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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

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**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 MARCH 31, 2003

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 333-31929

**EchoStar DBS Corporation**

(Exact Name of Registrant as Specified in its Charter)

**Colorado**  
(State or Other Jurisdiction of Incorporation or Organization)

**84-1328967**  
(I.R.S. Employer Identification No.)

**5701 S. Santa Fe Drive**  
**Littleton, Colorado**  
(Address of principal executive offices)

**80120**  
(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)

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 is an accelerated filer (as defined by Rule 12b-2 of the Exchange Act). Yes  No

As of May 7, 2003, Registrant's outstanding common stock consisted of 1,000 shares of Common Stock, \$0.01 par value.

The Registrant meets the conditions set forth in General Instruction (H)(1)(a) and (b) of Form 10-Q and is therefore filing this Form 10-Q with the reduced disclosure format.

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\* This item has been omitted pursuant to the reduced disclosure format as set forth in General Instruction (H)(2) of Form 10-Q.

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## DISCLOSURE REGARDING FORWARD-LOOKING STATEMENTS

We make “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995 throughout this document. Whenever you read a statement that is not simply a statement of historical fact (such as when we describe what we “believe,” “expect” or “anticipate” will occur and other similar statements), you must remember that our expectations may not be correct, even though we believe they are reasonable. We do not guarantee that the transactions and events described in this document will happen as described or that they will happen at all. You should read this document completely and with the understanding that actual future results may be materially different from what we expect. Whether actual results will conform with our expectations and predictions is subject to a number of risks and uncertainties. These risks and uncertainties include, but are not limited to, the following:

- we face intense and increasing competition from the satellite and cable television industry; new competitors may enter the subscription television business and new technologies may increase competition;
- DISH Network subscriber growth may decrease, subscriber turnover may increase and subscriber acquisition costs may increase;
- satellite programming signals have been pirated and could be pirated in the future; pirating could cause us to lose subscribers and revenue or result in higher costs to us;
- programming costs may increase beyond our current expectations;
- weakness in the global or U.S. economy may harm our business generally, and adverse local political or economic developments may occur in some of our markets;
- we currently do not have traditional commercial insurance covering losses incurred from the failure of satellite launches and/or in orbit satellites and we may be unable to settle outstanding claims with insurers;
- the regulations governing our industry may change;
- our satellite launches may be delayed or fail and our satellites may fail prematurely in orbit;
- service interruptions arising from technical anomalies on some satellites, or caused by war, terrorist activities or natural disasters, may cause customer cancellations or otherwise harm our business;
- we may be unable to obtain needed retransmission consents, FCC authorizations or export licenses;
- we are party to various lawsuits which, if adversely decided, could have a significant adverse impact on our business;
- we may be unable to obtain patent licenses from holders of intellectual property or redesign our products to avoid patent infringement;
- sales of digital equipment and related services to international direct-to-home service providers may decrease;
- we are highly leveraged and subject to numerous constraints on our ability to raise additional debt;
- future acquisitions, business combinations, strategic partnerships and divestitures may involve additional uncertainties;
- the September 11, 2001 terrorist attacks, consequences of the war in Iraq, and the possibility of war or hostilities relating to other countries, and changes in international political conditions as a result of these events may continue to affect the U.S. and the global economy and may increase other risks; and
- we may face other risks described from time to time in periodic reports we file with the Securities and Exchange Commission.

All cautionary statements made herein should be read as being applicable to all forward-looking statements wherever they appear. In this connection, investors should consider the risks described herein and should not place undue reliance on any forward-looking statements.

In this document “we,” “our,” “us,” and “EDBS” refer to EchoStar DBS Corporation and its subsidiaries, unless the context otherwise requires. “EchoStar” refers to Echostar Communications Corporation and its subsidiaries.

**ECHOSTAR DBS CORPORATION**  
**CONDENSED CONSOLIDATED BALANCE SHEETS**  
(In thousands)  
(Unaudited)

	December 31, 2002	March 31, 2003
<b>Assets</b>		
Current Assets:		
Cash and cash equivalents	\$ 267,692	\$ 85,340
Marketable investment securities	277,260	243,751
Trade accounts receivable, net of allowance for uncollectible accounts of \$9,276 and \$9,173; respectively	325,928	313,428
Insurance receivable	106,000	106,000
Inventories	149,611	174,206
Other current assets	17,335	37,638
Total current assets	1,143,826	960,363
Restricted cash	10	10
Cash reserved for satellite insurance	151,372	143,297
Property and equipment, net	1,831,139	1,778,541
FCC authorizations, net	696,242	696,242
Other noncurrent assets	38,492	36,815
Total assets	\$ 3,861,081	\$ 3,615,268
<b>Liabilities and Stockholder's Deficit</b>		
Current Liabilities:		
Trade accounts payable	\$ 246,314	\$ 269,341
Deferred revenue	440,678	471,153
Accrued expenses	852,499	832,943
Current portion of long-term debt	13,262	13,281
Total current liabilities	1,552,753	1,586,718
Long-term obligations, net of current portion:		
9 1/4% Seven Year Notes	375,000	—
9 3/8% Ten Year Notes	1,625,000	1,625,000
10 3/8% Seven Year Notes	1,000,000	1,000,000
9 1/8% Seven Year Notes	700,000	700,000
Mortgages and other notes payable, net of current portion	32,680	32,502
Long-term deferred distribution and carriage payments and other long-term liabilities	91,282	109,417
Total long-term obligations, net of current portion	3,823,962	3,466,919
Total liabilities	5,376,715	5,053,637
Commitments and Contingencies (Note 7)		
Stockholder's Deficit:		
Common Stock, \$.01 par value, 1,000 shares authorized, issued and outstanding	—	—
Additional paid-in capital	843,198	843,368
Deferred stock-based compensation	(8,657)	(6,839)
Accumulated other comprehensive income	697	536
Accumulated deficit	(2,350,872)	(2,275,434)
Total stockholder's deficit	(1,515,634)	(1,438,369)
Total liabilities and stockholder's deficit	\$ 3,861,081	\$ 3,615,268

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

**EHOSTAR DBS CORPORATION**  
**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS**  
(In thousands)  
(Unaudited)

	Three Months Ended March 31,	
	2002	2003
<b>Revenue:</b>		
Subscription television services	\$1,014,632	\$1,288,646
Other subscriber-related revenue	4,147	4,334
DTH equipment sales	56,340	40,188
Other	26,034	23,434
	<hr/>	<hr/>
Total revenue	1,101,153	1,356,602
<b>Costs and Expenses:</b>		
Subscriber-related expenses (exclusive of depreciation shown below — Note 8)	514,692	636,578
Satellite and transmission expenses (exclusive of depreciation shown below — Note 8)	12,362	14,974
Cost of sales — DTH equipment	39,275	27,745
Cost of sales — other	14,692	11,927
Cost of sales — subscriber promotion subsidies (exclusive of depreciation included below — Note 8)	101,010	124,544
Other subscriber promotion subsidies	133,370	150,637
Subscriber acquisition advertising	33,519	32,661
General and administrative	70,920	79,155
Non-cash, stock-based compensation	1,666	1,989
Depreciation and amortization (Note 8)	78,030	94,997
	<hr/>	<hr/>
Total costs and expenses	999,536	1,175,207
	<hr/>	<hr/>
Operating income	101,617	181,395
<b>Other Income (Expense):</b>		
Interest income	2,215	2,535
Interest expense, net of amounts capitalized	(82,137)	(102,485)
Other	(2,473)	(196)
	<hr/>	<hr/>
Total other income (expense)	(82,395)	(100,146)
	<hr/>	<hr/>
Income before income taxes	19,222	81,249
Income tax provision, net	(295)	(5,811)
	<hr/>	<hr/>
Net income	\$ 18,927	\$ 75,438
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The accompanying notes are an integral part of the condensed consolidated financial statements.

**EHOSTAR DBS CORPORATION**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(In thousands)  
(Unaudited)

	Three months ended March 31,	
	2002	2003
<b>Cash Flows From Operating Activities:</b>		
Net income	\$ 18,927	\$ 75,438
Adjustments to reconcile net income to net cash flows from operating activities:		
Realized and unrealized loss on investments	1,456	—
Deferred stock-based compensation recognized	1,666	1,989
Deferred tax expense	—	2,616
Depreciation and amortization	78,030	94,997
Amortization of debt discount and deferred financing costs	1,504	3,829
Change in long-term deferred distribution and carriage payments and other long-term liabilities	2,445	(3,529)
Other, net	3,480	(2,004)
Changes in current assets and current liabilities	144,886	27,220
Net cash flows from operating activities	252,394	200,556
<b>Cash Flows From Investing Activities:</b>		
Purchases of marketable investment securities	(120,439)	(182,859)
Sales of marketable investment securities	33,648	216,206
Purchases of property and equipment	(90,448)	(49,171)
Cash reserved for satellite insurance (Note 5)	(59,680)	—
Change in cash reserved for satellite insurance due to depreciation on related satellites (Note 5)	6,150	8,075
Net cash flows from investing activities	(230,769)	(7,749)
<b>Cash Flows From Financing Activities:</b>		
Non-interest bearing advances to affiliates	(58)	—
Redemption of 9 1/4% Senior Notes (Note 1)	—	(375,000)
Repayments of mortgage indebtedness and notes payable	(145)	(159)
Other	(77)	—
Net cash flows from financing activities	(280)	(375,159)
Net increase (decrease) in cash and cash equivalents	21,345	(182,352)
Cash and cash equivalents, beginning of period	39,052	267,692
Cash and cash equivalents, end of period	\$ 60,397	\$ 85,340
<b>Supplemental Disclosure of Cash Flow Information:</b>		
Forfeitures of deferred non-cash, stock-based compensation	\$ 3,078	\$ —
Capitalized interest	8,740	2,273
Capital contribution of EchoStar VII from EBC	172,532	—

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



**ECHOSTAR DBS CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**  
(Unaudited)

**1. Organization and Business Activities**

*Basis of Presentation*

EDBS (the “Company”), is a wholly-owned subsidiary of ECC, a publicly traded company listed on the Nasdaq National Market. EDBS was formed under Colorado law in January 1996. EchoStar has placed ownership of its eight direct broadcast satellites and related FCC licenses into subsidiaries of the Company.

*Principal Business*

Unless otherwise stated herein, or the context otherwise require, references herein to EchoStar shall include ECC, EDBS and all direct and indirect wholly-owned subsidiaries thereof. The operations of EchoStar include two interrelated business units:

- *The DISH Network* — a direct broadcast satellite (“DBS”) subscription television service in the United States; and
- *EchoStar Technologies Corporation* (“ETC”) — engaged in the design and development of DBS set-top boxes, antennae and other digital equipment for the DISH Network (“EchoStar receiver systems”) and the design, development and distribution of similar equipment for international satellite service providers.

Since 1994, EchoStar has deployed substantial resources to develop the “EchoStar DBS System.” The EchoStar DBS System consists of EchoStar’s FCC-allocated DBS spectrum, eight DBS satellites (“EchoStar I” through “EchoStar VIII”), EchoStar receiver systems, digital broadcast operations centers, customer service facilities, and other assets utilized in its operations. EchoStar’s principal business strategy is to continue developing its subscription television service in the United States to provide consumers with a fully competitive alternative to cable television service.

*Recent Developments*

*Redemption of 9 1/4% Senior Notes*

Effective February 1, 2003, EDBS redeemed all of its outstanding 9 1/4 % Senior Notes due 2006. In accordance with the terms of the indenture governing the notes, the \$375 million principal amount of the notes was repurchased at 104.625 percent, for a total of approximately \$392 million. The premium paid of approximately \$17 million, along with unamortized debt issuance costs of approximately \$3 million, were recorded as charges to earnings as of February 1, 2003.

*SES Americom*

During March 2003, one of the Company’s wholly-owned subsidiaries, EchoStar Satellite Corporation (“ESC”), entered into a satellite service agreement with SES Americom for all of the capacity on an FSS satellite to be located at the 105 degree west orbital location. This satellite is scheduled to be launched during the second half of 2004. ESC also agreed to lease all of the capacity on an existing in-orbit FSS satellite at the 105 degree orbital location commencing later this year, and continuing in most circumstances until the new satellite is launched.

ESC intends to use the capacity on the satellites to offer a combination of satellite TV programming including local network channels in additional markets and expanded high definition programming, together with satellite-delivered, high-speed internet services. In connection with the SES agreement, ESC paid \$50 million to SES Americom to partially fund construction of the new satellite. The ten-year satellite service agreement is renewable by ESC on a year to year basis following the initial term, and provides ESC with certain rights to replacement satellites at the 105 degree west orbital location.

**EHOSTAR DBS CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued**  
(Unaudited)

## 2. Significant Accounting Policies

### *Basis of Presentation*

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with generally accepted accounting principles 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 footnotes required by generally accepted accounting principles for complete financial statements. In the opinion of management, all adjustments (consisting of normal recurring adjustments) considered necessary for a fair presentation have been included. All significant intercompany accounts and transactions have been eliminated in consolidation. Operating results for the three months ended March 31, 2003 are not necessarily indicative of the results that may be expected for the year ending December 31, 2003. For further information, refer to the consolidated financial statements and footnotes thereto included in EDBS' Annual Report on Form 10-K for the year ended December 31, 2002. Certain prior year amounts have been reclassified to conform with the current year presentation.

### *Use of Estimates*

The preparation of financial statements in conformity with generally accepted accounting principles requires management 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 revenues and expenses for each reporting period. Actual results could differ from those estimates.

### *Comprehensive Income*

The components of comprehensive income, net of tax, are as follows (in thousands):

	Three months ended March 31,	
	2002	2003
	(Unaudited)	
Net income	\$18,927	\$75,438
Unrealized holding losses on available-for-sale securities arising during period	(556)	(161)
Reclassification adjustment for impairment losses on available-for-sale securities included in net income	633	—
Comprehensive income	\$19,004	\$75,277

Accumulated other comprehensive income presented on the accompanying condensed consolidated balance sheets consists of the accumulated net unrealized gains (losses) on available-for-sale securities, net of deferred taxes.

### *Accounting for Stock-Based Compensation*

The Company has elected to follow Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees," ("APB 25") and related interpretations in accounting for its stock-based compensation plans. Under APB 25, the Company generally does not recognize compensation expense on the issuance of stock under its Stock Incentive Plan because the option terms are typically fixed and typically the exercise price equals or exceeds the market price of the underlying stock on the date of grant. In October 1995, the Financial Accounting Standards Board issued Financial Accounting Standard No. 123, "Accounting and Disclosure of Stock-Based Compensation," ("FAS No. 123") which established an alternative method of expense recognition for stock-based compensation awards to employees based on fair values. The Company elected to not adopt FAS No. 123 for expense recognition purposes.

**ECHOSTAR DBS CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued**  
(Unaudited)

Pro forma information regarding net income and earnings per share is required by FAS No. 123 and Financial Accounting Standard No. 148, "Accounting and Disclosure of Stock-Based Compensation — Transition and Disclosure," ("FAS No. 148"). Pro forma information has been determined as if the Company had accounted for its stock-based compensation plans using the fair value method prescribed by FAS No. 123. For purposes of pro forma disclosures, the estimated fair value of the options is amortized to expense over the vesting period of the options. A value is not attributed to options that employees forfeit because they fail to satisfy specified service or performance related conditions. The following table, as required by FAS No. 148, illustrates the effect on net income if the Company had accounted for its stock-based compensation plans using the fair value method prescribed by FAS No. 123 (in thousands):

	Three months ended March 31,	
	2002	2003
Net income, as reported	\$18,927	\$75,438
Add: Stock-based employee compensation expense included in reported net income, net of related tax effects	1,666	1,989
Deduct: Total stock-based employee compensation expense determined under fair value based method for all awards, net of related tax effects	(6,388)	(6,084)
Pro forma net income	\$14,205	\$71,343

For purposes of this pro forma presentation, the fair value of each option grant was estimated at the date of the grant using a Black-Scholes option pricing model with the following weighted-average assumptions for grants during the three months ended March 31, 2002 and 2003:

	Three months ended March 31,	
	2002	2003
Risk-free interest rate	4.94%	3.04%
Volatility factor	43%	41%
Dividend yield	0.00%	0.00%
Expected term of options	6 years	6 years
Weighted-average fair value of options granted	\$13.75	\$12.64

The Black-Scholes option valuation model was developed for use in estimating the fair value of traded options which have no vesting restrictions and are fully transferable. In addition, option valuation models require the input of highly subjective assumptions including expected stock price characteristics which are significantly different from those of traded options, and because changes in the subjective input assumptions can materially affect the fair value estimate, the existing models do not necessarily provide a reliable single measure of the fair value of stock-based compensation awards.

*Non-cash, stock-based compensation*

During 1999, EchoStar adopted an incentive plan under its 1995 Stock Incentive Plan, which provided certain key employees with incentives including stock options. During each of the three months ended March 31, 2003 and 2002, the Company recognized approximately \$2 million of compensation under this performance-based plan. The remaining deferred compensation of \$7 million as of March 31, 2003, which will be reduced by future forfeitures, if any, will be recognized over the remaining vesting period, ending on March 31, 2004.

The Company reports all non-cash compensation based on stock option appreciation as a single expense category in its accompanying statements of operations. The following table indicates the other expense categories in our statements of operations that would be affected if non-cash, stock-based compensation was allocated to the same

**EHOSTAR DBS CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued**  
(Unaudited)

expense categories as the base compensation for key employees who participate in the 1999 incentive plan (in thousands):

	Three Months Ended March 31,	
	2002	2003
Subscriber related	\$ 182	\$ 90
Satellite and transmission	(554)	89
General and administrative	2,038	1,810
	—	—
Total non-cash, stock-based compensation	\$1,666	\$1,989

Options to purchase 8.7 million shares are outstanding as of March 31, 2003 and were granted with exercise prices equal to the market value of the underlying shares on the date they were issued during 1999, 2000 and 2001 pursuant to a long term incentive plan under EchoStar's 1995 Stock Incentive Plan. The weighted-average exercise price of these options is \$8.70. Vesting of these options is contingent upon meeting certain longer-term goals which have not yet been achieved. Consequently, no compensation was recorded during the three months ended March 31, 2003 related to these long-term options. EchoStar will record the related compensation at the achievement, if ever, of the performance goals. Such compensation, if recorded, would likely result in material non-cash, stock-based compensation expense in our statements of operations.

#### *New Accounting Pronouncements*

In January 2003, the Financial Accounting Standards Boards issued FASB Interpretation No. 46, "Consolidation of Variable Interest Entities" ("FIN 46"), which addresses the consolidation of variable interest entities as defined in the Interpretation. FIN 46 requires an assessment of equity investments to determine if they are variable interest entities. FIN 46 is immediately effective for all variable interest entities created after January 31, 2003. For variable interest entities created before February 1, 2003, the provisions of FIN 46 must be applied no later than the beginning of the first interim period or annual reporting period beginning after June 15, 2003. In addition, if it is reasonably possible that an enterprise will consolidate or disclose information about a variable interest entity, the enterprise shall discuss the following information in all financial statements issued after January 31, 2003: (i) the nature, purpose, size or activities of the variable interest entity and (ii) the enterprise's maximum exposure to loss as a result of its involvement with the variable interest entity. Effective January 1, 2003 the Company implemented FIN 46. Implementation of FIN 46 did not have a material impact on the Company's financial position and results of operations.

### **3. Marketable Investment Securities**

The Company currently classifies all marketable investment securities as available-for-sale. In accordance with generally accepted accounting principles, the Company adjusts the carrying value of its available-for-sale marketable investment securities to fair market value and reports the related temporary unrealized gains and losses as a separate component of stockholder's deficit, net of related deferred income tax, if applicable. Declines in the fair market value of a marketable investment security which are estimated to be "other than temporary" must be recognized in the statement of operations, thus establishing a new cost basis for such investment. The Company evaluates its marketable investment securities portfolio on a quarterly basis to determine whether declines in the market value of these securities are other than temporary. This quarterly evaluation consists of reviewing, among other things, the fair value of the Company's marketable investment securities compared to the carrying value of these securities, the historical volatility of the price of each security and any market and company specific factors related to each security. Generally, absent specific factors to the contrary, declines in the fair value of investments below cost basis for a period of less than six months are considered to be temporary. Declines in the fair value of investments for a period of six to nine months are evaluated on a case by case basis to determine whether any company or market-specific factors exist which would indicate that such declines are other than temporary. Declines in the fair value of investments below cost

**ECHOSTAR DBS CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued**  
(Unaudited)

basis for greater than nine months are considered other than temporary and are recorded as charges to earnings, absent specific factors to the contrary.

As of March 31, 2003, the Company recorded unrealized gains of approximately \$1 million as a separate component of stockholder's deficit. If the fair market value of the Company's marketable securities portfolio does not remain above cost basis or if the Company becomes aware of any market or company specific factors that indicate that the carrying value of certain of its securities is impaired, the Company may be required to record additional charges to earnings in future periods equal to the amount of the decline in fair value.

#### 4. Inventories

Inventories consist of the following (in thousands):

	December 31, 2002	March 31, 2003
Finished goods — DBS	\$104,052	\$113,381
Raw materials	25,618	38,430
Finished goods — remanufactured and other	16,478	15,217
Work-in-process	7,964	8,429
Consignment	5,140	4,785
Reserve for excess and obsolete inventory	(9,641)	(6,036)
	<u>\$149,611</u>	<u>\$174,206</u>

#### 5. Property and Equipment

##### *EchoStar V*

During 2000, 2001 and 2002, EchoStar V experienced anomalies resulting in the loss of three solar array strings, and during January 2003, EchoStar V experienced anomalies resulting in the loss of an additional solar array string. The satellite has a total of approximately 96 solar array strings and approximately 92 are required to assure full power availability for the estimated 12-year design life of the satellite. In addition, during January 2003, EchoStar V experienced an anomaly in a spacecraft electronic component which affects the ability to receive telemetry from certain on-board equipment. Other methods of communication have been established to alleviate the effects of the failed component. An investigation of the solar array and electronic component anomalies, none of which have impacted commercial operation of the satellite, is continuing. Until the root cause of these anomalies is finally determined, there can be no assurance future anomalies will not cause further losses which could impact commercial operation of the satellite.

##### *EchoStar VIII*

During 2002, two of the thrusters on EchoStar VIII experienced anomalous events and are not currently in use. Further, during March 2003, an additional thruster on EchoStar VIII experienced an anomalous event and is not currently in use. The satellite is equipped with a total of 12 thrusters that help control spacecraft location, attitude, and pointing and is currently operating using a combination of the other nine thrusters. This workaround requires more frequent maneuvers to maintain the satellite at its specified orbital location, which are less efficient and therefore result in accelerated fuel use. In addition, the workaround will require certain gyroscopes to be utilized for aggregate periods of time substantially in excess of their originally qualified limits. However, neither of these workarounds are expected to significantly reduce the estimated 12-year design life of the satellite. An investigation of the thruster anomalies including the development of additional workarounds for long term operations is continuing. None of these events has impacted commercial operation of the satellite to date. Until the root cause of these anomalies has been finally determined, there can be no assurance that these or future anomalies will not cause further losses which could impact commercial operation of the satellite.

**ECHOSTAR DBS CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued**  
(Unaudited)

*Satellite Insurance*

As a result of the failure of EchoStar IV solar arrays to fully deploy and the failure of 38 transponders to date, a maximum of 6 of the 44 transponders (including spares) on EchoStar IV are available for use at this time. In addition to transponder and solar array failures, EchoStar IV experienced anomalies affecting its thermal systems and propulsion system. There can be no assurance that further material degradation, or total loss of use, of EchoStar IV will not occur in the immediate future. Currently no programming is being transmitted to customers on EchoStar IV, and the satellite functions as an in-orbit spare.

In September 1998, EchoStar filed a \$219.3 million insurance claim for a total loss under the launch insurance policies covering EchoStar IV. The satellite insurance consists of separate substantially identical policies with different carriers for varying amounts that, in combination, create a total insured amount of \$219.3 million. The insurance carriers include La Reunion Spatiale; AXA Reinsurance Company (n/k/a AXA Corporate Solutions Reinsurance Company), United States Aviation Underwriters, Inc., United States Aircraft Insurance Group; Assurances Generales De France I.A.R.T. (AGF); Certain Underwriters at Lloyd's, London; Great Lakes Reinsurance (U.K.) PLC; British Aviation Insurance Group; If Skaadeforsikring (previously Storebrand); Hannover Re (a/k/a International Hannover); The Tokio Marine & Fire Insurance Company, Ltd.; Marham Space Consortium (a/k/a Marham Consortium Management); Ace Global Markets (a/k/a Ace London); M.C. Watkins Syndicate; Goshawk Syndicate Management Ltd.; D.E. Hope Syndicate 10009 (Formerly Busbridge); Amlin Aviation; K.J. Coles & Others; H.R. Dumas & Others; Hiscox Syndicates, Ltd.; Cox Syndicate; Hayward Syndicate; D.J. Marshall & Others; TF Hart; Kiln; Assitalia Le Assicurazioni D'Italia S.P.A. Roma; La Fondiaria Assicurazione S.P.A., Firenze; Vittoria Assicurazioni S.P.A., Milano; Ras — Riunione Adriatica Di Sicurtà S.P.A., Milano; Societa Cattolica Di Assicurazioni, Verano; Siat Assicurazione E Riassicurazione S.P.A, Genova; E. Patrick; ZC Specialty Insurance; Lloyds of London Syndicates 588 NJM, 1209 Meb AND 861 Meb; Generali France Assurances; Assurance France Aviation; and Ace Bermuda Insurance Ltd.

The insurance carriers offered EchoStar a total of approximately \$88 million, or 40% of the total policy amount, in settlement of the EchoStar IV insurance claim. The insurers assert, among other things, that EchoStar IV was not a total loss, as that term is defined in the policy, and that EchoStar did not abide by the exact terms of the insurance policies. EchoStar strongly disagrees and filed arbitration claims against the insurers for breach of contract, failure to pay a valid insurance claim and bad faith denial of a valid claim, among other things. Due to individual forum selection clauses in certain of the policies, EchoStar is pursuing its arbitration claims against Ace Bermuda Insurance Ltd. in London, England, and its arbitration claims against all of the other insurance carriers in New York, New York. The New York arbitration commenced on April 28, 2003. EchoStar is expected to complete presentation of evidence supporting its total loss claim in May of this year. The arbitration will then adjourn and resume this fall. The parties to the London arbitration are currently negotiating the schedule for a hearing, and, while there can be no assurance, EchoStar anticipates that the hearing date in that proceeding will be set for later in 2003. There can be no assurance that EchoStar will receive the amount claimed in either the New York or the London arbitrations or, if EchoStar does, that EchoStar will retain title to EchoStar IV with its reduced capacity.

At the time EchoStar filed its claim in 1998, EchoStar recognized an initial impairment loss of \$106 million to write-down the carrying value of the satellite and related costs, and simultaneously recorded an insurance claim receivable for the same amount. EchoStar will have to reduce the amount of this receivable if a final settlement is reached for less than this amount. In addition, during 1999, EchoStar recorded an impairment loss of approximately \$16 million to further write-down the carrying value of the satellite. This \$16 million impairment loss was recorded as a charge to earnings during 1999.

As a result of the thermal and propulsion system anomalies, EchoStar reduced the estimated remaining useful life of EchoStar IV to approximately four years during January 2000. EchoStar will continue to evaluate the performance of EchoStar IV and may modify its loss assessment as new events or circumstances develop.

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The indentures related to certain of EDBS' senior notes contain restrictive covenants that require EchoStar to maintain satellite insurance with respect to at least half of the satellites it owns or leases. All of EchoStar's eight in-orbit DBS satellites are currently owned by a direct subsidiary of EDBS. Insurance coverage is therefore required for at least four of EchoStar's eight satellites. The launch and/or in-orbit insurance policies for EchoStar I through EchoStar VIII have expired. EchoStar has been unable to obtain insurance on any of these satellites on terms acceptable to EchoStar. As a result, EchoStar is currently self-insuring these satellites. To satisfy insurance covenants related to EDBS' senior notes, EchoStar has reclassified an amount equal to the depreciated cost of four of its satellites from cash and cash equivalents to cash reserved for satellite insurance on its balance sheet. As of March 31, 2003, cash reserved for satellite insurance totaled approximately \$143 million. The reclassifications will continue until such time, if ever, as EchoStar can again insure its satellites on acceptable terms and for acceptable amounts, or until the covenants requiring the insurance are no longer applicable.

**6. Goodwill and Intangible Assets**

As of December 31, 2002 and March 31, 2003, the Company had approximately \$2 million of gross identifiable intangibles, with related accumulated amortization of approximately \$1 million as of the end of each period. These identifiable intangibles primarily include acquired contracts. The Company estimates amortization of these intangible assets with an average finite useful life of approximately five years will aggregate approximately \$200 thousand annually for the remaining useful life of these intangible assets of approximately four years. In addition, EchoStar's business unit DISH Network had approximately \$3 million of goodwill as of December 31, 2002 and March 31, 2003.

**7. Commitments and Contingencies**

*Guarantees*

During March 2003, one of the Company's wholly-owned subsidiaries, ESC, entered into a satellite service agreement with SES Americom for all of the capacity on an FSS satellite to be located at the 105 degree west orbital location. This satellite is scheduled to be launched during the second half of 2004. ESC also agreed to lease all of the capacity on an existing in-orbit FSS satellite at the 105 degree orbital location commencing later this year, and continuing in most circumstances until the new satellite is launched.

ESC intends to use the capacity on the satellites to offer a combination of satellite TV programming including local network channels in additional markets and expanded high definition programming, together with satellite-delivered, high-speed internet services. In connection with the SES agreement, ESC paid \$50 million to SES Americom to partially fund construction of the new satellite. The ten-year satellite service agreement is renewable by ESC on a year to year basis following the initial term, and provides ESC with certain rights to replacement satellites at the 105 degree west orbital location.

In the event that ESC's net long-term assets as of the end of any calendar quarter decline below a specified amount, EchoStar is required to guarantee the obligation of ESC to make monthly payments to SES Americom over the remainder of the ten year period following launch of the satellite. EchoStar also currently guarantees the obligation of ESC to make in orbit payments to the manufacturers of EchoStar IV and EchoStar VII. While in certain circumstances the dates on which ESC is obligated to make payments, and therefore the associated dates of EchoStar's guarantee obligations, could be delayed, the approximate maximum amount due under these agreements and guarantee obligations, absent delay, is \$13 million during 2003, \$11 million during 2004, \$54 million from 2005 through 2013, \$45 million in 2014, and \$2 million in 2015.

**ECHOSTAR DBS CORPORATION**  
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*Legal Proceedings*

*WIC Premium Television Ltd*

During July 1998, a lawsuit was filed by WIC Premium Television Ltd., an Alberta corporation, in the Federal Court of Canada Trial Division, against General Instrument Corporation, HBO, Warner Communications, Inc., John Doe, Showtime, United States Satellite Broadcasting Company, Inc., EchoStar, and certain EchoStar subsidiaries.

During September 1998, WIC filed another lawsuit in the Court of Queen's Bench of Alberta Judicial District of Edmonton against certain defendants, including EchoStar. WIC is a company authorized to broadcast certain copyrighted work, such as movies and concerts, to residents of Canada. WIC alleges that the defendants engaged in, promoted, and/or allowed satellite dish equipment from the United States to be sold in Canada and to Canadian residents and that some of the defendants allowed and profited from Canadian residents purchasing and viewing subscription television programming that is only authorized for viewing in the United States. The lawsuit seeks, among other things, interim and permanent injunctions prohibiting the defendants from importing satellite receivers into Canada and from activating satellite receivers located in Canada to receive programming, together with damages in excess of \$175 million.

The Court in the Alberta action denied EchoStar's Motion to Dismiss, and EchoStar's appeal of that decision. The Federal action has been stayed pending the outcome of the Alberta action. EchoStar intends to continue to vigorously defend the suit. During 2002, the Supreme Court of Canada ruled that the receipt in Canada of programming from United States pay television providers is prohibited. While EchoStar was not a party to that case, the ruling could adversely affect EchoStar's defense. It is too early to make an assessment of the probable outcome of the litigation or to determine the extent of any potential liability or damages.

*Distant Network Litigation*

Until July 1998, EchoStar obtained feeds of distant broadcast network channels (ABC, NBC, CBS and FOX) for distribution to its customers through PrimeTime 24, an independent third party programming provider. In December 1998, the United States District Court for the Southern District of Florida entered a nationwide permanent injunction requiring that provider to shut off distant network channels to many of its customers, and henceforth to sell those channels to consumers in accordance with certain stipulations in the injunction.

In October 1998, EchoStar filed a declaratory judgment action against ABC, NBC, CBS and FOX in the United States District Court for the District of Colorado. EchoStar asked the Court to enter judgment declaring that its method of providing distant network programming did not violate the Satellite Home Viewer Act and hence did not infringe the networks' copyrights. In November 1998, the networks and their affiliate groups filed a complaint against EchoStar in Miami Federal Court alleging, among other things, copyright infringement. The Court combined the case that EchoStar filed in Colorado with the case in Miami and transferred it to the Miami Federal Court. While the networks have not sought monetary damages, they have sought to recover attorney fees if they prevail.

In February 1999, the networks filed a Motion for Temporary Restraining Order, Preliminary Injunction and Contempt Finding against DirecTV, Inc. in Miami related to the delivery of distant network channels to DirecTV customers by satellite. DirecTV settled that lawsuit with the networks. Under the terms of the settlement between DirecTV and the networks, some DirecTV customers were scheduled to lose access to their satellite-provided distant network channels by July 31, 1999, while other DirecTV customers were to be disconnected by December 31, 1999. Subsequently, substantially all providers of satellite-delivered network programming other than EchoStar agreed to this cut-off schedule, although EchoStar does not know if they adhered to this schedule.

In December 1998, the networks filed a Motion for Preliminary Injunction against EchoStar in the Florida case and asked the Court to enjoin EchoStar from providing network programming except under limited circumstances. A preliminary injunction hearing was held in September 1999. In March 2000, the networks filed an emergency motion again asking the Court to issue an injunction requiring EchoStar to cease providing network programming to certain of its customers. At that time, the networks also argued that EchoStar's compliance procedures violated the Satellite Home Viewer Improvement Act, which was passed by Congress in November 1999. EchoStar opposed the networks' motion and again asked the Court to hear live testimony before ruling upon the networks' injunction request.



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During September 2000, the Court granted the networks' motion for preliminary injunction, denied the networks' emergency motion, and denied EchoStar's request to present live testimony and evidence. The Court's original order required EchoStar to terminate network programming to certain subscribers "no later than February 15, 1999," and contained other dates with which it would be physically impossible to comply. The order imposed restrictions on EchoStar's past and future sale of distant ABC, NBC, CBS and FOX channels similar to those imposed on PrimeTime 24 (and, EchoStar believes, on DirecTV and others). Some of those restrictions go beyond the statutory requirements imposed by the Satellite Home Viewer Act and the Satellite Home Viewer Improvement Act.

Twice during October 2000, the Court amended its original preliminary injunction order in an effort to fix some of the errors in the original order. The twice-amended preliminary injunction order required EchoStar to shut off, by February 15, 2001, all subscribers who were ineligible to receive distant network programming under the Court's order. EchoStar appealed the preliminary injunction orders. During September 2001, the United States Court of Appeals for the Eleventh Circuit vacated the District Court's nationwide preliminary injunction, which the Eleventh Circuit had stayed in November 2000. The Eleventh Circuit also rejected EchoStar's First Amendment challenge to the Satellite Home Viewer Act. However, the Eleventh Circuit found that the District Court had made factual findings that were clearly erroneous and not supported by the evidence, and that the District Court had misinterpreted and misapplied the law. The Eleventh Circuit issued an order during January 2002 remanding the case to the Florida District Court. During March 2002, the Florida District Court entered an order setting the matter for trial. In this order, the District Court denied certain of EchoStar's outstanding motions to compel discovery as moot and granted the networks' motion to compel. During April 2002, the District Court denied the networks' motion for preliminary injunction as moot. In June 2002, EchoStar filed a counterclaim against the networks asking the District Court to find that EchoStar is not violating the Satellite Home Viewer Act and seeking damages resulting from the networks' tortious interference with EchoStar's business relationships and from the networks' conduct amounting to unfair competition. The networks filed a motion to dismiss these claims. In August 2002, the District Court denied the networks' motion to dismiss. However, in April 2003 the District Court granted the networks' motion for summary judgment on EchoStar's counterclaims.

In April 2002, EchoStar reached a private settlement with ABC, Inc., one of the plaintiffs in the litigation and jointly filed a stipulation of dismissal. In November 2002, EchoStar reached a private settlement with NBC, another of the plaintiffs in the litigation and jointly filed a stipulation of dismissal. We have also reached private settlements with a small number of independent stations and station groups. Six of the original eight plaintiffs remain, including CBS and Fox, along with the associations affiliated with each of the four networks.

The trial commenced on April 11, 2003 and concluded on April 25, 2003. Post trial motions and briefs were filed on May 5, 2003. The District Court could issue a decision at any time, but EchoStar cannot predict when the judge will rule. If the District Court enters an injunction against EchoStar, the injunction could force EchoStar to terminate delivery of distant network channels to a substantial portion of its distant network subscriber base, which could also cause many of those subscribers to cancel their subscription to EchoStar's other programming services. Any such terminations would result in a small reduction in EchoStar's reported average monthly revenue per subscriber and could result in a temporary increase in churn. The judge could also, as one of many possible remedies, prohibit all future sales of distant network programming by EchoStar, which would have a material adverse affect on EchoStar's business.

While the plaintiffs had never previously alleged that EchoStar's local network channel offerings violate copyright laws, during closing arguments on April 25, 2003, the plaintiffs asserted that the judge was required by statute to terminate the delivery by EchoStar of all network channels to all EchoStar subscribers, including both distant and local network channels, and prohibit all such sales by EchoStar in the future. Approximately 60% of EchoStar's customers currently subscribe to at least one local or distant network channel and EchoStar's business plans include the intention to increase the number of markets where it offers local network channels. If the judge prohibits the sale by EchoStar of all local and distant network channels, it would have a material adverse affect on EchoStar's business. In conjunction with their post trial filings on May 5, 2003, the plaintiffs filed a form of injunction proposing that EchoStar be required to terminate distant network channels to all current subscribers, and be prohibited from offering distant network channels to all subscribers in the future. The proposed injunction did not specifically propose a prohibition on the current or future sale by EchoStar of local network channels, but the plaintiffs have not notified EchoStar or the Court that they no longer are seeking that remedy. Approximately 15% of our customers currently subscribe to at least one distant network channel. Such an injunction would have a material adverse affect on EchoStar's business. Several less severe results are also possible, and the judge could find that EchoStar has

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complied with all of its statutory obligations. It is not possible to predict with any degree of certainty how the judge will rule. It is likely that any decision by the District Court will be appealed by one or both parties.

*Gemstar*

During October 2000, Starsight Telecast, Inc., a subsidiary of Gemstar-TV Guide International, Inc. (“Gemstar”), filed a suit for patent infringement against EchoStar and certain of its subsidiaries in the United States District Court for the Western District of North Carolina, Asheville Division. The suit alleges infringement of United States Patent No. 4,706,121 (“the `121 Patent”) which relates to certain electronic program guide functions. EchoStar examined this patent and believes that it is not infringed by any of its products or services. This conclusion is supported by findings of the International Trade Commission (“ITC”) which are discussed below. The North Carolina case is stayed pending the appeal of the ITC action to the United States Court of Appeals for the Federal Circuit.

In December 2000, EchoStar filed suit against Gemstar-TV Guide (and certain of its subsidiaries) in the United States District Court for the District of Colorado alleging violations by Gemstar of various federal and state anti-trust laws and laws governing unfair competition. The lawsuit seeks an injunction and monetary damages. Gemstar filed counterclaims alleging infringement of United States Patent Nos. 5,923,362 and 5,684,525 that relate to certain electronic program guide functions. EchoStar examined these patents and believes they are not infringed by any of its products or services. In August 2001, the Federal Multi-District Litigation panel combined this suit, for pre-trial purposes, with other lawsuits asserting antitrust claims against Gemstar, which had previously been filed by other parties. In January 2002, Gemstar dropped the counterclaims of patent infringement. During March 2002, the Court denied Gemstar’s Motion to Dismiss EchoStar’s antitrust claims. A more recently filed Gemstar motion for summary judgment based generally on lack of standing has also been denied. In its answer, Gemstar asserted new patent infringement counterclaims regarding United States Patent Nos. 4,908,713 and 5,915,068 (which is expired). These patents relate to onscreen programming of VCRs. EchoStar has examined these patents and believes that they are not infringed by any of its products or services.

In February 2001, Gemstar filed patent infringement actions against EchoStar in the District Court in Atlanta, Georgia and with the ITC. These suits allege infringement of United States Patent Nos. 5,252,066, 5,479,268 and 5,809,204, all of which relate to certain electronic program guide functions. In addition, the ITC action alleged infringement of the `121 Patent which was also asserted in the North Carolina case previously discussed. In the Georgia district court case, Gemstar seeks damages and an injunction. The Georgia case was stayed pending resolution of the ITC action and remains stayed at this time. In December 2001, the ITC held a 15-day hearing before an administrative law judge. Prior to the hearing, Gemstar dropped its infringement allegations regarding United States Patent No. 5,252,066 with respect to which EchoStar had asserted substantial allegations of inequitable conduct. The hearing addressed, among other things, Gemstar’s allegations of patent infringement and respondents’ (SCI, Scientific Atlanta, Pioneer and EchoStar) allegations of patent misuse. During June 2002, the judge issued a Final Initial Determination finding that none of the patents asserted by Gemstar had been infringed. In addition, the judge found that Gemstar was guilty of patent misuse with respect to the `121 Patent and that the `121 Patent was unenforceable because it failed to name an inventor. The parties then filed petitions for the full ITC to review the judge’s Final Initial Determination. During August 2002, the full ITC adopted the Judge’s findings regarding non-infringement and the unenforceability of the `121 Patent. The ITC did not adopt, but did not overturn, the Judge’s findings of patent misuse. Gemstar is appealing the decision of the ITC to the United States Court of Appeals for the Federal Circuit. If the Federal Circuit were to overturn the Judge’s decision, such an adverse decision in this case could temporarily halt the import of EchoStar receivers and could require EchoStar to materially modify certain user-friendly electronic programming guides and related features it currently offers to consumers. Based upon EchoStar’s review of these patents, and based upon the ITC’s decision, EchoStar continues to believe that these patents are not infringed by any of its products or services. EchoStar intends to continue to vigorously contest the ITC, North Carolina and Georgia suits and will, among other things, continue to challenge both the validity and enforceability of the asserted patents.

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During 2000, Superguide Corp. (“Superguide”) also filed suit against EchoStar, DirecTV and others in the United States District Court for the Western District of North Carolina, Asheville Division, alleging infringement of United States Patent Nos. 5,038,211, 5,293,357 and 4,751,578 which relate to certain electronic program guide functions, including the use of electronic program guides to control VCRs. Superguide sought injunctive and declaratory relief and damages in an unspecified amount. It is EchoStar’s understanding that these patents may be licensed by Superguide to Gemstar. Gemstar was added as a party to this case and asserted these patents against EchoStar. EchoStar examined these patents and believes that they are not infringed by any of its products or services. A Markman ruling interpreting the patent claims was issued by the Court and in response to that ruling EchoStar filed motions for summary judgment of non-infringement for each of the asserted patents. Gemstar filed a motion for summary judgment of infringement with respect to one of the patents. During July 2002, the Court issued a Memorandum of Opinion on the summary judgment motions. In its Opinion, the Court ruled that none of EchoStar’s products infringe the 5,038,211 and 5,293,357 patents. With respect to the 4,751,578 patent, the Court ruled that none of EchoStar’s current products infringed that patent and asked for additional information before it could rule on certain low-volume products that are no longer in production. During July 2002, the Court summarily ruled that the aforementioned low-volume products did not infringe any of the asserted patents. Accordingly, the Court dismissed the case and awarded EchoStar its court costs. Superguide and Gemstar are appealing this case to the United States Court of Appeals for the Federal Circuit. EchoStar will continue to vigorously defend this case. In the event the Federal Circuit ultimately determines that EchoStar infringes on any of the aforementioned patents, EchoStar may be subject to substantial damages, which may include treble damages and/or an injunction that could require EchoStar to materially modify certain user-friendly electronic programming guide and related features that EchoStar currently offers to consumers. It is too early to make an assessment of the probable outcome of the suits.

*California Actions*

A purported class action was filed against EchoStar in the California State Superior Court for Alameda County during May 2001 by Andrew A. Werby. The complaint, relating to late fees, alleges unlawful, unfair and fraudulent business practices in violation of California Business and Professions Code Section 17200 et seq., false and misleading advertising in violation of California Business and Professions Code Section 17500, and violation of the California Consumer Legal Remedies Act. A settlement was subsequently reached with plaintiff’s counsel. The Court issued its preliminary approval of the settlement during October 2002 and issued its final approval of the settlement on March 7, 2003. As a result, this matter was concluded with no material impact on EchoStar’s business.

A purported class action relating to the use of terms such as “crystal clear digital video,” “CD-quality audio,” and “on-screen program guide,” and with respect to the number of channels available in various programming packages was also filed against EchoStar in the California State Superior Court for Los Angeles County in 1999 by David Pritikin and by Consumer Advocates, a nonprofit unincorporated association. The complaint alleges breach of express warranty and violation of the California Consumer Legal Remedies Act, Civil Code Sections 1750, et seq., and the California Business & Professions Code Sections 17500 & 17200. A hearing on the plaintiffs’ Motion for Class Certification and EchoStar’s Motion for Summary Judgment was held during June 2002. At the hearing, the Court issued a preliminary ruling denying the plaintiffs’ Motion for Class Certification. However, before issuing a final ruling on Class Certification, the Court granted EchoStar’s Motion for Summary Judgment with respect to all of the plaintiffs’ claims. Subsequently, EchoStar filed a Motion for Attorney’s Fees which was denied by the Court. The plaintiffs filed a Notice of Appeal of the Court’s Granting of EchoStar’s Motion for Summary Judgment and EchoStar Cross-Appealed the Court’s ruling on EchoStar’s Motion for Attorney’s Fees. It is not possible to make a firm assessment of the probable outcome of the appeal or to determine the extent of any potential liability or damages.

*State Investigation*

During April 2002, two state attorneys general commenced a civil investigation concerning certain of EchoStar’s business practices. Over the course of the next six months, 11 additional states ultimately joined the

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investigation. The states allege failure to comply with consumer protection laws based on EchoStar's call response times and policies, advertising and customer agreement disclosures, policies for handling consumer complaints, issuing rebates and refunds and charging cancellation fees to consumers, and other matters. EchoStar has cooperated fully in the investigation and is currently in settlement discussions with the states. It is not possible to determine the extent of any damages or injunctive relief which could result in the event a settlement is not reached.

*Retailer Class Actions*

EchoStar has been sued by retailers in three separate purported class actions. During October 2000, two separate lawsuits were filed in the Arapahoe County District Court in the State of Colorado and the United States District Court for the District of Colorado, respectively, by Air Communication & Satellite, Inc. and John DeJong, et al. on behalf of themselves and a class of persons similarly situated. The plaintiffs are attempting to certify nationwide classes on behalf of certain of EchoStar's satellite hardware retailers. The plaintiffs are requesting the Courts to declare certain provisions of, and changes to, alleged agreements between EchoStar and the retailers invalid and unenforceable, and to award damages for lost incentives and payments, charge backs, and other compensation. EchoStar intends to vigorously defend against the suits and to assert a variety of counterclaims. The United States District Court for the District of Colorado stayed the Federal Court action to allow the parties to pursue a comprehensive adjudication of their dispute in the Arapahoe County State Court. John DeJong, d/b/a Nexwave, and Joseph Kelley, d/b/a Keltronics, subsequently intervened in the Arapahoe County Court action as plaintiffs and proposed class representatives. EchoStar has filed a Motion for Summary Judgment on all counts and against all plaintiffs. The plaintiffs have filed a Motion for Additional Time to Conduct Discovery to enable them to respond to EchoStar's motion. The Court has not ruled on either of the two motions. It is too early to make an assessment of the probable outcome of the litigation or to determine the extent of any potential liability or damages.

Satellite Dealers Supply, Inc. ("SDS") filed a lawsuit in the United States District Court for the Eastern District of Texas during September 2000, on behalf of itself and a class of persons similarly situated. The plaintiff was attempting to certify a nationwide class on behalf of sellers, installers, and servicers of satellite equipment who contract with EchoStar and who allege that EchoStar: (1) charged back certain fees paid by members of the class to professional installers in violation of contractual terms; (2) manipulated the accounts of subscribers to deny payments to class members; and (3) misrepresented, to class members, who owns certain equipment related to the provision of satellite television service. During September 2001, the Court granted EchoStar's Motion to Dismiss for Lack of Personal Jurisdiction. The plaintiff moved for reconsideration of the Court's order dismissing the case. The Court denied the Plaintiff's Motion for Reconsideration. The trial court denied EchoStar's Motions for Sanctions against SDS. Both parties have now perfected appeals before the Fifth Circuit Court of Appeals. It is not possible to make a firm assessment of the probable outcome of the appeal or to determine the extent of any potential liability or damages.

*StarBand Shareholder Lawsuit*

On August 20, 2002, a limited group of shareholders in StarBand filed an action in the Delaware Court of Chancery against EchoStar and EchoBand Corporation, together with four EchoStar executives who sat on the Board of Directors for StarBand, for alleged breach of the fiduciary duties of due care, good faith and loyalty, and also against EchoStar and EchoBand Corporation for aiding and abetting such alleged breaches. Two of the individual defendants, Charles W. Ergen and David K. Moskowitz, are members of the Board of Directors of EchoStar. The action stems from the defendants' involvement as directors, and EchoBand's position as a shareholder, in StarBand, a broadband Internet satellite venture that is currently in bankruptcy. Plaintiffs seek an accounting of damages for their \$25 million investment in StarBand in addition to costs and disbursements. Defendants deny the allegations in the complaint and intend to defend the litigation vigorously. During October 2002, EchoStar, along with the other defendants, moved to dismiss the complaint. The motions have been briefed, argued, and submitted, and the Court has ordered limited jurisdictional discovery to proceed before the Court makes its final ruling on the motions to dismiss. It is too early to make an assessment of the probable outcome of the litigation or to determine the extent of any potential liability or damage.

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*Merger Related Proceedings*

On October 24, 2002, a purported shareholder filed a Shareholder's Derivative Action against EchoStar and the current members of its Board of Directors and named EchoStar as a nominal defendant. The Plaintiff filed the action in the United States District Court of Clark County, Nevada. The complaint alleges breach of fiduciary duties, corporate waste and other unlawful acts relating to EchoStar's agreement to (1) pay Hughes Electronics Corporation a \$600 million termination fee in certain circumstances and (2) acquire Hughes' shareholder interest in PanAmSat. The agreements to pay the termination fee and acquire PanAmSat were required in the event that the merger with DirecTV was not completed by January 21, 2003. No answer is due from the defendants, and all parties have entered into a stipulation allowing the defendants to answer only subject to 30-day notice from the plaintiff. EchoStar and the individual defendants intend to deny all liability and to defend this action vigorously. The Plaintiff has filed a Motion for Award of Attorneys Fees and the Court has ruled that it will hold an evidentiary hearing on that issue. It is too early to make an assessment of the probable outcome of the litigation or to determine the extent of any potential liability or damages.

The Company is subject to various other legal proceedings and claims which arise in the ordinary course of business. In the opinion of management, the amount of ultimate liability with respect to any of these actions is unlikely to materially affect the Company's financial position or results of operations.

**8. Depreciation and Amortization Expense**

Depreciation and amortization expense consists of the following (in thousands):

	For the Three Months Ended March 31,	
	2002	2003
Satellites	\$28,258	\$36,009
Digital Home Plan equipment	28,260	35,184
Furniture, fixtures and equipment	20,259	22,766
Buildings and improvements	623	726
Other amortizable intangibles	83	54
Tooling and other	547	258
	<u>\$78,030</u>	<u>\$94,997</u>

Cost of sales and operating expense categories included in the Company's accompanying condensed consolidated statements of operations do not include depreciation expense related to satellites or digital home plan equipment.

**9. Segment Reporting***Financial Data by Business Unit (in thousands)*

Statement of Financial Accounting Standard No. 131, "Disclosures About Segments of an Enterprise and Related Information" ("FAS No. 131") establishes standards for reporting information about operating segments in annual financial statements of public business enterprises and requires that those enterprises report selected information about operating segments in interim financial reports issued to shareholders. Operating segments are components of an enterprise about which separate financial information is available and regularly evaluated by the chief operating decision maker(s) of an enterprise. Under this definition EchoStar currently operates as two business units. The All Other column consists of revenue and expenses from other operating segments for which the disclosure requirements of FAS No. 131 do not apply.

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	Dish Network	ETC	All Other	Eliminations	EchoStar Consolidated Total	Other EchoStar Activity	EDBS and Subsidiaries
<b>Three Months Ended</b>							
<b>March 31, 2002</b>							
Revenue	\$1,046,097	\$29,289	\$30,585	\$(1,503)	\$1,104,468	\$ (3,315)	\$1,101,153
Net income (loss)	(44,568)	2,017	7,404	—	(35,147)	54,074	18,927
<b>Three Months Ended</b>							
<b>March 31, 2003</b>							
Revenue	\$1,314,317	\$18,958	\$27,797	\$(2,024)	\$1,359,048	\$ (2,446)	\$1,356,602
Net income (loss)	55,210	(5,534)	8,241	—	57,917	17,521	75,438

#### 10. Financial Information for Subsidiary Guarantors

With the exception of certain de minimis domestic and foreign subsidiaries (collectively, the “Non-Guarantors”), the 9 3/8% Ten Year Notes are fully, unconditionally and jointly and severally guaranteed by all subsidiaries of EDBS (collectively, the “Subsidiary Guarantors”).

The combined assets, stockholder’s equity, net loss and operating cash flows of the Non-Guarantors represent less than 1% of the combined and consolidated assets, stockholder’s equity, net loss and operating cash flows of the combined Subsidiary Guarantors for the three months ended March 31, 2002 and 2003. As a result, the Subsidiary Guarantors and Non-Guarantors are combined in the following tables. Consolidating financial information is presented for the following entities (in thousands):

EDBS Parent Company Only (referred to as “EDBS — PC”)  
Subsidiary Guarantors and Other Subsidiaries  
Consolidating and Eliminating Adjustments (referred to as “C&E”)  
Consolidated EDBS (referred to as “EDBS”)

**ECHOSTAR DBS CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued**  
(Unaudited)

Consolidating Balance Sheets — As of December 31, 2002

	EDBS - PC	Subsidiary Guarantors and Other	C&E	EDBS
<b>Assets</b>				
Current Assets:				
Cash and cash equivalents	\$ 259,784	\$ 7,908	\$ —	\$ 267,692
Marketable investment securities	277,260	—	—	277,260
Trade accounts receivable, net of allowance for uncollectible accounts of \$9,276	—	325,928	—	325,928
Insurance receivable	106,000	—	—	106,000
Inventories	—	149,611	—	149,611
Other current assets	16,923	412	—	17,335
<b>Total current assets</b>	<b>659,967</b>	<b>483,859</b>	<b>—</b>	<b>1,143,826</b>
Restricted cash	—	10	—	10
Cash reserved for satellite insurance	151,372	—	—	151,372
Property and equipment, net	—	1,831,139	—	1,831,139
FCC authorizations, net	—	696,242	—	696,242
Investment in subsidiaries	1,263,811	189	(1,264,000)	—
Other noncurrent assets	(11,236)	49,728	—	38,492
<b>Total assets</b>	<b>\$ 2,063,914</b>	<b>\$3,061,167</b>	<b>\$(1,264,000)</b>	<b>\$ 3,861,081</b>
<b>Liabilities and Stockholder's Equity (Deficit)</b>				
Current Liabilities:				
Trade accounts payable	\$ 15,273	\$ 231,041	\$ —	\$ 246,314
Deferred revenue	—	440,678	—	440,678
Accrued expenses	134,545	717,954	—	852,499
Advances (to) from affiliates, net	(280,362)	280,362	—	—
Current portion of long-term debt	—	13,262	—	13,262
<b>Total current liabilities</b>	<b>(130,544)</b>	<b>1,683,297</b>	<b>—</b>	<b>1,552,753</b>
Long-term obligations, net of current portion:				
9 1/4% Seven Year Notes	375,000	—	—	375,000
9 3/8% Ten Year Notes	1,625,000	—	—	1,625,000
10 3/8% Seven Year Notes	1,000,000	—	—	1,000,000
9 1/8% Seven Year Notes	700,000	—	—	700,000
Mortgages and other notes payable, net of current portion	—	32,680	—	32,680
Long-term deferred distribution and carriage payments and other long-term liabilities	10,092	81,190	—	91,282
<b>Total long-term obligations, net of current portion</b>	<b>3,710,092</b>	<b>113,870</b>	<b>—</b>	<b>3,823,962</b>
<b>Total liabilities</b>	<b>3,579,548</b>	<b>1,797,167</b>	<b>—</b>	<b>5,376,715</b>
Stockholder's Equity (Deficit):				
Common Stock, \$.01 par value, 1,000 shares authorized, issued and outstanding	—	14,368	(14,368)	—
Additional paid-in capital	843,198	1,788,334	(1,788,334)	843,198
Deferred stock-based compensation	(8,657)	(8,657)	8,657	(8,657)
Accumulated other comprehensive income	697	—	—	697
Accumulated equity (deficit)	(2,350,872)	(530,045)	530,045	(2,350,872)
<b>Total stockholder's equity (deficit)</b>	<b>(1,515,634)</b>	<b>1,264,000</b>	<b>(1,264,000)</b>	<b>(1,515,634)</b>
<b>Total liabilities and stockholder's equity (deficit)</b>	<b>\$ 2,063,914</b>	<b>\$3,061,167</b>	<b>\$(1,264,000)</b>	<b>\$ 3,861,081</b>

**ECHOSTAR DBS CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued**  
(Unaudited)

Consolidating Balance Sheets — As of March 31, 2003

	EDBS - PC	Subsidiary Guarantors and Other	C&E	EDBS
<b>Assets</b>				
Current Assets:				
Cash and cash equivalents	\$ 82,369	\$ 2,971	\$ —	\$ 85,340
Marketable investment securities	243,751	—	—	243,751
Trade accounts receivable, net of allowance for uncollectible accounts of \$9,173	—	313,428	—	313,428
Insurance receivable	106,000	—	—	106,000
Inventories	—	174,206	—	174,206
Other current assets	(24,548)	62,186	—	37,638
<b>Total current assets</b>	<b>407,572</b>	<b>552,791</b>	<b>—</b>	<b>960,363</b>
Restricted cash	—	10	—	10
Cash reserved for satellite insurance	143,297	—	—	143,297
Property and equipment, net	—	1,778,541	—	1,778,541
FCC authorizations, net	—	696,242	—	696,242
Investment in subsidiaries	1,443,232	189	(1,443,421)	—
Other noncurrent assets	74,677	(37,862)	—	36,815
<b>Total assets</b>	<b>\$ 2,068,778</b>	<b>\$2,989,911</b>	<b>\$(1,443,421)</b>	<b>\$ 3,615,268</b>
<b>Liabilities and Stockholder's Equity (Deficit)</b>				
Current Liabilities:				
Trade accounts payable	\$ 170,552	\$ 98,789	\$ —	\$ 269,341
Deferred revenue	—	471,153	—	471,153
Accrued expenses	94,612	738,331	—	832,943
Advances (to) from affiliates, net	(103,744)	103,744	—	—
Current portion of long-term debt	—	13,281	—	13,281
<b>Total current liabilities</b>	<b>161,420</b>	<b>1,425,298</b>	<b>—</b>	<b>1,586,718</b>
Long-term obligations, net of current portion:				
9 3/8% Ten Year Notes	1,625,000	—	—	1,625,000
10 3/8% Seven Year Notes	1,000,000	—	—	1,000,000
9 1/8% Seven Year Notes	700,000	—	—	700,000
Mortgages and other notes payable, net of current portion	—	32,502	—	32,502
Long-term deferred distribution and carriage payments and other long-term liabilities	20,727	88,690	—	109,417
<b>Total long-term obligations, net of current portion</b>	<b>3,345,727</b>	<b>121,192</b>	<b>—</b>	<b>3,466,919</b>
<b>Total liabilities</b>	<b>3,507,147</b>	<b>1,546,490</b>	<b>—</b>	<b>5,053,637</b>
Stockholder's Equity (Deficit):				
Common Stock, \$.01 par value, 1,000 shares authorized, issued and outstanding	—	14,368	(14,368)	—
Additional paid-in capital	843,368	1,788,506	(1,788,506)	843,368
Deferred stock-based compensation	(6,839)	(6,839)	6,839	(6,839)
Accumulated other comprehensive income	536	—	—	536
Accumulated equity (deficit)	(2,275,434)	(352,614)	352,614	(2,275,434)
<b>Total stockholder's equity (deficit)</b>	<b>(1,438,369)</b>	<b>1,443,421</b>	<b>(1,443,421)</b>	<b>(1,438,369)</b>
<b>Total liabilities and stockholder's equity (deficit)</b>	<b>\$ 2,068,778</b>	<b>\$2,989,911</b>	<b>\$(1,443,421)</b>	<b>\$ 3,615,268</b>



**EHOSTAR DBS CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued**  
(Unaudited)

Consolidating Statements of Operations — Three Months Ended March 31, 2002

	EDBS - PC	Subsidiary Guarantors and Other	C&E	EDBS
<b>Revenue:</b>				
Subscription television services	\$ —	\$1,014,632	\$ —	\$1,014,632
Other subscriber-related revenue	—	30,629	(26,482)	4,147
DTH equipment sales	—	56,340	—	56,340
Other	—	26,034	—	26,034
Total revenue	—	1,127,635	(26,482)	1,101,153
<b>Costs and Expenses:</b>				
Subscriber-related expenses	—	541,174	(26,482)	514,692
Satellite and transmission expenses	—	12,362	—	12,362
Cost of sales — DTH equipment	—	39,275	—	39,275
Cost of sales — other	—	14,692	—	14,692
Cost of sales — subscriber promotion subsidies	—	101,010	—	101,010
Other subscriber promotion subsidies	—	133,370	—	133,370
Subscriber acquisition advertising	—	33,519	—	33,519
General and administrative	147	70,773	—	70,920
Non-cash, stock-based compensation	—	1,666	—	1,666
Depreciation and amortization	—	78,030	—	78,030
Total costs and expenses	147	1,025,871	(26,482)	999,536
Operating income (loss)	(147)	101,764	—	101,617
<b>Other Income (Expense):</b>				
Interest income	2,101	114	—	2,215
Interest expense, net of amounts capitalized	(81,447)	(690)	—	(82,137)
Equity in earnings (losses) of subsidiaries	99,876	—	(99,876)	—
Other	(1,456)	(1,017)	—	(2,473)
Total other income (expense)	19,074	(1,593)	(99,876)	(82,395)
Income (loss) before income taxes	18,927	100,171	(99,876)	19,222
Income tax provision, net	—	(295)	—	(295)
Net income (loss)	\$ 18,927	\$ 99,876	\$(99,876)	\$ 18,927

**ECHOSTAR DBS CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued**  
(Unaudited)

Consolidating Statements of Operations — Three months ended March 31, 2003

	EDBS - PC	Subsidiary Guarantors and Other	C&E	EDBS
<b>Revenue:</b>				
Subscription television services	\$ —	\$1,288,646	\$ —	\$1,288,646
Other subscriber-related revenue	—	64,391	(60,057)	4,334
DTH equipment sales	—	40,188	—	40,188
Other	—	23,434	—	23,434
Total revenue	—	1,416,659	(60,057)	1,356,602
<b>Costs and Expenses:</b>				
Subscriber-related expenses	—	696,632	(60,054)	636,578
Satellite and transmission expenses	—	14,974	—	14,974
Cost of sales — DTH equipment	—	27,745	—	27,745
Cost of sales — other	—	11,930	(3)	11,927
Cost of sales — subscriber promotion subsidies	—	124,544	—	124,544
Other subscriber promotion subsidies	—	150,637	—	150,637
Subscriber acquisition advertising	—	32,661	—	32,661
General and administrative	—	79,155	—	79,155
Non-cash, stock-based compensation	—	1,989	—	1,989
Depreciation and amortization	—	94,997	—	94,997
Total costs and expenses	—	1,235,264	(60,057)	1,175,207
Operating income	—	181,395	—	181,395
<b>Other Income (Expense):</b>				
Interest income	2,523	12	—	2,535
Interest expense, net of amounts capitalized	(101,782)	(703)	—	(102,485)
Equity in earnings (losses) of subsidiaries	177,431	—	(177,431)	—
Other	(13)	(183)	—	(196)
Total other income (expense)	78,159	(874)	(177,431)	(100,146)
Income (loss) before income taxes	78,159	180,521	(177,431)	81,249
Income tax provision, net	(2,721)	(3,090)	—	(5,811)
Net income (loss)	\$ 75,438	\$ 177,431	\$(177,431)	\$ 75,438

**EHOSTAR DBS CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued**  
(Unaudited)

Consolidating Statements of Cash Flows — Three months ended March 31, 2002

	EDBS - PC	Subsidiary Guarantors and Other	C&E	EDBS
<b>Cash Flows From Operating Activities:</b>				
Net income (loss)	\$ 18,927	\$ 99,876	\$(99,876)	\$ 18,927
Adjustments to reconcile net income (loss) to net cash flows from operating activities:				
Equity in earnings (losses) of subsidiaries	(99,876)	—	99,876	—
Realized and unrealized loss on investments	1,456	—	—	1,456
Deferred stock-based compensation recognized	—	1,666	—	1,666
Depreciation and amortization	—	78,030	—	78,030
Amortization of debt discount and deferred financing costs	1,503	1	—	1,504
Change in long-term deferred distribution and carriage payments and other long-term liabilities	—	2,445	—	2,445
Other, net	800	2,680	—	3,480
Changes in current assets and current liabilities	(4,294)	149,180	—	144,886
Net cash flows from operating activities	(81,484)	333,878	—	252,394
<b>Cash Flows From Investing Activities:</b>				
Purchases of marketable investment securities	(120,439)	—	—	(120,439)
Sales of marketable investment securities	33,648	—	—	33,648
Purchases of property and equipment	—	(90,448)	—	(90,448)
Cash reserved for satellite insurance	(59,680)	—	—	(59,680)
Change in cash reserved for satellite insurance due to depreciation on related satellites	6,150	—	—	6,150
Net cash flows from investing activities	(140,321)	(90,448)	—	(230,769)
<b>Cash Flows From Financing Activities:</b>				
Non-interest bearing advances from affiliates	242,042	(242,100)	—	(58)
Repayments of mortgage indebtedness and other notes payable	—	(145)	—	(145)
Other	(77)	—	—	(77)
Net cash flows from financing activities	241,965	(242,245)	—	(280)
Net increase in cash and cash equivalents	20,160	1,185	—	21,345
Cash and cash equivalents, beginning of period	36,253	2,799	—	39,052
Cash and cash equivalents, end of period	\$ 56,413	\$ 3,984	\$ —	\$ 60,397

**EHOSTAR DBS CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued**  
(Unaudited)

Consolidating Statements of Cash Flows — Three months ended March 31, 2003

	EDBS - PC	Subsidiary Guarantors and Other	C&E	EDBS
<b>Cash Flows From Operating Activities:</b>				
Net income (loss)	\$ 75,438	\$ 177,432	\$(177,432)	\$ 75,438
Adjustments to reconcile net income (loss) to net cash flows from operating activities:				
Equity in earnings (losses) of subsidiaries	(177,432)	—	177,432	—
Deferred stock-based compensation recognized	—	1,989	—	1,989
Deferred tax (benefit) expense	(37,633)	40,249	—	2,616
Depreciation and amortization	—	94,997	—	94,997
Amortization of debt discount and deferred financing costs	3,826	3	—	3,829
Change in long-term deferred distribution and carriage payments and other long-term liabilities	—	(3,529)	—	(3,529)
Other, net	—	(2,004)	—	(2,004)
Changes in current assets and current liabilities	115,346	(88,126)	—	27,220
Net cash flows from operating activities	(20,455)	221,011	—	200,556
<b>Cash Flows From Investing Activities:</b>				
Purchases of marketable investment securities	(182,859)	—	—	(182,859)
Sales of marketable investment securities	216,206	—	—	216,206
Purchases of property and equipment	—	(49,171)	—	(49,171)
Change in cash reserved for satellite insurance due to depreciation on related satellites	8,075	—	—	8,075
Net cash flows from investing activities	41,422	(49,171)	—	(7,749)
<b>Cash Flows From Financing Activities:</b>				
Non-interest bearing advances (to) from affiliates	176,618	(176,618)	—	—
Redemption of 9 1/4% Senior Notes	(375,000)	—	—	(375,000)
Repayments of mortgage indebtedness and other notes payable	—	(159)	—	(159)
Net cash flows from financing activities	(198,382)	(176,777)	—	(375,159)
Net decrease in cash and cash equivalents	(177,415)	(4,937)	—	(182,352)
Cash and cash equivalents, beginning of period	259,784	7,908	—	267,692
Cash and cash equivalents, end of period	\$ 82,369	\$ 2,971	\$ —	\$ 85,340

## Item 2. MANAGEMENT'S NARRATIVE ANALYSIS OF RESULTS OF OPERATIONS

### Principal Business

We are a wholly-owned subsidiary of EchoStar Communications Corporation ("EchoStar"), a publicly traded company listed on the Nasdaq National Market under the symbol "DISH". Unless otherwise stated, or the context otherwise requires, references to EchoStar include EDBS and all other direct and indirect wholly-owned subsidiaries of EchoStar. We refer readers of this report to EDBS' Annual Report on Form 10-K for the year ended December 31, 2002. Substantially all of EchoStar's operations are conducted by EDBS. The operations of EchoStar include two interrelated business units.

- *The DISH Network* — which provides a direct broadcast satellite subscription television service we refer to as "DBS" in the United States; and
- *EchoStar Technologies Corporation* — which designs and develops DBS set-top boxes, antennae and other digital equipment for the DISH Network. We refer to this equipment collectively as "EchoStar receiver systems." EchoStar Technologies Corporation also designs, develops and distributes similar equipment for international satellite service providers.

Since 1994, EchoStar has deployed substantial resources to develop the "EchoStar DBS System." The EchoStar DBS System consists of EchoStar's FCC-allocated DBS spectrum, eight DBS satellites ("EchoStar I" through "EchoStar VIII"), EchoStar receiver systems, digital broadcast operations centers, customer service facilities, and other assets utilized in its operations. EchoStar's principal business strategy is to continue developing its subscription television service in the United States to provide consumers with a fully competitive alternative to cable television service.

### Results of Operations

*Three Months Ended March 31, 2003 Compared to the Three Months Ended March 31, 2002.*

**Total revenue.** Total revenue for the three months ended March 31, 2003 was \$1.357 billion, an increase of \$256 million or 23% compared to the three months ended March 31, 2002. This increase was attributable to continued DISH Network subscriber growth and increased monthly average revenue per subscriber and was partially offset by our reduced price programming promotions.

**Subscription television services.** Subscription television services revenue consists principally of revenue from basic, premium, local, international and pay-per-view subscription television services. Subscription television services revenue totaled \$1.289 billion for the three months ended March 31, 2003, an increase of \$274 million or 27% compared to the same period in 2002. This increase was attributable to continued DISH Network subscriber growth and an increase in monthly average revenue per subscriber, discussed below. DISH Network added approximately 350,000 net new subscribers for the three months ended March 31, 2003 compared to approximately 335,000 net new subscribers added during the same period in 2002. As of March 31, 2003, we had approximately 8.53 million DISH Network subscribers compared to approximately 7.16 million at March 31, 2002, an increase of approximately 19%. Subscription television services revenue will continue to increase to the extent we are successful in increasing the number of DISH Network subscribers and maintaining or increasing revenue per subscriber.

**Monthly average revenue per subscriber.** Monthly average revenue per subscriber was approximately \$51.48 during the three months ended March 31, 2003 and approximately \$48.36 during the same period in 2002. This increase was primarily attributable to price increases and the increased availability of local channels by satellite. The increase was also attributable to the expiration of free programming promotions offered during the three months ended March 31, 2002 but not offered during the same period in 2003, and a reduction in the discounts we offered on programming packages during the three months ended March 31, 2003 as compared to the same period in 2002. Monthly average revenue per subscriber will be adversely affected in any future periods during which we reinstitute free programming promotions or expand our discounted programming promotions.

**Item 2. MANAGEMENT’S NARRATIVE ANALYSIS OF RESULTS OF OPERATIONS — Continued**

Impacts from our litigation with the networks in Florida, FCC rules governing the delivery of superstations and other factors could cause us to terminate delivery of network channels and superstations to a material portion of our subscriber base, which could cause many of those customers to cancel their subscription to our other services. Any such terminations could result in a reduction in average monthly revenue per subscriber and could result in an increase in our percentage churn.

In April 2002, the FCC concluded that our “must carry” implementation methods were not in compliance with the “must carry” rules. If the FCC finds our subsequent remedial actions unsatisfactory, while we would attempt to continue providing local network channels in all markets without interruption, we could be forced by capacity constraints to reduce the number of markets in which we provide local channels. This could cause a temporary increase in churn and a small reduction in average monthly revenue per subscriber.

**DTH equipment sales.** DTH equipment sales consist of sales and maintenance of digital set-top boxes and other digital satellite broadcasting equipment by our ETC subsidiary to Bell ExpressVu, a subsidiary of Bell Canada, Canada’s national telephone company, and sales of DBS accessories in the United States. For the three months ended March 31, 2003, DTH equipment sales totaled \$40 million, a decrease of \$16 million compared to the same period during 2002. This decrease principally resulted from a decrease in sales of digital set-top boxes to Bell ExpressVu as a result of reduced demand.

**Subscriber-related expenses.** Subscriber-related expenses include costs incurred in the operation of our DISH Network customer service centers, programming expenses, copyright royalties, residual commissions, and billing, lockbox and other variable subscriber expenses. Subscriber related expenses totaled \$637 million during the three months ended March 31, 2003, an increase of \$122 million compared to the same period in 2002. This increase is primarily attributable to the increase in DISH Network subscribers. These expenses represented 49% and 51% of Subscription television services revenues during the three months ended March 31, 2003 and 2002, respectively. The decrease in Subscriber-related expenses as a percentage of Subscription television services revenue primarily resulted from the increase in average revenue per subscriber discussed above and increased operating efficiencies.

During the quarter ended March 31, 2003, we combined the line item on our Condensed Consolidated Statement of Operations captioned “Subscriber-related expenses” with the previously included line item captioned “Customer service center and other”. In addition, we have reclassified certain amounts between categories on the Condensed Consolidated Statement of Operations. All prior period amounts have been reclassified to conform with the current year presentation. None of these changes had any impact on “Operating income” during the three months ended March 31, 2002 and 2003.

**Satellite and transmission expenses.** Satellite and transmission expenses include expenses associated with the operation of our digital broadcast centers and contracted satellite telemetry, tracking and control services. Satellite and transmission expenses totaled \$15 million during the three months ended March 31, 2003, a \$3 million increase compared to the same period in 2002. This increase primarily resulted from the launch of additional local markets. Satellite and transmission expenses totaled 1% of Subscription television services revenue during each of the three months ended March 31, 2003 and 2002. These expenses will increase as a result of our agreement with SES Americom (see Note 1 to the Condensed Consolidated Financial Statements for further discussion). These expenses could increase further in the future as additional satellites are placed in service, additional local markets are launched, to the extent we successfully obtain commercial in-orbit insurance and to the extent we increase the operations at our digital broadcast centers in order, among other reasons, to meet the demands of current “must carry” requirements.

**Cost of sales — DTH equipment.** Cost of sales — DTH equipment principally includes costs associated with digital set-top boxes and related components sold to an international DTH operator, and sale of DBS accessories. Cost of sales — DTH equipment totaled \$28 million during the three months ended March 31, 2003, a decrease of \$11 million compared to the same period in 2002. This decrease related primarily to a decrease in sales of digital set-top

**Item 2. MANAGEMENT'S NARRATIVE ANALYSIS OF RESULTS OF OPERATIONS — Continued**

boxes to Bell ExpressVu. Cost of sales — DTH equipment represented 69% and 70% of DTH equipment sales during the three months ended March 31, 2003 and 2002, respectively.

**Subscriber acquisition costs.** Generally, under most promotions, we subsidize the installation and all or a portion of the cost of EchoStar receiver systems in order to attract new DISH Network subscribers. There is no clear industry standard used in the calculation of subscriber acquisition costs. Our subscriber acquisition costs include "Cost of sales — subscriber promotion subsidies", "Other subscriber promotion subsidies" and "Subscriber acquisition advertising" expenses. "Cost of sales — subscriber promotion subsidies" includes the cost of EchoStar receiver systems sold to retailers and other distributors of our equipment and receiver systems sold directly by EchoStar to subscribers. "Other subscriber promotion subsidies" includes net costs related to our free installation promotion and other promotional incentives. During the quarter ended March 31, 2003 certain amounts previously included in Subscriber acquisition costs were reclassified to Subscriber related expenses on the Condensed Consolidated Statements of Operations. All prior period amounts have been reclassified to conform with the current year presentation. None of these changes had any impact on "Operating income" during the three months ended March 31, 2002 and 2003.

During the three months ended March 31, 2003, our subscriber acquisition costs totaled approximately \$308 million, or approximately \$448 per new subscriber activation. Comparatively, our subscriber acquisition costs during the three months ended March 31, 2002 totaled approximately \$266 million, or approximately \$430 per new subscriber activation. This increase is primarily attributable to an increase in sales pursuant to promotions under which customers receive equipment at reduced or no cost to the subscriber, as opposed to promotions where the subscriber leases our equipment. Our subscriber acquisition costs, both in the aggregate and on a per-new-subscriber activation basis, may materially increase in the future to the extent that we introduce other more aggressive promotions to respond to competition, or for other reasons.

We exclude equipment capitalized under our lease promotion from our calculation of subscriber acquisition costs. We also exclude payments and certain returned equipment received from disconnecting lease promotion subscribers from our calculation of subscriber acquisition costs. Equipment capitalized under our lease promotion totaled approximately \$27 million and \$77 million for the three months ended March 31, 2003 and 2002, respectively. Returned equipment received from disconnecting lease promotion subscribers, which became available for sale through other promotions rather than being redeployed through the lease promotion, together with payments received in connection with equipment not returned, totaled approximately \$6 million and \$12 million during the three months ended March 31, 2003 and 2002, respectively.

**General and administrative expenses.** General and administrative expenses totaled \$79 million during the three months ended March 31, 2003, an increase of \$8 million compared to the same period in 2002. General and administrative expenses represented 6% of Total revenue during each of the three months ended March 31, 2003 and 2002. During the quarter ended March 31, 2003, certain amounts previously included in General and administrative expenses were reclassified to Subscriber related expenses on the Condensed Consolidated Statements of Operations. All prior period amounts have been reclassified to conform with the current year presentation. None of these changes had any impact on "Operating income" during the three months ended March 31, 2002 and 2003.

**Non-cash, stock-based compensation.** During 1999, EchoStar adopted an incentive plan under its 1995 Stock Incentive Plan, which provided certain key employees with incentives including stock options. During each of the three months ended March 31, 2003 and 2002, the Company recognized approximately \$2 million of compensation under this performance-based plan. The remaining deferred compensation of \$7 million as of March 31, 2003, which will be reduced by future forfeitures, if any, will be recognized over the remaining vesting period, ending on March 31, 2004.

The Company reports all non-cash compensation based on stock option appreciation as a single expense category in its accompanying statements of operations. The following table indicates the other expense categories in our statements of operations that would be affected if non-cash, stock-based compensation was allocated to the same expense categories as the base compensation for key employees who participate in the 1999 incentive plan (in thousands):

**Item 2. MANAGEMENT'S NARRATIVE ANALYSIS OF RESULTS OF OPERATIONS — Continued**

	Three Months Ended March 31,	
	2002	2003
Subscriber related	\$ 182	\$ 90
Satellite and transmission	(554)	89
General and administrative	2,038	1,810
Total non-cash, stock-based compensation	\$1,666	\$1,989

Options to purchase 8.7 million shares are outstanding as of March 31, 2003 and were granted with exercise prices equal to the market value of the underlying shares on the date they were issued during 1999, 2000 and 2001 pursuant to a long term incentive plan under our 1995 Stock Incentive Plan. The weighted-average exercise price of these options is \$8.70. Vesting of these options is contingent upon meeting certain longer-term goals which have not yet been achieved. Consequently, no compensation was recorded during the three months ended March 31, 2003 related to these long-term options. The Company will record the related compensation at the achievement, if ever, of the performance goals. Such compensation, if recorded, would likely result in material non-cash, stock-based compensation expense in our statements of operations.

**Earnings Before Interest, Taxes, Depreciation and Amortization.** EBITDA is defined as "Operating income (loss)" plus "Depreciation and amortization." Effective January 1, 2003, we have revised our definition of EBITDA to include "Non-cash, stock-based compensation" expense. All prior year amounts conform with the current year presentation. EBITDA was \$276 million during the three months ended March 31, 2003, compared to \$180 million during the same period in 2002. This improvement was directly attributable to the increase in the number of DISH Network subscribers, which continues to result in revenue sufficient to support the cost of new and existing subscribers. The improvement was partially offset by a decrease in subscribers leasing equipment and a corresponding increase in equipment subsidies compared to the same period in 2002, as well as a decrease in DTH equipment sales. EBITDA does not include the impact of capital expenditures under our lease promotion of approximately \$27 million and \$77 million during the three months ended March 31, 2003 and 2002, respectively. As previously discussed, to the extent we introduce more aggressive marketing promotions and our subscriber acquisition costs materially increase, our EBITDA results will be negatively impacted because subscriber acquisition costs are generally expensed as incurred.

The following table reconciles EBITDA to the accompanying financial statements:

	Three Months Ended March 31,	
	2002	2003
Operating income	\$101,617	\$181,395
Depreciation and amortization	78,030	94,977
EBITDA	\$179,647	\$276,372

It is important to note that EBITDA is a supplemental non-GAAP measure and does not represent cash provided or used by operating activities. EBITDA is used as a measurement of operating efficiency and overall financial performance and is believed to be a helpful measure for those evaluating companies in the multi-channel video programming distribution industry. Conceptually, EBITDA measures the amount of income generated each period that could be used to service debt, pay taxes and fund capital expenditures because EBITDA is independent of the actual leverage and capital expenditures employed by the business. EBITDA should not be considered in isolation or as a substitute for measures of performance prepared in accordance with generally accepted accounting principles.

**Depreciation and amortization.** Depreciation and amortization expense totaled \$95 million during the three months ended March 31, 2003, a \$17 million increase compared to the same period in 2002. This increase primarily resulted from an increase in depreciation related to the commencement of commercial operation of EchoStar VII in April 2002, commencement of commercial operations of EchoStar VIII in October 2002 and lease equipment and other additional depreciable assets placed in service during 2002 and 2003.



**Item 2. MANAGEMENT'S NARRATIVE ANALYSIS OF RESULTS OF OPERATIONS — Continued**

**Other Income and Expense.** Other expense, net, totaled \$100 million during the three months ended March 31, 2003, an increase of \$18 million compared to the same period in 2002. This increase primarily resulted from \$20 million of additional interest costs associated with the redemption of our 9 1/4% Senior Notes (see Note 1 to the Condensed Consolidated Financial Statements for further discussion) and a reduction in the amount of interest capitalized during the three months ended March 31, 2003 as compared to the same period in 2002. Interest is capitalized during the construction phase of a satellite and ceases to be capitalized upon commercial operation of the satellite. Therefore, once EchoStar VII and EchoStar VIII commenced commercial operation during April 2002 and October 2002, respectively, we ceased capitalizing interest related to these satellites. The expensing of this previously capitalized interest resulted in an increase in "Interest expense".

**Net income (loss).** Net income was \$75 million during the three months ended March 31, 2003, an increase of \$56 million compared to the same period in 2002. The increase was primarily attributable to an increase in Operating income, the components of which are discussed above. This increase was partially offset by an increase in Other Income and Expense, the components of which are also discussed above.

**Net cash flows from operating activities.** Net cash flows from operating activities includes net income for the period, adjusted for certain non-cash items including, but not limited to, depreciation and amortization, realized and unrealized gains and losses on investments, deferred tax expense, non-cash, stock-based compensation and changes in assets and liabilities during the period. Net cash flows from operating activities does not include investing activities or financing activities, nor does it include certain charges relating to losses on investing or financing activities. Net cash flows from operating activities was \$201 million and \$252 million during the three months ended March 31, 2003 and 2002, respectively. Our condensed consolidated statements of cash flows detail the significant components of Net cash flows from operating activities.

**Purchases of property and equipment.** Purchases of property and equipment were \$49 million and \$90 million during the three months ended March 31, 2003 and 2002, respectively. This decrease was primarily attributable to reduced spending on the construction of satellites and the capitalization of less equipment under our lease promotion during the three months ended March 31, 2003 as compared to the same period in 2002.

**Subscriber Turnover**

Our percentage monthly churn for the three months ended March 31, 2003 was approximately 1.36%, compared to our percentage churn for the same period in 2002 of approximately 1.37%. We calculate percentage monthly churn by dividing the number of subscribers who terminate service during the month by total subscribers as of the beginning of the month. We are not aware of any uniform standards for calculating churn and believe presentations of churn may not be calculated consistently by different entities in the same or similar businesses. Impacts from our litigation with the networks in Florida, FCC rules governing the delivery of superstations and other factors could cause us to terminate delivery of network channels and superstations to a material portion of our subscriber base, which could cause many of those customers to cancel their subscription to our other services. Any such terminations could result in a reduction in average monthly revenue per subscriber and could result in an increase in our percentage churn. In addition, price increases, which were effective February 1, 2003, could also cause a temporary increase in churn. Increases in piracy or theft of our signal, or our competitors' signals, could cause churn to increase in future periods. In April 2002, the FCC concluded that our "must carry" implementation methods were not in compliance with the "must carry" rules. If the FCC finds our subsequent remedial actions unsatisfactory, while we would attempt to continue providing local network channels in all markets without interruption, we could be forced by capacity constraints to reduce the number of markets in which we provide local channels. This could cause a temporary increase in churn and a small reduction in average monthly revenue per subscriber. Additionally, as the size of our subscriber base continues to increase, even if percentage churn remains constant, increasing numbers of gross new subscribers are required to sustain net subscriber growth

**Item 4. CONTROLS AND PROCEDURES**

- (a) Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we conducted an evaluation of the effectiveness of our disclosure controls and procedures as defined in Rule 13a-14(c) promulgated under the Securities Exchange Act of 1934 within 90 days of the filing date of this report. Based on their evaluation, our Chief Executive Officer and Chief Financial Officer concluded that the design and operation of our disclosure controls and procedures were effective as of the date of the evaluation.
- (b) There have been no significant changes (including corrective actions with regard to significant deficiencies or material weaknesses) in our internal controls or in other factors that could significantly affect these controls subsequent to the date of the evaluation referenced in paragraph (a) above.

## PART II — OTHER INFORMATION

### Item 1. LEGAL PROCEEDINGS

#### *Legal Proceedings*

##### *WIC Premium Television Ltd*

During July 1998, a lawsuit was filed by WIC Premium Television Ltd., an Alberta corporation, in the Federal Court of Canada Trial Division, against General Instrument Corporation, HBO, Warner Communications, Inc., John Doe, Showtime, United States Satellite Broadcasting Company, Inc., EchoStar, and certain EchoStar subsidiaries.

During September 1998, WIC filed another lawsuit in the Court of Queen's Bench of Alberta Judicial District of Edmonton against certain defendants, including EchoStar. WIC is a company authorized to broadcast certain copyrighted work, such as movies and concerts, to residents of Canada. WIC alleges that the defendants engaged in, promoted, and/or allowed satellite dish equipment from the United States to be sold in Canada and to Canadian residents and that some of the defendants allowed and profited from Canadian residents purchasing and viewing subscription television programming that is only authorized for viewing in the United States. The lawsuit seeks, among other things, interim and permanent injunctions prohibiting the defendants from importing satellite receivers into Canada and from activating satellite receivers located in Canada to receive programming, together with damages in excess of \$175 million.

The Court in the Alberta action denied EchoStar's Motion to Dismiss, and EchoStar's appeal of that decision. The Federal action has been stayed pending the outcome of the Alberta action. EchoStar intends to continue to vigorously defend the suit. During 2002, the Supreme Court of Canada ruled that the receipt in Canada of programming from United States pay television providers is prohibited. While EchoStar was not a party to that case, the ruling could adversely affect EchoStar's defense. It is too early to make an assessment of the probable outcome of the litigation or to determine the extent of any potential liability or damages.

##### *Distant Network Litigation*

Until July 1998, EchoStar obtained feeds of distant broadcast network channels (ABC, NBC, CBS and FOX) for distribution to its customers through PrimeTime 24, an independent third party programming provider. In December 1998, the United States District Court for the Southern District of Florida entered a nationwide permanent injunction requiring that provider to shut off distant network channels to many of its customers, and henceforth to sell those channels to consumers in accordance with certain stipulations in the injunction.

In October 1998, EchoStar filed a declaratory judgment action against ABC, NBC, CBS and FOX in the United States District Court for the District of Colorado. EchoStar asked the Court to enter judgment declaring that its method of providing distant network programming did not violate the Satellite Home Viewer Act and hence did not infringe the networks' copyrights. In November 1998, the networks and their affiliate groups filed a complaint against EchoStar in Miami Federal Court alleging, among other things, copyright infringement. The Court combined the case that EchoStar filed in Colorado with the case in Miami and transferred it to the Miami Federal Court. While the networks have not sought monetary damages, they have sought to recover attorney fees if they prevail.

In February 1999, the networks filed a Motion for Temporary Restraining Order, Preliminary Injunction and Contempt Finding against DirecTV, Inc. in Miami related to the delivery of distant network channels to DirecTV customers by satellite. DirecTV settled that lawsuit with the networks. Under the terms of the settlement between DirecTV and the networks, some DirecTV customers were scheduled to lose access to their satellite-provided distant network channels by July 31, 1999, while other DirecTV customers were to be disconnected by December 31, 1999. Subsequently, substantially all providers of satellite-delivered network programming other than EchoStar agreed to this cut-off schedule, although EchoStar does not know if they adhered to this schedule.

In December 1998, the networks filed a Motion for Preliminary Injunction against EchoStar in the Florida case and asked the Court to enjoin EchoStar from providing network programming except under limited circumstances. A preliminary injunction hearing was held in September 1999. In March 2000, the networks filed an emergency motion

**PART II — OTHER INFORMATION**

again asking the Court to issue an injunction requiring EchoStar to cease providing network programming to certain of its customers. At that time, the networks also argued that EchoStar's compliance procedures violated the Satellite Home Viewer Improvement Act, which was passed by Congress in November 1999. EchoStar opposed the networks' motion and again asked the Court to hear live testimony before ruling upon the networks' injunction request.

During September 2000, the Court granted the networks' motion for preliminary injunction, denied the networks' emergency motion, and denied EchoStar's request to present live testimony and evidence. The Court's original order required EchoStar to terminate network programming to certain subscribers "no later than February 15, 1999," and contained other dates with which it would be physically impossible to comply. The order imposed restrictions on EchoStar's past and future sale of distant ABC, NBC, CBS and FOX channels similar to those imposed on PrimeTime 24 (and, EchoStar believes, on DirecTV and others). Some of those restrictions go beyond the statutory requirements imposed by the Satellite Home Viewer Act and the Satellite Home Viewer Improvement Act.

Twice during October 2000, the Court amended its original preliminary injunction order in an effort to fix some of the errors in the original order. The twice-amended preliminary injunction order required EchoStar to shut off, by February 15, 2001, all subscribers who were ineligible to receive distant network programming under the Court's order. EchoStar appealed the preliminary injunction orders. During September 2001, the United States Court of Appeals for the Eleventh Circuit vacated the District Court's nationwide preliminary injunction, which the Eleventh Circuit had stayed in November 2000. The Eleventh Circuit also rejected EchoStar's First Amendment challenge to the Satellite Home Viewer Act. However, the Eleventh Circuit found that the District Court had made factual findings that were clearly erroneous and not supported by the evidence, and that the District Court had misinterpreted and misapplied the law. The Eleventh Circuit issued an order during January 2002 remanding the case to the Florida District Court. During March 2002, the Florida District Court entered an order setting the matter for trial. In this order, the District Court denied certain of EchoStar's outstanding motions to compel discovery as moot and granted the networks' motion to compel. During April 2002, the District Court denied the networks' motion for preliminary injunction as moot. In June 2002, EchoStar filed a counterclaim against the networks asking the District Court to find that EchoStar is not violating the Satellite Home Viewer Act and seeking damages resulting from the networks' tortious interference with EchoStar's business relationships and from the networks' conduct amounting to unfair competition. The networks filed a motion to dismiss these claims. In August 2002, the District Court denied the networks' motion to dismiss. However, in April 2003 the District Court granted the networks' motion for summary judgment on EchoStar's counterclaims.

In April 2002, EchoStar reached a private settlement with ABC, Inc., one of the plaintiffs in the litigation and jointly filed a stipulation of dismissal. In November 2002, EchoStar reached a private settlement with NBC, another of the plaintiffs in the litigation and jointly filed a stipulation of dismissal. We have also reached private settlements with a small number of independent stations and station groups. Six of the original eight plaintiffs remain, including CBS and Fox, along with the associations affiliated with each of the four networks.

The trial commenced on April 11, 2003 and concluded on April 25, 2003. Post trial motions and briefs were filed on May 5, 2003. The District Court could issue a decision at any time, but EchoStar cannot predict when the judge will rule. If the District Court enters an injunction against EchoStar, the injunction could force EchoStar to terminate delivery of distant network channels to a substantial portion of its distant network subscriber base, which could also cause many of those subscribers to cancel their subscription to EchoStar's other programming services. Any such terminations would result in a small reduction in EchoStar's reported average monthly revenue per subscriber and could result in a temporary increase in churn. The judge could also, as one of many possible remedies, prohibit all future sales of distant network programming by EchoStar, which would have a material adverse affect on EchoStar's business.

While the plaintiffs had never previously alleged that EchoStar's local network channel offerings violate copyright laws, during closing arguments on April 25, 2003, the plaintiffs asserted that the judge was required by statute to terminate the delivery by EchoStar of all network channels to all EchoStar subscribers, including both distant and local network channels, and prohibit all such sales by EchoStar in the future. Approximately 60% of EchoStar's customers currently subscribe to at least one local or distant network channel and EchoStar's business plans include the intention to increase the number of markets where it offers local network channels. If the judge

**PART II — OTHER INFORMATION**

prohibits the sale by EchoStar of all local and distant network channels, it would have a material adverse affect on EchoStar's business. In conjunction with their post trial filings on May 5, 2003, the plaintiffs filed a form of injunction proposing that EchoStar be required to terminate distant network channels to all current subscribers, and be prohibited from offering distant network channels to all subscribers in the future. The proposed injunction did not specifically propose a prohibition on the current or future sale by EchoStar of local network channels, but the plaintiffs have not notified EchoStar or the Court that they no longer are seeking that remedy. Approximately 15% of our customers currently subscribe to at least one distant network channel. Such an injunction would have a material adverse affect on EchoStar's business. Several less severe results are also possible, and the judge could find that EchoStar has complied with all of its statutory obligations. It is not possible to predict with any degree of certainty how the judge will rule. It is likely that any decision by the District Court will be appealed by one or both parties.

*Gemstar*

During October 2000, Starsight Telecast, Inc., a subsidiary of Gemstar-TV Guide International, Inc. ("Gemstar"), filed a suit for patent infringement against EchoStar and certain of its subsidiaries in the United States District Court for the Western District of North Carolina, Asheville Division. The suit alleges infringement of United States Patent No. 4,706,121 ("the `121 Patent") which relates to certain electronic program guide functions. EchoStar examined this patent and believes that it is not infringed by any of its products or services. This conclusion is supported by findings of the International Trade Commission ("ITC") which are discussed below. The North Carolina case is stayed pending the appeal of the ITC action to the United States Court of Appeals for the Federal Circuit.

In December 2000, EchoStar filed suit against Gemstar-TV Guide (and certain of its subsidiaries) in the United States District Court for the District of Colorado alleging violations by Gemstar of various federal and state anti-trust laws and laws governing unfair competition. The lawsuit seeks an injunction and monetary damages. Gemstar filed counterclaims alleging infringement of United States Patent Nos. 5,923,362 and 5,684,525 that relate to certain electronic program guide functions. EchoStar examined these patents and believes they are not infringed by any of its products or services. In August 2001, the Federal Multi-District Litigation panel combined this suit, for pre-trial purposes, with other lawsuits asserting antitrust claims against Gemstar, which had previously been filed by other parties. In January 2002, Gemstar dropped the counterclaims of patent infringement. During March 2002, the Court denied Gemstar's Motion to Dismiss EchoStar's antitrust claims. A more recently filed Gemstar motion for summary judgment based generally on lack of standing has also been denied. In its answer, Gemstar asserted new patent infringement counterclaims regarding United States Patent Nos. 4,908,713 and 5,915,068 (which is expired). These patents relate to onscreen programming of VCRs. EchoStar has examined these patents and believes that they are not infringed by any of its products or services.

In February 2001, Gemstar filed patent infringement actions against EchoStar in the District Court in Atlanta, Georgia and with the ITC. These suits allege infringement of United States Patent Nos. 5,252,066, 5,479,268 and 5,809,204, all of which relate to certain electronic program guide functions. In addition, the ITC action alleged infringement of the `121 Patent which was also asserted in the North Carolina case previously discussed. In the Georgia district court case, Gemstar seeks damages and an injunction. The Georgia case was stayed pending resolution of the ITC action and remains stayed at this time. In December 2001, the ITC held a 15-day hearing before an administrative law judge. Prior to the hearing, Gemstar dropped its infringement allegations regarding United States Patent No. 5,252,066 with respect to which EchoStar had asserted substantial allegations of inequitable conduct. The hearing addressed, among other things, Gemstar's allegations of patent infringement and respondents' (SCI, Scientific Atlanta, Pioneer and EchoStar) allegations of patent misuse. During June 2002, the judge issued a Final Initial Determination finding that none of the patents asserted by Gemstar had been infringed. In addition, the judge found that Gemstar was guilty of patent misuse with respect to the `121 Patent and that the `121 Patent was unenforceable because it failed to name an inventor. The parties then filed petitions for the full ITC to review the judge's Final Initial Determination. During August 2002, the full ITC adopted the Judge's findings regarding non-infringement and the unenforceability of the `121 Patent. The ITC did not adopt, but did not overturn, the Judge's findings of patent misuse. Gemstar is appealing the decision of the ITC to the United States Court of Appeals for the Federal Circuit. If the Federal Circuit were to overturn the Judge's decision, such an adverse decision in this case could temporarily halt the import of EchoStar receivers and could require EchoStar to materially modify certain user-friendly electronic programming guides and related features it currently offers to consumers. Based upon EchoStar's review of these patents, and based upon the ITC's decision, EchoStar continues to believe that these patents are not infringed by any of its products or services. EchoStar intends to continue to vigorously contest the ITC, North Carolina and Georgia suits and will, among other things, continue to challenge both the validity and enforceability of the asserted patents.

## PART II — OTHER INFORMATION

During 2000, Superguide Corp. (“Superguide”) also filed suit against EchoStar, DirecTV and others in the United States District Court for the Western District of North Carolina, Asheville Division, alleging infringement of United States Patent Nos. 5,038,211, 5,293,357 and 4,751,578 which relate to certain electronic program guide functions, including the use of electronic program guides to control VCRs. Superguide sought injunctive and declaratory relief and damages in an unspecified amount. It is EchoStar’s understanding that these patents may be licensed by Superguide to Gemstar. Gemstar was added as a party to this case and asserted these patents against EchoStar. EchoStar examined these patents and believes that they are not infringed by any of its products or services. A Markman ruling interpreting the patent claims was issued by the Court and in response to that ruling EchoStar filed motions for summary judgment of non-infringement for each of the asserted patents. Gemstar filed a motion for summary judgment of infringement with respect to one of the patents. During July 2002, the Court issued a Memorandum of Opinion on the summary judgment motions. In its Opinion, the Court ruled that none of EchoStar’s products infringe the 5,038,211 and 5,293,357 patents. With respect to the 4,751,578 patent, the Court ruled that none of EchoStar’s current products infringed that patent and asked for additional information before it could rule on certain low-volume products that are no longer in production. During July 2002, the Court summarily ruled that the aforementioned low-volume products did not infringe any of the asserted patents. Accordingly, the Court dismissed the case and awarded EchoStar its court costs. Superguide and Gemstar are appealing this case to the United States Court of Appeals for the Federal Circuit. EchoStar will continue to vigorously defend this case. In the event the Federal Circuit ultimately determines that EchoStar infringes on any of the aforementioned patents, EchoStar may be subject to substantial damages, which may include treble damages and/or an injunction that could require EchoStar to materially modify certain user-friendly electronic programming guide and related features that EchoStar currently offers to consumers. It is too early to make an assessment of the probable outcome of the suits.

### *California Actions*

A purported class action was filed against EchoStar in the California State Superior Court for Alameda County during May 2001 by Andrew A. Werby. The complaint, relating to late fees, alleges unlawful, unfair and fraudulent business practices in violation of California Business and Professions Code Section 17200 et seq., false and misleading advertising in violation of California Business and Professions Code Section 17500, and violation of the California Consumer Legal Remedies Act. A settlement was subsequently reached with plaintiff’s counsel. The Court issued its preliminary approval of the settlement during October 2002 and issued its final approval of the settlement on March 7, 2003. As a result, this matter was concluded with no material impact on EchoStar’s business.

A purported class action relating to the use of terms such as “crystal clear digital video,” “CD-quality audio,” and “on-screen program guide,” and with respect to the number of channels available in various programming packages was also filed against EchoStar in the California State Superior Court for Los Angeles County in 1999 by David Pritikin and by Consumer Advocates, a nonprofit unincorporated association. The complaint alleges breach of express warranty and violation of the California Consumer Legal Remedies Act, Civil Code Sections 1750, et seq., and the California Business & Professions Code Sections 17500 & 17200. A hearing on the plaintiffs’ Motion for Class Certification and EchoStar’s Motion for Summary Judgment was held during June 2002. At the hearing, the Court issued a preliminary ruling denying the plaintiffs’ Motion for Class Certification. However, before issuing a final ruling on Class Certification, the Court granted EchoStar’s Motion for Summary Judgment with respect to all of the plaintiffs’ claims. Subsequently, EchoStar filed a Motion for Attorney’s Fees which was denied by the Court. The plaintiffs filed a Notice of Appeal of the Court’s Granting of EchoStar’s Motion for Summary Judgment and EchoStar Cross-Appealed the Court’s ruling on EchoStar’s Motion for Attorney’s Fees. It is not possible to make a firm assessment of the probable outcome of the appeal or to determine the extent of any potential liability or damages.

### *State Investigation*

During April 2002, two state attorneys general commenced a civil investigation concerning certain of EchoStar’s business practices. Over the course of the next six months, 11 additional states ultimately joined the investigation. The states allege failure to comply with consumer protection laws based on EchoStar’s call response times and policies, advertising and customer agreement disclosures, policies for handling consumer complaints,

## PART II — OTHER INFORMATION

issuing rebates and refunds and charging cancellation fees to consumers, and other matters. EchoStar has cooperated fully in the investigation and is currently in settlement discussions with the states. It is not possible to determine the extent of any damages or injunctive relief which could result in the event a settlement is not reached.

### *Retailer Class Actions*

EchoStar has been sued by retailers in three separate purported class actions. During October 2000, two separate lawsuits were filed in the Arapahoe County District Court in the State of Colorado and the United States District Court for the District of Colorado, respectively, by Air Communication & Satellite, Inc. and John DeJong, et al. on behalf of themselves and a class of persons similarly situated. The plaintiffs are attempting to certify nationwide classes on behalf of certain of EchoStar's satellite hardware retailers. The plaintiffs are requesting the Courts to declare certain provisions of, and changes to, alleged agreements between EchoStar and the retailers invalid and unenforceable, and to award damages for lost incentives and payments, charge backs, and other compensation. EchoStar intends to vigorously defend against the suits and to assert a variety of counterclaims. The United States District Court for the District of Colorado stayed the Federal Court action to allow the parties to pursue a comprehensive adjudication of their dispute in the Arapahoe County State Court. John DeJong, d/b/a Nexwave, and Joseph Kelley, d/b/a Keltronics, subsequently intervened in the Arapahoe County Court action as plaintiffs and proposed class representatives. EchoStar has filed a Motion for Summary Judgment on all counts and against all plaintiffs. The plaintiffs have filed a Motion for Additional Time to Conduct Discovery to enable them to respond to EchoStar's motion. The Court has not ruled on either of the two motions. It is too early to make an assessment of the probable outcome of the litigation or to determine the extent of any potential liability or damages.

Satellite Dealers Supply, Inc. ("SDS") filed a lawsuit in the United States District Court for the Eastern District of Texas during September 2000, on behalf of itself and a class of persons similarly situated. The plaintiff was attempting to certify a nationwide class on behalf of sellers, installers, and servicers of satellite equipment who contract with EchoStar and who allege that EchoStar: (1) charged back certain fees paid by members of the class to professional installers in violation of contractual terms; (2) manipulated the accounts of subscribers to deny payments to class members; and (3) misrepresented, to class members, who owns certain equipment related to the provision of satellite television service. During September 2001, the Court granted EchoStar's Motion to Dismiss for Lack of Personal Jurisdiction. The plaintiff moved for reconsideration of the Court's order dismissing the case. The Court denied the Plaintiff's Motion for Reconsideration. The trial court denied EchoStar's Motions for Sanctions against SDS. Both parties have now perfected appeals before the Fifth Circuit Court of Appeals. It is not possible to make a firm assessment of the probable outcome of the appeal or to determine the extent of any potential liability or damages.

### *StarBand Shareholder Lawsuit*

On August 20, 2002, a limited group of shareholders in StarBand filed an action in the Delaware Court of Chancery against EchoStar and EchoBand Corporation, together with four EchoStar executives who sat on the Board of Directors for StarBand, for alleged breach of the fiduciary duties of due care, good faith and loyalty, and also against EchoStar and EchoBand Corporation for aiding and abetting such alleged breaches. Two of the individual defendants, Charles W. Ergen and David K. Moskowitz, are members of the Board of Directors of EchoStar. The action stems from the defendants' involvement as directors, and EchoBand's position as a shareholder, in StarBand, a broadband Internet satellite venture that is currently in bankruptcy. Plaintiffs seek an accounting of damages for their \$25 million investment in StarBand in addition to costs and disbursements. Defendants deny the allegations in the complaint and intend to defend the litigation vigorously. During October 2002, EchoStar, along with the other defendants, moved to dismiss the complaint. The motions have been briefed, argued, and submitted, and the Court has ordered limited jurisdictional discovery to proceed before the Court makes its final ruling on the motions to dismiss. It is too early to make an assessment of the probable outcome of the litigation or to determine the extent of any potential liability or damage.

## PART II — OTHER INFORMATION

### *Merger Related Proceedings*

On October 24, 2002, a purported shareholder filed a Shareholder's Derivative Action against EchoStar and the current members of its Board of Directors and named EchoStar as a nominal defendant. The Plaintiff filed the action in the United States District Court of Clark County, Nevada. The complaint alleges breach of fiduciary duties, corporate waste and other unlawful acts relating to EchoStar's agreement to (1) pay Hughes Electronics Corporation a \$600 million termination fee in certain circumstances and (2) acquire Hughes' shareholder interest in PanAmSat. The agreements to pay the termination fee and acquire PanAmSat were required in the event that the merger with DirecTV was not completed by January 21, 2003. No answer is due from the defendants, and all parties have entered into a stipulation allowing the defendants to answer only subject to 30-day notice from the plaintiff. EchoStar and the individual defendants intend to deny all liability and to defend this action vigorously. The Plaintiff has filed a Motion for Award of Attorneys Fees and the Court has ruled that it will hold an evidentiary hearing on that issue. It is too early to make an assessment of the probable outcome of the litigation or to determine the extent of any potential liability or damages.

### *Satellite Insurance*

In September 1998, EchoStar filed a \$219.3 million insurance claim for a total loss under the launch insurance policies covering EchoStar IV. The satellite insurance consists of separate substantially identical policies with different carriers for varying amounts that, in combination, create a total insured amount of \$219.3 million. The insurance carriers include La Reunion Spatiale; AXA Reinsurance Company (n/k/a AXA Corporate Solutions Reinsurance Company), United States Aviation Underwriters, Inc., United States Aircraft Insurance Group; Assurances Generales De France I.A.R.T. (AGF); Certain Underwriters at Lloyd's, London; Great Lakes Reinsurance (U.K.) PLC; British Aviation Insurance Group; If Skaadeforsikring (previously Storebrand); Hannover Re (a/k/a International Hannover); The Tokio Marine & Fire Insurance Company, Ltd.; Marham Space Consortium (a/k/a Marham Consortium Management); Ace Global Markets (a/k/a Ace London); M.C. Watkins Syndicate; Goshawk Syndicate Management Ltd.; D.E. Hope Syndicate 10009 (Formerly Busbridge); Amlin Aviation; K.J. Coles & Others; H.R. Dumas & Others; Hiscox Syndicates, Ltd.; Cox Syndicate; Hayward Syndicate; D.J. Marshall & Others; TF Hart; Kiln; Assitalia Le Assicurazioni D'Italia S.P.A. Roma; La Fondiaria Assicurazione S.P.A., Firenze; Vittoria Assicurazioni S.P.A., Milano; Ras — Riunione Adriatica Di Sicurta S.P.A., Milano; Societa Cattolica Di Assicurazioni, Verano; Siat Assicurazione E Riassicurazione S.P.A, Genova; E. Patrick; ZC Specialty Insurance; Lloyds of London Syndicates 588 NJM, 1209 Meb AND 861 Meb; Generali France Assurances; Assurance France Aviation; and Ace Bermuda Insurance Ltd.

The insurance carriers offered EchoStar a total of approximately \$88 million, or 40% of the total policy amount, in settlement of the EchoStar IV insurance claim. The insurers assert, among other things, that EchoStar IV was not a total loss, as that term is defined in the policy, and that EchoStar did not abide by the exact terms of the insurance policies. EchoStar strongly disagrees and filed arbitration claims against the insurers for breach of contract, failure to pay a valid insurance claim and bad faith denial of a valid claim, among other things. Due to individual forum selection clauses in certain of the policies, EchoStar is pursuing its arbitration claims against Ace Bermuda Insurance Ltd. in London, England, and its arbitration claims against all of the other insurance carriers in New York, New York. The New York arbitration commenced on April 28, 2003. EchoStar is expected to complete presentation of evidence supporting its total loss claim in May of this year. The arbitration will then adjourn and resume this fall. The parties to the London arbitration are currently negotiating the schedule for a hearing, and, while there can be no assurance, EchoStar anticipates that the hearing date in that proceeding will be set for later in 2003. There can be no assurance that EchoStar will receive the amount claimed in either the New York or the London arbitrations or, if EchoStar does, that EchoStar will retain title to EchoStar IV with its reduced capacity.

The Company is subject to various other legal proceedings and claims which arise in the ordinary course of business. In the opinion of management, the amount of ultimate liability with respect to any of these actions is unlikely to materially affect the Company's financial position or results of operations.



**PART II — OTHER INFORMATION**

**Item 6. EXHIBITS AND REPORTS ON FORM 8-K**

(a) *Exhibits*

10.1 Satellite Service Agreement, dated as of March 21, 2003, between SES Americom, Inc., EchoStar Satellite Corporation and EchoStar Communications Corporation.\*\*\*

\*\*\* Certain provisions have been omitted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment. A conforming electronic copy is being filed herewith.

(b) *Reports on Form 8-K*

On February 5, 2003, we filed a Current Report on Form 8-K to report that the Company completed the previously announced repurchase of all of its 9 1/4% Senior Notes due 2006. The redemption occurred three years early in accordance with the Company's early redemption right.

On March 12, 2003, we filed a Current Report on Form 8-K in connection with the filing of our Annual Report on Form 10-K for the period ended December 31, 2002 stating that our Chief Executive Officer and our Chief Financial Officer certified our report pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

**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.

EHOSTAR DBS CORPORATION

By: */s/ Charles W. Ergen*

---

Charles W. Ergen  
Chairman and Chief Executive Officer  
*(Duly Authorized Officer)*

By: */s/ Michael R. McDonnell*

---

Michael R. McDonnell  
Senior Vice President and Chief Financial Officer  
*(Principal Financial Officer)*

Date: May 8, 2003

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER**

Section 302 Certification

I, Charles W. Ergen, certify that:

1. I have reviewed this quarterly report on Form 10-Q of EchoStar DBS Corporation;
2. Based on my knowledge, this quarterly 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 quarterly report;
3. Based on my knowledge, the financial statements, and other financial information included in this quarterly 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 quarterly report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and have:
  - a) designed such disclosure controls and procedures 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 quarterly report is being prepared;
  - b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this quarterly report (the "Evaluation Date"); and
  - c) presented in this quarterly report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):
  - a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and
6. The registrant's other certifying officers and I have indicated in this quarterly report whether there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: May 8, 2003

/s/ Charles W. Ergen

\_\_\_\_\_  
Chairman and Chief Executive Officer

**CERTIFICATION OF CHIEF FINANCIAL OFFICER**

Section 302 Certification

I, Michael R. McDonnell, certify that:

1. I have reviewed this quarterly report on Form 10-Q of EchoStar DBS Corporation;
2. Based on my knowledge, this quarterly 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 quarterly report;
3. Based on my knowledge, the financial statements, and other financial information included in this quarterly 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 quarterly report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and have:
  - a) designed such disclosure controls and procedures 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 quarterly report is being prepared;
  - b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this quarterly report (the "Evaluation Date"); and
  - c) presented in this quarterly report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):
  - a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and
6. The registrant's other certifying officers and I have indicated in this quarterly report whether there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: May 8, 2003

/s/ Michael R. McDonnell

\_\_\_\_\_  
Senior Vice President and Chief Financial Officer

**EXHIBIT INDEX**

<b>EXHIBIT NUMBER</b>	<b>DESCRIPTION</b>
10.1	Satellite Service Agreement, dated as of March 21, 2003, between SES Americom, Inc., EchoStar Satellite Corporation and EchoStar Communications Corporation.***

\*\*\* Certain provisions have been omitted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment. A conforming electronic copy is being filed herewith.

## SATELLITE SERVICE AGREEMENT

**THIS AGREEMENT** between SES Americom, Inc., as agent for SES Americom California, Inc. (for the period prior to the In-Service Date) and SES Americom Colorado, Inc. (for the period on and after the In-Service Date), on the one hand, and EchoStar Satellite Corporation (“Customer”) and EchoStar Communications Corporation (solely as to the obligation set forth in Section 3.C of this Agreement), on the other hand, is made effective as of March 21, 2003 (the “Effective Date”). All references to “SES Americom” herein shall include SES Americom California, Inc., SES Americom Colorado, Inc., and SES Americom, Inc. as agent for each. Defined terms used in this Agreement have the meanings specified herein.

### ARTICLE 1. SERVICE PROVIDED

**A. Scope.** SES Americom has entered into a contract (the “Construction Contract”) with Vendor for the construction of one Ku-Band and Ka-Band hybrid communications satellite designated as the “AMC-15 Satellite,” and one substantially identical satellite designated as the “AMC-16 Satellite” for use as a ground spare. The AMC-15 Satellite is planned to be In-Service on or about November 1, 2004. SES Americom will provide to Customer, and Customer will pay the applicable MRC for, and be entitled to utilize solely for the Intended Use, the entire communications capacity (including all spare capacity) on the Satellite in accordance with this Agreement (the “Service”). The Satellite will be located at the 105° W.L. orbital position (the “Orbital Location”). Technical performance criteria for the Service on the AMC-15 Satellite and the AMC-16 Satellite (the “Technical Performance Specifications”) are appended to this Agreement as Attachment A. \*\*\*

The Service will be provided in accordance with the terms and conditions set forth in this Agreement, including Attachments A — E (as listed below), which are hereby incorporated by reference in their entirety (collectively, the “Agreement”). In the event of any conflict or inconsistency between the terms and conditions set forth in the body of this Agreement and the terms and conditions set forth in any Attachment hereto, then terms and conditions set forth in the body of this Agreement shall control.

Attachment A — Technical Performance Specifications  
Attachment B — Hypothetical MRC Partial Loss Adjustments  
Attachment C — \*\*\*  
Attachment D — \*\*\*  
Attachment E — \*\*\*

Customer may use the Channels for the transmission of digital services, and for the transmission of analog services, but only to the extent that all services are consistent with SES Americom’s applicable licenses and coordination agreements. SES Americom shall have no obligation to modify existing licenses or coordination agreements or enter into new coordination agreements to allow analog services.

**B. Terms Related to Construction Contract, Launch Service Agreement, and Insurance.**

(1) SES Americom agrees to collaborate with and include Customer in all future significant decisions related to the Construction Contract, and to obtain Customer’s prior approval (which approval may be withheld in Customer’s sole and absolute discretion) prior to making any changes to the Technical Performance Specifications, although the parties agree that SES Americom will make the final decisions under all aspects of the Construction Contract not affecting the Technical Performance Specifications

**Execution Copy**

### CONFIDENTIAL AND PROPRIETARY

This document contains confidential and proprietary information of SES Americom, Inc. and EchoStar Satellite Corporation that may not be shared with third parties without the express prior written approval of SES Americom and EchoStar.

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(provided such decisions are consistent with SES Americom's obligations under this Agreement). Notwithstanding the foregoing, SES Americom agrees to notify Customer of all changes to the Satellite (even if the relevant changes do not affect the Technical Performance Specifications), within a reasonable period of time after making such changes. Subject to any applicable ITAR restrictions and Vendor's standard security procedure requirements, Customer shall be permitted to participate in and be present at: (a) reviews of each of Vendor's milestone events leading up to launch of the Satellite (the only remaining milestones for the AMC-15 Satellite are "PSR" and "Launch"); (b) Vendor's "Final Integration and Test," "Pre-ship Review" and "Launch and In-Orbit Testing Sessions"; and (c) informal Project Manager meetings and informal project level technical review meetings. Participation by Customer as contemplated herein shall include attendance by Customer employees and U.S. citizen representatives at such events and meetings, consultation with Customer on engineering decisions that affect the Satellite's performance (including the ability to meet the applicable Technical Performance Specifications) and the review of relevant reports and test results. When available to SES Americom and upon completion of any necessary ITAR reviews and redactions, if applicable, SES Americom shall distribute all design review documents to Customer. SES Americom shall also instruct Vendor to make available to Customer employees and Customer's U.S. citizen representatives access to all technical documents under the Construction Contract, including without limitation the spacecraft performance specification, subject to any applicable ITAR reviews and redactions. With reasonable prior notice, SES Americom shall allow Customer, in the presence of SES Americom and Vendor, to view program hardware in progress in accordance with Vendor's access policies and procedures. Subject to any confidentiality restrictions set forth in the Construction Contract, SES Americom shall afford Customer and Customer's U.S. citizen representatives access, while accompanied by SES Americom, to all work, including without limitation technical data and information, test data, drawings, documentation (not containing cost information), tooling, and manufacturing processes, testing and hardware in progress, being performed at Vendor's facilities pursuant to the Construction Contract at all times during the period of Construction Contract performance, provided that such access does not unreasonably interfere with such work or any other work. SES Americom shall afford Customer and Customer's U.S. citizen representatives access, while accompanied by SES Americom, to work being performed pursuant to the Construction Contract in Vendor's subcontractors' facilities to the extent Vendor obtains such access, subject to the right of Vendor and SES Americom to accompany Customer and Customer's U.S. citizen representatives on any such visit and subject further to the execution by Customer and Customer's U.S. citizen representatives of non-disclosure or similar agreements as may be required by said subcontractors. SES Americom shall use its reasonable commercial efforts to obtain Customer and Customer's U.S. citizen representatives access, while accompanied by SES Americom, to the work being performed pursuant to the Construction Contract in Vendor's subcontractor's facilities. With respect to any access, documents or other information that Vendor or SES Americom is obligated to provide to Customer's U.S. citizen representatives under this Agreement, Customer shall be fully responsible for, and shall indemnify and hold harmless SES Americom for any losses, fines, penalties or liabilities arising from, any violation by Customer or any of Customer's U.S. citizen representatives of any ITAR restrictions in connection with access, documents or information so provided.

(2) In the event that Customer requests a modification of any Satellite \*\*\* then SES Americom will negotiate in good faith and in accordance with SES Americom's duties and obligations under Subsection 3.A(11) with Vendor to implement such modification Customer acknowledges that any requested modification of the Satellite would be subject to the change procedures set forth in the Construction Contract and, to the extent such modification results in an increase or decrease in price or a change to the milestone schedule under the Construction Contract, such increase or decrease in price and/or the impact of such change to the milestone schedule shall be passed through to Customer in the manner provided below. Customer further acknowledges that any such modification may also require additional approvals or authorizations from the FCC, which SES Americom shall use its reasonable commercial efforts to obtain. The parties agree that the increase or decrease in the Satellite Investment as a result of such a

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modification requested by Customer will be reflected in the calculation of the MRC and that the planned In-Service Date will be adjusted to reflect the change to the milestone schedule in the Construction Contract. The parties agree to negotiate, in advance and in good faith, regarding any other changes to this Agreement, if any, reasonably related to such modifications, including without limitation the Termination Payment, prior to implementing any such modifications. \*\*\* In the event that, notwithstanding good faith negotiations, the parties are unable to agree to the other changes, if any, to this Agreement reasonably related to such modifications, no modifications to the Satellite will be made.

(3) SES Americom agrees to collaborate with and include Customer in all future significant decisions related to the matters surrounding the Launch Service Agreement, although the parties agree that SES Americom will make the final decisions under the Launch Service Agreement (provided such decisions are consistent with SES Americom's obligations under this Agreement and do not adversely impact the rights of Customer under this Agreement). Subject to any applicable ITAR restrictions, Customer employees and Customer's U.S. citizen representatives shall be permitted to participate in reviews of each of the launch service provider's milestone events with respect to launch of the Satellite. Customer and Customer's guests may at Customer's expense attend the launch of the Satellite.

(4) To the extent that a failure by SES Americom to make payments in accordance with the terms of the Construction Contract or the Launch Service Agreement is the direct cause of a delay in the In-Service Date of the Satellite, then in addition to any rights and remedies that Customer may have in this Agreement, SES Americom will pay Customer \*\*\*.

**C. Service Term.** The term for Service (the "Service Term") on any Satellite \*\*\* shall commence on the In-Service Date for that Satellite, and, except as otherwise provided herein, shall expire on the earlier of (1) ten years after such In-Service Date (the "Initial Term"), or (2) the date that Satellite becomes a Failed Satellite. The Service Term on any Satellite \*\*\* that is not a Failed Satellite may be extended at Customer's sole option for successive one-year periods (or a portion thereof in the case of the final extension) until the Satellite reaches its End-of-Life (each an "Extended Term"), upon written notice to SES Americom provided at least 180 days prior to the end of the Initial Term and/or the then current Extended Term, and provided that, at the time of each such extension, Customer is in full compliance with all of its obligations under this Agreement.

**D. Service Priorities.** In the event of a Partial Loss, SES Americom shall immediately initiate all commercially and technically reasonable measures, consistent with protecting the Satellite and all services provided thereon, to restore the Service as quickly as possible. Restoration shall be effected by utilizing any available spare equipment on the Satellite to restore the Service and/or the Channel. If access to spare equipment on the Satellite is required for more than one Channel as a result of a single event or simultaneous events, Customer will determine the preferred use of the spare equipment, provided that Customer's decision does not adversely impact the Satellite.

**E. Notices.** All notices regarding technical or operational matters requiring immediate attention will be given by telephone to the telephone number set forth below for Customer and the telephone number set forth in the User's Guide for SES Americom and shall be followed by written notification. Any notice required or permitted to be given hereunder shall be in writing and shall be sent by facsimile transmission, or by first class certified mail, postage prepaid, or by overnight courier service, charges prepaid, to the party notified, addressed to such party at the address set forth below, or sent by facsimile to the fax number set forth below, or such other address or fax number as such party may have substituted by written notice to the other party. The sending of such notice with confirmation of receipt thereof (in the case of facsimile transmission) or receipt of such notice (in the case of delivery by mail or by overnight courier service) shall constitute the giving thereof.

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**If to be given to Customer:**

Attn: \*\*\*  
Vice President, Space Programs and Operations  
EchoStar Satellite Corporation  
5701 South Santa Fe Drive  
Littleton, CO 80120  
Fax #: \*\*\*

**If to be given to SES Americom:**

Attn: \*\*\*  
General Counsel  
SES Americom, Inc.  
Four Research Way  
Princeton, NJ 08540  
Fax #: \*\*\*

cc: David K. Moskowitz, Esq  
Senior Vice President & General Counsel  
(same address and fax number)

\*\*\*

**ARTICLE 2. PAYMENTS AND OTHER CONSIDERATIONS/ \*\*\***

**A. Option Payment.**

(1) On May 1, 2003, Customer shall pay SES Americom a non-refundable (except as otherwise set forth in this Agreement) option payment of Fifty Million Dollars (\$50,000,000) (the "Option Payment") by Customer check. \*\*\*

(2) The parties agree that SES Americom shall be deemed to have fully earned the Option Payment as of the In-Service Date, following which neither the Option Payment nor any portion of the Option Payment shall be returnable or creditable to Customer, and Customer hereby waives and relinquishes any right whatsoever to pursue any such refund or credit, except: \*\*\*

**B. Monthly Recurring Service Charge.** Commencing on the In-Service Date, and for the duration of the Service Term (including any Extended Terms) Customer will pay to SES Americom for the Service a monthly recurring service charge (the "MRC") of, \*\*\*

**C. MRC Adjustments/Refunds.**

(1) In the event of a Partial Loss (but not a Satellite Failure), Customer shall be entitled to a refund of any MRC already paid, and a reduction of the MRC to be paid, in either case applicable to the period of such Partial Loss until either (i) such Partial Loss is restored through the use of spare equipment on the Satellite, or (ii) the Service Term ends, in an amount calculated in accordance with the provisions in Attachment B hereto, \*\*\* In the event of a Satellite Failure for any reason whatsoever, Customer's obligation to pay the MRC due for the period after the Satellite Failure shall automatically terminate as of the date of the Satellite Failure, \*\*\*. SES Americom will refund to Customer any MRC paid for periods subsequent to the date of a Satellite Failure, including the period between and including the date of the Satellite Failure and the date upon which it is determined that a Satellite Failure has occurred.

(2) \*\*\*

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**E. Billing and Payment.** On the In-Service Date, initial invoices for the MRC will be issued for the first two months (or first partial month and subsequent month, as applicable) of Service, and are payable within 15 Business Days after the In-Service Date. Invoices for the MRC will thereafter be issued monthly thirty (30) days in advance of the month in which Service is to be provided and are payable on the first day of such month by wire transfer or Customer check as per the remittance instructions on the respective monthly invoice (or, in the event Customer has not received such invoice, in accordance with SES Americom's most recent remittance instructions). Invoices for partial months will be prorated on the basis of a 30-day month. On payments not received by the due date, SES Americom will assess a late payment charge of the lesser of (1) \*\*\*, or (2) the maximum rate permitted by applicable law, \*\*\*. A failure or delay by SES Americom to send an invoice will not relieve Customer either of its obligation to pay on a timely basis for Service or of its obligation to pay late payment charges in the event of late payment.

**F. Taxes and Other Charges.** The MRC shall be exclusive of taxes, duties and other fees or charges levied by governmental authorities on the Service or the facilities used to provide the Service to Customer. Customer will pay directly or reimburse SES Americom for all such taxes, duties and other fees or charges. SES Americom represents that, as of the date hereof, it has no actual knowledge of any taxes, duties or other fees or charges (1) which would be levied on SES Americom by any governmental authorities, (2) which would apply to the Service at the Orbital Location or the facilities used to provide the Service at the Orbital Location to Customer, provided that the Service is used solely for its Intended Use, and (3) for which SES Americom would seek reimbursement from Customer. Notwithstanding the foregoing, in no event will Customer be liable for any taxes based upon or measured by SES Americom's net income or property or employment taxes of SES Americom or any license or permit fees imposed generally on SES Americom's use of the Orbital Location, SES Americom's operation of the Satellite or the facilities used to provide the Service.

\*\*\*

### ARTICLE 3. REPRESENTATIONS, WARRANTIES AND COVENANTS

**A. SES Americom's Representations, Warranties and Covenants.** SES Americom hereby represents, warrants and covenants to Customer as follows:

(1) It is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. It is duly licensed or qualified to do business as a foreign corporation in all jurisdictions where the failure to be so qualified would materially adversely affect its ability to perform its obligations hereunder. It has all requisite corporate power and authority to own its properties and carry on its business as now conducted.

(2) The execution, delivery and performance (as provided herein) by SES Americom of this Agreement has been duly authorized by all requisite corporate action and will not violate any applicable provisions of law or any order of any court or any agency of government and will not conflict with or result in a breach under (a) its Articles of Incorporation or By-Laws, or (b) any material agreement to which SES Americom is a party or by which it is bound.

(3) SES Americom has not retained or authorized anyone to represent it as a broker or finder in connection with this Agreement.

(4) In connection with SES Americom's performance under this Agreement, SES Americom shall

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comply in all material respects with all applicable laws, regulations, or orders of any governmental entity, including without limitation the FCC.

(5) SES Americom (a) has filed, and will diligently prosecute, application(s) with the FCC to launch and operate the AMC-15 Satellite (including without limitation providing DTH Video Service) in geostationary orbit at the Orbital Location and (b) agrees to acquire and maintain all necessary governmental authorizations or permissions to operate the Satellite (including without limitation providing DTH Video Service) at the Orbital Location in a manner consistent with the Technical Performance Specifications and its Intended Use. SES Americom will comply in all material respects with all applicable FCC and other governmental and intergovernmental orders and regulations regarding the licensing and operation of the Satellite, including without limitation those of the ITU. SES Americom shall use all reasonable efforts to resist any move of the Satellite from the Orbital Location. In the event that SES Americom is required by order of the FCC to change the Orbital Location or because of an FCC order or for any other reason (provided such order or such other reason is not caused solely by the acts or failures to act of Customer in compliance with its representations, warranties or covenants under this Agreement) does not have the right to operate the Satellite at the Orbital Location for the benefit of Customer in accordance with this Agreement and for its Intended Use, then, effective at the time the Service is terminated for the foregoing reason, Customer shall be entitled to terminate this Agreement without any further liability to SES Americom.

(6) SES Americom will not place another satellite in service that would cause interference with the Ku-Band frequencies or the Ka-Band frequencies at the Orbital Location (including without limitation the Lower Ka-Band Frequencies and other polarizations available at the Orbital Location).

(7) SES Americom has entered into coordination agreements necessary for operation of the Satellite at the Orbital Location consistent with the Technical Performance Specifications and the Intended Use and will not amend such coordination agreements in a way that would adversely impact Customer without Customer's prior written consent.

(8) In accordance with requests made and instructions given by Customer, SES Americom shall use commercially reasonable efforts, at Customer's reasonable expense, to support Customer's efforts in obtaining any site licenses, earth station authorizations and other necessary FCC and other governmental authorizations to communicate with the Satellite for the Intended Use, provided that SES Americom shall have no duty or obligation whatsoever under this Subsection (8) to act or refrain from acting in any way that would materially adversely impact SES Americom.

(9) \*\*\*

(10) SES Americom's Program Management for the Satellite will apply the same degree of care as is normally applied by SES Americom to satellite construction efforts for the other satellites owned by SES Americom.

(11) \*\*\*

(12) SES Americom will not amend the Construction Contract in a way that would adversely impact Customer or terminate the Construction Contract without the express written concurrence of Customer, provided that Customer's concurrence shall not be required if notice has been given of the termination of this Agreement.

(13) \*\*\*

**Execution Copy**

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**B. Customer's Representations, Warranties and Covenants.** Customer hereby represents, warrants and covenants to SES Americom as follows:

(1) It is a corporation duly organized, validly existing and in good standing under the laws of Colorado. It is duly licensed or qualified to do business as a foreign corporation in all jurisdictions where the failure to be so qualified would materially adversely affect its ability to perform its obligations hereunder. It has all requisite corporate power and authority to own its properties and carry on its business as now conducted.

(2) The execution, delivery and performance (as provided herein) by Customer of this Agreement has been duly authorized by all requisite corporate action and will not violate any applicable provisions of law or any order of any court or agency of government and will not conflict with or result in a breach under (a) its Articles of Incorporation or By-Laws, or (b) any material agreement to which Customer is a party or by which it is bound.

(3) Customer has not employed or authorized anyone to represent it as a broker or finder in connection with this Agreement.

(4) In connection with Customer's performance under this Agreement, Customer shall comply in all material respects with all applicable laws, regulations, or orders of any governmental entity, including without limitation those governing content of transmissions and all FCC license requirements.

(5) Customer will properly illuminate and will use commercially reasonable efforts to cause third parties that Customer authorizes to use the Service to properly illuminate the Channels.

(6) \*\*\*

(7) Upon a written request therefor by SES Americom, but in no event more often than once per calendar year, Customer shall provide to SES Americom a certification duly executed by an officer of Customer, to the effect that Customer's net long term assets (as defined under GAAP) reflected on Customer's balance sheet for the immediately preceding calendar quarter exceed or are equal to \$1.2 Billion..

**C. EchoStar Communications Corporation Representations, Warranties and Covenants.**

(1) EchoStar Communications Corporation hereby represents, warrants, and covenants, solely with respect to the obligation set forth in Subsection (2) below, as follows:

(a) It is a corporation duly organized, validly existing and in good standing under the laws of Nevada. It is duly licensed or qualified to do business as a foreign corporation in all jurisdictions where the failure to be so qualified would materially adversely affect its ability to perform its obligations hereunder. It has all requisite corporate power and authority to own its properties and carry on its business as now conducted.

(b) The execution, delivery and performance (as provided herein) by EchoStar Communications Corporation of the obligation set forth in Subsection (2) below has been duly authorized by all requisite corporate action and will not violate any applicable provisions of law or any order of any court or agency of government and will not conflict with or result in a breach under (a) its Articles of Incorporation or By-Laws, or (b) any material agreement to which EchoStar Communications Corporation is a party or by which it is bound.

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(2) In the event that Customer's net long term assets (as defined under GAAP) reflected on Customer's balance sheet for any calendar quarter after the Effective Date are less than \$1.2 Billion, then EchoStar Communications Corporation, or any successor entity thereto that is the ultimate parent of Customer, shall become, effective at the end of such calendar quarter, absolutely, irrevocably, unconditionally and continually obligated to SES Americom to perform fully and timely all of the payment and other obligations and covenants of Customer hereunder.

#### ARTICLE 4. SERVICE RESPONSIBILITIES

**A. Laws and Regulations Governing Service.** Construction, launch, location and operation of the Satellite, SES Americom's satellite system and SES Americom's performance of all obligations pursuant to this Agreement are subject to all applicable laws and regulations, including without limitation ITAR, as amended, the Communications Act of 1934, as amended, the rules and regulations of the FCC, and coordination agreements with other operators and administrations.

**B. Use Conditions.**

(1) Customer will use the Service in accordance with (a) all applicable laws and regulations and (b) the conditions of use to be contained in a Commercial Operations Systems User's Guide to be agreed to by the parties (the "User's Guide"). Customer will not use the Service for any unlawful purpose, including violation of laws governing the content of material transmitted using the Service. If Customer's non-compliance with the preceding two sentences causes or threatens, or other circumstances arise from Customer's use of the Service which cause or threaten, damage to the Satellite, or if Customer's use of Service may reasonably result in the institution of criminal proceedings, or administrative proceedings that may result in sanctions or other non-monetary remedies, against SES Americom, SES Global SA, or any Affiliates of either entity, SES Americom may take actions (including suspension and/or restriction of Service) it reasonably believes necessary to ensure Customer's compliance with the User's Guide or SES Americom's compliance with law. SES Americom will provide Customer with advance notice as reasonably practicable prior to taking any such action; provided, however, that the foregoing shall not preclude SES Americom from taking prompt action to preserve its interests. SES Americom will also provide continuous monitoring of the Satellite in accordance with generally accepted industry standards.

(2) Customer shall be responsible for the failure of third parties (*e.g.*, subcontractors) who Customer utilizes in conjunction with the Service ("Customer's Designees") to meet the requirements of Subsection (1) above as if such failures were actions of Customer.

(3) \*\*\*

#### ARTICLE 5. OPERATIONAL MATTERS

**A. Service Access.** Customer is responsible for providing, operating and maintaining the equipment necessary to access the Satellite and Service. At no additional cost to Customer, SES Americom shall be responsible for providing telemetry, tracking and control service ("TTC") for the Satellite, and shall perform TTC service on the same standards as applied by SES Americom to the rest of its satellite fleet. Customer at its expense shall provide SES Americom with any descrambling or decoding devices that may be required for signal monitoring. At a mutually agreed time, and prior to Customer transmitting from its earth station(s), Customer will demonstrate to SES Americom's designated Technical Operations Center that its earth station(s) comply with the satellite access specifications contained in the User's Guide.

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**B. Action to Protect Satellite.** SES Americom shall have sole and exclusive control of operation of the Satellite. If circumstances occur which in SES Americom's reasonable judgment pose a threat to the stable operation of the Satellite, SES Americom shall have the right to take action it reasonably believes necessary to protect the Satellite, including discontinuance or suspension of operation of the Satellite or any Channel, without any liability to Customer, except as otherwise set forth in this Agreement, \*\*\*. If the discontinuance or suspension of operation is permanent, then, if the discontinuance applies to the entire Satellite, it shall be treated as a Satellite Failure for purposes of Section 2.C, and if the discontinuance applies to particular Channels, it shall be treated as a Partial Loss for purposes of Section 2.C. SES Americom shall give Customer as much notice as practical under the circumstances of any such discontinuance or suspension. If it becomes necessary to discontinue or suspend service on one or more Channels on the Satellite, and operational circumstances allow SES Americom to select the Channel or Channels to be discontinued or suspended, SES Americom will consult with Customer and implement Customer's preferred course of action, such consultation to take place prior to action by SES Americom unless more immediate action is necessary.

**C. Certain Other Operational Matters.**

\*\*\*

#### ARTICLE 6. INDEMNIFICATION

**A. By Customer.** \*\*\*

**B. By SES Americom** \*\*\*:

\*\*\*

**C. Survival.** The provisions of this Article 6 shall survive expiration or termination of this Agreement indefinitely.

#### ARTICLE 7. WARRANTY DISCLAIMER; LIMITATION OF LIABILITY

**A. Warranty Disclaimer.** No warranties, express, implied, or statutory, including any warranty of merchantability or fitness for a particular purpose, apply to Service provided hereunder or the equipment and facilities used to provide Service. The conveying by SES Americom of proprietary information or other information to Customer shall in no way alter this disclaimer.

**B. Limitation of Liability.**

\*\*\*

**C. Survival.** The provisions of this Article 7 shall survive expiration or termination of this Agreement indefinitely.

#### ARTICLE 8. CONFIDENTIALITY AND NONDISCLOSURE

**A. Certain Information Regarding Service.** Except for disclosures required by a court or governmental agency or to assignees permitted under Section 10.I, each party hereby agrees not to disclose to third parties (without the prior written consent of the other party) the material terms and conditions of this Agreement (including but not limited to the prices, payment terms, schedules, protection arrangements, and restoration provisions thereof), and all information provided to Customer and SES Americom related to the design and performance characteristics of the Satellite, and any subsystems or components thereof, including the Channels) Notwithstanding the foregoing, Customer (and not SES Americom) may disclose

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to its third-party customers making use of the Service, and SES Americom (and not Customer) may disclose to its third party vendors and contractors providing services relating to the Satellite (including but not limited to insurance and launch service providers), the Technical Performance Specifications, the User's Guide, and the protection arrangements and restoration provisions of the Service.

**B. Proprietary Information.** To the extent that either party discloses to the other any other information which it considers proprietary or is proprietary information of a third party, in written or tangible form, said party shall identify such information as proprietary when disclosing it to the other party by marking it clearly and conspicuously as proprietary information. Any proprietary disclosure to either party, if made orally, shall be identified as proprietary information at the time of disclosure, if the disclosing party wishes to keep such information proprietary under this Agreement. Any such information disclosed under this Agreement shall be used by the recipient thereof only in its performance under this Agreement.

Neither party shall be liable for the inadvertent or accidental disclosure of such information marked as proprietary, if such disclosure occurs despite the exercising of the same degree of care as the receiving party normally takes to preserve and safeguard its own proprietary information (but not less than reasonable care) or if such information (1) is or becomes lawfully available to the public from a source other than the receiving party before or during the period of this Agreement, (2) is released in writing by the disclosing party without restrictions, (3) is lawfully obtained by the receiving party from a third party or parties without obligation of confidentiality, (4) is lawfully known by the receiving party prior to such disclosure and is not subject to any confidentiality obligations, or (5) is at any time lawfully developed by the receiving party completely independently of any such disclosure or disclosures from the disclosing party.

In addition, neither party shall be liable for the disclosure of any proprietary information which it receives under this Agreement pursuant to judicial action or decree, or pursuant to any requirement of any Government or any agency or department thereof, having jurisdiction over such party, provided that in the reasonable opinion of counsel for such party such disclosure is required, and provided further that such party, to the extent reasonably practical, shall have given the other party notice prior to such disclosure.

Customer and SES Americom agree to negotiate in good faith a three-party non-disclosure agreement with Vendor for information to be disclosed related to this Agreement.

**C. Survival.** The provisions of this Article 8 shall survive expiration or termination of this Agreement indefinitely.

#### ARTICLE 9. TERMINATION

**A. Termination for Default.** In addition to any rights of termination provided in other Articles of this Agreement, either party may terminate this Agreement (a "Termination for Default") by giving the other party written notice thereof in the event: (1) the other party materially breaches this Agreement (except for a breach of Article 8) and fails to cure such breach within thirty (30) days after receipt of written notice thereof (except that, if the breaching party fails to pay amounts due hereunder, such cure period shall be reduced to twenty (20) days for the second and subsequent failures in any one calendar year, and, in lieu of termination, SES Americom may, in its sole discretion, suspend the provision to Customer of the Service, with no liability to Customer); or (2) the other party becomes insolvent or the subject of insolvency proceedings, including without limitation, if the other party is judicially declared insolvent or bankrupt, or if any assignment is made of the other party's property for the benefit of its creditors or if a receiver, conservator, trustee in bankruptcy or other similar officer is appointed by a court of competent jurisdiction to take charge of all or any substantial part of the other party's property, or if a petition is filed by or against the other party under any provision of the Bankruptcy Code now or hereafter enacted, and such proceeding is not dismissed within sixty (60) days after filing, or if a petition is filed by the other party under any provision of the Bankruptcy Code now or hereinafter enacted. \*\*\*

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**B. Termination for Convenience.** At any time after the Effective Date, Customer may terminate this Agreement for convenience (a “Termination for Convenience”), by written notice to SES Americom, provided at least 180 days prior to the effective date of such termination, provided that, on the effective date of such termination, Customer shall pay to SES Americom an amount equal to \*\*\* (together, the “Termination Payment”). The Termination Payment \*\*\* shall constitute Customer’s sole obligation in the event of a Termination for Convenience, and, for the avoidance of doubt, Customer shall have no further duties or obligations to SES Americom hereunder, except as expressly set forth in Subsection 9.F(2), provided that, except as provided in Subsection 2.A(2), Customer understands and agrees that any attempt to recover some or all of the Option Payment at any time or pay less than the Termination Payment in connection with a Termination for Convenience would be a breach of this Agreement and entitle SES Americom to terminate the Agreement for breach under Section 9.A and recover the Termination Value.

**C. Termination for Delay or Force Majeure.**

\*\*\*

**D. Refunds.** In the event of the expiration of this Agreement pursuant to Section 9.F(1), or in the event of termination by Customer or wrongful termination by SES Americom pursuant to this Agreement, SES Americom shall refund any portion of the MRC paid by Customer to SES Americom which relates to Service not provided by SES Americom, and no further MRC or other amounts shall be due for the period following expiration or termination. By way of clarification, this Section 9.D shall not limit Customer’s rights under this Agreement, at law, in equity or otherwise in the event of Termination for Default or otherwise by Customer.

**E. Termination Liability.** \*\*\*

**F. Expiration of Agreement/ Survival.**

\*\*\*

(2) Neither party shall have any further obligations or liability to the other under this Agreement in the event of the termination or expiration of this Agreement in accordance with this Article 9, except for any obligations or liability (a) arising prior to such termination or expiration, (b) expressly arising upon or as a result of such termination or expiration, (c) expressly described in this Agreement as surviving such expiration or termination, or (d) arising as a result of or in connection with the representations and warranties in Article 3.

**G. Inability to Regain Satellite.** If upon expiration or termination of this Agreement, SES Americom is unable to regain the use of all, or any part of, the Satellite free and clear of any claims (including, but not limited to, claims of a debtor in bankruptcy) or liens arising as a result of the use of the Satellite by Customer or Customer’s Designees, then in addition to any specific performance remedy available to SES Americom pursuant to Section 10.G of this Agreement, Customer shall be obligated, without regard to any such expiration or termination, to continue to pay SES Americom the payments provided for in Article 2 in proportion to the portion of the Satellite SES Americom is unable to regain (the “Continuation Payments”).

\*\*\*

## ARTICLE 10. GENERAL PROVISIONS

**A. Force Majeure.** If a Force Majeure Event under this Agreement has occurred and is continuing, then the performance obligations of the party directly affected by such Force Majeure Event under this

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Agreement shall be tolled for the duration of such Force Majeure Event and such party shall not be liable to the other by reason of any delay or failure in performance of this Agreement which arises out of such Force Majeure Event; provided that the party directly affected by such Force Majeure Event shall promptly take and continue to take all reasonable actions to abate such Force Majeure Event as soon as possible. If a payment is made late as a result of a Force Majeure Event (*e.g.*, unscheduled closure of the banking settlement system), then interest at 30-day LIBOR shall be compounded monthly and paid from the due date until the date actually paid. If Service is unavailable as a result of a Force Majeure Event affecting the Satellite, then Customer's obligation to pay the MRC shall be suspended during such period Service is unavailable and shall resume upon the Service becoming available. A "Force Majeure Event" means acts of God, acts of the other party, acts of government authority, strikes or other labor disturbances, or any other cause beyond the reasonable control of that party, that (1) as to SES Americom, relates to or affects its ability to provide the Service, or (2) as to either party, relates to or affects that's party's ability to make a payment.

**B. No Implied License.** The provision of services or the conveying of any information under this Agreement shall not convey any license by implication, estoppel or otherwise, under any patents or other intellectual property rights of Customer or SES Americom, SES Global SA, and their Affiliates, contractors and vendors (including Vendor).

**C. No Third-Party Rights; No Fiduciary Relationship.** Nothing contained in this Agreement shall be deemed or construed by the parties or by any third party to create any rights, obligations or interests in third parties; or to create the relationship of principal and agent, partnership or joint venture or any other fiduciary relationship or association between the parties.

**D. No Waiver; Remedies Cumulative.** No waiver, alteration, or modification of any of the terms of this Agreement will be binding unless in writing and signed by both parties. All remedies and rights hereunder and those available in law or in equity shall be cumulative and the exercise by a party of any such right or remedy shall not preclude the exercise of any other right or remedy available under this Agreement in law or in equity.

**E. Costs and Attorneys' Fees.** In any action brought with respect to this Agreement by one party hereto against the other party hereto, in addition to any other money damages awarded by a court of competent jurisdiction, the prevailing party shall be entitled to recover from the other party its reasonable costs, including reasonable attorneys' fees, in successfully bringing or defending against such action.

**F. Exclusive Jurisdiction.** Each party hereby irrevocably and unconditionally:

(1) (a) agrees that any suit, action or proceeding against SES Americom by Customer with respect to this Agreement shall be instituted only in the trial court of Princeton, New Jersey, or the U.S. District Court for the District of New Jersey (and appellate courts from any of the foregoing), as Customer may elect in its sole discretion, (b) agrees that any suit, action or proceeding against Customer by SES Americom with respect to this Agreement shall be instituted only in the trial court of Denver, Colorado, or the U.S. District Court for the District of Colorado (and appellate courts from any of the foregoing), as SES Americom may elect in its sole discretion, (c) consents and submits, for itself and its property, to the jurisdiction of such courts for the purpose of any such suit, action or proceeding instituted against it by the other, and (d) agrees that a final judgment in any such suit, action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law;

(2) agrees that service of all writs, process and summonses in any suit, action or proceeding pursuant to Subsection (1) above may be effected by the mailing of copies thereof by registered or certified mail, postage prepaid, to such party at its address for notices pursuant to Section 1.E, such service to become effective 30 days after such mailing, provided that nothing contained in this Subsection (2) shall

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affect the right of either party to serve process in any other manner permitted by law; and

(3) (a) waives any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement brought in any court specified in clause (a) or clause (b) of Subsection (1) above (as applicable), (b) waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum and (c) agrees not to plead or claim either of the foregoing.

(4) The provisions of this Subsection F shall survive expiration or termination of this Agreement indefinitely.

**G. Specific Performance.** Each party recognizes that any material breach of the terms of this Agreement would give rise to irreparable harm to the other party for which money damages would not be an adequate remedy, and accordingly agrees that, any term of this Agreement to the contrary notwithstanding, in addition to all other remedies available to it, each party shall be entitled to enforce the terms of this Agreement by a decree of specific performance against the other party, in each case without the necessity of proving the inadequacy of money damages, provided that Customer shall not be entitled to receive the benefit of such specific performance with respect to any action by SES Americom that would: (i) pose or allow to remain a threat to the health and stable operation of the Satellite; or (ii) result in a violation by SES Americom of any applicable law or regulation, or any coordination agreement or requirement. Such remedy shall not be deemed the exclusive remedy for breach of this Agreement, but shall be in addition to all other remedies that a party may have at law, in equity, under contract or otherwise. The provisions of this Subsection G shall survive expiration or termination of this Agreement indefinitely.

**H. Headings; Severability; Customer Purchase Orders.** All titles and headings in this Agreement are for reference purposes only; they will not affect the meaning or construction of the terms of this Agreement. If any part or parts of this Agreement are held to be invalid, the remaining parts of the Agreement will continue to be valid and enforceable. Customer agrees that any purchase order or other similar document that Customer may issue in connection with this Agreement will be for Customer's internal purposes only and, therefore, even if acknowledged by SES Americom, will not in any way add to, subtract from, or in any way modify the terms and conditions of this Agreement.

**I. Assignment.** \*\*\*

**J. Inter-Party Waiver.** Customer, on behalf of itself and its officers, employees, Affiliates, agents, insurers, owners and customers, agrees to accept the inter-party waiver and related indemnity provisions required by the applicable Launch Services Agreement for a launch, modified so as to apply to Customer and the launch services provider. SES Americom likewise, on behalf of itself and its officers, employees, Affiliates, agents, insurers, owners and customers, agrees to accept the inter-party waiver and related indemnity provisions required by the applicable Launch Services Agreement for a launch, modified so as to apply to SES Americom and the launch services provider. In no event shall such inter-party waiver and related indemnity provisions have any effect on the rights, obligations and liabilities of and between Customer and SES Americom under this Agreement.

**K. Publicity.** Neither party shall in any way or in any form publicize or advertise in any manner this Agreement or the Services to be provided pursuant to this Agreement without the express written approval (which shall not be unreasonably withheld) of the other party, obtained in advance, for each item of advertising or publicity. The foregoing prohibition shall include but not be limited to news releases, letters, correspondence, literature, promotional materials or displays of any nature or form. Each request for approval hereunder shall be submitted in writing to the representative designated in writing; and approval, in each instance, shall be effective only if in writing and signed by said representative. Nothing herein shall

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prevent either party from providing the FCC, or any other governmental agency, information concerning this Agreement as required by law or in response to a request for information by such governmental agency. Notwithstanding the foregoing, either party may refer to the fact that SES Americom is providing the Service to Customer without the other party's prior approval so long as such statements are limited to a statement of such fact and are not an endorsement (positive or negative) of any product or service.

**L. ITAR.** Information exchanged under this Agreement may be subject to U.S. export control laws and regulations, such as the U.S. International Traffic in Arms Regulations ("ITAR") or the Export Administration Act. The parties agree that information subject to the export control laws and regulations shall not be disclosed or transferred to a third party without first obtaining written approval from the disclosing party and complying with all applicable U.S. export control laws and regulations.

**M. Entire Agreement.** This Agreement contains the entire and exclusive understanding between the parties concerning the subject matter hereof and supersedes all prior communications and understandings between them relative to the subject matter hereof.

## ARTICLE 11. DEFINITIONS

As used in this Agreement:

- A. "Affiliate" means, with respect to a party, any person or entity (1) 10% or more of the capital securities which on an as-converted basis are owned by, or (2) directly or indirectly controlling, controlled by, or under common control with, such party at the time when the determination of affiliation is being made. For purposes of this definition, the term "control" (including the correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to a person or entity, shall mean the possession, directly or indirectly, of the power to (a) direct or cause the direction of management policies of such person or entity, whether through the ownership of voting securities or by contract or otherwise, or (b) select a majority of the Board of Directors of such person or entity.
- B. "Agreement" shall have the meaning specified in Section 1.A.
- C. \*\*\*
- D. \*\*\*
- E. "AMC-15 Satellite" shall have the meaning specified in Section 1.A.
- F. \*\*\*
- G. \*\*\*
- H. \*\*\*
- I. \*\*\*
- J. \*\*\*
- K. \*\*\*
- L. \*\*\*
- M. "Business Day" means Monday through Friday, 8:30 a.m. to 5:00 p.m. (local time in New York City, New York) exclusive of banking holidays observed in New York City.

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- N. \*\*\*
- O. “Channel” means a communication path by which a signal is transmitted using the Satellite.
- P. “Construction Contract” shall have the meaning specified in Section 1.A.
- Q. “Continuation Payments” shall have the meaning specified in Section 9.G.
- R. “Customer” shall have the meaning specified in the preamble paragraph.
- S. “Customer’s Designees” shall have the meaning specified in Subsection 4.B(2).
- T. \*\*\*
- U. “End-of-Life” means the date on which, in SES Americom’s reasonable judgment, a satellite should be taken out of service because of insufficient fuel.
- V. “Effective Date” shall have the meaning specified in the preamble paragraph.
- W. \*\*\*
- X. \*\*\*
- Y. “Force Majeure Event” shall have the meaning specified in Section 10.A.
- Z. “FSS” shall mean the Fixed-Satellite Service, as defined in the Radio Regulations of the ITU.
- AA. \*\*\*
- BB. “In-Service” means that the \*\*\* is deployed in the Orbital Location, and, following SES Americom testing and verification of the entire Satellite, SES Americom determines in its reasonable business judgment that the Satellite or all usable capacity thereof, is ready for commercial operation in accordance with the applicable Technical Performance Specifications, provided that the Satellite is not a Satellite Failure. SES Americom agrees that it shall provide written notice of such determination to Customer on the date that SES Americom makes its determination.
- CC. “In-Service Date” means the date on which the Satellite \*\*\* is In-Service.
- DD. \*\*\*
- EE. “Intended Use” means the provision by Customer to consumers in the United States of direct-to-home video, audio, data and broadband and other digital communications services.
- FF. \*\*\*
- GG. \*\*\*
- HH. \*\*\*
- II. \*\*\*
- JJ. \*\*\*
- KK. “ITAR” shall have the meaning ascribed to that term in Section 10.L.
- LL. “ITU” means the International Telecommunications Union.

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- MM. \*\*\*
- NN. “Launch Service Agreement” means the agreement executed between SES Americom and a launch provider for the launch of the Satellite.
- OO. “MRC” shall have the meaning specified in Section 2.B.
- PP. \*\*\*
- QQ. \*\*\*
- RR. \*\*\*
- SS. \*\*\*
- TT. “Orbital Location” shall have the meaning specified in Section 1.A.
- UU. “Partial Loss” shall mean any failure of a Channel to operate in accordance with the Technical Performance Specifications that does not result in a Satellite Failure.
- VV. “Prime Rate” shall mean the “prime rate” of interest as shown in the Money and Investing Section of the *Wall Street Journal* as of the applicable date.
- WW. “Program Management” means the SES Americom effort (both internal and external resources) to manage the construction, launch, insurance and commissioning of a satellite.
- XX. \*\*\*
- YY. \*\*\*
- ZZ. \*\*\*
- AAA. \*\*\*
- BBB. \*\*\*
- CCC. “Satellite” shall mean the AMC-15 Satellite \*\*\*
- DDD. \*\*\*
- EEE. “Service” shall have the meaning specified in Section 1.A.
- FFF. “Service Term” shall have the meaning specified in Section 1.C.
- GGG. “SES Americom” shall have the meaning specified in the preamble paragraph.
- HHH. \*\*\*
- III. \*\*\*
- JJJ. \*\*\*
- KKK. “Technical Performance Specifications” shall have the meaning specified in Section 1.A.
- LLL. “Termination for Convenience” shall have the meaning specified in Section 9.B.
- MMM. “Termination for Default” shall have the meaning specified in Section 9.A.

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- NNN. "Termination Payment" shall have the meaning specified in Section 9.B.
- OOO. "Termination Value" shall have the meaning specified in Section 9.E.
- PPP. "TTC" shall have the meaning specified in Section 5.A.
- QQQ. "User's Guide" shall have the meaning specified in Section 4.B.
- RRR. "Vendor" shall mean Lockheed Martin Corporation, \*\*\*

This Agreement contains the complete and exclusive understanding of the parties with respect to the subject matter hereof and supersedes all prior negotiations and agreements between the parties with respect thereto. To the extent that any Attachment may be inconsistent with the text of the Agreement, the text of the Agreement shall control.

**ECHOSTAR SATELLITE CORPORATION**

**SES AMERICOM, INC., as agent for SES AMERICOM CALIFORNIA, INC. and SES AMERICOM COLORADO, INC.**

By: \_\_\_\_\_  
*(Signature)*

Name: \_\_\_\_\_  
*(Typed or Printed Name)*

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

By: \_\_\_\_\_  
*(Signature)*

Name: \_\_\_\_\_  
*(Typed or Printed Name)*

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

**ECHOSTAR COMMUNICATIONS CORPORATION,**  
*solely as to the obligation set forth in Section 3.C of this Agreement*

By: \_\_\_\_\_  
*(Signature)*

Name: \_\_\_\_\_  
*(Typed or Printed Name)*

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

By: \_\_\_\_\_  
*(Signature)*

Name: \_\_\_\_\_  
*(Typed or Printed Name)*

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

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