note that these commitments are earlier than the current 600 MHz Final Build-Out Requirement date of June 2029. See Note 11 “*Commitments and Contingencies – Commitments*” in the Notes to our Condensed Consolidated Financial Statements for further information.
- With respect to the AWS-4 licenses, we must offer 5G broadband service to at least 20% of the U.S. population and have deployed a core network no later than June 14, 2022, and offer 5G broadband service to at least 70% of the U.S. population no later than June 14, 2023.
- With respect to the Lower 700 MHz E Block licenses, we must offer 5G broadband service to at least 20% of the U.S. population who are covered by such licenses and have deployed a core network no later than June 14, 2022, and offer 5G broadband service to at least 70% of the U.S. population who are covered by such licenses no later than June 14, 2023.
- With respect to the AWS H Block licenses, we must offer 5G broadband service to at least 20% of the U.S. population and have deployed a core network no later than June 14, 2022, and offer 5G broadband service to at least 70% of the U.S. population no later than June 14, 2023.

Wireless – 5G Network Deployment

Since 2008, we have directly invested over \$11 billion to acquire certain wireless spectrum licenses and related assets and made over \$10 billion in non-controlling investments in certain entities, for a total of over \$21 billion. The \$21 billion of investments related to wireless spectrum licenses does not include \$5 billion of capitalized interest related to the carrying value of such licenses. See Note 2 “*Capitalized Interest*” in the Notes to our Condensed Consolidated Financial Statements for further information on capitalized interest.

Item 2. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS – Continued

DISH Network Spectrum

We have directly invested over \$11 billion to acquire certain wireless spectrum licenses and related assets. These wireless spectrum licenses are subject to certain interim and final build-out requirements, as well as certain renewal requirements. In March 2017, we notified the FCC that we planned to deploy a narrowband IoT network on certain of these wireless licenses, which was to be the First Phase. We expected to complete the First Phase by March 2020, with subsequent phases to be completed thereafter. In light of, among other things, certain developments related to the Sprint-TMUS merger, during the first quarter 2020, we determined that the revision of certain of our build-out deadlines was probable and, therefore, we no longer intended to complete our narrowband IoT deployment. The FCC issued an Order effectuating the build-out deadline changes contemplated above on September 11, 2020. During the first quarter 2020, we impaired certain assets that would not be utilized in our 5G Network Deployment, resulting in a \$253 million non-cash impairment charge in “Impairment of long-lived assets” on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss). We have issued RFI/Ps to various vendors in the wireless industry and are in the process of selecting certain vendors as we move forward with our 5G Network Deployment. We currently expect expenditures for our 5G Network Deployment to be approximately \$10 billion, excluding capitalized interest. We will need to make significant additional investments or partner with others to, among other things, commercialize, build-out, and integrate these licenses and related assets, and any additional acquired licenses and related assets; and comply with regulations applicable to such licenses.

Recent Wireless Spectrum Acquisitions

3550-3650 MHz. The auction for the Priority Access Licenses for the 3550-3650 MHz band (“Auction 105”) began on July 23, 2020 and ended on August 25, 2020. On September 2, 2020, the FCC announced that Wetterhorn Wireless L.L.C. (“Wetterhorn”), a wholly-owned subsidiary of DISH Network, was the winning bidder of 5,492 Priority Access Licenses in the 3550-3650 MHz band, with Wetterhorn’s aggregate winning bids totaling approximately \$913 million. During the second and third quarters 2020, we paid \$83 million and \$100 million, respectively, to the FCC for our winning bids. These amounts are included in “Other current assets” on our Condensed Consolidated Balance Sheets as of September 30, 2020. On October 1, 2020, we paid the remaining balance of our winning bids of approximately \$730 million. The FCC has not yet issued the licenses to Wetterhorn.

Depending on the nature and scope of such commercialization, build-out, integration efforts, and regulatory compliance, any such investments or partnerships could vary significantly. In addition, as we consider our options for the commercialization of our wireless spectrum, we will incur significant additional expenses and will have to make significant investments related to, among other things, research and development, wireless testing and wireless network infrastructure. We may also determine that additional wireless spectrum licenses may be required to commercialize our wireless business and to compete with other wireless service providers. For example, on September 22, 2020, we filed an application with the FCC to participate as a potential bidder in the upcoming wireless spectrum auction for the Flexible-Use Service Licenses in the 3.7-3.98 GHz Band (“Auction 107”). The auction is scheduled to commence on December 8, 2020. The FCC determined that bidding in this auction will be “anonymous,” which means that prior to and during the course of the auction the FCC will not make public any information about a specific applicant’s upfront deposit or its bids. In addition, FCC rules restrict information that bidders may disclose about their participation in the auction.

See Note 2 “*Capitalized Interest*” and Note 11 “*Commitments and Contingencies – Commitments – Wireless – DISH Network Spectrum*” in the Notes to our Condensed Consolidated Financial Statements for further information.

Item 2. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS – Continued

DISH Network Non-Controlling Investments in the Northstar Entities and the SNR Entities Related to AWS-3 Wireless Spectrum Licenses

During 2015, through our wholly-owned subsidiaries American II and American III, we initially made over \$10 billion in certain non-controlling investments in Northstar Spectrum, the parent company of Northstar Wireless, and in SNR HoldCo, the parent company of SNR Wireless, respectively. On October 27, 2015, the FCC granted certain AWS-3 Licenses to Northstar Wireless and to SNR Wireless, respectively, which are recorded in “FCC authorizations” on our Condensed Consolidated Balance Sheets. Under the applicable accounting guidance in ASC 810, Northstar Spectrum and SNR HoldCo are considered variable interest entities and, based on the characteristics of the structure of these entities and in accordance with the applicable accounting guidance, we consolidate these entities into our financial statements. See Note 2 in the Notes to our Condensed Consolidated Financial Statements for further information.

The AWS-3 Licenses are subject to certain interim and final build-out requirements, as well as certain renewal requirements. The Northstar Entities and/or the SNR Entities may need to raise significant additional capital in the future, which may be obtained from third party sources or from us, so that the Northstar Entities and the SNR Entities may commercialize, build-out and integrate these AWS-3 Licenses, comply with regulations applicable to such AWS-3 Licenses, and make any potential Northstar Re-Auction Payment and SNR Re-Auction Payment for the AWS-3 licenses retained by the FCC. Depending upon the nature and scope of such commercialization, build-out, integration efforts, regulatory compliance, and potential Northstar Re-Auction Payment and SNR Re-Auction Payment, any loans, equity contributions or partnerships could vary significantly. See Note 11 “*Commitments and Contingencies – Commitments – Wireless – DISH Network Non-Controlling Investments in the Northstar Entities and the SNR Entities Related to AWS-3 Wireless Spectrum Licenses*” in the Notes to our Condensed Consolidated Financial Statements for further information.

We may need to raise significant additional capital in the future to fund the efforts described above, which may not be available on acceptable terms or at all. There can be no assurance that we, the Northstar Entities and/or the SNR Entities will be able to develop and implement business models that will realize a return on these wireless spectrum licenses or that we, the Northstar Entities and/or the SNR Entities will be able to profitably deploy the assets represented by these wireless spectrum licenses, which may affect the carrying amount of these assets and our future financial condition or results of operations. See Note 11 “*Commitments and Contingencies – Commitments – Wireless*” in the Notes to our Condensed Consolidated Financial Statements for further information.

Availability of Credit and Effect on Liquidity

The ability to raise capital has generally existed for us despite economic weakness and uncertainty. While modest fluctuations in the cost of capital will not likely impact our current operational plans, significant fluctuations could have a material adverse effect on our business, results of operations and financial condition.

Debt Issuances and Maturity

Our 5 1/8% Senior Notes with an aggregate principal balance of \$1.1 billion were redeemed on May 1, 2020.

Our 6 3/4% Senior Notes due 2021 with an aggregate principal balance of \$2.0 billion mature on June 1, 2021. We expect to fund this obligation from cash and marketable investment securities balances at that time. But, depending on market conditions, we may refinance this obligation in whole or in part.

On July 1, 2020, we issued \$1.0 billion aggregate principal amount of our 7 3/8% Senior Notes due July 1, 2028. Interest accrues at an annual rate of 7 3/8% and is payable semi-annually in cash, in arrears on January 1 and July 1 of each year, commencing on January 1, 2021.

Off-Balance Sheet Arrangements

We generally do not engage in off-balance sheet financing activities.

Item 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

There have been no material changes in our market risk during the nine months ended September 30, 2020. For additional information, see Item 7A. Quantitative and Qualitative Disclosures About Market Risk in Part II of our Annual Report on Form 10-K for the year ended December 31, 2019.

Item 4. CONTROLS AND PROCEDURES

Conclusion regarding disclosure controls and procedures

Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we evaluated the effectiveness of our disclosure controls and procedures (as defined in Rule 13a-15(e) under the Securities Exchange Act of 1934) as of the end of the period covered by this report. Based upon that evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective as of the end of the period covered by this report.

Changes in internal control over financial reporting

On July 1, 2020, we completed Boost Mobile Acquisition. This resulted in us implementing new processes and internal controls to assist us in the preparation and disclosure of financial information associated with the transaction. Given the magnitude of the Boost Mobile Acquisition and the complexity of the applicable systems and business processes, we intend to exclude the Prepaid Business from our assessment and report on internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) of the Securities Exchange Act), during the most recently completed fiscal quarter. In addition, we are continually monitoring the COVID-19 pandemic and any potential impact to our internal controls.

PART II — OTHER INFORMATION

Item 1. LEGAL PROCEEDINGS

See Note 11 “*Commitments and Contingencies – Litigation*” in the Notes to our Condensed Consolidated Financial Statements for information regarding certain legal proceedings in which we are involved.

Item 1A. RISK FACTORS

Item 1A, “Risk Factors,” of our Annual Report on Form 10-K for the year ended December 31, 2019 and our Quarterly Report on Form 10-Q for the quarter ended March 31, 2020 and June 30, 2020 include a detailed discussion of our risk factors.

Item 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS***Issuer Purchases of Equity Securities***

The following table provides information regarding repurchases of our Class A common stock from July 1, 2020 through September 30, 2020:

Period	Total Number of Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Programs	Maximum Approximate Dollar Value of Shares that May Yet be Purchased Under the Programs (1)
		(In thousands, except share data)		
July 1, 2020 - July 31, 2020	—	\$ —	—	\$ 1,000,000
August 1, 2020 - August 31, 2020	—	\$ —	—	\$ 1,000,000
September 1, 2020 - September 30, 2020	—	\$ —	—	\$ 1,000,000
Total	—	\$ —	—	\$ 1,000,000

- (1) On October 30, 2020, our Board of Directors authorized stock repurchases of up to \$1.0 billion of our outstanding Class A common stock through and including December 31, 2021. Purchases under our repurchase program may be made through open market purchases, privately negotiated transactions, or Rule 10b5-1 trading plans, subject to market conditions and other factors. We may elect not to purchase the maximum amount of shares allowable under this program and we may also enter into additional share repurchase programs authorized by our Board of Directors.

Item 5. OTHER INFORMATION**Ergen 2020 Performance Award**

On November 4, 2020, the Executive Compensation Committee of the Board of Directors (the “Compensation Committee”) of DISH Network approved an award to Mr. Charles W. Ergen, DISH Network’s Chairman, of long-term performance-based options (the “Ergen 2020 Performance Award” or the “Award”) to purchase up to 12,500,000 shares of DISH Network’s Class A Common Stock (the “Class A Shares”). The Award is subject to the achievement of performance vesting goals based on specified stock price targets (the “DISH Stock Price Targets”) as set forth in the table below over the ten-year period following the date of grant (except for the first two DISH Stock Price Goals (Tranche 1 and Tranche 2)). The Award will be granted on November 6, 2020, with an exercise price equal to the closing stock price of a Class A Share as reported on NASDAQ on November 6, 2020 (the “Award Exercise Price”) which will follow DISH Network’s earnings release for its quarter ending September 30, 2020 (which is expected to be released before trading begins on November 6, 2020). The Award will expire on February 6, 2031.

In approving the Ergen 2020 Performance Award, the Compensation Committee recognized, among other things, the unique blend of leadership, experience, and knowledge of our industry and business that Mr. Ergen brings to DISH Network and the continued importance of Mr. Ergen’s role as the individual who identifies strategic priorities and leads the execution of DISH Network’s long-term strategy, including, without limitation, its wireless business, which is expected to drive long-term value for DISH Network and its stockholders. In an effort to further incentivize Mr. Ergen’s continued long-term performance, the Compensation Committee designed the Award to be a challenging long-term incentive for future performance, and the Compensation Committee noted in particular that the performance thresholds could take many years to achieve, if they can be achieved at all. In addition, the Compensation Committee sought to ensure that the Ergen 2020 Performance Award would further align Mr. Ergen’s interests with those of DISH Network’s stockholders over the long-term.

In connection with its design, evaluation and approval of the Ergen 2020 Performance Award, the Compensation Committee retained an independent compensation consultant, Compensia, a national compensation consulting firm, to consider various designs for the structure of the award related to the grant value and award structure. Compensia's review included an assessment of comparable long-term incentive awards granted to other leaders of a range of technology and media companies. In addition, Compensia prepared a competitive market assessment of Mr. Ergen's projected annual compensation relative to the annual pay of leaders at a peer set of similar industry and size/value competitors to DISH Network. This analysis determined that Mr. Ergen's annual compensation (including the annualized fair value of the Ergen 2020 Performance Award) was generally lower than the compensation of the leaders of these peer companies.

Although the Award Exercise Price (which affects non-cash stock compensation expense) will not be established until the end of trading on November 6, 2020, assuming an Award Exercise Price of \$25.82 (the closing price of a Class A Share as reported on NASDAQ on November 2, 2020), the Ergen 2020 Performance Award would result in an estimated aggregate non-cash stock compensation expense to DISH Network in the range of approximately \$80 million to \$90 million. DISH Network will recognize such expense over the period from the date of grant through approximately December 31, 2028, and currently estimates that approximately three-fourths of the total will be recognized in the first four years following the date of the grant.

Subject to Mr. Ergen's continued employment in his position as Chairman of DISH Network (or a substantially equivalent role as determined by the Compensation Committee in its discretion) through the date on which the DISH Stock Price Targets are achieved, the Ergen 2020 Performance Award will vest in the following tranches upon achievement of the following DISH Stock Price Goals:

Tranche	DISH Stock Price Goal	Absolute Change in DISH Stock Price from		
		Award Exercise Price	Vesting %	Options Vesting
1	125% of Award Exercise Price	25%	10%	1,250,000
2	125% of DISH Stock Price Goal for Tranche #1	56%	10%	1,250,000
3	125% of DISH Stock Price Goal for Tranche #2	95%	10%	1,250,000
4	125% of DISH Stock Price Goal for Tranche #3	144%	10%	1,250,000
5	125% of DISH Stock Price Goal for Tranche #4	205%	10%	1,250,000
6	125% of DISH Stock Price Goal for Tranche #5	281%	10%	1,250,000
7	125% of DISH Stock Price Goal for Tranche #6	377%	10%	1,250,000
8	125% of DISH Stock Price Goal for Tranche #7	496%	10%	1,250,000
9	125% of DISH Stock Price Goal for Tranche #8	645%	10%	1,250,000
10	125% of DISH Stock Price Goal for Tranche #9	831%	10%	1,250,000

In the event that a DISH Stock Price Goal is determined by the Compensation Committee to have been achieved during an applicable calendar quarter (or at its ten-year anniversary) as set forth below: (i) that applicable DISH Stock Price Goal will be retired; and (ii) the corresponding tranche of the option will vest and shall become exercisable contemporaneously with the filing of the Corporation's financial results for that quarter or year, as applicable, with the Securities and Exchange Commission.

For purposes of the DISH Stock Price Goals, except for Tranches 1 and 2, the Stock Price Goal will be considered achieved if the average closing stock price, as reported on NASDAQ, of the Class A Shares for the thirty (30) calendar day period immediately prior to the end of during any calendar quarter exceeds the respective DISH Stock Price Goal (and the thirty (30) calendar day period prior to the Award's ten-year anniversary on November 6, 2030) during the period that is ten years following the date of the grant.

With respect to Tranche 1, the applicable DISH Stock Price Goal will be considered achieved if the average closing stock price, as reported on NASDAQ, of the Class A Shares for the thirty (30) calendar day period immediately prior to the end of any calendar quarter exceeds the respective DISH Stock Price Goal during the first four years following the date of the grant.

With respect to Tranche 2, the applicable DISH Stock Price Goal will be considered achieved if the average closing stock price, as reported on NASDAQ, of the Class A Shares for the thirty (30) calendar day period immediately prior to the end of any calendar quarter exceeds the respective DISH Stock Price Goal during the first seven years following the date of the grant.

In the event a “change in control” of the Corporation occurs while any portion of the 2020 Ergen Performance Award is unvested, the value of the transaction consideration per share for a Class A Share will be used to determine whether any additional portion of the Ergen 2020 Performance Award will vest. For purposes of the Award, a “change in control” of the Corporation is generally deemed to occur upon: (i) a transaction or a series of transactions the result of which is that any person (other than Mr. Ergen (our controlling shareholder) or a related party) individually owns more than fifty percent (50%) of the total equity interests of either: (A) the Corporation; or (B) the surviving entity in any such transaction(s) or a controlling affiliate of such surviving entity in such transaction(s); and (ii) the first day on which a majority of the members of the Board of Directors are not continuing directors.

The Ergen 2020 Performance Award is being granted under the terms of the Corporation’s 2019 Stock Incentive Plan and a non-qualified stock option agreement that includes, among other terms and conditions, a post-exercise holding period requirement (net of taxes and exercise price) on the Class A Shares obtained upon exercise that is equal to the longer of (i) five years from the date of grant; or (ii) one year following the date of exercise for applicable shares exercised under the Award.

The foregoing summary of the terms and conditions of the Ergen 2020 Performance Award set forth above do not purport to be complete and are qualified in their entirety by reference to the provisions of the Corporation’s 2019 Stock Incentive Plan and by reference to the non-qualified stock option agreement, which is attached as Exhibit 10.1 to this current report on Form 10-Q and is incorporated by reference into this Item 5 of Part II.

Item 6. EXHIBITS

(a) *Exhibits.*

- 10.1* [Incentive Stock Option Agreement](#)
- 10.2* [Non-Qualified Stock Option Agreement](#)
- 10.3* [Restricted Stock Unit Agreement](#)
- 10.4* [Master Network Service Agreement, dated as of July 1, 2020, by and among DISH Network Corporation, DISH Purchasing Corporation, and T-Mobile USA, Inc.](#)
- 10.5* [License Purchase Agreement, dated as of July 1, 2020, by and among DISH Network Corporation and T-Mobile USA, Inc.](#)
- 31.1* [Section 302 Certification of Chief Executive Officer.](#)
- 31.2* [Section 302 Certification of Chief Financial Officer.](#)
- 32.1* [Section 906 Certification of Chief Executive Officer.](#)
- 32.2* [Section 906 Certification of Chief Financial Officer.](#)
- 101* The following materials from the Quarterly Report on Form 10-Q of DISH Network for the quarter ended September 30, 2020 filed on November 6, 2020, formatted in Inline eXtensible Business Reporting Language (“iXBRL”): (i) Condensed Consolidated Balance Sheets, (ii) Condensed Consolidated Statements of Operations and Comprehensive Income (Loss), (iii) Condensed Consolidated Statements of Changes in Stockholders’ Equity (Deficit), (iv) Condensed Consolidated Statements of Cash Flows and (v) related notes to these financial statements.
- 104* Cover Page Interactive Data File (the cover page XBRL tags are embedded in the Inline XBRL document).

* Filed herewith.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

DISH NETWORK CORPORATION

By: /s/ W. Erik Carlson

W. Erik Carlson

President and Chief Executive Officer

(Duly Authorized Officer)

By: /s/ Paul W. Orban

Paul W. Orban

Executive Vice President and Chief Financial Officer

(Principal Financial Officer)

Date: November 6, 2020

[REDACTED] Indicates that certain information in this exhibit has been excluded because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

DISH NETWORK CORPORATION
INCENTIVE STOCK OPTION AGREEMENT

This Incentive Stock Options Agreement (the "Agreement") is entered into and made effective as of [Grant Date] (the "Grant Date") by and between DISH Network Corporation, a Nevada corporation (the "Company"), and [Participant Name] ("Grantee").

RECITAL

WHEREAS, the Company, pursuant to its 2019 Stock Incentive Plan (the "Plan"), desires to grant stock options to Grantee, and Grantee desires to accept such stock options, each under the terms and conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the promises and covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Grant of Options.

The Company hereby grants to Grantee, as of the Grant Date, the option (hereinafter called the "Option(s)"), each representing the right to purchase all or any part of an aggregate of [Number of Options Granted] shares of the Class A Common Stock of the Company, par value \$0.01 per share (a "Common Share") upon vesting of that Option, at the price of \$[Grant Price] per share (the "Option Price"), subject to the terms and conditions set forth in this Agreement, which price was equal to or greater than the fair market value of a Common Share on the Grant Date (or the last trading day prior to the Grant Date (if the Grant Date was not a trading day)). The Option Price is subject to adjustment as provided in this Agreement and the Plan. The Options are intended to be incentive stock options (an "ISO") within the meaning of the Internal Revenue Code of 1986, as amended, and regulations thereunder (the "Code").

Grantee understands, acknowledges, agrees and hereby stipulates that to the extent that the aggregate fair market value (as determined by the Company in its sole and absolute discretion for any reason or no reason at any time and from time to time ("Sole Discretion") as of the time the Options were granted) of the Common Shares with respect to which all options (that are ISOs within the meaning of the Code) are exercisable for the first time by Grantee during any calendar year exceeds one hundred thousand dollars (\$100,000), in accordance with Subsection 422(d) of the Code, such options shall be treated as options that do not qualify as ISOs.

2. Duration, Vesting and Exercisability.

(a) Subject to the terms and conditions set forth in this Agreement, the Options shall vest and shall become exercisable in accordance with the following schedule (for the avoidance of doubt and without limitation of the foregoing, it is the intention of the Company that the corresponding increment of the Options shall only vest once upon the dates set forth below):

<u>On or after each of the following dates</u>	<u>Percentage of Options Vesting</u>
[First Anniversary of the Grant Date	20%
Second Anniversary of the Grant Date	20%
Third Anniversary of the Grant Date	20%
Fourth Anniversary of the Grant Date	20%
Fifth Anniversary of the Grant Date	20%]

No Common Shares shall be issued upon the exercise of any Options until those Options have vested, until Grantee has exercised such Option, and until Grantee has satisfied Grantee's tax, tax withholding and all other obligations with respect to any individual income taxes, penalties and/or interest related to such Options as set forth in Subsection 2(d) of this Agreement, unless the Board of Directors of the Company (the "Board"), the Executive Compensation Committee of the Board (the "Committee") and/or the General Counsel of the Company, in its or their Sole Discretion, specifically waives applicability of this provision in whole or in part.

(b) During the lifetime of Grantee, the Common Shares issuable upon the exercise of the Options shall be issued only to Grantee (or, if permissible under applicable law and this Agreement, to Grantee's guardian or legal representative) and Options shall not be assignable or transferable by Grantee, other than by will or the laws of descent and distribution. Without limiting the generality of the foregoing, the Options may not be sold, assigned, transferred or otherwise disposed of, or pledged or hypothecated in any manner (whether by operation of law or otherwise), and will not be subject to execution, attachment or other process. Any sale, assignment, transfer or other disposition, or pledge or hypothecation, of the Options or any attempt to make any such levy of execution, attachment or other process will cause the Options to terminate immediately, unless the Board, the Committee and/or the General Counsel of the Company, in its or their Sole Discretion, specifically waives applicability of this provision in whole or in part.

(c) Notwithstanding anything to the contrary in this Agreement, the Options shall expire and terminate, and shall cease to be exercisable, ten (10) years after the date of this Agreement (the "Expiration Date").

(d) The Company assumes no responsibility for any individual income taxes, penalties and/or interest related to the grant, vesting, adjustment or exercisability of any Options or the issuance of Common Shares upon the exercise of any Options or any subsequent disposition of such Common Shares. **Grantee should consult with Grantee's personal tax advisor regarding the tax ramifications, if any, that result from the grant, vesting, adjustment or exercisability of any Options or the issuance of Common Shares upon the exercise of any Options or any**

subsequent disposition of such Common Shares. If, in the Company's Sole Discretion, it is necessary or appropriate to collect or withhold any individual income taxes, penalties and/or interest in connection with the grant, vesting, adjustment or exercisability of any Options or the issuance of Common Shares upon the exercise of any Options or any subsequent disposition of such Common Shares, then (i) the Company shall be entitled to require the payment of such amounts, and/or (ii) Grantee shall make arrangements satisfactory to the Company to satisfy all tax, tax withholding and all other obligations with respect to such amounts, in each case as a condition to such grant, vesting, adjustment or exercisability of such Options or the issuance of Common Shares upon the exercise of such Options and/or any subsequent disposition of such Common Shares, as the case may be, unless the Board, the Committee and/or the General Counsel of the Company, in its or their Sole Discretion, specifically waives applicability of this provision in whole or in part. In furtherance and without limiting the generality of the foregoing, Grantee (on its own behalf and on behalf of each and every other proper party as described in Subsection 2(b) and/or Subsection 3(c) of this Agreement) hereby authorizes the Company, in its Sole Discretion (including, without limitation, pursuant to the then-current procedures implemented by the Company's administrator for the Options (the "Administrator"), as such Administrator and procedures are designated by the Company in its Sole Discretion), to satisfy all tax, tax withholding and all other obligations with respect to any individual income taxes, penalties and/or interest related to the grant, vesting, adjustment or exercisability of any Options or the issuance of Common Shares upon the exercise of any Options or any subsequent disposition of such Common Shares, by one or a combination of the following:

- i. withholding from any wages or other cash compensation payable to Grantee by the Company;
- ii. withholding Common Shares that are otherwise issuable upon the exercise of the Options;
- iii. arranging for the sale of Common Shares that are otherwise issuable upon vesting of the Options, including, without limitation, selling Common Shares as part of a block trade with Common Shares held by other grantees under the Plan or otherwise; and/or
- iv. withholding from the gross amount of the sale of Common Shares issued upon the exercise of the Options.

(e) In considering the acceptance and any exercise of the Options, Grantee understands, acknowledges, agrees and hereby stipulates that Grantee should use the same independent investment judgment that Grantee would use in making other investments in corporate securities. Among other things, stock prices will fluctuate over any reasonable period of time and the price of the Common Shares may go down as well as up. No guarantees are made as to the future prospects of the Company or the Common Shares, or that any market for sale of the Common Shares will exist in the future. No representations are made by the Company except as may be contained in any active registration statement on file with the United States Securities and Exchange Commission ("SEC") relating to the Plan at the time of applicable exercise of the Options.

3. Cessation of Employment; Actual or Threatened Violation of Covenants; Covenants Found Unenforceable; Death or Disability; Demotion; Recoupment.

(a) Subject to the application of Subsections 3(b)(ii) and 3(b)(iii) of this Agreement, in the event that Grantee shall cease to be employed by the Company or its direct or indirect subsidiaries (collectively, the “Company” for purposes of this Section 3) for any reason other than the reason set forth in Subsection 3(b)(i) of this Agreement or Grantee's death or disability (as described in Subsection 3(c) of this Agreement), and Grantee shall have vested Options that Grantee has not exercised and for which Common Shares have not yet been issued as of such cessation of employment, Grantee shall have the right to exercise such vested Options at any time within one (1) month after such cessation of employment and have such Common Shares issued upon the exercise of such vested Options, **but only** to the extent of the full number of vested Options and Common Shares issuable upon the exercise of such vested Options as of such cessation of employment, subject to the condition that any portion of the Options not vested and exercised as of such cessation of employment shall terminate as of such cessation of employment, shall cease to be exercisable as of such cessation of employment and no Common Shares shall be issued upon the exercise of any unvested Options following such cessation of employment, and that no portion of the Options shall vest or be exercisable after the Expiration Date. Retirement, whether or not pursuant to any retirement or pension plan of the Company, shall be deemed to be a cessation of employment for all purposes under this Agreement. The termination of the Options by reason of any such cessation of employment shall be without prejudice to any right or remedy that the Company may have against Grantee at law, in equity, under contract (including, without limitation, this Agreement) or otherwise (all of which are hereby expressly reserved).

(b) In the event that: (i) Grantee shall cease to be employed by the Company by reason of Grantee's serious misconduct during the course of employment, including, without limitation, [REDACTED], misappropriation of Company funds, theft of Company property or other reasons as determined by the Company; (ii) [REDACTED]; or (iii) a court, arbitrator or other body of competent jurisdiction holds any of the provisions set forth in Subsection 3(e) of this Agreement [REDACTED] to be invalid, illegal, void or less than fully enforceable against Grantee to any extent or in any respect as to time, scope or otherwise, in the course of any litigation or other legal proceeding arising out of or relating to any Actual or Threatened Violation of such covenants by Grantee or a request by or on behalf of Grantee for declaratory relief regarding the enforceability of such covenants against Grantee (each of (i), (ii) and (iii) an “Award Termination Event”), then **all** Options (which for the avoidance of doubt and without limitation of the foregoing includes both vested and unvested Options) shall be deemed to have terminated, shall cease to be exercisable and no Common Shares shall be issuable in connection therewith, as of the earliest of the following to occur: (A) the serious misconduct described in subpart (i) above; (B) [REDACTED]; or (C) the commencement of the litigation or other legal proceeding described in subpart (iii) above (the first date on which any of (A), (B) and/or (C) occurs, an “Award Termination Effective Date”). The termination of the Options pursuant to Subsection 3(b)(i), 3(b)(ii) or 3(b)(iii) of this Agreement shall be without prejudice to any right or remedy that the Company may have against Grantee at law, in equity, under contract (including, without limitation, this Agreement) or otherwise (all of which are hereby expressly reserved). For all purposes under this Agreement, [REDACTED].

(c) Subject to the application of Subsections 3(b)(ii) and 3(b)(iii) of this Agreement, in the event that: (i) Grantee shall die while in the employ of the Company or within one (1) month after cessation of employment for any reason other than the reason set forth in Subsection 3(b)(i) of this Agreement; or (ii) employment ceases because Grantee has become disabled (within the meaning of Section 22(e)(3) of the Internal Revenue Code of 1986, as amended, and regulations thereunder) while in the employ of the Company and Grantee shall have vested Options that Grantee has not exercised and for which Common Shares have not yet been issued as of such death or cessation of employment for disability, then Grantee or the personal representative or administrator, executor or guardian of Grantee, as applicable, or any person or entity to whom the

Options are transferred by will or the applicable laws of descent and distribution shall have the right to exercise such vested Options and have such Common Shares issued upon the exercise of such vested Options, **but only** to the extent of the full number of vested Options and Common Shares issuable upon the exercise of such vested Options as of such death or cessation of employment for disability, subject to the condition that any portion of the Options not vested as of such death or cessation of employment for disability shall terminate as of such death or cessation of employment for disability, shall cease to be exercisable as of such death or cessation of employment for disability and no Common Shares shall be issued upon the exercise of any unvested Options following such death or cessation of employment for disability, and that no portion of the Options shall vest after the Expiration Date. The termination of the Options by reason of such death or cessation of employment for disability shall be without prejudice to any right or remedy that the Company may have against Grantee (and/or the personal representative or administrator, executor or guardian of Grantee, as applicable, or to any person or entity to whom the Options are transferred by will or the applicable laws of descent and distribution) at law, in equity, under contract (including, without limitation, this Agreement) or otherwise (all of which are hereby expressly reserved).

(d) In the event that Grantee is demoted (but remains employed) by the Company from Grantee's current level (e.g., chairman, chief executive officer, president, executive vice president, senior vice president, vice president, director, manager or other level held by Grantee on the Grant Date), then: (i) if Grantee shall have vested Options that Grantee has not exercised and for which Common Shares have not yet been issued as of such demotion, then, subject to the application of Subsections 3(b)(ii) and 3(b)(iii) of this Agreement, Grantee shall have the right to exercise such vested Options and have such Common Shares issued upon the exercise of such vested Options, **but only** to the extent of the full number of Common Shares issuable upon the exercise of such vested Options as of such demotion (the "Remaining Vested Options Following Demotion"), subject to the condition that any portion of the Options not vested as of such demotion shall terminate as of such demotion and no Common Shares shall be issued upon the exercise of any unvested Options following such demotion, and that no portion of the Options shall vest after the Expiration Date; and (ii) this Agreement, including, without limitation, [REDACTED], shall otherwise continue in force, unless otherwise terminated. The termination of the Options by reason of such demotion shall be without prejudice to any right or remedy that the Company may have against Grantee at law, in equity, under contract (including, without limitation, this Agreement) or otherwise (all of which are hereby expressly reserved).

(e) Notwithstanding anything to the contrary in this Agreement, Common Shares issued under this Agreement, Common Shares issued under any Other Award Agreement and all amounts that may be received by Grantee in connection with any disposition of any such Common Share(s) shall be subject to applicable recoupment, "clawback" and similar provisions under law, as well as any recoupment, "clawback" and similar policies of the Company that may be adopted at any time and from time to time in order to comply with the Dodd-Frank Wall Street Reform and Consumer Protection Act or other applicable law. In addition, and as a condition to the grant, vesting, adjustment or exercisability of any Options or the issuance of Common Shares upon the exercise of any Options and/or any disposition of such Common Shares, Grantee understands, acknowledges, agrees and hereby stipulates that in the event of an Award Termination Event, the Company may (in its Sole Discretion) require Grantee to and, to the extent so required by the Company, Grantee hereby agrees to: (A) return to the Company any and all Common Shares issued under this Agreement and all Other Award Agreements (as defined in this Subsection 3(e)) that are held by or on behalf of Grantee on or after the Award Termination Effective Date; and (B) pay to the Company an amount not to exceed the taxable income attributable to all dispositions, during and after the Recovery Period (as defined in this Subsection 3(e)), of Common Shares issued under

this Agreement and all Other Award Agreements (the amounts described in this subpart (B), the “**Gross Amounts**”). Effective as of the Award Termination Effective Date, Grantee shall hold such Common Shares and the Gross Amounts in trust for the benefit of the Company until such time as such Common Shares are returned to the Company and/or the Gross Amounts are paid to the Company, as applicable.

The Company will determine, in its Sole Discretion, the Gross Amounts and the method(s) of payment of the Gross Amounts, which method(s) may include, without limitation: (1) offsetting against any compensation or other amounts owed or owing at any time and from time to time by the Company to Grantee (including, without limitation, amounts payable under a deferred compensation plan permitted under Section 409A of the Internal Revenue Code of 1986, as amended); (2) reducing Grantee’s wages or salary and/or reducing or eliminating future salary increases, cash incentive awards or equity awards; and/or (3) requiring Grantee to pay the Gross Amounts to the Company in cash or other immediately available funds upon written demand for such payment. As a condition to the grant, vesting, adjustment or exercisability of any Options or the issuance of Common Shares upon the exercise of any Options and/or any disposition of such Common Shares, Grantee hereby consents to each of the foregoing method(s) of payment of the Gross Amounts, and further hereby agrees to execute any additional documentation determined by the Company to be necessary or advisable to facilitate the return of the Common Shares and/or payment of the Gross Amounts to the Company. Grantee hereby nominates and appoints the Company as Grantee’s attorney-in-fact for the limited purpose of executing, on Grantee’s behalf, any such additional documentation in the event that Grantee fails to do so on a reasonably timely basis under the circumstances. The return of the Common Shares and/or the payment of the Gross Amounts to the Company pursuant to this Subsection 3(e) shall be without prejudice to any other right or remedy that the Company may have against Grantee at law, in equity, under contract (including, without limitation, this Agreement) or otherwise (all of which are hereby expressly reserved). “**Other Award Agreement**” means any other restricted stock unit agreement, incentive stock option agreement, non-qualified stock option agreement or any other “Award Agreement” (as defined by the Plan) or similar agreement pursuant to successor or other plan(s) similar to the Plan. “**Recovery Period**” means the twelve (12) month period preceding the Award Termination Effective Date.

(f) In the event that: (i) a Change in Control occurs; and (ii) Grantee is terminated by the Company (and not simultaneously employed by the surviving entity – if not the Company – in the Change in Control), for any reason other than for Cause, within twenty-four (24) months after such Change in Control, then any portion of the Options not previously vested shall, as of the date of such termination, immediately vest and become exercisable, and Grantee shall have the right to exercise all unexercised Options within one (1) month after such termination, subject to the condition that any portion of the Options not exercised within such one (1) month period shall terminate and cannot be exercised following expiration of that period, and that no portion of the Option shall be exercisable (whether vested or unvested) after the Expiration Date subject to the condition that any portion of the Options not vested and exercised within such one (1) month period shall terminate after such one (1) month period, shall cease to be exercisable after such one (1) month period and no Common Shares shall be issued upon the exercise of any unvested Options following such one (1) month period, and that no portion of the Options shall vest or be exercisable after the Expiration Date.

For the purpose of this Section 3(f), the capitalized terms shall have the following meanings: "Capital Stock" means any and all shares, interests, participations, rights or other equivalents, however designated, of corporate stock or partnership or membership interests, whether common or preferred. "Cause" means: (i) the willful and continued failure of Grantee to substantially

perform their duties consistent with past practices prior to the Change in Control; (ii) any illegal conduct or gross misconduct which is materially injurious to the Company or its affiliates; (iii) Grantee has been convicted of or pleaded guilty or nolo contendere to a felony or any crime involving moral turpitude or dishonesty; (iv) Grantee has been convicted of or pleaded guilty or nolo contendere to a felony, crime or engaged in conduct which results in a prohibition on Grantee from serving, for any period of time, as an officer or director of a publicly-traded company by any federal, state or other regulatory governing body (including, without limitation, an exchange or association such as the NYSE or the NASDAQ Stock Market); and/or (v) the occurrence of any Award Termination Event. "Change in Control" means: (i) [REDACTED]; and (ii) [REDACTED]. "Equity Interest" means any Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any debt security that is convertible into, or exchangeable for, Capital Stock). [REDACTED].

4. Manner of Issuance of Common Shares.

(a) The Options can be exercised only by, and the Common Shares issuable upon the exercise of the Options can be issued only to, Grantee or other proper party as described in Subsection 2(b), Subsection 3(c) and/or Subsection 4(c) of this Agreement, in whole Common Shares by following (prior to the earlier of: (i) any termination of such Options; or (ii) the Expiration Date) the then-current procedures implemented by the Administrator, as such Administrator and procedures are designated by the Company in its Sole Discretion. The instruction to exercise any Options must be made by Grantee or other proper party as described in Subsection 2(b), Subsection 3(c) and/or Subsection 4(c) of this Agreement and shall include, among other things, the number of Common Shares as to which the Options are being exercised, shall contain a representation and agreement as to Grantee's investment intent with respect to the Common Shares in a form satisfactory to the Company's General Counsel (unless a Prospectus meeting applicable requirements of the Securities Act of 1933, as amended, is in effect for the Common Shares being issued pursuant to the exercise of the Option), and be accompanied by payment in full of the Option Price for all Options designated in the instruction (including, without limitation, satisfaction of Grantee's tax, tax withholding and all other obligations with respect to any individual income taxes, penalties and/or interest as set forth in Subsection 2(d) of this Agreement). All notices that need to be sent to the Company shall be addressed to it at its office at 9601 S. Meridian Blvd., Englewood, Colorado, 80112, Attn: Corporate Secretary, or to such other address or person or entity as the Company may notify Grantee of from time to time. All notices that need to be sent to Grantee or other person or entity then entitled to receive Common Shares issuable upon vesting of the Options shall be addressed to Grantee or such other person(s) or entity(ies) at such address as Grantee or such other person(s) or entity(ies) may notify the Company or its Administrator in writing of from time to time.

(b) Unless notified by the Company or the Administrator to the contrary, the Common Shares issuable upon the exercise of the Options shall be issued within five (5) business days following the date on which the General Counsel for the Company determines that all conditions necessary for vesting of the Options and issuance of the Common Shares have been satisfied (including, without limitation, satisfaction of Grantee's tax, tax withholding and all other obligations with respect to any individual income taxes, penalties and/or interest as set forth in Subsection 2(d) of this Agreement). The Company shall have no obligation to issue any Common Shares until it has confirmed to its satisfaction that all conditions necessary for vesting and the exercise of the Options and issuance of the Common Shares have been satisfied. Any notice of exercise shall be void and of no effect if all requisite events have not been properly completed.

(c) If, upon the close of trading on the NASDAQ Stock Market (or, in the event that the Common Shares are no longer listed and traded on the NASDAQ Stock Market, such other stock exchange on which the Common Shares are then listed and traded) (the “Market Close”) on the Expiration Date (or the last trading day prior to the Expiration Date (if the Expiration Date is not a trading day)) (the “Expiration Exercise Date”), all or any portion of the Options are vested and exercisable, then the Options (or vested and exercisable portion thereof) shall be automatically exercised upon the Market Close on the Expiration Exercise Date without any further action by Grantee (or any other proper party as described in Section 2(b) and/or Section 3(c) of this Agreement) pursuant to the applicable then-current procedures implemented by the Administrator (the “Expiration Exercise Procedures”), as such Administrator and Expiration Exercise Procedures are designated by the Company in its Sole Discretion.

Pursuant to the Expiration Exercise Procedures in effect as of the date of this Agreement: (i) the following costs and expenses will be satisfied by withholding otherwise deliverable Common Shares to be issued upon the automatic exercise of the Option: (A) the Option Price for the full number of vested Common Shares that are automatically exercised under the Options pursuant to this Section 4(c); (B) the Administrator’s fees and commissions, if any; (C) other brokerage fees and commissions, if any; and (D) all withholding and all other obligations with regard to any individual income taxes (which Grantee understands, acknowledges, agrees and hereby stipulates may be withheld at the highest then-current tax rate), penalties or interest related to the grant, vesting, adjustment or exercise of the Options and/or any subsequent disposition of Common Shares in connection with the Expiration Exercise Procedures or otherwise; and (ii) the number of whole Common Shares, if any, remaining after completion of all withholding as described in subsection (i) of these Expiration Exercise Procedures shall be issued to Grantee.

Without limitation of the generality of Section 2(d) of this Agreement, in the event that the amounts withheld pursuant to the Expiration Exercise Procedures are insufficient to satisfy Grantee’s actual individual income tax, penalty and/or interest obligations, Grantee understands, acknowledges, agrees and hereby stipulates that Grantee, and not the Company, shall be solely responsible and liable for payment of any deficiencies. Only Options that are “in-the-money” at Market Close on the Expiration Exercise Date shall be automatically exercised pursuant to this Section 4(c). Options shall be considered “in-the-money” for purposes of this Section 4(c) if the fair market value of a Common Share upon the Market Close on the Expiration Exercise Date is at least one percent (1%) greater than the Option Price. Furthermore, and without limitation of the generality of the preceding sentence, any exercise of the Options that would result in the issuance of less than one (1) whole Common Share to Grantee pursuant to the Expiration Exercise Procedures shall not be automatically exercised pursuant to this Section 4(c). Grantee (on its own behalf and on behalf of each and every other proper party as described in Section 2(b) and/or Section 3(c) of this Agreement) hereby expressly authorizes and agrees to the automatic exercise of the Options as provided in this Section 4(c) (and shall be deemed to have given all instructions and representations required under Section 4(a) of this Agreement in connection with the automatic exercise of the Options as provided in this Section 4(c)), and neither the approval of the Administrator, nor the consent of Grantee (or any other proper party as described in Section 2(b) and/or Section 3(c) of this Agreement) shall be required at the time of the automatic exercise of the Options pursuant to this Section 4(c). For the avoidance of doubt, Grantee may exercise any vested and exercisable portion of the Options prior to Market Close on the Expiration Exercise Date. **Grantee understands, acknowledges, agrees and hereby stipulates that the automatic exercise procedure pursuant to this Section 4(c) is provided solely as a convenience to Grantee as protection against Grantee’s inadvertent failure to exercise all or any portion of an “in-the-money” Options that are vested and exercisable before such Options expire under this Agreement. Because any exercise of all or any portion of the Options is solely Grantee’s responsibility, Grantee hereby waives and releases and agrees to indemnify and hold the**

Company harmless from and against any and all claims of any kind whatsoever against the Company and/or any other party (including without limitation, the Administrator and the Company's employees and agents) arising out of or relating to the automatic exercise procedure pursuant to this Section 4(c) (or any failure thereof), including without limitation any resulting individual income tax, penalty and/or interest liability and/or any other liability if the automatic exercise of the Options does occur, or does not occur for any reason or no reason whatsoever and/or the Options actually expire.

(c) The certificate or certificates for (or the book entries made by the Administrator to record) the Common Shares, if any, that are issued or made upon the exercise of the Options may be registered or recorded only in the name of Grantee (or if Grantee so requests, jointly in the name of Grantee and a member of Grantee's family, with the right of survivorship, or in the event of the death of Grantee, in the name of such survivor of Grantee as the person or entity with the right to receive the Common Shares issuable upon the exercise of the Options shall designate).

5. [REDACTED]
6. Dispute Resolution; Arbitration.

(a) In consideration of the promises and covenants set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantee and the Company mutually agree that any past, present or future claim, counterclaim, controversy and/or dispute between them (whether arising in contract, tort, under statute or otherwise) arising out of, relating to or incurred in connection with: (i) Grantee's application for employment, employment and/or cessation of employment (collectively, "Employment-Related Disputes"); and/or (ii) this Agreement and/or any Other Award Agreement (including, without limitation, [REDACTED]) (collectively, "Options Disputes") ((i) or (ii) each, a "Claim" and (i) and (ii) collectively, "Claims"), whenever and wherever brought shall be resolved by binding arbitration administered by the American Arbitration Association (the "AAA"). This Section 6 survives after the employment relationship ceases and applies to any Claim that the Company may have against Grantee or that Grantee may have against the Company. Grantee understands, acknowledges, agrees and hereby stipulates that this agreement to arbitrate is subject to the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq., it evidences a transaction involving commerce, and it is fully enforceable. For purposes of this Section 6, "the Company" shall be defined to include the Company, its predecessors, its and its predecessors' direct and indirect subsidiaries, and the officers, directors, shareholders, members, owners, employees, managers, agents, attorneys, successors and assigns of each of the foregoing persons and entities.

- (b) For Employment-Related Disputes:
 - i. a party who wishes to arbitrate an Employment-Related Dispute Claim must prepare a written demand for arbitration ("Request for Arbitration") that identifies the claims asserted, the factual basis for each claim and the relief and/or remedy sought. That party must file the Request for Arbitration (along with a copy of this Agreement and the applicable filing fee) with the AAA by: (A) delivering them by hand to the Denver, Colorado regional office of the AAA or any other office of the AAA located in the State of Colorado; (B) mailing them by certified U.S. mail, Federal Express or United Parcel Service to American Arbitration Association, Case Filing Services, 1101 Laurel Oak Road, Suite 100, Voorhees, NJ 08043; or (C) using the AAA WebFile feature at the AAA's website: <http://www.adr.org>. The Request for Arbitration must be submitted to the AAA before the expiration of the applicable statute of

limitations and the parties agree that the date on which the AAA receives the Request for Arbitration shall constitute filing for all statute of limitations purposes. Unless otherwise prohibited by law, the party initiating arbitration shall be responsible for paying the applicable filing fee. Subject to Subsection 7(v) of this Agreement, the Company will pay the Employment Law Arbitrator's (as defined in Subsection 6(b)(iii) of this Agreement) fees and any fee for administering the arbitration;

- ii. the party initiating arbitration must deliver a copy of the Request for Arbitration to the other party by hand or U.S. mail at the following location: (A) if to the Company - to the legal department of the Company at 9601 S. Meridian Blvd., Englewood, CO 80112, Attn: General Counsel; or (B) if to Grantee - to the last address of Grantee appearing in the Company's records;
- iii. a single arbitrator from the AAA with expertise in employment disputes (the "Employment Law Arbitrator") shall be selected by the AAA and shall conduct the arbitration pursuant to the AAA's Employment Arbitration Rules and Mediation Procedures (the "AAA Employment Rules"), without incorporation of the AAA's Supplementary Rules for Class Arbitrations, the AAA rules relating to the selection of arbitrators, or the AAA rules regarding selection of venue, which the parties hereby expressly disclaim. The AAA Employment Rules may be found at <http://www.adr.org/>, by searching for "AAA Employment Arbitration Rules" using an Internet search engine such as www.google.com, or by requesting a copy from the human resources department of the Company. The arbitration, including without limitation any construction or interpretation of this Agreement, shall be governed by and construed in accordance with the substantive law of the State of Colorado, without giving effect to choice of law principles. Notwithstanding anything to the contrary in this Agreement, the AAA Employment Rules, the AAA Commercial Rules (as defined in Subsection 6(b)(iii) of this Agreement), any other AAA rule and/or procedure and/or any applicable law, the Employment Law Arbitrator shall only have the power to render decisions that are consistent with the substantive law of the State of Colorado, without giving effect to choice of law principles, and any decision rendered by the Employment Law Arbitrator shall be subject to review by the United States District Court for the District of Colorado or the appropriate state court located in the City and County of Denver, Colorado for the purpose of determining whether such decision is consistent with such substantive law and for any other reason for which judicial review of an arbitration decision or award is permissible under the AAA rules, the Federal Arbitration Act or other applicable law; any decision rendered by the Employment Law Arbitrator that is inconsistent with such substantive law shall be deemed beyond the authority of the Employment Law Arbitrator. Regardless of what the AAA Employment Rules state, the arbitration proceedings shall be held in the City and County of Denver, Colorado. Grantee hereby irrevocably waives any and all objections that Grantee may now or hereafter have to the venue of the arbitration, or any court proceeding brought to determine whether a decision rendered by the Employment Law Arbitrator is consistent with the substantive law of the

State of Colorado, including, without limitation, any claim that the arbitration or any such court proceeding has been brought in an inconvenient forum;

- iv. the parties shall have the right to conduct discovery relevant and material to the outcome of the arbitration and to present witnesses and evidence as needed to present their claims and defenses, and the Employment Law Arbitrator shall resolve any discovery or evidentiary dispute. Each party shall have the right to subpoena relevant witnesses and documents, including, without limitation, documents from third parties; subpoenas may be issued for production of documents or witnesses at any deposition(s) or pre-hearing proceeding(s) and/or at the arbitration hearing. At least thirty (30) days before the arbitration hearing, the parties must exchange a list of witnesses and copies of all exhibits to be used at the arbitration hearing.
Notwithstanding anything to the contrary in this Agreement, the AAA Employment Rules, the AAA Commercial Rules, any other AAA rule and/or procedure and/or any applicable law, the Employment Law Arbitrator shall only have the power to award remedies available under the substantive law of the State of Colorado, without giving effect to choice of law principles, and the availability of any such remedies shall further be limited to those that would be available to a party in his/her/its individual capacity for all Claims presented to the Employment Law Arbitrator (for the avoidance of doubt and without limitation of the foregoing, Grantee may not bring a class arbitration and is not entitled to remedies for Grantee's Claims on behalf of any other person or entity and/or that are available to plaintiffs in a class action but not available to individual or non-class action plaintiffs). Any remedy awarded by the Employment Law Arbitrator shall be subject to review by the United States District Court for the District of Colorado or the appropriate state court located in the City and County of Denver, Colorado for the purpose of determining whether such remedy is consistent with such substantive law and complies with the limitations set forth above; any decision by the Employment Law Arbitrator that is inconsistent with such substantive law and/or fails to comply with such limitations shall be deemed beyond the authority of the Employment Law Arbitrator. Except as otherwise provided in this Subsection 6(b)(iv) and/or Subsection 6(b)(iii) of this Agreement, the Employment Law Arbitrator's decision shall be final and binding, and judgment upon the Employment Law Arbitrator's decision and/or award may be entered in any court of competent jurisdiction; provided that the parties agree to take all reasonable steps to ensure that all documents, pleadings and papers are filed and/or entered with the court under seal and/or in a manner that would maintain their confidentiality, including, without limitation, complying with all rules of procedure and local rules for filing documents, pleadings and papers under seal;
- i. the Employment Law Arbitrator shall have the authority to hear and decide dispositive motions under the legal standards set forth in Rules 12 and 56 of the Colorado Rules of Civil Procedure, regardless of whether a Claim arises under federal or state law. The Employment Law Arbitrator shall resolve all disputes regarding such dispositive motions and the timeliness

of the Request for Arbitration and apply the statute of limitations set forth under the substantive law of the State of Colorado, without giving effect to choice of law principles. The Employment Law Arbitrator shall dismiss, without limitation, any Claim that, in the absence of this Agreement, could not be brought under the substantive law of the State of Colorado, without giving effect to choice of law principles;

- ii. the Employment Law Arbitrator shall have the exclusive authority to resolve Employment-Related Disputes, except as limited by Subsection 6(e) of this Agreement; and
- iii. all arbitration proceedings, including, but not limited to, claims, allegations, decisions, findings, pleadings, hearings, testimony, discovery, settlements, opinions and awards shall be confidential, except: (A) to the extent the parties otherwise agree in writing; (B) as may be otherwise appropriate in response to a request from a government agency, subpoena, or legal process; (C) if the substantive law of the State of Colorado (without giving effect to choice of law principles) provides to the contrary; or (D) as is necessary in a court proceeding to enforce, correct, modify or vacate the Employment Law Arbitrator's award or decision (and in the case of this subpart (D), the parties agree to take all reasonable steps to ensure that all documents, pleadings and papers are filed and/or entered with the court under seal and/or in a manner that would maintain their confidentiality, including, without limitation, complying with all rules of procedure and local rules for filing documents, pleadings and papers under seal); provided, however, in the event that either party initiates a court proceeding to enforce, correct, modify, or vacate the Employment Law Arbitrator's award or decision, or any other proceeding that would require disclosing the Employment Law Arbitrator's award, decision or findings, the parties agree to take all reasonable steps to ensure that all documents, pleadings and papers are filed and/or entered with the court under seal and/or in a manner that would maintain their confidentiality, including, without limitation, complying with all rules of procedure and local rules for filing documents, pleadings and papers under seal.

(c) For Options Disputes:

- i. a party who wishes to arbitrate an Options Dispute Claim must prepare a Request for Arbitration that identifies the claims asserted, the factual basis for each claim and the relief and/or remedy sought. That party must file the Request for Arbitration (along with a copy of this Agreement and the applicable filing fee) with the AAA by: (A) delivering them by hand to the Denver, Colorado regional office of the AAA or any other office of the AAA located in the State of Colorado; (B) mailing them by certified U.S. mail, Federal Express or United Parcel Service to American Arbitration Association, Case Filing Services, 1101 Laurel Oak Road, Suite 100, Voorhees, NJ 08043; or (C) using the AAA WebFile feature at the AAA's website: <http://www.adr.org>. The Request for Arbitration must be submitted to the AAA before the expiration of the applicable statute of limitations and the parties agree that the date on which the AAA receives the Request for Arbitration shall constitute filing for all statute of

limitations purposes. Unless otherwise prohibited by law, the party initiating arbitration shall be responsible for paying the applicable filing fee. Subject to Subsection 7(v) of this Agreement, the Commercial Law Arbitrators' (as defined in Subsection 6(c)(iii) of this Agreement) fees and any fee for administering the arbitration will be paid equally by the parties (i.e. fifty percent (50%) by the Company and fifty percent (50%) by Grantee);

- ii. the party initiating arbitration must deliver a copy of the Request for Arbitration to the other party by hand or U.S. mail at the following location: (A) to the Company - to the legal department of the Company at 9601 S. Meridian Blvd., Englewood, CO 80112, Attn: General Counsel; or (B) to Grantee - to the last address of Grantee appearing in the Company's records;
- iii. three (3) arbitrators from the AAA with expertise in mergers and acquisitions and, more specifically, breach of non-solicit and/or breach of non-compete provisions, as the case may be ("Commercial Law Arbitrators") shall be selected in accordance with the procedure set forth below, and shall conduct the arbitration, pursuant to the then-current AAA Commercial Arbitration Rules and Mediation Procedures (the "AAA Commercial Rules"), without incorporation of the AAA Employment Rules, the AAA's Supplementary Rules for Class Arbitrations, the AAA rules relating to the selection of arbitrators or the AAA rules regarding selection of venue, which the parties hereby expressly disclaim. The AAA Commercial Rules may be found at <http://www.adr.org/>, by searching for "AAA Commercial Dispute Resolution Procedures" using an internet search engine such as www.google.com, or by requesting a copy from the human resources department of the Company. Within fourteen (14) days after the receipt of the Request for Arbitration, each party shall select one arbitrator from the AAA that meets the criteria set forth above to act as arbitrator and such arbitrators shall select a third arbitrator from the AAA that meets the criteria set forth above within ten (10) days of their appointment. The party-selected arbitrators will serve in a non-neutral capacity. In the event that the arbitrators selected by the parties are unable or fail to agree upon the third arbitrator, a third arbitrator that meets the criteria set forth above shall be selected by the AAA. The arbitration, including without limitation any construction or interpretation of this Agreement, shall be governed by and construed in accordance with the substantive law of the State of Colorado, without giving effect to choice of law principles. Notwithstanding anything to the contrary in this Agreement, the AAA Employment Rules, the AAA Commercial Rules, any other AAA rule and/or procedure and/or any applicable law, the Commercial Law Arbitrators shall only have the power to render decisions that are consistent with the substantive law of the State of Colorado, without giving effect to choice of law principles, and any decision rendered by the Commercial Law Arbitrators shall be subject to review by the United States District Court for the District of Colorado or the appropriate state court located in the City and County of Denver, Colorado for the purpose of determining whether such decision is consistent with such substantive law and for any other reason for which judicial review of

an arbitration decision or award is permissible under the AAA rules, the Federal Arbitration Act or other applicable law; any decision by the Commercial Law Arbitrators that is inconsistent with such substantive law shall be deemed beyond the authority of the Commercial Law Arbitrators.

Regardless of what the AAA Commercial Rules state, the arbitration proceedings shall be held in the City and County of Denver, Colorado.

Grantee hereby irrevocably waives any and all objections that Grantee may now or hereafter have to the venue of the arbitration, or any court proceeding brought to determine whether a decision rendered by the Commercial Law Arbitrators is consistent with the substantive law of the State of Colorado, including, without limitation, any claim that the arbitration or any such court proceeding has been brought in an inconvenient forum;

- iv. the parties shall have the right to conduct discovery relevant and material to the outcome of the arbitration and to present witnesses and evidence as needed to present their claims and defenses, and the Commercial Law Arbitrators shall resolve any discovery or evidentiary dispute. Each party shall have the right to subpoena relevant witnesses and documents, including, without limitation, documents from third parties; subpoenas may be issued for production of documents or witnesses at any deposition(s) or pre-hearing proceeding(s) and/or at the arbitration hearing. At least thirty (30) days before the arbitration hearing, the parties must exchange a list of witnesses and copies of all exhibits to be used at the arbitration hearing.

Notwithstanding anything to the contrary in this Agreement, the AAA Employment Rules, the AAA Commercial Rules, any other AAA rule and/or procedure and/or any applicable law, the Commercial Law Arbitrators shall only have the power to award remedies available under the substantive law of the State of Colorado, without giving effect to choice of law principles, and the availability of any such remedies shall further be limited to those that would be available to a party in his/her/its individual capacity for all Claims presented to the Commercial Law Arbitrators (for the avoidance of doubt and without limitation of the foregoing, Grantee may not bring a class arbitration and is not entitled to remedies for Grantee's Claims on behalf of any other person or entity and/or that are available to plaintiffs in a class action but not available to individual or non-class action plaintiffs). Any remedy awarded by the Commercial Law Arbitrators shall be subject to review by the United States District Court for the District of Colorado or the appropriate state court located in the City and County of Denver, Colorado for the purpose of determining whether such remedy is consistent with such substantive law and complies with the limitations set forth above; any decision by the Commercial Law Arbitrators that is inconsistent with such substantive law and/or fails to comply with such limitations shall be deemed beyond the authority of the Commercial Law Arbitrators. Except as otherwise provided in this Subsection 6(c)(iv) and/or Subsection 6(c)(iii) of this Agreement, the Commercial Law Arbitrators' decision shall be final and binding, and judgment upon the Commercial Law Arbitrators' decision and/or award may be entered in any court of competent jurisdiction; provided that the parties agree to take all reasonable steps to ensure that all documents, pleadings and papers are

filed and/or entered with the court under seal and/or in a manner that would maintain their confidentiality, including, without limitation, complying with all rules of procedure and local rules for filing documents, pleadings and papers under seal;

- v. the Commercial Law Arbitrators shall have the authority to hear and decide dispositive motions under the legal standards set forth in Rules 12 and 56 of the Colorado Rules of Civil Procedure, regardless of whether a Claim arises under federal or state law. The Commercial Law Arbitrators shall resolve all disputes regarding such dispositive motions and the timeliness of the Request for Arbitration and apply the statute of limitations set forth under the substantive law of the State of Colorado, without giving effect to choice of law principles. The Commercial Law Arbitrators shall dismiss, without limitation, any Claim that, in the absence of this Agreement, could not be brought under the substantive law of the State of Colorado, without giving effect to choice of law principles;
- vi. the Commercial Law Arbitrators shall have the exclusive authority to resolve Options Disputes, except as limited by Subsection 6(e) of this Agreement; and
- vii. all arbitration proceedings, including, but not limited to, claims, allegations, decisions, findings, pleadings, hearings, testimony, discovery, settlements, opinions and awards shall be confidential, except: (A) to the extent the parties otherwise agree in writing; (B) as may be otherwise appropriate in response to a request from a government agency, subpoena, or legal process; (C) if the substantive law of the State of Colorado (without giving effect to choice of law principles) provides to the contrary; or (D) as is necessary in a court proceeding to enforce, correct, modify or vacate the Commercial Law Arbitrators' award or decision (and in the case of this subpart (D), the parties agree to take all reasonable steps to ensure that all documents, pleadings and papers are filed and/or entered with the court under seal and/or in a manner that would maintain their confidentiality, including, without limitation, complying with all rules of procedure and local rules for filing documents, pleadings and papers under seal); provided, however, in the event that either party initiates a court proceeding to enforce, correct, modify, or vacate the Commercial Law Arbitrators' award or decision, or any other proceeding that would require disclosing the Commercial Law Arbitrators' award, decision or findings, the parties agree to take all reasonable steps to ensure that all documents, pleadings and other documents are filed and/or entered with the court under seal and/or in a manner that would maintain their confidentiality, including, without limitation, complying with all rules of procedure and local rules for filing documents, pleadings and papers under seal.

(d) Notwithstanding the foregoing, this agreement to arbitrate all Employment-Related Disputes and/or Options Disputes shall not apply to Grantee claims for statutory unemployment compensation benefits, statutory worker's compensation benefits, state disability insurance benefits (not including retaliation claims based upon seeking such benefits), charges filed with the National Labor Relations Board alleging violations of the National Labor Relations Act,

and claims for benefits from a Company-sponsored "employee benefit plan," as that term is defined in 29 U.S.C. §1002(3).

(e) Notwithstanding anything to the contrary in this Agreement, the AAA Employment Rules, the AAA Commercial Rules, any other AAA rule and/or procedure and/or any applicable law, Grantee and the Company agree to bring any Claim in arbitration on an individual basis only, and not as a class or collective action; Grantee and the Company waive any right for a Claim to be brought, heard, or decided as a class or collective action, and the Arbitrator has no power, jurisdiction or authority to preside over a class or collective action ("Class Action Waiver"). This Class Action Waiver, however, does not prevent Grantee from joining, opting into or participating in a pending class or collective action to which Grantee is a current or purported class member as of the date Grantee executes this Agreement. In addition and notwithstanding anything to the contrary in this Agreement, the AAA Employment Rules, the AAA Commercial Rules, any other AAA rule and/or procedure and/or any applicable law, Grantee and the Company waive any right for a Claim to be brought, heard or decided as a private attorney general representative action on behalf of other grantees ("Representative Action"), and the arbitrator has no power or authority to preside over a Representative Action ("Representative Action Waiver"). The Representative Action Waiver, however, does not apply to a Claim Grantee brings in arbitration as a private attorney general solely on his/her own behalf. Notwithstanding anything to the contrary in this Agreement, the AAA Employment Rules, the AAA Commercial Rules, any other AAA rule and/or procedure and/or any applicable law: (i) any dispute as to the interpretation, applicability, enforceability or formation of the Class Action Waiver and the Representative Action Waiver may only be determined by the United States District Court for the District of Colorado or the appropriate state court located in the City and County of Denver, Colorado and not by the Employment Law Arbitrator or Commercial Law Arbitrators, as the case may be (for the avoidance of doubt and without limitation of the foregoing, any dispute by the Company or Grantee regarding whether a Claim may be brought as a class or collective action or as a Representative Action must be decided by the courts listed above, and cannot be decided by the Employment Law Arbitrator or the Commercial Law Arbitrators); and (ii) in the event that any such court or other body of competent jurisdiction holds this Subsection 6(e) to be invalid, illegal, void, or less than fully enforceable to any extent or in any respect as to time, scope or otherwise, then Section 6 of this Agreement shall be deemed to have terminated in its entirety and shall be of no further force or effect.

(f) In addition and notwithstanding anything to the contrary in this Agreement, the AAA Employment Rules, the AAA Commercial Rules, any other AAA rule and/or procedure and/or any applicable law, the Company shall have the right to seek specific performance, a temporary restraining order, preliminary and permanent injunctive relief and/or other similar relief, as set forth in Subsection 7(u) of this Agreement, from a court. In the event that any such relief is sought from a court, at DISH's option, any or all Claims relating to the foregoing will thereafter remain with the applicable court(s) for resolution and will no longer be resolved by arbitration pursuant to this Agreement; provided, however, that the Claims and proceedings in the applicable court(s) shall at all times remain subject to the Class Action Waiver and Representative Action Waiver set forth in Subsection 6(e) of this Agreement. The parties mutually agree that the United States District Court for the District of Colorado and the appropriate state courts located in the City and County of Denver, Colorado shall have exclusive subject matter and personal jurisdiction to hear and decide any such action, and that any such court action shall be governed by the substantive law of the State of Colorado, without giving effect to choice of law principles. Grantee hereby irrevocably waives any and all objections that Grantee may now or hereafter have to the venue of any such proceeding brought in any such court, including, without limitation, any claim that such proceeding has been brought in an inconvenient forum.

(g) Nothing in this Section 6 prohibits Grantee from making a report or filing an administrative charge with a federal, state or local administrative agency of competent jurisdiction such as the National Labor Relations Board, the Equal Employment Opportunity Commission, the SEC or the Department of Labor. This Section 6 also does not prevent federal administrative agencies from adjudicating claims and awarding remedies based on those claims, even if such claims would otherwise be covered by this Section 6. Nothing in this Section 6 prevents or excuses a party from satisfying any conditions precedent and/or exhausting administrative remedies under applicable law before bringing a Claim in arbitration.

(h) **AGREEMENT TO ARBITRATE APPLIES TO ALL EMPLOYMENT-RELATED DISPUTES AND OPTIONS DISPUTES.** THIS SECTION 6 SHALL APPLY TO ALL EMPLOYMENT-RELATED DISPUTES AND OPTIONS DISPUTES UNDER THIS AGREEMENT AND ALL OTHER AWARD AGREEMENTS OR OTHERWISE, AND SUPERSEDES ANY AND ALL PRIOR AGREEMENT(S) TO ARBITRATE EMPLOYMENT-RELATED DISPUTES AND/OR OPTIONS DISPUTES BETWEEN GRANTEE AND THE COMPANY AND/OR ANY OF ITS DIRECT AND INDIRECT SUBSIDIARIES. IN THE EVENT OF ANY CONFLICT OR INCONSISTENCY BETWEEN THE AAA EMPLOYMENT RULES, THE AAA COMMERCIAL RULES, ANY OTHER AAA RULE AND/OR PROCEDURE AND/OR APPLICABLE LAW, ON THE ONE HAND, AND THE TERMS AND CONDITIONS OF THIS AGREEMENT, ON THE OTHER HAND, THE TERMS AND CONDITIONS OF THIS AGREEMENT SHALL CONTROL.

(i) The parties acknowledge that this agreement to arbitrate shall not alter the at-will nature of their employment relationship MEANING THAT YOU MAY TERMINATE YOUR EMPLOYMENT WITH THE COMPANY AND/OR ANY OF ITS DIRECT AND INDIRECT SUBSIDIARIES AT ANY TIME WITH OR WITHOUT CAUSE, AND WITH OR WITHOUT NOTICE, AND THE COMPANY AND/OR ANY OF ITS DIRECT AND INDIRECT SUBSIDIARIES RESERVE THE SAME RIGHTS TO TERMINATE YOUR EMPLOYMENT AND/OR DEMOTE YOU.

(j) EXCEPT FOR CLAIMS FOR SPECIFIC PERFORMANCE, A TEMPORARY RESTRAINING ORDER, PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF AND/OR SIMILAR RELIEF, WHICH THE COMPANY SHALL HAVE THE RIGHT TO OBTAIN FROM A COURT AS SET FORTH IN SUBSECTIONS 6(f) and 7(u) OF THIS AGREEMENT (AND EXCEPT FOR CLAIMS RELATING TO ANY OF THE FOREGOING, WHICH, IN THE EVENT THAT DISH SO ELECTS PURSUANT TO SUBSECTION 6(f) ABOVE, SHALL THEREAFTER REMAIN WITH THE APPLICABLE COURT(S) FOR RESOLUTION AS SET FORTH IN SUBSECTION 6(f) OF THIS AGREEMENT), GRANTEE AND THE COMPANY MUTUALLY AND VOLUNTARILY AGREE TO ARBITRATE ALL CLAIMS COVERED BY THIS AGREEMENT. THE RIGHTS TO A TRIAL, TO A TRIAL BY JURY, TO CLAIMS FOR PUNITIVE AND/OR EXEMPLARY DAMAGES, TO ANY REMEDY NOT AVAILABLE UNDER THE SUBSTANTIVE LAW OF THE STATE OF COLORADO, WITHOUT GIVING EFFECT TO CHOICE OF LAW PRINCIPLES, AND TO ENGAGE AND/OR PARTICIPATE IN A CLASS ACTION, COLLECTIVE ACTION, PRIVATE ATTORNEY GENERAL REPRESENTATIVE ACTION AND/OR ANY OTHER REPRESENTATIVE ACTION ARE OF VALUE AND EXPRESSLY WAIVED PURSUANT TO THIS SECTION 6. AS SET FORTH ABOVE, NOTHING IN THIS SECTION 6 INFRINGES ON GRANTEE'S RIGHT TO FILE A CHARGE WITH ANY GOVERNMENT AGENCY; PROVIDED, HOWEVER, GRANTEE UNDERSTANDS, ACKNOWLEDGES, AGREES, AND HEREBY STIPULATES THAT GRANTEE'S RIGHT TO SEEK OTHER REMEDIES AND/OR

PERSONAL RECOVERIES IS RESTRICTED AS SPECIFICALLY SET FORTH IN THIS SECTION 6.

7. Miscellaneous.

(a) Plan. The Options are issued pursuant to the Plan and are subject to the terms and conditions of the Plan. The terms and conditions of the Plan are available for inspection during normal business hours at the principal offices of the Company. The Committee has final authority to decide, interpret, determine and calculate any and all aspects of the Plan in its Sole Discretion.

(b) No Assurances of Employment; Shareholder Rights. Without limitation of Subsection 6(i) of this Agreement, this Agreement shall not confer upon Grantee any right with respect to continuance of employment with the Company or any of its direct or indirect subsidiaries, nor shall it interfere in any way with the right of the Company and its direct and indirect subsidiaries to terminate such employment or to demote Grantee for any reason or no reason at any time and from time to time. Grantee shall have none of the rights of a shareholder with respect to Common Shares subject to the Options unless and until such Common Shares shall have been issued to Grantee in accordance with this Agreement and the Plan (as evidenced by the records of the transfer agent of the Company).

(c) Adjustments. If there shall be any change in the Common Shares of the Company through merger, consolidation, reorganization, recapitalization, dividend in the form of stock (of whatever amount), stock split or other change in the corporate structure of the Company, then appropriate adjustments may be made by the Committee, in its Sole Discretion, to all or any portion of the Options that have not yet vested and been exchanged for Common Shares and have not been terminated or expired. Such adjustments may include, where appropriate, changes in the number of shares of Common Shares subject to the outstanding Options.

(d) This Agreement shall inure to the benefit of the Company's assigns and successors.

(e) Securities Laws. The Company shall at all times during the term of the Options reserve and keep available such number of Common Shares as will be sufficient to satisfy the requirements of this Agreement. If the Company in its Sole Discretion so elects, it may register the Common Shares issuable upon vesting of the Options under the Securities Act of 1933, as amended (the "Securities Act"), and list the Common Shares on any securities exchange. In the absence of such election, Grantee understands that neither the Options nor the Common Shares issuable pursuant to the exercise of the Options will be registered under the Securities Act, or tradeable on any securities exchange, and Grantee represents that the Options are being acquired, and that such Common Shares that will be acquired upon the exercise of the Options, if any, will be acquired, by Grantee for investment and not with a view to distribution thereof. In the absence of an effective Registration Statement meeting the requirements of the Securities Act, upon any sale or transfer of the Common Stock issued pursuant to the exercise of the Options, Grantee shall deliver to the Company an opinion of counsel satisfactory to the Company to the effect that the sale or transfer of the Common Shares does not violate any provision of the Securities Act or the Securities Exchange Act of 1934, as amended, and the Company in its Sole Discretion may impose restrictions upon the sale, pledge or other transfer of such Common Shares (including, without limitation, the placement of appropriate legends on certificates or the imposition of stop-transfer instructions on the certificates (or the book entries made by the Administrator to record the Common Shares), as applicable) if, in the judgment of the Company, such restrictions are necessary or desirable in order to achieve compliance with the Securities Act, the Exchange Act, the securities laws of any state and/or any other law.

(f) Dividends. The holder of the Options will not have any right to dividends or any other rights of a shareholder with respect to the Common Shares issuable upon the exercise of the Options unless and until such Common Shares shall have been issued in accordance with this Agreement and the Plan (as evidenced by the records of the transfer agent of the Company).

(g) Confidentiality. Grantee agrees to treat as confidential the terms and conditions of this Agreement and the Options, and understands, acknowledges, agrees and hereby stipulates that failure to do so may result in immediate termination of all Options (which for the avoidance of doubt and without limitation of the foregoing includes both vested and unvested Options), in which case no Common Shares shall be issuable in connection therewith.

(h) Other Agreements. Except as expressly set forth to the contrary in Section 6 of this Agreement, the obligations of Grantee under this Agreement shall be independent of, and unaffected by, and shall not affect, other agreements, if any, binding Grantee that apply to Grantee's business activities during and/or subsequent to Grantee's employment by the Company.

(i) Survival. Any provision of this Agreement that logically would be expected to survive termination or expiration, shall survive for a reasonable time period under the circumstances, whether or not specifically provided in this Agreement (including, without limitation, Subsection 3(e), [REDACTED] and Section 6 of this Agreement). Except as set forth to the contrary in Subsections 3(d) and 5(a)(iv) of this Agreement, the obligations under this Agreement also shall survive any changes made in the future to the employment terms and conditions of Grantee, including, without limitation, changes in salary, benefits, bonus plans, job title and job responsibilities.

(j) Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement. Except as expressly provided by this Agreement, no waiver or modification of any of the terms or conditions of this Agreement (including, without limitation, this Subsection 7(j)) shall be effective unless in writing and signed by both parties.

(k) No Waiver. In addition to (and without limitation of) the other terms and conditions of this Agreement, the failure of the Company to insist upon strict performance of any provision of this Agreement or any other agreement between the Company, on the one hand, and Grantee or any other grantee, on the other hand, shall not be construed as a waiver of the Company's right to insist upon strict performance of each and every representation, warranty, covenant, duty and obligation of Grantee hereunder. In addition to (and without limitation of) the foregoing, the election of certain remedies by the Company with respect to any Actual or Threatened Violation of this Agreement by Grantee or the breach, violation or default by Grantee or any other grantee of any other agreement between the Company, on the one hand, and Grantee or any other grantee, on the other hand, shall not be deemed to prejudice any right or remedy that the Company may have at law, in equity, under contract (including, without limitation, this Agreement) or otherwise with respect to a similar or different Actual or Threatened Violation of this Agreement by Grantee (all of which are hereby expressly reserved).

(l) Severability. Each provision of this Agreement shall be construed as separable and divisible from every other provision and the enforceability of any one provision shall not limit the enforceability, in whole or in part, of any other provision. Except as otherwise set forth in Subsections 3(b), 3(e) and 6(e) of this Agreement, in the event that a court, arbitrator or other body of competent jurisdiction holds any provision of this Agreement to be invalid, illegal, void, or less than fully enforceable to any extent or in any respect as to time, scope or otherwise, the parties

agree that such provision shall be construed by limiting and reducing it to the minimum extent necessary to render such provision valid, legal and enforceable while preserving to the greatest extent permissible the original intent of the parties; the remaining terms and conditions of this Agreement shall not be affected by such alteration, and shall remain in full force and effect.

(m) Agreement Summaries. In the event that the Company provides Grantee (or anyone acting on behalf of Grantee) with summary or other information concerning, including or otherwise relating to Grantee's rights or benefits under this Agreement (including, without limitation, the Options, and any vesting thereof), such summary or other information shall in all cases be qualified in its entirety by this Agreement and the Plan and, unless it explicitly states otherwise and is signed by an officer of the Company, shall not constitute an amendment or other modification hereto.

(n) Grantee understands, acknowledges, agrees and hereby stipulates that Grantee is executing this Agreement voluntarily and without any duress or undue influence by the Company or anyone else.

(o) Grantee understands, acknowledges, agrees and hereby stipulates that the Options are intended to be consideration in exchange for the promises and covenants set forth in this Agreement and not in exchange for any prior service or continuance of employment with the Company or any of its direct or indirect subsidiaries or for anything else.

(p) Grantee understands, acknowledges, agrees and hereby stipulates that Grantee has carefully read, considered and understands all of the provisions of this Agreement and the Company's policies reflected in this Agreement.

(q) Grantee understands, acknowledges, agrees and hereby stipulates that Grantee has asked any questions needed for Grantee to understand the terms, consequences and binding effect of this Agreement and Grantee fully understands them, including, without limitation, that Grantee is waiving the right to a trial, a trial by jury, and claims for punitive and/or exemplary damages.

(r) Grantee understands, acknowledges, agrees and hereby stipulates that Grantee was provided an opportunity to seek the advice of an attorney and/or a tax professional of Grantee's choice before accepting this Agreement.

(s) Grantee understands, acknowledges, agrees and hereby stipulates that the obligations and restrictions set forth in this Agreement are consistent with Grantee's right to sell Grantee's labor, the public's interest in unimpeded trade, are fair and reasonable, and are no broader than are reasonably required to protect the Company's interests.

(t) Headings and Interpretation. Headings of sections of this Agreement are included for convenience only, will not be construed as part of this Agreement and will not be used to define, limit, extend or interpret the terms of this Agreement. Each capitalized term will apply equally to both the singular and plural forms thereof. The parties acknowledge and agree that: (i) they and their counsel have reviewed, or been given a reasonable opportunity to review, this Agreement and any exhibits to this Agreement; (ii) this Agreement and any exhibits to this Agreement shall be deemed to have been jointly drafted by the parties; and (iii) no ambiguity or claimed ambiguity shall be resolved against any party on the basis that such party drafted the language claimed to be ambiguous nor shall the extent to which any party or its counsel participated in drafting this Agreement and/or any exhibits to this Agreement be construed in favor of or against any party.

(u) Injunctive Relief. Grantee understands, acknowledges, agrees and hereby stipulates that it is the Company's policy to seek legal recourse to the fullest extent possible for any Actual or Threatened Violation of this Agreement, and that nothing in this Agreement shall be construed to prohibit the Company from pursuing any available right or remedy that the Company may have at law, in equity, under contract (including, without limitation, this Agreement) or otherwise against Grantee for any such Actual or Threatened Violation (all of which are hereby expressly reserved), including, without limitation, the recovery of damages from Grantee. Grantee further understands, acknowledges, agrees and hereby stipulates that: (i) Grantee's compliance with this Agreement is necessary to preserve and protect the Company's Confidential Information and/or Trade Secrets, among other things; (ii) any and all Actual or Threatened Violations of any of the covenants set forth in this Agreement (including, without limitation, [REDACTED]) by Grantee will result in irreparable and continuing harm to the Company, which will be difficult to ascertain and for which there will be no adequate monetary or other remedy at law; and, therefore, (iii) the Company will be entitled, in addition to any and all other remedies available at law, in equity, under contract (including, without limitation, this Agreement) or otherwise (all of which are hereby expressly reserved), to specific performance, an *ex parte* (without notice to Grantee) temporary restraining order, preliminary and permanent injunctive relief and/or other similar relief to enjoin and prevent any such Actual or Threatened Violation. Such specific performance and/or injunctive relief includes, without limitation, [REDACTED], to avoid conflicts of interest and to otherwise protect the Company from irreparable harm. Grantee understands, acknowledges, agrees and hereby stipulates that the Company does not need to post a bond in order to obtain injunctive relief and Grantee waives any and all rights to require such a bond.

(v) Fee Shifting. The prevailing party in any arbitration or court proceeding to enforce or interpret this Agreement or any provision thereof shall be entitled to recover its costs, expenses and reasonable attorneys' fees (at trial/arbitration and on appeal), amounts paid in the investigation, defense and/or settlement of such arbitration or court proceeding (including, for the avoidance of doubt and without limitation of the foregoing, costs and expenses incurred in negotiating a settlement, if applicable), and all other amounts allowed by law. For purposes of the preceding sentence, the "prevailing party" means the party initiating such proceeding in the event that such party is awarded any relief by the arbitrator or court (regardless of whether such relief is monetary or equitable in nature) even, for the avoidance of doubt and without limitation of the foregoing, if such party did not prevail in all matters; otherwise, the "prevailing party" means the party defending against such proceeding. The "prevailing party" under (i) the complaint or similar filing or action, and (ii) any counterclaim or similar filing or action in any such proceeding shall be determined independently. Notwithstanding the foregoing, the first sentence of this Subsection 7(v) will not apply to any collateral claims not brought to enforce or interpret this Agreement, even if adjudicated contemporaneously. Nothing in this Agreement shall require Grantee to reimburse the Company for its costs, expenses and reasonable attorneys' fees incurred when the Company prevails in defense of any statutory claim of unlawful discrimination, unless such claim brought by Grantee is frivolous, unreasonable or without foundation, or Grantee continues to prosecute a claim after the claim became frivolous, unreasonable or without foundation, in which cases Grantee will be required to reimburse the Company for its costs, expenses and reasonable attorneys' fees (at trial/arbitration and on appeal), amounts paid in the investigation, defense and/or settlement of such claims (including, for the avoidance of doubt and without limitation of the foregoing, costs and expenses incurred in negotiating a settlement, if applicable), and all other amounts allowed by law. In the event either party hereto files a judicial or administrative action asserting claims subject to the arbitration provisions of this Agreement, and the other party successfully stays such action and/or compels arbitration of the claims made in such an action, the party filing the administrative or judicial action shall pay the other party's costs, expenses and reasonable attorneys' fees incurred in obtaining a stay and/or compelling arbitration.

Upon Grantee's acceptance of the terms and conditions set forth in this Agreement through the electronic grant process available through the Administrator, this Agreement shall become effective between the parties as of the Grant Date.

DISH NETWORK CORPORATION
Charles W. Ergen, Chairman

GRANTEE – [Participant Name]
Accepted on [Acceptance Date]

[REDACTED] Indicates that certain information in this exhibit has been excluded because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

DISH NETWORK CORPORATION
NON-QUALIFIED STOCK OPTION AGREEMENT

This Non-Qualified Stock Option Agreement (the "Agreement") is entered into and made effective as of [Grant Date] (the "Grant Date") by and between DISH Network Corporation, a Nevada corporation (the "Company"), and [Participant Name] ("Grantee").

RECITAL

WHEREAS, the Company, pursuant to its 2019 Stock Incentive Plan (the "Plan"), desires to grant stock options to Grantee, and Grantee desires to accept such stock options, each under the terms and conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the promises and covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Grant of Options.

The Company hereby grants to Grantee, as of the Grant Date, the options (hereinafter called the "Option(s)"), each representing the right to purchase all or any part of an aggregate of [Number of Options Granted] shares of the Class A Common Stock of the Company, par value \$0.01 per share (a "Common Share") upon vesting of that Option, at the price of \$[Grant Price] per share (the "Option Price"), subject to the terms and conditions set forth in this Agreement, which price was equal to or greater than the fair market value of a Common Share on the Grant Date (or the last trading day prior to the Grant Date (if the Grant Date was not a trading day)). The Option Price is subject to adjustment as provided in this Agreement and the Plan.

2. Duration, Vesting and Exercisability.

(a) Goal Achievement and Committee Authority.

[Goals]

(b) **Notwithstanding the foregoing vesting schedules set forth in Subsections 2(a)(i) – (vii), each corresponding increment of the Option shall not vest unless and until the Company has achieved the applicable [Goals] (collectively, the "Performance Goals") in each case as calculated in accordance with Subsections 2(a)(i) – (vii) and subject to the other terms and conditions set forth in this Agreement, on or before [Date]. No Common Shares shall be issued upon the exercise of any Options until those Options have vested, until Grantee has exercised such Option, and until Grantee has satisfied Grantee's tax, tax withholding and all other obligations with respect to any individual income taxes, penalties and/or interest related to such Options as set forth in Subsection 2(e) of this Agreement, unless the Board, the**

Committee and/or the General Counsel of the Company, in its or their Sole Discretion, specifically waives applicability of this provision in whole or in part. In no event shall the Grantee be entitled to receive additional options in excess of the total number of Options set forth in Section 1 of this Agreement, regardless of the achievement of any goal set forth herein. Upon the vesting of 100% of the Options set forth in Section 1 of this Agreement, all unachieved Performance Goals shall be immediately retired, and shall no longer be eligible for achievement and/or vesting.

(c) During the lifetime of Grantee, the Common Shares issuable upon the exercise of the Options shall be issued only to Grantee (or, if permissible under applicable law and this Agreement, to Grantee's guardian or legal representative) and Options shall not be assignable or transferable by Grantee, other than by will or the laws of descent and distribution. Without limiting the generality of the foregoing, the Options may not be sold, assigned, transferred or otherwise disposed of, or pledged or hypothecated in any manner (whether by operation of law or otherwise), and will not be subject to execution, attachment or other process. Any sale, assignment, transfer or other disposition, or pledge or hypothecation, of the Options or any attempt to make any such levy of execution, attachment or other process will cause the Options to terminate immediately, unless the Board, the Committee and/or the General Counsel of the Company, in its or their Sole Discretion, specifically waives applicability of this provision in whole or in part.

(d) Notwithstanding anything to the contrary in this Agreement, the Options shall expire and terminate, and shall cease to be exercisable, on [Date] (the "Expiration Date").

(e) The Company assumes no responsibility for any individual income taxes, penalties and/or interest related to the grant, vesting, adjustment or exercisability of any Options or the issuance of Common Shares upon the exercise of any Options or any subsequent disposition of such Common Shares. **Grantee should consult with Grantee's personal tax advisor regarding the tax ramifications, if any, that result from the grant, vesting, adjustment or exercisability of any Options or the issuance of Common Shares upon the exercise of any Options or any subsequent disposition of such Common Shares.** If, in the Company's Sole Discretion, it is necessary or appropriate to collect or withhold any individual income taxes, penalties and/or interest in connection with the grant, vesting, adjustment or exercisability of any Options or the issuance of Common Shares upon the exercise of any Options or any subsequent disposition of such Common Shares, then (i) the Company shall be entitled to require the payment of such amounts, and/or (ii) Grantee shall make arrangements satisfactory to the Company to satisfy all tax, tax withholding and all other obligations with respect to such amounts, in each case as a condition to such grant, vesting, adjustment or exercisability of such Options or the issuance of Common Shares upon the exercise of such Options and/or any subsequent disposition of such Common Shares, as the case may be, unless the Board, the Committee and/or the General Counsel of the Company, in its or their Sole Discretion, specifically waives applicability of this provision in whole or in part. In furtherance and without limiting the generality of the foregoing, Grantee (on its own behalf and on behalf of each and every other proper party as described in Subsection 2(b) and/or Subsection 3(c) of this Agreement) hereby authorizes the Company, in its Sole Discretion (including, without limitation, pursuant to the then-current procedures implemented by the Company's administrator for the Options (the "Administrator"), as such Administrator and procedures are designated by the Company in its Sole Discretion), to satisfy all tax, tax withholding and all other obligations with respect to any individual income taxes, penalties and/or interest related to the grant, vesting, adjustment or exercisability of any Options or the issuance of Common Shares upon the exercise of any Options or any subsequent disposition of such Common Shares, by one or a combination of the following:

- i. withholding from any wages or other cash compensation payable to Grantee by the Company;
- ii. withholding Common Shares that are otherwise issuable upon the exercise of the Options;
- iii. arranging for the sale of Common Shares that are otherwise issuable upon vesting of the Options, including, without limitation, selling Common Shares as part of a block trade with Common Shares held by other grantees under the Plan or otherwise; and/or
- iv. withholding from the gross amount of the sale of Common Shares issued upon the exercise of the Options.

(f) In considering the acceptance and any exercise of the Options, Grantee understands, acknowledges, agrees and hereby stipulates that Grantee should use the same independent investment judgment that Grantee would use in making other investments in corporate securities. Among other things, stock prices will fluctuate over any reasonable period of time and the price of the Common Shares may go down as well as up. No guarantees are made as to the future prospects of the Company or the Common Shares, or that any market for sale of the Common Shares will exist in the future. No representations are made by the Company except as may be contained in any active registration statement on file with the SEC relating to the Plan at the time of applicable exercise of the Options.

3. Cessation of Employment; Actual or Threatened Violation of Covenants; Covenants Found Unenforceable; Death or Disability; Demotion; Recoupment.

(a) Subject to the application of Subsections 3(b)(ii) and 3(b)(iii) of this Agreement, in the event that Grantee shall cease to be employed by the Company or its direct or indirect subsidiaries (collectively, the “Company” for purposes of this Section 3) for any reason other than the reason set forth in Subsection 3(b)(i) of this Agreement or Grantee's death or disability (as described in Subsection 3(c) of this Agreement), and Grantee shall have vested Options that Grantee has not exercised and for which Common Shares have not yet been issued as of such cessation of employment, Grantee shall have the right to exercise such vested Options at any time within one (1) month after such cessation of employment and have such Common Shares issued upon the exercise of such vested Options, **but only** to the extent of the full number of vested Options and Common Shares issuable upon the exercise of such vested Options as of such cessation of employment, subject to the condition that any portion of the Options not vested and exercised as of such cessation of employment shall terminate as of such cessation of employment, shall cease to be exercisable as of such cessation of employment and no Common Shares shall be issued upon the exercise of any unvested Options following such cessation of employment, and that no portion of the Options shall vest or be exercisable after the Expiration Date. Retirement, whether or not pursuant to any retirement or pension plan of the Company, shall be deemed to be a cessation of employment for all purposes under this Agreement. The termination of the Options by reason of any such cessation of employment shall be without prejudice to any right or remedy that the Company may have against Grantee at law, in equity, under contract (including, without limitation, this Agreement) or otherwise (all of which are hereby expressly reserved).

(b) In the event that: (i) Grantee shall cease to be employed by the Company by reason of Grantee's serious misconduct during the course of employment, including, without limitation,

[REDACTED], misappropriation of Company funds, theft of Company property or other reasons as determined by the Company; (ii) [REDACTED]; or (iii) a court, arbitrator or other body of competent jurisdiction holds any of the provisions set forth in Subsection 3(e) of this Agreement [REDACTED] to be invalid, illegal, void or less than fully enforceable against Grantee to any extent or in any respect as to time, scope or otherwise, in the course of any litigation or other legal proceeding arising out of or relating to any Actual or Threatened Violation of such covenants by Grantee or a request by or on behalf of Grantee for declaratory relief regarding the enforceability of such covenants against Grantee (each of (i), (ii) and (iii) an "Award Termination Event"), then **all** Options (which for the avoidance of doubt and without limitation of the foregoing includes both vested and unvested Options) shall be deemed to have terminated, shall cease to be exercisable and no Common Shares shall be issuable in connection therewith, as of the earliest of the following to occur: (A) the serious misconduct described in subpart (i) above; (B) [REDACTED]; or (C) the commencement of the litigation or other legal proceeding described in subpart (iii) above (the first date on which any of (A), (B) and/or (C) occurs, an "Award Termination Effective Date"). The termination of the Options pursuant to Subsection 3(b)(i), 3(b)(ii) or 3(b)(iii) of this Agreement shall be without prejudice to any right or remedy that the Company may have against Grantee at law, in equity, under contract (including, without limitation, this Agreement) or otherwise (all of which are hereby expressly reserved). For all purposes under this Agreement, [REDACTED].

(c) Subject to the application of Subsections 3(b)(ii) and 3(b)(iii) of this Agreement, in the event that: (i) Grantee shall die while in the employ of the Company or within one (1) month after cessation of employment for any reason other than the reason set forth in Subsection 3(b)(i) of this Agreement; or (ii) employment ceases because Grantee has become disabled (within the meaning of Section 22(e)(3) of the Internal Revenue Code of 1986, as amended, and regulations thereunder) while in the employ of the Company and Grantee shall have vested Options that Grantee has not exercised and for which Common Shares have not yet been issued as of such death or cessation of employment for disability, then Grantee or the personal representative or administrator, executor or guardian of Grantee, as applicable, or any person or entity to whom the Options are transferred by will or the applicable laws of descent and distribution shall have the right to exercise such vested Options and have such Common Shares issued upon the exercise of such vested Options, **but only** to the extent of the full number of vested Options and Common Shares issuable upon the exercise of such vested Options as of such death or cessation of employment for disability, subject to the condition that any portion of the Options not vested as of such death or cessation of employment for disability shall terminate as of such death or cessation of employment for disability, shall cease to be exercisable as of such death or cessation of employment for disability and no Common Shares shall be issued upon the exercise of any unvested Options following such death or cessation of employment for disability, and that no portion of the Options shall vest after the Expiration Date. The termination of the Options by reason of such death or cessation of employment for disability shall be without prejudice to any right or remedy that the Company may have against Grantee (and/or the personal representative or administrator, executor or guardian of Grantee, as applicable, or to any person or entity to whom the Options are transferred by will or the applicable laws of descent and distribution) at law, in equity, under contract (including, without limitation, this Agreement) or otherwise (all of which are hereby expressly reserved).

(d) In the event that Grantee is demoted (but remains employed) by the Company from Grantee's current level (e.g., chairman, chief executive officer, president, executive vice president, senior vice president, vice president, director, manager or other level held by Grantee on the Grant Date), then: (i) if Grantee shall have vested Options that Grantee has not exercised and for which Common Shares have not yet been issued as of such demotion, then, subject to the application of Subsections 3(b)(ii) and 3(b)(iii) of this Agreement, Grantee shall have the right to exercise such

vested Options and have such Common Shares issued upon the exercise of such vested Options, **but only** to the extent of the full number of Common Shares issuable upon the exercise of such vested Options as of such demotion (the “Remaining Vested Options Following Demotion”), subject to the condition that any portion of the Options not vested as of such demotion shall terminate as of such demotion and no Common Shares shall be issued upon the exercise of any unvested Options following such demotion, and that no portion of the Options shall vest after the Expiration Date; and (ii) this Agreement, including, without limitation, [REDACTED], shall otherwise continue in force, unless otherwise terminated. The termination of the Options by reason of such demotion shall be without prejudice to any right or remedy that the Company may have against Grantee at law, in equity, under contract (including, without limitation, this Agreement) or otherwise (all of which are hereby expressly reserved).

(e) Notwithstanding anything to the contrary in this Agreement, Common Shares issued under this Agreement, Common Shares issued under any Other Award Agreement and all amounts that may be received by Grantee in connection with any disposition of any such Common Share(s) shall be subject to applicable recoupment, “clawback” and similar provisions under law, as well as any recoupment, “clawback” and similar policies of the Company that may be adopted at any time and from time to time in order to comply with the Dodd-Frank Wall Street Reform and Consumer Protection Act or other applicable law. In addition, and as a condition to the grant, vesting, adjustment or exercisability of any Options or the issuance of Common Shares upon the exercise of any Options and/or any disposition of such Common Shares, Grantee understands, acknowledges, agrees and hereby stipulates that in the event of an Award Termination Event, the Company may (in its Sole Discretion) require Grantee to and, to the extent so required by the Company, Grantee hereby agrees to: (A) return to the Company any and all Common Shares issued under this Agreement and all Other Award Agreements (as defined in this Subsection 3(e)) that are held by or on behalf of Grantee on or after the Award Termination Effective Date; and (B) pay to the Company an amount not to exceed the taxable income attributable to all dispositions, during and after the Recovery Period (as defined in this Subsection 3(e)), of Common Shares issued under this Agreement and all Other Award Agreements (the amounts described in this subpart (B), the “**Gross Amounts**”). Effective as of the Award Termination Effective Date, Grantee shall hold such Common Shares and the Gross Amounts in trust for the benefit of the Company until such time as such Common Shares are returned to the Company and/or the Gross Amounts are paid to the Company, as applicable.

The Company will determine, in its Sole Discretion, the Gross Amounts and the method(s) of payment of the Gross Amounts, which method(s) may include, without limitation: (1) offsetting against any compensation or other amounts owed or owing at any time and from time to time by the Company to Grantee (including, without limitation, amounts payable under a deferred compensation plan permitted under Section 409A of the Internal Revenue Code of 1986, as amended); (2) reducing Grantee’s wages or salary and/or reducing or eliminating future salary increases, cash incentive awards or equity awards; and/or (3) requiring Grantee to pay the Gross Amounts to the Company in cash or other immediately available funds upon written demand for such payment. As a condition to the grant, vesting, adjustment or exercisability of any Options or the issuance of Common Shares upon the exercise of any Options and/or any disposition of such Common Shares, Grantee hereby consents to each of the foregoing method(s) of payment of the Gross Amounts, and further hereby agrees to execute any additional documentation determined by the Company to be necessary or advisable to facilitate the return of the Common Shares and/or payment of the Gross Amounts to the Company. Grantee hereby nominates and appoints the Company as Grantee’s attorney-in-fact for the limited purpose of executing, on Grantee’s behalf, any such additional documentation in the event that Grantee fails to do so on a reasonably timely basis under the circumstances. The return of the Common Shares and/or the payment of the Gross

Amounts to the Company pursuant to this Subsection 3(e) shall be without prejudice to any other right or remedy that the Company may have against Grantee at law, in equity, under contract (including, without limitation, this Agreement) or otherwise (all of which are hereby expressly reserved). “**Other Award Agreement**” means any other restricted stock unit agreement, incentive stock option agreement, non-qualified stock option agreement or any other “Award Agreement” (as defined by the Plan) or similar agreement pursuant to successor or other plan(s) similar to the Plan. “**Recovery Period**” means the twelve (12) month period preceding the Award Termination Effective Date.

4. Manner of Issuance of Common Shares.

(a) The Options can be exercised only by, and the Common Shares issuable upon the exercise of the Options can be issued only to, Grantee or other proper party as described in Subsection 2(b), Subsection 3(c) and/or Subsection 4(c) of this Agreement, in whole Common Shares by following (prior to the earlier of: (i) any termination of such Options; or (ii) the Expiration Date) the then-current procedures implemented by the Administrator, as such Administrator and procedures are designated by the Company in its Sole Discretion. The instruction to exercise any Options must be made by Grantee or other proper party as described in Subsection 2(b), Subsection 3(c) and/or Subsection 4(c) of this Agreement and shall include, among other things, the number of Common Shares as to which the Options are being exercised, shall contain a representation and agreement as to Grantee’s investment intent with respect to the Common Shares in a form satisfactory to the Company’s General Counsel (unless a Prospectus meeting applicable requirements of the Securities Act of 1933, as amended, is in effect for the Common Shares being issued pursuant to the exercise of the Option), and be accompanied by payment in full of the Option Price for all Options designated in the instruction (including, without limitation, satisfaction of Grantee’s tax, tax withholding and all other obligations with respect to any individual income taxes, penalties and/or interest as set forth in Subsection 2(e) of this Agreement). All notices that need to be sent to the Company shall be addressed to it at its office at 9601 S. Meridian Blvd., Englewood, Colorado, 80112, Attn: Corporate Secretary, or to such other address or person or entity as the Company may notify Grantee of from time to time. All notices that need to be sent to Grantee or other person or entity then entitled to receive Common Shares issuable upon vesting of the Options shall be addressed to Grantee or such other person(s) or entity(ies) at such address as Grantee or such other person(s) or entity(ies) may notify the Company or its Administrator in writing of from time to time.

(b) Unless notified by the Company or the Administrator to the contrary, the Common Shares issuable upon the exercise of the Options shall be issued within five (5) business days following the date on which the General Counsel for the Company determines that all conditions necessary for vesting of the Options and issuance of the Common Shares have been satisfied (including, without limitation, satisfaction of Grantee’s tax, tax withholding and all other obligations with respect to any individual income taxes, penalties and/or interest as set forth in Subsection 2(e) of this Agreement). The Company shall have no obligation to issue any Common Shares until it has confirmed to its satisfaction that all conditions necessary for vesting and the exercise of the Options and issuance of the Common Shares have been satisfied. Any notice of exercise shall be void and of no effect if all requisite events have not been properly completed.

(c) If, upon the close of trading on the NASDAQ Stock Market (or, in the event that the Common Shares are no longer listed and traded on the NASDAQ Stock Market, such other stock exchange on which the Common Shares are then listed and traded) (the “Market Close”) on the Expiration Date (or the last trading day prior to the Expiration Date (if the Expiration Date is not a trading day)) (the “Expiration Exercise Date”), all or any portion of the Options are vested

and exercisable, then the Options (or vested and exercisable portion thereof) shall be automatically exercised upon the Market Close on the Expiration Exercise Date without any further action by Grantee (or any other proper party as described in Section 2(b) and/or Section 3(c) of this Agreement) pursuant to the applicable then-current procedures implemented by the Administrator (the "Expiration Exercise Procedures"), as such Administrator and Expiration Exercise Procedures are designated by the Company in its Sole Discretion.

Pursuant to the Expiration Exercise Procedures in effect as of the date of this Agreement: (i) the following costs and expenses will be satisfied by withholding otherwise deliverable Common Shares to be issued upon the automatic exercise of the Option: (A) the Option Price for the full number of vested Common Shares that are automatically exercised under the Options pursuant to this Section 4(c); (B) the Administrator's fees and commissions, if any; (C) other brokerage fees and commissions, if any; and (D) all withholding and all other obligations with regard to any individual income taxes (which Grantee understands, acknowledges, agrees and hereby stipulates may be withheld at the highest then-current tax rate), penalties or interest related to the grant, vesting, adjustment or exercise of the Options and/or any subsequent disposition of Common Shares in connection with the Expiration Exercise Procedures or otherwise; and (ii) the number of whole Common Shares, if any, remaining after completion of all withholding as described in subsection (i) of these Expiration Exercise Procedures shall be issued to Grantee.

Without limitation of the generality of Subsection 2(e) of this Agreement, in the event that the amounts withheld pursuant to the Expiration Exercise Procedures are insufficient to satisfy Grantee's actual individual income tax, penalty and/or interest obligations, Grantee understands, acknowledges, agrees and hereby stipulates that Grantee, and not the Company, shall be solely responsible and liable for payment of any deficiencies. Only Options that are "in-the-money" at Market Close on the Expiration Exercise Date shall be automatically exercised pursuant to this Section 4(c). Options shall be considered "in-the-money" for purposes of this Section 4(c) if the fair market value of a Common Share upon the Market Close on the Expiration Exercise Date is at least one percent (1%) greater than the Option Price. Furthermore, and without limitation of the generality of the preceding sentence, any exercise of the Options that would result in the issuance of less than one (1) whole Common Share to Grantee pursuant to the Expiration Exercise Procedures shall not be automatically exercised pursuant to this Section 4(c). Grantee (on its own behalf and on behalf of each and every other proper party as described in Section 2(b) and/or Section 3(c) of this Agreement) hereby expressly authorizes and agrees to the automatic exercise of the Options as provided in this Section 4(c) (and shall be deemed to have given all instructions and representations required under Section 4(a) of this Agreement in connection with the automatic exercise of the Options as provided in this Section 4(c)), and neither the approval of the Administrator, nor the consent of Grantee (or any other proper party as described in Section 2(b) and/or Section 3(c) of this Agreement) shall be required at the time of the automatic exercise of the Options pursuant to this Section 4(c). For the avoidance of doubt, Grantee may exercise any vested and exercisable portion of the Options prior to Market Close on the Expiration Exercise Date. **Grantee understands, acknowledges, agrees and hereby stipulates that the automatic exercise procedure pursuant to this Section 4(c) is provided solely as a convenience to Grantee as protection against Grantee's inadvertent failure to exercise all or any portion of an "in-the-money" Options that are vested and exercisable before such Options expire under this Agreement. Because any exercise of all or any portion of the Options is solely Grantee's responsibility, Grantee hereby waives and releases and agrees to indemnify and hold the Company harmless from and against any and all claims of any kind whatsoever against the Company and/or any other party (including without limitation, the Administrator and the Company's employees and agents) arising out of or relating to the automatic exercise procedure pursuant to this Section 4(c) (or any failure thereof), including without limitation any resulting individual income tax, penalty and/or interest liability and/or any other liability**

if the automatic exercise of the Options does occur, or does not occur for any reason or no reason whatsoever and/or the Options actually expire.

(d) The certificate or certificates for (or the book entries made by the Administrator to record) the Common Shares, if any, that are issued or made upon the exercise of the Options may be registered or recorded only in the name of Grantee (or if Grantee so requests, jointly in the name of Grantee and a member of Grantee's family, with the right of survivorship, or in the event of the death of Grantee, in the name of such survivor of Grantee as the person or entity with the right to receive the Common Shares issuable upon the exercise of the Options shall designate).

5. [REDACTED]

6. Dispute Resolution; Arbitration.

(a) In consideration of the promises and covenants set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantee and the Company mutually agree that any past, present or future claim, counterclaim, controversy and/or dispute between them (whether arising in contract, tort, under statute or otherwise) arising out of, relating to or incurred in connection with: (i) Grantee's application for employment, employment and/or cessation of employment (collectively, "Employment-Related Disputes"); and/or (ii) this Agreement and/or any Other Award Agreement (including, without limitation, [REDACTED]) (collectively, "Options Disputes") ((i) or (ii) each, a "Claim" and (i) and (ii) collectively, "Claims"), whenever and wherever brought shall be resolved by binding arbitration administered by the American Arbitration Association (the "AAA"). This Section 6 survives after the employment relationship ceases and applies to any Claim that the Company may have against Grantee or that Grantee may have against the Company. Grantee understands, acknowledges, agrees and hereby stipulates that this agreement to arbitrate is subject to the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq., it evidences a transaction involving commerce, and it is fully enforceable. For purposes of this Section 6, "the Company" shall be defined to include the Company, its predecessors, its and its predecessors' direct and indirect subsidiaries, and the officers, directors, shareholders, members, owners, employees, managers, agents, attorneys, successors and assigns of each of the foregoing persons and entities.

(b) For Employment-Related Disputes:

- i. a party who wishes to arbitrate an Employment-Related Dispute Claim must prepare a written demand for arbitration ("Request for Arbitration") that identifies the claims asserted, the factual basis for each claim and the relief and/or remedy sought. That party must file the Request for Arbitration (along with a copy of this Agreement and the applicable filing fee) with the AAA by: (A) delivering them by hand to the Denver, Colorado regional office of the AAA or any other office of the AAA located in the State of Colorado; (B) mailing them by certified U.S. mail, Federal Express or United Parcel Service to American Arbitration Association, Case Filing Services, 1101 Laurel Oak Road, Suite 100, Voorhees, NJ 08043; or (C) using the AAA WebFile feature at the AAA's website: <http://www.adr.org>. The Request for Arbitration must be submitted to the AAA before the expiration of the applicable statute of limitations and the parties agree that the date on which the AAA receives the Request for Arbitration shall constitute filing for all statute of limitations purposes. Unless otherwise prohibited by law, the party initiating arbitration shall be responsible for paying the applicable filing

fee. Subject to Subsection 7(v) of this Agreement, the Company will pay the Employment Law Arbitrator's (as defined in Subsection 6(b)(iii) of this Agreement) fees and any fee for administering the arbitration;

- ii. the party initiating arbitration must deliver a copy of the Request for Arbitration to the other party by hand or U.S. mail at the following location: (A) if to the Company - to the legal department of the Company at 9601 S. Meridian Blvd., Englewood, CO 80112, Attn: General Counsel; or (B) if to Grantee - to the last address of Grantee appearing in the Company's records;
- iii. a single arbitrator from the AAA with expertise in employment disputes (the "Employment Law Arbitrator") shall be selected by the AAA and shall conduct the arbitration pursuant to the AAA's Employment Arbitration Rules and Mediation Procedures (the "AAA Employment Rules"), without incorporation of the AAA's Supplementary Rules for Class Arbitrations, the AAA rules relating to the selection of arbitrators, or the AAA rules regarding selection of venue, which the parties hereby expressly disclaim.
The AAA Employment Rules may be found at <http://www.adr.org/>, by searching for "AAA Employment Arbitration Rules" using an Internet search engine such as www.google.com, or by requesting a copy from the human resources department of the Company. The arbitration, including without limitation any construction or interpretation of this Agreement, shall be governed by and construed in accordance with the substantive law of the State of Colorado, without giving effect to choice of law principles.
Notwithstanding anything to the contrary in this Agreement, the AAA Employment Rules, the AAA Commercial Rules (as defined in Subsection 6(b)(iii) of this Agreement), any other AAA rule and/or procedure and/or any applicable law, the Employment Law Arbitrator shall only have the power to render decisions that are consistent with the substantive law of the State of Colorado, without giving effect to choice of law principles, and any decision rendered by the Employment Law Arbitrator shall be subject to review by the United States District Court for the District of Colorado or the appropriate state court located in the City and County of Denver, Colorado for the purpose of determining whether such decision is consistent with such substantive law and for any other reason for which judicial review of an arbitration decision or award is permissible under the AAA rules, the Federal Arbitration Act or other applicable law; any decision rendered by the Employment Law Arbitrator that is inconsistent with such substantive law shall be deemed beyond the authority of the Employment Law Arbitrator. Regardless of what the AAA Employment Rules state, the arbitration proceedings shall be held in the City and County of Denver, Colorado. Grantee hereby irrevocably waives any and all objections that Grantee may now or hereafter have to the venue of the arbitration, or any court proceeding brought to determine whether a decision rendered by the Employment Law Arbitrator is consistent with the substantive law of the State of Colorado, including, without limitation, any claim that the arbitration or any such court proceeding has been brought in an inconvenient forum;

- iv. the parties shall have the right to conduct discovery relevant and material to the outcome of the arbitration and to present witnesses and evidence as needed to present their claims and defenses, and the Employment Law Arbitrator shall resolve any discovery or evidentiary dispute. Each party shall have the right to subpoena relevant witnesses and documents, including, without limitation, documents from third parties; subpoenas may be issued for production of documents or witnesses at any deposition(s) or pre-hearing proceeding(s) and/or at the arbitration hearing. At least thirty (30) days before the arbitration hearing, the parties must exchange a list of witnesses and copies of all exhibits to be used at the arbitration hearing.

Notwithstanding anything to the contrary in this Agreement, the AAA Employment Rules, the AAA Commercial Rules, any other AAA rule and/or procedure and/or any applicable law, the Employment Law Arbitrator shall only have the power to award remedies available under the substantive law of the State of Colorado, without giving effect to choice of law principles, and the availability of any such remedies shall further be limited to those that would be available to a party in his/her/its individual capacity for all Claims presented to the Employment Law Arbitrator (for the avoidance of doubt and without limitation of the foregoing, Grantee may not bring a class arbitration and is not entitled to remedies for Grantee's Claims on behalf of any other person or entity and/or that are available to plaintiffs in a class action but not available to individual or non-class action plaintiffs). Any remedy awarded by the Employment Law Arbitrator shall be subject to review by the United States District Court for the District of Colorado or the appropriate state court located in the City and County of Denver, Colorado for the purpose of determining whether such remedy is consistent with such substantive law and complies with the limitations set forth above; any decision by the Employment Law Arbitrator that is inconsistent with such substantive law and/or fails to comply with such limitations shall be deemed beyond the authority of the Employment Law Arbitrator. Except as otherwise provided in this Subsection 6(b)(iv) and/or Subsection 6(b)(iii) of this Agreement, the Employment Law Arbitrator's decision shall be final and binding, and judgment upon the Employment Law Arbitrator's decision and/or award may be entered in any court of competent jurisdiction; provided that the parties agree to take all reasonable steps to ensure that all documents, pleadings and papers are filed and/or entered with the court under seal and/or in a manner that would maintain their confidentiality, including, without limitation, complying with all rules of procedure and local rules for filing documents, pleadings and papers under seal;
- i. the Employment Law Arbitrator shall have the authority to hear and decide dispositive motions under the legal standards set forth in Rules 12 and 56 of the Colorado Rules of Civil Procedure, regardless of whether a Claim arises under federal or state law. The Employment Law Arbitrator shall resolve all disputes regarding such dispositive motions and the timeliness of the Request for Arbitration and apply the statute of limitations set forth under the substantive law of the State of Colorado, without giving effect to choice of law principles. The Employment Law Arbitrator shall dismiss, without limitation, any Claim that, in the absence of this

Agreement, could not be brought under the substantive law of the State of Colorado, without giving effect to choice of law principles;

- ii. the Employment Law Arbitrator shall have the exclusive authority to resolve Employment-Related Disputes, except as limited by Subsection 6(e) of this Agreement; and
- iii. all arbitration proceedings, including, but not limited to, claims, allegations, decisions, findings, pleadings, hearings, testimony, discovery, settlements, opinions and awards shall be confidential, except: (A) to the extent the parties otherwise agree in writing; (B) as may be otherwise appropriate in response to a request from a government agency, subpoena, or legal process; (C) if the substantive law of the State of Colorado (without giving effect to choice of law principles) provides to the contrary; or (D) as is necessary in a court proceeding to enforce, correct, modify or vacate the Employment Law Arbitrator's award or decision (and in the case of this subpart (D), the parties agree to take all reasonable steps to ensure that all documents, pleadings and papers are filed and/or entered with the court under seal and/or in a manner that would maintain their confidentiality, including, without limitation, complying with all rules of procedure and local rules for filing documents, pleadings and papers under seal); provided, however, in the event that either party initiates a court proceeding to enforce, correct, modify, or vacate the Employment Law Arbitrator's award or decision, or any other proceeding that would require disclosing the Employment Law Arbitrator's award, decision or findings, the parties agree to take all reasonable steps to ensure that all documents, pleadings and papers are filed and/or entered with the court under seal and/or in a manner that would maintain their confidentiality, including, without limitation, complying with all rules of procedure and local rules for filing documents, pleadings and papers under seal.

(c) For Options Disputes:

- i. a party who wishes to arbitrate an Options Dispute Claim must prepare a Request for Arbitration that identifies the claims asserted, the factual basis for each claim and the relief and/or remedy sought. That party must file the Request for Arbitration (along with a copy of this Agreement and the applicable filing fee) with the AAA by: (A) delivering them by hand to the Denver, Colorado regional office of the AAA or any other office of the AAA located in the State of Colorado; (B) mailing them by certified U.S. mail, Federal Express or United Parcel Service to American Arbitration Association, Case Filing Services, 1101 Laurel Oak Road, Suite 100, Voorhees, NJ 08043; or (C) using the AAA WebFile feature at the AAA's website: <http://www.adr.org>. The Request for Arbitration must be submitted to the AAA before the expiration of the applicable statute of limitations and the parties agree that the date on which the AAA receives the Request for Arbitration shall constitute filing for all statute of limitations purposes. Unless otherwise prohibited by law, the party initiating arbitration shall be responsible for paying the applicable filing fee. Subject to Subsection 7(v) of this Agreement, the Commercial Law Arbitrators' (as defined in Subsection 6(c)(iii) of this Agreement) fees and

any fee for administering the arbitration will be paid equally by the parties (i.e. fifty percent (50%) by the Company and fifty percent (50%) by Grantee);

- ii. the party initiating arbitration must deliver a copy of the Request for Arbitration to the other party by hand or U.S. mail at the following location: (A) to the Company - to the legal department of the Company at 9601 S. Meridian Blvd., Englewood, CO 80112, Attn: General Counsel; or (B) to Grantee - to the last address of Grantee appearing in the Company's records;
- iii. three (3) arbitrators from the AAA with expertise in mergers and acquisitions and, more specifically, breach of non-solicit and/or breach of non-compete provisions, as the case may be ("Commercial Law Arbitrators") shall be selected in accordance with the procedure set forth below, and shall conduct the arbitration, pursuant to the then-current AAA Commercial Arbitration Rules and Mediation Procedures (the "AAA Commercial Rules"), without incorporation of the AAA Employment Rules, the AAA's Supplementary Rules for Class Arbitrations, the AAA rules relating to the selection of arbitrators or the AAA rules regarding selection of venue, which the parties hereby expressly disclaim. The AAA Commercial Rules may be found at <http://www.adr.org/>, by searching for "AAA Commercial Dispute Resolution Procedures" using an internet search engine such as www.google.com, or by requesting a copy from the human resources department of the Company. Within fourteen (14) days after the receipt of the Request for Arbitration, each party shall select one arbitrator from the AAA that meets the criteria set forth above to act as arbitrator and such arbitrators shall select a third arbitrator from the AAA that meets the criteria set forth above within ten (10) days of their appointment. The party-selected arbitrators will serve in a non-neutral capacity. In the event that the arbitrators selected by the parties are unable or fail to agree upon the third arbitrator, a third arbitrator that meets the criteria set forth above shall be selected by the AAA. The arbitration, including without limitation any construction or interpretation of this Agreement, shall be governed by and construed in accordance with the substantive law of the State of Colorado, without giving effect to choice of law principles. Notwithstanding anything to the contrary in this Agreement, the AAA Employment Rules, the AAA Commercial Rules, any other AAA rule and/or procedure and/or any applicable law, the Commercial Law Arbitrators shall only have the power to render decisions that are consistent with the substantive law of the State of Colorado, without giving effect to choice of law principles, and any decision rendered by the Commercial Law Arbitrators shall be subject to review by the United States District Court for the District of Colorado or the appropriate state court located in the City and County of Denver, Colorado for the purpose of determining whether such decision is consistent with such substantive law and for any other reason for which judicial review of an arbitration decision or award is permissible under the AAA rules, the Federal Arbitration Act or other applicable law; any decision by the Commercial Law Arbitrators that is inconsistent with such substantive law shall be deemed beyond the authority of the Commercial Law Arbitrators.

Regardless of what the AAA Commercial Rules state, the arbitration proceedings shall be held in the City and County of Denver, Colorado.

Grantee hereby irrevocably waives any and all objections that Grantee may now or hereafter have to the venue of the arbitration, or any court proceeding brought to determine whether a decision rendered by the Commercial Law Arbitrators is consistent with the substantive law of the State of Colorado, including, without limitation, any claim that the arbitration or any such court proceeding has been brought in an inconvenient forum;

- iv. the parties shall have the right to conduct discovery relevant and material to the outcome of the arbitration and to present witnesses and evidence as needed to present their claims and defenses, and the Commercial Law Arbitrators shall resolve any discovery or evidentiary dispute. Each party shall have the right to subpoena relevant witnesses and documents, including, without limitation, documents from third parties; subpoenas may be issued for production of documents or witnesses at any deposition(s) or pre-hearing proceeding(s) and/or at the arbitration hearing. At least thirty (30) days before the arbitration hearing, the parties must exchange a list of witnesses and copies of all exhibits to be used at the arbitration hearing.

Notwithstanding anything to the contrary in this Agreement, the AAA Employment Rules, the AAA Commercial Rules, any other AAA rule and/or procedure and/or any applicable law, the Commercial Law Arbitrators shall only have the power to award remedies available under the substantive law of the State of Colorado, without giving effect to choice of law principles, and the availability of any such remedies shall further be limited to those that would be available to a party in his/her/its individual capacity for all Claims presented to the Commercial Law Arbitrators (for the avoidance of doubt and without limitation of the foregoing, Grantee may not bring a class arbitration and is not entitled to remedies for Grantee's Claims on behalf of any other person or entity and/or that are available to plaintiffs in a class action but not available to individual or non-class action plaintiffs). Any remedy awarded by the Commercial Law Arbitrators shall be subject to review by the United States District Court for the District of Colorado or the appropriate state court located in the City and County of Denver, Colorado for the purpose of determining whether such remedy is consistent with such substantive law and complies with the limitations set forth above; any decision by the Commercial Law Arbitrators that is inconsistent with such substantive law and/or fails to comply with such limitations shall be deemed beyond the authority of the Commercial Law Arbitrators. Except as otherwise provided in this Subsection 6(c)(iv) and/or Subsection 6(c)(iii) of this Agreement, the Commercial Law Arbitrators' decision shall be final and binding, and judgment upon the Commercial Law Arbitrators' decision and/or award may be entered in any court of competent jurisdiction; provided that the parties agree to take all reasonable steps to ensure that all documents, pleadings and papers are filed and/or entered with the court under seal and/or in a manner that would maintain their confidentiality, including, without limitation, complying with all rules of procedure and local rules for filing documents, pleadings and papers under seal;

- v. the Commercial Law Arbitrators shall have the authority to hear and decide dispositive motions under the legal standards set forth in Rules 12 and 56 of the Colorado Rules of Civil Procedure, regardless of whether a Claim arises under federal or state law. The Commercial Law Arbitrators shall resolve all disputes regarding such dispositive motions and the timeliness of the Request for Arbitration and apply the statute of limitations set forth under the substantive law of the State of Colorado, without giving effect to choice of law principles. The Commercial Law Arbitrators shall dismiss, without limitation, any Claim that, in the absence of this Agreement, could not be brought under the substantive law of the State of Colorado, without giving effect to choice of law principles;
- vi. the Commercial Law Arbitrators shall have the exclusive authority to resolve Options Disputes, except as limited by Subsection 6(e) of this Agreement; and
- vii. all arbitration proceedings, including, but not limited to, claims, allegations, decisions, findings, pleadings, hearings, testimony, discovery, settlements, opinions and awards shall be confidential, except: (A) to the extent the parties otherwise agree in writing; (B) as may be otherwise appropriate in response to a request from a government agency, subpoena, or legal process; (C) if the substantive law of the State of Colorado (without giving effect to choice of law principles) provides to the contrary; or (D) as is necessary in a court proceeding to enforce, correct, modify or vacate the Commercial Law Arbitrators' award or decision (and in the case of this subpart (D), the parties agree to take all reasonable steps to ensure that all documents, pleadings and papers are filed and/or entered with the court under seal and/or in a manner that would maintain their confidentiality, including, without limitation, complying with all rules of procedure and local rules for filing documents, pleadings and papers under seal); provided, however, in the event that either party initiates a court proceeding to enforce, correct, modify, or vacate the Commercial Law Arbitrators' award or decision, or any other proceeding that would require disclosing the Commercial Law Arbitrators' award, decision or findings, the parties agree to take all reasonable steps to ensure that all documents, pleadings and other documents are filed and/or entered with the court under seal and/or in a manner that would maintain their confidentiality, including, without limitation, complying with all rules of procedure and local rules for filing documents, pleadings and papers under seal.

(d) Notwithstanding the foregoing, this agreement to arbitrate all Employment-Related Disputes and/or Options Disputes shall not apply to Grantee claims for statutory unemployment compensation benefits, statutory worker's compensation benefits, state disability insurance benefits (not including retaliation claims based upon seeking such benefits), charges filed with the National Labor Relations Board alleging violations of the National Labor Relations Act, and claims for benefits from a Company-sponsored "employee benefit plan," as that term is defined in 29 U.S.C. §1002(3).

(e) Notwithstanding anything to the contrary in this Agreement, the AAA Employment Rules, the AAA Commercial Rules, any other AAA rule and/or procedure and/or any

applicable law, Grantee and the Company agree to bring any Claim in arbitration on an individual basis only, and not as a class or collective action; Grantee and the Company waive any right for a Claim to be brought, heard, or decided as a class or collective action, and the Arbitrator has no power, jurisdiction or authority to preside over a class or collective action ("Class Action Waiver").

This Class Action Waiver, however, does not prevent Grantee from joining, opting into or participating in a pending class or collective action to which Grantee is a current or purported class member as of the date Grantee executes this Agreement. In addition and notwithstanding anything to the contrary in this Agreement, the AAA Employment Rules, the AAA Commercial Rules, any other AAA rule and/or procedure and/or any applicable law, Grantee and the Company waive any right for a Claim to be brought, heard or decided as a private attorney general representative action on behalf of other grantees ("Representative Action"), and the arbitrator has no power or authority to preside over a Representative Action ("Representative Action Waiver"). The Representative Action Waiver, however, does not apply to a Claim Grantee brings in arbitration as a private attorney general solely on his/her own behalf. Notwithstanding anything to the contrary in this Agreement, the AAA Employment Rules, the AAA Commercial Rules, any other AAA rule and/or procedure and/or any applicable law: (i) any dispute as to the interpretation, applicability, enforceability or formation of the Class Action Waiver and the Representative Action Waiver may only be determined by the United States District Court for the District of Colorado or the appropriate state court located in the City and County of Denver, Colorado and not by the Employment Law Arbitrator or Commercial Law Arbitrators, as the case may be (for the avoidance of doubt and without limitation of the foregoing, any dispute by the Company or Grantee regarding whether a Claim may be brought as a class or collective action or as a Representative Action must be decided by the courts listed above, and cannot be decided by the Employment Law Arbitrator or the Commercial Law Arbitrators); and (ii) in the event that any such court or other body of competent jurisdiction holds this Subsection 6(e) to be invalid, illegal, void, or less than fully enforceable to any extent or in any respect as to time, scope or otherwise, then Section 6 of this Agreement shall be deemed to have terminated in its entirety and shall be of no further force or effect.

(f) In addition and notwithstanding anything to the contrary in this Agreement, the AAA Employment Rules, the AAA Commercial Rules, any other AAA rule and/or procedure and/or any applicable law, the Company shall have the right to seek specific performance, a temporary restraining order, preliminary and permanent injunctive relief and/or other similar relief, as set forth in Subsection 7(u) of this Agreement, from a court. In the event that any such relief is sought from a court, at DISH's option, any or all Claims relating to the foregoing will thereafter remain with the applicable court(s) for resolution and will no longer be resolved by arbitration pursuant to this Agreement; provided, however, that the Claims and proceedings in the applicable court(s) shall at all times remain subject to the Class Action Waiver and Representative Action Waiver set forth in Subsection 6(e) of this Agreement. The parties mutually agree that the United States District Court for the District of Colorado and the appropriate state courts located in the City and County of Denver, Colorado shall have exclusive subject matter and personal jurisdiction to hear and decide any such action, and that any such court action shall be governed by the substantive law of the State of Colorado, without giving effect to choice of law principles. Grantee hereby irrevocably waives any and all objections that Grantee may now or hereafter have to the venue of any such proceeding brought in any such court, including, without limitation, any claim that such proceeding has been brought in an inconvenient forum.

(g) Nothing in this Section 6 prohibits Grantee from making a report or filing an administrative charge with a federal, state or local administrative agency of competent jurisdiction such as the National Labor Relations Board, the Equal Employment Opportunity Commission, the SEC or the Department of Labor. This Section 6 also does not prevent federal administrative

agencies from adjudicating claims and awarding remedies based on those claims, even if such claims would otherwise be covered by this Section 6. Nothing in this Section 6 prevents or excuses a party from satisfying any conditions precedent and/or exhausting administrative remedies under applicable law before bringing a Claim in arbitration.

(h) **AGREEMENT TO ARBITRATE APPLIES TO ALL EMPLOYMENT-RELATED DISPUTES AND OPTIONS DISPUTES.** THIS SECTION 6 SHALL APPLY TO ALL EMPLOYMENT-RELATED DISPUTES AND OPTIONS DISPUTES UNDER THIS AGREEMENT AND ALL OTHER AWARD AGREEMENTS OR OTHERWISE, AND SUPERSEDES ANY AND ALL PRIOR AGREEMENT(S) TO ARBITRATE EMPLOYMENT-RELATED DISPUTES AND/OR OPTIONS DISPUTES BETWEEN GRANTEE AND THE COMPANY AND/OR ANY OF ITS DIRECT AND INDIRECT SUBSIDIARIES. IN THE EVENT OF ANY CONFLICT OR INCONSISTENCY BETWEEN THE AAA EMPLOYMENT RULES, THE AAA COMMERCIAL RULES, ANY OTHER AAA RULE AND/OR PROCEDURE AND/OR APPLICABLE LAW, ON THE ONE HAND, AND THE TERMS AND CONDITIONS OF THIS AGREEMENT, ON THE OTHER HAND, THE TERMS AND CONDITIONS OF THIS AGREEMENT SHALL CONTROL.

(i) The parties acknowledge that this agreement to arbitrate shall not alter the at-will nature of their employment relationship MEANING THAT YOU MAY TERMINATE YOUR EMPLOYMENT WITH THE COMPANY AND/OR ANY OF ITS DIRECT AND INDIRECT SUBSIDIARIES AT ANY TIME WITH OR WITHOUT CAUSE, AND WITH OR WITHOUT NOTICE, AND THE COMPANY AND/OR ANY OF ITS DIRECT AND INDIRECT SUBSIDIARIES RESERVE THE SAME RIGHTS TO TERMINATE YOUR EMPLOYMENT AND/OR DEMOTE YOU.

(j) EXCEPT FOR CLAIMS FOR SPECIFIC PERFORMANCE, A TEMPORARY RESTRAINING ORDER, PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF AND/OR SIMILAR RELIEF, WHICH THE COMPANY SHALL HAVE THE RIGHT TO OBTAIN FROM A COURT AS SET FORTH IN SUBSECTIONS 6(f) and 7(u) OF THIS AGREEMENT (AND EXCEPT FOR CLAIMS RELATING TO ANY OF THE FOREGOING, WHICH, IN THE EVENT THAT DISH SO ELECTS PURSUANT TO SUBSECTION 6(f) ABOVE, SHALL THEREAFTER REMAIN WITH THE APPLICABLE COURT(S) FOR RESOLUTION AS SET FORTH IN SUBSECTION 6(f) OF THIS AGREEMENT), GRANTEE AND THE COMPANY MUTUALLY AND VOLUNTARILY AGREE TO ARBITRATE ALL CLAIMS COVERED BY THIS AGREEMENT. THE RIGHTS TO A TRIAL, TO A TRIAL BY JURY, TO CLAIMS FOR PUNITIVE AND/OR EXEMPLARY DAMAGES, TO ANY REMEDY NOT AVAILABLE UNDER THE SUBSTANTIVE LAW OF THE STATE OF COLORADO, WITHOUT GIVING EFFECT TO CHOICE OF LAW PRINCIPLES, AND TO ENGAGE AND/OR PARTICIPATE IN A CLASS ACTION, COLLECTIVE ACTION, PRIVATE ATTORNEY GENERAL REPRESENTATIVE ACTION AND/OR ANY OTHER REPRESENTATIVE ACTION ARE OF VALUE AND EXPRESSLY WAIVED PURSUANT TO THIS SECTION 6. AS SET FORTH ABOVE, NOTHING IN THIS SECTION 6 INFRINGES ON GRANTEE'S RIGHT TO FILE A CHARGE WITH ANY GOVERNMENT AGENCY; PROVIDED, HOWEVER, GRANTEE UNDERSTANDS, ACKNOWLEDGES, AGREES, AND HEREBY STIPULATES THAT GRANTEE'S RIGHT TO SEEK OTHER REMEDIES AND/OR PERSONAL RECOVERIES IS RESTRICTED AS SPECIFICALLY SET FORTH IN THIS SECTION 6.

7. Miscellaneous.

(a) Plan. The Options are issued pursuant to the Plan and the 2019 LTIP and are subject to the terms and conditions of the Plan and the 2019 LTIP. The terms and conditions of the Plan and the 2019 LTIP are available for inspection during normal business hours at the principal offices of the Company. The Committee has final authority to decide, interpret, determine and calculate any and all aspects of the Plan in its Sole Discretion.

(b) No Assurances of Employment; Shareholder Rights. Without limitation of Subsection 6(i) of this Agreement, this Agreement shall not confer upon Grantee any right with respect to continuance of employment with the Company or any of its direct or indirect subsidiaries, nor shall it interfere in any way with the right of the Company and its direct and indirect subsidiaries to terminate such employment or to demote Grantee for any reason or no reason at any time and from time to time. Grantee shall have none of the rights of a shareholder with respect to Common Shares subject to the Options unless and until such Common Shares shall have been issued to Grantee in accordance with this Agreement and the Plan (as evidenced by the records of the transfer agent of the Company).

(c) Adjustments. If there shall be any change in the Common Shares of the Company through merger, consolidation, reorganization, recapitalization, dividend in the form of stock (of whatever amount), stock split or other change in the corporate structure of the Company, then appropriate adjustments may be made by the Committee, in its Sole Discretion, to all or any portion of the Options that have not yet vested and been exchanged for Common Shares and have not been terminated or expired. Such adjustments may include, where appropriate, changes in the number of shares of Common Shares subject to the outstanding Options.

(d) This Agreement shall inure to the benefit of the Company's assigns and successors.

(e) Securities Laws. The Company shall at all times during the term of the Options reserve and keep available such number of Common Shares as will be sufficient to satisfy the requirements of this Agreement. If the Company in its Sole Discretion so elects, it may register the Common Shares issuable upon vesting of the Options under the Securities Act of 1933, as amended (the "Securities Act"), and list the Common Shares on any securities exchange. In the absence of such election, Grantee understands that neither the Options nor the Common Shares issuable pursuant to the exercise of the Options will be registered under the Securities Act, or tradeable on any securities exchange, and Grantee represents that the Options are being acquired, and that such Common Shares that will be acquired upon the exercise of the Options, if any, will be acquired, by Grantee for investment and not with a view to distribution thereof. In the absence of an effective Registration Statement meeting the requirements of the Securities Act, upon any sale or transfer of the Common Stock issued pursuant to the exercise of the Options, Grantee shall deliver to the Company an opinion of counsel satisfactory to the Company to the effect that the sale or transfer of the Common Shares does not violate any provision of the Securities Act or the Securities Exchange Act of 1934, as amended, and the Company in its Sole Discretion may impose restrictions upon the sale, pledge or other transfer of such Common Shares (including, without limitation, the placement of appropriate legends on certificates or the imposition of stop-transfer instructions on the certificates (or the book entries made by the Administrator to record the Common Shares), as applicable) if, in the judgment of the Company, such restrictions are necessary or desirable in order to achieve compliance with the Securities Act, the Exchange Act, the securities laws of any state and/or any other law.

(f) Dividends. The holder of the Options will not have any right to dividends or any other rights of a shareholder with respect to the Common Shares issuable upon the exercise of the

Options unless and until such Common Shares shall have been issued in accordance with this Agreement and the Plan (as evidenced by the records of the transfer agent of the Company).

(g) Confidentiality. Grantee agrees to treat as confidential the terms and conditions of this Agreement and the Options, and understands, acknowledges, agrees and hereby stipulates that failure to do so may result in immediate termination of all Options (which for the avoidance of doubt and without limitation of the foregoing includes both vested and unvested Options), in which case no Common Shares shall be issuable in connection therewith.

(h) Other Agreements. Except as expressly set forth to the contrary in Section 6 of this Agreement, the obligations of Grantee under this Agreement shall be independent of, and unaffected by, and shall not affect, other agreements, if any, binding Grantee that apply to Grantee's business activities during and/or subsequent to Grantee's employment by the Company.

(i) Survival. Any provision of this Agreement that logically would be expected to survive termination or expiration, shall survive for a reasonable time period under the circumstances, whether or not specifically provided in this Agreement (including, without limitation, Subsection 3(e), [REDACTED] and Section 6 of this Agreement). Except as set forth to the contrary in Subsections 3(d) and 5(a)(iv) of this Agreement, the obligations under this Agreement also shall survive any changes made in the future to the employment terms and conditions of Grantee, including, without limitation, changes in salary, benefits, bonus plans, job title and job responsibilities.

(j) Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement. Except as expressly provided by this Agreement, no waiver or modification of any of the terms or conditions of this Agreement (including, without limitation, this Subsection 7(j)) shall be effective unless in writing and signed by both parties.

(k) No Waiver. In addition to (and without limitation of) the other terms and conditions of this Agreement, the failure of the Company to insist upon strict performance of any provision of this Agreement or any other agreement between the Company, on the one hand, and Grantee or any other grantee, on the other hand, shall not be construed as a waiver of the Company's right to insist upon strict performance of each and every representation, warranty, covenant, duty and obligation of Grantee hereunder. In addition to (and without limitation of) the foregoing, the election of certain remedies by the Company with respect to any Actual or Threatened Violation of this Agreement by Grantee or the breach, violation or default by Grantee or any other grantee of any other agreement between the Company, on the one hand, and Grantee or any other grantee, on the other hand, shall not be deemed to prejudice any right or remedy that the Company may have at law, in equity, under contract (including, without limitation, this Agreement) or otherwise with respect to a similar or different Actual or Threatened Violation of this Agreement by Grantee (all of which are hereby expressly reserved).

(l) Severability. Each provision of this Agreement shall be construed as separable and divisible from every other provision and the enforceability of any one provision shall not limit the enforceability, in whole or in part, of any other provision. Except as otherwise set forth in Subsections 3(b), 3(e) and 6(e) of this Agreement, in the event that a court, arbitrator or other body of competent jurisdiction holds any provision of this Agreement to be invalid, illegal, void, or less than fully enforceable to any extent or in any respect as to time, scope or otherwise, the parties agree that such provision shall be construed by limiting and reducing it to the minimum extent necessary to render such provision valid, legal and enforceable while preserving to the greatest

extent permissible the original intent of the parties; the remaining terms and conditions of this Agreement shall not be affected by such alteration, and shall remain in full force and effect.

(m) Agreement Summaries. In the event that the Company provides Grantee (or anyone acting on behalf of Grantee) with summary or other information concerning, including or otherwise relating to Grantee's rights or benefits under this Agreement (including, without limitation, the Options, and any vesting thereof), such summary or other information shall in all cases be qualified in its entirety by this Agreement, the Plan and the 2019 LTIP and, unless it explicitly states otherwise and is signed by an officer of the Company, shall not constitute an amendment or other modification hereto.

(n) Grantee understands, acknowledges, agrees and hereby stipulates that Grantee is executing this Agreement voluntarily and without any duress or undue influence by the Company or anyone else.

(o) Grantee understands, acknowledges, agrees and hereby stipulates that the Options are intended to be consideration in exchange for the promises and covenants set forth in this Agreement and not in exchange for any prior service or continuance of employment with the Company or any of its direct or indirect subsidiaries or for anything else.

(p) Grantee understands, acknowledges, agrees and hereby stipulates that Grantee has carefully read, considered and understands all of the provisions of this Agreement and the Company's policies reflected in this Agreement.

(q) Grantee understands, acknowledges, agrees and hereby stipulates that Grantee has asked any questions needed for Grantee to understand the terms, consequences and binding effect of this Agreement and Grantee fully understands them, including, without limitation, that Grantee is waiving the right to a trial, a trial by jury, and claims for punitive and/or exemplary damages.

(r) Grantee understands, acknowledges, agrees and hereby stipulates that Grantee was provided an opportunity to seek the advice of an attorney and/or a tax professional of Grantee's choice before accepting this Agreement.

(s) Grantee understands, acknowledges, agrees and hereby stipulates that the obligations and restrictions set forth in this Agreement are consistent with Grantee's right to sell Grantee's labor, the public's interest in unimpeded trade, are fair and reasonable, and are no broader than are reasonably required to protect the Company's interests.

(t) Headings and Interpretation. Headings of sections of this Agreement are included for convenience only, will not be construed as part of this Agreement and will not be used to define, limit, extend or interpret the terms of this Agreement. Each capitalized term will apply equally to both the singular and plural forms thereof. The parties acknowledge and agree that: (i) they and their counsel have reviewed, or been given a reasonable opportunity to review, this Agreement and any exhibits to this Agreement; (ii) this Agreement and any exhibits to this Agreement shall be deemed to have been jointly drafted by the parties; and (iii) no ambiguity or claimed ambiguity shall be resolved against any party on the basis that such party drafted the language claimed to be ambiguous nor shall the extent to which any party or its counsel participated in drafting this Agreement and/or any exhibits to this Agreement be construed in favor of or against any party.

(u) Injunctive Relief. Grantee understands, acknowledges, agrees and hereby stipulates that it is the Company's policy to seek legal recourse to the fullest extent possible for any

Actual or Threatened Violation of this Agreement, and that nothing in this Agreement shall be construed to prohibit the Company from pursuing any available right or remedy that the Company may have at law, in equity, under contract (including, without limitation, this Agreement) or otherwise against Grantee for any such Actual or Threatened Violation (all of which are hereby expressly reserved), including, without limitation, the recovery of damages from Grantee. Grantee further understands, acknowledges, agrees and hereby stipulates that: (i) Grantee's compliance with this Agreement is necessary to preserve and protect the Company's Confidential Information and/or Trade Secrets, among other things; (ii) any and all Actual or Threatened Violations of any of the covenants set forth in this Agreement (including, without limitation, [REDACTED]) by Grantee will result in irreparable and continuing harm to the Company, which will be difficult to ascertain and for which there will be no adequate monetary or other remedy at law; and, therefore, (iii) the Company will be entitled, in addition to any and all other remedies available at law, in equity, under contract (including, without limitation, this Agreement) or otherwise (all of which are hereby expressly reserved), to specific performance, an *ex parte* (without notice to Grantee) temporary restraining order, preliminary and permanent injunctive relief and/or other similar relief to enjoin and prevent any such Actual or Threatened Violation. Such specific performance and/or injunctive relief includes, without limitation, [REDACTED], to avoid conflicts of interest and to otherwise protect the Company from irreparable harm. Grantee understands, acknowledges, agrees and hereby stipulates that the Company does not need to post a bond in order to obtain injunctive relief and Grantee waives any and all rights to require such a bond.

(v) Fee Shifting. The prevailing party in any arbitration or court proceeding to enforce or interpret this Agreement or any provision thereof shall be entitled to recover its costs, expenses and reasonable attorneys' fees (at trial/arbitration and on appeal), amounts paid in the investigation, defense and/or settlement of such arbitration or court proceeding (including, for the avoidance of doubt and without limitation of the foregoing, costs and expenses incurred in negotiating a settlement, if applicable), and all other amounts allowed by law. For purposes of the preceding sentence, the "prevailing party" means the party initiating such proceeding in the event that such party is awarded any relief by the arbitrator or court (regardless of whether such relief is monetary or equitable in nature) even, for the avoidance of doubt and without limitation of the foregoing, if such party did not prevail in all matters; otherwise, the "prevailing party" means the party defending against such proceeding. The "prevailing party" under (i) the complaint or similar filing or action, and (ii) any counterclaim or similar filing or action in any such proceeding shall be determined independently. Notwithstanding the foregoing, the first sentence of this Subsection 7(v) will not apply to any collateral claims not brought to enforce or interpret this Agreement, even if adjudicated contemporaneously. Nothing in this Agreement shall require Grantee to reimburse the Company for its costs, expenses and reasonable attorneys' fees incurred when the Company prevails in defense of any statutory claim of unlawful discrimination, unless such claim brought by Grantee is frivolous, unreasonable or without foundation, or Grantee continues to prosecute a claim after the claim became frivolous, unreasonable or without foundation, in which cases Grantee will be required to reimburse the Company for its costs, expenses and reasonable attorneys' fees (at trial/arbitration and on appeal), amounts paid in the investigation, defense and/or settlement of such claims (including, for the avoidance of doubt and without limitation of the foregoing, costs and expenses incurred in negotiating a settlement, if applicable), and all other amounts allowed by law.

In the event either party hereto files a judicial or administrative action asserting claims subject to the arbitration provisions of this Agreement, and the other party successfully stays such action and/or compels arbitration of the claims made in such an action, the party filing the administrative or judicial action shall pay the other party's costs, expenses and reasonable attorneys' fees incurred in obtaining a stay and/or compelling arbitration.

Upon Grantee's acceptance of the terms and conditions set forth in this Agreement through the electronic grant process available through the Administrator, this Agreement shall become effective between the parties as of the Grant Date.

DISH NETWORK CORPORATION
Charles W. Ergen, Chairman

GRANTEE – [Participant Name]
Accepted on [Acceptance Date]

[REDACTED] Indicates that certain information in this exhibit has been excluded because it is both (i) not material and (ii) would be competitively harmful if publicly disclosed.

DISH NETWORK CORPORATION
RESTRICTED STOCK UNIT AGREEMENT

This Restricted Stock Unit Agreement (the "Agreement") is entered into and made effective as of [Grant Date] (the "Grant Date") by and between DISH Network Corporation, a Nevada corporation (the "Company"), and [Participant Name] ("Grantee").

RECITAL

WHEREAS, the Company, pursuant to its 2019 Stock Incentive Plan (the "Plan"), desires to grant restricted stock units to Grantee, and Grantee desires to accept such restricted stock units, each under the terms and conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the promises and covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Grant of Restricted Stock Units.

The Company hereby grants to Grantee, as of the Grant Date, [Number of RSUs Granted] restricted stock units (hereinafter called the "Units"), each representing the right to receive one share of the Class A Common Stock of the Company, par value \$0.01 per share (a "Common Share") upon vesting of that Unit, subject to the terms and conditions set forth in this Agreement.

2. Duration and Vesting.

(a) Subject to the terms and conditions set forth in this Agreement, the Units shall vest in accordance with the following schedule (for the avoidance of doubt and without limitation of the foregoing, it is the intention of the Company that the corresponding increment of the Units shall only vest once upon the dates set forth below):

<u>On or after each of the following dates</u>	<u>Percentage of Units Vesting</u>
[First Anniversary of the Grant Date	20%
Second Anniversary of the Grant Date	20%
Third Anniversary of the Grant Date	20%
Fourth Anniversary of the Grant Date	20%
Fifth Anniversary of the Grant Date	20%]

No Common Shares shall be issued in exchange for any Unit until that Unit has vested and until Grantee has satisfied Grantee's tax, tax withholding and all other obligations with respect to any individual income taxes, penalties and/or interest related to such Unit as set

forth in Subsection 2(d) of this Agreement, unless the Board of Directors of the Company (the “Board”), the Executive Compensation Committee of the Board (the “Committee”) and/or the General Counsel of the Company, in its or their sole and absolute discretion for any reason or no reason at any time and from time to time (“Sole Discretion”), specifically waives applicability of this provision in whole or in part.

(b) During the lifetime of Grantee, the Common Shares issuable upon vesting of the Units shall be issued only to Grantee (or, if permissible under applicable law and this Agreement, to Grantee’s guardian or legal representative) and Units shall not be assignable or transferable by Grantee, other than by will or the laws of descent and distribution. Without limiting the generality of the foregoing, the Units may not be sold, assigned, transferred or otherwise disposed of, or pledged or hypothecated in any manner (whether by operation of law or otherwise), and will not be subject to execution, attachment or other process. Any sale, assignment, transfer or other disposition, or pledge or hypothecation, of the Units or any attempt to make any such levy of execution, attachment or other process will cause the Units to terminate immediately, unless the Board, the Committee and/or the General Counsel of the Company, in its or their Sole Discretion, specifically waives applicability of this provision in whole or in part.

(c) Notwithstanding anything to the contrary in this Agreement, the Units shall expire and terminate, and no Common Shares shall be issued in exchange for any Units, on the tenth (10th) anniversary of the [Grant Date] (the “Expiration Date”).

(d) The Company assumes no responsibility for any individual income taxes, penalties and/or interest related to the grant, vesting or adjustment of any Unit or the issuance of Common Shares in exchange for any Unit or any subsequent disposition of such Common Shares. **Grantee should consult with Grantee's personal tax advisor regarding the tax ramifications, if any, that result from the grant, vesting or adjustment of any Unit or the issuance of Common Shares in exchange for any Unit or any subsequent disposition of such Common Shares.** If, in the Company's Sole Discretion, it is necessary or appropriate to collect or withhold any individual income taxes, penalties and/or interest in connection with the grant, vesting or adjustment of any Unit or the issuance of Common Shares in exchange for any Unit or any subsequent disposition of such Common Shares, then (i) the Company shall be entitled to require the payment of such amounts, and/or (ii) Grantee shall make arrangements satisfactory to the Company to satisfy all tax, tax withholding and all other obligations with respect to such amounts, in each case as a condition to such grant, vesting or adjustment of such Unit or the issuance of Common Shares in exchange for such Unit and/or any subsequent disposition of such Common Shares, as the case may be, unless the Board, the Committee and/or the General Counsel of the Company, in its or their Sole Discretion, specifically waives applicability of this provision in whole or in part. In furtherance and without limiting the generality of the foregoing, Grantee (on its own behalf and on behalf of each and every other proper party as described in Subsection 2(b) and/or Subsection 3(c) of this Agreement) hereby authorizes the Company, in its Sole Discretion (including, without limitation, pursuant to the then-current procedures implemented by the Company’s administrator for the Units (the “Administrator”), as such Administrator and procedures are designated by the Company in its Sole Discretion), to satisfy all tax, tax withholding and all other obligations with respect to any individual income taxes, penalties and/or interest related to the grant, vesting or adjustment of any Unit or the issuance of Common Shares in exchange for any Unit or any subsequent disposition of such Common Shares, by one or a combination of the following:

- i. withholding from any wages or other cash compensation payable to Grantee by the Company;
- ii. withholding Common Shares that are otherwise issuable upon vesting of the Units;
- iii. arranging for the sale of Common Shares that are otherwise issuable upon vesting of the Units, including, without limitation, selling Common Shares as part of a block trade with Common Shares held by other grantees under the Plan or otherwise; and/or
- iv. withholding from the gross amount of the sale of Common Shares issued upon vesting of the Units.

(e) In considering the acceptance of the Units, Grantee understands, acknowledges, agrees and hereby stipulates that Grantee has used the same independent investment judgment that Grantee would use in making other investments in corporate securities. Among other things, stock prices will fluctuate over any reasonable period of time and the price of the Common Shares may go down as well as up. No guarantees are made as to the future prospects of the Company or the Common Shares, or that any market for sale of the Common Shares will exist in the future. No representations are made by the Company except as may be contained in any active registration statement on file with the United States Securities and Exchange Commission (“SEC”) relating to the Plan at the time of applicable issuance of the Units.

3. Cessation of Employment; Actual or Threatened Violation of Covenants; Covenants Found Unenforceable; Death or Disability; Demotion; Recoupment.

(a) Subject to the application of Subsections 3(b)(ii) and 3(b)(iii) of this Agreement, in the event that Grantee shall cease to be employed by the Company or its direct or indirect subsidiaries (collectively, the “Company” for purposes of this Section 3) for any reason other than the reason set forth in Subsection 3(b)(i) of this Agreement or Grantee's death or disability (as described in Subsection 3(c) of this Agreement), and Grantee shall have vested Units for which Common Shares have not yet been issued as of such cessation of employment, Grantee shall have the right to have such Common Shares issued in exchange for such vested Units, **but only** to the extent of the full number of Common Shares issuable upon such vested Units as of such cessation of employment, subject to the condition that any portion of the Units not vested as of such cessation of employment shall terminate as of such cessation of employment and no Common Shares shall be issued in exchange for any unvested Units following such cessation of employment, and that no portion of the Units shall vest after the Expiration Date. Retirement, whether or not pursuant to any retirement or pension plan of the Company, shall be deemed to be a cessation of employment for all purposes under this Agreement. The termination of the Units by reason of any such cessation of employment shall be without prejudice to any right or remedy that the Company may have against Grantee at law, in equity, under contract (including, without limitation, this Agreement) or otherwise (all of which are hereby expressly reserved).

(b) In the event that: (i) Grantee shall cease to be employed by the Company by reason of Grantee's serious misconduct during the course of employment, including, without limitation, [REDACTED], misappropriation of Company funds, theft of Company property or other reasons as determined by the Company; (ii) [REDACTED]; or (iii) a court, arbitrator or other body of competent jurisdiction holds any of the provisions set forth in Subsection 3(e) of this Agreement

[REDACTED] to be invalid, illegal, void or less than fully enforceable against Grantee to any extent or in any respect as to time, scope or otherwise, in the course of any litigation or other legal proceeding arising out of or relating to any Actual or Threatened Violation of such covenants by Grantee or a request by or on behalf of Grantee for declaratory relief regarding the enforceability of such covenants against Grantee (each of (i), (ii) and (iii) an “**Award Termination Event**”), then **all** Units (which for the avoidance of doubt and without limitation of the foregoing includes both vested and unvested Units) shall be deemed to have terminated and no Common Shares shall be issuable in connection therewith, as of the earliest of the following to occur: (A) the serious misconduct described in subpart (i) above; (B) [REDACTED]; or (C) the commencement of the litigation or other legal proceeding described in subpart (iii) above (the first date on which any of (A), (B) and/or (C) occurs, an “**Award Termination Effective Date**”). The termination of the Units pursuant to Subsection 3(b)(i), 3(b)(ii) or 3(b)(iii) of this Agreement shall be without prejudice to any right or remedy that the Company may have against Grantee at law, in equity, under contract (including, without limitation, this Agreement) or otherwise (all of which are hereby expressly reserved). For all purposes under this Agreement, [REDACTED].

(c) Subject to the application of Subsections 3(b)(ii) and 3(b)(iii) of this Agreement, in the event that: (i) Grantee shall die while in the employ of the Company or after cessation of employment for any reason other than the reason set forth in Subsection 3(b)(i) of this Agreement; or (ii) employment ceases because Grantee has become disabled (within the meaning of Section 22(e)(3) of the Internal Revenue Code of 1986, as amended, and regulations thereunder) while in the employ of the Company and Grantee shall have vested Units for which Common Shares have not yet been issued as of such death or cessation of employment for disability, then such Common Shares shall be issued to the personal representative or administrator, executor or guardian of Grantee, as applicable, or to any person or entity to whom the Units are transferred by will or the applicable laws of descent and distribution, **but only** to the extent of the full number of Common Shares issuable upon such vested Units as of such death or cessation of employment for disability, subject to the condition that any portion of the Units not vested as of such death or cessation of employment for disability shall terminate as of such death or cessation of employment for disability and no Common Shares shall be issued in exchange for any unvested Units following such death or cessation of employment for disability, and that no portion of the Units shall vest after the Expiration Date. The termination of the Units by reason of such death or cessation of employment for disability shall be without prejudice to any right or remedy that the Company may have against Grantee (and/or the personal representative or administrator, executor or guardian of Grantee, as applicable, or to any person or entity to whom the Units are transferred by will or the applicable laws of descent and distribution) at law, in equity, under contract (including, without limitation, this Agreement) or otherwise (all of which are hereby expressly reserved).

(d) In the event that Grantee is demoted (but remains employed) by the Company from Grantee’s current level (e.g., chairman, chief executive officer, president, executive vice president, senior vice president, vice president, director, manager or other level held by Grantee on the Grant Date), then: (i) if Grantee shall have vested Units for which Common Shares have not yet been issued as of such demotion, then, subject to the application of Subsections 3(b)(ii) and 3(b)(iii) of this Agreement, Grantee shall have the right to have such Common Shares issued in exchange for such vested Units, **but only** to the extent of the full number of Common Shares issuable upon such vested Units as of such demotion, subject to the condition that any portion of the Units not vested as of such demotion shall terminate as of such demotion and no Common Shares shall be issued in exchange for any unvested Units following such demotion, and that no portion of the Units shall vest after the Expiration Date; and (ii) this Agreement, including, without limitation, [REDACTED], shall otherwise continue in force, unless otherwise terminated. The termination of the Units by reason of such demotion shall be without prejudice to any right or remedy that the

Company may have against Grantee at law, in equity, under contract (including, without limitation, this Agreement) or otherwise (all of which are hereby expressly reserved).

(e) Notwithstanding anything to the contrary in this Agreement, Common Shares issued under this Agreement, Common Shares issued under any Other Award Agreement and all amounts that may be received by Grantee in connection with any disposition of any such Common Share(s) shall be subject to applicable recoupment, “clawback” and similar provisions under law, as well as any recoupment, “clawback” and similar policies of the Company that may be adopted at any time and from time to time in order to comply with the Dodd-Frank Wall Street Reform and Consumer Protection Act or other applicable law. In addition, and as a condition to the grant, vesting or adjustment of any Unit or the issuance of Common Shares in exchange for any Unit and/or any disposition of such Common Shares, Grantee understands, acknowledges, agrees and hereby stipulates that in the event of an Award Termination Event, the Company may (in its Sole Discretion) require Grantee to and, to the extent so required by the Company, Grantee hereby agrees to: (A) return to the Company any and all Common Shares issued under this Agreement and all Other Award Agreements (as defined in this Subsection 3(e)) that are held by or on behalf of Grantee on or after the Award Termination Effective Date; and (B) pay to the Company an amount not to exceed the taxable income attributable to all dispositions, during and after the Recovery Period (as defined in this Subsection 3(e)), of Common Shares issued under this Agreement and all Other Award Agreements (the amounts described in this subpart (B), the “**Gross Amounts**”). Effective as of the Award Termination Effective Date, Grantee shall hold such Common Shares and the Gross Amounts in trust for the benefit of the Company until such time as such Common Shares are returned to the Company and/or the Gross Amounts are paid to the Company, as applicable.

The Company will determine, in its Sole Discretion, the Gross Amounts and the method(s) of payment of the Gross Amounts, which method(s) may include, without limitation: (1) offsetting against any compensation or other amounts owed or owing at any time and from time to time by the Company to Grantee (including, without limitation, amounts payable under a deferred compensation plan permitted under Section 409A of the Internal Revenue Code of 1986, as amended); (2) reducing Grantee’s wages or salary and/or reducing or eliminating future salary increases, cash incentive awards or equity awards; and/or (3) requiring Grantee to pay the Gross Amounts to the Company in cash or other immediately available funds upon written demand for such payment. As a condition to the grant, vesting or adjustment of any Unit or the issuance of Common Shares in exchange for any Unit and/or any disposition of such Common Shares, Grantee hereby consents to each of the foregoing method(s) of payment of the Gross Amounts, and further hereby agrees to execute any additional documentation determined by the Company to be necessary or advisable to facilitate the return of the Common Shares and/or payment of the Gross Amounts to the Company. Grantee hereby nominates and appoints the Company as Grantee’s attorney-in-fact for the limited purpose of executing, on Grantee’s behalf, any such additional documentation in the event that Grantee fails to do so on a reasonably timely basis under the circumstances. The return of the Common Shares and/or the payment of the Gross Amounts to the Company pursuant to this Subsection 3(e) shall be without prejudice to any other right or remedy that the Company may have against Grantee at law, in equity, under contract (including, without limitation, this Agreement) or otherwise (all of which are hereby expressly reserved). “**Other Award Agreement**” means any other restricted stock unit agreement, incentive stock option agreement, non-qualified stock option agreement or any other “Award Agreement” (as defined by the Plan) or similar agreement pursuant to successor or other plan(s) similar to the Plan. “**Recovery Period**” means the twelve (12) month period preceding the Award Termination Effective Date.



4. Manner of Issuance of Common Shares.

(a) The Units and the Common Shares issuable upon vesting of the Units can be issued only to Grantee or other proper party as described in Subsection 2(b), Subsection 3(c) and/or Subsection 4(c) of this Agreement, in whole Common Shares by following (prior to the earlier of: (i) any termination of such Units; or (ii) the Expiration Date) the then-current procedures implemented by the Administrator, as such Administrator and procedures are designated by the Company in its Sole Discretion. All notices that need to be sent to the Company shall be addressed to it at its office at 9601 S. Meridian Blvd., Englewood, Colorado, 80112, Attn: Corporate Secretary, or to such other address or person or entity as the Company may notify Grantee of from time to time. All notices that need to be sent to Grantee or other person or entity then entitled to receive Common Shares issuable upon vesting of the Units shall be addressed to Grantee or such other person(s) or entity(ies) at such address as Grantee or such other person(s) or entity(ies) may notify the Company or its Administrator in writing of from time to time.

(b) Unless notified by the Company or the Administrator to the contrary, the Common Shares issuable upon vesting of the Units shall be issued within five (5) business days following the date on which the General Counsel for the Company determines that all conditions necessary for vesting of the Units and issuance of the Common Shares have been satisfied (including, without limitation, satisfaction of Grantee's tax, tax withholding and all other obligations with respect to any individual income taxes, penalties and/or interest as set forth in Subsection 2(d) of this Agreement). The Company shall have no obligation to issue any Common Shares until it has confirmed to its satisfaction that all conditions necessary for vesting of the Units and issuance of the Common Shares have been satisfied.

(c) The certificate or certificates for (or the book entries made by the Administrator to record) the Common Shares, if any, that are issued or made pursuant to vesting of the Units may be registered or recorded only in the name of Grantee (or if Grantee so requests, jointly in the name of Grantee and a member of Grantee's family, with the right of survivorship, or in the event of the death of Grantee, in the name of such survivor of Grantee as the person or entity with the right to receive the Common Shares issuable upon vesting of the Units shall designate).

5. [REDACTED]

6. Dispute Resolution; Arbitration.

(a) In consideration of the promises and covenants set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantee and the Company mutually agree that any past, present or future claim, counterclaim, controversy and/or dispute between them (whether arising in contract, tort, under statute or otherwise) arising out of, relating to or incurred in connection with: (i) Grantee's application for employment, employment and/or cessation of employment (collectively, "Employment-Related Disputes"); and/or (ii) this Agreement and/or any Other Award Agreement (including, without limitation, [REDACTED]) (collectively, "Units Disputes") ((i) or (ii) each, a "Claim" and (i) and (ii) collectively, "Claims"), whenever and wherever brought shall be resolved by binding arbitration administered by the American Arbitration Association (the "AAA"). This Section 6 survives after the employment relationship ceases and applies to any Claim that the Company may have against Grantee or that Grantee may have against the Company. Grantee understands, acknowledges, agrees and hereby stipulates that this agreement to arbitrate is subject to the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq., it evidences a transaction involving commerce, and it is fully enforceable. For purposes of this Section 6, "the Company" shall be defined to include the Company, its predecessors, its and its predecessors' direct and indirect subsidiaries, and

the officers, directors, shareholders, members, owners, employees, managers, agents, attorneys, successors and assigns of each of the foregoing persons and entities.

- (b) For Employment-Related Disputes:
- i. a party who wishes to arbitrate an Employment-Related Dispute Claim must prepare a written demand for arbitration ("Request for Arbitration") that identifies the claims asserted, the factual basis for each claim and the relief and/or remedy sought. That party must file the Request for Arbitration (along with a copy of this Agreement and the applicable filing fee) with the AAA by: (A) delivering them by hand to the Denver, Colorado regional office of the AAA or any other office of the AAA located in the State of Colorado; (B) mailing them by certified U.S. mail, Federal Express or United Parcel Service to American Arbitration Association, Case Filing Services, 1101 Laurel Oak Road, Suite 100, Voorhees, NJ 08043; or (C) using the AAA WebFile feature at the AAA's website: <http://www.adr.org>. The Request for Arbitration must be submitted to the AAA before the expiration of the applicable statute of limitations and the parties agree that the date on which the AAA receives the Request for Arbitration shall constitute filing for all statute of limitations purposes. Unless otherwise prohibited by law, the party initiating arbitration shall be responsible for paying the applicable filing fee. Subject to Subsection 7(v) of this Agreement, the Company will pay the Employment Law Arbitrator's (as defined in Subsection 6(b)(iii) of this Agreement) fees and any fee for administering the arbitration;
 - ii. the party initiating arbitration must deliver a copy of the Request for Arbitration to the other party by hand or U.S. mail at the following location: (A) if to the Company - to the legal department of the Company at 9601 S. Meridian Blvd., Englewood, CO 80112, Attn: General Counsel; or (B) if to Grantee - to the last address of Grantee appearing in the Company's records;
 - iii. a single arbitrator from the AAA with expertise in employment disputes (the "Employment Law Arbitrator") shall be selected by the AAA and shall conduct the arbitration pursuant to the AAA's Employment Arbitration Rules and Mediation Procedures (the "AAA Employment Rules"), without incorporation of the AAA's Supplementary Rules for Class Arbitrations, the AAA rules relating to the selection of arbitrators, or the AAA rules regarding selection of venue, which the parties hereby expressly disclaim. The AAA Employment Rules may be found at <http://www.adr.org/>, by searching for "AAA Employment Arbitration Rules" using an Internet search engine such as www.google.com, or by requesting a copy from the human resources department of the Company. The arbitration, including without limitation any construction or interpretation of this Agreement, shall be governed by and construed in accordance with the substantive law of the State of Colorado, without giving effect to choice of law principles. Notwithstanding anything to the contrary in this Agreement, the AAA Employment Rules, the AAA Commercial Rules (as defined in Subsection 6(b)(iii) of this Agreement), any other AAA rule and/or procedure and/or any applicable law, the

Employment Law Arbitrator shall only have the power to render decisions that are consistent with the substantive law of the State of Colorado, without giving effect to choice of law principles, and any decision rendered by the Employment Law Arbitrator shall be subject to review by the United States District Court for the District of Colorado or the appropriate state court located in the City and County of Denver, Colorado for the purpose of determining whether such decision is consistent with such substantive law and for any other reason for which judicial review of an arbitration decision or award is permissible under the AAA rules, the Federal Arbitration Act or other applicable law; any decision rendered by the Employment Law Arbitrator that is inconsistent with such substantive law shall be deemed beyond the authority of the Employment Law Arbitrator. Regardless of what the AAA Employment Rules state, the arbitration proceedings shall be held in the City and County of Denver, Colorado. Grantee hereby irrevocably waives any and all objections that Grantee may now or hereafter have to the venue of the arbitration, or any court proceeding brought to determine whether a decision rendered by the Employment Law Arbitrator is consistent with the substantive law of the State of Colorado, including, without limitation, any claim that the arbitration or any such court proceeding has been brought in an inconvenient forum;

- iv. the parties shall have the right to conduct discovery relevant and material to the outcome of the arbitration and to present witnesses and evidence as needed to present their claims and defenses, and the Employment Law Arbitrator shall resolve any discovery or evidentiary dispute. Each party shall have the right to subpoena relevant witnesses and documents, including, without limitation, documents from third parties; subpoenas may be issued for production of documents or witnesses at any deposition(s) or pre-hearing proceeding(s) and/or at the arbitration hearing. At least thirty (30) days before the arbitration hearing, the parties must exchange a list of witnesses and copies of all exhibits to be used at the arbitration hearing.

Notwithstanding anything to the contrary in this Agreement, the AAA Employment Rules, the AAA Commercial Rules, any other AAA rule and/or procedure and/or any applicable law, the Employment Law Arbitrator shall only have the power to award remedies available under the substantive law of the State of Colorado, without giving effect to choice of law principles, and the availability of any such remedies shall further be limited to those that would be available to a party in his/her/its individual capacity for all Claims presented to the Employment Law Arbitrator (for the avoidance of doubt and without limitation of the foregoing, Grantee may not bring a class arbitration and is not entitled to remedies for Grantee's Claims on behalf of any other person or entity and/or that are available to plaintiffs in a class action but not available to individual or non-class action plaintiffs). Any remedy awarded by the Employment Law Arbitrator shall be subject to review by the United States District Court for the District of Colorado or the appropriate state court located in the City and County of Denver, Colorado for the purpose of determining whether such remedy is consistent with such substantive law and complies with the limitations set forth above; any decision by the Employment Law Arbitrator that is inconsistent with such

substantive law and/or fails to comply with such limitations shall be deemed beyond the authority of the Employment Law Arbitrator. Except as otherwise provided in this Subsection 6(b)(iv) and/or Subsection 6(b)(iii) of this Agreement, the Employment Law Arbitrator's decision shall be final and binding, and judgment upon the Employment Law Arbitrator's decision and/or award may be entered in any court of competent jurisdiction; provided that the parties agree to take all reasonable steps to ensure that all documents, pleadings and papers are filed and/or entered with the court under seal and/or in a manner that would maintain their confidentiality, including, without limitation, complying with all rules of procedure and local rules for filing documents, pleadings and papers under seal;

- i. the Employment Law Arbitrator shall have the authority to hear and decide dispositive motions under the legal standards set forth in Rules 12 and 56 of the Colorado Rules of Civil Procedure, regardless of whether a Claim arises under federal or state law. The Employment Law Arbitrator shall resolve all disputes regarding such dispositive motions and the timeliness of the Request for Arbitration and apply the statute of limitations set forth under the substantive law of the State of Colorado, without giving effect to choice of law principles. The Employment Law Arbitrator shall dismiss, without limitation, any Claim that, in the absence of this Agreement, could not be brought under the substantive law of the State of Colorado, without giving effect to choice of law principles;
- ii. the Employment Law Arbitrator shall have the exclusive authority to resolve Employment-Related Disputes, except as limited by Subsection 6(e) of this Agreement; and
- iii. all arbitration proceedings, including, but not limited to, claims, allegations, decisions, findings, pleadings, hearings, testimony, discovery, settlements, opinions and awards shall be confidential, except: (A) to the extent the parties otherwise agree in writing; (B) as may be otherwise appropriate in response to a request from a government agency, subpoena, or legal process; (C) if the substantive law of the State of Colorado (without giving effect to choice of law principles) provides to the contrary; or (D) as is necessary in a court proceeding to enforce, correct, modify or vacate the Employment Law Arbitrator's award or decision (and in the case of this subpart (D), the parties agree to take all reasonable steps to ensure that all documents, pleadings and papers are filed and/or entered with the court under seal and/or in a manner that would maintain their confidentiality, including, without limitation, complying with all rules of procedure and local rules for filing documents, pleadings and papers under seal); provided, however, in the event that either party initiates a court proceeding to enforce, correct, modify, or vacate the Employment Law Arbitrator's award or decision, or any other proceeding that would require disclosing the Employment Law Arbitrator's award, decision or findings, the parties agree to take all reasonable steps to ensure that all documents, pleadings and papers are filed and/or entered with the court under seal and/or in a manner that would maintain their confidentiality, including,

without limitation, complying with all rules of procedure and local rules for filing documents, pleadings and papers under seal.

- (c) For Units Disputes:
- i. a party who wishes to arbitrate a Units Dispute Claim must prepare a Request for Arbitration that identifies the claims asserted, the factual basis for each claim and the relief and/or remedy sought. That party must file the Request for Arbitration (along with a copy of this Agreement and the applicable filing fee) with the AAA by: (A) delivering them by hand to the Denver, Colorado regional office of the AAA or any other office of the AAA located in the State of Colorado; (B) mailing them by certified U.S. mail, Federal Express or United Parcel Service to American Arbitration Association, Case Filing Services, 1101 Laurel Oak Road, Suite 100, Voorhees, NJ 08043; or (C) using the AAA WebFile feature at the AAA's website: <http://www.adr.org>. The Request for Arbitration must be submitted to the AAA before the expiration of the applicable statute of limitations and the parties agree that the date on which the AAA receives the Request for Arbitration shall constitute filing for all statute of limitations purposes. Unless otherwise prohibited by law, the party initiating arbitration shall be responsible for paying the applicable filing fee. Subject to Subsection 7(v) of this Agreement, the Commercial Law Arbitrators' (as defined in Subsection 6(c)(iii) of this Agreement) fees and any fee for administering the arbitration will be paid equally by the parties (i.e. fifty percent (50%) by the Company and fifty percent (50%) by Grantee);
 - ii. the party initiating arbitration must deliver a copy of the Request for Arbitration to the other party by hand or U.S. mail at the following location: (A) to the Company - to the legal department of the Company at 9601 S. Meridian Blvd., Englewood, CO 80112, Attn: General Counsel; or (B) to Grantee - to the last address of Grantee appearing in the Company's records;
 - iii. three (3) arbitrators from the AAA with expertise in mergers and acquisitions and, more specifically, breach of non-solicit and/or breach of non-compete provisions, as the case may be ("Commercial Law Arbitrators") shall be selected in accordance with the procedure set forth below, and shall conduct the arbitration, pursuant to the then-current AAA Commercial Arbitration Rules and Mediation Procedures (the "AAA Commercial Rules"), without incorporation of the AAA Employment Rules, the AAA's Supplementary Rules for Class Arbitrations, the AAA rules relating to the selection of arbitrators or the AAA rules regarding selection of venue, which the parties hereby expressly disclaim. The AAA Commercial Rules may be found at <http://www.adr.org/>, by searching for "AAA Commercial Dispute Resolution Procedures" using an internet search engine such as www.google.com, or by requesting a copy from the human resources department of the Company. Within fourteen (14) days after the receipt of the Request for Arbitration, each party shall select one arbitrator from the AAA that meets the criteria set forth above to act as arbitrator and such arbitrators shall select a third arbitrator from the AAA

that meets the criteria set forth above within ten (10) days of their appointment. The party-selected arbitrators will serve in a non-neutral capacity. In the event that the arbitrators selected by the parties are unable or fail to agree upon the third arbitrator, a third arbitrator that meets the criteria set forth above shall be selected by the AAA. The arbitration, including without limitation any construction or interpretation of this Agreement, shall be governed by and construed in accordance with the substantive law of the State of Colorado, without giving effect to choice of law principles. Notwithstanding anything to the contrary in this Agreement, the AAA Employment Rules, the AAA Commercial Rules, any other AAA rule and/or procedure and/or any applicable law, the Commercial Law Arbitrators shall only have the power to render decisions that are consistent with the substantive law of the State of Colorado, without giving effect to choice of law principles, and any decision rendered by the Commercial Law Arbitrators shall be subject to review by the United States District Court for the District of Colorado or the appropriate state court located in the City and County of Denver, Colorado for the purpose of determining whether such decision is consistent with such substantive law and for any other reason for which judicial review of an arbitration decision or award is permissible under the AAA rules, the Federal Arbitration Act or other applicable law; any decision by the Commercial Law Arbitrators that is inconsistent with such substantive law shall be deemed beyond the authority of the Commercial Law Arbitrators.

Regardless of what the AAA Commercial Rules state, the arbitration proceedings shall be held in the City and County of Denver, Colorado.

Grantee hereby irrevocably waives any and all objections that Grantee may now or hereafter have to the venue of the arbitration, or any court proceeding brought to determine whether a decision rendered by the Commercial Law Arbitrators is consistent with the substantive law of the State of Colorado, including, without limitation, any claim that the arbitration or any such court proceeding has been brought in an inconvenient forum;

- iv. the parties shall have the right to conduct discovery relevant and material to the outcome of the arbitration and to present witnesses and evidence as needed to present their claims and defenses, and the Commercial Law Arbitrators shall resolve any discovery or evidentiary dispute. Each party shall have the right to subpoena relevant witnesses and documents, including, without limitation, documents from third parties; subpoenas may be issued for production of documents or witnesses at any deposition(s) or pre-hearing proceeding(s) and/or at the arbitration hearing. At least thirty (30) days before the arbitration hearing, the parties must exchange a list of witnesses and copies of all exhibits to be used at the arbitration hearing.

Notwithstanding anything to the contrary in this Agreement, the AAA Employment Rules, the AAA Commercial Rules, any other AAA rule and/or procedure and/or any applicable law, the Commercial Law Arbitrators shall only have the power to award remedies available under the substantive law of the State of Colorado, without giving effect to choice of law principles, and the availability of any such remedies shall further be limited to those that would be available to a party in his/her/its individual capacity for all Claims presented to the

Commercial Law Arbitrators (for the avoidance of doubt and without limitation of the foregoing, Grantee may not bring a class arbitration and is not entitled to remedies for Grantee's Claims on behalf of any other person or entity and/or that are available to plaintiffs in a class action but not available to individual or non-class action plaintiffs). Any remedy awarded by the Commercial Law Arbitrators shall be subject to review by the United States District Court for the District of Colorado or the appropriate state court located in the City and County of Denver, Colorado for the purpose of determining whether such remedy is consistent with such substantive law and complies with the limitations set forth above; any decision by the Commercial Law Arbitrators that is inconsistent with such substantive law and/or fails to comply with such limitations shall be deemed beyond the authority of the Commercial Law Arbitrators. Except as otherwise provided in this Subsection 6(c)(iv) and/or Subsection 6(c)(iii) of this Agreement, the Commercial Law Arbitrators' decision shall be final and binding, and judgment upon the Commercial Law Arbitrators' decision and/or award may be entered in any court of competent jurisdiction; provided that the parties agree to take all reasonable steps to ensure that all documents, pleadings and papers are filed and/or entered with the court under seal and/or in a manner that would maintain their confidentiality, including, without limitation, complying with all rules of procedure and local rules for filing documents, pleadings and papers under seal;

- v. the Commercial Law Arbitrators shall have the authority to hear and decide dispositive motions under the legal standards set forth in Rules 12 and 56 of the Colorado Rules of Civil Procedure, regardless of whether a Claim arises under federal or state law. The Commercial Law Arbitrators shall resolve all disputes regarding such dispositive motions and the timeliness of the Request for Arbitration and apply the statute of limitations set forth under the substantive law of the State of Colorado, without giving effect to choice of law principles. The Commercial Law Arbitrators shall dismiss, without limitation, any Claim that, in the absence of this Agreement, could not be brought under the substantive law of the State of Colorado, without giving effect to choice of law principles;
- vi. the Commercial Law Arbitrators shall have the exclusive authority to resolve Units Disputes, except as limited by Subsection 6(e) of this Agreement; and
- vii. all arbitration proceedings, including, but not limited to, claims, allegations, decisions, findings, pleadings, hearings, testimony, discovery, settlements, opinions and awards shall be confidential, except: (A) to the extent the parties otherwise agree in writing; (B) as may be otherwise appropriate in response to a request from a government agency, subpoena, or legal process; (C) if the substantive law of the State of Colorado (without giving effect to choice of law principles) provides to the contrary; or (D) as is necessary in a court proceeding to enforce, correct, modify or vacate the Commercial Law Arbitrators' award or decision (and in the case of this subpart (D), the parties agree to take all reasonable steps to ensure that all documents, pleadings and papers are filed and/or entered with the

court under seal and/or in a manner that would maintain their confidentiality, including, without limitation, complying with all rules of procedure and local rules for filing documents, pleadings and papers under seal); provided, however, in the event that either party initiates a court proceeding to enforce, correct, modify, or vacate the Commercial Law Arbitrators' award or decision, or any other proceeding that would require disclosing the Commercial Law Arbitrators' award, decision or findings, the parties agree to take all reasonable steps to ensure that all documents, pleadings and other documents are filed and/or entered with the court under seal and/or in a manner that would maintain their confidentiality, including, without limitation, complying with all rules of procedure and local rules for filing documents, pleadings and papers under seal.

(d) Notwithstanding the foregoing, this agreement to arbitrate all Employment-Related Disputes and/or Units Disputes shall not apply to Grantee claims for statutory unemployment compensation benefits, statutory worker's compensation benefits, state disability insurance benefits (not including retaliation claims based upon seeking such benefits), charges filed with the National Labor Relations Board alleging violations of the National Labor Relations Act, and claims for benefits from a Company-sponsored "employee benefit plan," as that term is defined in 29 U.S.C. §1002(3).

(e) Notwithstanding anything to the contrary in this Agreement, the AAA Employment Rules, the AAA Commercial Rules, any other AAA rule and/or procedure and/or any applicable law, Grantee and the Company agree to bring any Claim in arbitration on an individual basis only, and not as a class or collective action; Grantee and the Company waive any right for a Claim to be brought, heard, or decided as a class or collective action, and the Arbitrator has no power, jurisdiction or authority to preside over a class or collective action ("Class Action Waiver"). This Class Action Waiver, however, does not prevent Grantee from joining, opting into or participating in a pending class or collective action to which Grantee is a current or purported class member as of the date Grantee executes this Agreement. In addition and notwithstanding anything to the contrary in this Agreement, the AAA Employment Rules, the AAA Commercial Rules, any other AAA rule and/or procedure and/or any applicable law, Grantee and the Company waive any right for a Claim to be brought, heard or decided as a private attorney general representative action on behalf of other grantees ("Representative Action"), and the arbitrator has no power or authority to preside over a Representative Action ("Representative Action Waiver"). The Representative Action Waiver, however, does not apply to a Claim Grantee brings in arbitration as a private attorney general solely on his/her own behalf. Notwithstanding anything to the contrary in this Agreement, the AAA Employment Rules, the AAA Commercial Rules, any other AAA rule and/or procedure and/or any applicable law: (i) any dispute as to the interpretation, applicability, enforceability or formation of the Class Action Waiver and the Representative Action Waiver may only be determined by the United States District Court for the District of Colorado or the appropriate state court located in the City and County of Denver, Colorado and not by the Employment Law Arbitrator or Commercial Law Arbitrators, as the case may be (for the avoidance of doubt and without limitation of the foregoing, any dispute by the Company or Grantee regarding whether a Claim may be brought as a class or collective action or as a Representative Action must be decided by the courts listed above, and cannot be decided by the Employment Law Arbitrator or the Commercial Law Arbitrators); and (ii) in the event that any such court or other body of competent jurisdiction holds this Subsection 6(e) to be invalid, illegal, void, or less than fully enforceable to any extent or in any respect as to time, scope or otherwise, then Section 6 of this Agreement shall be deemed to have terminated in its entirety and shall be of no further force or effect.

(f) In addition and notwithstanding anything to the contrary in this Agreement, the AAA Employment Rules, the AAA Commercial Rules, any other AAA rule and/or procedure and/or any applicable law, the Company shall have the right to seek specific performance, a temporary restraining order, preliminary and permanent injunctive relief and/or other similar relief, as set forth in Subsection 7(u) of this Agreement, from a court. In the event that any such relief is sought from a court, at DISH's option, any or all Claims relating to the foregoing will thereafter remain with the applicable court(s) for resolution and will no longer be resolved by arbitration pursuant to this Agreement; provided, however, that the Claims and proceedings in the applicable court(s) shall at all times remain subject to the Class Action Waiver and Representative Action Waiver set forth in Subsection 6(e) of this Agreement. The parties mutually agree that the United States District Court for the District of Colorado and the appropriate state courts located in the City and County of Denver, Colorado shall have exclusive subject matter and personal jurisdiction to hear and decide any such action, and that any such court action shall be governed by the substantive law of the State of Colorado, without giving effect to choice of law principles. Grantee hereby irrevocably waives any and all objections that Grantee may now or hereafter have to the venue of any such proceeding brought in any such court, including, without limitation, any claim that such proceeding has been brought in an inconvenient forum.

(g) Nothing in this Section 6 prohibits Grantee from making a report or filing an administrative charge with a federal, state or local administrative agency of competent jurisdiction such as the National Labor Relations Board, the Equal Employment Opportunity Commission, the SEC or the Department of Labor. This Section 6 also does not prevent federal administrative agencies from adjudicating claims and awarding remedies based on those claims, even if such claims would otherwise be covered by this Section 6. Nothing in this Section 6 prevents or excuses a party from satisfying any conditions precedent and/or exhausting administrative remedies under applicable law before bringing a Claim in arbitration.

(h) AGREEMENT TO ARBITRATE APPLIES TO ALL EMPLOYMENT-RELATED DISPUTES AND UNITS DISPUTES. THIS SECTION 6 SHALL APPLY TO ALL EMPLOYMENT-RELATED DISPUTES AND UNITS DISPUTES UNDER THIS AGREEMENT AND ALL OTHER AWARD AGREEMENTS OR OTHERWISE, AND SUPERSEDES ANY AND ALL PRIOR AGREEMENT(S) TO ARBITRATE EMPLOYMENT-RELATED DISPUTES AND/OR UNITS DISPUTES BETWEEN GRANTEE AND THE COMPANY AND/OR ANY OF ITS DIRECT AND INDIRECT SUBSIDIARIES. IN THE EVENT OF ANY CONFLICT OR INCONSISTENCY BETWEEN THE AAA EMPLOYMENT RULES, THE AAA COMMERCIAL RULES, ANY OTHER AAA RULE AND/OR PROCEDURE AND/OR APPLICABLE LAW, ON THE ONE HAND, AND THE TERMS AND CONDITIONS OF THIS AGREEMENT, ON THE OTHER HAND, THE TERMS AND CONDITIONS OF THIS AGREEMENT SHALL CONTROL.

(i) The parties acknowledge that this agreement to arbitrate shall not alter the at-will nature of their employment relationship MEANING THAT YOU MAY TERMINATE YOUR EMPLOYMENT WITH THE COMPANY AND/OR ANY OF ITS DIRECT AND INDIRECT SUBSIDIARIES AT ANY TIME WITH OR WITHOUT CAUSE, AND WITH OR WITHOUT NOTICE, AND THE COMPANY AND/OR ANY OF ITS DIRECT AND INDIRECT SUBSIDIARIES RESERVE THE SAME RIGHTS TO TERMINATE YOUR EMPLOYMENT AND/OR DEMOTE YOU.

(j) EXCEPT FOR CLAIMS FOR SPECIFIC PERFORMANCE, A TEMPORARY RESTRAINING ORDER, PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF

AND/OR SIMILAR RELIEF, WHICH THE COMPANY SHALL HAVE THE RIGHT TO OBTAIN FROM A COURT AS SET FORTH IN SUBSECTIONS 6(f) and 7(u) OF THIS AGREEMENT (AND EXCEPT FOR CLAIMS RELATING TO ANY OF THE FOREGOING, WHICH, IN THE EVENT THAT DISH SO ELECTS PURSUANT TO SUBSECTION 6(f) ABOVE, SHALL THEREAFTER REMAIN WITH THE APPLICABLE COURT(S) FOR RESOLUTION AS SET FORTH IN SUBSECTION 6(f) OF THIS AGREEMENT), GRANTEE AND THE COMPANY MUTUALLY AND VOLUNTARILY AGREE TO ARBITRATE ALL CLAIMS COVERED BY THIS AGREEMENT. THE RIGHTS TO A TRIAL, TO A TRIAL BY JURY, TO CLAIMS FOR PUNITIVE AND/OR EXEMPLARY DAMAGES, TO ANY REMEDY NOT AVAILABLE UNDER THE SUBSTANTIVE LAW OF THE STATE OF COLORADO, WITHOUT GIVING EFFECT TO CHOICE OF LAW PRINCIPLES, AND TO ENGAGE AND/OR PARTICIPATE IN A CLASS ACTION, COLLECTIVE ACTION, PRIVATE ATTORNEY GENERAL REPRESENTATIVE ACTION AND/OR ANY OTHER REPRESENTATIVE ACTION ARE OF VALUE AND EXPRESSLY WAIVED PURSUANT TO THIS SECTION 6. AS SET FORTH ABOVE, NOTHING IN THIS SECTION 6 INFRINGES ON GRANTEE'S RIGHT TO FILE A CHARGE WITH ANY GOVERNMENT AGENCY; PROVIDED, HOWEVER, GRANTEE UNDERSTANDS, ACKNOWLEDGES, AGREES, AND HEREBY STIPULATES THAT GRANTEE'S RIGHT TO SEEK OTHER REMEDIES AND/OR PERSONAL RECOVERIES IS RESTRICTED AS SPECIFICALLY SET FORTH IN THIS SECTION 6.

7. Miscellaneous.

(a) Plan. The Units are issued pursuant to the Plan and are subject to the terms and conditions of the Plan. The terms and conditions of the Plan are available for inspection during normal business hours at the principal offices of the Company. The Committee has final authority to decide, interpret, determine and calculate any and all aspects of the Plan in its Sole Discretion.

(b) No Assurances of Employment; Shareholder Rights. Without limitation of Subsection 6(i) of this Agreement, this Agreement shall not confer upon Grantee any right with respect to continuance of employment with the Company or any of its direct or indirect subsidiaries, nor shall it interfere in any way with the right of the Company and its direct and indirect subsidiaries to terminate such employment or to demote Grantee for any reason or no reason at any time and from time to time. Grantee shall have none of the rights of a shareholder with respect to Common Shares subject to the Units unless and until such Common Shares shall have been issued to Grantee in accordance with this Agreement and the Plan (as evidenced by the records of the transfer agent of the Company).

(c) Adjustments. If there shall be any change in the Common Shares of the Company through merger, consolidation, reorganization, recapitalization, dividend in the form of stock (of whatever amount), stock split or other change in the corporate structure of the Company, then appropriate adjustments may be made by the Committee, in its Sole Discretion, to all or any portion of the Units that have not yet vested and been exchanged for Common Shares and have not been terminated or expired. Such adjustments may include, where appropriate, changes in the number of shares of Common Shares subject to the outstanding Units.

(d) This Agreement shall inure to the benefit of the Company's assigns and successors.

(e) Securities Laws. The Company shall at all times during the term of the Units reserve and keep available such number of Common Shares as will be sufficient to satisfy the requirements of this Agreement. If the Company in its Sole Discretion so elects, it may register

the Common Shares issuable upon vesting of the Units under the Securities Act of 1933, as amended (the "Securities Act"), and list the Common Shares on any securities exchange. In the absence of such election, Grantee understands that neither the Units nor the Common Shares issuable upon vesting of the Units will be registered under the Securities Act, or tradeable on any securities exchange, and Grantee represents that the Units are being acquired, and that such Common Shares that will be acquired pursuant to the Units, if any, will be acquired, by Grantee for investment and not with a view to distribution thereof. In the absence of an effective Registration Statement meeting the requirements of the Securities Act, upon any sale or transfer of the Common Stock issued pursuant to the Units, Grantee shall deliver to the Company an opinion of counsel satisfactory to the Company to the effect that the sale or transfer of the Common Shares does not violate any provision of the Securities Act or the Securities Exchange Act of 1934, as amended, and the Company in its Sole Discretion may impose restrictions upon the sale, pledge or other transfer of such Common Shares (including, without limitation, the placement of appropriate legends on certificates or the imposition of stop-transfer instructions on the certificates (or the book entries made by the Administrator to record the Common Shares), as applicable) if, in the judgment of the Company, such restrictions are necessary or desirable in order to achieve compliance with the Securities Act, the Exchange Act, the securities laws of any state and/or any other law.

(f) Dividends. The holder of the Units will not have any right to dividends or any other rights of a shareholder with respect to the Common Shares issuable upon vesting of the Units unless and until such Common Shares shall have been issued in accordance with this Agreement and the Plan (as evidenced by the records of the transfer agent of the Company).

(g) Confidentiality. Grantee agrees to treat as confidential the terms and conditions of this Agreement and the Units, and understands, acknowledges, agrees and hereby stipulates that failure to do so may result in immediate termination of all Units (which for the avoidance of doubt and without limitation of the foregoing includes both vested and unvested Units), in which case no Common Shares shall be issuable in connection therewith.

(h) Other Agreements. Except as expressly set forth to the contrary in Section 6 of this Agreement, the obligations of Grantee under this Agreement shall be independent of, and unaffected by, and shall not affect, other agreements, if any, binding Grantee that apply to Grantee's business activities during and/or subsequent to Grantee's employment by the Company.

(i) Survival. Any provision of this Agreement that logically would be expected to survive termination or expiration, shall survive for a reasonable time period under the circumstances, whether or not specifically provided in this Agreement (including, without limitation, Subsection 3(e), [REDACTED] and Section 6 of this Agreement). Except as set forth to the contrary in Subsections 3(d) and 5(a)(iv) of this Agreement, the obligations under this Agreement also shall survive any changes made in the future to the employment terms and conditions of Grantee, including, without limitation, changes in salary, benefits, bonus plans, job title and job responsibilities.

(j) Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement. Except as expressly provided by this Agreement, no waiver or modification of any of the terms or conditions of this Agreement (including, without limitation, this Subsection 7(j)) shall be effective unless in writing and signed by both parties.

(k) No Waiver. In addition to (and without limitation of) the other terms and conditions of this Agreement, the failure of the Company to insist upon strict performance of any

provision of this Agreement or any other agreement between the Company, on the one hand, and Grantee or any other grantee, on the other hand, shall not be construed as a waiver of the Company's right to insist upon strict performance of each and every representation, warranty, covenant, duty and obligation of Grantee hereunder. In addition to (and without limitation of) the foregoing, the election of certain remedies by the Company with respect to any Actual or Threatened Violation of this Agreement by Grantee or the breach, violation or default by Grantee or any other grantee of any other agreement between the Company, on the one hand, and Grantee or any other grantee, on the other hand, shall not be deemed to prejudice any right or remedy that the Company may have at law, in equity, under contract (including, without limitation, this Agreement) or otherwise with respect to a similar or different Actual or Threatened Violation of this Agreement by Grantee (all of which are hereby expressly reserved).

(l) Severability. Each provision of this Agreement shall be construed as separable and divisible from every other provision and the enforceability of any one provision shall not limit the enforceability, in whole or in part, of any other provision. Except as otherwise set forth in Subsections 3(b), 3(e) and 6(e) of this Agreement, in the event that a court, arbitrator or other body of competent jurisdiction holds any provision of this Agreement to be invalid, illegal, void, or less than fully enforceable to any extent or in any respect as to time, scope or otherwise, the parties agree that such provision shall be construed by limiting and reducing it to the minimum extent necessary to render such provision valid, legal and enforceable while preserving to the greatest extent permissible the original intent of the parties; the remaining terms and conditions of this Agreement shall not be affected by such alteration, and shall remain in full force and effect.

(m) Agreement Summaries. In the event that the Company provides Grantee (or anyone acting on behalf of Grantee) with summary or other information concerning, including or otherwise relating to Grantee's rights or benefits under this Agreement (including, without limitation, the Units, and any vesting thereof), such summary or other information shall in all cases be qualified in its entirety by this Agreement and the Plan and, unless it explicitly states otherwise and is signed by an officer of the Company, shall not constitute an amendment or other modification hereto.

(n) Grantee understands, acknowledges, agrees and hereby stipulates that Grantee is executing this Agreement voluntarily and without any duress or undue influence by the Company or anyone else.

(o) Grantee understands, acknowledges, agrees and hereby stipulates that the Units are intended to be consideration in exchange for the promises and covenants set forth in this Agreement and not in exchange for any prior service or continuance of employment with the Company or any of its direct or indirect subsidiaries or for anything else.

(p) Grantee understands, acknowledges, agrees and hereby stipulates that Grantee has carefully read, considered and understands all of the provisions of this Agreement and the Company's policies reflected in this Agreement.

(q) Grantee understands, acknowledges, agrees and hereby stipulates that Grantee has asked any questions needed for Grantee to understand the terms, consequences and binding effect of this Agreement and Grantee fully understands them, including, without limitation, that Grantee is waiving the right to a trial, a trial by jury, and claims for punitive and/or exemplary damages.

(r) Grantee understands, acknowledges, agrees and hereby stipulates that Grantee was provided an opportunity to seek the advice of an attorney and/or a tax professional of Grantee's choice before accepting this Agreement.

(s) Grantee understands, acknowledges, agrees and hereby stipulates that the obligations and restrictions set forth in this Agreement are consistent with Grantee's right to sell Grantee's labor, the public's interest in unimpeded trade, are fair and reasonable, and are no broader than are reasonably required to protect the Company's interests.

(t) Headings and Interpretation. Headings of sections of this Agreement are included for convenience only, will not be construed as part of this Agreement and will not be used to define, limit, extend or interpret the terms of this Agreement. Each capitalized term will apply equally to both the singular and plural forms thereof. The parties acknowledge and agree that: (i) they and their counsel have reviewed, or been given a reasonable opportunity to review, this Agreement and any exhibits to this Agreement; (ii) this Agreement and any exhibits to this Agreement shall be deemed to have been jointly drafted by the parties; and (iii) no ambiguity or claimed ambiguity shall be resolved against any party on the basis that such party drafted the language claimed to be ambiguous nor shall the extent to which any party or its counsel participated in drafting this Agreement and/or any exhibits to this Agreement be construed in favor of or against any party.

(u) Injunctive Relief. Grantee understands, acknowledges, agrees and hereby stipulates that it is the Company's policy to seek legal recourse to the fullest extent possible for any Actual or Threatened Violation of this Agreement, and that nothing in this Agreement shall be construed to prohibit the Company from pursuing any available right or remedy that the Company may have at law, in equity, under contract (including, without limitation, this Agreement) or otherwise against Grantee for any such Actual or Threatened Violation (all of which are hereby expressly reserved), including, without limitation, the recovery of damages from Grantee. Grantee further understands, acknowledges, agrees and hereby stipulates that: (i) Grantee's compliance with this Agreement is necessary to preserve and protect the Company's Confidential Information and/or Trade Secrets, among other things; (ii) any and all Actual or Threatened Violations of any of the covenants set forth in this Agreement (including, without limitation, [REDACTED]) by Grantee will result in irreparable and continuing harm to the Company, which will be difficult to ascertain and for which there will be no adequate monetary or other remedy at law; and, therefore, (iii) the Company will be entitled, in addition to any and all other remedies available at law, in equity, under contract (including, without limitation, this Agreement) or otherwise (all of which are hereby expressly reserved), to specific performance, an *ex parte* (without notice to Grantee) temporary restraining order, preliminary and permanent injunctive relief and/or other similar relief to enjoin and prevent any such Actual or Threatened Violation. Such specific performance and/or injunctive relief includes, without limitation, [REDACTED], to avoid conflicts of interest and to otherwise protect the Company from irreparable harm. Grantee understands, acknowledges, agrees and hereby stipulates that the Company does not need to post a bond in order to obtain injunctive relief and Grantee waives any and all rights to require such a bond.

(v) Fee Shifting. The prevailing party in any arbitration or court proceeding to enforce or interpret this Agreement or any provision thereof shall be entitled to recover its costs, expenses and reasonable attorneys' fees (at trial/arbitration and on appeal), amounts paid in the investigation, defense and/or settlement of such arbitration or court proceeding (including, for the avoidance of doubt and without limitation of the foregoing, costs and expenses incurred in negotiating a settlement, if applicable), and all other amounts allowed by law. For purposes of the preceding sentence, the "prevailing party" means the party initiating such proceeding in the event that such party is awarded any relief by the arbitrator or court (regardless of whether such relief is monetary

or equitable in nature) even, for the avoidance of doubt and without limitation of the foregoing, if such party did not prevail in all matters; otherwise, the “prevailing party” means the party defending against such proceeding. The “prevailing party” under (i) the complaint or similar filing or action, and (ii) any counterclaim or similar filing or action in any such proceeding shall be determined independently. Notwithstanding the foregoing, the first sentence of this Subsection 7(v) will not apply to any collateral claims not brought to enforce or interpret this Agreement, even if adjudicated contemporaneously. Nothing in this Agreement shall require Grantee to reimburse the Company for its costs, expenses and reasonable attorneys’ fees incurred when the Company prevails in defense of any statutory claim of unlawful discrimination, unless such claim brought by Grantee is frivolous, unreasonable or without foundation, or Grantee continues to prosecute a claim after the claim became frivolous, unreasonable or without foundation, in which cases Grantee will be required to reimburse the Company for its costs, expenses and reasonable attorneys’ fees (at trial/arbitration and on appeal), amounts paid in the investigation, defense and/or settlement of such claims (including, for the avoidance of doubt and without limitation of the foregoing, costs and expenses incurred in negotiating a settlement, if applicable), and all other amounts allowed by law. In the event either party hereto files a judicial or administrative action asserting claims subject to the arbitration provisions of this Agreement, and the other party successfully stays such action and/or compels arbitration of the claims made in such an action, the party filing the administrative or judicial action shall pay the other party’s costs, expenses and reasonable attorneys’ fees incurred in obtaining a stay and/or compelling arbitration.

Upon Grantee’s acceptance of the terms and conditions set forth in this Agreement through the electronic grant process available through the Administrator, this Agreement shall become effective between the parties as of the Grant Date.

DISH NETWORK CORPORATION
Charles W. Ergen, Chairman

GRANTEE – [Participant Name]
Accepted on [Acceptance Date]

CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS EXHIBIT, MARKED BY [***], HAS BEEN OMITTED FROM THIS EXHIBIT BECAUSE IT IS BOTH (I) NOT MATERIAL AND (II) WOULD LIKELY CAUSE COMPETITIVE HARM TO IF PUBLICLY DISCLOSED.

Master Network Services Agreement

between

T-Mobile USA, Inc.,

DISH Purchasing Corporation

and

solely for the purposes of Section 13

DISH Network Corporation

dated as of

July 1, 2020

TABLE OF CONTENTS

Page

1.	DEFINITIONS.....	2
2.	PROVISION OF SERVICE GENERALLY; NO INTEGRATION OF SERVICE.....	8
3.	CUSTOMER CARE.	10
4.	GOVERNMENT REGULATION, LAWFUL INTERCEPTS, AND 911.	10
5.	FEEES, PAYMENT, REPORTING, TAXES.....	12
6.	TERM AND TERMINATION.	15
7.	INTELLECTUAL PROPERTY RIGHTS.....	16
8.	CYBERSECURITY	17
9.	CONFIDENTIALITY.	18
10.	WARRANTIES; DISCLAIMER.	20
11.	INDEMNITIES.....	20
12.	GENERAL PROVISIONS.	22
13.	PARENT GUARANTY.	27

Annexes, Schedules, Attachments and Appendices

<u>Annex 1</u>	<u>Legacy Network Services and Cross-Provisioning Terms</u>
Schedule 1-A	Description of Services
<u>Annex 2</u>	<u>T-Mobile Network Service Terms</u>
Schedule 2-A	Description of Service
Schedule 2-B	IoT Addendum
<u>Annex 3</u>	<u>Infrastructure MNO Services Terms</u>
<u>Annex 4</u>	<u>Pricing</u>
Schedule 4-A to the Pricing Schedule	Wholesale Pricing for Plans Provisioned with Fixed High-Speed Allocation
Schedule 4-B to the Pricing Schedule	Wholesale Pricing for Retail Plans
Schedule 4-C to the Pricing Schedule	Wholesale Pricing for IoT Retail Plans

Master Network Services Agreement

This Master Network Services Agreement, dated this first day of July, 2020 (the “**Effective Date**”), is between T-Mobile USA, Inc. a Delaware corporation (“**T-Mobile**”), and DISH Purchasing Corporation, a Colorado corporation (“**DISH**”), and (but solely for purposes of Section 13), DISH Network Corporation, a Nevada corporation (“**Parent**”). T-Mobile and DISH are referred to individually as a “**Party**” and collectively as the “**Parties**”. Capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the Purchase Agreement (as defined below).

Recitals

WHEREAS, T-Mobile US, Inc., the parent company of T-Mobile, Sprint Corporation and Parent have entered into that certain Asset Purchase Agreement, dated as of July 26, 2019 (the “**Purchase Agreement**”), pursuant to which T-Mobile US, Inc. and Sprint Corporation have sold and transferred certain assets related to the Business (as defined in the Purchase Agreement) to Parent;

WHEREAS, in consideration of the Purchase Agreement, the Parties acknowledge and agree that they will work in good faith to support a transition commencing at Closing and continuing through the Term to evolve DISH’s pre-paid wireless communications services to a free standing, fully independent mobile network operator business, fully owned and administered by DISH;

WHEREAS, the Parties acknowledge and agree that such transition will include:

Legacy Network Services, which include activities involving (1) pre-Closing historic Boost/Sprint pre-paid subscribers whose contracts have been purchased by Dish Network Corporation (“**Legacy Boost Subscribers**”); and (2) End Users added and provisioned on DISH’s behalf by T-Mobile on the Legacy Network post-Closing; (collectively, the “**Legacy Network Subscribers**”);

T-Mobile Network Services, which include activities involving (1) Legacy Network Subscribers that have been migrated to the T-Mobile network; and (2) End Users added and provisioned by DISH on the T-Mobile Network post-Closing;

Infrastructure MNO Services, which include activities involving the deployment by DISH of certain network elements and the handover of End User traffic between DISH’s network elements and the T-Mobile Network; and

WHEREAS, in further consideration of the Purchase Agreement, the Parties’ ultimate objective is to facilitate DISH’s transition to operating as a fully independent facilities-based carrier;

WHEREAS, T-Mobile has the ability to provide access to wireless communications service within the Territory; and

WHEREAS, DISH desires to purchase and distribute wireless communications service to end user customers through the use of the Legacy Network and the T-Mobile Network within the Territory in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, including the acquisition of the Business by DISH and the other terms of the Purchase Agreement and Ancillary Agreements as connected terms to the terms of this Agreement, the Parties, intending to be legally bound, agree as follows:

Agreement

1. DEFINITIONS

- 1.1 “**Activations Footprint**” has the meaning given in the applicable Annex.
- 1.2 “**Affiliate**” means, with respect to a Person, any Person that, through one or more intermediaries, controls, is controlled by or is under common control with such Person. For purposes of this definition, “control” means direct or indirect ownership of more than 50% of the shares or other equity interests of the entity entitled to vote in the election of directors (or, in the case of an entity that is not a corporation, for the election of the corresponding managing authority). An entity will be considered an Affiliate only for so long as such ownership or control exists.
- 1.3 “**Agreement**” means this Agreement and all schedules, addenda, exhibits, annexes, appendices and attachments, all of which may be amended from time to time in accordance with this Agreement.
- 1.4 [***]
- 1.5 “**API**” means an electronic application programming interface.
- 1.6 “**AT&T**” means AT&T Inc. and its subsidiaries and controlled Affiliates.
- 1.7 “**Billing Cycle**” means the monthly billing cycle for Service usage as established and billed to DISH by T-Mobile.
- 1.8 “**CALEA**” means Communications Assistance for Law Enforcement Act.
- 1.9 “**Capital Stock**” means any and all shares, interests, participations, rights or other equivalents, however designated, of corporate stock or partnership or membership interests or other equity interests, whether common or preferred.
- 1.10 “**CDMA**” means code division multiple access wireless network technology.
- 1.11 “**Change of Control**” is defined in Section 12.8.
- 1.12 [***]
- 1.13 “**Closing**” has the meaning given in the Purchase Agreement.
- 1.14 “**Collected Taxes**” has the meaning given in Section 5.5(e).
- 1.15 [***]
- 1.16 “**Confidential Information**” is defined in Section 9.1.
- 1.17 “**CPNI**” means Customer Proprietary Network Information (as such term is defined in 47 U.S.C. Section 222(h)(1), as such provision may be amended at any time and from time to time).
- 1.18 “**Customer**” means a Person who directly or indirectly purchases services of the same or substantially the same type as the Service from T-Mobile. Customer does not include Persons who purchase Service from DISH or its Distribution Partners or End Users, or from Customers of T-Mobile (e.g., other mobile virtual network operators) under such Customers’ terms of service.

- 1.19 “**Device**” means a single unit of radio telephone equipment having a unique IMEI (including the associated SIM Card) for use in connection with its own Number which includes operating system and other software, and which is technically and operationally compatible with the applicable Facilities under Annex 1, Annex 2 or Annex 3, as the case may be.
- 1.20 “**DISH Facilities**” means the DISH RAN and DISH core network.
- 1.21 “**Distribution Partner**” has the meaning given in Section 2.3(a).
- 1.22 “**Domestic Long Distance**” means a communication from a Device with an assigned Number associated to one local access and transport area (“**LATA**”) to a telephone number associated with another LATA.
- 1.23 “**Effective Date**” has the meaning set forth in the Preamble.
- 1.24 “**End User**” means a Person who obtains Service directly or indirectly, but only as expressly permitted by this Agreement, from DISH under DISH’s terms of service..
- 1.25 “**End User Personal Data**” means any and all information relating to any DISH End User to which T-Mobile has access solely by virtue of (a) providing the Service under this Agreement or (b) acquiring such information pursuant to the Purchase Agreement, including, without limitation: (i) the IMEI, MSISDN, Number, names, addresses, email addresses, internet protocol addresses, other identifying information and/or other non-public information of any DISH End User; (ii) the fact that an individual is or was a DISH End User; (iii) CPNI; (iv) activation and suspension of service histories, service choices and preferences; and (v) other comparable information in each case related to any DISH End User’s use of the Service. For clarity, End User Personal Data is the sole Confidential Information of DISH.
- 1.26 “**Equipment**” means all or any portion of the equipment, software, technology, handsets, accessories, Devices, or other materials or equipment used by DISH in its business operation or by End Users in their use of Service.
- 1.27 “**Exchange Act**” means the Securities Exchange Act of 1934, as amended.
- 1.28 “**Facilities**” means the communications switching equipment and cell site transceiver equipment owned, operated, maintained, expanded, modified or replaced by T-Mobile or any of its wholly-owned subsidiaries to render Service or wireless communications services of the same or similar type as the Service to DISH, Customers, and End Users in the Territory.
- 1.29 “**FCC**” means the Federal Communications Commission.
- 1.30 “**Financial Investor**” means a non-strategic financial investor such as a retirement fund, a pension fund, exchange traded fund, sovereign wealth fund, or private equity fund.
- 1.31 “**Gigabyte**” or “**GB**” means 1,073,741,824 bytes.
- 1.32 “**Governmental Authority**” means any supra-national, or United States or foreign, national, federal, state, regional, municipal or local government (including any subdivision, court, tribunal, administrative agency or commission or other authority thereof) or any quasi-governmental authority, regulatory or administrative body or other private body exercising any legislative, judicial, regulatory, taxing, importing, self-regulatory or other governmental or quasi-governmental authority.

- 1.33 “**Governmental Order**” means any decision, ruling, order, requirement, writ, injunction, decree, stipulation, determination, award, binding agreement or judgment issued or entered by or with any Governmental Authority.
- 1.34 “**IMEI**” means International Mobile Equipment Identity, the unique permanently assigned identification number installed in each Device when it is manufactured.
- 1.35 “**Indemnified Parties**” has the meaning given in Section 11.1.
- 1.36 “**Indemnifying Party**” has the meaning given in Section 11.1.
- 1.37 “**Intellectual Property Rights**” means all intellectual property rights throughout the world, whether existing under intellectual property, unfair competition or trade secret laws, or under statute or at common law or equity, including but not limited to: (i) copyrights, trade secrets, Marks, patents, inventions, “moral rights,” mask works, rights of personality, publicity or privacy, and any other intellectual property and proprietary rights; (ii) any application or right to apply for any of the rights referred to in this clause; and (iii) any and all renewals, extensions and restorations thereof, now or hereafter in force and effect.
- 1.38 “**International Long Distance**” means a communication between a Device with an assigned Number in the Territory to a telephone number assigned to a location outside of the Territory.
- 1.39 “**Invalidated Evidence**” has the meaning given in Section 5.5(c).
- 1.40 “**Invoice**” means any invoice issued in accordance with Section 5.4(a).
- 1.41 “**Kilobyte**” or “**KB**” means 1,024 bytes. All Kilobytes under this Agreement will be rounded to the nearest whole Kilobyte. For example, 32.5 Kilobytes will be counted as 33 Kilobytes under this Agreement.
- 1.42 “**Laws**” mean United States federal, state or local, foreign, multinational or other law (including common law), statute, rule, ordinance, regulation or Governmental Order of any Governmental Authority.
- 1.43 “**Legacy Network**” means the Sprint CDMA & LTE network on which Boost/Sprint pre-paid subscribers receive service as owned and operated by Sprint at the time of the consummation of the Business Combination Agreement, dated as of April 29, 2018, and as such network is modified and maintained by T-Mobile from time to time thereafter.
- 1.44 “**Legacy Network Services**” means the Service that T-Mobile will provide under Annex 1.
- 1.45 “**Legacy Network Services Phase**” means the period commencing on the Effective Date and ending on the last day of the term under the Transition Services Agreement.
- 1.46 “**Legacy Systems**” means the information technology systems generally used by T-Mobile to provide provisioning and billing services to DISH in connection with activities on the Legacy Network.
- 1.47 “**Local Calling Area**” means the geographic area which includes the areas within a Rate Center (i) where T-Mobile actively manages Local Numbers (“**T-Mobile Rate Center**”), and (ii) from which a local exchange carrier offers at least one local calling plan to a T-Mobile Rate Center.

- 1.48 “**Local Number**” means a Number that T-Mobile provides to DISH, to which Number a local exchange carrier provides at least one local calling plan from the zip code submitted to T-Mobile by DISH as part of DISH’s request to activate Service to a SIM Card.
- 1.49 “**LTE**” means Long Term Evolution mobile communication standard of format (as defined in the applicable 3rd Generation Partnership Project (“**3GPP**”) standards) as the same may be modified, updated or amended from time to time.
- 1.50 “**Marks**” means trademarks, service marks, logos, designs, icons, slogans, trade dress, sounds, colors, company names, trade names, fictitious or assumed business names, top-level domains, social networking names or “handles”, or other source identifying devices
- 1.51 “**Megabyte**” or “**MB**” means 1,024 Kilobytes.
- 1.52 “**MMS**” means a multi-media message service message that may include graphic, audio or video in addition to text.
- 1.53 “**MMSC**” means a mobile messaging service center operated by or for T-Mobile that manages the distribution of MMS to End Users.
- 1.54 “**MNO Service**” means the Service made available to DISH pursuant to Annex 3.
- 1.55 “**MSISDN**” means the Mobile Subscriber Integrated Services Digital Network Number uniquely identifying a SIM Card.
- 1.56 “**Number**” means the ten digit telephone number (Numbering Plan Area/Numbering Plan Exchange) assigned by T-Mobile to a SIM Card used to provide access to Service.
- 1.57 “**Parent Entity**” means, with respect to any Person, any other Person that, directly or indirectly, holds more than 50% of the Voting Power of such first Person.
- 1.58 “**Permitted Owner**” means any Person who is the “beneficial owner” (as defined in Rule 13d-3 promulgated under the Exchange Act), directly or indirectly, of more than 50% of the Voting Power, provided that such Person is: (a) the Principal; (b) any Financial Investor; or (c) [***].
- 1.59 “**Person**” means any individual, subsidiary, corporation, limited liability company, partnership, co-partnership, firm, joint venture, association, joint stock company, trust, estate, unincorporated organization, governmental or regulatory body or other entity.
- 1.60 “**Personnel**” has the meaning given in Section 2.3(b).
- 1.61 “**PTCRB**” means PCS Type Certification Review Board.
- 1.62 “**Premium Customers**” means Customers who purchase T-Mobile’s then-current premium or primary prepaid retail offering (on the T-Mobile Network, such offering is currently the Metro offering).
- 1.63 “**Principal**” means, collectively, (a) Charles W. Ergen, (b) the spouse and each immediate family member of the person named in clause (a), and (c) each trust, corporation, partnership or other entity (an “**Other Entity**”) of which a person or persons described in clause (a) or (b) directly or indirectly holds at least 80% Voting Power or beneficial interest, if all other Voting Power and beneficial interest in such Other Entity (i) is connected to estate planning activities, (ii) was not purchased by and is not held by any third-party investor in any Parent Entity or Party holding the

Wireless Communications Business (excluding for the purpose of this clause (ii) common equity of Dish Network Corporation representing less than 5% of the outstanding Capital Stock of Dish Network Corporation) and (iii) does not convey pass-through Voting Power in respect of any Capital Stock of any other Person that is directly or indirectly owned by such Other Entity.

- 1.64** “**Proceeding**” has the meaning given in Section 12.18.
- 1.65** “**Purchase Agreement**” has the meaning assigned to such term in the Recitals.
- 1.66** “**Quarter**” means a calendar quarter or, to the extent the context requires, a portion thereof.
- 1.67** “**Rate Center**” means a geographic area that is used by a local exchange carrier to set rate boundaries for billing and for issuing Numbers.
- 1.68** “**Representatives**” mean, with respect to a Party, such Party’s Affiliates and its and their respective directors, officers, employees, agents and advisors.
- 1.69** “**Restricted Owner**” means:
- (a) on or prior to the last day of the thirty-sixth (36th) month of the Term (the “**Transition Date**”), any “person” or “group” (as such terms are defined in Section 13(d) of the Exchange Act), other than a Permitted Owner or a Financial Investor; and
- 1.70** on the earlier of: (i) the Transition Date, or (ii) [***], any “person” or “group” (as such terms are defined in Section 13(d) of the Exchange Act) that is any of: (x) AT&T Inc. or Verizon Wireless or their respective successors, (y) any of [***] or their respective successors (“**Cable Companies**”), unless any **Cable Company**, prior to becoming a Restricted Owner, has entered into a mutually beneficial reciprocal facility sharing arrangement regarding broadband with T-Mobile as a condition precedent or (z) any Person (including any **Cable Company**), other than a Financial Investor, unless, prior to becoming a Restricted Owner, such Person has entered into a network usage agreement with T-Mobile, as a condition precedent, which prevents such Person from (A) [***], (B) [***], and (C) [***]. Any disputes arising from the negotiation of such a network usage agreement, reciprocal facility sharing arrangement, or any term in this section shall be resolved by the Antitrust Division of the United States Department of Justice in its sole discretion, provided such discretion shall be exercised in a reasonable manner.
- (a) A Permitted Owner or a Financial Investor shall not be a Restricted Owner, notwithstanding anything to the contrary in this Agreement.
- 1.71** “**Roaming**” means the service provided to a Customer or to DISH and its End Users via communications switching equipment or cell site transceiver equipment that is operated by a Person other than T-Mobile or its wholly owned subsidiaries, and with whom T-Mobile has an agreement to provide such services to Customers.
- 1.72** “**Roaming Carriers**” means Persons with whom T-Mobile has agreements for the provision of Roaming to Customers.
- 1.73** “**Service**” means the “Service” as defined in Annex 1, Annex 2 and/or Annex 3, as applicable.
- 1.74** “**Service Transaction Gateway**” means an API between T-Mobile and DISH through which DISH may view and perform transactions related to End Users’ SIM Cards.
- 1.75** “**SIM Card**” means Subscriber Identity Module card.

- 1.76 “**SMS**” means a short message service text message with up to 160 characters of 7-bit ASCII text or 140 bytes of data sent from (i.e., SMS-Mobile Originated (“**SMS MO**”)) or to (i.e., SMS-Mobile Terminated (“**SMS MT**”)) an End User’s Device.
- 1.77 “**Taxes and Fees**” has the meaning given in Section 5.5(a).
- 1.78 “**Territory**” or “**Territories**” means the United States of America (including the U.S. Virgin Islands and Puerto Rico).
- 1.79 “**T-Mobile Network**” means the wireless network generally accessible to Customers and to DISH and its End Users (i.e., currently LTE), and including future updates, improvements or releases to such network technologies (“**Updates**”; for clarity, upon deployment, 5G and 6G are Updates; provided, however that Updates to the T-Mobile Network for purposes of IoT Service are only as described in the IoT Addendum), including the Facilities that are operated by T-Mobile or any of its wholly-owned subsidiaries, and any successor networks to the T-Mobile Network that are operated by T-Mobile to provide the Service as contemplated by Section 2 or, subject to the express terms of this Agreement, wireless communications services of the same or similar type as the Service. The T-Mobile Network does not include the Legacy Network or any facilities operated by roaming carriers or by any entity that is not T-Mobile or a T-Mobile wholly-owned subsidiary.
- 1.80 “**T-Mobile Network Service**” means the Service that T-Mobile will provide under Annex 2.
- 1.81 “**T-Mobile Terms and Conditions**” means the T-Mobile Terms and Conditions located at www.T-Mobile.com, as updated by T-Mobile from time to time.
- 1.82 “**Transaction**” means any transaction or series of transactions (whether by way of acquisition, merger, consolidation, share exchange, business combination, recapitalization or reorganization, or other transaction or series of transactions).
- 1.83 “**Transition Services Agreement**” has the meaning given in the Purchase Agreement.
- 1.84 “**Verizon**” means Verizon Communications Inc. and its subsidiaries and controlled Affiliates.
- 1.85 “**Voting Power**” means the voting power of the shares of Capital Stock entitled to vote (including the voting power of any shares of Capital Stock or convertible or voting indebtedness that, subject to the occurrence of any contingency, exercise or conversion, would be entitled to vote, assuming the occurrence of such contingency, exercise or conversion) in the election of directors (or, in the case of an entity that is not a corporation, for the election of the corresponding managing authority) who control the management and decision-making authority and policies of a Person.
- 1.86 “**Wireless Communications Business**” means the wireless customers, brands, network access rights and other wireless terrestrial telecommunications assets of DISH and its Affiliates, taken as a whole; provided that “Wireless Communications Business” shall exclude (x) all wireless terrestrial spectrum licenses and (y) interests in entities in which (i) all or substantially all of the wireless terrestrial spectrum licenses are held and (ii) no wireless customers, brands, network access rights or other wireless terrestrial telecommunications assets are held. For avoidance of doubt, the term “wireless customers” does not include any pay-TV direct broadcast satellite or over-the-top internet video customers.

2. PROVISION OF SERVICE GENERALLY; NO INTEGRATION OF SERVICE

2.1 Subject to the terms and conditions of this Agreement, T-Mobile will provide to DISH:

- (a) Legacy Network Services under Annex 1 (Legacy Network Services) during the Legacy Network Service Phase;
- (b) the T-Mobile Network Service under Annex 2 (T-Mobile Network Service); and
- (c) The MNO Service under Annex 3 (Infrastructure MNO Services).

2.2 [***]. Effective as of the Effective Date and thereafter throughout the Term, DISH may enter into one or more agreements with third parties that allow [***]. Subject to the limitations set forth in this Section 2.2 and the restrictions in the Transition Services Agreement, DISH will have the right to offer differentiated pricing, products and services (including post-paid services) and features under such brands as it may elect in conjunction with the Service. This Agreement is not exclusive for T-Mobile, and T-Mobile may engage other dealers, agents, and other Representatives and T-Mobile and others may directly compete with DISH in the Territory and elsewhere.

2.3 DISH's Sale of Service.

- (a) **Distribution Partners.** DISH may, in the ordinary course of its business and subject to Section 2.4, use agents, retailers, distributors and dealers to directly or indirectly market, sell and solicit orders for the Service under brands owned by DISH or its wholly owned affiliates to End Users, provided that the End Users' Service contract and relationship is with DISH or its wholly owned affiliates ("**Distribution Partners**"). DISH is fully responsible for all acts and omissions of its Distribution Partners and will require that Distribution Partners adhere to all terms and conditions of this Agreement. Acts or omissions of any Distribution Partner will be deemed acts or omissions of DISH for purposes of determining whether there has been a breach of this Agreement.
- (b) **Personnel.** DISH is fully responsible for all acts and omissions of its employees and contractors (collectively, "**Personnel**") and will require that Personnel adhere to all terms and conditions of this Agreement. Any breach by any Personnel (acting in their capacity as such) of the terms of this Agreement applicable to DISH including its Personnel (in their capacity as such) will be considered a breach by DISH.

2.4 **Branding and Resale Restriction.** DISH and its wholly owned affiliates may sell or distribute the Service, and will allow Distribution Partners to sell or distribute the Service (as further described in Section 2.3), [***]. DISH and its wholly owned affiliates may sell or distribute the Service in a bundle with any other party's service so long as [***]. DISH will make all pricing decisions, control End User Personal Data, and control all billing processes [***]; provided that such services may be provided in part or whole by T-Mobile under the direction of DISH pursuant to the Transition Services Agreement. Subject to the rights expressly granted in the previous sentence, DISH and its Distribution Partners may not wholesale, sub-distribute or resell the Service or any component thereof to [***]. Without limiting the foregoing, DISH may not sell or provide access to the Service to any Person for the purpose of that Person re-selling or using the Service under such Person's own brand or pursuant to a Service contract between the end user and any Person other than DISH. DISH and its Distribution Partners may not sell or distribute the Service to End Users for an End User's resale or further commercial distribution of the Service. Notwithstanding anything to the contrary set forth herein, in no event shall [***].

2.5 Customer Service and Communications. Unless DISH is required by applicable Laws, DISH will not use any T-Mobile Mark or T-Mobile's name in its End User materials, including but not limited to DISH's packaging, marketing, and promotional materials, coverage maps, End User contracts, SIM Cards, Devices, the handset display, point of sale materials, or any other products, services, materials, publicity or other communications without T-Mobile's prior written consent, which T-Mobile may withhold in its sole discretion. "**T-Mobile Mark**" means any T-Mobile name, tradename, mark, trademark, service mark, trade dress (including color), brand, and logo. DISH will not, directly or indirectly, [***]. T-Mobile will enable DISH to port Numbers off of the T-Mobile Network. DISH will not indicate in its End User agreements that an End User may acquire a proprietary interest in any Number assigned to it, unless required by applicable law, and then only to the extent so required.

3. CUSTOMER CARE.

3.1 Customer Care. DISH will provide all customer service to its End Users, including without limitation issues related to (a) the issuance, sale, adjustment, modification, addition, replenishment, or recharge of any Service, (b) End User requests, (c) Devices, and (d) standard account maintenance. DISH is responsible for the development of the required training materials and tools to educate customer service resources. DISH may not provide or disclose T-Mobile's customer care number to any Person other than an Affiliate for purposes consistent with this Agreement. T-Mobile has no obligation to provide customer care tools to DISH under this Agreement, but, if T-Mobile does, DISH will not provide access to the customer care tools directly to End Users. Each Party will provide to the other contact information for escalation of customer care support between T-Mobile and DISH.

3.2 Scope. T-Mobile customer care representatives will use commercially reasonable efforts to address and respond to DISH representatives that raise End User issues relating to advanced provisioning, advanced voicemail and troubleshooting with respect to T-Mobile's network infrastructure. For all other issues, DISH will only use the customer support tools provided by T-Mobile for submitting such issues to T-Mobile.

4. GOVERNMENT REGULATION, LAWFUL INTERCEPTS, AND 911.

4.1 Compliance with Laws and Regulations.

- (a)** Each Party represents, warrants, and covenants that, with respect to its activities in furtherance of or in connection with provision or use of the Service under this Agreement, it will:
 - (i)** comply in all material respects with all applicable Laws including, but not limited to, all electronic surveillance Laws, Laws relating to personal identifiable information, privacy Laws, any and all state public utility commission registrations, Taxes and Fees, CALEA and implementing rules, the Communications Act of 1934, as amended, international long distance (i.e., "**Section 214 authority**"), and the FCC implementing rules and orders (e.g., CPNI) rules, compliance programs, certifications and filings, and
 - (ii)** not negligently cause the other Party to be in material violation of any applicable Laws.
- (b)** DISH is solely responsible for, and accordingly is solely liable for, all Numbers, including ensuring that all Numbers are assigned, used and disconnected in accordance with all

applicable Laws and industry numbering resource guidelines. With respect to Numbers that T-Mobile makes available to DISH, until such time as DISH is providing services to end users pursuant to Annex 3, T-Mobile will remain the “Primary Carrier” and DISH will remain the “Intermediate Non-Carrier Entity” as defined by the regulations of the Federal Communications Commission. The Parties shall agree to modifications to this Agreement that are reasonably necessary to comply with any change in Laws related to its practices.

Each Party must store all of its subscriber information (including without limitation call transactional data, call associated data, call identifying data, subscriber information and subscriber billing records (and including End User Personal Data with respect to DISH) in the United States. Each Party may not provide, authorize, or allow any third party (including Affiliates) to provide any subscriber information to any non-United States government except as required by applicable non-United States law and permitted by applicable Law. Each Party will ensure that any and all subscriber information is not and will not be subject to any mandatory foreign destruction laws.

- 4.2 Subpoenas.** DISH will comply with lawful process. DISH and T-Mobile will cooperate in good faith in responding to lawful process in connection with provision or use of the Service under this Agreement. T-Mobile is authorized to act on behalf of DISH in responding to lawful process regarding call-related information within its custody or control. T-Mobile will only be responsible for responding to lawful process with respect to call-related information to the extent within its custody and control (i.e., DISH does not have the information). DISH is responsible for responding to all subpoenas for information beyond T-Mobile’s obligation set forth in the preceding sentence. DISH will give T-Mobile a toll-free telephone contact number that will be available at all times (24/7/365) to which T-Mobile may refer subpoena requests for End User information and call-related information that T-Mobile does not have.
- 4.3 Lawful Intercepts.** Each Party agrees to cooperate with the other regarding government requests for lawful intercepts of an End User pursuant to a valid court order. T-Mobile shall provide a lawful intercept compliance solution for the Service that satisfies the lawful intercept capability and capacity obligations of T-Mobile and DISH under CALEA. T-Mobile may set, and DISH will communicate to the applicable Governmental Authority, a commercially reasonable fee for the purpose of recovering the costs of an intercept (“**Intercept Fee**”), provided that in any event T-Mobile shall comply with CALEA for the Service if required by Law. T-Mobile has the right to directly bill the Governmental Authority seeking the lawful intercept for the Intercept Fee. DISH is not entitled to any portion of the Intercept Fee. T-Mobile is authorized to act on behalf of DISH in responding to requests for lawful intercepts with regard to End Users, provided that T-Mobile provides prior written notice of such lawful intercepts as permitted by applicable Law.
- 4.4 911 Calls.** T-Mobile will reply to requests from 911 calling centers relating to End Users in substantially the same manner as it does for calls relating to its own subscribers, and will provide calling and location information, to the extent that it is available to T-Mobile, consistent with its internal practices relating to 911 calls. T-Mobile is hereby authorized to act on behalf of DISH in responding to 911 public safety answering points with regard to End Users. DISH understands and agrees that 911 calls while Roaming may be handled by the Roaming Carrier. This Section 4.4 does not apply in connection with the Service provided under Annex 3.
- 4.5 Targeting and Use of End User Personal Data.** During and after the Term, [***].
- 5. FEES, PAYMENT, REPORTING, TAXES.**
- 5.1 Payment Obligations.** As more fully described in this Section 5, DISH is solely responsible for the payment of all fees, charges and other amounts as set forth in this Agreement including, but not

limited to, all Service access and usage with respect to any Service including without limitation all amounts related to Fraudulent Usage (as defined in the applicable Annex).

5.2 Schedule of Service Rates, Charges, Fees and Other Amounts. In consideration for the Service to be provided in this Agreement, DISH will pay T-Mobile the amounts for Service set forth in Annex 4 (Pricing) of this Agreement.

5.3 Calculation for Service. T-Mobile will calculate the volume of Service used by End Users in accordance with the applicable procedures set forth in Annex 4.

5.4 Invoice and Billing.

(a) **Invoice.**

(i) Within 30 days after the end of each Billing Cycle, T-Mobile will provide DISH with a summary invoice (the “**Invoice**”) of the charges, fees, deposits, and other amounts owed to T-Mobile, except that any delay on the part of T-Mobile in sending out any Invoice will not relieve DISH of the obligation to pay the amounts reflected in the Invoice when received. DISH will pay T-Mobile the amounts set forth in each Invoice within 60 days after the date of receipt of the electronic Invoice. T-Mobile represents that as of the Effective Date, it does not provide any other mobile virtual network operator Customer payment terms that are longer than the foregoing. [***]. Nothing in this Agreement will affect T-Mobile's right to amend, modify, change or otherwise update its Billing Cycle or billing systems.

(b) **Disputes.** DISH must notify T-Mobile of any disputed Invoice amounts within 30 days after receipt of the Invoice, and the Parties will work in good faith to expeditiously resolve any dispute. Regardless of any notations that may accompany any payment, T-Mobile’s acceptance of any payment will not be deemed a waiver of any disputed amounts or Invoices. If there is a dispute over any Invoice, DISH will nevertheless promptly remit to T-Mobile the full amount of the Invoice. DISH expressly acknowledges that some charges incurred in a Billing Cycle may not appear on the Invoice for the Billing Cycle and that the charges will appear on subsequent Invoices. DISH is responsible for payment of any and all charges that are delayed or appear on any subsequent Invoice(s) for fees incurred within 180 days before the Invoice date. [***].

5.5 Taxes and Governmental Fees.

(a) T-Mobile: (i) will [***]. Notwithstanding anything to the contrary contained in this Agreement, [***].

(b) DISH, in its sole discretion, will utilize the best information available to it to determine the correct situs for Taxes and Fees applicable to Service purchased by DISH under this Agreement.

(c) T-Mobile and DISH agree and acknowledge that, under this Agreement, DISH is purchasing Service for resale to DISH’s End Users and that DISH has an obligation to ensure that any necessary resale certificate is valid and has been provided to T-Mobile. Any resale certificate provided will only apply to Taxes and Fees incurred after the date T-Mobile receives the certificate. If the certificate is later found to be invalid by a governmental entity (“**Invalidated Evidence**”) where the certificate was used to avoid the payment of any Taxes and Fees by DISH, then DISH is responsible for, and will promptly

remit to T-Mobile or the applicable governmental entity, all tax, interest and penalties levied or imposed upon T-Mobile due to the Invalidated Evidence. If (i) DISH does not provide or maintain a valid certificate, or (ii) a certificate is not applicable in a particular jurisdiction, T-Mobile may invoice DISH and DISH will remit, all taxes applicable in that jurisdiction with respect to the transactions or payments contemplated under this Agreement. DISH agrees that it will provide any governmental forms or documentation that T-Mobile may require to satisfy its federal, state or local governmental reporting requirements.

- (d) If DISH believes it is exempt from any tax, regulatory fee, or charge for any reason other than on the basis of a resale exemption, DISH will provide T-Mobile with appropriate documentation evidencing the claimed exemption and T-Mobile will exempt DISH to the extent that T-Mobile is satisfied in its reasonable discretion that the exemption is in accordance with applicable law. T-Mobile will provide an explanation of the computation of Taxes and Fees due from DISH promptly after DISH's request. If T-Mobile becomes aware that any Taxes and Fees were incorrectly or erroneously collected from DISH, upon confirmation of the amount and period involved and subject to an open statute of limitations, T-Mobile will notify DISH and will promptly refund or credit DISH the incorrectly or erroneously collected Taxes and Fees. T-Mobile and DISH will work cooperatively to take reasonable steps to minimize Taxes and Fees in accordance with all relevant laws, regulations and judicial decisions.
- (e) DISH is also responsible for determining, billing and remitting the [***].
- (f) All payments made by DISH under this Agreement will be made without any deduction or withholding for or on account of any taxes or regulatory charges or fees imposed by any taxing or Governmental Authority of any country or state unless DISH is or was required by Law to make any such deduction or withholding.

5.6 Audits

- (a) T-Mobile may cause an independent third party auditor selected by DISH and reasonably acceptable to T-Mobile (an "**Auditor**") to audit the books, and records of T-Mobile to the extent necessary to determine T-Mobile's compliance with this Agreement with respect to the amounts paid or payable pursuant to Annex 4. The Parties agree that the "big four" accounting firms will be reasonably acceptable to T-Mobile. DISH shall have the right to cause an Auditor to audit the books and records of T-Mobile once in any twelve-month period during the period that T-Mobile is obligated to provide the Service. DISH shall also have the right to cause an Auditor to audit the books and records of T-Mobile pertaining to the Service within twelve months after the final payment is made by DISH to T-Mobile pursuant to this Agreement.
- (b) Any audit shall be conducted during regular business hours and in a manner that complies with the building and security requirements of T-Mobile. Such audits shall not interfere unreasonably with the operations of T-Mobile. DISH shall provide notice to T-Mobile not less than 30 calendar days prior to the commencement of the audit and shall specify the date on which the audit will commence. DISH shall pay the costs of conducting such audit, including the reasonable out-of-pocket costs of T-Mobile and its Affiliates for cooperating with such audit, unless the results of an audit reasonably indicate an overpayment by DISH of 5% or more, in which case T-Mobile shall pay the reasonable out-of-pocket costs of DISH up to the amount of the overpayment. If an audit reveals that DISH has overpaid T-Mobile by any amounts, T-Mobile shall pay to DISH the amount of such overpayment,

without set-off or deduction. If an audit reveals that DISH has underpaid T-Mobile by any amounts, DISH shall pay to T-Mobile the amount of such underpayment, without set-off or deduction.

- (c) Prior to any audit conducted pursuant to this Section 5.6, DISH shall cause the Auditor to enter into an agreement reasonably acceptable to T-Mobile that prohibits the Auditor from disclosing certain specified information in the books and records to DISH or any of its Affiliates or any of its or their Representatives other than in summary form and other than as may be reasonably required to provide DISH with information necessary to demonstrate the amount of any underpayment or overpayment. T-Mobile shall be named an intended third party beneficiary of such agreement with a right to directly enforce its terms.

5.7 [***]. T-Mobile represents and warrants that, as of the Effective Date, [***].

6. TERM AND TERMINATION.

6.1 **Term.** Subject to the rights of termination set forth in this Section 6 and in Section 12.3, and to the terms of Section 12.8, the term of this Agreement will begin on the Effective Date and will continue until the seventh anniversary of the Effective Date (the “**Term**”).

6.2 Termination for Cause.

- (a) Upon 30 days prior written notice to the other Party, a Party may terminate this Agreement for cause upon Default by the other Party as specified in this Section 6.2(a), provided that such other Party has not cured (or commenced to cure with respect to Defaults that are not reasonably capable of cure within 30 days, in which case the Default must be cured within 15 more days for a total of 45 days) the Default during the 30 or 45 day period, whichever is applicable, after the date of the notice. “**Default**” means and includes each of the following under this Agreement:

- (i) the material violation or breach of any FCC rule or regulation in connection with the Service, which violation or breach has a material adverse effect on the non-breaching Party; or
- (ii) the material violation or breach of any other Law or other requirement of a governmental entity in connection with the Service, which violation or breach has a material adverse effect on the other Party.

- (b) **Suspension Default.** T-Mobile may suspend DISH’s access to the Service Transaction Gateway to [***] (provided that DISH may continue to access the Service Transaction Gateway to support [***]) and T-Mobile may [***] in the event there is a Suspension Default by DISH that has not been cured within [***] days from the date of the Suspension Default, where a “**Suspension Default**” means a [***]. T-Mobile may suspend DISH’s access to the Service Transaction Gateway [***]. Once the Suspension Default or [***] has been cured, T-Mobile will restore any previously suspended access to the Service Transaction Gateway.

6.3 **Termination Upon Mutual Agreement.** The Parties may agree by mutual written agreement to terminate this Agreement.

6.4 **Survival of Obligations.** The following sections will survive any termination or expiration of this Agreement: Sections 1, 5.5, 5.6, 6.4, 6.5, 7, 9, 10, 11, 12 and 13. Termination or expiration of this

Agreement will not release either Party from any liability that has already accrued to the other Party at the time of termination or expiration or that thereafter may accrue with respect to any act or omission prior to termination or expiration, or from any obligation that is stated in this Agreement to survive termination or expiration.

6.5 Post Termination/Expiration Obligations. Upon termination or expiration of the Agreement for any reason:

- (a) DISH will promptly cease production of any new promotional materials and marketing campaigns related solely to the Service;
- (b) DISH will promptly discontinue the activation of new End Users; provided that all activations of End Users that occur within five business days following the termination or expiration date will be deemed to have occurred prior to such termination or expiration; and
- (c) DISH will remain solely responsible for its obligations to Distribution Partners and End Users and for all charges incurred by DISH or its End Users for the Service, including any charges incurred after the date of expiration or termination.
- (d) Except for T-Mobile's termination of this Agreement for cause pursuant to Section 6.2, in which case T-Mobile is not obligated to provide any post termination assistance, upon expiration or termination of this Agreement, unless DISH has provided T-Mobile written notice that it intends to exit and discontinue its operations at least 180 days before the end of the Term, it will be assumed by both Parties that DISH will continue its operations for its existing End Users at such time, and T-Mobile and DISH will cooperate solely as necessary to enable existing End Users to continue the Service (including the ability for such existing End Users to purchase additional Service) with minimal disruption. DISH is solely responsible for compliance with any and all federal, state, and local regulatory compliance obligations Laws relating to notices of cessation or suspension of Service to End Users.

7. INTELLECTUAL PROPERTY RIGHTS.

7.1 Ownership of Equipment and Service. DISH acknowledges that the Facilities and Service involve valuable Intellectual Property Rights of T-Mobile and its licensors. As between DISH and T-Mobile, T-Mobile retains all right, title, and interest in and to the Facilities and the Service, and no title to or ownership of any Intellectual Property Rights associated with any Facilities or Service are transferred to DISH or any End User under this Agreement.

7.2 Protection of T-Mobile Rights. DISH will promptly notify T-Mobile of any infringement, misappropriation, or violation of any Intellectual Property Rights of T-Mobile or the licensor) of the T-Mobile Mark that comes to DISH's attention and that is related to performance under this Agreement. Nothing set forth herein may be construed as a license from T-Mobile to use any T-Mobile Intellectual Property Rights, including but not limited to T-Mobile Marks, to DISH or any Distribution Partner. DISH will not and DISH will ensure that its Distribution Partners will not adopt or use any Marks that are identical or confusingly similar to T-Mobile Marks in connection with activities under this Agreement. DISH will not and DISH will use commercially reasonable efforts to ensure that its Distribution Partners will not infringe or violate any Intellectual Property Rights of T-Mobile in connection with activities under this Agreement, and will use its commercially reasonable efforts to preserve and protect T-Mobile's and its licensor's interest (with respect to the T-Mobile Mark) in their respective Intellectual Property Rights. In the event of any

infringement, misappropriation or violation by or resulting from the activities of DISH or any of its officers, employees, agents, Distribution Partners, contractors, End Users, or Representatives, DISH will promptly report the infringement, misappropriation, or violation to T-Mobile and T-Mobile will take all steps T-Mobile deems reasonably necessary to terminate the infringement, misappropriation or violation. T-Mobile or its designee will have exclusive control over the prosecution and settlement of any legal Proceeding to enforce, to recover damages on account of any infringement, misappropriation or violation, and to defend any of its or its licensor's Intellectual Property Rights.

Without limiting the generality of the foregoing, DISH will: (a) provide such assistance related to the Proceeding as T-Mobile may reasonably request; and (b) reasonably assist T-Mobile in enforcing any settlement or order made in connection with the Proceeding; provided that T-Mobile will reimburse the expenses reasonably incurred by DISH to provide the assistance in accordance with T-Mobile's requests for the assistance.

8. CYBERSECURITY

8.1 Vulnerability Management. In T-Mobile's performance of the Services, T-Mobile will employ industry standard tools and practices to identify and remediate vulnerabilities or weaknesses in the Facilities or the T-Mobile network software. T-Mobile will provide or cause to be provided documentation of T-Mobile's patch management program(s) and update process(es), which will include such T-Mobile: (i) method(s) or recommendation(s) for how the integrity of a patch is to be validated by DISH and (ii) approach(es) and capability or capabilities to remediate newly reported zero-day vulnerabilities. T-Mobile will make commercially reasonable efforts to ensure that any software incorporated into, or intended to be incorporated into, the Service includes all known available updates and all known available patches for the remediation of any and all known vulnerabilities or weaknesses; provided that with respect to remediation of vulnerabilities and weaknesses: (a) at the time of delivery T-Mobile will make commercially reasonable efforts to ensure that such software includes all available updates and patches for the remediation of all then known critical and high priority vulnerabilities and weaknesses with such remediation subject to approval by DISH and (b) T-Mobile will make commercially reasonable efforts to provide a report on all then known vulnerabilities and weaknesses and a plan for prioritization and remediation thereof with such remediation subject to approval by DISH.

8.2 Software Logs. T-Mobile will make commercially reasonable efforts to maintain, at all times during which the Service is provided, accurate and complete logs of all software updates and software versions and software releases related to any software required for DISH or any End User to receive the Service. Such logs will be available for audit by DISH upon request, and T-Mobile will make such logs available as soon as reasonably practicable. In the event that such logs do not provide sufficient information or detail for any purposes related to DISH's cybersecurity audits, T-Mobile will cooperate and provide such further relevant information as reasonably requested by DISH and will permit a third party designated by DISH, to inspect T-Mobile's records related to any such software.

8.3 Inappropriate Data Collection. T-Mobile represents, warrants, covenants and agrees that at no time during the Term will T-Mobile, its wholly owned subsidiaries, subcontractors or vendors directly or indirectly (through the Facilities or any required T-Mobile network software) engage in any collection, use, distribution or storage by T-Mobile or its wholly-owned subsidiaries or subcontractors of any End User Personal Data that is not (i) authorized by DISH and required for performance under this Agreement or (ii) required by Law (which in such case, T-Mobile shall provide DISH as much advance reasonable notice as permitted by such Law, if any).

8.4 Receipt, Processing and Storage of DISH Personal Data. At all times during the Term (or at any time that T-Mobile is in receipt of any End User Personal Data as a result of its current or prior performance of the Service) T-Mobile will process, store, and transmit, as applicable, any End User Personal Data in its possession or control in accordance with T-Mobile's information security policies as they may be updated from time to time. T-Mobile's information security policies will be designed to secure, protect, transmit, and dispose of such End User Personal Data in accordance with industry best practices, and to comply with all applicable laws. Additionally, T-Mobile acknowledges and agrees that the FCC has issued rules and orders relating to the access, use and safeguarding of CPNI (the "CPNI Rules") and in the event any End User Personal Data received by T-Mobile constitutes CPNI then T-Mobile will fully comply with the CPNI Rules in addition to the other requirements set forth in this Section 8.4.

8.5 Security Breach. In the event of any security breach then the Party who discovers the security breach will immediately notify the other Party of such security breach. T-Mobile covenants to: (i) conduct a review to determine the cause of the security breach and (ii) provide DISH with a written report describing in reasonable detail the cause of the security breach. To the extent the security breach is a result of a failure of the Facilities or T-Mobile network software, T-Mobile will: (a) take all reasonable actions designed to prevent future security breaches arising from the same or similar failures, and describe such actions to DISH in writing; and (b) cooperate with DISH in carrying any associated damage mitigation efforts. For the avoidance of doubt, T-Mobile's compliance with the terms and conditions of this Section 8.5 will not relieve T-Mobile of any of its obligations under any provision of this Agreement.

8.6 Independent Auditing and Verification. Notwithstanding anything to the contrary in this Agreement, DISH reserves the right to establish an independent auditing or verification system or to implement a cyber risk management plan, whether alone or in collaboration with any Person or Persons (expressly including any governmental authority), pursuant to which any such Person or Persons designated by DISH, together with or independently from DISH, may audit or verify at DISH's expense in a manner that does not interfere with T-Mobile's operations or the T-Mobile network, and no more frequently than once in any calendar year, that any processes or policies that T-Mobile implements or effects in furtherance of this Section 8 comply in all material respects with this Agreement and applicable Law. In the event that DISH establishes such a system or plan, T-Mobile will cooperate fully and in good faith with DISH and any other such Person in the implementation of such system or plan. T-Mobile's cooperation under this Section 8.6 will be conditioned upon T-Mobile's determination that such system or plan does not give rise to an unreasonable risk of breach of security or confidentiality, and that T-Mobile's cooperation is either commercially reasonable or T-Mobile's expenses related to its cooperation are paid by DISH. In addition, if T-Mobile receives a cyber risk management report from an independent auditing entity, which report identifies a material risk that affects T-Mobile's provision of the Service to DISH under this Agreement, T-Mobile will notify DISH of the material risk that has been identified as a cyber risk.

9. CONFIDENTIALITY.

9.1 Confidential Information.

- (a) "Confidential Information" means all information of or relating to either Party (whether of a business, technical or other nature) that the other Party knows or reasonably should know to be confidential or proprietary. Without limiting the generality of the foregoing, "Confidential Information" includes all information not generally known to the public that relates to the business, technology, finances, budgets, projections, proposals, practices

of either Party, including, without limitation, End User Personal Data, the existence or terms of this Agreement, and all information relating to either Party's business plans and proposals, marketing plans and proposals, technical plans and proposals, research and development, and pricing plans, and the relationship between the Parties, including its existence. Any and all media (whether written, film, tape, optical, magnetic, opto-magnetic or otherwise) embodying any of the information described above are also Confidential Information. All Confidential Information of a Party will be considered trade secrets of that Party and will be entitled to all protections given by Law to trade secrets.

- (b) Confidential Information does not include information that: (i) was in or entered the public domain through no fault of the receiving Party; (ii) the receiving Party can show, by written evidence, was rightfully in the receiving Party's possession without any obligation of confidentiality prior to receipt thereof from the disclosing Party; (iii) is disclosed to receiving Party by a Person other than the disclosing Party who was legally entitled at the time of disclosure to make the disclosure without breach of any obligation of confidentiality; (iv) is required to be disclosed by applicable Laws (but only to the extent required to be disclosed); or (v) is independently developed by the receiving Party without reference to any Confidential Information of the disclosing Party. Nothing in this Agreement will be construed to restrict T-Mobile's right to collect and analyze data regarding activity on the T-Mobile Network and, other than expressly set forth in this Agreement, T-Mobile will be under no obligation to share such data or the outcome of its independent analysis with DISH.

9.2 Non-Disclosure of Confidential Information. During the Term and at all times thereafter, both Parties and their respective employees and contractors may not directly or indirectly (a) use any Confidential Information for any purpose other than that for which it is used or disclosed under the terms of this Agreement; (b) disclose to any Person any Confidential Information of the other Party or in any other way publicly or privately disseminate the Confidential Information (except that the Parties may disclose Confidential Information in connection with any reports made to a Governmental Authority to the extent that such Confidential Information is required to be provided in such reports) or (c) assist, authorize or encourage anyone else to use, disclose, or disseminate any Confidential Information of the other Party. The Parties will: (i) hold all Confidential Information in confidence using the same degree of care that the Party uses to protect its own confidential and proprietary information (but in no event less than reasonable care); (ii) use the Confidential Information only for the purpose of performing obligations under this Agreement; (iii) reproduce any Confidential Information only to the extent necessary to perform its obligations; (iv) restrict disclosure of and access to the Confidential Information only to those employees and contractors who are directly concerned with, and who agree to maintain the confidentiality of, the Confidential Information; and (v) take all precautions necessary and appropriate to guard the confidentiality of the Confidential Information, including informing employees and contractors who handle the information that it is confidential and not to be disclosed to others. Upon termination of this Agreement, both Parties will promptly return or destroy, at the election of the disclosing Party, all Confidential Information of the disclosing Party in its (or its employees' or contractors') possession or control (including all originals and copies of all or any portion of any Confidential Information). Each Party is responsible for ensuring compliance with this Section 9.2 by all of its employees and Representatives. Any conduct violating the provisions of this Section 9.2 will constitute a material breach of this Agreement.

10. WARRANTIES; DISCLAIMER.

10.1 Mutual Representations and Warranties. DISH represents and warrants to T-Mobile, and T-Mobile represents and warrants to DISH, that (i) it is a legal entity duly organized, validly existing and in good standing under the Laws of its jurisdiction of organization and has all governmental licenses, authorizations, permits, consents and approvals required to carry on its business as now conducted; (ii) it has the power and authority to execute and deliver this Agreement and perform its obligations hereunder and activities contemplated hereby; (iii) it is duly qualified as a foreign entity and is in good standing in each jurisdiction where such qualification is required, except for those jurisdictions where the failure to be so qualified would not, individually or in the aggregate, have a material adverse effect on its ability to fulfill its obligations hereunder; (iv) this Agreement constitutes a valid and binding obligations on it, enforceable against it in accordance with its terms (except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer and similar laws of general applicability relating to or effecting creditors' rights or by general equity principles); (v) from the date of the Purchase Agreement through the Closing Date of the Purchase Agreement, DISH has taken no action that would have constituted a Restricted Transfer pursuant to Section 12.7 or a Change of Control pursuant to Section 12.8 had those provisions been in effect during that period of time; and (vi) the execution, delivery and performance of this Agreement will not conflict with, violate or result in a breach of the "**FCC MNSA Approval**" (as defined in the Purchase Agreement).

10.2 WARRANTY DISCLAIMER. EXCEPT AS EXPRESSLY STATED HEREIN, NEITHER PARTY OR ITS AFFILIATES MAKE ANY EXPRESS WARRANTIES, AND EACH PARTY HEREBY DISCLAIMS ALL IMPLIED WARRANTIES, TO THE OTHER PARTY OR ANY THIRD PARTY, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE OR PURPOSE, NON-INFRINGEMENT, TITLE, AND QUIET ENJOYMENT. EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, T-MOBILE PROVIDES THE SERVICE (INCLUDING ALL ROAMING AND OTHER SERVICES) AND THE FACILITIES "AS IS" AND "WHERE IS." T-MOBILE DOES NOT GUARANTEE THAT ALL EQUIPMENT WILL WORK CORRECTLY (OR AT ALL) WITH THE T-MOBILE NETWORK OR THE SERVICE, AND EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT T-MOBILE WILL HAVE NO LIABILITY OR RESPONSIBILITY FOR INTEROPERABILITY BETWEEN EQUIPMENT AND THE T-MOBILE NETWORK OR SERVICE. DISH ACKNOWLEDGES THAT T-MOBILE WILL HAVE NO LIABILITY EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT OR IN THE EVENT OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT FOR ANY FAILURE, DEFECTS, MALFUNCTIONS OR ERRORS IN THE FACILITIES OR FOR THE PROVISION OF SERVICE TO DISH OR ITS END USERS.

11. INDEMNITIES.

11.1 General Indemnification. Each Party hereto will defend, indemnify and hold harmless (in such capacity, the "**Indemnifying Party**") the other Party, its Affiliates and it and their respective former, current and future officers, directors, employees, agents, contractors, successors and assigns (collectively, "**Indemnified Parties**"), from and against all third party (including Customers, Distribution Partners, End Users and Roaming Carriers) claims, costs, liabilities, damages and expenses of every kind, including court costs, and reasonable and documented attorneys' and expert witness fees incurred as a result of all third party claims, demands, actions, suits, arbitrations, assessments, adjustments or other Proceedings (collectively, "**Claims**") (i) arising from a material breach of this Agreement by the Indemnifying Party; (ii) alleging that

any Equipment (excluding any Facilities) developed, used or sold by the Indemnifying Party (or its Distribution Partners, in the case of DISH) in conjunction with the Service infringes the Intellectual Property Rights of another Person; or (iii) arising out of advertisements, promotional, or other marketing materials developed or used by the Indemnifying Party (or its Distribution Partners, in the case of DISH) (with respect to each of clauses (i) through (iii) above, except if and to the extent such Claims arise out of or with respect to any willful misconduct, gross negligence or breach of this Agreement by any Indemnified Party of the Party seeking indemnification under this Section 11.1).

11.2 Each Indemnified Party will promptly notify the Indemnifying Party of any Claim to which these indemnification obligations may apply. Failure to provide prompt notice will not relieve the Indemnifying Party of its obligation to indemnify, except and solely to the extent that the Indemnifying Party is actually prejudiced by such Indemnified Party's failure to provide prompt notice. Subject to the following sentence, upon receiving notice of a Claim, the Indemnifying Party will assume the defense of the Claim, employ counsel reasonably acceptable to the Indemnified Party, and contest, pay, or settle the Claim as it may determine, except that the Indemnifying Party will not enter into any settlement that adversely affects the Indemnified Parties' rights or interests without the prior written consent of such Indemnified Parties, which consent will not be unreasonably withheld. Notwithstanding the preceding sentence, an Indemnified Party is entitled to defend a Claim through counsel of its own choosing without the participation of the Indemnifying Party and at the Indemnifying Party's expense, if: (i) the Indemnifying Party fails or refuses to defend the Claim on or before the 15th business day after such Indemnified Party has given written notice pursuant to this section or (ii) representation of DISH and T-Mobile by the same counsel has the potential to constitute a conflict of interest. Each Indemnified Party will provide reasonable cooperation to the Indemnifying Party in connection with the defense or settlement of any Claim. At its own expense, each Indemnified Party will be entitled to participate in the defense of any Claim.

11.3 LIMITATION OF LIABILITY. EXCEPT FOR DAMAGES ARISING FROM (I) A BREACH OF SECTION 4.5 (TARGETING AND USE OF END USER PERSONAL DATA), SECTION 2.1(E) OF ANNEX 1 (NONDISCRIMINATION), SECTION 2.5 OF ANNEX 2 (NONDISCRIMINATION), WHICH WILL BE SUBJECT TO SECTION 11.4; OR (II) A BREACH OF SECTION 8 (CONFIDENTIALITY), GROSS NEGLIGENCE OR INTENTIONALLY WRONGFUL ACTS OR OMISSIONS, OR A PARTY'S INDEMNIFICATION OBLIGATIONS IN THIS AGREEMENT (BUT, AS IT RELATES TO THE INDEMNIFICATION OBLIGATIONS IN THIS AGREEMENT, ONLY WITH RESPECT TO DAMAGES AWARDED IN RESPECT OF CLAIMS OF OR AMOUNTS OTHERWISE PAID TO THIRD PARTIES), IN NO EVENT WILL EITHER PARTY BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST REVENUE OR PROFITS, IN CONNECTION WITH THIS AGREEMENT OR ITS BREACH, OR ARISING FROM THE RELATIONSHIP OF THE PARTIES OR THE CONDUCT OF BUSINESS BETWEEN THEM, EVEN IF A PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11.4 T-MOBILE MAY BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES IN AN AGGREGATE AMOUNT NOT TO EXCEED [***] ARISING FROM T-MOBILE'S [***], ONLY IN THE EVENT THAT T-MOBILE'S BREACH OF ANY OF THE FOREGOING CONTINUES AFTER [***] FOLLOWING T-MOBILE'S RECEIPT OF DISH'S WRITTEN NOTICE TO T-MOBILE SPECIFYING SUCH BREACH. NOTHING HEREIN SHALL RESTRICT DISH'S ABILITY TO SEEK INJUNCTIVE RELIEF IN ACCORDANCE WITH SECTION 12.15.

12. GENERAL PROVISIONS.

12.1 Notices. All notices and other communications under this Agreement will be given in writing (email sufficient) and be deemed to have been duly given and effective:

- (a) upon receipt if delivered in person, via United States mail or via national overnight express delivery service; or
- (b) upon sending if delivered via fax copy (but only if the sending Party receives written confirmation of the successful transmission thereof) or via email (but only if the sending Party, on or before the date that is one (1) business day following the date on which it sends such notice by email, also sends a copy of such notice by one of the other, non-email methods permitted under this Section).

Either Party may change the following contact information upon written notice to the other Party.

Notices are to be delivered or transmitted to:

If to DISH:

Attention: Chief Operating Officer
DISH Purchasing Corporation
9601 South Meridian Blvd.
Englewood, Colorado 80112
Email: [***]
Fax: [***]
With a copy to:

Legal Department – General Counsel
DISH Network Corporation
9601 South Meridian Blvd.
Englewood, Colorado 80112
Email: [***]

And a copy to:

Legal Department – Head of Prepaid Wireless
DISH Network Corporation
9601 South Meridian Blvd.
Englewood, Colorado 80112

If to T-Mobile:

Vice President – Wholesale
T-Mobile USA, Inc.
12920 S.E. 38th Street Bellevue, Washington 98006
Email: [***]
Fax: [***]

With a copy to:

Legal Department – General Counsel
T-Mobile USA, Inc.

12920 S.E. 38th Street
Bellevue, Washington 98006
Email: [***]
Fax: [***]

- 12.2 Insurance.** Each Party will maintain, at its cost, a program of insurance against liability and other risks associated with its activities and obligations under this Agreement, in such amounts, subject to such deductibles and on such terms as are appropriate in such Party's sole discretion for the activities to be conducted by it under this Agreement. All insurance required by this Section 12.2 will be maintained for at least three (3) years after the Term.
- 12.3 Force Majeure.** Either Party's performance, except for payment obligations, under this Agreement will be excused if the non-performance is due to factors outside the Party's control, such as riots; Governmental Orders; epidemics; acts of civil or military authority; war; terrorism; adoption of Laws after the Effective Date that prevents a Party's performance under this Agreement; acts of God; civil commotion; or acts of nature for the period of time that the force majeure condition exists; provided, however, that if a Party's non-performance due to a force majeure condition continues for more than 60 consecutive days, the Party whose performance is not impaired by the force majeure condition may terminate this Agreement upon written notice to the Party whose performance is being excused.
- 12.4 Entire Agreement; Conflicts.** Each Party represents and warrants to the other Party that the execution and performance of this Agreement does not and will not violate any other contract or obligation to which such Party is a party, including terms relating to covenants not to discriminate and confidentiality covenants. Neither Party will disclose to the other Party hereto, or use or induce such other Party to use, any proprietary information or trade secrets of any other person, association or entity. This Agreement and its Schedules and Annexes will be interpreted and enforced in connection with and in consideration of the Purchase Agreement, the Ancillary Agreements (as defined in the Purchase Agreement) and the letter dated May 20, 2019 to the Federal Communications Commission regarding applications of T-Mobile and Sprint for Consent to Transfer Control of Licenses and Authorizations; WT Docket No. 18-197. Notwithstanding the foregoing, this Agreement and its Schedules and Annexes constitute the entire agreement and understanding between T-Mobile and DISH with respect to the subject matter herein and supersede all offers, negotiations and other agreements concerning the Service. Neither Party is not relying on any oral or written representations or warranties from the other Party, including, but not limited to, any representation or warranty as to the nature of competition or the results or effect of any advertising. No course of dealing, course of performance, or usage of trade may be invoked by DISH to modify or supplement in any way the terms and conditions of this Agreement. In the event of a conflict between the terms of this Agreement, any schedule or exhibit hereto, the Purchase Agreement, or the Transition Services Agreement not resolved on the face of the relevant documents, the following order of precedence will apply, but solely with respect to the provision of Service under this Agreement: (i) the applicable schedule or exhibit, (ii) the body of this Agreement, (iii) the Transition Services Agreement, and (iv) the Purchase Agreement.
- 12.5 Relationship, Authority and Representations.** Nothing in this Agreement creates or will be construed or implied to create a relationship of partners, agency, joint venture, or employer and employee. DISH is not authorized to act as an agent for or legal representative of T-Mobile, and does not have authority to assume or create any obligation on behalf of, in the name of, or that will be binding upon T-Mobile. All sales by DISH will be in its own name and for its own account. No provision of this Agreement will be construed as vesting in DISH any control whatsoever in any Facilities or operations of T-Mobile or its Affiliates or any other wireless carrier. DISH will not

represent itself as a federal or state certified licensee for operation of Service in the Territory unless otherwise so authorized by the appropriate authority, agency or entity.

12.6 Remedies Cumulative. The rights and remedies expressly provided in this Agreement are cumulative and not exclusive of any rights or remedies that a Party would otherwise have.

12.7 Assignment. Without DISH's prior written approval, in DISH's sole discretion, T-Mobile may not assign or otherwise transfer its rights or obligations under this Agreement, in whole or in part, by operation of law or otherwise, including without limitation in connection with a sale, spin-off or other disposition of any line of business, entity or assets (each, a "**Transfer**", which term shall, for the avoidance of doubt, exclude any transfer, extension of benefits or delegation of duties in connection with the use of contractors, consultants, distributors and similar arrangements); provided that T-Mobile may Transfer its rights and obligations under this Agreement in whole but not in part, by operation of law or otherwise, to any Affiliate of T-Mobile or in connection with a Change of Control of T-Mobile, without DISH's prior approval, in T-Mobile's sole discretion. At least 30 days prior to any Transfer by T-Mobile, T-Mobile shall provide written notice to DISH of such Transfer and the identity of the applicable transferee and shall indicate whether such transferee is an Affiliate of T-Mobile or such Transfer is in connection with a Change of Control of T-Mobile. Without T-Mobile's prior written approval, in T-Mobile's sole discretion, DISH may not Transfer its rights or obligations under this Agreement, in whole or in part, to any Person, except (A) to the applicable transferee in connection with any Transaction also involving the Transfer of all or substantially all of the Wireless Communications Business (it being understood that the foregoing shall not limit the application of Section 12.8 to such Transfer); or (B) to any Person in respect of which a Permitted Owner (and not a Restricted Owner) beneficially owns more than 50% of the Voting Power in connection with an internal reorganization (e.g., delegation to a subsidiary of DISH's Parent Entity) of DISH's Parent Entity and its subsidiaries (a "**Permitted Transfer**"). At least 30 days prior to any Transfer by DISH, DISH shall provide written notice to T-Mobile of such Transfer and the identity of the applicable transferee and shall indicate whether such Transfer is a Permitted Transfer.

Notwithstanding anything to the contrary in this Agreement, in the event of any direct or indirect Transfer by DISH that is not a Permitted Transfer (a "**Restricted Transfer**"), T-Mobile may elect, within 30 days following receipt of notice from DISH of such Restricted Transfer, that (i) the Term will automatically expire on the earliest of: (a) two (2) years from the date of such purported Restricted Transfer, (b) the date the Term would otherwise expire or terminate under Section 6, and (c) such earlier date on which this Agreement is terminated in accordance with its terms and (ii) DISH will not be authorized to access the Service Transaction Gateway to add any new End Users or SIM Cards to the T-Mobile Network (but shall have continued access the Service Transaction Gateway to support then existing End Users and SIM Cards) and T-Mobile may block Roaming Services to any new End Users or SIM Cards on the T-Mobile Network on or after the date of such election, provided, however, that in the event that DISH does not deliver such notice in accordance with this sentence, T-Mobile shall be entitled to make such election on or at any time after the date of such Restricted Transfer, and the period set forth in clause (a) above shall be reduced by a number of days equal to the number of days between the date of consummation of such Restricted Transfer and the date on which DISH actually provides notice of such Restricted Transfer. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns, and for purposes of this Agreement, any Person who is a successor or permitted assign of DISH in a Permitted Transfer shall be deemed to be "DISH" hereunder. For the avoidance of doubt, this Section 12.7 shall not operate to prevent DISH or its Affiliates from engaging in a transaction that constitutes a Change of Control of DISH, subject to the terms set forth in Section 12.8.

12.8 Change of Control.

- (a) In the event of a Change of Control of DISH, the Term will automatically expire on the earliest of: (a) two (2) years from the Change of Control Date for such Change of Control, (b) the date the Term would otherwise expire or terminate under Section 6, and (c) any earlier date on which this Agreement is terminated in accordance with its terms. Further, following the date that is six (6) months from the Change of Control Date, DISH will not be authorized to access the Service Transaction Gateway to add any new End Users or SIM Cards to the T-Mobile Network (but shall have continued access to the Service Transaction Gateway to support then existing End Users and SIM Cards). In the event of a Change of Control, T-Mobile will continue to provide Roaming Services on the T-Mobile Network [***]. Such Roaming Services will be provided for the duration of the Term of this Agreement had it not expired or terminated. Any dispute regarding the Roaming Services agreement in the event of a Change of Control will be resolved by the Antitrust Division of the United States Department of Justice in its sole discretion, provided such discretion will be exercised in a reasonable manner.
- (b) At least 30 days prior to any Change of Control of DISH, DISH shall provide written notice to T-Mobile describing in all material respects such pending Change of Control, including the identity of the applicable parties thereto; provided that if the Principal, such Permitted Owner, DISH or any Parent Entity of DISH becomes aware of such Change of Control (x) less than 30 days prior to the date of such Change of Control or (y) after the date of such Change of Control, DISH's only obligation under this sentence shall be to provide written notice of such Change of Control to T-Mobile within five (5) business days of such Change of Control.
- (c) As used herein, a "**Change of Control**" of a Party means any of the following, each of which will be deemed to occur upon closing or occurrence of the relevant transaction (the "**Change of Control Date**"):
- (i) any Transaction as a result of which (A) on or prior to the Transition Date, a Permitted Owner does not beneficially own more than 50% of the Voting Power of such Party or any Parent Entity of such Party or (B) any single Restricted Owner or group of Restricted Owners acting in concert beneficially owns more than 50% of the Voting Power or aggregate economic value of all the outstanding Capital Stock (on a fully diluted basis) of such Party or any Parent Entity of such Party; or
 - (ii) any Transaction as a result of which both: (A) DISH and its Affiliates that owned all or substantially all of the assets of the Wireless Communications Business, taken as a whole immediately prior to such Transaction, cease to own directly or indirectly a majority of all such assets of the Wireless Communications Business, taken as a whole, and (B) the Person, directly or indirectly, owning the Transferred Wireless Communications Business assets immediately following such Transaction is a Restricted Owner.

12.9 No Waiver. No failure by a Party to take action on account of any default or breach of this Agreement by the other Party will constitute a waiver of that default or breach, or of the performance required of the other Party under this Agreement.

12.10 Attorney's Fees and Costs. The prevailing Party in any dispute under this Agreement will be entitled to recover its costs, including reasonable attorneys' fees.

- 12.11 Construction.** This Agreement will be interpreted according to the plain meaning of its terms without any presumption that it should be construed in favor of or against either Party. The recitals to this Agreement are hereby incorporated by reference into this Agreement in their entirety. Any list of examples following followed by "including" or "e.g." is illustrative and not exhaustive, unless qualified by terms like "only" or "solely." All references (e.g., to sections, parties, terms, schedules, and exhibits) are to the sections of, parties to, terms of, and schedules and exhibits to this Agreement, unless stated otherwise. All captions are intended solely for the parties' convenience, and none will affect the meaning of any provision. All references to "written," "in writing," or other words of similar import refer to a non-electronic, paper document only, except where electronic mail communication is expressly authorized. The words "herein," "hereof," and words of similar meaning refer to this Agreement as a whole, including its schedules and exhibits. All references to "days" refer to calendar days, unless otherwise expressly set forth in this Agreement.
- 12.12 Third Parties.** Nothing herein expressed or implied is intended or will be construed to confer upon or give to any person or corporation, other than the Parties and their permitted successors or assigns, any legal or equitable rights, remedies or claims under or by reason of this Agreement or any provision of this Agreement.
- 12.13 Consultation With Counsel.** DISH and T-Mobile acknowledge that both Parties have had the opportunity to review this Agreement, have negotiated its terms, and have had the opportunity to obtain independent legal counsel for advice regarding all terms. Neither Party has relied upon any representation made by the other Party regarding the meaning or effect of any of the provisions of this Agreement. DISH acknowledges that the provisions in this Agreement are reasonably necessary to maintain T-Mobile's high standards for service and goodwill.
- 12.14 Signing Authority.** Each person signing below hereby warrants and represents that he or she has full authority to execute this Agreement for the Party on whose behalf he or she is signing.
- 12.15 Injunctive Relief.** The Parties agree and acknowledge that irreparable harm could occur in the event of any breach by a Party of Section 9, Section 2.1(e) of Annex 1 or Section 2.5 of Annex 2. Accordingly, the Parties will be entitled to the remedies of specific performance, injunctive relief or other equitable remedies, in addition to any other remedy to which such Party may be entitled pursuant to this Agreement, at law or in equity. Neither Party will raise as a defense or objection to injunctive relief for a breach of Section 9, Section 2.1(e) of Annex 1 or Section 2.5 of Annex 2 that such a breach is or would be compensable by an award of money damages.
- 12.16 Media Releases.** Except as otherwise provided by applicable Law (including releases or disclosures only to the extent necessary or in good faith determined to be reasonably necessary under the Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, as amended) each Party agrees: (i) to submit to the other Party all press releases or similar communications wherein the other Party's names or Marks are mentioned or language from which the connection of said names or Marks therewith may be inferred or implied; and (ii) not to publish such press releases or similar communications without the other Party's prior written approval.
- 12.17 Dispute Escalation.** If there is a dispute between the Parties relating to the Service or any other aspect of this Agreement, the Parties will each designate one or more representatives to meet and use good faith efforts to attempt to resolve the dispute prior to filing a legal action. If the representatives are unable to resolve the dispute within thirty (30) calendar days after the date of written notice of the dispute from one Party to the other, then the Parties will escalate the dispute to the vice president level on each side. If the vice presidents are unable to resolve the dispute within thirty (30) calendar days after the date of escalation, then the Parties will submit the matter to each Party's responsible senior executive for resolution, and if such executives are not able to

resolve the matter within thirty (30) calendar days, either Party may file a legal action in accordance with 12.18. Notwithstanding the foregoing, nothing in this Agreement will prevent either Party from, or require either Party to delay, the filing of any Claim for injunctive relief.

12.18 Governing Law; Dispute Resolution. This Agreement will be governed by, and construed in accordance with, the Laws of the State of New York applicable to contracts executed and to be performed entirely within that state. Any lawsuit, arbitration, Claim, action, administrative or regulatory challenge or proceeding (a “**Proceeding**”) based upon, arising out of or related to this Agreement will be brought exclusively in the courts located in the State of New York, and, if it has or can acquire jurisdiction, in the United States District Court for the Southern District of New York located therein, and, in each case, appellate courts therefrom, and each of the Parties irrevocably submits to the exclusive jurisdiction of each such court in any such Proceedings, waives any objection it may now or hereafter have to personal jurisdiction, venue or to convenience of forum, agrees that all Claims in respect of the Proceedings will be heard and determined only in any such court, and agrees not to bring any Proceedings arising out of or relating to this Agreement in any other court. Nothing herein contained will be deemed to affect the right of any Party to serve process in any manner permitted by Law or to commence legal Proceedings or otherwise proceed against any other Party in any other jurisdiction, in each case, to enforce judgments obtained in any action, suit or Proceeding brought pursuant to this Section 12.18.

12.19 Counterparts and Delivery. This Agreement may be executed in two or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. Any signed counterpart of this Agreement may be delivered by facsimile or other form of electronic transmission (e.g., .pdf), with the same legal force and effect as delivery of an originally signed agreement.

13. PARENT GUARANTY. Parent hereby unconditionally and irrevocably guarantees, as a principal and not as a surety, to T-Mobile the prompt and full performance and payment of any and all performance and payment obligations of DISH under this Agreement (the “**Obligations**”). T-Mobile may seek remedies directly from Parent with respect to the Obligations without first exhausting its remedies against DISH. The liability of Parent hereunder is, in all cases, subject to all defences, setoffs and counterclaims available to DISH with respect to performance or payment of the Obligations. Parent waives presentment, demand and any other notice with respect to any of the Obligations and any defences that Parent may have with respect to any of the Obligations other than as set forth in the immediately preceding sentence.

[Signature Page Follows]

Each of the Parties has caused this Agreement to be duly executed as of the day and year set forth below and intends it to be effective as of the Effective Date.

DISH:

DISH PURCHASING CORPORATION

/s/ John Swieringa

By: John Swieringa
Its: Chief Operating Officer, EVP and
Group President, Retail Wireless

Signature Date: July 1, 2020

T-MOBILE:

T-MOBILE USA, INC.

/s/ G. Michael Sievert

By: G. Michael Sievert
Its: Chief Executive Officer & President

Signature Date: July 1, 2020

For purposes of Section 13 only

PARENT:

DISH NETWORK CORPORATION

/s/ John Swieringa

By: John Swieringa
Its: Chief Operating Officer, EVP and
Group President, Retail Wireless

Signature Date: July 1, 2020

CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS EXHIBIT, MARKED BY [*], HAS BEEN OMITTED FROM THIS EXHIBIT BECAUSE IT IS BOTH (I) NOT MATERIAL AND (II) WOULD LIKELY CAUSE COMPETITIVE HARM TO IF PUBLICLY DISCLOSED.**

LICENSE PURCHASE AGREEMENT

by and between

T-MOBILE USA, INC.

and

DISH NETWORK CORPORATION

Dated as of July 1, 2020

TABLE OF CONTENTS

	Page
<u>ARTICLE 1 DEFINITIONS</u>	<u>1</u>
<u>ARTICLE 2 PURCHASE AND SALE OF LICENSES</u>	<u>6</u>
<u>Section 2.1 Purchase and Sale of Seller Licenses</u>	<u>6</u>
<u>Section 2.2 No Assumption of Liabilities</u>	<u>6</u>
<u>Section 2.3 Closing</u>	<u>7</u>
<u>ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF SELLER</u>	<u>7</u>
<u>Section 3.1 Organization and Qualification</u>	<u>8</u>
<u>Section 3.2 Power and Authority</u>	<u>8</u>
<u>Section 3.3 Enforceability</u>	<u>8</u>
<u>Section 3.4 Non-Contravention</u>	<u>8</u>
<u>Section 3.5 Seller Licenses</u>	<u>9</u>
<u>Section 3.6 Litigation</u>	<u>10</u>
<u>Section 3.7 Build-Out Requirements</u>	<u>11</u>
<u>Section 3.8 No Brokers</u>	<u>11</u>
<u>ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF PURCHASER</u>	<u>11</u>
<u>Section 4.1 Organization</u>	<u>11</u>
<u>Section 4.2 Power and Authority</u>	<u>11</u>
<u>Section 4.3 Enforceability</u>	<u>11</u>
<u>Section 4.4 Non-Contravention</u>	<u>12</u>
<u>Section 4.5 Litigation</u>	<u>12</u>
<u>Section 4.6 Qualification</u>	<u>12</u>
<u>Section 4.7 Acknowledgements regarding Build-Out Requirements</u>	<u>12</u>
<u>Section 4.8 No Brokers</u>	<u>13</u>
<u>ARTICLE 5 COVENANTS AND OTHER AGREEMENTS</u>	<u>13</u>
<u>Section 5.1 Covenants of Purchaser and Seller Pending the Closing</u>	<u>13</u>
<u>Section 5.2 Lease-Back Option</u>	<u>13</u>
<u>Section 5.3 Confidentiality</u>	<u>13</u>
<u>Section 5.4 Compliance with Law; Compliance with Licenses; Non-Solicitation</u>	<u>14</u>
<u>Section 5.5 Governmental Filings</u>	<u>15</u>
<u>Section 5.6 Financing</u>	<u>16</u>
<u>Section 5.7 Rebanding</u>	<u>16</u>
<u>Section 5.8 Termination of Liens and other Arrangements</u>	<u>17</u>
<u>Section 5.9 Updated Disclosure Schedules</u>	<u>17</u>
<u>ARTICLE 6 CONDITIONS TO CLOSING</u>	<u>18</u>
<u>Section 6.1 Conditions to the Obligations of Purchaser</u>	<u>18</u>
<u>Section 6.2 Conditions to the Obligations of Seller</u>	<u>18</u>
<u>ARTICLE 7 TERMINATION</u>	<u>19</u>

Section 7.1	Termination	19
ARTICLE 8 SURVIVAL AND INDEMNIFICATION		21
Section 8.1	Survival	21
Section 8.2	General Indemnification Obligation	21
Section 8.3	Limitations	22
Section 8.4	Indemnification Procedures	22
Section 8.5	Treatment of Payments	24
Section 8.6	Effect of Investigation	24
Section 8.7	Exclusive Remedy	24
ARTICLE 9 MISCELLANEOUS		25
Section 9.1	Assignment	25
Section 9.2	Further Assurances	25
Section 9.3	Entire Agreement; Amendment	25
Section 9.4	Waiver	26
Section 9.5	Notices	26
Section 9.6	Governing Law	27
Section 9.7	Waiver of Jury Trial	27
Section 9.8	Submission to Jurisdiction	27
Section 9.9	Specific Performance	28
Section 9.10	Bulk Transfer Laws	28
Section 9.11	No Benefit to Others	28
Section 9.12	Headings, Gender, "Person," and "including"	29
Section 9.13	Severability	29
Section 9.14	Counterparts, Facsimile and Electronic Signatures	29
Section 9.15	Expenses	29

LICENSE PURCHASE AGREEMENT

THIS LICENSE PURCHASE AGREEMENT (“Agreement”), dated as of July 1, 2020 (the “Effective Date”), is entered into by and between (i) T-Mobile USA, Inc., a Delaware corporation (“Seller”), and (ii) DISH Network Corporation, a Nevada corporation (“Purchaser”). Seller and Purchaser are each a “Party,” and collectively are the “Parties.”

WHEREAS, as of the Effective Date, the Parties consummated the transactions under the Asset Purchase Agreement;

WHEREAS, an Affiliate of the Seller holds the 800 MHz licenses granted by the FCC that are identified in Schedule A (collectively, the “Seller Licenses”); and

WHEREAS, Seller wishes to sell, and Purchaser wishes to purchase, the Seller Licenses, as permitted pursuant to 47 C.F.R. § 1.948, in the manner and subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual representations, warranties, covenants, conditions and agreements hereinafter set forth, the Parties agree as follows:

ARTICLE 1 DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set forth or referenced below:

“Affiliate” means, as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. The term “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as applied to any Person, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or other ownership interests, by contract or otherwise; *provided, however*, that none of SoftBank Group Corp., Deutsche Telekom AG and their respective Affiliates (as defined without giving effect to this proviso), other than the Subsidiaries of Sprint and the Subsidiaries of TMUS, shall be deemed to be an Affiliate of Seller or any of its Subsidiaries.

“Agreed Amount” has the meaning set forth in Section 8.4(d).

“Agreement” means this Agreement and all Exhibits and Schedules hereto, as amended, supplemented or otherwise modified from time to time in accordance with the terms hereof.

“Asset Purchase Agreement” means that certain Asset Purchase Agreement, dated as of July 26, 2019, by and among T-Mobile US, Inc. (“TMUS”), Sprint Corporation (“Sprint”) and Purchaser (as amended, amended and restated or otherwise modified from time to time).

“Assigned Specified Lease” has the meaning set forth in Section 5.8.

“Business Combination Agreement” means that certain Business Combination Agreement, dated as of April 29, 2018, by and among T-Mobile US, Inc., Sprint Corporation and the other parties thereto (as amended, amended and restated or otherwise modified from time to time).

“Business Day” means any day, other than a Saturday or Sunday, on which commercial banks and foreign exchange markets are open for business in the county of New York, State of New York.

“Claim Notice” means a written notification which contains (a) a description of the Losses incurred or reasonably expected to be incurred by the Indemnified Party and the Claimed Amount of such Losses, to the extent then known and (b) a statement of the provisions under the Agreement upon which such claim is based.

“Claimed Amount” means the amount of any Losses incurred or reasonably expected to be incurred by the Indemnified Party (to the extent then known).

“Closing” has the meaning set forth in Section 2.3(a).

“Closing Date” has the meaning set forth in Section 2.3(a).

“Code” means the Internal Revenue Code of 1986, as amended.

“Communications Act” means the Communications Act of 1934, as amended.

“Controlling Party” means the Party controlling the defense of any Third Party Claim.

“Deductible Amount” has the meaning set forth in Section 8.3(a).

“Disclosure Schedule” has the meaning set forth in the preamble to ARTICLE 3.

“DOJ” means the United States Department of Justice.

“Effective Date” has the meaning set forth in the preamble.

“Excluded Rebanding Activities” means any Rebanding activities related to the reconfiguring and retuning of 800 MHz frequencies that are outside of the frequency bands licensed under the Seller Licenses; *provided* that Excluded Rebanding Activities shall not include any Rebanding activities that, if not completed prior to the Closing, Purchaser would be legally responsible for completing after the Closing.

“FCC” means the United States Federal Communications Commission or any successor entity thereto.

“FCC Applications” has the meaning set forth in Section 5.5(a).

“FCC Consents” means the requisite consents of the FCC to permit the consummation of the transactions contemplated hereby, including (i) the assignment by Seller to Purchaser of the Seller Licenses, and (ii) if Seller timely exercises the Lease-Back Option, the entry by the Parties (or their Affiliates, as applicable) into the Spectrum Lease. These consents shall have been

granted and be in full force and effect, provided that this condition will be satisfied by the approval of the full FCC, a bureau of the FCC or division or subdivision thereof taken under delegated authority, which approval is in full force and effect, is not subject to reconsideration, has not been stayed by a bureau of the FCC, division or subdivision thereof, the FCC or a court of competent jurisdiction.

“FCC Order” means an official action or order taken or issued by the FCC or any of its bureaus or offices through written order, decision, memorandum, public notice or letter.

“FCC Rules” means the rules, regulations, orders and written policies of the FCC.

“Filing Deadline” means the third anniversary of the Merger Closing Date.

“Financing” has the meaning set forth in Section 5.6.

“FTC” means the United States Federal Trade Commission.

“Governmental Authority” means a federal, state or local court, legislature, governmental agency, commission or regulatory or administrative authority or instrumentality.

“HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, any successor statute thereto, and the rules and regulations promulgated thereunder.

“HSR Notice” has the meaning set forth in Section 5.5(b).

“Indemnified Party” has the meaning set forth in Section 8.2(a).

“Indemnifying Party” has the meaning set forth in Section 8.2(a).

“Law” means applicable common law and any statute, ordinance, code or other law, rule, permit, permit condition, regulation, order, decree, technical or other standard, requirement or procedure enacted, adopted, promulgated, applied, issued or followed by any Governmental Authority.

“Lease-Back Option” has the meaning set forth in Section 5.2.

“Liabilities” means any direct or indirect liability, indebtedness, guaranty, endorsement, claim, loss, damage, deficiency, cost, expense, obligation or responsibility, of any kind or nature whatsoever, whether fixed or unfixed, known or unknown, asserted or unasserted, choate or inchoate, liquidated or unliquidated, secured or unsecured, accrued, contingent or otherwise.

“Licensing Subsidiary” means a direct or indirect Subsidiary of Seller that holds one or more Seller Licenses.

“Lien” means, with respect to any asset, any mortgage, lien, pledge, charge, security interest, easement, conditional sales contract, reversionary interest, transfer restriction (other than transfer restrictions arising or routinely imposed under the Communications Act or the FCC Rules), right of first refusal, voting trust agreement, preemptive right, or other adverse claim, defect of title or other encumbrance of any kind, whether voluntary or imposed by applicable

Law, and any agreement to give any of the foregoing in respect of such asset. For the avoidance of doubt, “Lien” shall not include any conditions or restrictions imposed on the Seller Licenses by the FCC or the FCC Rules.

“Loss” means any loss (including diminution in value), Liability, claim, damage, expense (including reasonable legal fees and expenses or other professional fees and expenses), court cost, amount paid in settlement, other expense associated with enforcing any right hereunder, expense for investigation and ongoing monitoring and remediation expense; *provided, however*, that “Loss” shall not include any punitive, indirect, consequential, special or incidental damages (except (x) to the extent of awarded to a Third Party in a Third Party Claim or (y) any indirect, consequential, special or incidental damages that are a reasonably foreseeable consequence of a breach hereunder).

“Material Adverse Effect” means an event, development, circumstance, change or effect that, individually or in the aggregate, materially impairs: (i) the Seller Licenses (taken as a whole), (ii) the ability of the holder thereof to use the Seller Licenses, or (iii) the ability of Seller to consummate the transactions contemplated by this Agreement.

“Merger Closing Date” means April 1, 2020, the date the transactions under the Business Combination Agreement were consummated.

“Non-Controlling Party” means the Party not controlling the defense of any Third Party Claim.

“Outside Date” has the meaning set forth in Section 7.1(a).

“Party” and “Parties” have the meanings set forth in the preamble.

“Person” has the meaning set forth in Section 9.12.

“Proceedings” has the meaning set forth in Section 9.8.

“Purchase Price” has the meaning set forth in Section 2.1.

“Purchaser” has the meaning set forth in the preamble.

“Purchaser Fundamental Representations” means the representations and warranties set forth in Sections 4.1, 4.2, 4.3 and 4.8.

“Purchaser Indemnified Parties” has the meaning set forth in Section 8.2(b).

“Rebanding” means the process that Sprint Corporation has been undertaking to reconfigure and retune the 800 MHz frequency band as required by the FCC in its proceeding *Improving Public Safety Communications* in the 800 MHz Band, WT Docket No. 02-55 and related dockets.

“Representatives” means, in relation to any Party, the directors, officers, employees, agents, professional advisers, attorneys, financial advisers, accountants and consultants of such

Party and its Affiliates (and with regard to Seller, of SoftBank Group Corp., Deutsche Telekom AG and their respective Affiliates and Representatives).

“Response” has the meaning set forth in Section 8.4(d).

“Seller” has the meaning set forth in the preamble.

“Seller Fundamental Representations” means the representations and warranties set forth in Sections 3.1, 3.2, 3.3 and 3.8.

“Seller Indemnified Parties” has the meaning set forth in Section 8.2(c).

“Seller Licenses” has the meaning set forth in the recitals.

“Specified BEAs” has the meaning set forth in Section 5.2.

“Specified Leases” has the meaning set forth in Section 5.8.

“Spectrum Lease” means a Long-Term De Facto Transfer Lease Agreement in substantially the form attached hereto as Exhibit C.

“Sprint” has the meaning set forth in the preamble.

“Subsidiary” means, with respect to any Person, any corporation, partnership, association or other business entity of which (i) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (ii) if a partnership, association or other business entity, a majority of the partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more Subsidiaries of that Person or a combination thereof. For purposes hereof, a Person or Persons shall be deemed to have a majority ownership interest in a partnership, association or other business entity if such Person or Persons shall be allocated a majority of partnership, association or other business entity gains or losses or shall be or control the managing director or general partner of such partnership, association or other business entity.

“Termination Fee” has the meaning set forth in the Section 7.1(c)

“Third Party” means, with respect to any specified Person, any other Person who is not an Affiliate of such specified Person (other than Governmental Authority).

“Third Party Claim” means any Proceeding by a Person other than Purchaser or Seller for which indemnification may be sought by an Indemnified Party under ARTICLE 8.

“Transaction Documents” means this Agreement, the Spectrum Lease (if applicable), and all other agreements, documents and instruments required to be delivered by any Party or its designee to any other Party or its designee in accordance with the provisions of this Agreement.

“Updated Disclosure Schedule” has the meaning set forth in Section 5.9.

ARTICLE 2
PURCHASE AND SALE OF LICENSES

Section 2.1 Purchase and Sale of Seller Licenses

(a) Subject to the terms and conditions set forth in this Agreement, Seller hereby agrees to, or to cause the Licensing Subsidiaries to, sell, convey, transfer, deliver and assign to Purchaser at the Closing, and Purchaser hereby agrees to purchase from Seller and the Licensing Subsidiaries at the Closing, all right, title and interest of Seller and the Licensing Subsidiaries in and to the Seller Licenses, free and clear of all Liens (but subject to the Specified Leases, to the extent that any remain in effect as of the Closing), in exchange for the payment by Purchaser of \$3,589,738,864 (the "Purchase Price"); *provided*, that, in the event that the Rebanding has not been completed prior to the Closing (other than in respect of Excluded Rebanding Activities), the Purchase Price shall be reduced to \$3,517,944,087 and Seller shall promptly reimburse Purchaser for its reasonable, documented, out of pocket costs and expenses incurred in the relocation of Seller Licenses and the licenses of other incumbent 800 MHz licensees that are needed to complete the Rebanding (for the avoidance of doubt, neither the failure to complete non-technical administrative tasks relating to the Rebanding that will not interfere with Purchaser's use and enjoyment of the wireless spectrum covered by the Seller Licenses (such as delivery of invoices or proof of payment, or reconciling contracts of Seller and its Affiliates), nor the failure to complete or obtain any required regulatory or administrative processes or determinations (such as the need to obtain a certification or order of completion by the FCC or other Governmental Authority) so long as all technical Rebanding work (other than Excluded Rebanding Activities) has been completed, shall be considered a failure to complete the Rebanding); *provided further*, that Purchaser is not prevented from using the Seller Licenses as of the Closing and does not have to perform any Rebanding or incur any costs or expenses related to the Rebanding.

(b) At the Closing, Purchaser shall pay the Purchase Price to Seller by wire transfer of immediately available funds to such account(s) as Seller shall designate no later than three Business Days prior to the Closing Date.

(c) Following the Closing, nothing contained herein or in any Transaction Document (other than the Spectrum Lease) shall restrict the Purchaser's right to use and deploy the spectrum granted by the FCC pursuant to the Seller Licenses in whatever manner it chooses (subject to the rights of the lessees under the Assigned Specified Leases).

Section 2.2 No Assumption of Liabilities

THIS IS A PURCHASE AND SALE OF ASSETS AND PURCHASER SHALL NOT ASSUME, BE BOUND BY OR BE RESPONSIBLE OR LIABLE FOR, OR BE DEEMED TO HAVE ASSUMED, BECOME BOUND BY OR RESPONSIBLE OR LIABLE FOR, UNDER THIS AGREEMENT OR BY REASON OF THE TRANSACTIONS CONTEMPLATED HEREBY, ANY LIABILITIES OF SELLER OR ANY OTHER PERSON OF ANY KIND OR NATURE, KNOWN OR UNKNOWN, CONTINGENT OR OTHERWISE, THAT EXISTED, AROSE, WERE INCURRED, OR OTHERWISE PERTAIN TO ACTIONS EVENTS OR CIRCUMSTANCES OCCURRING OR EXISTING PRIOR TO THE CLOSING WITH RESPECT TO THE SELLER LICENSES. PURCHASER SHALL BE LIABLE FOR ALL LIABILITIES ARISING FROM AND AFTER THE CLOSING OUT OF OR RELATING TO

THE OWNERSHIP, OPERATION OR USE OF THE SELLER LICENSES OR THE ASSIGNED SPECIFIED LEASES (IF ANY).

Section 2.3 Closing

(a) Unless this Agreement shall have been earlier terminated in accordance with the provisions of this Agreement, the closing of the transactions contemplated by this Agreement (the “Closing”) shall be consummated via electronic transmission and funds transfer on the date that is five Business Days after the satisfaction or waiver of the conditions set forth in ARTICLE 6 (except those conditions that by their nature will be satisfied at the Closing), or at such other time or place as may be agreed upon in writing by Purchaser and Seller; *provided* that in no event shall the Closing occur earlier than the third anniversary of the Merger Closing Date. The date of the Closing is referred to herein as the “Closing Date”.

(b) Subject to the terms and conditions hereof, at the Closing, Seller shall, and shall cause the Licensing Subsidiaries to, execute and deliver to Purchaser: (i) an instrument of assignment and assumption of license in the form attached hereto as Exhibit A, executed by Seller or the applicable Licensing Subsidiary; (ii) with respect to each Specified Lease that is in effect as of the Closing (if any) an instrument of assignment and assumption of lease in the form attached hereto as Exhibit B, executed by the Subsidiary of Seller party thereto; (iii) such other reasonable instruments (if any) as shall be necessary and effective to transfer, convey and assign to, and vest in, Purchaser all of the right, title and interest of Seller and the Licensing Subsidiaries in and to the Seller Licenses, free and clear of all Liens (but subject to the Specified Leases, to the extent that any remain in effect as of the Closing); (iv) the closing certificates and other documents required to be delivered by Seller pursuant to this Agreement; and (v) if Seller timely exercises the Lease-Back Option, the Spectrum Lease in substantially the form attached hereto as Exhibit C, executed by Seller or an Affiliate thereof.

(c) Subject to the terms and conditions hereof, at the Closing, Purchaser shall execute and deliver to Seller: (i) an instrument of assignment and assumption of license in the form attached hereto as Exhibit A, executed by Purchaser; (ii) with respect to each Specified Lease that is in effect as of the Closing (if any) an instrument of assignment and assumption of lease in the form attached hereto as Exhibit B, executed by Purchaser; (iii) the closing certificates and other documents required to be delivered by Purchaser pursuant to this Agreement; and (iv) if Seller timely exercises the Lease-Back Option, the Spectrum Lease in substantially the form attached hereto as Exhibit C, executed by Purchaser.

ARTICLE 3
REPRESENTATIONS AND WARRANTIES OF SELLER

Except as set forth in the Disclosure Schedules delivered by Seller to Purchaser immediately prior to the execution of this Agreement (the “Disclosure Schedule”) (it being agreed that disclosure of any item in any Section or subsection of a Disclosure Schedule shall apply only to the corresponding Section or subsection of this Agreement and to any other Section or subsection of this Agreement to the extent that the relevance of such item is reasonably apparent on its face in the Disclosure Schedules), Seller hereby represents and warrants to Purchaser as of the Effective Date and as of the Closing (or in the case of representations and warranties that speak of a specified date, as of such specified date) that the following statements

are true and correct:

Section 3.1 Organization and Qualification

Seller and each Licensing Subsidiary is duly organized and validly existing under the laws of the jurisdiction of its organization and has all requisite corporate or similar power and authority and all necessary governmental approvals to own, lease and operate its properties and to carry on its business as now being conducted, except where the failure to be so organized, existing and in good standing or to have such power, authority or governmental approvals would not impair Seller's or such Licensing Subsidiary's ability to sell, convey, transfer, deliver and assign its right, title and interest in and to the Seller Licenses, free and clear of all Liens (but subject to the Assigned Specified Leases, if any), on the terms contemplated hereby.

Section 3.2 Power and Authority

Seller has all requisite corporate or similar power and authority to execute, deliver and perform this Agreement and the other Transaction Documents to which it is a party. The execution, delivery and performance by Seller of this Agreement and all the other Transaction Documents required to be executed and delivered by Seller in accordance with the provisions of this Agreement have been duly authorized by all necessary corporate or similar action on the part of Seller. This Agreement has been, and the other Transaction Documents to which Seller is a party have been, or will be, duly executed and delivered by Seller.

Section 3.3 Enforceability

This Agreement constitutes, and the other Transaction Documents to which Seller is a party constitute or will constitute, the legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, fraudulent transfer and other similar laws affecting creditors' rights generally and by general principles of equity.

Section 3.4 Non-Contravention

Subject to the receipt of the FCC Consents, compliance with any applicable requirements of the HSR Act and the giving of any post-Closing notifications required by the FCC or state Governmental Authorities, the execution, delivery and performance by Seller of this Agreement and the other Transaction Documents to which Seller is a party do not and will not violate or conflict with or result in a default or the breach of any term, condition or provision of, or require the consent of any other Person or give any Person any right of termination, amendment, acceleration or cancellation under, (i) any Law to which Seller or any of the Seller Licenses is subject, (ii) any judgment, order, writ, injunction, decree or award of any court, arbitrator or governmental or regulatory official, body or authority that is applicable to Seller or any of the Seller Licenses, (iii) the articles of incorporation, certificate of formation, bylaws or similar organizational documents of Seller, (iv) any material mortgage, indenture, agreement, contract, commitment, lease, plan, license or other instrument, document or understanding, oral or written, to which Seller is a party or subject or by which any of the Seller Licenses may be bound or affected, or (v) any of the Seller Licenses or result in the creation of a Lien on any of the Seller Licenses.

Section 3.5 Seller Licenses

(a) Each of the Seller Licenses has been validly issued, is in full force and effect, is validly held by Seller or a Licensing Subsidiary and is free and clear of conditions or restrictions, other than those routinely imposed in conjunction with FCC licenses of a similar type or conditions imposed by the FCC with respect to the Rebanding. Each of the Seller Licenses is free and clear of all Liens, other than (i) any Liens in respect of indebtedness for borrowed money (which Liens by their express terms shall be automatically released at the Closing upon payment of the Purchase Price as contemplated hereunder); or (ii) any leases or other arrangements with any Affiliates of Seller or other third parties (which, other than the Specified Leases, shall be terminated at or prior to the Closing). At the Closing, upon payment of the Purchase Price as contemplated hereunder, each of the Seller Licenses will be free and clear of all Liens (but will remain subject to the Assigned Specified Leases, if any).

(b) Except for any leases or other arrangements with any Affiliates of Seller or other third parties (which, other than the Specified Leases, shall be terminated at or prior to the Closing), none of the spectrum covered by the Seller Licenses is subject to any lease or other agreement or arrangement with any third party, including any agreement giving any third party any right to use such spectrum. With respect to each Assigned Specified Lease (if any), none of Seller, any of its Affiliates or, to the actual knowledge of Seller, any other party thereto is in material breach or violation of, or default under, such Assigned Specified Lease.

(c) There are no existing applications, petitions to deny or complaints or proceedings pending or, to Seller's knowledge, threatened, before the FCC or other Governmental Authority relating to any of the Seller Licenses or which otherwise, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect, other than proceedings affecting the wireless telecommunications industry or 800 MHz licenses or licensees generally. No Governmental Authority has, to Seller's knowledge, threatened to terminate or suspend any of the Seller Licenses, and there are no third party claims of any kind that have been asserted with respect to any of the Seller Licenses that, if successful, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect. Neither Seller nor any of the Licensing Subsidiaries is material violation or default, and has not received any notice of any claim of material violation or default, of any Law or regulation of any Governmental Authority with respect to any of the Seller Licenses. No event has occurred with respect to any of the Seller Licenses that permits, or after notice or lapse of time or both would permit, revocation or termination thereof or that would reasonably be expected to result in any material violation or default, claim of material violation or default of any Law or regulation of any Governmental Authority with respect to any Seller License or material impairment of the rights of the holder of such Seller License.

(d) Each Seller License is held solely by Seller or a Licensing Subsidiary. As of the Effective Date, no shareholder, officer, employee or former employee of Seller or any Affiliate thereof, or any other Person, holds or has any proprietary, financial or other interest (direct or indirect) in, or any authority to use, or any other right or claim in or to, any of the Seller Licenses, other than any Liens, leases or other arrangements that (other than in the case of the Specified Leases) will be terminated at or prior to the Closing (as provided above). At the Closing, upon payment of the Purchase Price as contemplated hereunder, no shareholder, officer, employee or former employee of Seller or any Affiliate thereof, or any other Person, holds or has

any proprietary, financial or other interest (direct or indirect) in, or any authority to use, or any other right or claim in or to, any of the Seller Licenses, other than pursuant to the Assigned Specified Leases, if any.

(e) No amounts (including installment payments consisting of principal and/or interest or late payment fees) are due to the FCC or the United States Department of the Treasury in respect of the Seller Licenses, and none of the Seller Licenses was acquired with bidding credits. The consummation of the transactions contemplated hereunder will not cause the FCC to impose any penalties on Seller under the FCC's WT Docket No. 02-55 or related proceedings. The consummation of the transactions contemplated hereunder will not cause the FCC to impose any trafficking or unjust enrichment penalties pursuant to 47 C.F.R. §1.2111.

(f) Seller has no reason to believe that any of the Seller Licenses will not be renewed in the ordinary course. None of the Seller Licenses will be adversely affected by the consummation of the transactions contemplated hereby. Seller is not aware of any basis for any application, action, petition, objection or other pleading, or for any proceeding with the FCC or any other Governmental Authority, that (i) questions or contests the validity of, or seeks the revocation, forfeiture, non-renewal or suspension of, any Seller License, (ii) seeks the imposition of any materially adverse modification or amendment with respect to any Seller License, (iii) seeks the payment of a material fine, sanction, penalty, damages or contribution in connection with the use of any Seller License, or (iv) in any other way would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, other than proceedings affecting the wireless communications industry or 800 MHz licenses or licensees generally.

(g) There are no material liabilities of Seller or any Affiliate thereof (whether matured or unmatured, direct or indirect, or absolute, contingent or otherwise), whether related to, associated with, or attached to, any Seller License or otherwise to which Purchaser or any of its Affiliates will be subject from and after the Closing as a result of the consummation of the transactions contemplated hereby (other than liabilities arising from and after the Closing under the Assigned Specified Leases, if any).

(h) With respect to each Seller License, (i) all material documents required to be filed at any time by Seller and its Affiliates with the FCC with respect to such Seller License have been filed or the time period for such filing has not lapsed, and (ii) all such documents filed since the date that such Seller License was first issued or transferred to Seller or any Affiliate thereof were correct in all material respects at the time of filing.

(i) Seller and each Affiliate thereof is in compliance with all Laws applicable to the Seller Licenses to which any of them is subject, except where any such non-compliance, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

Section 3.6 Litigation

Except for proceedings affecting the wireless communications industry generally or 800 MHz licenses or licensees generally, no litigation, arbitration, investigation or other proceeding of or before any Governmental Authority or arbitrator is pending or, to Seller's knowledge, threatened against Seller or any Affiliate thereof that, individually or in the aggregate, would

reasonably be expected to have a Material Adverse Effect, or that seeks to enjoin this Agreement or the transactions contemplated hereby or otherwise prevent Seller from performing its obligations under this Agreement or consummating the transactions contemplated hereby. Neither Seller nor any Affiliate thereof is a party to or subject to the provisions of any judgment, order, writ, injunction, decree or award of any Governmental Authority or arbitrator that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

Section 3.7 Build-Out Requirements

Seller and its Affiliates are not in breach or otherwise in violation of any build-out or continuance of service requirements under the FCC rules relating to any Seller License.

Section 3.8 No Brokers

Seller and its agents and Affiliates have incurred no obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payments in connection with this Agreement or the transactions contemplated hereby for which Purchaser or any Affiliate thereof could become liable or obligated.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby represents and warrants to Seller as of the Effective Date and as of the Closing (or in the case of representations and warranties that speak of a specified date, as of such specified date) that the following statements are true and correct:

Section 4.1 Organization

Purchaser is duly organized and validly existing under the laws of the jurisdiction of its organization.

Section 4.2 Power and Authority

Purchaser has all requisite corporate or similar power and authority to execute, deliver and perform this Agreement and the other Transaction Documents to which it is a party. The execution, delivery and performance by Purchaser of this Agreement and all the other Transaction Documents required to be executed and delivered by Purchaser in accordance with the provisions of this Agreement have been duly authorized by all necessary corporate or similar action on the part of Purchaser. This Agreement has been, and the other Transaction Documents to which Purchaser is a party have been, or will be, duly executed and delivered by Purchaser.

Section 4.3 Enforceability

This Agreement constitutes, and the other Transaction Documents to which Purchaser is a party constitute or will constitute, the legal, valid and binding obligations of Purchaser, enforceable against Purchaser in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, fraudulent

conveyance, fraudulent transfer and other similar laws affecting creditors' rights generally and by general principles of equity.

Section 4.4 Non-Contravention

Subject to the receipt of the FCC Consents, compliance with any applicable requirements of the HSR Act and the giving of any post-Closing notifications required by the FCC or state Governmental Authorities, the execution, delivery and performance by Purchaser of this Agreement and the other Transaction Documents to which Purchaser is a party do not and will not violate or conflict with or result in a default or the breach of any term, condition or provision of, or require the consent of any other Person or give any Person any right of termination, amendment, acceleration or cancellation under, (i) any Law to which Purchaser is subject, (ii) any judgment, order, writ, injunction, decree or award of any court, arbitrator or governmental or regulatory official, body or authority that is applicable to Purchaser, (iii) the articles of incorporation, certificate of formation, bylaws or similar organizational documents of Purchaser, or (iv) any material mortgage, indenture, agreement, contract, commitment, lease, plan, license or other instrument, document or understanding, oral or written, to which Purchaser is a party or subject.

Section 4.5 Litigation

Except for proceedings affecting the wireless communications industry generally, no litigation, arbitration, investigation or other proceeding of or before any Governmental Authority or arbitrator is pending or, to Purchaser's knowledge, threatened against Purchaser or any Affiliate thereof that seeks to enjoin this Agreement or the transactions contemplated hereby or otherwise prevent Purchaser from performing its obligations under this Agreement or consummating the transactions contemplated hereby. Neither Purchaser nor any Affiliate thereof is a party to or subject to the provisions of any judgment, order, writ, injunction, decree or award of any Governmental Authority or arbitrator that, individually or in the aggregate, would reasonably be expected to have a material adverse effect on the ability of Purchaser to consummate the transactions contemplated by this Agreement.

Section 4.6 Qualification

Purchaser is fully qualified under the Communications Act and the FCC Rules (i) to hold and receive FCC licenses generally, (ii) to hold and receive the Seller Licenses, and the consummation of the transactions contemplated hereby will not cause Purchaser or such Affiliate to be ineligible to hold any Seller License, and (iii) to be approved as the assignee of the Seller Licenses. Purchaser is in compliance with Section 310(b) of the Communications Act of 1934, as amended, and all FCC Rules promulgated thereunder with respect to alien ownership.

Section 4.7 Acknowledgements regarding Build-Out Requirements

Purchaser acknowledges that it is aware of the continuance of service requirements under the FCC Rules with respect to the Seller Licenses, and that satisfaction of those requirements will be Purchaser's responsibility following the Closing, without prejudice to any right of indemnification Purchaser may have pursuant to ARTICLE 8 by reason of any breach of Seller's representations and warranties.

Section 4.8 No Brokers

Purchaser and its agents and Affiliates have incurred no obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payments in connection with this Agreement or the transactions contemplated hereby for which Seller or any Affiliate thereof could become liable or obligated.

ARTICLE 5
COVENANTS AND OTHER AGREEMENTS

Section 5.1 Covenants of Purchaser and Seller Pending the Closing

Subject to the terms of this Agreement, from the date hereof until the Closing, each Party shall use reasonable best efforts to take, or cause to be taken, all actions, and do, or cause to be done, all things necessary, proper or advisable and consistent with applicable Law to carry out all of their respective obligations under this Agreement and to consummate the transactions contemplated hereunder as contemplated herein as soon as reasonably practicable after the Filing Deadline.

Section 5.2 Lease-Back Option

Seller shall have the right, exercisable by giving written notice to Purchaser by no later than the second anniversary of the Merger Closing Date of Seller's irrevocable commitment to exercise such option, to lease back 2x2 MHz of spectrum nationwide under the Seller Licenses (subject to the proviso below with respect to the Specified BEAs) for a two-year term commencing on the Closing Date on the terms set forth in the Spectrum Lease (the "Lease-Back Option"). Such leased spectrum in each service area shall be contiguous 2x2 MHz as configured as of the Effective Date unless otherwise mutually agreed by the Parties; *provided* that the leased spectrum shall be 1.525x1.525 MHz (or such greater amount (up to 2x2 MHz) as is reasonably required to operate one CDMA carrier for the applicable service area) with respect to the Seller Licenses for each of the BEAs listed on Schedule 5.2 attached hereto (the "Specified BEAs"). Within six months of the Effective Date, Seller shall provide Purchaser with the configuration of the leased spectrum as of the Effective Date in each service area. In the event that Seller timely exercises the Lease-Back Option, Seller (or an Affiliate thereof designated by Seller) and Purchaser shall execute and deliver the Spectrum Lease at the Closing.

Section 5.3 Confidentiality

Each Party shall keep confidential the existence and terms of this Agreement; except: (i) as required by applicable Law (including FCC Rules) or the rules of any relevant stock exchange or by order or decree of a Governmental Authority having jurisdiction over such Party; *provided* that the disclosing Party provides the other Party reasonable opportunity to review and comment in advance on such disclosure, (ii) in connection with such Party's enforcement of any rights it may have at law or in equity, (iii) that each Party may disclose the existence and terms of this Agreement on a "need-to-know" basis to its and its Affiliates' Representatives who may be assisting such Party in connection with the transactions contemplated hereby and agree to be bound by the terms of this Section 5.3 as if they were parties hereto (or are otherwise subject to substantially similar confidentiality obligations or undertakings) (and such Party shall be liable for any breach by any such Person of such non-disclosure obligations), (iv) with the express prior

written approval of the other Party, or (v) after such information has become available to the general public without breach of this Agreement by the disclosing Party or its Affiliates or its or their respective Representatives.

Section 5.4 Compliance with Law; Compliance with Licenses; Non-Solicitation

(a) Compliance with Law. From the date hereof until the Closing, Seller shall comply in all material respects with the Seller Licenses and all applicable Laws to the extent that they relate to any of the Seller Licenses.

(b) Compliance with Licenses. From the date hereof until the Closing: (i) Seller shall, and shall cause its Affiliates to, use their respective reasonable best efforts to maintain the validity of the Seller Licenses and to ensure that the Seller Licenses remain in full force and effect in the ordinary course consistent with past practice, and (ii) Seller shall not, and shall cause its Affiliates not to, engage in any transaction or take any action or omit to take any action that would reasonably be expected to adversely affect the validity of the Seller Licenses. Without limiting the foregoing, Seller shall not, nor permit the Licensing Subsidiaries to, seek the modification of any Seller Licenses without the prior written consent of Purchaser (not to be unreasonably withheld, conditioned or delayed); *provided* that only prior written notice to Purchaser (rather than prior written consent) shall be required for modifications in the ordinary course of business consistent with Seller's past practice.

(c) Non-Solicitation. Prior to the earlier to occur of the Closing or any termination of this Agreement in accordance with the provisions of Section 7.1, Seller shall not, and shall not permit the Licensing Subsidiaries to, (i) directly or indirectly sell, transfer, assign or otherwise dispose of any of the Seller Licenses or offer to or enter into any agreement, arrangement or understanding to, directly or indirectly sell, transfer, assign or otherwise dispose of any of the Seller Licenses (other than to a direct or indirect Subsidiary of Seller); *provided that*, for the avoidance of doubt, Seller and the Licensing Subsidiaries shall be permitted to enter into or continue any leases with any Affiliates of Seller or other third parties so long as such leases (other than the Specified Leases) either expire by their express terms no later than three months prior to the Filing Deadline or are freely terminable by Seller and its Licensing Subsidiaries (as applicable) and are actually terminated no later than three months prior to the Filing Deadline; and *provided further that*, Seller and the Licensing Subsidiaries shall be permitted to freely incur or permit to exist any Lien on any or all of the Seller Licenses that secures indebtedness for borrowed money so long as such Liens by their express terms will be automatically released at the Closing upon payment of the Purchase Price as contemplated hereunder, or (ii) take or refrain from taking any action that would reasonably be expected to materially impair the Seller Licenses (taken as a whole) or subject the Seller Licenses to forfeiture or cancellation by the FCC.

(d) Notice of Certain Events. Each Party shall promptly notify the other in writing of any action, suit or proceeding that shall be instituted or threatened against such Party to restrain, prohibit or otherwise challenge the legality of any transaction contemplated by this Agreement. No disclosure by either Party pursuant to this Section 5.4(d), however, shall be deemed to amend or supplement this Agreement or to prevent or cure any misrepresentation by such Party herein, unless the other Party shall have expressly so agreed in writing.

Section 5.5 Governmental Filings

(a) The Parties shall prepare and file with the FCC all applications and notifications necessary to obtain the FCC Consents (the “FCC Applications”) by no later than the Filing Deadline; *provided*, that the FCC Applications shall not be filed more than 30 days prior to the Filing Deadline unless the Parties mutually agree to file the FCC Applications earlier. The Parties shall cooperate in the diligent submission of any additional information requested by the FCC with respect to the FCC Applications, and (subject to Section 5.5(d)) will use (and cause their respective Affiliates to use) their respective reasonable best efforts to take all such actions and do or cause to be done all things, necessary, appropriate or advisable to obtain the FCC Consents as soon as reasonably practicable after the Filing Deadline.

(b) Prior to the Filing Deadline, the Parties shall prepare and file with the FTC and the DOJ the notifications required pursuant to the HSR Act with respect to the transactions contemplated by this Agreement, including any documents required to be filed in connection therewith (the “HSR Notice”). The HSR Notice shall specifically request early termination of the waiting period prescribed by the HSR Act. The Parties shall cooperate in the diligent submission of any supplemental information requested by the FTC or the DOJ with respect to the HSR Notice.

(c) Each Party shall, and shall cause its Affiliates to, cooperate with the other Party in connection with the making of all filings and the obtaining of all approvals referred to in this Section 5.5, including by (i) providing copies of all such filings and attachments to the non-filing Party, (ii) furnishing all information required for all such filings, (iii) promptly keeping the other Party informed in all material respects of any material communication received by such Party from, or given by such Party to, any Governmental Authority relating to the approval of the transactions contemplated hereby and of any material communication received or given regarding any proceeding by a private party relating to the approval of the transactions contemplated hereby by any Governmental Authority, and (iv) permitting the other Party to review any material communication delivered to, and consulting with the other Party in advance of any meeting or conference with, any Governmental Authority relating to the transactions contemplated hereby or regarding any proceeding by a private party relating to the approval of the transactions contemplated hereby by any Governmental Authority. Notwithstanding the foregoing, either Party may, as it deems necessary, appropriate or advisable, designate any competitively sensitive material provided to the other Party under this Section 5.5 as “outside counsel only.” Such materials and information contained therein shall be given only to the outside legal counsel of the recipient Party, and the recipient Party shall cause such outside counsel not to disclose such materials or information to any Representatives of the recipient Party or its Affiliates, unless express written permission is obtained in advance from the disclosing Party. To the extent practicable under the circumstances, neither Party shall participate in any meeting or discussion expected to address substantive matters related to the transactions contemplated hereby, either in person or by telephone, with any Governmental Authority regarding the proposed transactions unless, to the extent not prohibited by such Governmental Authority, it gives the other Party the opportunity to attend and observe. The Parties shall advise each other promptly in respect of any understandings, undertakings or agreements (oral or written) that either of them proposes to make or enter into with the FTC, the DOJ, the FCC or any other Governmental Authority regarding the transactions contemplated hereby. To the extent that confidential information of either Party is required to be filed with any

Governmental Authority, the Party submitting such information shall, prior to such disclosure, (A) notify the Party whose confidential information is to be disclosed, and (B) together with the Party whose information is to be disclosed, seek and use commercially reasonable efforts to secure confidential treatment of such information pursuant to the applicable protective order or other confidentiality procedures of such Governmental Authority.

(d) Notwithstanding anything to the contrary set forth in this Agreement or otherwise, the Parties agree that their respective obligations under this Section 5.5 shall not include any obligation on the part of either Party or their Affiliates to: (i) commit to or effect, by consent decree, hold separate orders, trust or otherwise, the sale or disposition of any assets or businesses or any other structural or conduct relief with respect to its future operations as may be required to be divested or undertaken in order to avoid the entry of, or to effect the dissolution of, any decree, order, judgment, injunction, temporary restraining order or other order in any action, suit or proceeding that would otherwise have the effect of preventing, delaying or limiting the consummation of the transactions contemplated hereby, (ii) litigate or otherwise pursue any claims against any objections asserted by any Governmental Authority with respect to the consummation of the transactions contemplated hereby, or (iii) contest, resist or seek to have vacated, lifted, reversed or overturned any decree, order, judgment, injunction, temporary restraining order or other order in any action, suit or proceeding that would otherwise have the effect of preventing, delaying or limiting the consummation of the transactions contemplated hereby.

Section 5.6 Financing

(a) Purchaser shall have sufficient funds available to it at the Closing to satisfy the payment of the Purchase Price in full. In the event that Purchaser would need to arrange or obtain any financing in order to have sufficient funds available to it at the Closing to satisfy the payment of the Purchase Price in full (the "Financing"), Purchaser shall use, and shall cause its Affiliates to use, its and their commercially reasonable efforts to ensure that the Financing is available at the Closing. Purchaser shall keep Seller informed in reasonable detail of the status of its efforts to arrange any Financing.

(b) Purchaser understands and acknowledges that under the terms of this Agreement, Purchaser's obligation to consummate the transactions hereunder is not in any way contingent upon or otherwise subject to Purchaser's consummation of any financing arrangements, Purchaser's obtaining of any financing or the availability, grant, provision or extension of any financing to Purchaser. For the avoidance of doubt, if any such financing has not been obtained, Purchaser shall continue to be obligated, until such time as this Agreement is terminated in accordance with its terms and subject to the satisfaction or waiver of the conditions set forth in ARTICLE 6, to consummate the transactions contemplated by this Agreement.

Section 5.7 Rebanding

Seller shall, and shall cause its Affiliates to, use reasonable best efforts to complete the Rebanding within two and a half years after the Merger Closing Date. If the Rebanding is not completed within two and a half years after the Merger Closing Date, Seller shall promptly share with Purchaser any and all information reasonably necessary to facilitate completion of the Rebanding or reasonably requested by Purchaser in furtherance of completion of the Rebanding.

For the avoidance of doubt, the obligations of Seller under this Section 5.7 shall not apply to any Excluded Rebanding Activities.

Section 5.8 Termination of Liens and other Arrangements.

Seller shall, and shall cause its Affiliates to, terminate at or prior to the Closing, (i) subject to the payment of the Purchase Price as contemplated hereunder, all Liens on the Seller Licenses, and (ii) all leases (other than the Specified Leases) or other arrangements with any Affiliates of Seller or other third parties to which the spectrum covered by the Seller Licenses is subject, including any agreement giving any third party any right to use such spectrum after the Closing (but for the avoidance of doubt excluding the Spectrum Lease). Seller shall, and shall cause its Affiliates to, use reasonable best efforts to terminate the spectrum leases set forth on Schedule 5.8 (the “Specified Leases”) at or prior to the Closing. In the event that any Specified Leases have not been terminated and remain in effect as of the Closing, each such remaining Specified Lease shall be assigned to and assumed by Purchaser at the Closing (each such Specified Lease, an “Assigned Specified Lease”). In the event that Seller may provide notice under a Specified Lease in order to prevent such Specified Lease from being renewed or extended for a period extending beyond the Closing Date, Seller shall, and shall cause its Affiliates to, use reasonable best efforts to timely provide such notice as soon as permitted under such Specified Lease.

Section 5.9 Updated Disclosure Schedules.

Seller shall have the right (but not the obligation), no later than five Business Days prior to the Closing Date, to deliver an updated Disclosure Schedule to Purchaser (an “Updated Disclosure Schedule”). Any additional disclosures provided in such Updated Disclosure Schedule that were not set forth in the Disclosure Schedule delivered by Seller to Purchaser on the Effective Date shall be deemed to have qualified the representations and warranties made by Seller as of the Closing Date (and to cure any inaccuracy in such representations and warranties as of the Closing Date that would otherwise have existed) and be taken into account solely for the purpose of determining whether the representations or warranties made by the Seller in ARTICLE 3 are true and correct as of the Closing (and, for the avoidance of doubt, not as of the Effective Date) for purposes of Seller’s indemnity pursuant to ARTICLE 8 and, for the avoidance of doubt, shall not be taken into account for the purpose of determining whether the condition to the Closing set forth in Section 6.1(b) has been satisfied. The right to deliver an Updated Disclosure Schedule shall be at Seller’s sole discretion, and the failure of Seller to deliver an Updated Disclosure Schedule hereunder (or to otherwise notify Purchaser in the event a representation or warranty made by Seller hereunder is or becomes untrue) shall not constitute a breach of this Agreement or give rise to any Liability of Seller (other than pursuant to the indemnity obligations set forth in ARTICLE 8 in the event of an inaccuracy of the representations and warranties made by Seller in ARTICLE 3).

ARTICLE 6
CONDITIONS TO CLOSING

Section 6.1 Conditions to the Obligations of Purchaser

The obligation of Purchaser to consummate the transactions contemplated by this Agreement is subject to the satisfaction on or prior to the Closing Date of each of the following conditions, unless waived in writing by Purchaser:

(a) The FCC Consents shall have been obtained by one or more FCC Orders, free of any conditions that, individually or in the aggregate, are materially adverse to the business of Purchaser and its Affiliates or that would reasonably be expected to materially impair the Seller Licenses (taken as a whole), except for conditions on any Seller License that are generally applicable to 800 MHz licenses or licensees.

(b) The representations and warranties of Seller contained in ARTICLE 3 shall be true and correct in all material respects (without giving effect to any qualifications or limitations therein as to materiality or Material Adverse Effect) as of the Effective Date and as of the Closing Date as if made on such date (except that representations and warranties that are made as of a specific date need to be so true and correct in all material respects only as of such date).

(c) Seller shall have performed in all material respects all covenants and agreements required by this Agreement to be performed by it prior to or at the Closing.

(d) Purchaser shall have received at the Closing a certificate signed by an executive officer of Seller to the effect that such executive officer has read Section 6.1(b) and Section 6.1(c) and the conditions set forth therein have been satisfied as of the Closing Date.

(e) No Law or award, order, writ, decree, injunction or judgment by any arbitrator or Governmental Authority shall be in effect that enjoins or prohibits the consummation of the transactions contemplated hereby.

(f) Any applicable waiting period under the HSR Act relating to the transactions contemplated by this Agreement shall have expired or been terminated.

(g) Except as permitted by the Spectrum Lease (if the Lease-Back Option has been timely exercised by Seller) and except for the lease of spectrum under the Assigned Specified Leases (if any), Seller and its Subsidiaries shall have discontinued all of their respective operations on and uses of the spectrum covered by the Seller Licenses.

(h) Purchaser shall have received at the Closing each of the deliveries set forth in Section 2.3(b) required to be delivered to Purchaser.

Section 6.2 Conditions to the Obligations of Seller

The obligation of Seller to consummate the transactions contemplated by this Agreement is subject to the satisfaction on or prior to the Closing Date of each of the following conditions, unless waived in writing by Seller:

(a) The FCC Consents shall have been obtained by one or more FCC Orders, free of any conditions that, individually or in the aggregate, are materially adverse to the business of Seller and its Affiliates.

(b) The representations and warranties of Purchaser contained in ARTICLE 4 shall be true and correct in all material respects (without giving effect to any qualifications or limitations therein as to materiality) as of the Effective Date and as of the Closing Date as if made on such date (except that representations and warranties that are made as of a specific date need to be so true and correct in all material respects only as of such date).

(c) Purchaser shall have performed in all material respects all covenants and agreements required by this Agreement to be performed by it prior to or at the Closing.

(d) Seller shall have received at the Closing a certificate signed by an executive officer of Purchaser to the effect that such executive officer has read Section 6.2(b) and Section 6.2(c) and the conditions set forth therein have been satisfied as of the Closing Date.

(e) No Law or award, order, writ, decree, injunction or judgment by any arbitrator or Governmental Authority shall be in effect that enjoins or prohibits the consummation of the transactions contemplated hereby.

(f) Any applicable waiting period under the HSR Act relating to the transactions contemplated by this Agreement shall have expired or been terminated.

(g) Seller shall have received at the Closing each of the deliveries set forth in Section 2.3(c) required to be delivered to Seller.

ARTICLE 7 TERMINATION

Section 7.1 Termination

(a) This Agreement may be terminated, and the transactions contemplated hereunder abandoned, without any further obligation of any Party (except as set forth herein) at any time prior to the Closing Date as follows:

(i) by mutual written consent of the Parties;

(ii) by either Party if the Closing does not occur by the first anniversary of the Filing Deadline (the “Outside Date”); provided, however, that the right to terminate this Agreement pursuant to this Section 7.1(a)(ii) shall not be available to either Party if such Party’s failure to comply with its obligations under this Agreement has materially contributed to the failure of the Closing to occur before the Outside Date;

(iii) by Seller, if Purchaser fails to consummate the transactions contemplated by this Agreement within five Business Days after the satisfaction or waiver of the conditions set forth in ARTICLE 6 (except those conditions that by their nature will be satisfied at the Closing) and as required by Section 2.3 or by such later time for the Closing Date as may be agreed upon in writing by Purchaser and Seller;

(iv) by Purchaser, if (x) Seller fails to consummate the transactions contemplated by this Agreement within five Business Days after the satisfaction or waiver of the conditions set forth in ARTICLE 6 and as required by Section 2.3 (except those conditions that by their nature will be satisfied at the Closing) or by such later time for the Closing Date as may be agreed upon in writing by Purchaser and Seller, and (y) a court of competent jurisdiction has determined by final, non-appealable order or decree that the remedy of specific performance is not available to Purchaser to specifically enforce the consummation of the transactions contemplated hereunder;

(v) by either Party upon any other material breach by the other Party of its obligations under this Agreement; *provided* that the breaching Party has not cured such breach within 30 days following written notice of such breach and that the terminating Party is not otherwise in breach of its obligations under this Agreement which has prevented or would prevent the satisfaction of any condition for the benefit of the breaching party set forth in ARTICLE 6 (for the avoidance of doubt, if a Party is ready and willing to file the FCC Applications on the Filing Deadline subject only to the substantially concurrent filing of the FCC Applications required by the other Party, the Party ready and willing to so file the FCC Applications shall not be deemed to be in breach of its obligations under this Agreement and the other Party (if not so ready and willing) shall be deemed to be in material breach of Section 5.5(a) and the Party ready and willing to file the FCC Applications may terminate this Agreement if such material breach is not cured within 30 days following written notice of such breach);

(vi) by either Party if the consummation of the transactions contemplated hereby shall be prohibited by a final, non-appealable order, decree or injunction of a court of competent jurisdiction; or

(vii) by Purchaser in the event that Seller opts to deliver an Updated Disclosure Schedule pursuant to Section 5.9.

(b) In the event of the termination of this Agreement, this Agreement shall become void and have no effect, and, subject to Section 7.1(c) and Section 7.1(d), neither Party shall have any Liability or further obligation to the other Party in respect of this Agreement, except that this ARTICLE 7 and ARTICLE 9 shall survive termination of this Agreement (it being understood that the survival of Section 9.15 shall not preclude a Party's expenses from being included in damages for a breach of this Agreement by the other Party).

(c) In the event that Seller terminates this Agreement pursuant to Section 7.1(a)(iii) or Section 7.1(a)(v), or either Party terminates this Agreement pursuant to Section 7.1(a)(ii), at a time when Seller could have terminated this Agreement pursuant to Section 7.1(a)(iii) or Section 7.1(a)(v), then, in any such case, Purchaser shall pay to Seller a termination fee of \$71,794,777 in cash (the "Termination Fee"), which shall be paid by Purchaser to Seller by wire transfer of immediately available funds within three Business Days after such termination of this Agreement. Notwithstanding any other provision of this Agreement, including Section 9.9, prior to the Closing, payment of the Termination Fee shall be the sole and exclusive remedy of Seller and its Affiliates against Purchaser and its Affiliates with respect to the transactions contemplated by this Agreement, including for any breach by Purchaser of its obligations hereunder, and Seller and its Affiliates hereby forfeit any right to bring an action prior to the

Closing to specifically enforce Purchaser's obligations under this Agreement, including Purchaser's obligation to consummate the transactions contemplated hereunder. The Termination Fee shall be considered liquidated damages (and not a penalty) for any and all Losses suffered or incurred by Seller in connection with this Agreement.

(d) The sole and exclusive remedy of Purchaser in the event that Seller fails to consummate the transactions contemplated hereunder when required by this Agreement shall be an action for specific performance in accordance with Section 9.9; *provided*, that if a court of competent jurisdiction has determined by final, non-appealable order or decree that the remedy of specific performance is not available to Purchaser to specifically enforce the consummation of the transactions contemplated hereunder, then following termination of this Agreement in circumstances when the Termination Fee is not payable, Purchaser shall be entitled as its sole and exclusive remedy to seek damages against Seller for any uncured material breach of this Agreement by Seller that occurred prior to such termination, up to a maximum amount of damages of \$71,794,777 in the aggregate.

(e) The Parties acknowledge and agree that in the event the FCC Applications are filed and the FCC fails to approve the transactions contemplated hereby, neither Party shall have any liability to the other Party hereunder, except as expressly provided in Section 7.1(c) or Section 7.1(d) above.

(f) The Parties acknowledge that the agreements set forth in this ARTICLE 7 are an integral part of the transactions contemplated by this Agreement and that, without these agreements the Parties would not enter into this Agreement.

ARTICLE 8 SURVIVAL AND INDEMNIFICATION

Section 8.1 Survival

All representations and warranties made by the Parties in this Agreement shall survive for a period lasting 18 months after the Closing and shall expire at such time, except for the Purchaser Fundamental Representations and the Seller Fundamental Representations which shall survive for a period lasting three years after the Closing and then expire at such time. All covenants and agreements set forth herein which by their terms contemplate actions or impose obligations prior to or at the Closing shall survive the Closing for eighteen (18) months from the Closing Date and then expire. All covenants and agreements set forth herein which by their terms contemplate actions or impose obligations following the Closing shall survive the Closing and remain in full force and effect in accordance with their terms. Any claim by a Party based upon breach of any representation, warranty, covenant or agreement must be submitted to the other Party prior to the expiration of such survival period.

Section 8.2 General Indemnification Obligation

(a) From and after the Closing, each Party (the "Indemnifying Party") agrees to indemnify and hold harmless the other Party and its Affiliates, and its and their respective Representatives, successors and assigns (each, an "Indemnified Party"), against and in respect of any and all Losses incurred or suffered by any Indemnified Party, that result from, relate to or arise out of (i) any inaccuracy in any representation or warranty made by the Indemnifying Party

in this Agreement as of the date hereof or the Closing Date (except to the extent such representation or warranty speaks as of a particular date, in which case such inaccuracy shall be determined as of such particular date) and (ii) any breach or failure by the Indemnifying Party to perform any of the covenants or agreements made by the Indemnifying Party in this Agreement.

(b) From and after the Closing, Seller as Indemnifying Party agrees to indemnify and hold harmless Purchaser and its Affiliates, and Purchaser's and its Affiliates' respective Representatives, successors and assigns, as Indemnified Parties (collectively, "Purchaser Indemnified Parties"), against and in respect of any and all Losses incurred or suffered by any such Indemnified Party that result from, relate to or arise out of: (i) any claims by third parties arising out of, in connection with or relating to the ownership or operation of the Seller Licenses by Seller and its Affiliates prior to the Closing Date, or (ii) all Liabilities arising out of, in connection with or relating to any Assigned Specified Lease prior to the Closing Date.

(c) From and after the Closing, Purchaser as Indemnifying Party agrees to indemnify and hold harmless Seller and its Affiliates, and Seller's and its Affiliates' respective Representatives, successors and assigns, as Indemnified Parties (collectively, "Seller Indemnified Parties"), against and in respect of any and all Losses incurred or suffered by any such Indemnified Party that result from, relate to or arise out of: (i) any claims by third parties arising out of, in connection with or relating to the ownership or operation of the Seller Licenses by Purchaser and its Affiliates on or after the Closing Date, or (ii) all Liabilities arising out of, in connection with or relating to any Assigned Specified Lease on or after the Closing Date.

Section 8.3 Limitations

(a) Seller shall not be liable for any inaccuracy of representations or warranties pursuant to Section 8.2(a)(i) unless the aggregate amount of all Losses of the Purchaser Indemnified Parties for all such inaccuracies exceeds \$10,000,000 (the "Deductible Amount"), in which case Seller shall be liable for all such Losses, including the Deductible Amount.

(b) The maximum aggregate liability or recovery of all Seller Indemnified Parties from Purchaser under this ARTICLE 8 or otherwise pursuant to this Agreement shall not exceed an amount equal to the Purchase Price actually received by Seller. The maximum aggregate liability or recovery of all Purchaser Indemnified Parties from Seller under this ARTICLE 8 or otherwise pursuant to this Agreement shall not exceed an amount equal to the Purchase Price actually received by Seller.

(c) The amount of any Losses for which an Indemnified Party claims indemnification under this Agreement shall be reduced by: (i) any insurance proceeds actually received by the Indemnified Party with respect to such Losses, and (ii) any indemnification or reimbursement payments actually received by the Indemnified Party from third parties (other than insurers) with respect to such Losses.

Section 8.4 Indemnification Procedures

(a) An Indemnified Party shall give written notification to the Indemnifying Party of the commencement of any Third Party Claim. Such notification shall be given within thirty days after receipt by the Indemnified Party of notice of such Third Party Claim, and shall describe in reasonable detail (to the extent known by the Indemnified Party) the facts constituting the basis

for such Third Party Claim and the amount of damages claimed therein (if specified); *provided, however*, that no delay or failure on the part of the Indemnified Party in so notifying the Indemnifying Party shall relieve the Indemnifying Party of any liability or obligation hereunder except and only to the extent that the Indemnifying Party is actually prejudiced by such delay or failure. Within twenty days after delivery of such notification, the Indemnifying Party shall have the right to, upon written notice thereof to the Indemnified Party, assume control of and conduct, at the Indemnifying Party's sole cost and expense, the defense of such Third Party Claim (with counsel of national standing reasonably satisfactory to the Indemnified Party); *provided*, that (i) as a condition precedent to the Indemnifying Party's right to assume and conduct such defense, within fifteen days after the Indemnified Party has given notice of such Third Party Claim, (A) the Indemnifying Party must notify the Indemnified Party in writing that the Indemnifying Party shall undertake the defense of such Third Party Claim and (B) the Indemnifying Party must agree in writing with the Indemnified Party to unconditionally indemnify the Indemnified Party from and against all such Losses that the Indemnified Party may suffer or incur or to which the Indemnified Party may otherwise become subject and which arise from or as a result of or are connected with such Claim, and (ii) the Indemnifying Party may not assume control of the defense of, or conduct the defense of, any Claim to the extent such Claim constitutes a Third Party Claim (A) involving any criminal or quasi-criminal Proceeding, action, indictment, allegation or investigation or seeking to impose any criminal penalty, fine or other sanction, (B) made by any Governmental Authority or to which any Governmental Authority is a named party, (C) in which relief other than monetary Losses is sought, including any injunctive or other equitable relief, (D) which, if adversely determined, would reasonably be expected, in the good faith judgment of the Indemnified Party, to establish a precedent, custom or practice materially adverse to the continuing business interests or prospects of the Indemnified Party or its Affiliates, or (E) that could, in the good faith judgment of the Indemnified Party, reasonably be expected to result in Losses in excess of the maximum liability of Seller or Purchaser, as applicable under this ARTICLE 8.

(b) If the Indemnifying Party does not so assume or does not have the right to so assume control of the defense of a Third Party Claim, the Indemnified Party shall control such defense. The Non-Controlling Party may participate in such defense, and may hire separate counsel at its own expense. The Controlling Party shall keep the Non-Controlling Party reasonably advised of the status of such Third Party Claim and the defense thereof and shall consider in good faith recommendations made by the Non-Controlling Party with respect thereto. The Non-Controlling Party shall furnish the Controlling Party with such information as it may have with respect to such Third Party Claim (including copies of any summons, complaint or other pleading which may have been served on such party and any written claim, demand, invoice, billing or other document evidencing or asserting the same) and shall otherwise reasonably cooperate with and assist the Controlling Party in the defense of such Third Party Claim, including by (i) furnishing and, upon request, procuring the attendance of potential witnesses for interview, preparation, submission of witness statements and the giving of evidence at any related hearing, (ii) promptly furnishing documentary evidence to the extent available to it or its Affiliates, and (iii) providing access to any other relevant party, including any Representatives of the Non-Controlling Party as reasonably needed. Notwithstanding the foregoing, the fees and expenses of counsel to the Indemnified Party with respect to a Third Party Claim shall be considered Losses for purposes of this Agreement only if (A) the Indemnified Party shall have determined in good faith that an actual or potential conflict of interest makes representation by the same counsel or the counsel selected by the Indemnifying

Party inappropriate or (B) the Indemnifying Party shall have authorized in writing the Indemnified Party to employ separate counsel at the Indemnifying Party's expense. The Indemnifying Party shall not agree to any settlement of, or the entry of any judgment arising from, any Third Party Claim without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld, delayed or conditioned), unless the relief consists solely of money Losses to be paid by the Indemnifying Party. The Indemnified Party shall not agree to any settlement of, or the entry of any judgment arising from, any such Third Party Claim without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld, delayed or conditioned).

(c) In order to seek indemnification under this ARTICLE 8, an Indemnified Party shall deliver a Claim Notice to the Indemnifying Party.

(d) Within twenty days after delivery of a Claim Notice, the Indemnifying Party shall deliver to the Indemnified Party a written response (the "Response"), in which the Indemnifying Party shall: (i) agree that the Indemnified Party is entitled to receive all of the Claimed Amount (in which case the Response shall be accompanied by a payment by the Indemnifying Party to the Indemnified Party of the Claimed Amount, by check or by wire transfer), (ii) agree that the Indemnified Party is entitled to receive the part, but not all, of the Claimed Amount (the "Agreed Amount") (in which case the Response shall be accompanied by a payment by the Indemnifying Party to the Indemnified Party of the Agreed Amount, by check or by wire transfer), or (iii) dispute that the Indemnified Party is entitled to receive any of the Claimed Amount (whereupon the Indemnifying Party and the Indemnified Party agree that the dispute shall be resolved in accordance with Section 9.8).

Section 8.5 Treatment of Payments

Any payment made pursuant to the indemnification obligations arising under Section 8.2 shall be treated as an adjustment to the Purchase Price to the extent permitted under applicable law.

Section 8.6 Effect of Investigation.

Subject to Section 5.9, the representations, warranties, covenants and agreements of the Indemnifying Party, and the Indemnified Party's right to indemnification with respect thereto, shall not be affected or deemed waived by reason of any investigation made by or on behalf of the Indemnified Party (including by any of its Representatives) or by reason of the fact that the Indemnified Party or any of its Representatives knew or should have known that any such representation or warranty is, was or might be inaccurate or that any such covenant or agreement is, was or might have been breached or not fulfilled or by reason of the Indemnified Party's waiver of any condition set forth in Section 6.1 or Section 6.2, as applicable.

Section 8.7 Exclusive Remedy.

Following the Closing, the Parties acknowledge and agree that the indemnification rights of the Parties and their Affiliates under this ARTICLE 8 are their exclusive remedy with respect to any and all claims arising out of or in relation to this Agreement and the Transaction Documents, provided that the foregoing shall not limit any Party's rights to specific performance or injunctive relief or any Party's rights or remedies based on fraud.

ARTICLE 9
MISCELLANEOUS

Section 9.1 Assignment

(a) Subject to Section 9.1(b), this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their successors and permitted assigns. Other than as set forth in Section 9.1(b) and Section 9.1(c) below, neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any Party without the prior written consent of Purchaser, in the case of assignment by Seller, and of Seller, in the case of any assignment by Purchaser.

(b) Purchaser may assign its rights, interest or obligations under this Agreement to any of its direct or indirect Subsidiaries, *provided* that (i) no such assignment shall relieve the Purchaser of its obligations to Seller hereunder, (ii) the assignment will not result in any incremental taxes or other costs or expenses for which Seller or any of its Affiliates would be responsible, *provided* that with respect to clause (ii), Seller's or such Affiliate's remedy shall be a reimbursement of such costs and expenses, and (iii) the representations and warranties of Purchaser in Section 4.6 shall be true and correct in all respects with respect to such assignee. The term "Purchaser" as used herein shall be deemed to include any and all of Purchaser's permitted successors or assigns, in addition to DISH Network Corporation.

(c) Seller may assign its rights, interest or obligations under this Agreement to any of its direct or indirect Subsidiaries, *provided* that (i) no such assignment shall relieve Seller of its obligations to Purchaser hereunder and (ii) the assignment will not result in any incremental taxes or other costs or expenses for which Purchaser or any of its Affiliates would be responsible, *provided* that with respect to clause (ii), Purchaser's or such Affiliate's remedy shall be a reimbursement of such costs and expenses.

Section 9.2 Further Assurances

Each Party agrees to use reasonable best efforts to cooperate with the other Party and to take, or cause to be taken, all appropriate action, do or cause to be done all things necessary, proper or advisable under applicable Law, and execute and deliver such documents and other instruments, in each case as may be required to consummate the transactions contemplated hereunder. Notwithstanding anything to the contrary in this Agreement, no requirement to use "reasonable best efforts" under this Agreement shall require a Party or its Subsidiaries to pay any consent or similar fees to a Third Party or to agree to any adverse amendment to any contract or any concession with a Third Party.

Section 9.3 Entire Agreement; Amendment

(a) This Agreement, including its Schedules and Exhibits, which are specifically incorporated herein, sets forth the entire understanding of the Parties hereto with respect to the transactions contemplated hereby and supersedes any and all previous agreements and understandings, oral or written, between or among the Parties regarding the transactions contemplated hereby.

(b) This Agreement shall not be amended, modified or supplemented except by written instrument duly executed by both Parties.

Section 9.4 Waiver

No waiver of any term or provision of this Agreement shall be effective unless in writing, signed by the Party against whom enforcement of the same is sought. The grant of a waiver in one instance does not constitute a continuing waiver in all similar instances. No failure or delay in exercising any right, remedy, power or privilege under this Agreement or the documents referred to in this Agreement shall be deemed to or shall constitute a waiver of such right, remedy, power or privilege, and no single or partial exercise of any such right, remedy power, or privilege shall be deemed to or shall preclude any other or further exercise of such right, remedy, power or privilege or the exercise of any other right, remedy, power or privilege hereof.

Section 9.5 Notices

All notices and other communications required or permitted hereunder shall be in writing and given as follows:

If to Purchaser, to:

DISH Network Corporation
9601 S. Meridian Boulevard
Englewood, CO 80112
Attn: General Counsel
Email: [***]

with a required copy (which shall not itself constitute proper notice) to:

Sullivan & Cromwell LLP
125 Broad Street
New York, New York 10004
Attn: Scott Miller and Scott Crofton
Email: [***]

If to Seller, to:

T-Mobile US, Inc.
12920 SE 38th Street
Bellevue, Washington 98006
Attention: Dave Miller
Email: [***]

with a required copy (which shall not itself constitute proper notice) to:

Latham & Watkins LLP
885 Third Avenue
New York, New York 10022
Attention: David Allinson, Josh Dubofsky, Tom Malone
Email: [***]

or to such other address or facsimile number as the addressee may have specified in a notice duly given to the sender as provided herein. Such notice or other communication shall be deemed to have been duly given or made: (i) upon receipt if delivered personally, (ii) upon confirmation of successful transmission if sent by facsimile transmission (which confirmation shall be sufficient if shown on the journal produced by the facsimile machine used for such transmission), (iii) upon receipt of an electronic transmission, upon confirmation of such receipt in writing (which may be via email) by the recipient thereof, (iv) three Business Days after deposit in the mail, if sent by registered or certified mail, postage prepaid, or (v) on the next Business Day after deposit with an overnight courier, if sent by overnight courier.

Section 9.6 Governing Law.

This Agreement, and all claims or causes of action based upon, arising out of, or related to this Agreement or the transactions contemplated hereby, shall be governed by, and construed in accordance with, the Laws of the State of New York, without giving effect to principles or rules of conflict of laws to the extent such principles or rules would require or permit the application of Laws of another jurisdiction.

Section 9.7 Waiver of Jury Trial.

EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION ARISING OUT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY HERETO (I) CERTIFIES THAT NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH PARTY WOULD NOT, IN THE EVENT OF ANY ACTION, SUIT OR PROCEEDING, SEEK TO ENFORCE THE FOREGOING WAIVER AND (II) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT, BY, AMONG OTHER THINGS, THE MUTUAL WAIVER AND CERTIFICATIONS IN THIS SECTION 9.7.

Section 9.8 Submission to Jurisdiction.

Any lawsuit, arbitration, claim, action, hearing, suit, investigation, demand, administrative or regulatory challenge or proceeding (“Proceedings”) based upon, arising out of or related to this Agreement or the transactions contemplated hereby shall be brought exclusively in the federal courts located in the State of New York, and, if it has or can acquire jurisdiction, in the United States District Court for the Southern District of New York located therein, *provided, however*, that if such federal courts have finally determined that they do not have jurisdiction over such Proceeding, such Proceeding shall be heard and determined exclusively in any New York state

court sitting in the Borough of Manhattan of The City of New York, and, in each case, appellate courts therefrom. Each of the Parties hereto irrevocably submits to the exclusive jurisdiction of each such court in any such Proceedings, waives any objection it may now or hereafter have to personal jurisdiction, venue or to convenience of forum, agrees that all claims in respect of the Proceedings shall be heard and determined only in any such court, and agrees not to bring any Proceedings arising out of or relating to this Agreement or the transactions contemplated hereby in any other court (including state court prior to the time that a final determination of non-jurisdiction has occurred). Nothing herein contained shall be deemed to affect the right of any Party to serve process in any manner permitted by Law or to commence Proceedings or otherwise proceed against any other Party in any other jurisdiction, in each case, to enforce judgments obtained in any Proceeding brought pursuant to this Section 9.8.

Section 9.9 Specific Performance

The Parties acknowledge that, in view of the uniqueness of the transactions contemplated by this Agreement, each of Seller and Purchaser would not have an adequate remedy at law for money damages in the event that this Agreement has not been performed in accordance with its terms, and therefore agrees that, in addition to all other remedies available at law or in equity, the other Party shall be entitled to an injunction or injunctions to prevent or restrain breaches or threatened breaches of this Agreement by the other (as applicable), and to specifically enforce the terms and provisions of this Agreement to prevent breaches or threatened breaches of, or to enforce compliance with, the covenants and obligations of the other (as applicable). Each of Seller and Purchaser agrees that it will not oppose the granting of an injunction, specific performance and other equitable relief on the basis that any other Party has an adequate remedy at law or that any award of specific performance is not an appropriate remedy for any reason at law or in equity. Any Party seeking an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement shall not be required to provide any bond or other security in connection with any such order or injunction. Notwithstanding the foregoing or any other provision of this Agreement or any Transaction Document, the Parties acknowledge and agree that Seller shall have no right to seek a remedy of specific performance prior to the Closing, and in the event that Purchaser fails to consummate the transactions contemplated hereunder when required by this Agreement or otherwise breaches its obligations hereunder prior to the Closing, then payment by Purchaser to Seller of the Termination Fee (when due and payable as provided in Section 7.1(c)) shall be the sole and exclusive remedy of Seller.

Section 9.10 Bulk Transfer Laws

Purchaser hereby waives compliance by Seller and its Affiliates with the provisions of any bulk sales, bulk transfer or other similar Laws of any jurisdiction in connection with the transactions contemplated by this Agreement.

Section 9.11 No Benefit to Others

The representations, warranties, covenants and agreements contained in this Agreement are for the sole benefit of the Parties hereto and their heirs, executors, administrators, legal representatives, successors and assigns, and they shall not be construed as conferring any rights on any other Persons.

Section 9.12 Headings, Gender, “Person,” and “including”

All section headings contained in this Agreement are for convenience of reference only, do not form a part of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement. Unless otherwise specified, any reference herein to a Section, Article, Schedule or Exhibit shall be a reference to such Section or Article of, or Schedule or Exhibit to, this Agreement. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine, or neuter, as the context requires. Any reference to a “Person” herein shall include an individual, firm, corporation, partnership, limited liability company, trust, governmental authority or body, association, unincorporated organization or any other entity. Whenever used in this Agreement, the word “including,” and variations thereof, even when not modified by the phrase “but not limited to” or “without limitation,” shall not be construed to imply any limitation and shall mean “including but not limited to.”

Section 9.13 Severability

Any provision of this Agreement that is determined to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions hereof, and such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction. Moreover, the Parties agree that any such invalid or unenforceable provision shall be enforced to the maximum extent permitted by law in accordance with the intention of the Parties as expressed by such provision.

Section 9.14 Counterparts, Facsimile and Electronic Signatures

This Agreement may be executed in any number of counterparts and any Party hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. This Agreement shall become binding when one or more counterparts taken together shall have been executed and delivered by all of the Parties. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for any of the other counterparts. The Parties intend to sign and deliver this Agreement by facsimile transmission or by electronic transmission in PDF format. Each Party agrees that the delivery of this Agreement by facsimile or PDF shall have the same force and effect as delivery of original signatures and that each Party may use such facsimile or PDF signatures as evidence of the execution and delivery of this Agreement by all Parties to the same extent that an original signature could be used.

Section 9.15 Expenses

Except as otherwise provided in this Agreement or the Asset Purchase Agreement, including Section 14.1 thereof, each Party shall pay its own expenses incidental to the preparation of this Agreement, the carrying out of the provisions of this Agreement and the consummation of the transactions contemplated hereby. This Section shall survive termination of this Agreement, and shall apply irrespective of whether the Closing occurs, except as provided in Section 7.1(b).

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IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first above written.

T-MOBILE USA, INC.

DISH NETWORK CORPORATION

By: /s/ G. Michael Sievert
Name: G. Michael Sievert
Title: Chief Executive Officer & President

By: /s/ John Swieringa
Name: John Swieringa
Title: Chief Operating Officer, EVP and
Group President, Retail Wireless

[Signature Page to License Purchase Agreement]

CERTIFICATION OF CHIEF EXECUTIVE OFFICER
Section 302 Certification

I, W. Erik Carlson, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of DISH Network Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 6, 2020

/s/ W. Erik Carlson

President and Chief Executive Officer

CERTIFICATION OF CHIEF FINANCIAL OFFICER
Section 302 Certification

I, Paul W. Orban, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of DISH Network Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 6, 2020

/s/ Paul W. Orban

Executive Vice President and Chief Financial Officer

CERTIFICATION OF CHIEF EXECUTIVE OFFICER
Section 906 Certification

Pursuant to 18 U.S.C. § 1350, the undersigned officer of DISH Network Corporation (the “Company”) hereby certifies that to the best of his knowledge the Company’s Quarterly Report on Form 10-Q for the three months ended September 30, 2020 (the “Report”) fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934 and that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: November 6, 2020

Name: /s/ W. Erik Carlson

Title: President and Chief Executive Officer

The foregoing certification is being furnished solely pursuant to 18 U.S.C. § 1350 and is not being filed as part of the Report or as a separate disclosure document.

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

CERTIFICATION OF CHIEF FINANCIAL OFFICER
Section 906 Certification

Pursuant to 18 U.S.C. § 1350, the undersigned officer of DISH Network Corporation (the “Company”) hereby certifies that to the best of his knowledge the Company’s Quarterly Report on Form 10-Q for the three months ended September 30, 2020 (the “Report”) fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934 and that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: November 6, 2020

Name: /s/ Paul W. Orban

Title: Executive Vice President and Chief Financial Officer

The foregoing certification is being furnished solely pursuant to 18 U.S.C. § 1350 and is not being filed as part of the Report or as a separate disclosure document.

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.
