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## PART I—FINANCIAL INFORMATION

### DISCLOSURE REGARDING FORWARD-LOOKING STATEMENTS

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

The risks and uncertainties include, but are not limited to, the following:

#### General Risks Affecting Our Business

- Weakened economic conditions, including the recent downturn in financial markets and reduced consumer spending, may adversely affect our ability to grow or maintain our business.
- We currently depend on DISH Network Corporation, or DISH Network, and Bell TV for substantially all of our revenue. The loss as a customer of, or a significant reduction in orders from or a decrease in selling prices of digital set-top boxes, transponder leasing, digital broadcast operations and/or other products or services to, DISH Network or Bell TV would significantly reduce our revenue and adversely impact our results of operations.
- Adverse developments in DISH Network's business, such as the termination of its distribution relationship with AT&T, may adversely affect us.
- We currently have substantial unused satellite capacity, and our results of operations may be materially adversely affected if we are not able to utilize more of this capacity.
- Our sales to DISH Network could be terminated or substantially curtailed on short notice which would have a detrimental effect on us.
- We may need additional capital, which may not be available on acceptable terms or at all, in order to continue investing in our business and to finance acquisitions and other strategic transactions.
- We may experience significant financial losses on our existing investments.
- We may pursue acquisitions and other strategic transactions to complement or expand our business which may not be successful and in which we may lose the entire value of our investment.
- We intend to make significant investments in new products, services, technologies and business areas that may not be profitable.
- We are party to various lawsuits which, if adversely decided, could have a significant adverse impact on our business, particularly lawsuits regarding intellectual property.
- We have not been an independent company for a significant amount of time and we may be unable to make, on a timely or cost-effective basis, the changes necessary to operate as an independent company.
- If we are unable to properly respond to technological changes, our business could be significantly harmed.

- We rely on key personnel and the loss of their services may negatively affect our businesses.

#### **Risks Affecting Our "Digital Set-Top Box" Business**

- We depend on sales of digital set-top boxes for nearly all of our revenue and a decline in sales of our digital set-top boxes would have a material adverse effect on our financial position and results of operations.
- Our business may suffer if direct-to-home satellite service providers, who currently comprise our customer base, do not compete successfully with existing and emerging alternative platforms for delivering digital television, including cable television operators, terrestrial broadcasters, and Internet protocol television.
- Our future financial performance depends in part on our ability to penetrate new markets for digital set-top boxes.
- We may be exposed to the risk of inflation which could have a material adverse effect on our results of operations.
- The average selling price and gross margins of our digital set-top boxes has been decreasing and may decrease even further, which could negatively impact our financial position and results of operations.
- Our ability to sell our digital set-top boxes to other operators depends on our ability to obtain licenses to use the conditional access systems utilized by these other operators.
- Growth in our "Digital Set-Top Box" business likely requires expansion of our sales to international customers; we may be unsuccessful in expanding international sales.
- The digital set-top box business is extremely competitive.
- We expect to continue to face competition from new market entrants, principally located in Asia, that offer low cost set-top boxes.
- Our digital set-top boxes are highly complex and may experience quality or supply problems.
- If significant numbers of television viewers are unwilling to pay for premium programming packages that utilize digital set-top boxes, we may not be able to sustain our current revenue level.
- Our reliance on a single supplier or a limited number of suppliers for several key components used in our digital set-top boxes could restrict production and result in higher digital set-top box costs.
- Our future growth depends on market acceptance of high definition, or HD, television.
- If we are unsuccessful in overturning the District Court's ruling on Tivo's motion for contempt, we are not successful in developing and deploying potential new alternative technology and we are unable to reach a license agreement with Tivo on reasonable terms, we would be subject to substantial liability and would be prohibited from offering DVR functionality that would in turn place us at a significant disadvantage to our competitors and significantly decrease sales of digital set-top boxes to DISH Network and others.

#### **Risks Affecting Our "Satellite Services" Business**

- We currently face competition from established competitors in the satellite service business and may face competition from others in the future.

- Our satellites in orbit are subject to significant operational and environmental risks that could limit our ability to utilize these satellites.
- Our satellites have minimum design lives of 12 years, but could fail or suffer reduced capacity before then.
- Our satellites under construction are subject to risks related to launch that could limit our ability to utilize these satellites.
- Our "Satellite Services" business is subject to risks of adverse government regulation.
- Our business depends substantially on Federal Communications Commission, or FCC, licenses that can expire or be revoked or modified and applications for FCC licenses that may not be granted.
- We may not be aware of certain foreign government regulations.
- Our dependence on outside contractors could result in delays related to the design, manufacture and launch of our new satellites, which could in turn adversely affect our operating results.
- We currently have no commercial insurance coverage on the satellites we own and could face significant impairment charges if one of our satellites fails.

#### **Risks Relating to the Spin-Off**

- We have potential conflicts of interest with DISH Network due to our common ownership and management.

#### **Risks Relating to our Common Stock and the Securities Market**

- We cannot assure you that there will not be deficiencies leading to material weaknesses in our internal control over financial reporting.
- It may be difficult for a third party to acquire us, even if doing so may be beneficial to our shareholders, because of our capital structure.
- We are controlled by one principal shareholder who is our Chairman, President and Chief Executive Officer.
- We do not intend to pay dividends for the foreseeable future.
- We may face other risks described from time to time in periodic and current reports we file with the Securities and Exchange Commission, or SEC.

All cautionary statements made herein should be read as being applicable to all forward-looking statements wherever they appear. Investors should consider the risks described herein and should not place undue reliance on any forward-looking statements. We assume no responsibility for updating forward-looking information contained or incorporated by reference herein or in other reports we file with the SEC.

In this report, the words "EchoStar," the "Company," "we," "our" and "us" refer to EchoStar Corporation and its subsidiaries, unless the context otherwise requires. "DISH Network" refers to DISH Network Corporation and its subsidiaries, unless the context otherwise requires.

## Item 1. FINANCIAL STATEMENTS

**ECHOSTAR CORPORATION**  
**CONDENSED CONSOLIDATED BALANCE SHEETS**

(Dollars in thousands, except share amounts)

(Unaudited)

	As of	
	September 30, 2009	December 31, 2008
<b>Assets</b>		
<i>Current Assets:</i>		
Cash and cash equivalents	\$ 47,456	\$ 24,467
Marketable investment securities	887,301	804,194
Trade accounts receivable—DISH Network, net of allowance for doubtful accounts of zero	297,715	297,629
Trade accounts receivable—other, net of allowance for doubtful accounts of \$3,752 and \$7,182, respectively	39,487	29,216
Inventories, net	33,563	46,493
Deferred tax assets	11,715	9,484
Other current assets	18,758	17,230
<b>Total current assets</b>	<b>1,335,995</b>	<b>1,228,713</b>
<i>Noncurrent Assets:</i>		
Restricted cash and marketable investment securities	17,846	2,846
Property and equipment, net of accumulated depreciation of \$1,567,507 and \$1,447,572, respectively	1,166,255	1,182,048
FCC authorizations	69,810	69,810
Deferred tax assets	—	8,047
Intangible assets, net	160,150	185,143
Marketable and other investment securities	575,416	156,717
Other noncurrent assets, net	62,017	56,475
<b>Total noncurrent assets</b>	<b>2,051,494</b>	<b>1,661,086</b>
<b>Total assets</b>	<b>\$ 3,387,489</b>	<b>\$ 2,889,799</b>
<b>Liabilities and Stockholders' Equity (Deficit)</b>		
<i>Current Liabilities:</i>		
Trade accounts payable—other	\$ 255,289	\$ 205,660
Trade accounts payable—DISH Network	20,516	21,570
Accrued expenses and other	104,661	89,324
Current portion of capital lease obligations, mortgages and other notes payable	49,673	52,778
<b>Total current liabilities</b>	<b>430,139</b>	<b>369,332</b>
<i>Long-Term Obligations, Net of Current Portion:</i>		
Capital lease obligations, mortgages and other notes payable, net of current portion	257,432	293,661
Deferred tax liabilities	23,905	—
Other long-term liabilities	16,502	15,220
<b>Total long-term obligations, net of current portion</b>	<b>297,839</b>	<b>308,881</b>
<b>Total liabilities</b>	<b>727,978</b>	<b>678,213</b>
Commitments and Contingencies (Note 10)		
<i>Stockholders' Equity (Deficit):</i>		
Preferred Stock, \$.001 par value, 20,000,000 shares authorized, none issued and outstanding	—	—
Class A common stock, \$.001 par value, 1,600,000,000 shares authorized, 42,606,794 and 42,382,704 shares issued, 37,136,304 and 38,764,208 shares outstanding, respectively	43	42
Class B common stock, \$.001 par value, 800,000,000 shares authorized, 47,687,039 shares issued and outstanding	48	48
Class C common stock, \$.001 par value, 800,000,000 shares authorized, none issued and outstanding	—	—
Class D common stock, \$.001 par value, 800,000,000 shares authorized, none issued and outstanding	—	—
Additional paid-in capital	3,261,513	3,248,327
Accumulated other comprehensive income (loss)	58,041	(10,598)
Accumulated earnings (deficit)	(563,079)	(958,188)
Treasury stock, at cost	(97,055)	(68,045)
<b>Total stockholders' equity (deficit)</b>	<b>2,659,511</b>	<b>2,211,586</b>
<b>Total liabilities and stockholders' equity (deficit)</b>	<b>\$ 3,387,489</b>	<b>\$ 2,889,799</b>

The accompanying notes are an integral part of the Condensed Consolidated Financial Statements.

**ECHOSTAR CORPORATION**

**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS  
AND COMPREHENSIVE INCOME (LOSS)**

(In thousands, except per share amounts)

(Unaudited)

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2009	2008	2009	2008
<b>Revenue:</b>				
Equipment revenue—DISH Network	\$ 314,362	\$ 461,675	\$ 838,965	\$ 1,134,408
Equipment revenue—other	68,647	55,110	195,635	206,883
Services and other revenue—DISH Network	89,913	91,388	281,282	276,877
Services and other revenue—other	10,010	8,000	29,745	35,916
Total revenue	<u>482,932</u>	<u>616,173</u>	<u>1,345,627</u>	<u>1,654,084</u>
<b>Costs and Expenses:</b>				
Cost of sales—equipment	327,522	446,970	886,176	1,146,878
Cost of sales—services and other (exclusive of depreciation shown below—Note 11)	47,954	52,670	149,005	162,885
Research and development expenses	10,633	7,302	31,447	23,921
Selling, general and administrative expenses	37,223	31,176	90,117	93,792
General and administrative expenses—DISH Network	4,447	6,192	17,703	19,488
Depreciation and amortization (Note 11)	58,989	69,782	180,413	193,767
Impairments of goodwill, indefinite-lived and long-lived assets	—	43,193	—	55,992
Total costs and expenses	<u>486,768</u>	<u>657,285</u>	<u>1,354,861</u>	<u>1,696,723</u>
Operating income (loss)	<u>(3,836)</u>	<u>(41,112)</u>	<u>(9,234)</u>	<u>(42,639)</u>
<b>Other Income (Expense):</b>				
Interest income	9,757	8,807	24,535	26,763
Interest expense, net of amounts capitalized	(6,964)	(7,839)	(21,479)	(24,400)
Unrealized and realized gains (losses) on marketable investment securities and other investments	100,458	(110,719)	97,504	(43,914)
Unrealized gains (losses) on investments accounted for at fair value, net	232,359	(150,321)	349,309	(147,106)
Other, net	1,400	(1,706)	(3,645)	(7,311)
Total other income (expense)	<u>337,010</u>	<u>(261,778)</u>	<u>446,224</u>	<u>(195,968)</u>
Income (loss) before income taxes	333,174	(302,890)	436,990	(238,607)
Income tax (provision) benefit, net	(38,492)	(5,040)	(41,881)	(15,798)
Net income (loss)	<u>294,682</u>	<u>(307,930)</u>	<u>395,109</u>	<u>(254,405)</u>
Less: Net income (loss) attributable to noncontrolling interest	742	—	—	—
Net income (loss) attributable to EchoStar common shareholders	<u>\$ 293,940</u>	<u>\$ (307,930)</u>	<u>\$ 395,109</u>	<u>\$ (254,405)</u>
<b>Comprehensive Income (Loss):</b>				
Net income (loss)	\$ 294,682	\$ (307,930)	\$ 395,109	\$ (254,405)
Foreign currency translation adjustments	(546)	(1,037)	617	(1,821)
Unrealized holding gains (losses) on available-for-sale securities	41,596	(53,557)	208,125	(153,720)
Recognition of previously unrealized (gains) losses on available-for-sale securities included in net income (loss)	(100,458)	100,728	(102,964)	101,548
Deferred income tax (expense) benefit	23,270	—	(37,139)	20,485
Comprehensive income (loss)	<u>258,544</u>	<u>(261,796)</u>	<u>463,748</u>	<u>(287,913)</u>
Less: Comprehensive income (loss) attributable to noncontrolling interest	742	—	—	—
Comprehensive income (loss) attributable to EchoStar common shareholders	<u>\$ 257,802</u>	<u>\$ (261,796)</u>	<u>\$ 463,748</u>	<u>\$ (287,913)</u>
<b>Weighted-average common shares outstanding—Class A and B common stock:</b>				
Basic	<u>85,260</u>	<u>89,884</u>	<u>86,086</u>	<u>89,825</u>
Diluted	<u>85,310</u>	<u>89,884</u>	<u>86,303</u>	<u>89,825</u>
<b>Earnings per share—Class A and B common stock:</b>				
Basic net income (loss) per share attributable to EchoStar common shareholders	<u>\$ 3.45</u>	<u>\$ (3.43)</u>	<u>\$ 4.59</u>	<u>\$ (2.83)</u>
Diluted net income (loss) per share attributable to EchoStar common shareholders	<u>\$ 3.45</u>	<u>\$ (3.43)</u>	<u>\$ 4.58</u>	<u>\$ (2.83)</u>

The accompanying notes are an integral part of the Condensed Consolidated Financial Statements.

**ECHOSTAR CORPORATION**

**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**

(In thousands)

(Unaudited)

	For the Nine Months Ended September 30,	
	2009	2008
<b>Cash Flows From Operating Activities:</b>		
Net income (loss)	\$ 395,109	\$ (254,405)
<i>Adjustments to reconcile net income (loss) to net cash flows from operating activities:</i>		
Depreciation and amortization	180,413	193,767
Equity in losses (earnings) of affiliates	4,179	3,304
Unrealized and realized (gains) losses on marketable investment securities and other investments	(97,504)	43,914
Unrealized (gains) losses on investments accounted for at fair value, net	(349,309)	147,106
Impairments of goodwill, indefinite-lived and long-lived assets	—	55,992
Non-cash, stock-based compensation	10,118	17,477
Deferred tax expense (benefit)	(8,348)	(51,634)
Other, net	(14,029)	(13,897)
Change in noncurrent assets	(168)	(36,610)
Changes in current assets and current liabilities, net	21,078	(71,593)
<b>Net cash flows from operating activities</b>	<b>141,539</b>	<b>33,421</b>
<b>Cash Flows From Investing Activities:</b>		
Purchases of marketable investment securities	(1,284,078)	(2,440,917)
Sales and maturities of marketable investment securities	1,423,943	2,439,078
Purchases of property and equipment	(124,910)	(147,268)
Proceeds from insurance settlement	—	40,750
Change in restricted cash and marketable investment securities	(15,906)	304
Purchase of strategic investments included in marketable and other investment securities	(53,023)	(133,692)
Other, net	5,052	(1,012)
<b>Net cash flows from investing activities</b>	<b>(48,922)</b>	<b>(242,757)</b>
<b>Cash Flows From Financing Activities:</b>		
Repayment of capital lease obligations, mortgages and other notes payable	(42,094)	(37,016)
Contribution of cash and cash equivalents from DISH Network in connection with the Spin-off	—	544,065
Repurchases of Class A common stock	(29,010)	(14,785)
Net proceeds from Class A common stock options exercised and Class A common stock issued under the Employee Stock Purchase Plan	1,476	5,784
<b>Net cash flows from financing activities</b>	<b>(69,628)</b>	<b>498,048</b>
Net increase (decrease) in cash and cash equivalents	22,989	288,712
Cash and cash equivalents, beginning of period	24,467	41,082
Cash and cash equivalents, end of period	<u>\$ 47,456</u>	<u>\$ 329,794</u>
<b>Supplemental Disclosure of Cash Flow Information:</b>		
Cash paid for interest	\$ 21,310	\$ 24,509
Cash received for interest	\$ 9,506	\$ 17,637
Cash paid for income taxes	\$ 25,532	\$ 23,045
Assets financed under capital lease obligations	\$ 2,760	\$ 15,172
Non-cash investing activities	\$ —	\$ 15,862
Non-cash proceeds from the sale of a company which held certain FCC authorizations	\$ —	\$ 132,900
Net assets contributed in connection with the Spin-off, excluding cash and cash equivalents	\$ —	\$ 1,533,485

The accompanying notes are an integral part of the Condensed Consolidated Financial Statements.



ECHOSTAR CORPORATION

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

(Unaudited)

**1. Organization and Business Activities**

***Principal Business***

EchoStar Corporation is a holding company, whose subsidiaries (which together with EchoStar Corporation are referred to as "EchoStar," the "Company," "we," "us" and/or "our") operate two primary business units:

- ***"Digital Set-Top Box" Business***—which designs, develops and distributes digital set-top boxes and related products, including our Slingbox "placeshifting" technology, primarily for satellite TV service providers, telecommunication and cable companies and, with respect to Slingboxes, directly to consumers via retail outlets. Our digital set-top box business also provides digital broadcast operations including satellite uplinking/downlinking, transmission services, signal processing, conditional access management and other services provided primarily to DISH Network.
- ***"Satellite Services" Business***—which uses our nine owned and leased in-orbit satellites and related FCC licenses to lease capacity on a full time and occasional-use basis to enterprise, broadcast news and government organizations. We currently lease capacity primarily to DISH Network, and secondarily to government entities, Internet service providers, broadcast news organizations and private enterprise customers.

Effective January 1, 2008, DISH Network Corporation ("DISH Network") completed its distribution to us (the "Spin-off") of its digital set-top box business and certain infrastructure and other assets, including certain of its satellites, uplink and satellite transmission assets, real estate and other assets and related liabilities. We and DISH Network now operate as separate publicly-traded companies, and neither entity has any ownership interest in the other. However, a substantial majority of the voting power of both companies is owned beneficially by Charles W. Ergen, our Chairman, President and Chief Executive Officer or by certain trusts established by Mr. Ergen for the benefit of his family.

**2. Summary of Significant Accounting Policies**

***Basis of Presentation***

The accompanying unaudited Condensed Consolidated Financial Statements have been prepared in accordance with accounting principles generally accepted in the United States ("GAAP") and with the instructions to Form 10-Q and Article 10 of Regulation S-X for interim financial information. Accordingly, these statements do not include all of the information and notes required for complete financial statements prepared under GAAP. In our opinion, all adjustments (consisting of normal recurring adjustments) considered necessary for a fair presentation have been included. Operating results for the nine months ended September 30, 2009 are not necessarily indicative of the results that may be expected for the year ending December 31, 2009. For further information, refer to the Consolidated Financial Statements and notes thereto included in our Annual Report on Form 10-K for the year ended December 31, 2008 ("2008 10-K"). Certain prior period amounts have been reclassified to conform to the current period presentation. Further, in connection with preparation of the condensed consolidated financial statements, we have evaluated subsequent events through the issuance of these financial statements on November 9, 2009.

**ECHOSTAR CORPORATION****NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)****(Unaudited)****2. Summary of Significant Accounting Policies (Continued)*****Accounting Standards Codification***

In June 2009, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standards No. 168, "The FASB Accounting Standards Codification and the Hierarchy of Generally Accepted Accounting Principles—A Replacement of FASB Statement No. 162" ("SFAS 168"). SFAS 168 establishes the FASB Accounting Standards Codification (the "Codification") as the single source of authoritative accounting principles recognized by the FASB to be applied by nongovernmental entities in the preparation of financial statements in conformity with GAAP. The Codification does not change current GAAP, but is intended to simplify user access to all authoritative GAAP by providing all the authoritative literature in one place related to a particular topic. We were required to implement the Codification during the third quarter of 2009. The Codification did not have any impact on our consolidated financial position or results of operations. However, it affects the way we reference authoritative accounting literature in our Condensed Consolidated Financial Statements. Accordingly, this Quarterly Report on Form 10-Q and all subsequent applicable public filings will reference the Codification as the source of authoritative literature.

***Principles of Consolidation***

We consolidate all majority owned subsidiaries, investments in entities in which we have controlling influence and variable interest entities where we have been determined to be the primary beneficiary. Non-majority owned investments are accounted for using the equity method when we have the ability to significantly influence the operating decisions of the investee. When we do not have the ability to significantly influence the operating decisions of an investee, the cost method is used. All significant intercompany accounts and transactions have been eliminated in consolidation.

***Use of Estimates***

The preparation of financial statements in conformity with GAAP requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses for each reporting period. Estimates are used in accounting for, among other things, allowances for doubtful accounts, allowance for sales returns, inventory allowances, warranty obligations, self-insurance obligations, deferred taxes and related valuation allowances, uncertain tax positions, loss contingencies, fair value of financial instruments, fair value of options granted under our stock-based compensation plans, fair value of assets and liabilities acquired in business combinations, capital leases, asset impairments, useful lives of property, equipment and intangible assets, and royalty obligations. Illiquid credit markets and general downward economic conditions have increased the inherent uncertainty in the estimates and assumptions indicated above. Actual results may differ from previously estimated amounts, and such differences may be material to the Condensed Consolidated Financial Statements. Estimates and assumptions are reviewed periodically, and the effects of revisions are reflected prospectively in the period they occur.

***Fair Value of Financial Instruments***

As of September 30, 2009 and December 31, 2008, the carrying value of our cash and cash equivalents, marketable investment securities, trade accounts receivable, net of allowance for doubtful

ECHOSTAR CORPORATION

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

**2. Summary of Significant Accounting Policies (Continued)**

accounts, and current liabilities is equal to or approximates fair value due to their short-term nature. Disclosure regarding fair value of capital leases is not required.

***Revision of Previously Issued Financial Statements***

During the three months ended March 31, 2009, we identified an additional \$14 million adjustment related to investments in certain marketable investment securities that should have been recorded in the quarter ended December 31, 2008. We have determined that the impact of the prior period amount is not considered material to our consolidated results of operations or financial position for the year ended December 31, 2008. Consistent with the provisions of SEC Staff Accounting Bulletin No. 108 ("SAB 108") "Considering the Effects of Prior Year Misstatements When Quantifying Misstatements in the Current Year Financial Statements," we revised our previously issued 2008 consolidated financial statements as reflected in the December 31, 2008 Condensed Consolidated Balance Sheets as presented in this Form 10-Q.

The revision increased the loss in our previously reported "Unrealized gains (losses) on investments accounted for at fair value, net," changing "Total other income (expense)," "Income (loss) before income taxes," "Net income (loss)" for 2008 by \$14 million and our basic and diluted net loss per share by \$0.16 to \$10.73. Further, our "Other noncurrent assets, net," "Total noncurrent assets," "Total assets," "Accumulated earnings (deficit)," "Total EchoStar stockholders' equity (deficit)," "Total stockholders' equity (deficit)" and "Total liabilities and stockholders' equity (deficit)" were decreased by \$14 million. The revision had no impact on the 2008 total cash flows from operating, investing or financing activities in our Consolidated Statements of Cash Flows.

***New Accounting Pronouncements***

***Consolidation of Variable Interest Entities***

In June 2009, the FASB issued Statement of Financial Accounting Standards No. 167, "Amendments to FASB Interpretation No. 46(R)" ("SFAS 167"). SFAS No. 167 has been deemed authoritative literature even though the provisions of this standard have not yet been integrated into the Codification. SFAS 167 amends the guidance for determining whether an entity is a variable interest entity and modifies the methods allowed for determining the primary beneficiary. In addition, it requires ongoing reassessments of whether an enterprise is the primary beneficiary and enhanced disclosures related to an enterprise's involvement in a variable interest entity. This standard is effective for fiscal years beginning after November 15, 2009. We are currently evaluating the impact the adoption of SFAS 167 will have on our financial position and results of operations.

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

We present both basic earnings per share ("EPS") and diluted EPS. Basic EPS excludes dilution and is computed by dividing "Net income (loss) attributable to EchoStar common shareholders" by the weighted-average number of common shares outstanding for the period. Diluted EPS reflects the potential dilution that could occur if stock awards were exercised.

The potential dilution from stock awards was computed using the treasury stock method based on the average market value of our Class A common stock. The following table presents earnings per

## ECHOSTAR CORPORATION

## NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

## 3. Basic and Diluted Income (Loss) Per Share (Continued)

share amounts for all periods and the basic and diluted weighted-average shares outstanding used in the calculation.

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2009	2008	2009	2008
(In thousands, except per share amounts)				
Net income (loss) attributable to EchoStar common shareholders	\$ 293,940	\$ (307,930)	\$ 395,109	\$ (254,405)
<b>Weighted-average common shares outstanding—Class A and B common stock:</b>				
Basic	85,260	89,884	86,086	89,825
Dilutive impact of stock awards outstanding	50	—	217	—
Diluted	85,310	89,884	86,303	89,825
<b>Earnings per share—Class A and B common stock:</b>				
Basic net income (loss) per share attributable to EchoStar common shareholders	\$ 3.45	\$ (3.43)	\$ 4.59	\$ (2.83)
Diluted net income (loss) per share attributable to EchoStar common shareholders	\$ 3.45	\$ (3.43)	\$ 4.58	\$ (2.83)

We had a net loss for the three and nine months ended September 30, 2008. Therefore, the effect of stock options is excluded from the computation of diluted earnings (loss) per share since the effect is anti-dilutive. As of September 30, 2009 and 2008, there were stock awards to purchase 5.0 million shares and 4.6 million shares, respectively, of Class A common stock outstanding, not included in the above denominator, as their effect is antidilutive.

**ECHOSTAR CORPORATION**

**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

(Unaudited)

**3. Basic and Diluted Income (Loss) Per Share (Continued)**

Vesting of options and rights to acquire shares of our Class A common stock ("Restricted performance units") granted pursuant to a long-term, performance based stock incentive plan is contingent upon meeting a certain long-term company goal which has not yet been achieved. As a consequence, the following are also not included in the diluted EPS calculation:

	As of	
	September 30, 2009	2008
	(In thousands)	
Performance-based options	731	1,910
Restricted performance units	101	114
<b>Total</b>	<b>832</b>	<b>2,024</b>

**4. Marketable Investment Securities, Restricted Cash and Other Investment Securities**

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

	As of	
	September 30, 2009	December 31, 2008
	(In thousands)	
<b>Marketable investment securities:</b>		
Current marketable investment securities—VRDNs	\$ 489,860	\$ 621,740
Current marketable investment securities—strategic	149,377	151,050
Current marketable investment securities—other	248,064	31,404
<i>Total marketable investment securities—current</i>	887,301	804,194
Restricted marketable investment securities(1)	1,939	2,846
<b>Total</b>	<b>889,240</b>	<b>807,040</b>
<b>Restricted cash and cash equivalents(1)</b>	<b>15,907</b>	<b>—</b>
<b>Marketable and other investment securities—noncurrent:</b>		
Marketable and other investment securities—cost method	27,913	27,913
Marketable and other investment securities—equity method	64,773	20,841
Marketable and other investment securities—fair value method	482,730	107,963
<b>Total marketable and other investment securities—noncurrent</b>	<b>575,416</b>	<b>156,717</b>
<b>Total marketable investment securities, restricted cash and other investment securities</b>	<b>\$ 1,480,563</b>	<b>\$ 963,757</b>

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

ECHOSTAR CORPORATION

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

**4. Marketable Investment Securities, Restricted Cash and Other Investment Securities (Continued)**

***Marketable Investment Securities—Current***

Our current marketable investment securities portfolio consists of various debt and equity instruments, all of which are classified as available-for-sale.

***Current Marketable Investment Securities—VRDNs***

Variable rate demand notes ("VRDNs") are long-term floating rate municipal bonds with embedded put options that allow the bondholder to sell the security at par plus accrued interest. All of the put options are secured by a pledged liquidity source. Our VRDN portfolio is comprised of many municipalities and financial institutions that serve as the pledged liquidity source. While they are classified as marketable investment securities, the put option allows for VRDNs to be liquidated on a same day or on a five business day settlement basis.

***Current Marketable Investment Securities—Strategic***

Our strategic marketable investment securities are highly speculative and have experienced and continue to experience volatility. As of September 30, 2009, a significant portion of our strategic investment portfolio consisted of securities of a few issuers and the value of that portfolio therefore depends on those issuers.

***Current Marketable Investment Securities—Other***

Our other current marketable investment securities portfolio includes investments in various debt instruments including corporate and government bonds.

***Restricted Marketable Investment Securities***

As of September 30, 2009 and December 31, 2008, restricted marketable investment securities included amounts required under our letters of credit or surety bonds.

***Marketable and Other Investment Securities—Noncurrent***

We account for our unconsolidated debt and equity investments under the fair value, equity or cost method of accounting. We have several strategic investments in certain equity securities that are included in noncurrent "Marketable and other investment securities" on our Condensed Consolidated Balance Sheets.

***Marketable and Other Investment Securities—Fair Value***

We elect the fair value method for certain investments in affiliates whose equity is publicly traded, when we believe the fair value method of accounting provides more meaningful information to our investors. For our investments carried at fair value, interest and dividends are measured at fair value and those amounts are recorded in "Unrealized gains (losses) on investments accounted for at fair value, net."

## EHOSTAR CORPORATION

## NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

## 4. Marketable Investment Securities, Restricted Cash and Other Investment Securities (Continued)

*Marketable and Other Investment Securities—Cost and Equity*

Non-majority owned investments are generally accounted for using the equity method when we have the ability to significantly influence the operating decisions of an investee. However, when we do not have the ability to significantly influence the operating decisions of an investee, the cost method is used.

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

*Unrealized Gains (Losses) on Marketable Investment Securities*

As of September 30, 2009 and December 31, 2008, we had accumulated net unrealized gains of \$95 million, excluding \$37 million of related tax effect, and net unrealized losses of \$10 million, with no related tax effect, respectively, as a part of "Accumulated other comprehensive income (loss)" within "Total stockholders' equity (deficit)." A full valuation allowance has been established against the deferred tax assets associated with the 2008 unrealized capital losses. The components of our available-for-sale investments are detailed in the table below.

	As of September 30, 2009			As of December 31, 2008		
	Marketable Investment Securities	Unrealized		Marketable Investment Securities	Unrealized	
	Gains	Losses	Net	Gains	Losses	Net
	(In thousands)					
<b>Debt securities:</b>						
VRDNs	\$ 489,860	\$ —	\$ —	\$ 621,740	\$ —	\$ —
Other (including restricted)	268,723	14,140	(66)	127,803	—	(13,244)
<b>Equity securities:</b>						
Other	130,657	80,669	—	57,497	2,825	—
<b>Total marketable investment securities</b>	<u>\$ 889,240</u>	<u>\$ 94,809</u>	<u>\$ (66)</u>	<u>\$ 807,040</u>	<u>\$ 2,825</u>	<u>\$ (10,419)</u>

As of September 30, 2009, restricted and non-restricted marketable investment securities include debt securities of \$710 million with contractual maturities of one year or less and \$49 million with contractual maturities greater than one year. Actual maturities may differ from contractual maturities as a result of our ability to sell these securities prior to maturity.

*Marketable Investment Securities in a Loss Position*

The following table reflects the length of time that the individual securities, accounted for as available-for-sale, have been in an unrealized loss position, aggregated by investment category. We do not intend to sell our investments in these debt securities before they recover or mature, and it is more likely than not that we will hold these investments until that time. In addition, we are not aware of any

**ECHOSTAR CORPORATION**

**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

(Unaudited)

**4. Marketable Investment Securities, Restricted Cash and Other Investment Securities (Continued)**

specific factors indicating that the underlying issuers of these debt securities would not be able to pay interest as it becomes due or repay the principal at maturity. Therefore, we believe that these changes in the estimated fair values of these marketable investment securities are related to temporary market fluctuations.

Investment Category	Primary Reason for Unrealized Loss	As of September 30, 2009						
		Total Fair Value	Less than Six Months		Six to Nine Months		Nine Months or More	
			Fair Value	Unrealized Loss	Fair Value	Unrealized Loss	Fair Value	Unrealized Loss
(In thousands)								
Debt securities	Temporary market fluctuations	\$ 34,509	\$ 34,368	\$ (59)	\$ —	\$ —	\$ 141	\$ (7)
<b>Total</b>		<u>\$ 34,509</u>	<u>\$ 34,368</u>	<u>\$ (59)</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 141</u>	<u>\$ (7)</u>

Investment Category	Primary Reason for Unrealized Loss	As of December 31, 2008						
		Total Fair Value	Less than Six Months		Six to Nine Months		Nine Months or More	
			Fair Value	Unrealized Loss	Fair Value	Unrealized Loss	Fair Value	Unrealized Loss
(In thousands)								
Debt securities	Temporary market fluctuations	\$ 109,219	\$ 103,380	\$ (13,184)	\$ —	\$ —	\$ 5,839	\$ (60)
<b>Total</b>		<u>\$ 109,219</u>	<u>\$ 103,380</u>	<u>\$ (13,184)</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 5,839</u>	<u>\$ (60)</u>

**Fair Value Measurements**

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

- Level 1, defined as observable inputs being quoted prices in active markets for identical assets;
- Level 2, defined as observable inputs including quoted prices for similar assets in active markets; quoted prices for identical or similar instruments in markets that are not active; and model-derived valuations in which significant inputs and significant value drivers are observable in active markets; and
- Level 3, defined as unobservable inputs in which little or no market data exists, therefore requiring assumptions based on the best information available.



**ECHOSTAR CORPORATION**

**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

(Unaudited)

**4. Marketable Investment Securities, Restricted Cash and Other Investment Securities (Continued)**

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

<u>Assets</u>	<u>Total Fair Value as of September 30, 2009</u>			
	<u>Total</u>	<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u>
	(In thousands)			
Marketable investment securities—current and restricted	\$ 889,240	\$ 132,657	\$ 756,583	\$ —
Marketable and other investment securities—noncurrent	482,730	68,700	349,189	64,841
<b>Total assets at fair value</b>	<b>\$ 1,371,970</b>	<b>\$ 201,357</b>	<b>\$ 1,105,772</b>	<b>\$ 64,841</b>

Changes in Level 3 instruments are as follows:

	<u>Level 3 Investment Securities</u> (In thousands)
<b>Balance as of December 31, 2008</b>	<b>\$ 23,821</b>
Net realized and unrealized gains (losses) included in earnings	24,810
Purchases, issuances and settlements, net	16,210
<b>Balance as of September 30, 2009</b>	<b>\$ 64,841</b>

**Unrealized and Realized Gains (Losses) on Marketable Investment Securities and Other Investments**

"Unrealized and realized gains (losses) on marketable investment securities and other investments" on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss) includes changes in the carrying amount of our investments as follows:

	<u>For the Three Months Ended September 30,</u>		<u>For the Nine Months Ended September 30,</u>	
	<u>2009</u>	<u>2008</u>	<u>2009</u>	<u>2008</u>
	(In thousands)			
<b>Unrealized and realized gains (losses) on marketable investment securities and other investments:</b>				
Marketable investment securities—gains (losses) on sales/exchange	\$ 100,458	\$ (30,284)	\$ 104,275	\$ 14,969
Gain on sale of a company which held certain FCC authorizations	—	—	—	67,624
Marketable and other investment securities—other-than-temporary impairments	—	(80,435)	(6,771)	(126,507)
<b>Total unrealized and realized gains (losses) on marketable investment securities and other investments</b>	<b>\$ 100,458</b>	<b>\$ (110,719)</b>	<b>\$ 97,504</b>	<b>\$ (43,914)</b>

## ECHOSTAR CORPORATION

## NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

## 4. Marketable Investment Securities, Restricted Cash and Other Investment Securities (Continued)

*Investment in TerreStar*

We currently account for our investment in TerreStar using the fair value method of accounting. We have two representatives on TerreStar's board of directors and have the ability to exert significant influence and believe that the fair value approach provides our investors with the most meaningful information.

We report the TerreStar financial information on a one-quarter lag as TerreStar is a public company but not a "large accelerated filer," as defined by the Securities and Exchange Commission. As such, the statements of operations data, shown below, includes the three and six months ended June 30 for each respective period presented. We rely on TerreStar's management to provide us with accurate summary financial information. We are not aware of any errors in, or possible misstatements of, the financial information provided to us that would have a material effect on our Condensed Consolidated Financial Statements. The following table provides summarized financial information from TerreStar:

Statements of Operations Data (unaudited):	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
	2009	2008	2009	2008
	(In thousands)			
Operating expenses	\$ 41,932	\$ 57,280	\$ 77,884	\$ 124,474
Net income (loss) from continuing operations	\$ (52,624)	\$ (66,715)	\$ (97,155)	\$ (161,289)
Net income (loss)	\$ (52,624)	\$ (66,715)	\$ (97,155)	\$ (161,289)
Net income (loss) available to common stockholders	\$ (60,002)	\$ (73,640)	\$ (112,079)	\$ (175,139)

In August 2009, TerreStar filed its quarterly report on Form 10-Q for the quarter ended June 30, 2009. This report included a disclosure that TerreStar estimates its cash and cash equivalents will not be sufficient to cover its estimated funding needs for 2010 based upon its current plans. We account for our investment in TerreStar using the fair value method of accounting and its financial position as indicated in their Form 10-Q for the quarter ended June 30, 2009 could have a material impact on the fair value of our investment in subsequent periods.

## 5. Inventories

Inventories consist of the following:

	As of	
	September 30, 2009	December 31, 2008
	(In thousands)	
Finished goods	\$ 3,318	\$ 17,814
Raw materials	23,797	16,756
Work-in-process	13,312	15,168
Subtotal	40,427	49,738
Inventory allowance	(6,864)	(3,245)
Inventories, net	\$ 33,563	\$ 46,493

## ECHOSTAR CORPORATION

## NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

**6. Satellites**

We currently utilize six owned and three leased satellites in geostationary orbit approximately 22,300 miles above the equator. Our leased satellites are accounted for as capital leases. The capital leases are depreciated over the terms of the satellite service agreements.

Prior to 2009, certain satellites in our fleet have experienced anomalies, some of which have had a significant adverse impact on their remaining life and commercial operation. There can be no assurance that future anomalies will not further impact the remaining life and commercial operation of any of these satellites. See "*Long-Lived Satellite Assets*" below for further discussion of evaluation of impairment. There can be no assurance that we can recover critical transmission capacity in the event one or more of our in-orbit satellites were to fail. We do not anticipate carrying insurance for any of the in-orbit satellites that we own, and we will bear the risk associated with any in-orbit satellite failures. Recent developments with respect to our satellites are discussed below.

**Owned Satellites**

**EchoStar III.** EchoStar III was originally designed to operate a maximum of 32 DBS transponders in full continental United States ("CONUS") mode at approximately 120 watts per channel, switchable to 16 transponders operating at over 230 watts per channel, and was equipped with a total of 44 traveling wave tube amplifiers ("TWTAs") to provide redundancy. As a result of TWTA failures in previous years and an additional pair of TWTA failures during August 2009, only 16 transponders are currently available for use. Due to redundancy switching limitations and specific channel authorizations, we are currently operating on 14 of our FCC authorized frequencies at the 61.5 degree orbital location. While the failures have not reduced the original minimum 12-year design life of the satellite, it is likely that additional TWTA failures will occur from time to time in the future, and such failures could further impact commercial operation of the satellite.

**EchoStar XII.** Prior to 2009, EchoStar XII experienced anomalies resulting in the loss of electrical power available from its solar arrays. During March and May 2009, EchoStar XII experienced more of these anomalies, which further reduced the electrical power available to operate EchoStar XII. We currently operate EchoStar XII in CONUS/spot beam hybrid mode. If we continue to operate the satellite in this mode, as a result of this loss of electrical power, we would be unable to use the full complement of its available transponders for the 12-year design life of the satellite. However, since the number of useable transponders on EchoStar XII depends on, among other things, whether EchoStar XII is operated in CONUS, spot beam, or hybrid CONUS/spot beam mode, we are unable to determine at this time the actual number of transponders that will be available at any given time or how many transponders can be used during the remaining estimated life of the satellite. Additionally, there can be no assurance that future anomalies will not cause further losses, which could impact the remaining useful life or commercial operation of EchoStar XII. As a result of the May 2009 anomalies on EchoStar XII, we determined that we had a triggering event related to EchoStar XII. See discussion of evaluation of impairment in "*Long-Lived Satellite Assets*" below. Based on this triggering event we performed an impairment review of the satellite using an undiscounted cash flow model and concluded that the estimated undiscounted cash flows associated with EchoStar XII were still in excess of its carrying value and therefore no impairment was required.

## ECHOSTAR CORPORATION

## NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

**6. Satellites (Continued)***Leased Satellites*

**Nimiq 5.** Nimiq 5 was launched in September 2009 and commenced commercial operation at the 72.7 degree orbital location during October 2009, where it provides additional high-powered capacity to our satellite fleet. See Note 13 for further discussion.

*Long-Lived Satellite Assets*

We evaluate our satellites for impairment and test for recoverability whenever events or changes in circumstances indicate that their carrying amount may not be recoverable. This evaluation is performed at the lowest level for which identifiable cash flows are largely independent of the cash flows of other assets and liabilities. Other than the evaluation discussed in EchoStar XII above, certain of the anomalies discussed above, and previously disclosed, may be considered to represent a significant adverse change in the physical condition of a particular satellite. Based on the redundancy designed within each satellite, these anomalies are not considered to be significant events that would require evaluation for impairment recognition because the projected cash flows have not been significantly affected by these anomalies.

**7. Intangible Assets**

As of September 30, 2009 and December 31, 2008, our identifiable intangible assets subject to amortization consisted of the following:

	As of			
	September 30, 2009		December 31, 2008	
	Intangible Assets	Accumulated Amortization	Intangible Assets	Accumulated Amortization
	(In thousands)			
Contract-based	\$ 190,566	\$ (87,576)	\$ 190,566	\$ (75,104)
Customer relationships	23,600	(15,733)	23,600	(9,833)
Technology-based	73,314	(24,021)	73,297	(17,383)
Total	<u>\$ 287,480</u>	<u>\$ (127,330)</u>	<u>\$ 287,463</u>	<u>\$ (102,320)</u>

Amortization of these intangible assets is recorded on a straight line basis over an average finite useful life primarily ranging from approximately three to 20 years.

## ECHOSTAR CORPORATION

## NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

**7. Intangible Assets (Continued)**

Estimated future amortization of our identifiable intangible assets as of September 30, 2009 is as follows (in thousands):

<b>For the Years Ended December 31,</b>	
2009 (remaining three months)	\$ 8,337
2010	31,381
2011	25,005
2012	23,185
2013	23,180
Thereafter	49,062
Total	<u>\$ 160,150</u>

**8. Stockholders' Equity (Deficit)*****Common Stock Repurchase Program***

Our board of directors authorized stock repurchases of up to \$500 million of our Class A common stock through and including December 31, 2009. During the three and nine months ended September 30, 2009, we repurchased 1.363 million and 1.852 million shares of our common stock for \$22 million and \$29 million, respectively. On November 3, 2009, our board of directors extended the plan and authorized an increase in the maximum dollar value of shares that may be repurchased under the plan, such that we are currently authorized to repurchase up to \$500 million of our outstanding shares through and including December 31, 2010.

**9. Stock-Based Compensation*****Stock Incentive Plans***

In connection with the Spin-off, as permitted by DISH Network's existing stock incentive plans and consistent with the Spin-off exchange ratio, each DISH Network stock option was converted into two stock options as follows:

- an adjusted DISH Network stock option for the same number of shares that were exercisable under the original DISH Network stock option, with an exercise price equal to the exercise price of the original DISH Network stock option multiplied by 0.831219.
- a new EchoStar stock option for one-fifth of the number of shares that were exercisable under the original DISH Network stock option, with an exercise price equal to the exercise price of the original DISH Network stock option multiplied by 0.843907.

Similarly, each holder of DISH Network restricted stock units retained his or her DISH Network restricted stock units and received one EchoStar restricted stock unit for every five DISH Network restricted stock units that they held.

Consequently, the fair value of the DISH Network stock award and the new EchoStar stock award immediately following the Spin-off was equivalent to the fair value of such stock award immediately prior to the Spin-off.

## ECHOSTAR CORPORATION

## NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

**9. Stock-Based Compensation (Continued)**

We maintain stock incentive plans to attract and retain officers, directors and key employees. Stock awards under these plans include both performance and non-performance based stock incentives. As of September 30, 2009, we had outstanding under these plans stock options to acquire 6.3 million shares of our Class A common stock and 0.1 million restricted stock units. Stock options granted through September 30, 2009 were granted with exercise prices equal to or greater than the market value of our Class A common stock at the date of grant and with a maximum term of ten years. Historically, our stock awards have been subject to vesting, typically at the rate of 20% to 25% per year, however, some stock awards have been granted with immediate vesting and other stock awards vest only upon the achievement of certain company-wide objectives. As of September 30, 2009, we had 8.5 million shares of our Class A common stock available for future grant under our stock incentive plans.

As of September 30, 2009, the following stock awards were outstanding:

Stock Awards Outstanding	As of September 30, 2009			
	EchoStar Awards		DISH Network Awards	
	Stock Options	Restricted Stock Units	Stock Options	Restricted Stock Units
Held by EchoStar employees	4,874,678	82,065	3,451,851	410,374
Held by DISH Network employees	1,398,788	63,833	N/A	N/A
<b>Total</b>	<b>6,273,466</b>	<b>145,898</b>	<b>3,451,851</b>	<b>410,374</b>

We are responsible for fulfilling all stock awards related to EchoStar common stock and DISH Network is responsible for fulfilling all stock awards related to DISH Network common stock, regardless of whether such stock awards are held by our or DISH Network's employees. Notwithstanding the foregoing, our stock-based compensation expense, resulting from stock awards outstanding at the Spin-off date, is based on the stock awards held by our employees regardless of whether such stock awards were issued by EchoStar or DISH Network. Accordingly, stock-based compensation that we expense with respect to DISH Network stock awards is included in "Additional paid-in capital" on our Condensed Consolidated Balance Sheets.

## ECHOSTAR CORPORATION

## NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

## 9. Stock-Based Compensation (Continued)

## Stock Award Activity

Our stock option activity for the nine months ended September 30, 2009 was as follows:

	For the Nine Months Ended September 30, 2009	
	Options	Weighted- Average Exercise Price
Total options outstanding, beginning of period	5,184,415	\$ 28.61
Granted	1,513,000	15.06
Exercised	(35,589)	5.97
Forfeited and cancelled	(388,360)	25.91
Total options outstanding, end of period	6,273,466	25.64
Performance based options outstanding, end of period(1)	731,250	25.45
Exercisable at end of period	1,889,937	29.58

- (1) These stock options, which are included in the caption "Total options outstanding, end of period," were issued pursuant to a long-term, performance-based stock incentive plan. Vesting of these stock options is contingent upon meeting a certain long-term company goal which has not yet been achieved. See discussion of the 2005 LTIP below.

We realized tax benefits from stock awards exercised during the three and nine months ended September 30, 2009 and 2008 as follows:

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2009	2008	2009	2008
	(In thousands)			
Tax benefit from stock awards exercised	\$ 65	\$ 612	\$ 357	\$ 1,859

Based on the closing market price of our Class A common stock on September 30, 2009, the aggregate intrinsic value of our stock options was as follows:

	As of September 30, 2009	
	Options Outstanding	Options Exercisable
	(In thousands)	
Aggregate intrinsic value	\$ 5,494	\$ 311

## ECHOSTAR CORPORATION

## NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

## 9. Stock-Based Compensation (Continued)

Our restricted stock unit activity for the nine months ended September 30, 2009 was as follows:

	For the Nine Months Ended September 30, 2009	
	Restricted Stock Units	Weighted- Average Grant Date Fair Value
Total restricted stock units outstanding, beginning of period	272,856	\$ 29.40
Granted	—	—
Vested	(6,000)	26.30
Forfeited and cancelled	(120,958)	31.04
Total restricted stock units outstanding, end of period	<u>145,898</u>	<u>28.19</u>
Restricted performance units outstanding, end of period(1)	<u>100,823</u>	<u>26.55</u>

- (1) These restricted performance units, which are included in the caption "Total restricted stock units outstanding, end of period," were issued pursuant to a long-term, performance-based stock incentive plan. Vesting of these restricted performance units is contingent upon meeting a certain long-term company goal which has not yet been achieved. See discussion of the 2005 LTIP below.

**Long-Term Performance-Based Plans**

**2005 LTIP.** In 2005, DISH Network adopted a long-term, performance-based stock incentive plan (the "2005 LTIP"). The 2005 LTIP provides stock options and restricted stock units, either alone or in combination, which vest over seven years at the rate of 10% per year during the first four years, and at the rate of 20% per year thereafter. Exercise of the stock awards is subject to a performance condition that a company-specific goal is achieved prior to March 31, 2015.

Contingent compensation related to the 2005 LTIP will not be recorded in our financial statements unless and until the achievement of the performance condition is probable. The competitive nature of our industry and certain other factors can significantly impact achievement of the goal. Consequently, while it was determined that achievement of the goal was not probable as of September 30, 2009, that assessment could change at any time.

If all of the stock awards under the 2005 LTIP were vested and the goal had been met or if we had determined that achievement of the goal was probable during the nine months ended September 30, 2009, we would have recorded total non-cash, stock-based compensation expense for our employees as indicated in the table below. If the goal is met and there are unvested stock awards at that time, the vested amounts would be expensed immediately on our Condensed Consolidated



## EHOSTAR CORPORATION

## NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

## 9. Stock-Based Compensation (Continued)

Statements of Operations and Comprehensive Income (Loss), with the unvested portion recognized ratably over the remaining vesting period.

	2005 LTIP	
	Total	Vested Portion
	(In thousands)	
DISH Network awards held by EchoStar employees	\$ 17,757	\$ 6,853
EchoStar awards held by EchoStar employees	3,605	1,391
Total	\$ 21,362	\$ 8,244

Of the 6.3 million stock options and 0.1 million restricted stock units outstanding under our stock incentive plans as of September 30, 2009, the following awards were outstanding pursuant to the 2005 LTIP:

	As of September 30, 2009	
	Number of Awards	Weighted- Average Exercise Price
Stock options	731,250	\$ 25.45
Restricted performance units	100,823	
Total	832,073	

**Stock-Based Compensation**

Total non-cash, stock-based compensation expense for all of our employees is shown in the following table for the three and nine months ended September 30, 2009 and 2008 and was allocated to the same expense categories as the base compensation for such employees:

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2009	2008	2009	2008
	(In thousands)			
Cost of sales—services and other	\$ —	\$ 196	\$ —	\$ 571
Research and development expenses	680	1,526	2,617	4,549
Selling, general and administrative expenses	2,577	4,734	7,501	12,357
Total non-cash, stock based compensation	\$ 3,257	\$ 6,456	\$ 10,118	\$ 17,477

As of September 30, 2009, our total unrecognized compensation cost related to our non-performance based unvested stock awards was \$30 million and includes compensation expense that we will recognize for DISH Network stock awards held by our employees as a result of the Spin-off. This cost is based on an estimated future forfeiture rate of approximately 1.2% per year and will be recognized over a weighted-average period of approximately three years. Share-based compensation

## EHOSTAR CORPORATION

## NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

## 9. Stock-Based Compensation (Continued)

expense is recognized based on stock awards ultimately expected to vest and is reduced for estimated forfeitures. Forfeitures are estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates. Changes in the estimated forfeiture rate can have a significant effect on share-based compensation expense since the effect of adjusting the rate is recognized in the period the forfeiture estimate is changed.

The fair value of each stock award for the three and nine months ended September 30, 2009 and 2008 was estimated at the date of the grant using a Black-Scholes option valuation model with the following assumptions:

Stock Options	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2009	2008	2009	2008
Risk-free interest rate	2.72%	3.15%	2.00% - 2.92%	2.74% - 3.42%
Volatility factor	29.87%	24.90%	28.48% - 29.87%	19.98% - 24.90%
Expected term of options in years	6.3	6.1	6.2 - 6.3	6.0 - 6.1
Weighted-average fair value of options granted	\$ 6.55	\$ 7.63	\$4.76 - \$6.55	\$7.63 - \$9.29

We do not currently plan to pay dividends on our common stock, and therefore the dividend yield percentage is set at zero for all periods presented. The Black-Scholes option valuation model was developed for use in estimating the fair value of traded stock options which have no vesting restrictions and are fully transferable. Consequently, our estimate of fair value may differ from other valuation models. Further, the Black-Scholes option valuation model requires the input of highly subjective assumptions. Changes in the subjective input assumptions can materially affect the fair value estimate. Therefore, we do not believe the existing model provides as reliable a single measure of the fair value of stock-based compensation awards as a market-based model would.

We will continue to evaluate the assumptions used to derive the estimated fair value of our stock options as new events or changes in circumstances become known.

## ECHOSTAR CORPORATION

## NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

**10. Commitments and Contingencies****Commitments**

As of September 30, 2009, future maturities of our contractual obligations are summarized as follows:

	Payments due by period						
	Total	2009	2010	2011 (In thousands)	2012	2013	Thereafter
Long-term debt obligations	\$ 7,243	\$ 9	\$ 693	\$ 748	\$ 808	\$ 872	\$ 4,113
Capital lease obligations	299,862	12,092	49,088	52,162	57,258	63,198	66,064
Interest expense on long-term debt and capital lease obligations	76,936	6,391	23,604	19,269	14,501	9,234	3,937
Satellite-related obligations	1,486,858	70,800	127,821	135,215	117,839	108,759	926,424
Operating lease obligations	14,451	1,858	6,017	3,704	1,557	855	460
Purchase and other obligations	1,487,623	1,472,648	14,975	—	—	—	—
<b>Total</b>	<b>\$ 3,372,973</b>	<b>\$ 1,563,798</b>	<b>\$ 222,198</b>	<b>\$ 211,098</b>	<b>\$ 191,963</b>	<b>\$ 182,918</b>	<b>\$ 1,000,998</b>

The table above does not include \$16 million of liabilities associated with unrecognized tax benefits which were accrued and are included on our Condensed Consolidated Balance Sheets as of September 30, 2009. We do not expect any portion of this amount to be paid or settled within the next twelve months.

In certain circumstances the dates on which we are obligated to make these payments could be delayed. These amounts will increase to the extent we procure insurance for our satellites or contract for the construction, launch or lease of additional satellites.

**Contingencies**

In connection with the Spin-off, we entered into a separation agreement with DISH Network, which provides among other things for the division of certain liabilities, including liabilities resulting from litigation. Under the terms of the separation agreement, we have assumed certain liabilities that relate to our business including certain designated liabilities for acts or omissions prior to the Spin-off. Certain specific provisions govern intellectual property related claims under which, generally, we will only be liable for our acts or omissions following the Spin-off and DISH Network will indemnify us for any liabilities or damages resulting from intellectual property claims relating to the period prior to the Spin-off as well as DISH Network's acts or omissions following the Spin-off.

**Acacia**

During 2004, Acacia Media Technologies, ("Acacia") filed a lawsuit against us and DISH Network in the United States District Court for the Northern District of California. The suit also named DirecTV, Comcast, Charter, Cox and a number of smaller cable companies as defendants. Acacia is an entity that seeks to license an acquired patent portfolio without itself practicing any of the claims recited therein. The suit alleges infringement of United States Patent Nos. 5,132,992, 5,253,275, 5,550,863, 6,002,720 and 6,144,702, which relate to certain systems and methods for transmission of

ECHOSTAR CORPORATION

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

**10. Commitments and Contingencies (Continued)**

digital data. On September 25, 2009, the Court granted summary judgment to defendants on invalidity grounds, and dismissed the action with prejudice. The plaintiffs have appealed.

We intend to vigorously defend this case. In the event that a Court ultimately determines that we infringe any of the asserted patents, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could require us to materially modify certain user-friendly features that we currently offer to consumers. We are being indemnified by DISH Network for any potential liability or damages resulting from this suit relating to the period prior to the effective date of the Spin-off. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

***Broadcast Innovation, L.L.C.***

During 2001, Broadcast Innovation, L.L.C. ("Broadcast Innovation") filed a lawsuit against DISH Network, DirecTV, Thomson Consumer Electronics and others in United States District Court in Denver, Colorado. The suit alleges infringement of United States Patent Nos. 6,076,094 (the '094 patent) and 4,992,066 (the '066 patent). The '094 patent relates to certain methods and devices for transmitting and receiving data along with specific formatting information for the data. The '066 patent relates to certain methods and devices for providing the scrambling circuitry for a pay television system on removable cards. Subsequently, DirecTV and Thomson settled with Broadcast Innovation leaving us as the only defendant.

During 2004, the judge issued an order finding the '066 patent invalid. Also in 2004, the Court found the '094 patent invalid in a parallel case filed by Broadcast Innovation against Charter and Comcast. In 2005, the United States Court of Appeals for the Federal Circuit overturned the '094 patent finding of invalidity and remanded the Charter case back to the District Court. During June 2006, Charter filed a reexamination request with the United States Patent and Trademark Office. The Court has stayed the Charter case pending reexamination, and our case has been stayed pending resolution of the Charter case.

We intend to vigorously defend this case. In the event that a Court ultimately determines that we infringe any of the asserted patents, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could require us to materially modify certain user-friendly features that we currently offer to consumers. We are being indemnified by DISH Network for any potential liability or damages resulting from this suit relating to the period prior to the effective date of the Spin-off. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

***Finisar Corporation***

Finisar Corporation ("Finisar") obtained a \$100 million verdict in the United States District Court for the Eastern District of Texas against DirecTV for patent infringement. Finisar alleged that DirecTV's electronic program guide and other elements of its system infringe United States Patent No. 5,404,505 (the '505 patent).

ECHOSTAR CORPORATION

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

**10. Commitments and Contingencies (Continued)**

During 2006, we and DISH Network, together with NagraStar LLC, filed a Complaint for Declaratory Judgment in the United States District Court for the District of Delaware against Finisar that asks the Court to declare that we do not infringe, and have not infringed, any valid claim of the '505 patent. During April 2008, the Federal Circuit reversed the judgment against DirecTV and ordered a new trial. On May 19, 2009, the District Court granted summary judgment to DirecTV, and dismissed the action with prejudice. Finisar is appealing that decision. Our case is stayed until the DirecTV action is resolved.

We intend to vigorously prosecute this case. In the event that a Court ultimately determines that we infringe the asserted patent, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could require us to modify our system architecture. We are being indemnified by DISH Network for any potential liability or damages resulting from this suit relating to the period prior to the effective date of the Spin-off. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

***Global Communications***

During April 2007, Global Communications, Inc. ("Global") filed a patent infringement action against us and DISH Network in the United States District Court for the Eastern District of Texas. The suit alleges infringement of United States Patent No. 6,947,702 (the '702 patent), which relates to satellite reception. In October 2007, the United States Patent and Trademark Office granted our request for reexamination of the '702 patent and issued an initial Office Action finding that all of the claims of the '702 patent were invalid. At the request of the parties, the District Court stayed the litigation until the reexamination proceeding is concluded and/or other Global patent applications issue.

During June 2009, Global filed a patent infringement action against us and DISH Network in the United States District Court for the Northern District of Florida. The suit alleges infringement of United States Patent No. 7,542,717 (the '717 patent), which relates to satellite reception.

We intend to vigorously defend these cases. In the event that a Court ultimately determines that we infringe any of the asserted patents, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could require us to materially modify certain user-friendly features that we currently offer to consumers. We are being indemnified by DISH Network for any potential liability or damages resulting from this suit relating to the period prior to the effective date of the Spin-off. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

***Guardian Media***

During December 2008, Guardian Media Technologies LTD ("Guardian") filed suit against us, EchoStar Technologies L.L.C., DISH Network, DirecTV and several other defendants in the United States District Court for the Central District of California alleging infringement of United States Patent Nos. 4,930,158 and 4,930,160. Both patents are expired and relate to certain parental lock features. On September 9, 2009, Guardian voluntarily dismissed the case against us with prejudice.

ECHOSTAR CORPORATION

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

**10. Commitments and Contingencies (Continued)**

***Multimedia Patent Trust***

On February 13, 2009, Multimedia Patent Trust ("MPT") filed suit against us, DISH Network, DirecTV and several other defendants in the United States District Court for the Southern District of California alleging infringement of United States Patent Nos. 4,958,226, 5,227,878, 5,136,377, 5,500,678 and 5,563,593, which relate to video encoding, decoding and compression technology. MPT is an entity that seeks to license an acquired patent portfolio without itself practicing any of the claims recited therein.

We intend to vigorously defend this case. In the event that a Court ultimately determines that we infringe any of the asserted patents, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could require us to materially modify certain user-friendly features that we currently offer to consumers. We are being indemnified by DISH Network for any potential liability or damages resulting from this suit relating to the period prior to the effective date of the Spin-off. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

***NorthPoint Technology***

On July 2, 2009, NorthPoint Technology, Ltd ("Northpoint") filed suit against us, DISH Network, and DirecTV in the United States District Court for the Western District of Texas alleging infringement of United States Patent No. 6,208,636 ("the '636 patent"). The '636 patent relates to the use of multiple low-noise block converter feedhorns, or LNBFs, which are antennas used for satellite reception.

We intend to vigorously defend this case. In the event that a Court ultimately determines that we infringe the asserted patent, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could require us to materially modify certain features that we currently offer to consumers. We are being indemnified by DISH Network for any potential liability or damages resulting from this suit relating to the period prior to the effective date of the Spin-off. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

***Personalized Media Communications***

In February 2008, Personalized Media Communications, Inc. filed suit against us, DISH Network and Motorola, Inc. in the United States District Court for the Eastern District of Texas alleging infringement of United States Patent Nos. 4,694,490, 5,109,414, 4,965,825, 5,233,654, 5,335,277, and 5,887,243, which relate to satellite signal processing.

We intend to vigorously defend this case. In the event that a Court ultimately determines that we infringe any of the asserted patents, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could require us to materially modify certain user-friendly features that we currently offer to consumers. We are being indemnified by DISH Network for any potential liability or damages resulting from this suit relating to the period prior to the effective date of the Spin-off. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

ECHOSTAR CORPORATION

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

**10. Commitments and Contingencies (Continued)**

***Technology Development Licensing***

On January 22, 2009, Technology Development and Licensing LLC ("TechDev") filed suit against us and DISH Network in the United States District Court for the Northern District of Illinois alleging infringement of United States Patent No. 35,952, which relates to certain favorite channel features. In July 2009, the Court granted our motion to stay the case pending two re-examination petitions before the Patent and Trademark Office.

We intend to vigorously defend this case. In the event that a Court ultimately determines that we infringe the asserted patent, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could require us to materially modify certain user-friendly features that we currently offer to consumers. We are being indemnified by DISH Network for any potential liability or damages resulting from this suit relating to the period prior to the effective date of the Spin-off. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

***Tivo Inc.***

During January 2008, the United States Court of Appeals for the Federal Circuit affirmed in part and reversed in part the April 2006 jury verdict concluding that certain of our digital video recorders, or DVRs, infringed a patent held by Tivo. In its January 2008 decision, the Federal Circuit affirmed the jury's verdict of infringement on Tivo's "software claims," and upheld the award of damages from the District Court. The Federal Circuit, however, found that we did not literally infringe Tivo's "hardware claims," and remanded such claims back to the District Court for further proceedings. On October 6, 2008, the Supreme Court denied our petition for certiorari. As a result, DISH Network paid approximately \$105 million to Tivo.

We also developed and deployed "next-generation" DVR software. This improved software was automatically downloaded to our current customers' DVRs, and is fully operational (our "original alternative technology"). The download was completed as of April 2007. We received written legal opinions from outside counsel that concluded our original alternative technology does not infringe, literally or under the doctrine of equivalents, either the hardware or software claims of Tivo's patent. Tivo filed a motion for contempt alleging that we are in violation of the Court's injunction. We opposed this motion on the grounds that the injunction did not apply to DVRs that have received our original alternative technology, that our original alternative technology does not infringe Tivo's patent, and that we were in compliance with the injunction.

On June 2, 2009, the District Court granted Tivo's contempt motion, finding that our original alternative technology was not more than colorably different than the products found by the jury to infringe Tivo's patent, that the original alternative technology still infringed the software claims, and that even if the original alternative technology was "non-infringing," the original injunction by its terms required that DISH Network disable DVR functionality in all but approximately 192,000 digital set-top boxes in the field. The District Court awarded Tivo \$103 million in supplemental damages and interest for the period from September 2006 to April 2008, based on an assumed \$1.25 per subscriber per month royalty rate. DISH Network posted a bond to secure that award pending appeal of the contempt order.

ECHOSTAR CORPORATION

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

**10. Commitments and Contingencies (Continued)**

On July 1, 2009, the Federal Circuit Court of Appeals granted a permanent stay of the District Court's contempt order pending resolution of our appeal. In so doing, the Federal Circuit found, at a minimum, that we had a substantial case on the merits. Oral argument on our appeal of the contempt ruling took place on November 2, 2009 before three judges of the Federal Circuit.

The District Court held a hearing on July 28, 2009 on Tivo's claims for contempt sanctions, but has ordered that enforcement of any sanctions award will be stayed pending our appeal of the contempt order. Tivo sought up to \$975 million in contempt sanctions for the period from April 2008 to June 2009 based on, among other things, profits Tivo alleges DISH Network made from subscribers using DVRs. We opposed Tivo's request arguing, among other things, that sanctions are inappropriate because we made good faith efforts to comply with the Court's injunction. We also challenged Tivo's calculation of profits.

On August 3, 2009, the Patent and Trademark Office (the "PTO") issued an initial office action rejecting the software claims of the '389 patent as being invalid in light of two prior patents. These are the same software claims that we were found to have infringed and which underlie the contempt ruling now pending on appeal. We believe that the PTO's conclusions are relevant to the issues on appeal as well as the pending sanctions proceedings in the District Court. The PTO's conclusions support our position that our original alternative technology is more than colorably different than the devices found to infringe by the jury; that our original alternative technology does not infringe; and that we acted in good faith to design around Tivo's patent.

On September 4, 2009, the District Court partially granted Tivo's motion for contempt sanctions. In partially granting Tivo's motion for contempt sanctions, the District Court awarded \$2.25 per DVR subscriber per month for the period from April 2008 to July 2009 (as compared to the award for supplemental damages for the prior period from September 2006 to April 2008, which was based on an assumed \$1.25 per DVR subscriber per month). By the District Court's estimation, the total award for the period from April 2008 to July 2009 is approximately \$200 million (the enforcement of the award has been stayed by the District Court pending DISH Network's appeal of the underlying June 2, 2009 contempt order).

In light of the District Court's finding of contempt, and its description of the manner in which it believes our original alternative technology infringed the '389 patent, we are also developing and testing potential new alternative technology in an engineering environment. As part of our development process, we have downloaded one of our design-around options to approximately 125 subscribers for "beta" testing.

If we are unsuccessful in overturning the District Court's ruling on Tivo's motion for contempt, we are not successful in developing and deploying potential new alternative technology and we are unable to reach a license agreement with Tivo on reasonable terms, we would be required to cease distribution of digital set-top boxes with DVR functionality. In that event, our sales of digital set-top boxes to DISH Network and others would likely significantly decrease and could even potentially cease for a period of time. Furthermore, the inability to offer DVR functionality would place us at a significant disadvantage to our competitors and make it even more difficult for us to penetrate new markets for digital set-top boxes. The adverse effect on our financial position and results of operations if the District Court's contempt order is upheld is likely to be significant.



ECHOSTAR CORPORATION

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

**10. Commitments and Contingencies (Continued)**

If we are successful in overturning the District Court's ruling on Tivo's motion for contempt, but unsuccessful in defending against any subsequent claim that our original alternative technology or any potential new alternative technology infringes Tivo's patent, we could be prohibited from distributing DVRs. In that event we would be at a significant disadvantage to our competitors who could continue offering DVR functionality and the adverse effect on our business could be material.

Because both we and DISH Network are defendants in the Tivo lawsuit, we and DISH Network are jointly and severally liable to Tivo for any final damages and sanctions that may be awarded by the Court. DISH Network has agreed that it is obligated under the agreements entered into in connection with the Spin-off to indemnify us for substantially all liability arising from this lawsuit. We have agreed to contribute an amount equal to our \$5 million intellectual property liability limit under the Receiver Agreement. We and DISH Network have further agreed that our \$5 million contribution would not exhaust our liability to DISH Network for other intellectual property claims that may arise under the Receiver Agreement. Therefore, during the second quarter of 2009, we recorded a charge included in "General and administrative expenses—DISH Network" on our Condensed Statement of Operations and Comprehensive Income (Loss) of \$5 million to reflect this contribution. We and DISH Network also agreed that we would each be entitled to joint ownership of, and a cross-license to use, any intellectual property developed in connection with any potential new alternative technology.

Because we are jointly and severally liable with DISH Network, to the extent that DISH Network does not or is unable to pay any damages or sanctions arising from this lawsuit, we would then be liable for any portion of these damages and sanctions not paid by DISH Network. Any amounts that DISH Network may be required to pay could impair its ability to pay us and also negatively impact our future liquidity.

If we become liable for any portion of these damages or sanctions, we may be required to raise additional capital at a time and in circumstances in which we would normally not raise capital. Therefore, any capital we raise may be on terms that are unfavorable to us, which might adversely affect our financial position and results of operations and might also impair our ability to raise capital on acceptable terms in the future to fund our own operations and initiatives.

**Other**

In addition to the above actions, we are subject to various other legal proceedings and claims which arise in the ordinary course of business. In our opinion, the amount of ultimate liability with respect to any of these actions is unlikely to materially affect our financial position, results of operations or liquidity.

## ECHOSTAR CORPORATION

## NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

**11. Depreciation and Amortization Expense**

Depreciation and amortization expense consists of the following:

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2009	2008	2009	2008
	(In thousands)			
Satellites	\$ 25,570	\$ 34,786	\$ 76,711	\$ 104,357
Furniture, fixtures, equipment and other	23,560	25,576	74,140	60,712
Identifiable intangible assets subject to amortization	8,264	7,972	24,793	24,416
Buildings and improvements	1,595	1,448	4,769	4,282
Total depreciation and amortization	<u>\$ 58,989</u>	<u>\$ 69,782</u>	<u>\$ 180,413</u>	<u>\$ 193,767</u>

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

**12. Segment Reporting**

Operating segments are components of an enterprise for which separate financial information is available and regularly evaluated by the chief operating decision maker(s) of an enterprise. Total assets by segment have not been specified because the information is not available to the chief operating decision-maker. Under this definition, we operate as two business units.

- **"Digital Set-Top Box" Business**—which designs, develops and distributes digital set-top boxes and related products, including our Slingbox "placeshifting" technology, primarily for satellite TV service providers, telecommunication and cable companies and, with respect to Slingboxes, directly to consumers via retail outlets. Our "Digital Set-Top Box" business also provides digital broadcast operations including satellite uplinking/downlinking, transmission services, signal processing, conditional access management and other services provided primarily to DISH Network.
- **"Satellite Services" Business**—which uses our nine owned and leased in-orbit satellites and related FCC licenses to lease capacity on a full time and occasional-use basis to enterprise, broadcast news and government organizations. We currently lease capacity primarily to DISH Network, and secondarily to government entities, Internet service providers, broadcast news organizations and private enterprise customers.

## ECHOSTAR CORPORATION

## NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

## 12. Segment Reporting (Continued)

The "All Other" category consists of revenue and net income (loss) attributable to EchoStar common stockholders from other operations including our corporate investment portfolio for which segment disclosure requirements do not apply.

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2009	2008	2009	2008
	(In thousands)			
<b>Revenue:</b>				
Digital set-top box	\$ 438,858	\$ 567,434	\$ 1,210,802	\$ 1,490,601
Satellite services	39,774	43,584	121,127	148,401
All other	4,300	5,155	13,698	15,082
Total revenue	<u>\$ 482,932</u>	<u>\$ 616,173</u>	<u>\$ 1,345,627</u>	<u>\$ 1,654,084</u>
<b>Net income (loss) attributable to EchoStar common shareholders:</b>				
Digital set-top box	\$ (2,744)	\$ (6,919)	\$ (21,319)	\$ (13,598)
Satellite services	(2,431)	(4,966)	(5,866)	(16,832)
All other	299,115	(296,045)	422,294	(223,975)
Total net income (loss) attributable to EchoStar common shareholders	<u>\$ 293,940</u>	<u>\$ (307,930)</u>	<u>\$ 395,109</u>	<u>\$ (254,405)</u>

**Geographic Information and Transactions with Major Customers**

**Geographic Information.** Revenues are attributed to geographic regions based upon the location where the sale originated. United States revenue includes transactions with both United States and international customers. All other revenue includes transactions with customers in Europe, Africa, South America, and the Middle East. The following table summarizes total long-lived assets and revenue attributed to the United States and foreign locations.

	United States	All Other	Total
	(In thousands)		
<b>Long-lived assets, including FCC authorizations:</b>			
As of September 30, 2009	<u>\$ 1,263,302</u>	<u>\$ 132,913</u>	<u>\$ 1,396,215</u>
As of December 31, 2008	<u>\$ 1,340,229</u>	<u>\$ 96,772</u>	<u>\$ 1,437,001</u>
<b>Revenue:</b>			
For the nine months ended September 30, 2009	<u>\$ 1,317,707</u>	<u>\$ 27,920</u>	<u>\$ 1,345,627</u>
For the nine months ended September 30, 2008	<u>\$ 1,580,585</u>	<u>\$ 73,499</u>	<u>\$ 1,654,084</u>

## ECHOSTAR CORPORATION

## NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

## 12. Segment Reporting (Continued)

**Transactions with Major Customers.** The following table summarizes sales to our major customers for the three and nine months ended September 30, 2009 and 2008 and their respective percentage of total revenue.

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2009	2008	2009	2008
	(In thousands)			
<b>Total revenue:</b>				
DISH Network	\$ 404,275	\$ 553,063	\$ 1,120,247	\$ 1,411,285
Bell TV	50,459	41,910	149,420	151,710
Other	28,198	21,200	75,960	91,089
Total revenue	<u>\$ 482,932</u>	<u>\$ 616,173</u>	<u>\$ 1,345,627</u>	<u>\$ 1,654,084</u>
<b>Percentage of total revenue:</b>				
DISH Network	<u>83.7%</u>	<u>89.8%</u>	<u>83.3%</u>	<u>85.3%</u>
Bell TV	<u>10.4%</u>	<u>6.8%</u>	<u>11.1%</u>	<u>9.2%</u>

## 13. Related Party Transactions

## Related Party Transactions with DISH Network

Following the Spin-off, we and DISH Network have operated as separate public companies and DISH Network has no ownership interest in us. However, a substantial majority of the voting power of the shares of both companies is owned beneficially by our Chairman, President and Chief Executive Officer, Charles W. Ergen or by certain trusts established by Mr. Ergen for the benefit of his family.

In connection with the Spin-off, we and DISH Network entered into certain transitional services and other agreements pursuant to which we obtain certain services and rights from DISH Network, DISH Network obtains certain services and rights from us, and we and DISH Network have indemnified each other against certain liabilities arising from our respective businesses. Subsequent to the Spin-off, we have entered into certain agreements with DISH Network and may enter into additional agreements with DISH Network in the future. The following is a summary of the terms of the principal agreements that we have entered into with DISH Network that have an impact on our results of operations.

In the near term, we expect that DISH Network will remain our principal customer. However, except as otherwise noted below, DISH Network has no obligation to purchase digital set-top boxes, satellite services or digital broadcast operation services from us after January 1, 2011 because these services are provided pursuant to contracts that generally expire on that date. Therefore, if we are unable to extend these contracts on similar terms with DISH Network, or if we are otherwise unable to obtain similar contracts from third parties before that date, there could be a significant adverse effect on our business, results of operations and financial position.

ECHOSTAR CORPORATION

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

**13. Related Party Transactions (Continued)**

Generally, the prices charged for products and services provided under the agreements entered into in connection with the Spin-off are based on our cost plus a fixed margin, which varies depending on the nature of the products and services provided.

**"Equipment revenue—DISH Network"**

*Receiver Agreement.* We entered into a receiver agreement pursuant to which DISH Network has the right but not the obligation to purchase digital set-top boxes, related accessories, and other equipment from us for a two year period ending on January 1, 2010. DISH Network has the right, but not the obligation, to extend the receiver agreement annually for up to two years. DISH Network has exercised its right to renew this agreement for an additional year. The receiver agreement allows DISH Network to purchase digital set-top boxes, related accessories, and other equipment from us at cost plus a fixed margin, which varies depending on the nature of the equipment purchased. We provide DISH Network with standard manufacturer warranties for the goods sold under the receiver agreement. DISH Network may terminate the receiver agreement for any reason upon sixty days written notice. We may terminate this agreement if certain entities were to acquire DISH Network. The receiver agreement also includes an indemnification provision, whereby the parties will indemnify each other for certain intellectual property matters.

**"Services and other revenue—DISH Network"**

*Broadcast Agreement.* We entered into a broadcast agreement pursuant to which DISH Network receives broadcast services, including teleport services such as transmission and downlinking, channel origination services, and channel management services from us for a two year period ending on January 1, 2010. DISH Network has the right, but not the obligation, to extend the broadcast agreement annually for up to two years. DISH Network has exercised its right to renew this agreement for an additional year. DISH Network may terminate channel origination services and channel management services for any reason and without any liability upon sixty days written notice to us. If DISH Network terminates teleport services for a reason other than our breach, DISH Network must pay us a sum equal to the aggregate amount of the remainder of the expected cost of providing the teleport services.

*Satellite Capacity Agreements.* We entered into satellite capacity agreements pursuant to which a DISH Network subsidiary leases satellite capacity on satellites owned or leased by us. The fees for the services to be provided under the satellite capacity agreements are based on spot market prices for similar satellite capacity and depend, among other things, upon the orbital location of the satellite and the frequency on which the satellite provides services. Generally, each satellite capacity agreement will terminate upon the earlier of: (i) the end of life or replacement of the satellite; (ii) the date the satellite fails; (iii) the date that the transponder on which service is being provided under the agreement fails; or (iv) January 1, 2010. We expect to enter into agreements pursuant to which DISH Network will continue to lease satellite capacity on certain satellites owned or leased by us after January 1, 2010.

*Nimiq 5 Lease Agreement.* During March 2008, we entered into a fifteen-year satellite service agreement with Bell TV, to receive service on 16 DBS transponders on the Nimiq 5 satellite at the

## ECHOSTAR CORPORATION

## NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

**13. Related Party Transactions (Continued)**

72.7 degree orbital location (the "Bell Transponder Agreement"). During September 2009, we entered into a fifteen-year satellite service agreement with Telesat Canada ("Telesat") to receive service on all 32 DBS transponders on the Nimiq 5 satellite (the "Telesat Transponder Agreement"). As disclosed in our Current Report on Form 8-K filed September 18, 2009, upon the occurrence of certain events, the Bell Transponder Agreement would terminate and the Telesat Transponder Agreement would become effective. As of October 8, 2009, the Bell Transponder Agreement terminated and the Telesat Transponder Agreement became effective. The Nimiq 5 satellite was placed into service on October 10, 2009.

During March 2008, we also entered into a satellite service agreement ("DISH Bell Agreement") with DISH Network L.L.C. ("DISH L.L.C."), a wholly-owned subsidiary of DISH Network, pursuant to which DISH L.L.C. would receive service from us on all of the DBS transponders covered by the Bell Transponder Agreement. DISH Network guaranteed certain of our obligations under the Bell Transponder Agreement. During September 2009, we also entered into a satellite service agreement (the "DISH Telesat Agreement") with DISH L.L.C., pursuant to which DISH L.L.C. will receive service from us on all of the DBS transponders covered by the Telesat Transponder Agreement. DISH Network has also guaranteed certain of our obligations under the Telesat Transponder Agreement. As disclosed in our Current Report on Form 8-K filed September 18, 2009, upon the occurrence of certain events, the DISH Bell Agreement and DISH Network's guarantee of certain of our obligations under the Bell Transponder Agreement would terminate and the DISH Telesat Agreement and DISH Network's guarantee of certain of our obligations under the Telesat Transponder Agreement would become effective. As of October 8, 2009, the DISH Bell Agreement and associated guarantee terminated and the DISH Telesat Agreement and associated guarantee became effective.

Under the terms of the DISH Telesat Agreement, DISH L.L.C. will make certain monthly payments to us that commenced when the Nimiq 5 satellite was placed into service and continue through the service term. Unless earlier terminated under the terms and conditions of the DISH Telesat Agreement, the service term will expire ten years following the date it was placed in service. Upon expiration of the initial term DISH L.L.C. has the option to renew the DISH Telesat Agreement on a year-to-year basis through the end-of-life of the Nimiq 5 satellite. Upon in-orbit failure or end-of-life of the Nimiq 5 satellite, and in certain other circumstances, DISH L.L.C. has certain rights to receive service from us on a replacement satellite.

*QuetzSat-1 Lease Agreement.* During November 2008, we entered into a ten-year satellite service agreement with SES Latin America S.A. ("SES"), which provides, among other things, for the provision by SES to us of service on 32 DBS transponders on the QuetzSat-1 satellite expected to be placed in service at the 77 degree orbital location. During November 2008, we also entered into a transponder service agreement ("QuetzSat-1 Transponder Agreement") with DISH Network pursuant to which they will receive service from us on 24 of the DBS transponders on QuetzSat-1. The remaining eight DBS transponders on QuetzSat-1 are expected to be used by DISH Mexico.

Under the terms of the QuetzSat-1 Transponder Agreement, DISH Network will make certain monthly payments to us commencing when the QuetzSat-1 satellite is placed into service and continuing through the service term. Unless earlier terminated under the terms and conditions of the QuetzSat-1 Transponder Agreement, the service term will expire ten years following the actual service commencement date. Upon expiration of the initial term, DISH Network has the option to renew the

ECHOSTAR CORPORATION

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

13. Related Party Transactions (Continued)

QuetzSat-1 Transponder Agreement on a year-to-year basis through the end-of-life of the QuetzSat-1 satellite. Upon a launch failure, in-orbit failure or end-of-life of the QuetzSat-1 satellite, and in certain other circumstances, DISH Network has certain rights to receive service from us on a replacement satellite.

*TT&C Agreement.* We entered into a telemetry, tracking and control ("TT&C") agreement pursuant to which we provide TT&C services to DISH Network and its subsidiaries for a two year period ending on January 1, 2010. DISH Network has the right, but not the obligation, to extend the agreement annually for up to two years. DISH Network has exercised its right to renew this agreement for an additional year. The fees for the services provided under the TT&C agreement are equal to our cost plus a fixed margin which varies depending on the nature of the services provided. DISH Network may terminate the TT&C agreement for any reason upon sixty days prior written notice.

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

*Inverness Lease Agreement.* The lease for certain space at 90 Inverness Circle East in Englewood, Colorado, is for a period of two years ending on January 1, 2010. In August 2009, we and DISH Network agreed to extend this agreement through January 1, 2011.

*Meridian Lease Agreement.* The lease for all of 9601 S. Meridian Blvd. in Englewood, Colorado, is for a period of two years ending on January 1, 2010 with annual renewal options for up to three additional years. DISH Network has exercised its right to renew this agreement for an additional year.

*Santa Fe Lease Agreement.* The lease for all of 5701 S. Santa Fe Dr. in Littleton, Colorado, is for a period of two years ending on January 1, 2010 with annual renewal options for up to three additional years. DISH Network has exercised its right to renew this agreement for an additional year.

*Gilbert Lease Agreement.* The lease for certain space at 801 N. DISH Dr. in Gilbert, Arizona, is for a period of two years ending on January 1, 2010 with annual renewal options for up to three additional years. We do not expect to renew this agreement.

*EDN Sublease Agreement.* The sublease for certain space at 211 Perimeter Center in Atlanta, Georgia, is for a period of three years ending on April 30, 2011.

## ECHOSTAR CORPORATION

## NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

**13. Related Party Transactions (Continued)**

*Product Support Agreement.* We entered into a product support agreement pursuant to which DISH Network has the right, but not the obligation, to receive product support (including certain engineering and technical support services) for all digital set-top boxes and related accessories that our subsidiaries have previously sold and in the future may sell to DISH Network. The fees for the services provided under the product support agreement are equal to our cost plus a fixed margin, which varies depending on the nature of the services provided. The term of the product support agreement is the economic life of such receivers and related accessories, unless terminated earlier. DISH Network may terminate the product support agreement for any reason upon sixty days prior written notice. In the event of an early termination of this agreement, DISH Network shall be entitled to a refund of any unearned fees paid to us for the services.

*Satellite Procurement Agreement.* We entered into a satellite procurement agreement pursuant to which DISH Network has the right, but not the obligation, to engage us to manage the process of procuring new satellite capacity for DISH Network. The satellite procurement agreement has a two year term expiring on January 1, 2010. The fees for the services to be provided under the satellite procurement agreement are equal to our cost plus a fixed margin, which varies depending on the nature of the services provided. DISH Network may terminate the satellite procurement agreement for any reason upon sixty days prior written notice. We and DISH Network have agreed that following January 1, 2010, DISH Network will continue to have the right, but not the obligation, to engage us to manage the process of procuring new satellite capacity for DISH Network pursuant to a Professional Services Agreement between us and DISH Network for a one-year period and for successive one-year periods thereafter; however, DISH Network may terminate these services upon thirty days notice and either party may terminate the Professional Services Agreement upon sixty days prior written notice.

*Services Agreement.* We entered into a services agreement pursuant to which DISH Network has the right, but not the obligation, to receive logistics, procurement and quality assurance services from us. The fees for the services provided under this services agreement are equal to our cost plus a fixed margin, which varies depending on the nature of the services provided. This agreement has a term of two years ending on January 1, 2010. DISH Network may terminate the services agreement with respect to a particular service for any reason upon sixty days prior written notice. We and DISH Network have agreed that following January 1, 2010, DISH Network will continue to have the right, but not the obligation, to receive from us the services previously provided under the services agreement pursuant to a Professional Services Agreement between us and DISH Network for a one-year period and for successive one-year periods thereafter; however, DISH Network may terminate these services upon thirty days notice and either party may terminate the Professional Services Agreement upon sixty days prior written notice.

**"General and administrative expenses—DISH Network"**

*Management Services Agreement.* We entered into a management services agreement with DISH Network pursuant to which DISH Network makes certain of its officers available to provide services (which are primarily legal and accounting services) to EchoStar. Specifically, Bernard L. Han, R. Stanton Dodge and Paul W. Orban remain employed by DISH Network, but serve as EchoStar's Executive Vice President and Chief Financial Officer, Executive Vice President and General Counsel, and Senior Vice President and Controller, respectively. Effective March 30, 2009, Carl E. Vogel



**ECHOSTAR CORPORATION****NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)****(Unaudited)****13. Related Party Transactions (Continued)**

resigned from the board of directors of EchoStar and from his position as Senior Advisor of EchoStar and its subsidiaries. We make payments to DISH Network based upon an allocable portion of the personnel costs and expenses incurred by DISH Network with respect to such DISH Network officers (taking into account wages and fringe benefits). These allocations are based upon the estimated percentages of time to be spent by the DISH Network executive officers performing services for us under the management services agreement. We also reimburse DISH Network for direct out-of-pocket costs incurred by DISH Network for management services provided to us. We and DISH Network evaluate all charges for reasonableness at least annually and make any adjustments to these charges as we and DISH Network mutually agree upon.

The management services agreement is for a one year period commencing on January 1, 2008, and will be renewed automatically for successive one-year periods thereafter, unless terminated earlier (i) by us at any time upon at least 30 days' prior written notice, (ii) by DISH Network at the end of any renewal term, upon at least 180 days' prior notice; or (iii) by DISH Network upon written notice to us, following certain changes in control. The management services agreement was automatically renewed for an additional one year term through December 31, 2010.

*Real Estate Lease Agreement.* During 2008, we entered into an agreement to sublease space at 185 Varick Street, New York, New York from DISH Network for a period of approximately seven years. The rent on a per square foot basis for this sublease was comparable to per square foot rental rates of similar commercial property in the same geographic area at the time of the sublease, and we are responsible for our portion of the taxes, insurance, utilities and maintenance of the premises.

*Transition Services Agreement.* We entered into a transition services agreement with DISH Network pursuant to which we have the right, but not the obligation, to receive the following services from DISH Network: finance, information technology, benefits administration, travel and event coordination, human resources, human resources development (training), program management, internal audit, legal, accounting and tax, and other support services. The fees for the services provided under the transition services agreement are equal to cost plus a fixed margin, which varies depending on the nature of the services provided. The transition services agreement has a term of two years, ending on January 1, 2010. We may terminate the transition services agreement with respect to a particular service for any reason upon thirty days prior written notice. We and DISH Network have agreed that following January 1, 2010 we will continue to have the right, but not the obligation, to receive certain of the services previously provided by DISH Network under the transition services agreement pursuant to a Professional Services Agreement between us and DISH Network for a one-year period and for successive one-year periods thereafter; however, we may terminate these services upon thirty days notice and either party may terminate the Professional Services Agreement upon sixty days prior written notice.

***Other Agreements—DISH Network***

*Packout Services Agreement.* We entered into a packout services agreement, whereby we have the right, but not the obligation, to engage a DISH Network subsidiary to package and ship satellite receivers to customers that are not associated with DISH Network or its subsidiaries. The fees charged by DISH Network for the services provided under the packout services agreement are equal to cost

## ECHOSTAR CORPORATION

## NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

**13. Related Party Transactions (Continued)**

plus a fixed margin, which varies depending on the nature of the services provided. The original one year term of the packout services agreement, which expired on January 1, 2009, was extended for an additional one year. We may terminate this agreement for any reason upon sixty days prior written notice to DISH Network. In the event of an early termination of this agreement, we will be entitled to a refund of any unearned fees paid to DISH Network for the services. We do not expect to renew this agreement.

*Remanufactured Receiver Agreement.* We entered into a remanufactured receiver agreement with DISH Network under which we have the right to purchase remanufactured receivers and accessories from DISH Network for a two-year period ending on January 1, 2010. In August 2009, we and DISH Network agreed to extend this agreement through January 1, 2011. Under the remanufactured receiver agreement, we have the right, but not the obligation, to purchase remanufactured receivers and accessories from DISH Network at cost plus a fixed margin, which varies depending on the nature of the equipment purchased. We may terminate the remanufactured receiver agreement for any reason upon sixty days written notice to DISH Network.

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

*Tivo.* Because both we and DISH Network are defendants in the Tivo lawsuit, we and DISH Network are jointly and severally liable to Tivo for any final damages and sanctions that may be awarded by the Court. DISH Network has agreed that it is obligated under the agreements entered into in connection with the Spin-off to indemnify us for substantially all liability arising from this lawsuit. We have agreed to contribute an amount equal to our \$5 million intellectual property liability limit under the Receiver Agreement. We and DISH Network have further agreed that our \$5 million contribution would not exhaust our liability to DISH Network for other intellectual property claims that may arise under the Receiver Agreement. Therefore, during the second quarter 2009, we recorded a charge included in "General and administrative expenses—DISH Network" on our Condensed Statement of Operations and Comprehensive Income (Loss) of \$5 million to reflect this contribution. We and DISH Network also agreed that we would each be entitled to joint ownership of, and a cross-

## ECHOSTAR CORPORATION

## NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)

(Unaudited)

**13. Related Party Transactions (Continued)**

license to use, any intellectual property developed in connection with any potential new alternative technology.

**Other Agreements**

On November 4, 2009, Mr. Roger Lynch, became employed by both us and DISH Network as Executive Vice President. Mr. Lynch will report to Mr. Ergen and will be responsible for the development and implementation of advanced technologies that are of potential utility and importance to both us and DISH Network. Mr. Lynch's compensation will consist of cash and equity compensation and will be borne by both DISH Network and us.

**Related Party Transactions with NagraStar**

We own 50% of NagraStar L.L.C. ("NagraStar"), a joint venture that is our primary provider of encryption and related security technology used in our set-top boxes. Although we do not consolidate NagraStar, we have the ability to significantly influence its operating policies; therefore, we account for our investment in NagraStar under the equity method of accounting.

The table below summarizes our transactions with NagraStar.

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2009	2008	2009	2008
	(In thousands)			
<b>Purchases:</b>				
Purchases from NagraStar	\$ 14,777	\$ 12,590	\$ 35,250	\$ 32,523

	As of	
	September 30, 2009	December 31, 2008
	(In thousands)	
<b>Amounts Payable and Commitments:</b>		
Amounts payable to NagraStar	\$ 41,362	\$ 32,504
Commitments to purchase from NagraStar during 2009	\$ 31,539	\$ 29,151

**Related Party Transactions with DISH Mexico**

During November 2008, we entered into a joint venture for a direct-to-home, or DTH, service in Mexico known as DISH Mexico, S. de R.L. de C.V., or DISH Mexico. Pursuant to these arrangements, we provide certain broadcast services and satellite capacity and sell hardware such as digital set-top boxes and related equipment to DISH Mexico. Subject to a number of conditions, including regulatory approvals and compliance with various other arrangements, we committed to provide approximately \$112 million of value over an initial ten year period, of which \$59 million has been satisfied in the form of cash, equipment and services, leaving \$53 million remaining under this commitment. Of the remaining commitment, approximately \$27 million is expected to be paid in cash and the remaining

**ECHOSTAR CORPORATION**

**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

**(Unaudited)**

**13. Related Party Transactions (Continued)**

amounts may be satisfied in the form of certain services or equipment. During the three and nine months ended September 30, 2009, we sold \$6 million and \$11 million, respectively, of set-top boxes and related accessories to DISH Mexico that are not related to the original commitment associated with our investment in DISH Mexico. As of September 30, 2009, amounts receivable from DISH Mexico totaled \$1 million.

**Related Party Transactions with a Taiwanese Joint Venture**

During June of 2009, we entered into an agreement to form a Taiwanese joint venture, for a DTH service in Taiwan and certain other targeted regions in Asia. Pursuant to these arrangements, we sell hardware such as digital set-top boxes and provide certain technical support services. Subject to a number of conditions, including regulatory approvals and entry into various other arrangements, we committed to provide \$18 million of cash, of which \$8 million has been deposited into an escrow account to be used for ongoing expenses until the final regulatory approvals are received, and an \$18 million line of credit that the joint venture may only use to purchase set-top boxes from us. As of September 30, 2009, no amounts have been drawn on the line of credit.

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

*You should read the following discussion and analysis of our financial condition and results of operations together with the condensed consolidated financial statements and notes to the financial statements included elsewhere in this quarterly report. This management's discussion and analysis is intended to help provide an understanding of our financial condition, changes in financial condition and results of our operations and contains forward-looking statements that involve risks and uncertainties. The forward-looking statements are not historical facts, but rather are based on current expectations, estimates, assumptions and projections about our industry, business and future financial results. Our actual results could differ materially from the results contemplated by these forward-looking statements due to a number of factors, including those discussed in our Annual Report on Form 10-K for the year ended December 31, 2008 and this Quarterly Report on Form 10-Q, under the caption "Item 1A. Risk Factors."*

### EXECUTIVE SUMMARY

#### Overview

Effective January 1, 2008, DISH Network Corporation ("DISH Network") completed its distribution to us (the "Spin-off") of its set-top box business and certain infrastructure and other assets, including certain of its satellites, uplink and satellite transmission assets, real estate and other assets and related liabilities. We currently operate two primary business units: (i) our "Digital Set-Top Box" business, and (ii) our "Satellite Services" business.

#### "Digital Set-Top Box" Business

Our "Digital Set-Top Box" business designs, develops and distributes digital set-top boxes and related products and technology, including our Slingbox "placeshifting" technology, primarily for satellite TV service providers, telecommunication and cable companies and, with respect to Slingboxes, directly to consumers via retail outlets. Most of our digital set-top boxes are sold to DISH Network, but we also sell a significant number of digital set-top boxes to Bell TV in Canada, DISH Mexico and other international customers. As part of the Spin-off, DISH Network contributed Sling Media, Inc., a leading innovator in the digital-lifestyle space to us, to complement our existing product line. Slingbox "placeshifting" technology allows consumers to watch and control their home digital video and audio content anywhere in the world via a broadband Internet connection.

Our "Digital Set-Top Box" business also provides digital broadcast operations including satellite uplinking/downlinking, transmission services, signal processing, conditional access management and other services provided primarily to DISH Network.

We believe opportunities exist to expand our business by selling equipment and services in both the United States and international markets. As a result of our extensive experience with digital set-top boxes and digital broadcast operations, we can provide end-to-end pay TV delivery systems incorporating our satellite and backhaul capacity, customized digital set-top boxes and related components, and network design and management.

During November 2008, we entered into a joint venture for a direct-to-home, or DTH, service in Mexico known as DISH Mexico, S. de R.L. de C.V., or DISH Mexico. Pursuant to these arrangements, we provide certain broadcast services and satellite capacity and sell hardware such as digital set-top boxes and related equipment to DISH Mexico. Subject to a number of conditions, including regulatory approvals and compliance with various other arrangements, we committed to provide approximately \$112 million of value over an initial ten year period, of which \$59 million has been satisfied in the form of cash, equipment and services, leaving \$53 million remaining under this commitment. Of the

**Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS (Continued)**

remaining commitment, approximately \$27 million is expected to be paid in cash and the remaining amounts may be satisfied in the form of certain services or equipment. During the three and nine months ended September 30, 2009, we sold \$6 million and \$11 million, respectively, of set-top boxes and related accessories to DISH Mexico that are not related to the original commitment associated with our investment in DISH Mexico. As of September 30, 2009, amounts receivable from DISH Mexico totaled \$1 million.

During June of 2009, we entered into an agreement to form a Taiwanese joint venture, for a DTH service in Taiwan and certain other targeted regions in Asia. Pursuant to these arrangements, we sell hardware such as digital set-top boxes and provide certain technical support services. Subject to a number of conditions, including regulatory approvals and entry into various other arrangements, we committed to provide \$18 million of cash, of which \$8 million has been deposited into an escrow account to be used for ongoing expenses until the final regulatory approvals are received, and an \$18 million line of credit that the joint venture may only use to purchase set-top boxes from us. As of September 30, 2009, no amounts have been drawn on the line of credit.

**Dependence on DISH Network.** We currently depend on DISH Network for a substantial portion of the revenue for our "Digital Set-Top Box" business and we expect for the foreseeable future that DISH Network will continue to be the primary source of revenue for each of our businesses. Therefore, our results of operations are and will for the foreseeable future be closely linked to the performance of DISH Network's satellite pay-TV business. In addition, because the number of potential new customers for our "Digital Set-Top Box" business is small and may be limited by our common ownership and related management with DISH Network, our current customer concentration is likely to continue for the foreseeable future.

Changes in DISH Network subscriber growth could have a material adverse affect on our digital set-top box sales. In particular, weaknesses in the economy and other factors adversely affecting DISH Network, such as the decision by AT&T to terminate its distribution agreement with DISH Network effective January 31, 2009, may have an adverse impact on us. According to DISH Network's Form 10-K for the year ended December 31, 2008, its relationship with AT&T accounted for approximately 17% of DISH Network's gross subscriber additions. Furthermore, to the extent that DISH Network subscriber growth decreases as a result of weakened economic conditions in the United States or otherwise, sales of our digital set-top boxes to DISH Network may decline.

The impact to us of any weakening of DISH Network subscriber growth may be offset over the near term by an increase in sales to DISH Network resulting from the upgrade of DISH Network subscribers to advanced products such as high definition ("HD") receivers, digital video recorders ("DVRs") and HD DVRs, as well as by the upgrade of DISH Network digital set-top boxes to new technologies such as MPEG-4 digital compression technology or Slingbox placeshifting technology. However, there can be no assurance that any of these factors will mitigate any weakening of subscriber growth at DISH Network. In addition, although we expect DISH Network to continue to purchase products and services from us, there can be no assurance that DISH Network will continue to purchase products and services from us in the future.

We may experience significant pressure on margins we earn on the sale of digital set-top boxes and other equipment, including on sales to DISH Network. This pressure may be due to current economic conditions, advancements in the technology and functionality of digital set-top boxes and other equipment. The margins we earn on sales are determined largely through periodic negotiations that could result in pricing reflecting, among other things, the digital set-top boxes and other equipment that best meet our customers' current sales and marketing priorities, the product and service

**Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS (Continued)**

alternatives available from other equipment suppliers, and our ability to respond to customer requirements and to differentiate ourselves from other equipment suppliers on bases other than pricing.

Our future success may also depend on the extent to which prospective customers that have been competitors of DISH Network are willing to purchase products and services from us. Many of these customers may continue to view us as a competitor as a result of common ownership and related management with DISH Network. If we do not develop relationships with new customers, we may not be able to expand our customer base and our ability to increase or even maintain our revenue will be impacted.

**Additional Challenges for our "Digital Set-Top Box" Business.** We believe that our best opportunities for developing potential new customers for our "Digital Set-Top Box" business over the near term lie in international markets, and we therefore expect our performance in international markets to be a significant factor in determining whether we will be able to generate revenue and income growth in future periods. However, there can be no assurance that we will be able to sustain or grow our international business. In particular, we have noticed an increase in new market entrants, primarily located in Asia, that offer low cost set-top boxes, including set-top boxes that are modeled after our products or products of our principal competitors. The entry of these new competitors may result in pricing pressure in international markets that we hope to enter. If market prices in international markets are substantially reduced by such new entrants, it may be difficult for us to make profitable sales in international markets.

Furthermore, if we do not continue to distinguish our products through distinctive, technologically advanced features and design, as well as continue to build and strengthen our brand recognition, our business could be harmed as we may not be able to effectively compete on price alone in both domestic and international markets against low cost competitors that are principally located in Asia. If we do not otherwise compete effectively, demand for our products could decline, our gross margins could decrease, we could lose market share, our revenues and earnings may decline and our growth prospects would be diminished.

The current economic downturn and tightened credit markets may cause certain suppliers that we rely on to cease operations which, in turn, may cause us to suffer disruptions to our supply chain or incur higher production costs.

Our ability to sustain or increase profitability will also depend in large part on our ability to control or reduce our costs of producing digital set-top boxes. The market for our digital set-top boxes, like other electronic products, has been characterized by regular reductions in selling prices and production costs. Therefore, we will likely be required to reduce production costs in order to maintain the margins we earn on digital set-top boxes and the profitability of our "Digital Set-Top Box" business. Our ability to reduce production costs could be impacted by the current economic conditions which could cause inflated pricing as a result of a shortage of available parts.

**"Satellite Services" Business**

Our satellite services segment consists principally of transponder leasing provided primarily to DISH Network, and secondarily to government entities, Internet service providers, broadcast news organizations and private enterprise customers. We also deliver our ViP-TV transport service, offering MPEG-4 encoded Internet Protocol, or IP, streams of video and audio channels to telecommunication companies and small cable operators. We began operating the "Satellite Services" business following the completion of the Spin-off using our owned and leased in-orbit satellites, multiple digital broadcast

**Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS (Continued)**

centers and other transmission assets. We are also pursuing expanding our business offerings by providing value added services such as telemetry, tracking and control services to third parties. However, there can be no assurance that we will be able to effectively compete against our competitors due to their significant resources and operating history.

The American Recovery and Reinvestment Act of 2009 ("ARRA") has allocated \$7.2 billion to expand access to broadband services. Of this amount, \$2.5 billion is administered by the Rural Utilities Service ("RUS") for deployment of broadband projects in rural, unserved and underserved communities across the United States and \$4.7 billion has been allocated to the National Telecommunications and Information Administration ("NTIA") of the United States Department of Commerce to fund broadband initiatives throughout the U.S, including unserved and underserved areas. During August 2009, we, both individually and jointly with other parties, filed applications for over \$1.1 billion of broadband stimulus funds with the RUS and/or the NTIA. If RUS decides not to fund any of the broadband infrastructure projects that include us as an applicant, NTIA may elect to do so. If either the RUS and/or the NTIA funds any of the broadband infrastructure projects that include us as an applicant, we along with certain co-applicants in some cases, expect to use the funds to help finance project(s) to provide broadband service by satellite. We are also supporting an affiliate of DISH Network for a sustainable broadband project that, if funded, would seek to increase subscribers for broadband service. We cannot be sure that our applications will be granted, or that they will be granted on acceptable terms.

**Dependence on DISH Network.** We currently depend on DISH Network for a substantial portion of the revenue for our "Satellite Services" business. Therefore, our results of operations are and will for the foreseeable future be closely linked to the performance of DISH Network's satellite pay-TV business.

While we expect to continue to provide satellite services to DISH Network for the foreseeable future, its satellite capacity requirements may change for a variety of reasons, including the launch of its own additional satellites. Any termination or reduction in the services we provide to DISH Network would increase excess capacity on our satellites and require that we aggressively pursue alternative sources of revenue for this business.

During September 2009, we entered into a ten-year satellite service agreement with DISH Network for capacity on the Nimiq 5 satellite. Pursuant to this agreement, DISH Network will receive service from us on all 32 of the DBS transponders covered by our transponder contract with Telesat. DISH Network began receiving service on 16 of these DBS transponders upon service commencement of the satellite on October 10, 2009 and will receive service on the remaining 16 DBS transponders over a phase-in period that will be completed in 2012.

In addition, because the number of potential new customers for our "Satellite Services" business is small and may be limited by our relationship with DISH Network, our current customer concentration is likely to continue for the foreseeable future. Our future success may also depend on the extent to which prospective customers that have been competitors of DISH Network are willing to purchase services from us. Many of these customers may continue to view us as a competitor given the common ownership and management team we continue to share with DISH Network.

**Additional Challenges for our "Satellite Services" Business.** Our ability to expand revenues in the "Satellite Services" business will likely require that we displace incumbent suppliers that generally have well established business models and often benefit from long-term contracts with customers. As a result, in order to grow our "Satellite Services" business we may need to develop or otherwise acquire



**Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS (Continued)**

access to new satellite-delivered services so that we may offer customers differentiated services. In addition, as our satellite fleet ages, we will be required to evaluate replacement alternatives such as acquiring, leasing or constructing additional satellites, with or without customer commitments for capacity.

However, there can be no assurance that we would be able to develop successful alternative services or the sales and marketing expertise necessary to sell these services profitably.

**Adverse Economic Conditions**

Our ability to grow or maintain our business may be adversely affected by weakened global and domestic economic conditions, including wavering consumer confidence and constraints on discretionary purchasing, unemployment, tight credit markets, declines in global and domestic stock markets, falling home prices and other factors that may adversely affect the markets in which we operate. Our ability to increase our income or to generate additional revenues will depend in part on our ability to organically grow our business, identify and successfully exploit opportunities to acquire other businesses or technologies, and enter into strategic partnerships. These activities may require significant additional capital that may not be available on terms that would be attractive to us or at all. In particular, current dislocations in the credit markets, which have significantly impacted the availability and cost of financing, specifically in the leveraged finance markets, may significantly constrain our ability to obtain financing to support our growth initiatives. These developments in the credit markets may increase our cost of financing and impair our liquidity position. In addition, these developments may cause us to defer or abandon business strategies and transactions that we would otherwise pursue if financing were available on acceptable terms.

Furthermore, unfavorable events in the economy, including continued or further deterioration in the credit and equity markets could cause consumer demand for pay-TV services and consequently sales of our digital set-top boxes to DISH Network, Bell TV and other international customers to decline materially because consumers may delay purchasing decisions or reduce or reallocate their discretionary spending.

**Future Capital Sources**

We primarily rely on our existing cash and marketable investment securities balances, as well as cash flow generated through operations to fund our investment needs. Since we currently depend on DISH Network for a substantial portion of our revenue, our cash flow from operations depend heavily on their needs for equipment and services. As a result, there can be no assurances that we will always have positive cash flows from operations and should our cash flows turn negative, our existing cash and marketable investment securities balances may be reduced. In addition, if we are unsuccessful in overturning the District Court's ruling on Tivo's motion for contempt, we are not successful in developing and deploying potential new alternative technology and we are unable to reach a license agreement with Tivo on reasonable terms, we would be required to cease distribution of digital set-top boxes with DVR functionality. In that event, our sales of digital set-top boxes to DISH Network and others would likely significantly decrease and could even potentially cease for a period of time. Furthermore, the inability to offer DVR functionality would place us at a significant disadvantage to our competitors and make it even more difficult for us to penetrate new markets for digital set-top boxes. The adverse effect on our financial position and results of operations if the District Court's contempt order is upheld is likely to be significant.

**Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS (Continued)**

If we are successful in overturning the District Court's ruling on Tivo's motion for contempt, but unsuccessful in defending against any subsequent claim that our original alternative technology or any potential new alternative technology infringes Tivo's patent, we could be prohibited from distributing DVRs. In that event we would be at a significant disadvantage to our competitors who could continue offering DVR functionality and the adverse effect on our business could be material.

Because both we and DISH Network are defendants in the Tivo lawsuit, we and DISH Network are jointly and severally liable to Tivo for any final damages and sanctions that may be awarded by the Court. DISH Network has agreed that it is obligated under the agreements entered into in connection with the Spin-off to indemnify us for substantially all liability arising from this lawsuit. We have agreed to contribute an amount equal to our \$5 million intellectual property liability limit under the Receiver Agreement. We and DISH Network have further agreed that our \$5 million contribution would not exhaust our liability to DISH Network for other intellectual property claims that may arise under the Receiver Agreement. Therefore, during the second quarter of 2009, we recorded a charge included in "General and administrative expenses—DISH Network" on our Condensed Statement of Operations and Comprehensive Income (Loss) of \$5 million to reflect this contribution. We and DISH Network also agreed that we would each be entitled to joint ownership of, and a cross-license to use, any intellectual property developed in connection with any potential new alternative technology.

Because we are jointly and severally liable with DISH Network, to the extent that DISH Network does not or is unable to pay any damages or sanctions arising from this lawsuit, we would then be liable for any portion of these damages and sanctions not paid by DISH Network. Any amounts that DISH Network may be required to pay could impair its ability to pay us and also negatively impact our future liquidity.

If we become liable for any portion of these damages or sanctions, we may be required to raise additional capital at a time and in circumstances in which we would normally not raise capital. Therefore, any capital we raise may be on terms that are unfavorable to us, which might adversely affect our financial position and results of operations and might also impair our ability to raise capital on acceptable terms in the future to fund our own operations and initiatives.

**Other Risks**

Our profitability is affected by our marketable investment securities accounted for at fair value, which had a fair value of \$483 million and \$108 million as of September 30, 2009 and December 31, 2008, respectively. The fluctuations in fair value of these investments are recorded in "Unrealized gains (losses) on investments accounted for at fair value, net" on our Statement of Operations and Comprehensive Income (Loss) directly impacting our profitability. For the nine months ended September 30, 2009, we recorded a \$349 million gain on these investments compared to a \$147 million loss for the same period in 2008. These investments are highly speculative and have experienced and continue to experience significant volatility. The fair value of these investments can be significantly impacted by the risk of adverse changes in securities markets generally, as well as risks related to the performance of the company whose securities we have invested in, their ability to obtain sufficient capital to execute their business plans, risks associated with their specific industries, and other factors.

**Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS (Continued)**

Our profitability is also affected by costs associated with our efforts to expand our sales, marketing, product development and general and administrative capabilities in all of our businesses, as well as other expenses that we incur as a separate publicly-traded company. These costs are associated with, among other things, financial reporting, information technology, complying with federal securities laws (including compliance with the Sarbanes-Oxley Act of 2002), tax administration and human resources related functions. As we expand internationally, we may also incur additional costs to conform our digital set-top boxes to comply with local laws or local specifications and to ship our digital set-top boxes to our international customers.

**EXPLANATION OF KEY METRICS AND OTHER ITEMS**

**Equipment revenue—DISH Network.** "Equipment revenue—DISH Network" primarily includes sales of digital set-top boxes and related components to DISH Network, including Slingboxes and related hardware products.

**Equipment revenue—other.** "Equipment revenue—other" primarily includes sales of digital set-top boxes and related components to Bell TV, DISH Mexico and other international customers, including sales of Slingboxes and related hardware products.

**Services and other revenue—DISH Network.** "Services and other revenue—DISH Network" primarily includes revenue associated with satellite and transponder leasing, satellite uplinking/downlinking, signal processing, conditional access management, telemetry, tracking and control, professional services, facilities rental revenue and other services provided to DISH Network.

**Services and other revenue—other.** "Services and other revenue—other" primarily includes revenue associated with satellite and transponder leasing, satellite uplinking/downlinking and other services provided to customers other than DISH Network.

**Cost of sales—equipment.** "Cost of sales—equipment" principally includes costs associated with digital set-top boxes and related components sold to DISH Network, Bell TV, DISH Mexico and other international customers, including costs associated with Slingboxes and related hardware products.

**Cost of sales—services and other.** "Cost of sales—services and other" principally includes costs associated with satellite and transponder leasing, satellite uplinking/downlinking, signal processing, conditional access management, telemetry, tracking and control, professional services, facilities rental revenue, and other services.

**Research and development expenses.** "Research and development expenses" consist primarily of costs associated with the design and development of our digital set-top boxes, Slingboxes and related components, including among other things, salaries and consulting fees.

**Selling, general and administrative expenses.** "Selling, general and administrative expenses" consists primarily of selling and marketing costs and employee-related costs associated with administrative services (i.e., information systems, human resources and other services), including non-cash, stock-based compensation expense. It also includes professional fees (i.e., legal, information systems and accounting services) and other items associated with facilities and administration provided by DISH Network and other third parties.

**Impairments of goodwill, indefinite-lived and long-lived assets.** "Impairments of goodwill, indefinite-lived and long-lived assets" consists primarily of impairments of goodwill, FCC authorizations and satellites.

**Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS (Continued)**

**Interest income.** "Interest income" consists primarily of interest earned on our cash, cash equivalents and marketable investment securities, including accretion on debt securities.

**Interest expense, net of amounts capitalized.** "Interest expense, net of amounts capitalized" primarily includes interest expense associated with our capital lease obligations.

**Unrealized and realized gains (losses) on marketable investment securities and other investments.** "Unrealized and realized gains (losses) on marketable investment securities and other investments" consists primarily of gains and losses realized on the sale or exchange of investments and "other-than-temporary" impairments of marketable and other investment securities.

**Unrealized gains (losses) on investments accounted for at fair value, net.** "Unrealized gains (losses) on investments accounted for at fair value, net" consists of unrealized gains and losses from changes in fair value of marketable and other strategic investments accounted for at fair value.

**Other, net.** The main component of "Other, net" is primarily equity in earnings and losses of our affiliates.

**Earnings before interest, taxes, depreciation and amortization ("EBITDA").** EBITDA is defined as "Net income (loss) attributable to EchoStar common shareholders" plus "Interest expense" net of "Interest income," "Income taxes" and "Depreciation and amortization." This "non-GAAP measure" is reconciled to "Net income (loss) attributable to EchoStar common shareholders" in our discussion of "Results of Operations" below.

**Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS (Continued)**
**RESULTS OF OPERATIONS**
*Three Months Ended September 30, 2009 Compared to the Three Months Ended September 30, 2008.*

<u>Statements of Operations Data</u>	<b>For the Three Months Ended September 30,</b>		<b>Variance</b>	
	<b>2009</b>	<b>2008</b>	<b>Amount</b>	<b>%</b>
	<b>(In thousands)</b>			
<b>Revenue:</b>				
Equipment revenue—DISH Network	\$ 314,362	\$ 461,675	\$ (147,313)	(31.9)
Equipment revenue—other	68,647	55,110	13,537	24.6
Services and other revenue—DISH Network	89,913	91,388	(1,475)	(1.6)
Services and other revenue—other	10,010	8,000	2,010	25.1
Total revenue	<u>482,932</u>	<u>616,173</u>	<u>(133,241)</u>	<u>(21.6)</u>
<b>Costs and Expenses:</b>				
Cost of sales—equipment	327,522	446,970	(119,448)	(26.7)
<b>% of Total equipment revenue</b>	<b>85.5%</b>	<b>86.5%</b>		
Cost of sales—services and other	47,954	52,670	(4,716)	(9.0)
<b>% of Total services and other revenue</b>	<b>48.0%</b>	<b>53.0%</b>		
Research and development expenses	10,633	7,302	3,331	45.6
<b>% of Total revenue</b>	<b>2.2%</b>	<b>1.2%</b>		
Selling, general and administrative expenses	41,670	37,368	4,302	11.5
<b>% of Total revenue</b>	<b>8.6%</b>	<b>6.1%</b>		
Depreciation and amortization	58,989	69,782	(10,793)	(15.5)
Impairments of goodwill, indefinite-lived and long-lived assets	—	43,193	(43,193)	(100.0)
Total costs and expenses	<u>486,768</u>	<u>657,285</u>	<u>(170,517)</u>	<u>(25.9)</u>
Operating income (loss)	<u>(3,836)</u>	<u>(41,112)</u>	<u>37,276</u>	<u>90.7</u>
<b>Other Income (Expense):</b>				
Interest income	9,757	8,807	950	10.8
Interest expense, net of amounts capitalized	(6,964)	(7,839)	875	11.2
Unrealized and realized gains (losses) on marketable investment securities and other investments	100,458	(110,719)	211,177	NM
Unrealized gains (losses) on investments accounted for at fair value, net	232,359	(150,321)	382,680	NM
Other, net	1,400	(1,706)	3,106	NM
Total other income (expense)	<u>337,010</u>	<u>(261,778)</u>	<u>598,788</u>	<u>NM</u>
Income (loss) before income taxes	333,174	(302,890)	636,064	NM
Income tax (provision) benefit, net	(38,492)	(5,040)	(33,452)	NM
<b>Effective tax rate</b>	<b>11.6%</b>	<b>(1.7)%</b>		
Net income (loss)	294,682	(307,930)	602,612	NM
Less: Net income (loss) attributable to noncontrolling interest	742	—	742	NM
Net income (loss) attributable to EchoStar common shareholders	<u>\$ 293,940</u>	<u>\$ (307,930)</u>	<u>\$ 601,870</u>	<u>NM</u>
<b>Other Data:</b>				
EBITDA	\$ 388,628	\$ (234,076)	\$ 622,704	NM

**Equipment revenue—DISH Network.** "Equipment revenue—DISH Network" totaled \$314 million during the three months ended September 30, 2009, a decrease of \$147 million or 31.9% compared to the same period in 2008. This change related primarily to a 14% decrease in unit sales of set-top boxes and a 24% decline in average revenue per unit resulting from a change in the mix of receivers sold, including a shift towards sales of lower cost models.

**Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS (Continued)**

In the near term, we expect DISH Network to remain the primary customer of our "Digital Set-Top Box" business and the primary source of our total revenue. Pursuant to the commercial agreements we entered into with DISH Network, we are obligated to sell digital set-top boxes to DISH Network at cost plus a fixed margin through January 1, 2011, although DISH Network has no obligation to purchase digital set-top boxes from us during or after this period. In addition, if DISH Network's subscriber growth declines, it may have a material adverse effect on our financial position and results of operations.

**Equipment revenue—other.** "Equipment revenue—other" totaled \$69 million during the three months ended September 30, 2009, an increase of \$14 million or 24.6% compared to the same period in 2008. This change resulted primarily from a \$9 million increase in sales to Bell TV and sales of \$4 million to DISH Mexico. Although the number of units sold to Bell TV increased, the average revenue per unit to Bell TV decreased compared to the same quarter in 2008 due to a change in sales mix and as a result of the February 6, 2009 amendment to our agreement with Bell TV, discussed below. The sales to DISH Mexico are not part of the original commitment associated with our investment in DISH Mexico.

A substantial majority of our international revenue during the three months ended September 30, 2009 was attributable to sales of equipment to Bell TV. In early 2009, we completed a multi-year contract extension with Bell TV that makes us the exclusive provider of certain digital set-top boxes to Bell TV. The agreement includes fixed pricing over the term of the agreement as well as providing future engineering development for enhanced Bell TV service offerings. There can be no assurance that sales to Bell TV will continue at historical levels, and any decline could adversely affect our gross margins and profitability.

**Cost of sales—equipment.** "Cost of sales—equipment" totaled \$328 million during the three months ended September 30, 2009, a decrease of \$119 million or 26.7% compared to the same period in 2008. This change primarily resulted from a decrease in sales to DISH Network, partially offset by an increase in sales to Bell TV and sales to DISH Mexico. "Cost of sales—equipment" represented 85.5% and 86.5% of total equipment sales during the three months ended September 30, 2009 and 2008, respectively. The improvement in the expense to revenue ratio principally resulted from the decrease in the sales to DISH Network, partially offset by an increase in sales to Bell TV and sales to DISH Mexico.

**Cost of sales—services and other.** "Cost of sales—services and other" totaled \$48 million during the three months ended September 30, 2009, a decrease of \$5 million or 9.0% compared to the same period during 2008. "Cost of sales—services and other" represented 48.0% and 53.0% of total "Services and other revenue" during the three months ended September 30, 2009 and 2008, respectively. The overall decrease and the improvement in this expense to revenue ratio were primarily driven by a decrease in our fiber backhaul costs, partially offset by an increase in satellite licenses and fees.

**Selling, general and administrative expenses.** "Selling, general and administrative expenses" totaled \$42 million during the three months ended September 30, 2009, an increase of \$4 million or 11.5% compared to the same period in 2008. This increase was primarily attributable to an increase in litigation expense. "Selling, general and administrative expenses" represented 8.6% and 6.1% of "Total revenue" during the three months ended September 30, 2009 and 2008, respectively. The increase in the ratio of the expenses to "Total revenue" was primarily attributable to the decrease in "Total revenue" relative to the increase in expense, discussed previously.

**Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS (Continued)**

**Depreciation and amortization.** "Depreciation and amortization" expense totaled \$59 million during the three months ended September 30, 2009, an \$11 million or 15.5% decrease compared to the same period in 2008. The decrease in "Depreciation and amortization" expense was primarily due to less depreciation expense on AMC-15 and AMC-16. In 2008, we impaired AMC-15 and AMC-16 by the combined amount of \$218 million.

**Impairments of goodwill, indefinite-lived and long-lived assets.** "Impairments of goodwill, indefinite-lived and long-lived assets" totaled \$43 million during the three months ended September 30, 2008 and resulted from impairments of certain FCC authorizations.

**Unrealized and realized gains (losses) on marketable investment securities and other investments.** "Unrealized and realized gains (losses) on marketable investment securities and other investments" totaled a net gain of \$100 million during the three months ended September 30, 2009, a \$211 million increase compared to the same period in 2008. This change was attributable to a net gain of \$99 million on the sale of marketable investment securities during the three months ended September 30, 2009, compared to \$80 million in impairments on our marketable and other investment securities and a loss on the exchange of marketable investment securities of \$32 million during the same period in 2008.

**Unrealized gains (losses) on investments accounted for at fair value, net.** "Unrealized gains (losses) on investments accounted for at fair value, net" totaled \$232 million during the three months ended September 30, 2009, a \$383 million increase compared to the same period in 2008. This change is attributable to increases in fair value related to investments accounted for under the fair value method.

**Earnings before interest, taxes, depreciation and amortization.** EBITDA was \$389 million during the three months ended September 30, 2009, an increase of \$623 million compared to the same period in 2008. EBITDA for the three months ended September 30, 2009 was positively impacted by the \$100 million "Unrealized and realized gains (losses) on marketable investment securities and other investments" and the \$232 million "Unrealized gains (losses) on investments accounted for at fair value, net." The following table reconciles EBITDA to the accompanying financial statements.

	<b>For the Three Months Ended September 30,</b>	
	<b>2009</b>	<b>2008</b>
	<b>(In thousands)</b>	
EBITDA	\$ 388,628	\$ (234,076)
Less:		
Interest expense, net	(2,793)	(968)
Income tax provision (benefit), net	38,492	5,040
Depreciation and amortization	58,989	69,782
Net income (loss) attributable to EchoStar common shareholders	<u>\$ 293,940</u>	<u>\$ (307,930)</u>

EBITDA is not a measure determined in accordance with accounting principles generally accepted in the United States, or GAAP, and should not be considered a substitute for operating income, net income or any other measure determined in accordance with GAAP. Conceptually, EBITDA measures the amount of income generated each period that could be used to service debt, pay taxes and fund capital expenditures. EBITDA should not be considered in isolation or as a substitute for measures of performance prepared in accordance with GAAP. EBITDA is used by our management as a measure of

**Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS (Continued)**

operating efficiency and overall financial performance for benchmarking against our peers and competitors. Management believes EBITDA provides meaningful supplemental information regarding liquidity and the underlying operating performance of our business. Management also believes that EBITDA is useful to investors because it is frequently used by securities analysts, investors and other interested parties to evaluate companies in the digital set-top box industry.

**Income tax (provision) benefit, net.** During the three months ended September 30, 2009, we recorded an income tax provision totaling \$38 million, an increase of \$33 million compared to the same period in 2008. This change resulted primarily from the increase in "Income (loss) before income taxes," partially offset by the increase in our effective tax rate. During the three months ended September 30, 2009, our effective tax rate was positively impacted by the release of certain previously recognized valuation allowances established against certain deferred tax assets that are capital in nature. During the three months ended September 30, 2008 our effective tax rate was negatively impacted by the establishment of a \$102 million valuation allowance on the deferred tax assets related to unrealized losses on marketable investment securities accounted for at fair value and the impairment of certain marketable and non-marketable investment securities.

**Net income (loss) attributable to EchoStar common shareholders.** Our net income attributable to EchoStar common shareholders was \$294 million during the three months ended September 30, 2009, an increase of \$602 million compared to the same period in 2008. This increase was primarily attributable to the changes in revenue and expenses discussed above.



**Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS (Continued)**
*Nine Months Ended September 30, 2009 Compared to the Nine Months Ended September 30, 2008.*

<u>Statements of Operations Data</u>	<u>For the Nine Months Ended September 30,</u>		<u>Variance</u>	
	<u>2009</u>	<u>2008</u>	<u>Amount</u>	<u>%</u>
	(In thousands)			
<b>Revenue:</b>				
Equipment revenue—DISH Network	\$ 838,965	\$ 1,134,408	\$ (295,443)	(26.0)
Equipment revenue—other	195,635	206,883	(11,248)	(5.4)
Services and other revenue—DISH Network	281,282	276,877	4,405	1.6
Services and other revenue—other	29,745	35,916	(6,171)	(17.2)
Total revenue	<u>1,345,627</u>	<u>1,654,084</u>	<u>(308,457)</u>	<u>(18.6)</u>
<b>Costs and Expenses:</b>				
Cost of sales—equipment	886,176	1,146,878	(260,702)	(22.7)
<b>% of Total equipment revenue</b>	<b>85.7%</b>	<b>85.5%</b>		
Cost of sales—services and other	149,005	162,885	(13,880)	(8.5)
<b>% of Total services and other revenue</b>	<b>47.9%</b>	<b>52.1%</b>		
Research and development expenses	31,447	23,921	7,526	31.5
<b>% of Total revenue</b>	<b>2.3%</b>	<b>1.4%</b>		
Selling, general and administrative expenses	107,820	113,280	(5,460)	(4.8)
<b>% of Total revenue</b>	<b>8.0%</b>	<b>6.8%</b>		
Depreciation and amortization	180,413	193,767	(13,354)	(6.9)
Impairments of goodwill, indefinite-lived and long-lived assets	—	55,992	(55,992)	(100.0)
Total costs and expenses	<u>1,354,861</u>	<u>1,696,723</u>	<u>(341,862)</u>	<u>(20.1)</u>
Operating income (loss)	<u>(9,234)</u>	<u>(42,639)</u>	<u>33,405</u>	<u>78.3</u>
<b>Other Income (Expense):</b>				
Interest income	24,535	26,763	(2,228)	(8.3)
Interest expense, net of amounts capitalized	(21,479)	(24,400)	2,921	12.0
Unrealized and realized gains (losses) on marketable investment securities and other investments	97,504	(43,914)	141,418	NM
Unrealized gains (losses) on investments accounted for at fair value, net	349,309	(147,106)	496,415	NM
Other, net	(3,645)	(7,311)	3,666	50.1
Total other income (expense)	<u>446,224</u>	<u>(195,968)</u>	<u>642,192</u>	<u>NM</u>
Income (loss) before income taxes	436,990	(238,607)	675,597	NM
Income tax (provision) benefit, net	(41,881)	(15,798)	(26,083)	NM
<b>Effective tax rate</b>	<b>9.6%</b>	<b>(6.6)%</b>		
Net income (loss)	<u>395,109</u>	<u>(254,405)</u>	<u>649,514</u>	<u>NM</u>
Less: Net income (loss) attributable to noncontrolling interest	—	—	—	NM
Net income (loss) attributable to EchoStar common shareholders	<u>\$ 395,109</u>	<u>\$ (254,405)</u>	<u>\$ 649,514</u>	<u>NM</u>
<b>Other Data:</b>				
EBITDA	\$ 614,347	\$ (47,203)	\$ 661,550	NM

**Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS (Continued)**

**Equipment revenue—DISH Network.** "Equipment revenue—DISH Network" totaled \$839 million during the nine months ended September 30, 2009, a decrease of \$295 million or 26.0% compared to the same period in 2008. This change related primarily to an 18% decrease in unit sales of set-top boxes and a 19% decline in average revenue per unit resulting from a change in the mix of receivers sold, including a shift towards sales of lower cost models.

**Equipment revenue—other.** "Equipment revenue—other" totaled \$196 million during the nine months ended September 30, 2009, a decrease of \$11 million or 5.4% compared to the same period in 2008. This change resulted primarily from a decrease of \$21 million in sales to other international customers, partially offset by sales to DISH Mexico. Our sales to international customers other than Bell TV and DISH Mexico were adversely impacted by low cost competitors that are principally located in Asia. The sales to DISH Mexico are not part of the original commitment associated with our investment in DISH Mexico.

**Services and other revenue—other.** "Services and other revenue—other" totaled \$30 million during the nine months ended September 30, 2009, a decrease of \$6 million or 17.2% compared to the same period during 2008. The change was driven primarily by a decrease in other satellite services revenue and revenue from several non-recurring sources in the first quarter of 2008 that had minimal associated costs, partially offset by an increase in transponder leasing provided to customers other than DISH Network.

**Cost of sales—equipment.** "Cost of sales—equipment" totaled \$886 million during the nine months ended September 30, 2009, a decrease of \$261 million or 22.7% compared to the same period in 2008. This change primarily resulted from a decrease in sales to DISH Network and other international customers, partially offset by sales to DISH Mexico and an increase in charges for slow moving and obsolete inventory. "Cost of sales—equipment" represented 85.7% and 85.5% of total equipment sales during the nine months ended September 30, 2009 and 2008, respectively.

**Cost of sales—services and other.** "Cost of sales—services and other" totaled \$149 million during the nine months ended September 30, 2009, a decrease of \$14 million or 8.5% compared to the same period in 2008. "Cost of sales—services and other" represented 47.9% and 52.1% of total "Services and other revenue" during the nine months ended September 30, 2009 and 2008, respectively. The overall decrease and the improvement in the expense to revenue ratio was primarily driven by decreases in certain transponder leasing costs which ceased during the first quarter of 2008, a decrease in costs related to certain international programming events and in costs associated with fiber backhaul, partially offset by an increase in satellite licenses and fees.

**Selling, general and administrative expenses.** "Selling, general and administrative expenses" totaled \$108 million during the nine months ended September 30, 2009, a decrease of \$5 million or 4.8% compared to the same period in 2008. This decrease was attributable to a reduction of our marketing and advertising expenses for Slingboxes and related hardware products and the collection of previously reserved receivables, partially offset by an increase in litigation expense. "Selling, general and administrative expenses" represented 8.0% and 6.8% of "Total revenue" during the nine months ended September 30, 2009 and 2008, respectively. The increase in the ratio of the expenses to "Total revenue" was primarily attributable to the decrease in "Total revenue" relative to the decrease in expense, discussed previously.

**Depreciation and amortization.** "Depreciation and amortization" expense totaled \$180 million during the nine months ended September 30, 2009, a \$13 million or 6.9% decrease compared to the

**Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS (Continued)**

same period in 2008. The decrease in "Depreciation and amortization" expense was primarily due to less depreciation expense on AMC-15 and AMC-16, partially offset by assets placed in service during 2009. In 2008, we impaired AMC-15 and AMC-16 by the combined amount of \$218 million.

**Impairments of goodwill, indefinite-lived and long-lived assets.** "Impairments of goodwill, indefinite-lived and long-lived assets" totaled \$56 million during the nine months ended September 30, 2008 and resulted from impairments of certain FCC authorizations and satellites. In connection with the AMC-14 launch anomaly, we wrote-off certain deposits, capitalized interest and insurance costs, net of insurance proceeds.

**Unrealized and realized gains (losses) on marketable investment securities and other investments.** "Unrealized and realized gains (losses) on marketable investment securities and other investments" totaled a net gain of \$98 million during the nine months ended September 30, 2009, a \$141 million increase compared to the same period in 2008. This change was attributable to an increase in net gains of \$22 million on the sale and exchange of marketable and non-marketable investment securities and a decline of \$120 million in impairments on our marketable and other investment securities during the nine months ended September 30, 2009 compared to the same period in 2008.

**Unrealized gains (losses) on investments accounted for at fair value, net.** "Unrealized gains (losses) on investments accounted for at fair value, net" totaled \$349 million during the nine months ended September 30, 2009, a \$496 million increase compared to the same period in 2008. This change is attributable to increases in fair value related to investments accounted for under the fair value method.

**Earnings before interest, taxes, depreciation and amortization.** EBITDA was \$614 million during the nine months ended September 30, 2009, an increase of \$662 million compared to the same period in 2008. EBITDA for the nine months ended September 30, 2009 was positively impacted by the \$98 million "Unrealized and realized gains (losses) on marketable investment securities and other investments" and the \$349 million "Unrealized gains (losses) on investments accounted for at fair value, net." The following table reconciles EBITDA to the accompanying financial statements.

	<b>For the Nine Months Ended September 30,</b>	
	<b>2009</b>	<b>2008</b>
	<b>(In thousands)</b>	
EBITDA	\$ 614,347	\$ (47,203)
Less:		
Interest expense, net	(3,056)	(2,363)
Income tax provision (benefit), net	41,881	15,798
Depreciation and amortization	180,413	193,767
Net income (loss) attributable to EchoStar common shareholders	<u>\$ 395,109</u>	<u>\$ (254,405)</u>

**Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS (Continued)**

EBITDA is not a measure determined in accordance with accounting principles generally accepted in the United States, or GAAP, and should not be considered a substitute for operating income, net income or any other measure determined in accordance with GAAP. Conceptually, EBITDA measures the amount of income generated each period that could be used to service debt, pay taxes and fund capital expenditures. EBITDA should not be considered in isolation or as a substitute for measures of performance prepared in accordance with GAAP. EBITDA is used by our management as a measure of operating efficiency and overall financial performance for benchmarking against our peers and competitors. Management believes EBITDA provides meaningful supplemental information regarding liquidity and the underlying operating performance of our business. Management also believes that EBITDA is useful to investors because it is frequently used by securities analysts, investors and other interested parties to evaluate companies in the digital set-top box industry.

**Income tax (provision) benefit, net.** During the nine months ended September 30, 2009, we recorded an income tax provision totaling \$42 million compared to \$16 million during the same period in 2008. This change resulted primarily from the increase in "Income (loss) before income taxes," partially offset by the increase in our effective tax rate. During the nine months ended September 30, 2009, our effective tax rate was positively impacted by the release of certain previously recognized valuation allowances established against certain deferred tax assets that are capital in nature. During the nine months ended September 30, 2008 our effective tax rate was negatively impacted by the establishment of an \$88 million valuation allowance on the deferred tax assets related to unrealized losses on marketable investment securities accounted for at fair value and the impairment of certain marketable and non-marketable investment securities.

**Net income (loss) attributable to EchoStar common shareholders.** Our net income attributable to common shareholders was \$395 million during the nine months ended September 30, 2009, an increase of \$650 million compared to the same period in 2008. This increase was primarily attributable to the changes in revenue and expenses discussed above.

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

We consider all liquid investments purchased within 90 days of their maturity to be cash equivalents. See "Item 3.—Quantitative and Qualitative Disclosures about Market Risk" for further discussion regarding our marketable investment securities. As of September 30, 2009, our cash, cash equivalents and current marketable investment securities totaled \$935 million compared to \$829 million as of December 31, 2008, an increase of \$106 million. This increase in cash, cash equivalents and current marketable investment securities was primarily related an increase in cash generated from operations, net gains on the sale and an increase in the value of certain marketable investment securities, partially offset by capital expenditures, purchases of strategic investment securities, repayment of debt and repurchases of our Class A common stock.

We have investments in various debt and equity instruments including corporate bonds, corporate equity securities, government bonds, and variable rate demand notes ("VRDNs"). VRDNs are long-term floating rate municipal bonds with embedded put options that allow the bondholder to sell the security at par plus accrued interest. All of the put options are secured by a pledged liquidity source. Our VRDN portfolio is comprised of many municipalities and financial institutions that serve as the pledged liquidity source. While they are classified as marketable investment securities, the put option allows VRDNs to be liquidated on a same day or on a five business day settlement basis. As of

**Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS (Continued)**

September 30, 2009 and December 31, 2008, we held VRDNs with fair values of \$490 million and \$622 million, respectively.

The following discussion highlights our cash flow activities during the nine months ended September 30, 2009.

**Cash Flow**

***Cash flows from operating activities***

For the nine months ended September 30, 2009, we reported net cash flows from operating activities of \$142 million. This amount is primarily comprised of net income adjusted for "Depreciation and amortization," "Unrealized and realized gains (losses) on marketable investment securities and other investments" and "Unrealized gains (losses) on investments accounted for at fair value, net" of \$129 million and changes in working capital of \$21 million mainly related to an increase in accounts payable and accrued expenses partially offset by an increase in inventory.

***Cash flows from investing activities***

For the nine months ended September 30, 2009, we reported net cash outflows from investing activities of \$49 million primarily related to capital expenditures of \$125 million and purchases of strategic investments of \$53 million, partially offset by net sales of marketable investment securities of \$140 million. The capital expenditures include \$62 million of satellite related capital expenditures and \$63 million of other corporate capital expenditures.

***Cash flows from financing activities***

For the nine months ended September 30, 2009, we reported net cash outflows from financing activities of \$70 million primarily resulting from debt repayments and repurchases of our Class A common stock.

**Satellites**

As our satellite fleet ages, we will be required to evaluate replacement alternatives such as acquiring, leasing or constructing additional satellites, with or without customer commitments for capacity.

**Stock Repurchases**

Our board of directors authorized stock repurchases of up to \$500 million of our Class A common stock through and including December 31, 2009. During the three and nine months ended September 30, 2009, we repurchased 1.363 million and 1.852 million shares of our common stock for \$22 million and \$29 million, respectively. On November 3, 2009, our board of directors extended the plan and authorized an increase in the maximum dollar value of shares that may be repurchased under the plan, such that we are currently authorized to repurchase up to \$500 million of our outstanding shares through and including December 31, 2010.

**Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS (Continued)****Contractual Obligations and Off-Balance Sheet Arrangements**

As of September 30, 2009, future maturities of our contractual obligations are summarized as follows:

	Payments due by period						
	Total	2009	2010	2011	2012	2013	Thereafter
	(In thousands)						
Long-term debt obligations	\$ 7,243	\$ 9	\$ 693	\$ 748	\$ 808	\$ 872	\$ 4,113
Capital lease obligations	299,862	12,092	49,088	52,162	57,258	63,198	66,064
Interest expense on long-term debt and capital lease obligations	76,936	6,391	23,604	19,269	14,501	9,234	3,937
Satellite-related obligations	1,486,858	70,800	127,821	135,215	117,839	108,759	926,424
Operating lease obligations	14,451	1,858	6,017	3,704	1,557	855	460
Purchase and other obligations	1,487,623	1,472,648	14,975	—	—	—	—
<b>Total</b>	<b>\$ 3,372,973</b>	<b>\$ 1,563,798</b>	<b>\$ 222,198</b>	<b>\$ 211,098</b>	<b>\$ 191,963</b>	<b>\$ 182,918</b>	<b>\$ 1,000,998</b>

The table above does not include \$16 million of liabilities associated with unrecognized tax benefits which were accrued and are included on our Condensed Consolidated Balance Sheets as of September 30, 2009. We do not expect any portion of this amount to be paid or settled within the next twelve months.

In certain circumstances the dates on which we are obligated to make these payments could be delayed. These amounts will increase to the extent we procure insurance for our satellites or contract for the construction, launch or lease of additional satellites.

In general, we do not engage in off-balance sheet financing activities.

**Future Capital Sources**

We primarily rely on our existing cash and marketable investment securities balances, as well as cash flow generated through operations to fund our investment needs. Since we currently depend on DISH Network for a substantial portion of our revenue, our cash flow from operations depend heavily on their needs for equipment and services. As a result, there can be no assurances that we will always have positive cash flows from operations and should our cash flows turn negative, our existing cash and marketable investment securities balances may be reduced. In addition, if we are unsuccessful in overturning the District Court's ruling on Tivo's motion for contempt, we are not successful in developing and deploying potential new alternative technology and we are unable to reach a license agreement with Tivo on reasonable terms, we would be required to cease distribution of digital set-top boxes with DVR functionality. In that event, our sales of digital set-top boxes to DISH Network and others would likely significantly decrease and could even potentially cease for a period of time. Furthermore, the inability to offer DVR functionality would place us at a significant disadvantage to our competitors and make it even more difficult for us to penetrate new markets for digital set-top boxes. The adverse effect on our financial position and results of operations if the District Court's contempt order is upheld is likely to be significant.

If we are successful in overturning the District Court's ruling on Tivo's motion for contempt, but unsuccessful in defending against any subsequent claim that our original alternative technology or any potential new alternative technology infringes Tivo's patent, we could be prohibited from distributing

**Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS (Continued)**

DVRs. In that event we would be at a significant disadvantage to our competitors who could continue offering DVR functionality and the adverse effect on our business could be material.

Because both we and DISH Network are defendants in the Tivo lawsuit, we and DISH Network are jointly and severally liable to Tivo for any final damages and sanctions that may be awarded by the Court. DISH Network has agreed that it is obligated under the agreements entered into in connection with the Spin-off to indemnify us for substantially all liability arising from this lawsuit. We have agreed to contribute an amount equal to our \$5 million intellectual property liability limit under the Receiver Agreement. We and DISH Network have further agreed that our \$5 million contribution would not exhaust our liability to DISH Network for other intellectual property claims that may arise under the Receiver Agreement. Therefore, during the second quarter of 2009, we recorded a charge included in "General and administrative expenses—DISH Network" on our Condensed Statement of Operations and Comprehensive Income (Loss) of \$5 million to reflect this contribution. We and DISH Network also agreed that we would each be entitled to joint ownership of, and a cross-license to use, any intellectual property developed in connection with any potential new alternative technology.

Because we are jointly and severally liable with DISH Network, to the extent that DISH Network does not or is unable to pay any damages or sanctions arising from this lawsuit, we would then be liable for any portion of these damages and sanctions not paid by DISH Network. Any amounts that DISH Network may be required to pay could impair its ability to pay us and also negatively impact our future liquidity.

If we become liable for any portion of these damages or sanctions, we may be required to raise additional capital at a time and in circumstances in which we would normally not raise capital. Therefore, any capital we raise may be on terms that are unfavorable to us, which might adversely affect our financial position and results of operations and might also impair our ability to raise capital on acceptable terms in the future to fund our own operations and initiatives.

The American Recovery and Reinvestment Act of 2009 ("ARRA") has allocated \$7.2 billion to expand access to broadband services. Of this amount, \$2.5 billion is administered by the Rural Utilities Service ("RUS") for deployment of broadband projects in rural, unserved and underserved communities across the United States and \$4.7 billion has been allocated to the National Telecommunications and Information Administration ("NTIA") of the United States Department of Commerce to fund broadband initiatives throughout the United States, including unserved and underserved areas. During August 2009, we, both individually and jointly with other parties, filed applications for over \$1.1 billion of broadband stimulus funds with the RUS and/or the NTIA. If RUS decides not to fund any of the broadband infrastructure projects that include us as an applicant, NTIA may elect to do so. If either the RUS and/or the NTIA funds any of the broadband infrastructure projects that include us as an applicant, we along with certain co-applicants in some cases, expect to use the funds to help finance project(s) to provide broadband service by satellite. We are also supporting an affiliate of DISH Network for a sustainable broadband project that, if funded, would seek to increase subscribers for broadband service. We cannot be sure that our applications will be granted, or that they will be granted on acceptable terms.

### Item 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

#### Market Risks Associated With Financial Instruments

Our investments and debt are exposed to market risks, discussed below.

##### *Cash, Cash Equivalents and Current Marketable Investment Securities*

As of September 30, 2009, our cash, cash equivalents and current marketable investment securities had a fair value of \$935 million. Of that amount, a total of \$785 million was invested in: (a) cash; (b) debt instruments of the United States Government and its agencies; (c) commercial paper and corporate notes with an overall average maturity of less than one year and rated in one of the four highest rating categories by at least two nationally recognized statistical rating organizations; and (d) instruments with similar risk, duration and credit quality characteristics to the commercial paper described above. The primary purpose of these investing activities has been to preserve principal until the cash is required to, among other things, fund operations, make strategic investments and expand the business. Consequently, the size of this portfolio fluctuates significantly as cash is received and used in our business. The value of this portfolio is negatively impacted by credit losses; however, this risk is mitigated through diversification that limits our exposure to any one issuer.

##### *Interest Rate Risk*

A change in interest rates would affect the fair value of our cash, cash equivalents and current marketable investment securities portfolio. Based on our September 30, 2009 current non-strategic investment portfolio of \$785 million, a hypothetical 10% increase in average interest rates would result in a decrease of approximately \$13 million in fair value of this portfolio. We normally hold these investments to maturity; however, the hypothetical loss in fair value would be realized if we sold the investments prior to maturity.

Our cash, cash equivalents and current marketable investment securities had an average annual rate of return for the nine months ended September 30, 2009 of 1.5%. A change in interest rates would affect our future annual interest income from this portfolio, since funds would be re-invested at different rates as the instruments mature. A hypothetical 10% decrease in average interest rates during 2009 would result in a decrease of approximately \$1 million in annual interest income.

##### *Strategic Marketable Investment Securities*

As of September 30, 2009, we held strategic and financial debt and equity investments of public companies with a fair value of \$149 million. These investments, which are held for strategic and financial purposes, are concentrated in a small number of companies, are highly speculative and have experienced and continue to experience volatility. The fair value of our strategic and financial debt and equity investments can be significantly impacted by the risk of adverse changes in securities markets generally, as well as risks related to the performance of the companies whose securities we have invested in, risks associated with specific industries, and other factors. These investments are subject to significant fluctuations in fair value due to the volatility of the securities markets and of the underlying businesses. In general, the debt instruments held in our strategic marketable investment securities portfolio are not significantly impacted by interest rate fluctuations as their value is more closely related to factors specific to the underlying business. A hypothetical 10% adverse change in the price of our public strategic debt and equity investments would result in a decrease of approximately \$15 million in the fair value of these investments.



**Item 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK (Continued)**

***Restricted Cash and Marketable Investment Securities and Noncurrent Marketable and Other Investment Securities***

*Restricted Cash and Marketable Investment Securities*

As of September 30, 2009, we had \$18 million of restricted cash and marketable investment securities invested in: (a) cash; (b) debt instruments of the United States Government and its agencies; (c) commercial paper and corporate notes with an overall average maturity of less than one year and rated in one of the four highest rating categories by at least two nationally recognized statistical rating organizations; and (d) instruments with similar risk, duration and credit quality characteristics to the commercial paper described above. Based on our September 30, 2009 investment portfolio, a hypothetical 10% increase in average interest rates would not have a material impact in the fair value of our restricted cash and marketable investment securities.

*Other Investment Securities*

As of September 30, 2009, we had \$575 million of nonpublic debt and equity instruments that we hold for strategic business purposes. We account for these investments under the cost, equity and fair value methods of accounting.

Our ability to realize value from our strategic investments in companies that are not publicly traded depends on the success of those companies' businesses and their ability to obtain sufficient capital to execute their business plans. Because private markets are not as liquid as public markets, there is also increased risk that we will not be able to sell these investments, or that when we desire to sell them we will not be able to obtain fair value for them. A hypothetical 10% adverse change in the price of these nonpublic debt and equity instruments would result in a decrease of approximately \$58 million in the fair value of these investments.

***Long-Term Debt***

As of September 30, 2009, we had \$307 million of long-term debt, of which \$300 million represents our capital lease obligations, which are not subject to fair value disclosure requirements.

***Derivative Financial Instruments***

In general, we do not use derivative financial instruments for hedging or speculative purposes, but we may do so in the future.

**Item 4. CONTROLS AND PROCEDURES**

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

There has been no change in our internal control over financial reporting (as defined in Rule 13a-15(f) under the Securities Exchange Act of 1934) during our most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

## PART II—OTHER INFORMATION

### Item 1. LEGAL PROCEEDINGS

In connection with the Spin-off, we entered into a separation agreement with DISH Network, which provides among other things for the division of certain liabilities, including liabilities resulting from litigation. Under the terms of the separation agreement, we have assumed certain liabilities that relate to our business including certain designated liabilities for acts or omissions prior to the Spin-off. Certain specific provisions govern intellectual property related claims under which, generally, we will only be liable for our acts or omissions following the Spin-off and DISH Network will indemnify us for any liabilities or damages resulting from intellectual property claims relating to the period prior to the Spin-off as well as DISH Network's acts or omissions following the Spin-off.

#### *Acacia*

During 2004, Acacia Media Technologies, ("Acacia") filed a lawsuit against us and DISH Network in the United States District Court for the Northern District of California. The suit also named DirecTV, Comcast, Charter, Cox and a number of smaller cable companies as defendants. Acacia is an entity that seeks to license an acquired patent portfolio without itself practicing any of the claims recited therein. The suit alleges infringement of United States Patent Nos. 5,132,992, 5,253,275, 5,550,863, 6,002,720 and 6,144,702, which relate to certain systems and methods for transmission of digital data. On September 25, 2009, the Court granted summary judgment to defendants on invalidity grounds, and dismissed the action with prejudice. The plaintiffs have appealed.

We intend to vigorously defend this case. In the event that a Court ultimately determines that we infringe any of the asserted patents, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could require us to materially modify certain user-friendly features that we currently offer to consumers. We are being indemnified by DISH Network for any potential liability or damages resulting from this suit relating to the period prior to the effective date of the Spin-off. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

#### *Broadcast Innovation, L.L.C.*

During 2001, Broadcast Innovation, L.L.C. ("Broadcast Innovation") filed a lawsuit against DISH Network, DirecTV, Thomson Consumer Electronics and others in United States District Court in Denver, Colorado. The suit alleges infringement of United States Patent Nos. 6,076,094 (the '094 patent) and 4,992,066 (the '066 patent). The '094 patent relates to certain methods and devices for transmitting and receiving data along with specific formatting information for the data. The '066 patent relates to certain methods and devices for providing the scrambling circuitry for a pay television system on removable cards. Subsequently, DirecTV and Thomson settled with Broadcast Innovation leaving us as the only defendant.

During 2004, the judge issued an order finding the '066 patent invalid. Also in 2004, the Court found the '094 patent invalid in a parallel case filed by Broadcast Innovation against Charter and Comcast. In 2005, the United States Court of Appeals for the Federal Circuit overturned the '094 patent finding of invalidity and remanded the Charter case back to the District Court. During June 2006, Charter filed a reexamination request with the United States Patent and Trademark Office. The Court has stayed the Charter case pending reexamination, and our case has been stayed pending resolution of the Charter case.

We intend to vigorously defend this case. In the event that a Court ultimately determines that we infringe any of the asserted patents, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could require us to materially modify certain user-friendly

**PART II—OTHER INFORMATION (Continued)**

features that we currently offer to consumers. We are being indemnified by DISH Network for any potential liability or damages resulting from this suit relating to the period prior to the effective date of the Spin-off. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

***Finisar Corporation***

Finisar Corporation ("Finisar") obtained a \$100 million verdict in the United States District Court for the Eastern District of Texas against DirecTV for patent infringement. Finisar alleged that DirecTV's electronic program guide and other elements of its system infringe United States Patent No. 5,404,505 (the '505 patent).

During 2006, we and DISH Network, together with NagraStar LLC, filed a Complaint for Declaratory Judgment in the United States District Court for the District of Delaware against Finisar that asks the Court to declare that we do not infringe, and have not infringed, any valid claim of the '505 patent. During April 2008, the Federal Circuit reversed the judgment against DirecTV and ordered a new trial. On May 19, 2009, the District Court granted summary judgment to DirecTV, and dismissed the action with prejudice. Finisar is appealing that decision. Our case is stayed until the DirecTV action is resolved.

We intend to vigorously prosecute this case. In the event that a Court ultimately determines that we infringe the asserted patent, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could require us to modify our system architecture. We are being indemnified by DISH Network for any potential liability or damages resulting from this suit relating to the period prior to the effective date of the Spin-off. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

***Global Communications***

During April 2007, Global Communications, Inc. ("Global") filed a patent infringement action against us and DISH Network in the United States District Court for the Eastern District of Texas. The suit alleges infringement of United States Patent No. 6,947,702 (the '702 patent), which relates to satellite reception. In October 2007, the United States Patent and Trademark Office granted our request for reexamination of the '702 patent and issued an initial Office Action finding that all of the claims of the '702 patent were invalid. At the request of the parties, the District Court stayed the litigation until the reexamination proceeding is concluded and/or other Global patent applications issue.

During June 2009, Global filed a patent infringement action against us and DISH Network in the United States District Court for the Northern District of Florida. The suit alleges infringement of United States Patent No. 7,542,717 (the '717 patent), which relates to satellite reception.

We intend to vigorously defend these cases. In the event that a Court ultimately determines that we infringe any of the asserted patents, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could require us to materially modify certain user-friendly features that we currently offer to consumers. We are being indemnified by DISH Network for any potential liability or damages resulting from this suit relating to the period prior to the effective date of the Spin-off. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

**PART II—OTHER INFORMATION (Continued)**

***Guardian Media***

During December 2008, Guardian Media Technologies LTD ("Guardian") filed suit against us, EchoStar Technologies L.L.C., DISH Network, DirecTV and several other defendants in the United States District Court for the Central District of California alleging infringement of United States Patent Nos. 4,930,158 and 4,930,160. Both patents are expired and relate to certain parental lock features. On September 9, 2009, Guardian voluntarily dismissed the case against us with prejudice.

***Multimedia Patent Trust***

On February 13, 2009, Multimedia Patent Trust ("MPT") filed suit against us, DISH Network, DirecTV and several other defendants in the United States District Court for the Southern District of California alleging infringement of United States Patent Nos. 4,958,226, 5,227,878, 5,136,377, 5,500,678 and 5,563,593, which relate to video encoding, decoding and compression technology. MPT is an entity that seeks to license an acquired patent portfolio without itself practicing any of the claims recited therein.

We intend to vigorously defend this case. In the event that a Court ultimately determines that we infringe any of the asserted patents, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could require us to materially modify certain user-friendly features that we currently offer to consumers. We are being indemnified by DISH Network for any potential liability or damages resulting from this suit relating to the period prior to the effective date of the Spin-off. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

***NorthPoint Technology***

On July 2, 2009, NorthPoint Technology, Ltd ("Northpoint") filed suit against us, DISH Network, and DirecTV in the United States District Court for the Western District of Texas alleging infringement of United States Patent No. 6,208,636 ("the '636 patent"). The '636 patent relates to the use of multiple low-noise block converter feedhorns, or LNBFs, which are antennas used for satellite reception.

We intend to vigorously defend this case. In the event that a Court ultimately determines that we infringe the asserted patent, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could require us to materially modify certain features that we currently offer to consumers. We are being indemnified by DISH Network for any potential liability or damages resulting from this suit relating to the period prior to the effective date of the Spin-off. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

***Personalized Media Communications***

In February 2008, Personalized Media Communications, Inc. filed suit against us, DISH Network and Motorola, Inc. in the United States District Court for the Eastern District of Texas alleging infringement of United States Patent Nos. 4,694,490, 5,109,414, 4,965,825, 5,233,654, 5,335,277, and 5,887,243, which relate to satellite signal processing.

We intend to vigorously defend this case. In the event that a Court ultimately determines that we infringe any of the asserted patents, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could require us to materially modify certain user-friendly features that we currently offer to consumers. We are being indemnified by DISH Network for any

**PART II—OTHER INFORMATION (Continued)**

potential liability or damages resulting from this suit relating to the period prior to the effective date of the Spin-off. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

***Technology Development Licensing***

On January 22, 2009, Technology Development and Licensing LLC ("TechDev") filed suit against us and DISH Network in the United States District Court for the Northern District of Illinois alleging infringement of United States Patent No. 35,952, which relates to certain favorite channel features. In July 2009, the Court granted our motion to stay the case pending two re-examination petitions before the Patent and Trademark Office.

We intend to vigorously defend this case. In the event that a Court ultimately determines that we infringe the asserted patent, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could require us to materially modify certain user-friendly features that we currently offer to consumers. We are being indemnified by DISH Network for any potential liability or damages resulting from this suit relating to the period prior to the effective date of the Spin-off. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

***Tivo Inc.***

During January 2008, the United States Court of Appeals for the Federal Circuit affirmed in part and reversed in part the April 2006 jury verdict concluding that certain of our digital video recorders, or DVRs, infringed a patent held by Tivo. In its January 2008 decision, the Federal Circuit affirmed the jury's verdict of infringement on Tivo's "software claims," and upheld the award of damages from the District Court. The Federal Circuit, however, found that we did not literally infringe Tivo's "hardware claims," and remanded such claims back to the District Court for further proceedings. On October 6, 2008, the Supreme Court denied our petition for certiorari. As a result, DISH Network paid approximately \$105 million to Tivo.

We also developed and deployed "next-generation" DVR software. This improved software was automatically downloaded to our current customers' DVRs, and is fully operational (our "original alternative technology"). The download was completed as of April 2007. We received written legal opinions from outside counsel that concluded our original alternative technology does not infringe, literally or under the doctrine of equivalents, either the hardware or software claims of Tivo's patent. Tivo filed a motion for contempt alleging that we are in violation of the Court's injunction. We opposed this motion on the grounds that the injunction did not apply to DVRs that have received our original alternative technology, that our original alternative technology does not infringe Tivo's patent, and that we were in compliance with the injunction.

On June 2, 2009, the District Court granted Tivo's contempt motion, finding that our original alternative technology was not more than colorably different than the products found by the jury to infringe Tivo's patent, that the original alternative technology still infringed the software claims, and that even if the original alternative technology was "non-infringing," the original injunction by its terms required that DISH Network disable DVR functionality in all but approximately 192,000 digital set-top boxes in the field. The District Court awarded Tivo \$103 million in supplemental damages and interest for the period from September 2006 to April 2008, based on an assumed \$1.25 per subscriber per month royalty rate. DISH Network posted a bond to secure that award pending appeal of the contempt order.

**PART II—OTHER INFORMATION (Continued)**

On July 1, 2009, the Federal Circuit Court of Appeals granted a permanent stay of the District Court's contempt order pending resolution of our appeal. In so doing, the Federal Circuit found, at a minimum, that we had a substantial case on the merits. Oral argument on our appeal of the contempt ruling took place on November 2, 2009 before three judges of the Federal Circuit.

The District Court held a hearing on July 28, 2009 on Tivo's claims for contempt sanctions, but has ordered that enforcement of any sanctions award will be stayed pending our appeal of the contempt order. Tivo sought up to \$975 million in contempt sanctions for the period from April 2008 to June 2009 based on, among other things, profits Tivo alleges DISH Network made from subscribers using DVRs. We opposed Tivo's request arguing, among other things, that sanctions are inappropriate because we made good faith efforts to comply with the Court's injunction. We also challenged Tivo's calculation of profits.

On August 3, 2009, the Patent and Trademark Office (the "PTO") issued an initial office action rejecting the software claims of the '389 patent as being invalid in light of two prior patents. These are the same software claims that we were found to have infringed and which underlie the contempt ruling now pending on appeal. We believe that the PTO's conclusions are relevant to the issues on appeal as well as the pending sanctions proceedings in the District Court. The PTO's conclusions support our position that our original alternative technology is more than colorably different than the devices found to infringe by the jury; that our original alternative technology does not infringe; and that we acted in good faith to design around Tivo's patent.

On September 4, 2009, the District Court partially granted Tivo's motion for contempt sanctions. In partially granting Tivo's motion for contempt sanctions, the District Court awarded \$2.25 per DVR subscriber per month for the period from April 2008 to July 2009 (as compared to the award for supplemental damages for the prior period from September 2006 to April 2008, which was based on an assumed \$1.25 per DVR subscriber per month). By the District Court's estimation, the total award for the period from April 2008 to July 2009 is approximately \$200 million (the enforcement of the award has been stayed by the District Court pending DISH Network's appeal of the underlying June 2, 2009 contempt order).

In light of the District Court's finding of contempt, and its description of the manner in which it believes our original alternative technology infringed the '389 patent, we are also developing and testing potential new alternative technology in an engineering environment. As part of our development process, we have downloaded one of our design-around options to approximately 125 subscribers for "beta" testing.

If we are unsuccessful in overturning the District Court's ruling on Tivo's motion for contempt, we are not successful in developing and deploying potential new alternative technology and we are unable to reach a license agreement with Tivo on reasonable terms, we would be required to cease distribution of digital set-top boxes with DVR functionality. In that event, our sales of digital set-top boxes to DISH Network and others would likely significantly decrease and could even potentially cease for a period of time. Furthermore, the inability to offer DVR functionality would place us at a significant disadvantage to our competitors and make it even more difficult for us to penetrate new markets for digital set-top boxes. The adverse effect on our financial position and results of operations if the District Court's contempt order is upheld is likely to be significant.

If we are successful in overturning the District Court's ruling on Tivo's motion for contempt, but unsuccessful in defending against any subsequent claim that our original alternative technology or any potential new alternative technology infringes Tivo's patent, we could be prohibited from distributing DVRs. In that event we would be at a significant disadvantage to our competitors who could continue offering DVR functionality and the adverse effect on our business could be material.

## PART II—OTHER INFORMATION (Continued)

Because both we and DISH Network are defendants in the Tivo lawsuit, we and DISH Network are jointly and severally liable to Tivo for any final damages and sanctions that may be awarded by the Court. DISH Network has agreed that it is obligated under the agreements entered into in connection with the Spin-off to indemnify us for substantially all liability arising from this lawsuit. We have agreed to contribute an amount equal to our \$5 million intellectual property liability limit under the Receiver Agreement. We and DISH Network have further agreed that our \$5 million contribution would not exhaust our liability to DISH Network for other intellectual property claims that may arise under the Receiver Agreement. Therefore, during the second quarter of 2009, we recorded a charge included in "General and administrative expenses—DISH Network" on our Condensed Statement of Operations and Comprehensive Income (Loss) of \$5 million to reflect this contribution. We and DISH Network also agreed that we would each be entitled to joint ownership of, and a cross-license to use, any intellectual property developed in connection with any potential new alternative technology.

Because we are jointly and severally liable with DISH Network, to the extent that DISH Network does not or is unable to pay any damages or sanctions arising from this lawsuit, we would then be liable for any portion of these damages and sanctions not paid by DISH Network. Any amounts that DISH Network may be required to pay could impair its ability to pay us and also negatively impact our future liquidity.

If we become liable for any portion of these damages or sanctions, we may be required to raise additional capital at a time and in circumstances in which we would normally not raise capital. Therefore, any capital we raise may be on terms that are unfavorable to us, which might adversely affect our financial position and results of operations and might also impair our ability to raise capital on acceptable terms in the future to fund our own operations and initiatives.

### **Other**

In addition to the above actions, we are subject to various other legal proceedings and claims which arise in the ordinary course of business. In our opinion, the amount of ultimate liability with respect to any of these actions is unlikely to materially affect our financial position, results of operations or liquidity.

### **Item 1A. RISK FACTORS**

Item 1A, "Risk Factors," of our Annual Report on Form 10-K for the year ended December 31, 2008 includes a detailed discussion of our risk factors. The information presented below updates, and should be read in conjunction with, the risk factors and information disclosed in our Annual Report on Form 10-K for 2008.

***If we are unsuccessful in overturning the District Court's ruling on Tivo's motion for contempt, we are not successful in developing and deploying potential new alternative technology and we are unable to reach a license agreement with Tivo on reasonable terms, we would be subject to substantial liability and would be prohibited from offering DVR functionality that would in turn place us at a significant disadvantage to our competitors and significantly decrease sales of digital set-top boxes to DISH Network and others.***

In June 2009, the United States District Court granted Tivo's motion for contempt finding that our next-generation DVRs continue to infringe Tivo's intellectual property and awarded Tivo an additional \$103 million dollars in supplemental damages and interest for the period from September 2006 through April 2008. In September 2009, the District Court partially granted Tivo's motion for contempt sanctions. In partially granting Tivo's motion for contempt sanctions, the District Court awarded \$2.25 per DVR subscriber per month for the period from April 2008 to July 2009 (as compared to the award

**PART II—OTHER INFORMATION (Continued)**

for supplemental damages for the prior period from September 2006 to April 2008, which was based on an assumed \$1.25 per DVR subscriber per month). By the District Court's estimation, the total award for the period from April 2008 to July 2009 is approximately \$200 million (the enforcement of the award has been stayed by the District Court pending our appeal of the underlying June 2009 contempt order).

If we are unsuccessful in overturning the District Court's ruling on Tivo's motion for contempt, we are not successful in developing and deploying potential new alternative technology and we are unable to reach a license agreement with Tivo on reasonable terms, we would be required to cease distribution of digital set-top boxes with DVR functionality. In that event, our sales of digital set-top boxes to DISH Network and others would likely significantly decrease and could even potentially cease for a period of time. Furthermore, the inability to offer DVR functionality would place us at a significant disadvantage to our competitors and make it even more difficult for us to penetrate new markets for digital set-top boxes. The adverse effect on our financial position and results of operations if the District Court's contempt order is upheld is likely to be significant.

If we are successful in overturning the District Court's ruling on Tivo's motion for contempt, but unsuccessful in defending against any subsequent claim that our original alternative technology or any potential new alternative technology infringes Tivo's patent, we could be prohibited from distributing DVRs. In that event we would be at a significant disadvantage to our competitors who could continue offering DVR functionality and the adverse effect on our business could be material.

Because both we and DISH Network are defendants in the Tivo lawsuit, we and DISH Network are jointly and severally liable to Tivo for any final damages and sanctions that may be awarded by the Court. DISH Network has agreed that it is obligated under the agreements entered into in connection with the Spin-off to indemnify us for substantially all liability arising from this lawsuit. We have agreed to contribute an amount equal to our \$5 million intellectual property liability limit under the Receiver Agreement. We and DISH Network have further agreed that our \$5 million contribution would not exhaust our liability to DISH Network for other intellectual property claims that may arise under the Receiver Agreement. Therefore, during the second quarter of 2009, we recorded a charge included in "General and administrative expenses—DISH Network" on our Condensed Statement of Operations and Comprehensive Income (Loss) of \$5 million to reflect this contribution. We and DISH Network also agreed that we would each be entitled to joint ownership of, and a cross-license to use, any intellectual property developed in connection with any potential new alternative technology.

Because we are jointly and severally liable with DISH Network, to the extent that DISH Network does not or is unable to pay any damages or sanctions arising from this lawsuit, we would then be liable for any portion of these damages and sanctions not paid by DISH Network. Any amounts that DISH Network may be required to pay could impair its ability to pay us and also negatively impact our future liquidity.

If we become liable for any portion of these damages or sanctions, we may be required to raise additional capital at a time and in circumstances in which we would normally not raise capital. Therefore, any capital we raise may be on terms that are unfavorable to us, which might adversely affect our financial position and results of operations and might also impair our ability to raise capital on acceptable terms in the future to fund our own operations and initiatives.

***The average selling price and gross margins of our digital set-top boxes has been decreasing and may decrease even further, which could negatively impact our financial position and results of operations.***

The average selling price and gross margins of our digital set-top boxes has been decreasing and may decrease even further due to, among other things, an increase in the sales of lower-priced digital



**PART II—OTHER INFORMATION (Continued)**

set top boxes to DISH Network and increased pricing pressure on our average selling prices, including sales to Bell TV as a result of the February 6, 2009 amendment to our agreement with Bell TV. Furthermore, our ability to increase the average selling prices of our digital set-top boxes is limited and our average selling price may decrease even further in response to competitive pricing pressures, new product introductions by us or our competitors or other factors. If we are unable to increase or at least maintain the average selling prices of our digital set-top boxes, or if such selling prices further decline, and we are unable to respond in a timely manner by developing and introducing new products and continually reducing our product costs, our revenues and gross margin may be negatively affected, which will harm our financial position and results of operations.

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

The following table provides information regarding repurchases of our Class A common stock from July 1, 2009 through September 30, 2009.

<u>Period</u>	<u>Total Number of Shares Purchased</u>	<u>Average Price Paid per Share</u>	<u>Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs</u>	<u>Maximum Approximate Dollar Value of Shares that May Yet be Purchased Under the Plans or Programs(a) (In thousands)</u>
July 1 - July 31, 2009	783,303	\$ 15.28	783,303	\$ 450,646
August 1 - August 31, 2009	349,750	\$ 15.46	349,750	\$ 445,240
September 1 - September 30, 2009	229,758	\$ 18.00	229,758	\$ 441,104
Total	<u>1,362,811</u>		<u>1,362,811</u>	<u>\$ 441,104</u>

- (a) In November 2007, our board of directors authorized the repurchase of up to \$1.0 billion of our Class A common stock during 2008. Effective November 2008, our board of directors extended the plan and authorized a reduction in the maximum dollar value of shares that may be repurchased, such that we were currently authorized to repurchase up to \$500 million of our outstanding Class A common stock through and including December 31, 2009, subject to a limitation to purchase no more than 20% of our outstanding common stock. On November 3, 2009, our board of directors extended the plan and authorized an increase in the maximum dollar value of shares that may be repurchased under the plan, such that we are currently authorized to repurchase up to \$500 million of our outstanding shares through and including December 31, 2010. This authorization is not subject to a limitation to purchase no more than 20% of our outstanding common stock. Purchases under the program may be made through open market purchases, privately negotiated transactions, or Rule 10b5-1 trading plans, subject to market conditions and other factors. We may elect not to purchase all of the shares authorized for repurchase under this program and we may also enter into additional share repurchase programs authorized by our board of directors.

**Item 5. OTHER INFORMATION**

On November 4, 2009, Mr. Roger Lynch, became employed by both us and DISH Network as Executive Vice President. Mr. Lynch will report to Mr. Ergen and will be responsible for the development and implementation of advanced technologies that are of potential utility and importance to both us and DISH Network. Mr. Lynch's compensation will consist of cash and equity compensation and will be borne by both DISH Network and us.

**PART II—OTHER INFORMATION (Continued)**

**Item 6. EXHIBITS**

*(a) Exhibits.*

- 10.1o NIMIQ 5 Whole RF Channel Service Agreement, dated September 15, 2009, between Telesat Canada and EchoStar.\*\*
  - 10.2o NIMIQ 5 Whole RF Channel Service Agreement, dated September 15, 2009, between EchoStar and DISH Network L.L.C.\*\*
  - 10.3o Professional Services Agreement, dated August 4, 2009, between EchoStar and DISH Network\*\*
  - 10.4o Allocation Agreement, dated August 4, 2009, between EchoStar and DISH Network
  - 31.1o Section 302 Certification of Chief Executive Officer.
  - 31.2o Section 302 Certification of Chief Financial Officer.
  - 32.1o Section 906 Certification of Chief Executive Officer.
  - 32.2o Section 906 Certification of Chief Financial Officer.
- 

o Filed herewith.

\* Incorporated by reference.

\*\* Certain portions of the exhibit have been omitted and separately filed with the Securities and Exchange Commission with a request for confidential treatment.

**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 CORPORATION

By:   /s/ CHARLES W. ERGEN    
  Charles W. Ergen  
  *Chairman, President and Chief Executive Officer*  
  *(Duly Authorized Officer)*

By:   /s/ BERNARD L. HAN    
  Bernard L. Han  
  *Executive Vice President and Chief Financial*  
  *Officer (Principal Financial Officer)*

Date: November 9, 2009





## TELESAT CANADA

- and -

## EHOSTAR CORPORATION

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 NIMIQ 5 WHOLE RF CHANNEL SERVICE AGREEMENT
 

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Dated as of September 15, 2009

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 Nimiq 5 Whole RF Channel Service Agreement
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**SCHEDULES:**

Schedule 1	Terms And Conditions For Full Period Whole RF Channel Service On The Nimiq 5 Satellite
Schedule 2	Performance Specifications
Schedule 3	Availability of *** RF Channels
Schedule 4	Advanced Payments
Schedule 5	MOA Transition Provisions
Schedule 6	Access Requirements

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\*\*\*Certain confidential portions of this exhibit were omitted by means of redacting a portion of the text. Copies of the exhibit containing the redacted portions have been filed separately with the Securities and Exchange Commission subject to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act.




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 NIMIQ 5 WHOLE RF CHANNEL SERVICE AGREEMENT

This whole RF channel service agreement is made as of **September 15, 2009** (hereinafter referred to as the "Execution Date"), by and between **TELESAT CANADA**, a Canadian corporation with offices located at 1601 Telesat Court, Gloucester, Ontario K1B 5P4, Canada (hereinafter collectively referred to with

its permitted assigns and successors in interest as “Telesat”), and **ECHOSTAR CORPORATION**, a Nevada corporation with offices located at 100 Inverness Terrace East, Englewood, CO 80112, in the United States of America (hereinafter collectively referred to with its permitted assigns and successors in interest as “Customer”).

**WHEREAS** Customer has agreed to subscribe for, and Telesat has agreed to furnish to Customer, certain RF channel services operating on the 17/12 GHz Frequency Band on the Nimiq 5 Satellite at the rates and subject to the other terms and conditions specified herein.

**NOW THEREFORE** in consideration of the mutual agreements contained in this Agreement and other good and valuable consideration (the receipt and adequacy of which are hereby acknowledged), the Parties agree as follows:

#### ARTICLE 1.0 — DEFINITIONS

1.1 As used in this Agreement and the recitals hereto, the following terms shall have the following meanings:

“**4.5 Underutilization Circumstance**” shall have the meaning ascribed to that term in Section 4.5(a).

“**4.5(c) End of Right Date**” shall have the meaning ascribed to that term in Section 4.5(c).

“**Advanced Payments**” shall have the meaning ascribed to that term in Section 2.4.

“**Agreement**” means this whole RF channel service agreement and all schedules, appendices and instruments in amendment of it; “hereof”, “hereto”, “herein” and “hereunder” and similar expressions mean and refer to this Agreement and not to any particular Article or Section; “Article” or “Section” of this Agreement followed by a number means and refers to the specified Article or Section of this Agreement.

“**Alternate Capacity Rights**” shall have the meaning ascribed to that term in Section 5.2.

“**Authorization**” means any authorization, order, permit, approval, forbearance decision, grant, licence, consent, right, franchise, privilege or certificate of any Governmental Entity of competent jurisdiction, whether or not having the force of law.

\*\*\*

“**BSS**” means the 17/12 GHz frequency band.

“**Canadian Authorizations**” means all Authorizations of Canadian Governmental Entities and/or Canadian Persons, including without limitation the DBS Slot License, the Radio Authorization and any and all other Canadian notifications, licenses, permits, authorizations, approvals and consents now or hereafter required (a) for Telesat to provide the Customer RF Channel Services to Customer under the terms and conditions of this Agreement, and (b) to the

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\*\*\*Certain confidential portions of this exhibit were omitted by means of redacting a portion of the text. Copies of the exhibit containing the redacted portions have been filed separately with the Securities and Exchange Commission subject to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act.

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extent required under Canadian law, for Customer to (i) uplink from the United States to, and downlink into the United States from, the Nimiq 5 Satellite at the Orbital Position, and (ii) use the Customer RF Channel Services for the Intended Purpose. “Canadian Authorizations” specifically do not include any United States Authorizations, but shall include any and all Authorizations (including without limitation Authorizations of the International Telecommunication Union but excluding United States Authorizations) to the extent required to obtain or maintain a Canadian Authorization.

“**Customer**” shall have the meaning ascribed to that term in the introductory paragraph of this Agreement.

“**Customer 4.5 Offer**” shall have the meaning ascribed to that term in Section 4.5(a).

“**Customer 4.5 Replacement Satellite**” shall have the meaning ascribed to that term in Section 4.5(a).

“**Customer 4.5 Replacement Services**” shall have the meaning ascribed to that term in Section 4.5(a).

“**Customer 5.4 Offer**” shall have the meaning ascribed to that term in Section 5.4(c).

“**Customer RF Channel Service(s)**” shall have the meaning ascribed to that term in Section 2.1(a).

“**DBS Slot License**” means the Approval in Principle granted on 17 December 2003 (as amended on 28 December 2006) by Industry Canada pursuant to the Radiocommunication Act (Canada) and any Radio Authorizations associated therewith which authorize Telesat to operate a direct broadcast satellite at the Orbital Position.

“**Decommissioned**” means the permanent removal from service of a satellite.

“**Earliest Termination Date**” shall have the meaning ascribed to that term in Section 5.3.

“**Effective Date**” shall have the meaning ascribed to that term in Section 8.9 hereto.

“**EOL**” means the permanent removal from service of the Nimiq 5 Satellite.

\*\*\*

“**Execution Date**” shall have the meaning ascribed to that term in the introductory paragraph of this Agreement.

“**FCC**” means the United States Federal Communications Commission and any successor agency thereto.

“**FCC Approval**” means the FCC Authorization required for Customer to (a) uplink from the United States to, and downlink into the United States from, the Nimiq 5 Satellite at the Orbital Position, and (b) use the Nimiq 5 Satellite for the Intended Purpose.

“**First Service Date**” shall have the meaning ascribed to that term in Section 2.1(a) hereto

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“**Governmental Entity**” means any (i) multinational, federal, provincial, state, municipal, local or other government, governmental or public department, central bank, court, commission, board, bureau, agency or instrumentality, domestic or foreign; (ii) any subdivision, agent, commission, board, or authority of any of the foregoing; or (iii) any quasi-governmental or

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\*\*\*Certain confidential portions of this exhibit were omitted by means of redacting a portion of the text. Copies of the exhibit containing the redacted portions have been filed separately with the Securities and Exchange Commission subject to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act.

private body validly exercising any regulatory, expropriation or taxing authority under or for the account of any of the foregoing, in each case in the proper exercise of its governmental authority.

“**Initial Term**” shall have the meaning ascribed to that term in Section 2.2.

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“**Intended Purpose**” means the use of the Nimiq 5 Satellite at the Orbital Position to provide \*\*\*

\*\*\*

“**LIBOR**” means the interest rate per annum, for three month deposits of United States Dollars made to prime banks in the London interbank market calculated on the basis of the actual number of days elapsed divided by 360. For greater certainty, the LIBOR rate on a given date will be established by reference to the British Bankers Association web page (<http://bankfacts.org.uk/public/libor>), providing information on historical LIBOR rates or such other web page as may replace it from time to time.

“**Manufacturer Termination for Default Date**” shall have the meaning ascribed to that term in Section 4.2(b).

\*\*\*

“**Nimiq 5 Satellite**” means the communications satellite that includes a BSS-band communications payload, presently designated within Telesat as “Nimiq 5”, \*\*\*.

\*\*\*

“**Orbital Position**” means the 72.7° West Longitude orbital position.

“**Parties**” means Telesat, Customer and any other person who may become party to this Agreement and “**Party**” means any one of them.

\*\*\*

“**Performance Specifications**” means the performance specifications for the BSS payload set forth in Schedule 2.

“**Person**” means an individual, partnership, limited liability company, corporation, joint stock company, trust, unincorporated association, joint venture or other entity or Governmental Entity and pronouns have similarly extended meaning.

“**Radio Authorization**” means the authorization of the Minister of Industry (Canada) pursuant to the *Radiocommunication Act* (Canada) required for Telesat to operate the Nimiq 5 Satellite at the Orbital Position, which authorization does not contain any conditions, restrictions or limitations that would prevent Customer from using the Nimiq 5 Satellite for the Intended Purpose.

“**Reduction Notice**” shall have the meaning ascribed to that term in Section 2.1(b).

“**Replacement Satellite**” shall have the meaning ascribed to that term in Section 5.4(a).

“**Replacement Services**” shall have the meaning ascribed to that term in Section 5.4(a).

“**Satellite Failure**” means the total destruction, failure or loss of the Nimiq 5 Satellite during the Term hereof, \*\*\*

“**Satellite Manufacturer**” means Space Systems/Loral, Inc.

\*\*\*Certain confidential portions of this exhibit were omitted by means of redacting a portion of the text. Copies of the exhibit containing the redacted portions have been filed separately with the Securities and Exchange Commission subject to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act.

“**Satellite Purchase Agreement**” means the satellite purchase agreement entered into by and between Telesat and the Satellite Manufacturer providing for the procurement by Telesat of the Nimiq 5 Satellite, as such agreement may be amended, modified, supplemented, restated or replaced from time to time.

“**Satellite Service Commencement Date**” means the date on which Telesat has conducted an acceptance inspection of the Nimiq 5 Satellite \*\*\*

“**Service Commencement Date**” shall have the meaning ascribed to that term in Section 2.1(a).

“**Telesat**” shall have the meaning ascribed to that term in the introductory paragraph of this Agreement.

“**Term**” shall have the meaning ascribed to that term in Section 2.2(a).

“**Terms and Conditions**” means the terms and conditions for Full Period Whole RF Channel Service on the Nimiq 5 Satellite set forth in Schedule 1.

“**United States Authorizations**” means all Authorizations, including without limitation FCC Approval, now or hereafter required from United States Governmental Entities for Customer to (a) uplink from the United States to, and downlink into the United States from, the Nimiq 5 Satellite at the Orbital Position, and (b) use the Nimiq 5 Satellite for the Intended Purpose.

- 1.2 Capitalized terms used in this Agreement and not otherwise defined in this Agreement have the same meanings as in the Terms and Conditions.
- 1.3 **Gender and Number.** Any reference in this Agreement to gender shall include all genders, and words importing the singular number only shall include the plural and vice versa.
- 1.4 **Entire Agreement.** From and after the Effective Date, this Agreement, including Schedules 1, 2, 3, 4, 5 and 6 attached hereto, and the agreements referred to herein or delivered pursuant hereto (including without limitation \*\*\* being entered contemporaneously herewith) supersedes all prior agreements, term sheets, letters of intent, understandings, negotiations and discussions, whether oral or written, of the Parties pertaining to the subject matter hereof; provided, however, for the avoidance of doubt the confidentiality provisions, including restrictions on the use of proprietary information (and associated remedy provisions) contained in any such prior agreements, term sheets, letters of intent, understandings, negotiations and discussions shall survive in accordance with their terms. There are no representations, warranties, conditions or other agreements, express or implied, statutory or otherwise, between the Parties in connection with the subject matter of this Agreement, except as specifically set forth in this Agreement and the agreements referred to herein or delivered pursuant hereto.
- 1.5 **Amendments.** This Agreement may only be amended, modified or supplemented by a written agreement signed by each of the Parties.
- 1.6 **Incorporation of Schedules.** The schedules attached hereto shall for all purposes hereof form an integral part of this Agreement and are hereby incorporated by reference in their entirety.
- 1.7 **Currency.** All dollar amounts referred to in this Agreement, \*\*\*

\*\*\*Certain confidential portions of this exhibit were omitted by means of redacting a portion of the text. Copies of the exhibit containing the redacted portions have been filed separately with the Securities and Exchange Commission subject to a request for confidential treatment pursuant to Rule 24b-2 under the Securities Exchange Act.

## ARTICLE 2.0 — SERVICE COMMITMENT

### 2.1 Service Commitment on Nimiq 5 Satellite

- (a) Customer hereby agrees to subscribe for, and Telesat hereby agrees to furnish to Customer, subject to the terms and conditions of this Agreement including, but not limited to, Section 2.1(b), thirty-two (32) \*\*\* Channel Services operating on the 17/12 GHz Frequency Band\*\*\*, on the Nimiq 5 Satellite (hereinafter referred to individually as a “Customer RF Channel Service” and collectively as the “Customer RF Channel Services”) commencing as follows:

\*\*\*

The date of commencement for each Customer RF Channel Service (as set forth above) is referred to herein as the “Service Commencement Date” for such Customer RF Channel Service, with the first such date hereunder being referred to herein as the “First Service Date.”

- (b) \*\*\*

### 2.2 Term, Satellite Service Commencement Date and Satellite Construction



- (a) Unless terminated earlier as provided herein, the term of this Agreement shall commence upon the Effective Date and shall expire on the date which is fifteen (15) years following the Satellite Service Commencement Date (the "Initial Term"). Upon expiration of the Initial Term, and subject to issuance of a written notice from Customer to Telesat at least ninety (90) days before the expiration of the Initial Term, Customer shall be entitled to extend this Agreement on a month to month basis until EOL (the Initial Term, plus any such extended month to month term, the "Term") on the same terms and conditions set out in this Agreement.
- (b) Telesat shall use commercially reasonable efforts to give Customer \*\*\* prior written notice of the Satellite Service Commencement Date and each Service Commencement Date and, to the extent the predicted date changes, promptly apprise Customer of any such change. If Telesat fails to give Customer written notice of the Satellite Service Commencement Date and/or any Service Commencement Date prior to the Satellite Service Commencement Date and/or such Service Commencement Date, \*\*\*. To the extent applicable, during the construction of the Nimiq 5 Satellite, Telesat shall \*\*\* provide Customer with quarterly reports summarizing the current status of the Nimiq 5 Satellite, including the then-scheduled dates for completing construction and launching the Nimiq 5 Satellite into orbit. Telesat shall promptly, and in no event later than \*\*\* after Telesat's actual knowledge of the applicable change or development, advise Customer of any changes and other developments relating to the construction, operation, launch and performance of the Nimiq 5 Satellite which \*\*\* could be expected to result in the Customer RF Channel Services not meeting the Performance Specifications or delay the launch of the Nimiq 5 Satellite. Notwithstanding the aforesaid, (i) all confidentiality requirements imposed by the satellite manufacturer and/or launch provider; and (ii) requirements imposed by an applicable Governmental Entity, including but not limited to requirements imposed by the United States Department of State, shall be complied with by Customer prior to delivery of any of the above information. \*\*\*
- (c) To the extent applicable, Telesat shall provide Customer with \*\*\* notice of: (i) the pre-ship review, the launch readiness review, in-orbit testing, and the in-orbit testing review scheduled to be held between Telesat and the satellite manufacturer and/or conducted during construction and in-orbit check-out of the Nimiq 5 Satellite; and (ii) the launch readiness review and post-flight review scheduled to be held between Telesat and the launch service provider for the Nimiq 5 Satellite. \*\*\*

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- 
- (d) To the extent applicable, Telesat may during the construction of the Nimiq 5 Satellite request changes or waivers to the Performance Specifications. Such changes and/or waivers shall be submitted in writing to Customer \*\*\* prior to the proposed date of change. Customer shall notify Telesat in writing. \*\*\* The Parties agree to amend the Performance Specifications forming Schedule 2 of this Agreement to conform with an approved or deemed approved waiver or change. \*\*\*
- (e) To the extent applicable, Customer may during the construction of the Nimiq 5 Satellite request changes to the Performance Specifications. Telesat agrees to work in good faith with Customer to implement its requested changes \*\*\*
- Prior to implementing a Customer-requested change, Telesat shall provide in writing to Customer \*\*\*
- (B) if there is an impact on the construction schedule for the Nimiq 5 Satellite \*\*\*
- (C) the Parties will amend the Performance Specifications forming Schedule 2 of this Agreement to conform with the change.
- (f) Telesat's program management for the Nimiq 5 Satellite will apply \*\*\*

### 2.3 Monthly Rate

- (a) Subject to Section 2.2(b) above, Customer shall pay, and there shall become due and payable, a monthly rate of \*\*\* for each Customer RF Channel Service furnished during the period commencing on and from the applicable Service Commencement Date until the date of the expiry of the Term. For the purposes of Rebates for Interruption only\*\*\*
- (b) Applicable Regulatory Fees in respect of the Customer RF Channel Service(s) as specified in Section C.5 of Schedule 1 shall be \*\*\*

### 2.4 Advanced Payments

- (a) Subject to Section 2.4(b) below, Customer shall pay to Telesat the advanced payments ("Advanced Payments") as set forth in Schedule 4.
- (b) If Telesat gives Customer less than \*\*\* prior written notice of the due date \*\*\* for any Advanced Payment, Customer will pay such Advanced Payment on \*\*\* following receipt of such notice. In the event that the number of Customer RF Channel Services is reduced in accordance with \*\*\* if and to the extent that any portion of the Advanced Payments is then due and outstanding, Customer shall be given a credit against said Advanced Payments in an amount equal to the Advanced Payments applicable to such reduction\*\*\* for each whole RF Channel Service that is reduced or, if and to the extent that Customer is then current on the Advanced Payments, Telesat shall \*\*\* refund to Customer the portion of the Advanced Payments applicable to such reduction\*\*\* for each whole RF Channel Service that is reduced. If and at such point that the Advanced Payments then due and outstanding, taking into account such credits, if any, have been paid in full such that there is no further Advanced Payment then due and outstanding to be made against which such credit would apply, Telesat shall \*\*\* of the occurrence of such reduction \*\*\* refund such amount that has not been credited to Customer. \*\*\* In the event that this Agreement terminates in its entirety prior to the Satellite Service Commencement Date pursuant to Section 4.2(a), Section 4.2(b), Section 4.2(c), Section 4.2(d), Section 4.2(e) and/or Section G.3(b) of Schedule 1, or in the event of a Satellite Failure or launch failure as described in Section 3 of Schedule 5 to this Agreement, Telesat shall refund to Customer \*\*\*

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## 2.5 Terms and Conditions

The furnishing of the Customer RF Channel Services by Telesat shall be subject to the Terms and Conditions which the Parties hereby agree are incorporated by \*\*\* and constitute an integral part of this Agreement.

## 2.6 MOA Transition Provisions

The Parties acknowledge and agree that, while this Agreement will replace the “MOA” (as defined in Schedule 5 hereto) and related agreements referenced in an MOA Termination Agreement being entered contemporaneously herewith, \*\*\*

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## ARTICLE 3.0 — REPRESENTATIONS AND WARRANTIES

### 3.1 Mutual Representations and Warranties

Each Party represents and warrants to the other Party as follows and acknowledges and confirms that the other Party is relying thereon without independent inquiry in entering into this Agreement:

- (a) **Organization and Qualification.** It is a corporation duly incorporated, organized, continued or amalgamated, and validly existing and in good standing under the laws of the jurisdiction of its incorporation, organization, continuance or amalgamation, as the case may be, and is duly qualified, licensed or registered to carry on business under the laws applicable to it in all jurisdictions in which the nature of its assets or business as currently conducted makes such qualification necessary or where the failure to be so qualified \*\*\* on its ability to perform its obligations hereunder.
- (b) **Corporate Power.** It has all requisite corporate power and authority to execute and deliver this Agreement, to perform its respective obligations hereunder, to own its properties and to carry on its business as now conducted and to consummate the transactions contemplated hereby.
- (c) **Authorizations, etc.** The execution and delivery by it of this Agreement and the performance of its respective obligations hereunder, and the consummation by it of the transactions contemplated hereby, have been duly authorized by all requisite corporate action.
- (d) **Execution and Binding Obligation.** This Agreement has been duly executed and delivered by it and constitutes legal, valid and binding obligations of it, enforceable against it in accordance with its terms, except insofar as enforceability may be affected by applicable Laws relating to bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereafter in effect affecting creditors’ rights generally or by principles governing the availability of equitable remedies.
- (e) **No Breach or Violation.** The execution and delivery of this Agreement and performance of its respective obligations under this Agreement and compliance with the terms, conditions and provisions hereof will not conflict with or result in a breach of any of the terms, conditions or provisions of (i) its organizational or constating documents or by-laws; (ii) any applicable Law; (iii) any contractual restriction binding on it or affecting it or its properties (without regard to requirements of notice, passage of time or elections of any Person); or (iv) any judgement, injunction, determination or award which is binding on it. It has not retained or authorized anyone to represent it as a broker or finder in connection with this Agreement. In connection with its performance under this Agreement, it shall comply in all material respects with all applicable laws, regulations, or orders of any Governmental Entity.
- (f) **Legal Proceedings.** There is no judgement or order outstanding, or any action, suit, complaint, proceeding or investigation by or before any Governmental Entity or any arbitrator pending, or to the best of its knowledge, threatened, which, if adversely determined, would be reasonably expected to have a material adverse effect on its ability to consummate the transactions contemplated hereby or perform its obligations hereunder.

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## ARTICLE 4.0 — ADDITIONAL COVENANTS AND TERMINATION

### 4.1 Use of the Nimiq 5 Satellite for the Intended Purpose

- (a) Telesat agrees, \*\*\*, to obtain and maintain all Canadian Authorizations, including without limitation the DBS Slot License and the Radio Authorization; provided that with respect to Canadian Authorizations which are to be obtained and/or maintained by Canadian Governmental Entities, Telesat shall use commercially reasonable efforts to support such Canadian Governmental Entities in obtaining and maintaining such Canadian Authorizations; further provided that, if following the Effective Date of this Agreement additional Canadian Authorization(s) is required solely due to an Authorization or other requirement of \*\*\*
- (b) Customer agrees, \*\*\* In accordance with requests made and instructions given by Customer, Telesat shall use commercially reasonable efforts \*\*\*, to support Customer's efforts to obtain and maintain all United States Authorizations.
- (c) Customer's use of the Customer RF Channel Services and/or the \*\*\* to provide services outside of the United States (and thereby beyond the Intended Purpose herein stated) shall be permitted, \*\*\*. In accordance with requests made and instructions given by Customer, Telesat shall use commercially reasonable efforts \*\*\*, to support Customer's efforts to obtain and maintain such Authorizations as may be required for Customer's expanded use. \*\*\*

#### 4.2 Termination

This Agreement may be terminated and the transactions contemplated by this Agreement may be abandoned at any time prior to the Satellite Service Commencement Date (except where a different timeframe has been expressly stated below):

- (a) \*\*\*
- (b) at the option of Customer, if the Nimiq 5 Satellite has not been launched by \*\*\*
- (c) at the option of Customer, if the Satellite Service Commencement Date has not occurred within the earlier of: \*\*\*
- (d) \*\*\*

#### 4.3 Liabilities in Event of Termination

- (a) Subject to Section 4.3(b) and except as expressly set forth to the contrary herein, the termination or expiration of this Agreement will in no way limit any obligation or liability of either Party based on or arising from a breach or default by such Party with respect to any of its representations or warranties contained in this Agreement, or with respect to any of its covenants or agreements contained in this Agreement which by their terms were to be performed prior to the date of termination or expiration, nor shall any such termination or expiration release either Party from any liabilities or obligations under this Agreement, including without limitation any liabilities or obligations under Section 2.4 or under Section E, Section G.3(d), Section I.5 or Section J of Schedule 1.
- (b) Upon the termination of this Agreement pursuant to Section 4.2, the Parties shall have no further obligations or liabilities to each other hereunder or in respect to the transactions contemplated hereby, except as otherwise provided under Section 2.4(b) and Section 2.4(c).

#### 4.4 General Rights and Remedies

Subject to the exclusions and limitations of liability in the Terms and Conditions, in the event any representation or warranty of any Party contained in this Agreement shall prove to have been incorrect in any material respect when made or deemed to have been made or if any Party fails to perform, observe or comply with any of its covenants or agreements contained in this Agreement, the other Party will be entitled to whatever rights or remedies are available at law or in equity.

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#### 4.5 Undertakings With Respect to the Customer RF Channel Services in the Event of Certain Underutilization Circumstances

- (a) In the event that, after the Satellite Service Commencement Date, Telesat is receiving monthly fees \*\*\* for less than \*\*\* RF Channels on the Nimiq 5 Satellite in aggregate \*\*\* then Telesat may, subject to the balance of this subsection 4.5(a), at any time thereafter offer to enter into an agreement with Customer for the procurement of thirty-two whole RF channel services with CONUS coverage (the "Customer 4.5 Replacement Services") on a replacement satellite at the Orbital Position (the "Customer 4.5 Replacement Satellite") at pricing to Customer that shall be determined \*\*\*and otherwise on terms and conditions substantially similar to the terms and conditions of this Agreement (the "Customer 4.5 Offer"). Within \*\*\* of receipt of the Customer 4.5 Offer, Customer may elect to accept the Customer 4.5 Offer by giving written notice of acceptance. \*\*\*
- (b) If Customer timely accepts a Customer 4.5 Offer, then Customer shall be entitled \*\*\* until the Customer 4.5 Replacement Satellite is placed into commercial operation at the Orbital Position.
- (c) If Customer does not timely accept a Customer 4.5 Offer, then \*\*\*
- (d) If Customer does not timely accept a Customer 4.5 Offer then Telesat shall \*\*\*

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**ARTICLE 5.0 — \*\*\***

\*\*\*

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**ARTICLE 6.0 — FREQUENCY COORDINATION AND SATELLITE CONFIGURATION**

6.1 The Parties acknowledge and agree that the Nimiq 5 Satellite will be operated consistent with the \*\*\*. The Parties further agree that, notwithstanding anything to the contrary set forth herein, Telesat shall \*\*\*. For the avoidance of doubt, Customer must operate within the existing Frequency Coordination Limits, and Customer shall pay for the Customer RF Channel Services under this Agreement, as if the Nimiq 5 Satellite fully meets the Performance Specifications \*\*\*, if the sole reason that it is not meeting such Performance Specifications is due to the Nimiq 5 Satellite being operated in accordance with the existing Frequency Coordination Limits.

Telesat agrees to use commercially reasonable efforts to coordinate the Orbital Position with other operators and administrations in accordance with written instructions provided by Customer at any time and from time to time. Furthermore, Telesat shall, provided that it would be consistent with the health, safety, and performance of the Nimiq 5 Satellite configure the Nimiq 5 Satellite in accordance with written instructions received from EchoStar at any time and from time to time.

Nothing herein shall be deemed to require Telesat to accept concessions in connection with any coordination activities contemplated herein \*\*\*, acting in a commercially reasonable manner, nor shall Telesat have \*\*\* if any such coordination cannot be achieved. Notwithstanding the immediately preceding sentence, each Party acknowledges and agrees that the other Party shall be entitled to \*\*\* of the first Party's obligations under this Section.

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**ARTICLE 7.0. — INTENTIONALLY OMITTED**

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**ARTICLE 8.0 — MISCELLANEOUS****8.1 Parties Obligated and Benefited**

This Agreement will be binding upon the Parties and their respective permitted assigns and successors in interest and will inure solely to the benefit of the Parties and their respective permitted assigns and successors in interest, and no other Person will be entitled to any of the benefits conferred by this Agreement or to rely on the provisions hereof in any action, suit, proceeding, hearing or other forum. Neither Party shall be permitted to assign any of its rights under this Agreement or delegate any of its duties or obligations under this Agreement without the prior written consent of the other Party, provided that either Party may, without the consent of the other Party, assign its rights and obligations hereunder to:

- (a) any Affiliate; or
- (b) any successor Person in connection with any merger or reorganization of its business; or
- (c) its \*\*\* of the Nimiq 5 Satellite or the Customer RF Channel Services, as the case may be; or
- (d) the \*\*\* in the Nimiq 5 Satellite and the RF Channels upon the occurrence of a; \*\*\*

**8.2 Notices**

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 to be 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 directed to Telesat:

Telesat Canada  
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Attention: VP North America Sales

With copy to General Counsel

If directed to Customer:

EchoStar Corporation  
100 Inverness Terrace East  
Englewood, Colorado 80112  
\*\*\*

Attention: Senior VP Space Programs and Operations

With copy to  
EchoStar Corporation  
9601 S. Meridian Blvd.  
Englewood, Colorado 80112  
\*\*\*

Attention: General Counsel

**8.3 Expenses**

Except as otherwise expressly provided herein, all costs and expenses \*\*\* incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by \*\*\*

**8.4 Non-Merger**

Except as otherwise expressly provided in this Agreement, the covenants, representations and warranties of the Parties contained in this Agreement shall not merge on and shall survive the Satellite Service Commencement Date and, notwithstanding any investigation made by or on behalf of either Party, shall continue in full force and effect throughout the Term.

**8.5 Governing Law**

This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. Any controversy or claim arising out of or relating to this Agreement, or the breach, termination or validity thereof, shall be determined by binding arbitration administered by the American Arbitration Association in accordance with its then-current International Arbitration Rules and Supplementary Procedures for Large, Complex Disputes, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. The number of arbitrators shall be three. Within 15 days after the commencement of arbitration, each Party shall select one person to act as an arbitrator and the two selected shall select a third arbitrator within 10 days of their appointment. If the arbitrators selected by the parties are unable or fail to agree upon a third arbitrator within twenty (20) days after the commencement of the arbitration, the third arbitrator shall be selected by the American Arbitration Association. The place of arbitration shall be New York City, New York USA. The language of the arbitration shall be English. The arbitrators shall have no authority to award punitive or other damages not measured by the prevailing party's actual damages. In furtherance and without limitation of the foregoing, the arbitrators shall not award consequential damages in any arbitration initiated under this Section 8.5. The arbitrators shall award to the prevailing party, in addition to any other money damages awarded, its reasonable costs, including reasonable attorneys' fees, in successfully bringing or defending against such arbitration. The award of the arbitrators shall be in writing, shall be signed by a majority of the

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arbitrators, and shall be accompanied by a reasoned opinion, including findings of fact, the reasons for the disposition of each claim, and a breakdown of any monetary award as to specific claims (if applicable). Except as may be required by law, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties. Notwithstanding the foregoing, the request by either party for equitable relief, including without limitation preliminary or permanent injunctive relief, shall not be subject to arbitration under this Section 8.5, and may be adjudicated before any court of competent jurisdiction.

#### 8.6 U.S. Export Control

The Parties agree and acknowledge that in connection with their respective obligations under this Agreement, they shall at all times comply with the laws, rules and regulations of the United States regarding export restrictions, including, without limitation, the International Traffic in Arms Regulations, 22 CFR §§ 120-130. This Section shall survive the expiration or termination of this Agreement.

#### 8.7 Injunctive Relief

Notwithstanding anything to the contrary set forth herein, the Parties agree that each of them shall be entitled to injunctive relief, if necessary, in order to prevent the other Party from willfully breaching its obligations under this Agreement or to compel the other Party to perform its obligations under this Agreement. Each Party acknowledges that in the event that it willfully breaches its obligations under this Agreement, the harm suffered by the other Party would not be adequately compensated by monetary damages and there would be no adequate remedy at law for the first Party's willful breach or failure to perform and, accordingly, the other Party shall be entitled to specific performance and injunctive relief (in addition to any other remedies available at law or in equity) specifically preventing any such willful breach and enforcing the provisions not being performed hereunder.

#### 8.8 Counterparts

This Agreement may be executed by facsimile and/or in one or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same instrument.

#### 8.9 Conditions Subsequent

Notwithstanding anything to the contrary contained herein, this Agreement shall not become effective until and unless:

(a) **both of the following conditions (i) and (ii) have been met:**

(i) all Canadian Authorizations are issued \*\*\* to (x) Telesat to launch and operate the Nimiq 5 Satellite and/or to provide the Customer RF Channel Services to Customer under the terms and conditions of this Agreement, and/or (y) Telesat and/or Customer to (A) uplink from the United States to, and downlink into the United States from, the Nimiq 5 Satellite at the Orbital Position, and/or (B) use the Customer RF Channel Services for the Intended Purpose; and

(ii) as of the satisfaction of condition (i) immediately above there shall not have been instituted any \*\*\* to (x) Telesat to launch and operate the Nimiq 5 Satellite and/or to provide the Customer RF Channel Services to Customer under the terms and conditions of this Agreement, and/or (y) Telesat and/or Customer to (A) uplink from the United States to, and downlink into the United States from, the Nimiq 5 Satellite at the Orbital Position, and/or (B) use the Customer RF Channel Services for the Intended Purpose;

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**OR**

(b) there has occurred a Satellite Failure or a launch failure of the Nimiq 5 Satellite (for purposes of this Section 8.9 only, "Satellite Failure" means the total destruction, failure or loss of the Nimiq 5 Satellite, \*\*\*).

The first date upon which either condition (a) above or condition (b) above has been satisfied is referenced herein as the "Effective Date."

\*\*\*

8.10 Notwithstanding Article 8.9, the Parties agree that the following provisions shall become effective as of the Execution Date: (i) Telesat's notice obligations under the first two sentences of Section 2.1(b); (ii) each Party's obligations under Section 2.2(b) (except for the second sentence thereof); (iii) Sections 2.2(c), 2.2(d) and 2.2(e); and (iv) the confidentiality provisions, including restrictions on the use of proprietary information (and associated remedy provisions) contained in this Agreement (including without limitation Schedule 1 hereto).

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IN WITNESS WHEREOF each of the parties hereto has duly executed this Agreement under the hands of its proper officers duly authorized in that behalf effective as of the Effective Date.

**TELESAT CANADA**

By: \_\_\_\_\_  
Name:  
Title:

**ECHOSTAR CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
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SCHEDULE 1

Terms And Conditions  
For Full Period Whole RF Channel Service  
On The Nimiq 5 Satellite

\*\*\*

\_\_\_\_\_  
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SCHEDULE 2

PERFORMANCE SPECIFICATIONS

\*\*\*

\_\_\_\_\_  
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SCHEDULE 3

AVAILABILITY OF \*\*\* RF CHANNELS

\*\*\*

\_\_\_\_\_  
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SCHEDULE 4

ADVANCED PAYMENTS

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SCHEDULE 5

MOA TRANSITION PROVISIONS

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SCHEDULE 6

ACCESS REQUIREMENTS

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## EHOSTAR CORPORATION

- and -

## DISH NETWORK L.L.C.

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**NIMIQ 5 WHOLE RF CHANNEL SERVICE AGREEMENT**


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Dated as of September 15, 2009

**Nimiq 5 Whole RF Channel Service Agreement****TABLE OF CONTENTS**

Article 1.0	Definitions
Article 2.0	Service Commitment
Article 3.0	Representations and Warranties
Article 4.0	Additional Covenants and Termination
Article 5.0	***
Article 6.0	Frequency Coordination and Satellite Configuration
Article 7.0	Intentionally Omitted
Article 8.0	Miscellaneous

**SCHEDULES:**

Schedule 1	Terms and Conditions for Full Period Whole RF Channel Service on the Nimiq 5 Satellite
Schedule 2	Performance Specifications
Schedule 3	Availability of *** RF Channels
Schedule 4	[Reserved]
Schedule 5	[Reserved]
Schedule 6	Access Requirements
Schedule 7	DISH-Telesat Letter

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**NIMIQ 5 WHOLE RF CHANNEL SERVICE AGREEMENT**

This whole RF channel service agreement is made as of **September 15, 2009**, by and between **EHOSTAR CORPORATION**, a Nevada corporation with offices located at 100 Inverness Terrace East, Englewood, CO 80112, in the United States of America (hereinafter collectively referred to with its permitted assigns and successors in interest as "EchoStar") and **DISH Network L.L.C.**, a Colorado limited liability company with offices located at 9601 South Meridian Boulevard, Englewood, CO 80112 (hereinafter collectively referred to with its permitted assigns and successors in interest as "Customer"), and shall become effective upon the Effective Date (as such term is defined in the Telesat Agreement; such date shall also be referred to as the "Effective Date" for purposes of this Agreement).

**WHEREAS** Customer has agreed to subscribe for, and EchoStar has agreed to furnish to Customer, certain RF channel services operating on the 17/12 GHz Frequency Band-on the Nimiq 5 Satellite at the rates and subject to the other terms and conditions specified herein.

**NOW THEREFORE** in consideration of the mutual agreements contained in this Agreement and other good and valuable consideration (the receipt and adequacy of which are hereby acknowledged), the Parties agree as follows:

#### **ARTICLE 1.0 — DEFINITIONS**

1.1 As used in this Agreement and the recitals hereto, the following terms shall have the following meanings:

**“4.5 Underutilization Circumstance”** shall have the meaning ascribed to that term in Section 4.5(a).

**“Agreement”** means this whole RF channel service agreement and all schedules, appendices and instruments in amendment of it; “hereof”, “hereto”, “herein” and “hereunder” and similar expressions mean and refer to this Agreement and not to any particular Article or Section; “Article” or “Section” of this Agreement followed by a number means and refers to the specified Article or Section of this Agreement.

**“Authorization”** means any authorization, order, permit, approval, forbearance decision, grant, licence, consent, right, franchise, privilege or certificate of any Governmental Entity of competent jurisdiction, whether or not having the force of law.

\*\*\*

**“BSS”** means the 17/12 GHz frequency band.

**“Canadian Authorizations”** means all Authorizations of Canadian Governmental Entities and/or Canadian Persons, including without limitation the DBS Slot License, the Radio Authorization and any and all other Canadian notifications, licenses, permits, authorizations, approvals and consents now or hereafter required (a) for EchoStar to provide the Customer RF Channel Services to Customer under the terms and conditions of this Agreement, and (b) to the extent required under Canadian law, for Customer to (i) uplink from the United States to, and downlink into the United States from, the Nimiq 5 Satellite at the Orbital Position, and (ii) use the Customer RF Channel Services for the Intended Purpose. “Canadian Authorizations” specifically do not include any United States Authorizations \*\*\*, but shall include any and all Authorizations (including without limitation Authorizations of the International Telecommunication Union but excluding United States Authorizations) to the extent required to obtain or maintain a Canadian Authorization.

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**“Customer”** shall have the meaning ascribed to that term in the introductory paragraph of this Agreement.

**“Customer RF Channel Service(s)”** shall have the meaning ascribed to that term in Section 2.1(a).

**“DBS Slot License”** means the Approval in Principle granted on 17 December 2003 (as amended on 28 December 2006) by Industry Canada pursuant to the Radiocommunication Act (Canada) and any Radio Authorizations associated therewith which authorize Telesat to operate a direct broadcast satellite at the Orbital Position.

**“Decommissioned”** means the permanent removal from service of a satellite.

**“DISH”** means Dish Network Corporation.

**“DISH-Telesat Letter”** means that certain letter by and between DISH and Telesat regarding the Nimiq 5 Whole RF Channel Service Agreement, dated September 15, 2009, attached hereto as Schedule 7.

**“EchoStar 4.5 Offer”** shall have the meaning ascribed to that term in Section 4.5(a).

**“EchoStar 4.5 Replacement Satellite”** shall have the meaning ascribed to that term in Section 4.5(a).

**“EchoStar 4.5 Replacement Services”** shall have the meaning ascribed to that term in Section 4.5(a).

**“EchoStar 4.6 Offer”** shall have the meaning ascribed to that term in Section 4.6.

**“Effective Date”** shall have the meaning ascribed to that term in the introductory paragraph of this Agreement.

**“EOL”** means the permanent removal from service of the Nimiq 5 Satellite.

\*\*\*

**“Extended Term”** shall have the meaning ascribed to that term in Section 2.2(a).

**“FCC”** means the United States Federal Communications Commission and any successor agency thereto.

**“FCC Approval”** means the FCC Authorization required for Customer to (a) uplink from the United States to, and downlink into the United States from, the Nimiq 5 Satellite at the Orbital Position, and (b) use the Nimiq 5 Satellite for the Intended Purpose, \*\*\*

\*\*\*

“**Full Term**” shall have the meaning ascribed to that term in Section 2.2(a).

“**Governmental Entity**” means any (i) multinational, federal, provincial, state, municipal, local or other government, governmental or public department, central bank, court, commission, board, bureau, agency or instrumentality, domestic or foreign; (ii) any subdivision, agent, commission, board, or authority of any of the foregoing; or (iii) any quasi-governmental or private body validly exercising any regulatory, expropriation or taxing authority under or for the account of any of the foregoing, in each case in the proper exercise of its governmental authority.

“**Initial Term**” shall have the meaning ascribed to that term in Section 2.2(a).

\*\*\*

“**Intended Purpose**” means the use of the Nimiq 5 Satellite at the Orbital Position to provide \*\*\*

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“**LIBOR**” means the interest rate per annum, for three month deposits of United States Dollars made to prime banks in the London interbank market calculated on the basis of the actual number of days elapsed divided by 360. For greater certainty, the LIBOR rate on a given date will be established by reference to the British Bankers Association web page (<http://bankfacts.org.uk/public/libor>), providing information on historical LIBOR rates or such other web page as may replace it from time to time.

“**Nimiq 5 Satellite**” means the communications satellite that includes a BSS-band communications payload, presently designated as “Nimiq 5”, \*\*\*

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“**Orbital Position**” means the 72.7° West Longitude orbital position.

“**Parties**” means EchoStar, Customer and any other person who may become party to this Agreement and “**Party**” means any one of them.

\*\*\*

“**Performance Specifications**” means the performance specifications for the BSS payload set forth in Schedule 2.

“**Person**” means an individual, partnership, limited liability company, corporation, joint stock company, trust, unincorporated association, joint venture or other entity or Governmental Entity and pronouns have similarly extended meaning.

“**Prior Nimiq 5 Agreement**” means that certain Nimiq 5 Transponder Service Agreement by and between the Parties, dated as of March 11, 2008.

“**Radio Authorization**” means the authorization of the Minister of Industry (Canada) pursuant to the *Radiocommunication Act* (Canada) required to operate the Nimiq 5 Satellite at the Orbital Position, which authorization does not contain any conditions, restrictions or limitations that would prevent Customer from using the Nimiq 5 Satellite for the Intended Purpose.

“**Reduction Notice**” shall have the meaning ascribed to that term in Section 2.1(b).

“**Satellite Failure**” means the total destruction, failure or loss of the Nimiq 5 Satellite during the Term hereof, \*\*\*

“**Satellite Manufacturer**” means Space Systems/Loral, Inc.

“**Satellite Service Commencement Date**” means the date on which EchoStar provides notice in writing to Customer that Telesat has conducted an acceptance inspection of the Nimiq 5 Satellite \*\*\*

“**Service Commencement Date**” shall have the meaning ascribed to that term in Section 2.1(a).

“**Telesat**” means Telesat Canada, a corporation continued and existing under the laws of Canada.

“**Telesat Agreement**” means that certain Nimiq 5 Whole RF Channel Service Agreement by and between EchoStar and Telesat, dated as of September 15, 2009.

“**Term**” shall have the meaning ascribed to that term in Section 2.2(a).

“**Terms and Conditions**” means the Terms and Conditions for Full Period Whole RF Channel Service on the Nimiq 5 Satellite set forth in Schedule 1.

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**“United States Authorizations”** means all Authorizations, including without limitation FCC Approval, now or hereafter required from United States Governmental Entities for Customer to (a) uplink from the United States to, and downlink into the United States from, the Nimiq 5 Satellite at the Orbital Position, and (b) use the Nimiq 5 Satellite for the Intended Purpose, \*\*\*

- 1.2 Capitalized terms used in this Agreement and not otherwise defined in this Agreement have the same meanings as in the Terms and Conditions.
- 1.3 **Gender and Number.** Any reference in this Agreement to gender shall include all genders, and words importing the singular number only shall include the plural and vice versa.
- 1.4 **Entire Agreement.** From and after the Effective Date, this Agreement, including Schedules 1, 2, 3, 4, 5, 6 and 7 attached hereto, and the agreements referred to herein or delivered pursuant hereto (including without limitation \*\*\*) supersedes all prior agreements, term sheets, letters of intent, understandings, negotiations and discussions, whether oral or written, of the Parties pertaining to the subject matter hereof, including without limitation the Prior Nimiq 5 Agreement; provided, however, for the avoidance of doubt the confidentiality provisions, including restrictions on the use of proprietary information (and associated remedy provisions) contained in any such prior agreements, term sheets, letters of intent, understandings, negotiations and discussions shall survive in accordance with their terms. There are no representations, warranties, conditions or other agreements, express or implied, statutory or otherwise, between the Parties in connection with the subject matter of this Agreement, except as specifically set forth in this Agreement and the agreements referred to herein or delivered pursuant hereto. For the avoidance of doubt, nothing set forth herein shall limit the effectiveness of the DISH-Telesat Letter.
- 1.5 **Amendments.** This Agreement may only be amended, modified or supplemented by a written agreement signed by each of the Parties.
- 1.6 **Incorporation of Schedules.** The schedules attached hereto shall for all purposes hereof form an integral part of this Agreement and are hereby incorporated by reference in their entirety.
- 1.7 **Currency.** All dollar amounts referred to in this Agreement are expressed in the currency of the United States of America.

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## ARTICLE 2.0 — SERVICE COMMITMENT

### 2.1 Service Commitment on Nimiq 5 Satellite

- (a) Customer hereby agrees to subscribe for, and EchoStar hereby agrees to furnish to Customer, subject to the terms and conditions of this Agreement including, but not limited to, Section 2.1(b), thirty-two (32) \*\*\* Channel Services operating on the 17/12 GHz Frequency Band \*\*\* on the Nimiq 5 Satellite (hereinafter referred to individually as a “Customer RF Channel Service” and collectively as the “Customer RF Channel Services”) commencing as follows:

\*\*\*

The date of commencement for each Customer RF Channel Service (as set forth above) is referred to herein as the “Service Commencement Date” for such Customer RF Channel Service.

\*\*\*

### 2.2 Term, Satellite Service Commencement Date

- (a) Unless terminated earlier as provided herein and subject to certain situations under the Telesat Agreement in which EchoStar (and therefore Customer) is required to cease using capacity on the Nimiq 5 Satellite, the term of this Agreement shall commence upon the Effective Date and shall expire on the date which is ten (10) years following the Satellite Service Commencement Date (the “Initial Term”). The Initial Term may be extended at Customer’s sole option for successive one-year periods (or a portion thereof in the case of the final extension) (each an “Extended Term”) through EOL, unless earlier terminated in accordance with the terms hereof and subject to certain situations under the Telesat Agreement in which EchoStar (and therefore Customer) is required to cease using capacity on the Nimiq 5 Satellite, upon written notice to EchoStar provided at least one hundred twenty (120) days prior to the end of the Initial Term and/or the then-current Extended Term (the Initial Term, plus any such Extended Terms, the “Term”). The term of this Agreement with respect to all matters other than the Customer RF Channel Service(s) shall commence upon the Effective Date hereof and shall continue in full force and effect until the expiration or termination of all of EchoStar’s rights under the Telesat Agreement to \*\*\* (the “Full Term”).
- (b) EchoStar shall use commercially reasonable efforts to give Customer prior written notice of the Satellite Service Commencement Date and each Service Commencement Date and, to the extent the predicted date changes, promptly apprise Customer of any such change. If EchoStar fails to give Customer written notice of the Satellite Service Commencement Date and/or any Service Commencement Date prior to the Satellite Service Commencement Date and/or such Service Commencement Date, \*\*\*, EchoStar shall promptly, and in no event later than \*\*\* after EchoStar’s actual knowledge of the applicable change or development, advise Customer of any changes and other developments relating to the operation and performance of the Nimiq 5 Satellite which \*\*\* could be expected to result in the Customer RF Channel Services not meeting the Performance

Specifications. Notwithstanding the aforesaid, (i) all confidentiality requirements imposed by the satellite manufacturer and/or launch provider; and (ii) requirements imposed by an applicable Governmental Entity, including but not limited to requirements imposed by the United States Department of State, shall be complied with by Customer prior to delivery of any of the above information \*\*\*

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### 2.3 Monthly Rate

- (a) Subject to Section 2.2(b) above, Customer shall pay, and there shall become due and payable, a monthly rate of \*\*\* for each Customer RF Channel Service furnished during the period commencing on and from the applicable Service Commencement Date until the date of the expiry of the Term.
- (b) Applicable Regulatory Fees in respect of the Customer RF Channel Service(s) as specified in Section C.5 of Schedule 1 shall be \*\*\*

### 2.4 [Reserved]

### 2.5 Terms and Conditions

The furnishing of the Customer RF Channel Services by EchoStar shall be subject to the Terms and Conditions which the Parties hereby agree are incorporated by \*\*\* and constitute an integral part of this Agreement.

### 2.6 Prior Nimiq 5 Transponder Service Agreement

The Parties acknowledge and agree that this Agreement will replace the Prior Nimiq 5 Agreement.

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## ARTICLE 3.0 — REPRESENTATIONS AND WARRANTIES

### 3.1 Mutual Representations and Warranties

Each Party represents and warrants to the other Party as follows and acknowledges and confirms that the other Party is relying thereon without independent inquiry in entering into this Agreement:

- (a) **Organization and Qualification.** It is an entity duly incorporated, organized, continued or amalgamated, and validly existing and in good standing under the laws of the jurisdiction of its incorporation, organization, continuance or amalgamation, as the case may be, and is duly qualified, licensed or registered to carry on business under the laws applicable to it in all jurisdictions in which the nature of its assets or business as currently conducted makes such qualification necessary or where the failure to be so qualified \*\*\* on its ability to perform its obligations hereunder.
- (b) **Corporate Power.** It has all requisite corporate power and authority to execute and deliver this Agreement, to perform its respective obligations hereunder, to own its properties and to carry on its business as now conducted and to consummate the transactions contemplated hereby.
- (c) **Authorizations, etc.** The execution and delivery by it of this Agreement and the performance of its respective obligations hereunder, and the consummation by it of the transactions contemplated hereby, have been duly authorized by all requisite corporate action.
- (d) **Execution and Binding Obligation.** This Agreement has been duly executed and delivered by it and constitutes legal, valid and binding obligations of it, enforceable against it in accordance with its terms, except insofar as enforceability may be affected by applicable Laws relating to bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereafter in effect affecting creditors' rights generally or by principles governing the availability of equitable remedies.
- (e) **No Breach or Violation.** The execution and delivery of this Agreement and performance of its respective obligations under this Agreement and compliance with the terms, conditions and provisions hereof will not conflict with or result in a breach of any of the terms, conditions or provisions of (i) its organizational or constating documents or by-laws; (ii) any applicable Law; (iii) any contractual restriction binding on it or affecting it or its properties (without regard to requirements of notice, passage of time or elections of any Person); or (iv) any judgement, injunction, determination or award which is binding on it. It has not retained or authorized anyone to represent it as a broker or finder in connection with this Agreement. In connection with its performance under this Agreement, it shall comply in all material respects with all applicable laws, regulations, or orders of any Governmental Entity.
- (f) **Legal Proceedings.** There is no judgement or order outstanding, or any action, suit, complaint, proceeding or investigation by or before any Governmental Entity or any arbitrator pending, or to the best of its knowledge, threatened, which, if adversely determined, would be reasonably expected to have a material adverse effect on its ability to consummate the transactions contemplated hereby or perform its obligations hereunder.

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## ARTICLE 4.0 — ADDITIONAL COVENANTS AND TERMINATION

### 4.1 Use of the Nimiq 5 Satellite for the Intended Purpose

- (a) EchoStar agrees, \*\*\*, to use commercially reasonable efforts to cause Telesat to obtain and maintain all Canadian Authorizations, including without limitation the DBS Slot License and the Radio Authorization; provided that with respect to Canadian Authorizations which are to be obtained and/or maintained by Canadian Governmental Entities, EchoStar shall use commercially reasonable efforts to cause Telesat to support such Canadian Governmental Entities in obtaining and maintaining such Canadian Authorizations; further provided that, if following the Effective Date of this Agreement additional Canadian Authorization(s) is required solely due to an Authorization or other requirement of \*\*\*
- (b) EchoStar agrees, \*\*\*. In accordance with requests made and instructions given by EchoStar, Customer shall use commercially reasonable efforts to support, \*\*\*, the efforts of EchoStar to obtain and maintain all United States Authorizations.
- (c) Customer's use of the Customer RF Channel Services and/or the \*\*\* to provide services outside of the United States (and thereby beyond the Intended Purpose herein stated) shall be permitted \*\*\*. In accordance with requests made and instructions given by Customer, EchoStar shall use commercially reasonable efforts to support (and to cause Telesat to support), \*\*\*, Customer's efforts to obtain and maintain such Authorizations as may be required for Customer's expanded use. \*\*\*

\*\*\*

### 4.2 Termination

This Agreement may be terminated and the transactions contemplated by this Agreement may be abandoned:

\*\*\*

### 4.3 Liabilities in Event of Termination

- (a) Subject to Section 4.3(b) and except as expressly set forth to the contrary herein, the termination or expiration of this Agreement will in no way limit any obligation or liability of either Party based on or arising from a breach or default by such Party with respect to any of its representations or warranties contained in this Agreement, or with respect to any of its covenants or agreements contained in this Agreement which by their terms were to be performed prior to the date of termination or expiration, nor shall any such termination or expiration release either Party from any liabilities or obligations under this Agreement, including without limitation any liabilities or obligations under Section E, Section G.3(d), Section I.5 or Section J of Schedule 1.
- (b) Upon the termination of this Agreement pursuant to Section 4.2, the Parties shall have no further obligations or liabilities to each other hereunder or in respect to the transactions contemplated hereby.

### 4.4 General Rights and Remedies

Subject to the exclusions and limitations of liability in the Terms and Conditions, in the event any representation or warranty of any Party contained in this Agreement shall prove to have been incorrect in any material respect when made or deemed to have been made or if any Party fails to perform, observe or comply with any of its covenants or agreements contained in this Agreement, the other Party will be entitled to whatever rights or remedies are available at law or in equity.

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### 4.5 Undertakings With Respect to the Customer RF Channel Services in the Event of Certain Underutilization Circumstances

- (a) In the event that, after the Satellite Service Commencement Date, Telesat is receiving monthly fees \*\*\* for less than \*\*\* RF Channels on the Nimiq 5 Satellite in aggregate \*\*\* then Telesat may, subject to the provisions of the Telesat Agreement, at any time thereafter offer (the "EchoStar 4.5 Offer") to enter into an agreement with EchoStar for the procurement of thirty-two whole RF channel services with CONUS coverage (the "EchoStar 4.5 Replacement Services") on a replacement satellite at the Orbital Position (the "EchoStar 4.5 Replacement Satellite"). EchoStar shall provide the terms and conditions of the EchoStar 4.5 Offer to Customer within \*\*\* of receipt of the EchoStar 4.5 Offer by EchoStar. Upon written request of Customer received by EchoStar no later than \*\*\* following EchoStar's receipt of the EchoStar 4.5 Offer, EchoStar shall accept the EchoStar 4.5 Offer by giving written notice of acceptance to Telesat. Upon acceptance of the EchoStar 4.5 Offer, EchoStar and Customer shall automatically be deemed to have entered into an agreement for the provision by EchoStar to Customer of the EchoStar 4.5 Replacement Services on the EchoStar 4.5 Replacement Satellite at pricing to Customer that shall be determined \*\*\* and otherwise on terms and conditions substantially similar to the terms and conditions of this Agreement. In the event that Customer fails to timely request that EchoStar accept an EchoStar 4.5 Offer, then \*\*\*
- (b) If Customer does not timely accept a EchoStar 4.5 Offer, \*\*\*

Upon the earliest to occur of: (i) the Nimiq 5 Satellite experiences a launch failure; (ii) the Nimiq 5 Satellite becomes a total loss or experiences a total failure in-orbit or there is a Satellite Failure; (iii) \*\*\* of the Satellite Service Commencement Date; or (iv) transfer of title to the Nimiq 5 Satellite \*\*\*, Telesat shall offer to enter into an agreement with EchoStar for the procurement of thirty-two (32) whole RF channel services with CONUS coverage on a replacement satellite at the Orbital Position (the "EchoStar 4.6 Offer"). EchoStar shall provide the terms and conditions of the EchoStar 4.6 Offer to Customer \*\*\* of receipt of the EchoStar 4.6 Offer by EchoStar. Upon written request of Customer received by EchoStar \*\*\* following EchoStar's receipt of the EchoStar 4.6 Offer, EchoStar shall accept the EchoStar 4.6 Offer by giving written notice of acceptance to Telesat. Upon acceptance of the EchoStar 4.6 Offer, EchoStar and Customer shall automatically be deemed to have entered into an agreement for the provision by EchoStar to Customer of thirty-two (32) whole RF channel services with CONUS coverage on a replacement satellite at the Orbital Position at pricing to Customer that shall be determined \*\*\* and otherwise on terms and conditions substantially similar to the terms and conditions of this Agreement. In the event that Customer fails to timely request that EchoStar accept an EchoStar 4.6 Offer, then \*\*\*

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ARTICLE 5.0 — \*\*\*

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ARTICLE 6.0 — FREQUENCY COORDINATION AND SATELLITE CONFIGURATION

6.1 The Parties acknowledge and agree that the Nimiq 5 Satellite will be operated consistent with the \*\*\*. The Parties further agree that, notwithstanding anything to the contrary set forth herein, EchoStar shall \*\*\*. For the avoidance of doubt, Customer must operate within the existing Frequency Coordination Limits, and Customer shall pay for the Customer RF Channel Services under this Agreement, as if the Nimiq 5 Satellite fully meets the Performance Specifications \*\*\*, if the sole reason that it is not meeting such Performance Specifications is due to the Nimiq 5 Satellite being operated in accordance with the existing Frequency Coordination Limits.

EchoStar agrees to use commercially reasonable efforts to cause Telesat to coordinate the Orbital Position with other operators and administrations in accordance with written instructions provided by Customer at any time and from time to time. Furthermore, EchoStar shall, provided that it would be consistent with the health, safety, and performance of the Nimiq 5 Satellite, cause Telesat to configure the Nimiq 5 Satellite in accordance with written instructions received from Customer at any time and from time to time.

Nothing herein shall be deemed to require EchoStar or Telesat to accept concessions in connection with any coordination activities contemplated herein \*\*\* acting in a commercially reasonable manner, nor shall EchoStar or Telesat have \*\*\* if any such coordination cannot be achieved. Notwithstanding the immediately preceding sentence, each Party acknowledges and agrees that the other Party shall be entitled to \*\*\* of the first Party's obligations under this Section.

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ARTICLE 7.0. — INTENTIONALLY OMITTED

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ARTICLE 8.0 — MISCELLANEOUS

## 8.1 Parties Obligated and Benefited

This Agreement will be binding upon the Parties and their respective permitted assigns and successors in interest and will inure solely to the benefit of the Parties and their respective permitted assigns and successors in interest. \*\*\* Other than as expressly set forth in the prior sentence, no other Person will be entitled to any of the benefits conferred by this Agreement or to rely on the provisions hereof in any action, suit, proceeding, hearing or other forum. Neither Party shall be permitted to assign any of its rights under this Agreement or delegate any of its duties or obligations under this Agreement without the prior written consent of the other Party, provided that either Party may, without the consent of the other Party, assign its rights and obligations hereunder to:

- (a) any Affiliate; or
- (b) any successor Person in connection with any merger or reorganization of its business; or
- (c) the \*\*\* in the Nimiq 5 Satellite and the RF Channels upon the occurrence of a; \*\*\*

## 8.2 Notices

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 to be 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 directed to Customer:

Attn: Office of the President  
DISH Network L.L.C.  
9601 South Meridian Blvd.  
Englewood, Colorado 80112  
\*\*\*

cc: Office of the General Counsel  
\*\*\*  
(same address as above)

### If directed to EchoStar:

EchoStar Corporation  
100 Inverness Terrace East  
Englewood, Colorado 80112  
\*\*\*

Attention: Senior VP Space Programs and Operations

With copy to  
EchoStar Corporation  
9601 S. Meridian Blvd.  
Englewood, Colorado 80112  
\*\*\*  
Attention: General Counsel

## 8.3 Expenses

Except as otherwise expressly provided herein, all costs and expenses \*\*\* incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by \*\*\*

## 8.4 Non-Merger

Except as otherwise expressly provided in this Agreement, the covenants, representations and warranties of the Parties contained in this Agreement shall not merge on and shall survive the Satellite Service Commencement Date and, notwithstanding any investigation made by or on behalf of either Party, shall continue in full force and effect throughout the Term.

## 8.5 Choice of Law; Consent to Jurisdiction

This Agreement shall be governed in all respects by the laws of the State of Colorado (without giving any effect to the conflict of laws provisions thereof), as such laws are applied to agreements between Colorado residents entered into and to be performed entirely within Colorado. The federal and state courts in the State of Colorado shall have exclusive jurisdiction to hear and determine any and all claims, disputes, actions and suits that may arise under or out of this Agreement. The parties hereby agree and voluntarily consent to the personal jurisdiction of, and waive any objection



to venue in, such courts for such purposes and agree to accept service of process outside the State of Colorado in any matter to be submitted to any such court pursuant hereto.

**8.6 U.S. Export Control**

The Parties agree and acknowledge that in connection with their respective obligations under this Agreement, they shall at all times comply with the laws, rules and regulations of the United States regarding export restrictions, including, without limitation, the International Traffic in Arms Regulations, 22 CFR §§ 120-130. This Section shall survive the expiration or termination of this Agreement.

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**8.7 Injunctive Relief**

Notwithstanding anything to the contrary set forth herein, the Parties agree that each of them shall be entitled to injunctive relief, if necessary, in order to prevent the other Party from willfully breaching its obligations under this Agreement or to compel the other Party to perform its obligations under this Agreement. Each Party acknowledges that in the event that it willfully breaches its obligations under this Agreement, the harm suffered by the other Party would not be adequately compensated by monetary damages and there would be no adequate remedy at law for the first Party's willful breach or failure to perform and, accordingly, the other Party shall be entitled to specific performance and injunctive relief (in addition to any other remedies available at law or in equity) specifically preventing any such willful breach and enforcing the provisions not being performed hereunder.

**8.8 Counterparts**

This Agreement may be executed by facsimile and/or in one or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same instrument.

**8.9 Enforcement Under the Telesat Agreement.**

The Parties hereby acknowledge that all rights and entitlements of Customer set forth under this Agreement are derivative of the rights EchoStar obtained from Telesat under the Telesat Agreement. EchoStar hereby agrees to enforce and pursue such rights and entitlements on behalf of, and for the benefit of Customer, at Customer's direction.

**8.10 Certain Actions Under the Telesat Agreement.**

During the Full Term, EchoStar agrees that it will not \*\*\* the Telesat Agreement or any of its rights or obligations thereunder, or \*\*\* without in either case obtaining the prior written consent of Customer (which consent may be withheld in Customer's sole and absolute discretion for any reason or no reason). During the Full Term, EchoStar agrees \*\*\* without Customer's prior written consent (which consent may be withheld in Customer's sole and absolute discretion for any reason or no reason). During the Full Term, EchoStar agrees to \*\*\* with respect to the Telesat Agreement, and EchoStar further agrees not to take any action, or refrain from taking any action, under the Telesat Agreement that would \*\*\* without Customer's prior written consent (which consent may be withheld in Customer's sole and absolute discretion for any reason or no reason).

8.11 \*\*\*

8.12 \*\*\*

8.13 \*\*\*

**8.14 DISH Assumption.**

If DISH becomes the prime obligor under the Service Agreement (as such term is defined in the DISH-Telesat Letter), this Agreement shall \*\*\*

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IN WITNESS WHEREOF each of the parties hereto has duly executed this Agreement under the hands of its proper officers duly authorized in that behalf effective as of the Effective Date.

**DISH NETWORK L.L.C.**

By: \_\_\_\_\_  
Name:  
Title:

**ECHOSTAR CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
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SCHEDULE 1

Terms and Conditions  
for Full Period Whole RF Channel Service  
on the Nimiq 5 Satellite

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\_\_\_\_\_  
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SCHEDULE 2

PERFORMANCE SPECIFICATIONS

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\_\_\_\_\_  
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SCHEDULE 3

AVAILABILITY OF \*\*\* RF CHANNELS

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\_\_\_\_\_  
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SCHEDULE 4

[Reserved]

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SCHEDULE 5

[Reserved]

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SCHEDULE 6

ACCESS REQUIREMENTS

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SCHEDULE 7

DISH-TELESAT LETTER

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PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT is entered into as of August 4, 2009, and shall be effective as of January 1, 2010, (the "Effective Date") by and between DISH Network Corporation, a Nevada corporation ("DISH"), and Echostar Corporation, a Nevada corporation (the "Company").

WHEREAS, the Board of Directors of DISH determined that it was appropriate and desirable to separate DISH and the Company into two publicly-traded companies by separating from DISH and transferring to the Company DISH's non-consumer related businesses and related assets and liabilities (the "Separation");

WHEREAS, DISH and the Company entered into that certain Separation Agreement, dated as of December 31, 2007 (the "Separation Agreement"), in order to carry out, effect and consummate the Separation;

WHEREAS, to DISH and the Company entered into that certain Transition Services Agreement, dated as of December 31, 2007 (the "Transition Services Agreement"), pursuant to which DISH provides certain services to the Company;

WHEREAS, DISH and the Company entered into that certain Services Agreement, dated as of December 31, 2007 (the "Services Agreement"), pursuant to which the Company provides certain services to DISH;

WHEREAS, DISH and the Company entered into that certain Satellite Procurement Agreement, dated as of December 31, 2007 (the "Satellite Procurement Agreement"), pursuant to which the Company provides certain services to DISH; and

WHEREAS, DISH and the Company deem it to be appropriate and in the best interests of DISH and the Company to continue to provide and receive certain services previously provided under the Transition Services Agreement, the Services Agreement and the Satellite Procurement Agreement pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises, covenants, agreements, representations and warranties contained herein, and for other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby agree, intending to be legally bound, as follows:

ARTICLE I

Definitions

Section 1.1 Definitions. Unless otherwise defined herein, each capitalized term shall have the meaning specified for such term in the Separation Agreement. As used in this Agreement:

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(a) "Agreement" means this Professional Services Agreement, the provisions of the Separation Agreement referenced herein and all Schedules attached hereto and incorporated herein by this reference and all amendments, modifications and changes hereto and thereto.

(b) "Company Indemnified Parties" means the Company and its Affiliates and each of their respective present and former directors, managers, or persons acting in a similar capacity, officers, employees, agents, consultants, or other representatives and each of the heirs, executors, successors and assigns of any of the foregoing.

(c) "Company Systems" means any computer software program or routine or part thereof owned, licensed or provided by or for the Company or any of its Subsidiaries which is used by the Company or any of its Subsidiaries or their suppliers on behalf of the Company or any of its Subsidiaries, each as modified, maintained or enhanced from time to time by the Company or any of its Subsidiaries, DISH or any of its Subsidiaries or any Third Party.

(d) "Cost" means the fully-burdened cost incurred by a party and its Affiliates to provide or procure the Services. For purposes of this definition, the fully-burdened cost includes without limitation: (i) the costs of any materials or fees paid to third party consultants or advisers used in the provision or procurement of the Services; (ii) shipping costs; (iii) the salary, benefits (if any) (including without limitation, medical plans and 401(k) or other retirement plans), employment taxes (if any) of all employees of a party and its Affiliates involved in the provision or procurement of the Services; (iv) related overhead expenses (including without limitation cost of facilities and utilities costs, insurance, and the cost of all general support, operational and business services); (v) any and all licensing fees paid or payable to Third Parties for any intellectual property incorporated into the Services; and (vi) depreciation on any equipment or assets involved in the provision or procurement of the Services.

(e) "DISH Indemnified Parties" means DISH and its Affiliates and each of their respective present and former directors, managers, or persons acting in a similar capacity, officers, employees, agents, consultants, or other representatives and each of the heirs, executors, successors and assigns of any of the foregoing.

(f) "DISH Systems" means any computer software program or routine or part thereof owned, licensed or provided by or for DISH or any of its Subsidiaries which is used by DISH or any of its Subsidiaries or their suppliers on behalf DISH or any of its Subsidiaries, each as modified, maintained or enhanced from time to time by DISH or any of its Subsidiaries or any Third Party.

(g) “Expenses” means any and all expenses incurred in connection with investigating, defending or asserting any claim, action, suit or proceeding incident to any matter indemnified against hereunder (including court filing fees, court costs, arbitration fees or costs, witness fees, and reasonable fees and disbursements of legal counsel, investigators, expert witnesses, consultants, accountants and other professionals).

(h) Reserved.

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(i) “Providing Party” means the party providing Services pursuant to the terms of this Agreement.

(j) “Receiving Party” means the party receiving Services pursuant to the terms of this Agreement.

(k) “Services” means either the DISH Services or the Company Services.

(l) “Systems” means the DISH Systems or the Company Systems, individually, or the DISH Systems and the Company Systems, collectively, as the context may indicate.

(m) “Third Party” means a Person that is not an Affiliate of any party hereto.

Section 1.2 Interpretation. (a) In this Agreement, unless the context clearly indicates otherwise:

(i) words used in the singular include the plural and words used in the plural include the singular;

(ii) references to any Person include such Person’s successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement, and a reference to such Person’s “Affiliates” shall be deemed to mean such Person’s Affiliates following the Distribution; provided that for purposes of this Agreement DISH and the Company shall not be considered Affiliates;

(iii) references to any gender includes the other gender;

(iv) the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation”;

(v) references to any Article, Section or Schedule means such Article or Section of, or such Schedule to, this Agreement, as the case may be, and references in any Section or definition to any clause means such clause of such Section or definition;

(vi) the words “herein,” “hereunder,” “hereof,” “hereto” and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Section or other provision hereof;

(vii) references to any agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and by this Agreement;

(viii) references to any Applicable Law (including statutes and ordinances) means such law (including all rules and regulations promulgated thereunder) as amended, modified, codified

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or reenacted, in whole or in part, and in effect at the time of determining compliance or applicability;

(ix) relative to the determination of any period of time, “from” means “from and including,” “to” means “to but excluding” and “through” means “through and including”;

(x) accounting terms used herein shall have the meanings historically ascribed to them by DISH and its Subsidiaries, including the Company, in its and their internal accounting and financial policies and procedures in effect prior to the date of the Separation;

(xi) if there is any conflict between the provisions of the Separation Agreement and this Agreement, the provisions of this Agreement shall control with respect to the subject matter hereof;

(xii) the titles to Articles and headings of Sections contained in this Agreement have been inserted for convenience of reference only and shall not be deemed to be a part of or to affect the meaning or interpretation of this Agreement;

(xiii) any portion of this Agreement obligating a party hereto to take any action or refrain from taking any action, as the case may be, shall mean that such party shall also be obligated to cause its relevant Affiliates to take such action or refrain from taking such action, as the case may be (and, accordingly, if Services are provided by Affiliates of DISH or the Company, references to “DISH” or “the Company” shall be deemed to be references to such Affiliate which shall provide the Services under this Agreement; and

(xiv) unless otherwise specified in this Agreement, all references to dollar amounts herein shall be in respect of lawful currency of the United States.

## ARTICLE II

### Performance of Services

Section 2.1 Description of the Services Provided by DISH. Following the Effective Date, DISH shall provide, or cause to be provided, the following services (collectively, the “DISH Services”) to the Company in support of its businesses:

(a) Reserved.

(b) IT Services. DISH or its designee shall provide each of the IT services specified in Schedule 2.1.2 (the “IT Services”) to the Company or its Subsidiaries, in accordance with the terms and conditions for such IT Services listed on Schedule 2.1.2.

(c) Travel and Event Coordination Services. DISH or its designee shall provide each of the travel and events coordination services specified in Schedule 2.1.3 (the “Travel and Event Coordination Services”) to the Company or its Subsidiaries, in accordance with the terms and conditions for such Travel and Event Coordination Services listed on Schedule 2.1.3.

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(d) Reserved.

(e) Internal Audit Services. DISH or its designee shall provide each of the internal audit and corporate quality services specified in Schedule 2.1.5 (the “Internal Audit Services”) to the Company or its Subsidiaries, in accordance with the terms and conditions for such Internal Audit Services listed on Schedule 2.1.5.

(f) Legal Services. DISH or its designee shall provide each of the legal services specified in Schedule 2.1.6 (the “Legal Services”) to the Company or its Subsidiaries, in accordance with the terms and conditions for such Legal Services listed on Schedule 2.1.6.

(g) Accounting and Tax Services. DISH or its designee shall provide each of the accounting and tax services specified in Schedule 2.1.7 (the “Accounting and Tax Services”) to the Company or its Subsidiaries, in accordance with the terms and conditions for such Accounting and Tax Services listed on Schedule 2.1.7.

(h) Benefits Administration. DISH or its designee shall provide each of the benefits administration services specified in Schedule 2.1.8 (the “Benefits Administration Services”) to the Company or its Subsidiaries, in accordance with the terms and conditions for such Benefits Administration Services listed on Schedule 2.1.8.

(i) Chairman’s Group. DISH or its designee shall provide each of the chairman’s group services specified in Schedule 2.1.9 (the “Chairman’s Group Services”) to the Company or its Subsidiaries, in accordance with the terms and conditions for such Chairman’s Group Services listed on Schedule 2.1.9.

(j) Non-Cash Compensation. DISH or its designee shall provide each of the non-cash compensation services specified in Schedule 2.1.10 (the “Non-Cash Compensation Services”) to the

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Company or its Subsidiaries, in accordance with the terms and conditions for such Non-Cash Compensation Services listed on Schedule 2.1.10.

(k) Programming Acquisition Services. DISH or its designee shall provide each of the programming acquisition services specified in Schedule 2.1.11 (the “Programming Acquisition Services”) to the Company or its Subsidiaries, in accordance with the terms and conditions for such Programming Acquisition Services listed on Schedule 2.1.11.

(l) Other Services: To the extent fees for a specific Service are not provided in Schedule 2.1.1 through Schedule 2.1.11 or the Company desires to receive certain other Services as mutually agreed upon between DISH and the Company, including without limitation those services which were

provided to the Company pursuant to the Transition Services Agreement, then DISH or its designee shall provide such Service in accordance with the terms and conditions listed on Schedule 2.1.12.

(m) Consulting Services. DISH shall occasionally act in a consulting function on certain services which were previously provided by DISH pursuant to the Transition Services Agreement or which are terminated in accordance with Section 10.2 hereof in accordance with the terms and conditions listed on Schedule 2.1.13 (the “DISH Consulting Services”).

Section 2.2 Description of the Services Provided by the Company. Following the Effective Date, the Company shall provide, or cause to be provided, the following services (collectively, the “the Company Services”) to DISH in support of its businesses:

(a) Logistics Services. The Company or its designee shall provide each of the logistics services specified in Schedule 2.2.1 (the “Logistics Services”) to DISH or its Subsidiaries, in accordance with the terms and conditions for such Logistics Services listed on Schedule 2.2.1.

(b) Procurement. The Company or its designee shall provide each of the procurement services specified in Schedule 2.2.2 (the “Procurement Services”) to DISH or its Subsidiaries, in accordance with the terms and conditions for such Procurement Services listed on Schedule 2.2.2.

(c) Satellite Procurement. The Company or its designee shall provide each of the satellite procurement services specified in Schedule 2.2.3 (the “Satellite Procurement Services”) to DISH or its Subsidiaries, in accordance with the terms and conditions for such Satellite Procurement Services listed on Schedule 2.2.3.

(d) Other Services: To the extent fees for a specific Service are not provided in Schedule 2.1.1 through Schedule 2.2.3 or DISH desires to receive certain other Services as mutually agreed upon between DISH and the Company, including without limitation those services which were provided to DISH pursuant to the Services Agreement or the Satellite Procurement Agreement, then the Company or its designee shall provide such Service in accordance with the terms and conditions listed on Schedule 2.2.4.

(e) Consulting Services. The Company shall occasionally act in a consulting function on certain services which were previously provided by the Company pursuant to Services Agreement or

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which are terminated in accordance with Section 10.2 hereof in accordance with the terms and conditions listed on Schedule 2.2.5 (the “DISH Consulting Services”).

Section 2.3 Schedules Update. To the extent any Services are mischaracterized in any of Schedule 2.1.1 through Schedule 2.2.4 (collectively, the “Service Schedules”), DISH and the Company shall negotiate in good faith to amend such Service Schedules as appropriate.

Section 2.4 Service Levels. With respect to Services that DISH or the Company provided, or caused to be provided, to the other party prior to the Distribution Date, DISH or the Company, as applicable, shall at all times perform such Services (i) with at least the same degree of care, skill and diligence with which DISH or the Company performs similar services for itself, consistent with past practices, including, with respect to the type, quality and timeliness of such Services, subject to variation in the provision of such Services agreed to by the parties hereto, but, in no case may such degree of care, skill and diligence be less than the degree of care, skill and diligence with which DISH or the Company historically has performed such Services for the benefit of the other party prior to the Distribution Date, (ii) with the use of reasonable care, (iii) in material compliance with Applicable Laws and (iv) with substantially the same priority under comparable circumstances as it provides such services to itself and its Subsidiaries.

Section 2.5 Additional Services. If a party reasonably determines that additional services of the type previously provided by one party or its designee to the other party prior to the Distribution Date are necessary to conduct such party’s respective business and such party or its Affiliates are not able to provide such service themselves (each such service an “Additional Service”), then such party may provide written notice thereof to the other party. Upon receipt of such notice by the second party, if the second party is willing, in its sole discretion, to provide such Additional Service, the parties hereto will negotiate in good faith an amendment to the Services Schedules setting forth the Additional Service, the terms and conditions for the provision of such Additional Service and the Fees (as defined below) payable by the first party for such Additional Service, such Fees to be determined on an arm’s-length basis and at fair market value.

Section 2.6 Third Party Services. Each party hereto acknowledges and agrees that certain of the Services to be provided under this Agreement have been, and will continue to be, provided (in accordance with this Agreement) to DISH or the Company, as applicable, by Third Parties designated by DISH or the Company, as applicable, as responsible for providing such Services. To the extent so provided, the Providing Party shall use commercially reasonable efforts to (a) cause such Third Parties to provide such Services under this Agreement and/or (b) enable the Receiving Party and its Affiliates to avail itself of such Services; provided, however, that if any such Third Party is unable or unwilling to provide any such Services, the Providing Party shall use its commercially reasonable efforts to determine the manner in which such Services can best be provided.

Section 2.7 Cost of Providing the Services. Unless otherwise expressly set forth in this Agreement, the Providing Party shall bear all initial costs of providing the Services (including all out-of-pocket and third-party expenses incurred by such party in order to provide the Services).

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## ARTICLE III

### Service Disruptions

Section 3.1 Contingency Plans. The Providing Party agrees to use commercially reasonable efforts, consistent with its practices for itself and its divisions and Affiliates, to avoid any inability to provide the Services. In the event of a disaster, the Providing Party agrees to use the same degree of care to restore the Services as such party would use to restore similar services for itself and as provided in Section 3.3, but in any event no less than commercially reasonable efforts. In the event of scheduled downtime, the Providing Party shall provide notice to the Company Contract Manager (as defined below) or the DISH Contract Manager (as defined below), as applicable, with as much notice as is reasonably possible under the circumstances.

Section 3.2 Non-Performance. (a) Except with respect to a Force Majeure Event (as defined below) which shall be subject to Section 3.3, if the Providing Party's, any of its Affiliates' or any Third Party's performance of any Service is interrupted in whole or in part for any reason for more than two (2) consecutive Business Days (other than a Force Majeure Event), then the Receiving Party shall have the right to make, at the Providing Party's sole cost and expense, commercially reasonable arrangements to procure such interrupted Services from an alternative source at a cost no greater than the fair market value of such interrupted Services for the period the Service is interrupted; provided, that the Receiving Party shall provide prompt written notice to the Providing Party's Contract Manager setting forth in reasonable detail the terms and conditions of the arrangements to procure such interrupted Services from an alternative source. For the avoidance of doubt, the Receiving Party shall not be obligated to pay the Providing Party for the interrupted Services during the period when such party is not providing such Services.

Section 3.3 Force Majeure. (a) If a party, any of its Affiliates or any Third Party service provider is prevented from or delayed in complying, either totally or in part, with any of the terms or provisions of this Agreement by reason of fire, flood, storm, strike, walkout, lockout or other labor trouble or shortage, delays by unaffiliated suppliers or carriers, shortages of fuel, power, raw materials or components, any Applicable Law, order, proclamation, regulation, ordinance, demand, seizure or requirement of any Governmental Authority, riot, civil commotion, war, rebellion, acts of terrorism, nuclear accident or other acts of God, or acts, omissions or delays in acting by any governmental or military authority (a "Force Majeure Event"), then upon notice to the Receiving Party, the affected provisions and/or other requirements of this Agreement shall be suspended during the period of such disability and, unless otherwise set forth herein to the contrary, the Receiving Party shall have no liability to the Providing Party, its Affiliates, any Third Party or any other Person in connection therewith. The Providing Party shall use commercially reasonable efforts to promptly remove such disability as soon as possible, but in any event no later than 30 days after giving notice of such disability; provided, however, that nothing in this Section 3.3 will be construed to require the settlement of any strike, walkout, lockout or other labor dispute on terms which, in the reasonable judgment of the Providing Party, are contrary to its interest. It is understood that the settlement of a strike, walkout, lockout or other labor dispute will be entirely within the discretion of the Providing Party. If the Providing Party is unable to provide any of the Services due to such a disability, each party hereto shall use commercially reasonable efforts to cooperatively seek a solution that is mutually satisfactory.

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(b) Notwithstanding anything herein to the contrary, the obligation of the Providing Party to resume performance of its obligations hereunder pursuant to this Section 3.3 shall terminate and cease to be in effect to the extent and period that the Receiving Party has acquired such Services from an alternate source pursuant to this Section 3.3. The Receiving Party shall be free to acquire such Services from an alternate source, at such party's sole cost and expense, and without liability to the Providing Party, for the period and to the extent reasonably necessitated by such non-performance and during the continuation of any agreement entered into with the provider of such Service, and for that period that such Service is provided by an alternate source, the Providing Party shall have no obligation to provide such Service to the Receiving Party. For the avoidance of doubt, the Receiving Party shall not be obligated to pay the Providing Party for such Services during the period when the Providing Party is not providing such Services.

(c) Notwithstanding anything hereunder to the contrary, the parties hereto agree that this Section 3.3 shall not be construed so as to excuse a party hereto of its obligations to perform in accordance with Article VII and Article VIII at all times during the term of this Agreement.

Section 3.4 Recovery of Data. If the Providing Party loses or damages any of the Receiving Party's data, the Providing Party shall use its best efforts to recover and re-process such data immediately after discovery of such loss or damage. If the Providing Party is unable to re-process such data immediately, the Providing Party shall notify the Receiving Party in writing of such loss or damage.

## ARTICLE IV

### Cooperation

Section 4.1 Cooperation. During the term of this Agreement, the Providing Party shall provide commercially reasonable cooperation to the Receiving Party by responding to the Receiving Party's reasonable requests for information related to the functionality or operation of the Services; provided, that such requested information is related to the Separated Businesses and does not require disclosure of any proprietary or confidential information of the Providing Party or any of its Affiliates. Without limiting the foregoing, the Providing Party shall provide the Receiving Party with (i) reasonable access (during reasonable business hours) to records and the Providing Party employees related to the provision of the Services and (ii) reasonable access (during reasonable business hours) for the Receiving Party's employees and consultants to the Providing Party's employees and facilities for the purpose of training and consulting with respect to the Services; provided, that such access shall not interfere with the day-to-day operations of the Providing Party and its Subsidiaries.

Section 4.2 Consents. (a) the Providing Party shall, and shall cause its Affiliates to, cooperate to obtain (i) all Consents for any Third Party software or other Third Party intellectual property related to the provision of the Services sufficient to enable the Providing Party or its designee to perform the Services in accordance with this Agreement and (ii) all other Consents to allow the Providing Party to provide the Services and to



allow the Receiving Party to access and use the Services (collectively, the “Required Consents”); provided, however, that the Providing Party shall not be obligated under this Agreement to pay any consideration, grant any concession or incur any Liability

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to any third Person to obtain any such Required Consent. Schedule 4.2 sets forth a list of all Required Consents and whether such Consents have been obtained as of the date hereof.

(b) In the event that any Required Consent is not obtained, then, unless and until such Required Consent is obtained, the parties hereto shall cooperate with each other in achieving a reasonable alternative arrangement for the Receiving Party to continue to process its work and for the Providing Party to perform such Services and in a manner which does not increase the fees or costs payable by the Receiving Party hereunder.

#### Section 4.3 Primary Points of Contact for Agreement.

(a) Appointment and Responsibilities. Each party hereto shall appoint an individual to act as the primary point of operational contact for the administration and operation of this Agreement, as follows:

(i) The individual appointed by the Company as the primary point of operational contact pursuant to this Section 4.3(a) (the “the Company Contract Manager”) shall have overall responsibility for coordinating on behalf of the Company all activities of the Company undertaken hereunder, for the performance of the Company’s obligations hereunder, for coordinating the performance of the Services with DISH, for acting as a day-to-day contact with the DISH Contract Manager and for making available to DISH the data, facilities, resources and other support services from the Company required for DISH to be able to perform the Services in accordance with the terms of this Agreement. The Company may change the Company Contract Manager from time to time upon written notice to DISH.

(ii) The individual appointed by DISH as the primary point of operational contact pursuant to this Section 4.3(a) (the “DISH Contract Manager”) shall have primary operational responsibility for coordinating on behalf of DISH its joint activities with the Company under the Agreement and for DISH’s performance of the Services, including all DISH personnel and other resources used by DISH, and will serve as the day-to-day contact with the Company Contract Manager. DISH may change the DISH Contract Manager from time to time upon written notice to the Company (the Company Contract Manager and the DISH Contract Manager, collectively the “Contract Managers”).

(b) Review Meetings and Reports. The Contract Managers shall meet at least monthly to review the Performing Party’s performance of the Services as required under this Agreement. The Performing Party’s Contract Manager shall provide to the parties hereto reports on the parties’ respective performance, identifying any significant problems that are unresolved and any details concerning their expected resolution.

#### Section 4.4 Steering Committee.

(a) Size and Composition. DISH shall appoint two (2) members of its management staff and the Company shall appoint two (2) members of its management staff to serve on a steering committee (the “Steering Committee”). Either party hereto may change its Steering Committee members from time to time upon written notice to the other party; provided, however, that the DISH

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Contract Manager and the Company Contract Manager shall at all times remain as members of the Steering Committee. In addition, the parties hereto may mutually agree to increase or decrease the size, purpose or composition of the Steering Committee in an effort for the Providing Party to better provide, and for the Receiving Party to better utilize, the Services.

(b) Responsibilities. The Steering Committee’s responsibilities include (i) generally overseeing the performance of each party’s hereto obligations under this Agreement and (ii) assisting in providing the Services by the Providing Party and utilizing the Services by the Receiving Party.

Section 4.5 Meetings. The Steering Committee shall meet once a month or at such other frequency as mutually agreed by the parties hereto or the members of the Steering Committee. Each Steering Committee meeting shall be at a mutually acceptable location determined by the members of the Steering Committee.

Section 4.6 Dispute Resolution. The procedures for discussion and negotiation set forth in this Section 4.6 shall apply to all disputes, controversies or claims (whether arising in contract, tort or otherwise) that may arise out of or relate to, or arise under or in connection with this Agreement or the transactions contemplated hereby.

(a) Primary Points of Contact. It is the intent of the parties hereto to use their respective reasonable best efforts to resolve expeditiously any dispute, controversy or claim between them with respect to the matters covered hereby that may arise from time to time on a mutually acceptable negotiated basis. In furtherance of the foregoing, if a dispute arises, the Company Contract Manager and the DISH Contract Manager shall consider the dispute for up to seven (7) Business Days following receipt of a notice from either party hereto specifying the nature of the dispute, during which time the Company Contract Manager and the DISH Contract Manager shall meet in person at least once, and attempt to resolve the dispute.

(b) Senior Management. If the dispute is not resolved by the end of the seven (7) day period referred to in Section 4.6(a), or if the Company Contract Manager and the DISH Contract Manager agree that the dispute shall not be resolved by them, either party hereto may deliver a notice (an "Escalation Notice") demanding an in person meeting involving appropriate representatives of the parties hereto at a senior level of management of the parties hereto (or if the parties agree, of the appropriate strategic business unit or division within such entity) (collectively, "Senior Executives"). Thereupon, each of the Company Contract Manager and the DISH Contract Manager shall promptly prepare a memorandum stating (i) the issues in dispute and each party's position thereon, (ii) a summary of the evidence and arguments supporting each party's positions (attaching all relevant documents), (iii) a summary of the negotiations that have taken place to date, and (iv) the name and title of the Senior Executive who shall represent each party. The Company Contract Manager and the DISH Contract Manager shall deliver such memorandum to its respective Senior Executive promptly upon receipt of such memorandum from the DISH Contract Manager and the Company Contract Manager, respectively. The Senior Executives shall meet for negotiations (which may be held telephonically) at a mutually agreed time and place within 10 days of the Escalation Notice, and thereafter as often as the Senior Executives deem reasonably necessary to resolve the dispute.

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(c) Court Actions. In the event that any party, after complying with the provisions set forth in Sections 4.6(a) and 4.6(b) and desires to commence an action, such party may submit the dispute, controversy or claim (or such series of related disputes, controversies or claims), subject to Section 12.2, to any court of competent jurisdiction. Unless otherwise agreed in writing, the parties hereto shall continue to provide service and honor all other commitments under this Agreement during the course of dispute resolution pursuant to the provisions of this Section 4.6 with respect to all matters not subject to such dispute, controversy or claim.

## ARTICLE V

### Fees

Section 5.1 Fees. The fees for any of the Services are set forth in the "Cost Details" column in the respective Service Schedule (the "Fees").

Section 5.2 Taxes. To the extent required or permitted by Applicable Law, there shall be added to any Fees due under this Agreement, and the Receiving Party agrees to pay to the Providing Party, amounts equal to any taxes, however designated or levied, based upon such Fees, or upon this Agreement or the Systems, Services or materials provided under this Agreement, or their use, including state and local privilege or excise taxes based on gross revenue and any taxes or amounts in lieu thereof paid or payable by the Receiving Party. In the event taxes are not added to an invoice from the Providing Party, the Receiving Party shall be responsible to remit to the appropriate tax jurisdiction any additional amounts due including tax, interest and penalty. If additional amounts are determined to be due on the Services provided hereunder as a result of an audit by a tax jurisdiction, the Receiving Party agrees to reimburse the Providing Party for the additional amounts due including tax, interest and penalty. The Providing Party will be responsible for penalty or interest associated with its failure to remit invoiced taxes. The parties hereto further agree that no party hereto shall be required to pay any franchise taxes, taxes based on the net income of the other party hereto or personal property taxes on property owned or leased by a party hereto.

## ARTICLE VI

### Invoice and Payment; Audit

Section 6.1 Invoices and Payment. Within 20 days following the end of each month during the term of this Agreement (or within 20 days after receipt of a Third Party supplier's invoice in the case of Services that are provided by a Third Party supplier), the Providing Party will submit to the Receiving Party for payment a written statement of amounts due under this Agreement for such month. The Providing Party shall include with each invoice a reasonably detailed description of the Services performed and the fees charged and, if requested by the Receiving Party, will contain reasonably satisfactory documentation in support of such amounts as specified therein and such other supporting detail as the Receiving Party may reasonably require to validate such amounts due.

Section 6.2 Timing of Payment; No Offsets. The Receiving Party will pay all undisputed amounts due pursuant to this Agreement within 60 days after the date upon which each such statement that is required to be provided hereunder is received by the Receiving Party. The

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Receiving Party shall not offset any amounts owing to it by the Providing Party or any of its Affiliates against amounts payable by the Receiving Party hereunder or any other agreement or arrangement.

Section 6.3 Fees Dispute. (a) In the event that the Receiving Party has a good faith dispute with regard to any Fees invoiced by the Providing Party (the "Disputed Fee"), the Receiving Party shall provide the Providing Party with written notice of such dispute (the "Fee Dispute Notice"), together with a reasonably detailed explanation of such dispute, at the time payment would have otherwise been due, and the Receiving Party may withhold payment of any Disputed Fee pending resolution of the dispute. For the avoidance of doubt, the Receiving Party's failure to pay the Disputed Fee in accordance with this Section 6.3 shall not be grounds for a claim of breach or suspension of work by the Providing Party.

(a) In the event that the parties hereto are unable to agree after reasonable negotiation, in accordance with Sections 4.6(a) and 4.6(b), upon the Disputed Fee, the parties hereto shall jointly select a qualified unaffiliated independent third party to determine the fair value (the “Arbitrator”). If the parties hereto are unable to agree on an Arbitrator within 10 days of the receipt of a Fee Dispute Notice by the Providing Party, then there shall be an arbitral tribunal consisting of 3 neutral arbitrators of (the “Tribunal”) whom each party hereto shall select one within 10 days of the receipt of a Fee Dispute Notice by the Providing Party. The two party-appointed arbitrators shall select the third arbitrator within 10 days of the nomination of the second arbitrator. The determination of the Arbitrator or Tribunal, as applicable, with respect to such disagreement shall be completed within 30 days after the appointment of the Arbitrator or Tribunal, as applicable and such determination shall be final and binding upon the parties hereto. The Arbitrator or Tribunal, as applicable, shall adopt the position of either the Company or DISH with respect to the Disputed Fees. The fees, costs and expenses of the Arbitrator or Tribunal, as applicable, selected in the event of a dispute shall be paid by the party hereto who the Arbitrator or Tribunal, as applicable, did not side with in its decision.

Section 6.4 Audit Rights. (a) the Receiving Party may audit (or cause an independent Third Party auditor to audit) the books, records and facilities of the Providing Party to the extent necessary to determine the Providing Party’s compliance with this Agreement with respect to Fees paid or payable pursuant to this Article VI, or the performance of its other obligations set forth in this Agreement. For any given Service, the Receiving Party shall have the right to audit the books, records and facilities of the Providing Party once for each twelve month period during which payment obligations are due (and at such other times as may be required by Applicable Law). The Receiving Party shall also have the right to audit (or cause an independent Third Party auditor to audit) the books, records and facilities of the Providing Party pertaining to a particular Service within six months after the termination of such Service.

(b) Any audit shall be conducted during regular business hours and in a manner that complies with the building and security requirements of the Providing Party. Such audits shall not interfere unreasonably with the operations of the Providing Party. The Receiving Party shall provide notice to the Providing Party not less than 30 days prior to the commencement of the audit and shall specify the date on which the audit will commence. The Receiving Party conducting an audit shall pay the costs of conducting such audit, unless the results of an audit reasonably indicate an overpayment by the Receiving Party of 10% or more (such percentage to be determined by reference to the Services

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which are subject to the specific audit), in which case the Providing Party shall pay the reasonable out-of-pocket costs of the Receiving Party.

## ARTICLE VII

### Independence; Ownership of Assets

Section 7.1 Independence. All employees and representatives of a party hereto and any of its Affiliates will be deemed for purposes of all compensation and employee benefits to be employees or representatives of such party or its Affiliates (or its subcontractors) and not employees or representatives of the other party hereto or any of the other party’s Affiliates. In providing the Services, the Providing Party’s employees and representatives will be under the direction, control and supervision of the Providing Party or its Affiliates (or its subcontractors), and not of the Receiving Party. The Providing Party or its Affiliates (or its subcontractors) will have the sole right to exercise all authority with respect to the employment (including termination of employment), assignment and compensation of its employees and representatives.

### Section 7.2 Ownership of Assets.

(a) DISH Systems. The DISH Systems and any and all enhancements thereof or improvements thereto are and shall remain the sole exclusive property of DISH, its Subsidiaries and their suppliers, as the case may be. From and after the creation of any and all such DISH Systems or enhancements thereof or improvements thereto by the Company or by any contractor, Affiliate or other Third Party on the Company’s behalf, in each case, pursuant to this Agreement, the Company shall cause to be assigned and hereby assigns to DISH or the applicable Subsidiary, any and all right, title and interest that the Company or such contractor, Affiliate or Third Party may have in such DISH Systems or enhancements thereof or improvements thereto.

(b) Company Systems. The Company Systems and any and all enhancements thereof or improvements thereto are and shall remain the sole exclusive property of the Company, its Subsidiaries and their suppliers, as the case may be. From and after the creation of any and all such Company Systems or enhancements thereof or improvements thereto by DISH or by any contractor, Affiliate or other Third Party on DISH’s behalf, in each case, pursuant to this Agreement, DISH shall cause to be assigned and hereby assigns to the Company or the applicable Subsidiary, any and all right, title and interest that DISH or such contractor, Affiliate or Third Party may have in such Company Systems or enhancements thereof or improvements thereto.

(c) License. During the term of this Agreement, each party hereto grants to the other party and such party’s respective suppliers a non-exclusive, royalty-free right and license to use the DISH Systems or the Company Systems, as applicable, solely to provide the Services or use the Services contemplated hereunder. Notwithstanding anything to the contrary hereunder, each party hereto agrees to cooperate with the other (and shall cause its suppliers to so cooperate) to cause the orderly return of the other party’s Systems and property upon the termination of this Agreement or upon written request, whichever is earlier.

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(d) Data Ownership. As between DISH and its Subsidiaries, on the one hand, and the Company and its Subsidiaries, on the other hand, all right, title and interest in and to all data processed hereunder shall be owned exclusively by DISH or its applicable Subsidiary or the Company or its applicable Subsidiary that originally supplied it to the other. DISH and the Company hereby assign to the other, and shall cause any of its or their contractors, Affiliates or suppliers to assign to the other, as applicable, all right, title and interest that DISH or the Company, as applicable, may have in the other's data.

(e) Third Party Suppliers. The Providing Party shall have written agreements with its employees consistent with past practices, and shall cause any contractor, Affiliate or Third Party performing Services on its behalf pursuant to this Agreement to also have written agreements with its employees that are consistent with its obligations hereunder, including the obligations to disclose and assign all right, title and interest in intellectual property rights as contemplated in this Section 7.2. The Providing Party agrees not to voluntarily terminate or to amend or modify such agreements with respect to the provisions described above without providing at least 30 days prior written notice thereof and further agrees that any such amendments or modifications to such agreements shall be prospective only.

Section 7.3 Other Assets. Except as otherwise noted in Sections 7.1 and 7.2, all procedures, methods, systems, strategies, tools, equipment, facilities and other resources used by a party hereto, any of its Affiliates or any Third Party service provider shall remain the property of such party, its Affiliates or such service providers and, except as otherwise provided herein, shall at all times be under the sole direction and control of such party, its Affiliates or such Third Party service provider.

## ARTICLE VIII

### Confidentiality

Section 8.1 Confidentiality. Each party hereto agrees that the specific terms and conditions of this Agreement and any information conveyed or otherwise received by or on behalf of a party hereto in conjunction herewith are confidential and are subject to the terms of the confidentiality provisions set forth in Section 4.5 of the Separation Agreement.

## ARTICLE IX

### No Agency Relationship

Section 9.1 No Agency Relationship. The Providing Party, in performance of this Agreement, is acting as an independent contractor to the Receiving Party, and not as a partner, joint venturer or agent, nor do the parties hereto intend to create by this Agreement an employer-employee relationship. Neither party hereto shall be bound by any representation, act or omission of the other party hereto. Neither party hereto has any right, power or authority to create any obligation, express or implied, on behalf of the other party hereto.

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## ARTICLE X

### Term and Termination

#### Section 10.1 Term.

(a) Term of Agreement. This Agreement shall commence on the Effective Date and shall end on the earliest of: (i) one year from the Effective Date; provided that this Agreement shall automatically renew for indefinite successive one year periods unless either party provides notice of its desire not to renew the term of this Agreement at least sixty (60) days prior to the then current end of the term; (ii) the date all Services have been terminated in accordance with the terms of this Agreement; or (iii) the date of a termination for convenience in accordance with Section 10.2(b).

(b) Term of Services. The Providing Party shall provide each Service beginning on the Effective Date, or as otherwise set forth in the Service Schedules or agreed to by the parties hereto in writing, and shall continue to provide such Service until as otherwise agreed to by the parties hereto in writing, unless sooner terminated in accordance with the provisions of the Agreement.

#### Section 10.2 Termination.

(a) Termination of Services. The Receiving Party may terminate its right to receive any particular Service for any or no reason by providing the Providing Party not less than 30 days prior written notice (the "Termination Notice") setting forth in reasonable detail the Services to be terminated (the "Terminated Services") and the termination date (the "Termination Date") for each Terminated Service that shall not be less than 30 days from the receipt of the Termination Notice by the second party. Beginning on such Termination Date, the Receiving Party shall not be obligated to pay any Fees in connection with such Terminated Services other than Fees owed by the Terminating Party to the Providing Party for such Terminated Services prior to the Termination Date. The Receiving Party shall, as soon as practicable but no later than 10 Business Days after the Receiving Party realizes that a Service is no longer required by the Receiving Party and to be provided pursuant to the Agreement, deliver a Termination Notice with respect to such Service in accordance with Section 10.2(a).

(b) Termination for Convenience. Either party may terminate this Agreement for any or no reason by providing the other party not less than 60 days prior written notice setting forth the termination date for this Agreement.

(c) Termination for Breach. If a party hereto materially breaches any of its obligations under this Agreement, and does not cure such default within 30 days after receiving written notice thereof from the non-breaching party, then the non-breaching party may, at its option, terminate any

Service affected by such breach or this Agreement in its entirety by providing written notice of termination to the breaching party, which termination shall be effective immediately upon receipt of such termination notice.

(d) Bankruptcy Termination. This Agreement may be terminated by either party hereto upon at least 30 days prior written notice if the other party hereto is declared insolvent or

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bankrupt, or makes an assignment for the benefit of creditors, or a receiver is appointed or any proceeding is demanded by, for or against the other under any provision of the Federal Bankruptcy Act. Any termination of this Agreement shall be without prejudice to any rights or obligations of the parties hereto accruing prior to such termination including the right to payment of unpaid amounts owing for services performed prior to termination.

(e) Termination for Illegal Agreement. If there shall be any Applicable Law that makes any or all of the transactions contemplated by this Agreement, illegal or otherwise prohibited or if any order of any competent authority prohibiting such transactions is entered and such order shall become final and non-appealable, then either party hereto may terminate any Service affected by such Applicable Law or order by providing written notice of termination to the other party hereto, which termination shall be effective immediately upon receipt of such termination notice.

Section 10.3 Procedures on Termination. Following any termination of this Agreement in whole or in part, each party hereto will cooperate with the other party as reasonably necessary to avoid disruption of the ordinary course of the other party's and its Affiliates' businesses. Termination shall not affect any right to payment for Services provided prior to termination.

Section 10.4 Effect of Termination. Sections 4.3 and Articles V and VI (with respect to Fees and Taxes attributable to periods prior to termination), 7.2(a), 7.2(b), 7.2(d), 10.3, this Section 10.4 and Articles VII, VIII, XI and XII shall survive any termination of this Agreement. For the avoidance of doubt, termination of a particular Service hereunder shall be a termination of this Agreement.

## ARTICLE XI

### Indemnification

Section 11.1 Indemnification by the Company. The Company shall indemnify, defend and hold harmless the DISH Indemnified Parties for any Losses and Expenses incurred by them in connection with or arising out of (i) any breach of this Agreement by the Company, its Affiliates, employees, suppliers or contractors, (ii) any bodily injury or damage to property occasioned by the acts or omissions of the Company, its Affiliates, employees, suppliers or contractors, (iii) the Company's, its Affiliates', employees', suppliers' or contractors' gross negligence, willful misconduct or bad faith in the provision of the Company Services by the Company, its Affiliates, employees, suppliers or contractors pursuant to this Agreement, (iv) any Action that determines that the provision by the Company and/or the receipt by the DISH Indemnified Parties of any the Company Services infringes upon or misappropriates the intellectual property of any Third Party to the extent that any such Losses and Expenses are determined to have resulted from the Company's, its Affiliates', employees', suppliers' or contractors' gross negligence, willful misconduct or bad faith, and (v) Third Party claims arising out of the provision of the Company Services, except to the extent that such Losses and Expenses are finally determined by a final non-appealable decision of a court having jurisdiction over DISH and the Company to have arisen out of the material breach of this Agreement, gross negligence, bad faith or willful misconduct of DISH, its Affiliates, employees, suppliers or contractors in providing DISH Services.

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Section 11.2 Indemnification by DISH. DISH shall indemnify, defend and hold harmless the Company Indemnified Parties for any Losses and Expenses incurred by them in connection with or arising out of (i) any breach of this Agreement by DISH, its Affiliates, employees, suppliers or contractors, (ii) any bodily injury or damage to property occasioned by the acts or omissions of DISH, its Affiliates, employees, suppliers or contractors, (iii) DISH's, its Affiliates', employees', suppliers' or contractors' gross negligence, willful misconduct or bad faith in the provision of the DISH Services by DISH, its Affiliates, employees, suppliers or contractors pursuant to this Agreement, (iv) any Action that determines that the provision by DISH and/or the receipt by the Company Indemnified Parties of any DISH Services infringes upon or misappropriates the intellectual property of any Third Party to the extent that any such Losses and Expenses are determined to have resulted from DISH's, its Affiliates', employees', suppliers' or contractors' gross negligence, willful misconduct or bad faith, and (v) Third Party claims arising out of the provision of the Company Services, except to the extent that such Losses and Expenses are finally determined by a final non-appealable decision of a court having jurisdiction over DISH and the Company to have arisen out of the material breach of this Agreement, gross negligence, bad faith or willful misconduct of the Company, its Affiliates, employees, suppliers or contractors in providing the Company Services.

Section 11.3 Limitations and Liability. Each party hereto shall have a duty to mitigate the Losses and Expenses for which the other is responsible hereunder. EXCEPT FOR CLAIMS ARISING OUT OF OR RELATING TO ARTICLE VIII, IN NO EVENT SHALL ANY PARTY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL (INCLUDING LOSS OF REVENUES OR PROFITS), EXEMPLARY OR PUNITIVE DAMAGES OR THE LIKE ARISING UNDER ANY LEGAL OR EQUITABLE THEORY OR ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT (OR THE PROVISION OF SERVICES HEREUNDER), ALL OF WHICH ARE HEREBY EXCLUDED BY AGREEMENT

Section 11.4 Indemnification is Exclusive Remedy. The indemnification provisions of this Article XI shall be the exclusive remedy for breach of this Agreement.

Section 11.5 Risk Allocation. Each party hereto agrees that the Fees charged under this Agreement reflect the allocation of risk between the parties hereto, including the limitations on liability in Section 11.3. Modifying the allocation of risk from what is stated here would affect the Fees that each party hereto charges, and in consideration of those Fees, each party hereto agrees to the stated allocation of risk.

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Section 11.6 Indemnification Procedures. All claims for indemnification pursuant to this Article XI shall be made in accordance with the provisions set forth in Sections 5.6 and 5.7 of the Separation Agreement.

## ARTICLE XII

### Miscellaneous

Section 12.1 Entire Agreement. This Agreement, including the Schedules hereto and the sections of the Separation Agreement referenced herein, constitutes the entire agreement between the parties hereto with respect to the subject matter contained herein, and supersedes all prior agreements, negotiations, discussions, understandings, writings and commitments between the parties hereto with respect to such subject matter. For the avoidance of doubt, each party hereto agrees that all Services provided as of the Effective Date shall be provided under the terms and conditions of this Agreement and shall no longer be provided under the Transition Services Agreement, the Services Agreement or the Satellite Procurement Agreement, as applicable.

Section 12.2 Governing Law; Service of Process; Jurisdiction. This Agreement and the legal relations between the parties hereto shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflict of laws rules thereof to the extent such rules would require the application of the law of another jurisdiction. The state or federal courts located within the City of New York shall have exclusive jurisdiction over any and all disputes between the parties hereto, whether in law or equity, arising out of or relating to this Agreement and the agreements, instruments and documents contemplated hereby and the parties hereto consent to and agree to submit to the exclusive jurisdiction of such courts. Each of the parties hereto hereby waives and agrees not to assert in any such dispute, to the fullest extent permitted by Applicable Law, any claim that (i) such party is not personally subject to the jurisdiction of such courts, (ii) such party and such party's property is immune from any legal process issued by such courts or (iii) any litigation or other proceeding commenced in such courts is brought in an inconvenient forum. The parties hereto hereby agree that mailing of process or other papers in connection with any such action or proceeding in the manner provided in Section 12.10, or in such other manner as may be permitted by Applicable Law, shall be valid and sufficient service thereof and hereby waive any objections to service accomplished in the manner herein provided.

Section 12.3 Waiver of Jury Trial. EACH PARTY TO THIS AGREEMENT HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED IN THIS AGREEMENT (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT.

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Section 12.4 Amendment. This Agreement shall not be amended, modified or supplemented except by a written instrument signed by an authorized representative of each of DISH and the Company.

Section 12.5 Waiver. Any term or provision of this Agreement may be waived, or the time for its performance may be extended, by the party or the parties hereto entitled to the benefit thereof. Any such waiver shall be validly and sufficiently given for the purposes of this Agreement if, as to any party hereto, it is in writing signed by an authorized representative of such party. The failure of any party hereto to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, or in any way to affect the validity of this Agreement or any part hereof or the right of any party hereto thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

Section 12.6 Severability. If any provision of this Agreement or the application thereof to any Person or circumstance is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions hereof or thereof, or the application of such provision to Persons or circumstances or in jurisdictions other than those as to which it has been held invalid or unenforceable, shall remain in full force and

effect and shall in no way be affected, impaired or invalidated thereby, so long as the economic or legal substance of the transactions contemplated hereby or thereby, as the case may be, is not affected in any manner adverse to any party hereto or thereto. Upon such determination, the parties hereto shall negotiate in good faith in an effort to agree upon such a suitable and equitable provision to effect the original intent of the parties hereto.

Section 12.7 Execution in Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original instrument, but all of which shall be considered one and the same agreement, and shall become binding when one or more counterparts have been signed by and delivered to each of the parties hereto.

Section 12.8 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and permitted assigns; provided, however, that the rights and obligations of either party hereto under this Agreement shall not be assignable by such party without the prior written consent of the other party. The successors and permitted assigns hereunder shall include any permitted assignee as well as the successors in interest to such permitted assignee (whether by merger, liquidation (including successive mergers or liquidations) or otherwise).

Section 12.9 Third Party Beneficiaries. Except to the extent otherwise provided in Article XI, the provisions of this Agreement are solely for the benefit of the parties hereto and their respective Affiliates, successors and permitted assigns and shall not confer upon any third Person any remedy, claim, liability, reimbursement or other right in excess of those existing without reference to this Agreement.

Section 12.10 Notices. All notices or other communications under this Agreement shall be in writing and shall be deemed to be duly given when delivered or mailed in accordance with the terms of Section 9.12 of the Separation Agreement.

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Section 12.11 No Public Announcement. Neither DISH nor the Company shall, without the approval of the other, make any press release or other public announcement concerning the transactions contemplated by this Agreement, except as and to the extent that either party hereto shall be so obligated by Applicable Law or the rules of any regulatory body, stock exchange or quotation system, in which case the other party hereto shall be advised and the parties hereto shall use commercially reasonable efforts to cause a mutually agreeable release or announcement to be issued; provided, however, that the foregoing shall not preclude communications or disclosures necessary to implement the provisions of this Agreement or to comply with Applicable Law, accounting and SEC disclosure obligations or the rules of any stock exchange.

Section 12.12 Limited Liability. Notwithstanding any other provision of this Agreement, no individual who is a stockholder, director, employee, officer, agent or representative of the Company or DISH, in its capacity as such, shall have any liability in respect of or relating to the covenants or obligations of such party under this Agreement and, to the fullest extent legally permissible, each of the Company and DISH, for itself and its respective stockholders, directors, employees, officers and Affiliates, waives and agrees not to seek to assert or enforce any such liability that any such Person otherwise might have pursuant to Applicable Law.

Section 12.13 Divestiture. If the Receiving Party divests or sells all or a part of the Receiving Party during the term of this Agreement, the Providing Party shall continue to provide the Services to the divested or sold entity or part thereof until the termination or expiration of the provision of Services hereunder, as long as the Providing Party's obligations hereunder are not materially increased thereby.

Section 12.14 Mutual Drafting. This Agreement shall be deemed to be the joint work product of DISH and the Company and any rule of construction that a document shall be interpreted or construed against a drafter of such document shall not be applicable.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their authorized representatives as of the date first above written.

DISH Network Corporation

By: \_\_\_\_\_  
Name:  
Title:

Echostar Corporation

By: \_\_\_\_\_

Signature Page to the Professional Services Agreement

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**Schedule 2.1.2**

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**Schedule 2.1.3**

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**Schedule 2.1.5**

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**Schedule 2.1.6**

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**Schedule 2.1.7**

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**Schedule 2.1.8**

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**Schedule 2.1.9**

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**Schedule 2.1.10**

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**Schedule 2.1.11**

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**Schedule 2.1.12**

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**Schedule 2.1.13**

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**Schedule 2.2.1**

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**Schedule 2.2.2**

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**Schedule 2.2.3**

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**Schedule 2.2.4**

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**Schedule 2.2.5**

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**Allocation Agreement  
Between  
DISH Network Corporation  
and  
EchoStar Corporation**

This Allocation Agreement (this "Agreement") is entered into as of August 4, 2009, by and between DISH Network Corporation ("DISH"), a Nevada corporation, and EchoStar Corporation ("SATS"), a Nevada corporation.

WHEREAS, the parties desire to enter into an agreement to allocate between DISH and SATS certain liabilities and expenses arising out of the litigation with Tivo Inc. ("Tivo");

NOW THEREFORE, in consideration of the mutual promises, covenants, agreements and undertakings contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, DISH and SATS hereby agree, intending to be legally bound, as follows:

1. Indemnification by DISH. DISH shall indemnify, defend and hold harmless SATS, each member of the Company Group and each of their respective current and former directors, officers and employees, and each of the heirs, executors, successors and assigns of any of the foregoing (collectively, the "SATS Indemnified Parties"), from and against any and all liabilities and costs of defense arising out of or relating to the litigation with Tivo, including any litigation arising from any further design-around.
2. Payment. SATS shall pay DISH an amount equal to its \$5,000,000 intellectual property liability limit under that certain Receiver Agreement between EchoStar Technologies L.L.C. (a subsidiary of SATS) and EchoSphere L.L.C. (a subsidiary of DISH), dated December 31, 2007 (the "Receiver Agreement"); provided that, such \$5,000,000 payment shall not exhaust SATS' potential liability under the Receiver Agreement for other intellectual property claims.
3. Intellectual Property. DISH and SATS shall jointly own (50/50) any intellectual property developed in connection with any further design-around and shall have a royalty-free, perpetual license to use such intellectual property with any manufacturer.
5. Further Assurances. DISH and SATS agree to execute or cause to be executed by the appropriate parties and deliver, as appropriate, such other agreements, instruments and other documents as may be necessary or desirable in order to effect the purposes of this Agreement as provided for in Section 4.2 of that certain Separation Agreement by and between DISH and SATS dated December 31, 2007 (the "Separation Agreement").
6. Capitalized Terms. Capitalized terms used herein, but not otherwise defined, shall have the meaning ascribed to them in the Separation Agreement.

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7. Dispute Resolution. Any dispute arising under this agreement shall be settled in accordance with the provisions of Article VIII of the Separation Agreement.
8. Governing Law. This Agreement and the legal relations between the parties hereto shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflict of laws rules thereof to the extent such rules would require the application of the law of another jurisdiction.
9. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and thereof and supersede all previous agreements, negotiations, discussions, understandings, writings, commitments and conversations between the parties hereto with respect to such subject matter. No agreements or understandings exist between the parties hereto other than those set forth or referred to herein or therein.
10. Severability. If any provision of this Agreement or the application thereof to any Person or circumstance is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions hereof or thereof, or the application of such provision to Persons or circumstances or in jurisdictions other than those as to which it has been held invalid or unenforceable, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby, so long as the economic or legal substance of the transactions contemplated hereby or thereby, as the case may be, is not affected in any manner adverse to any party hereto or thereto. Upon such determination, the parties hereto shall negotiate in good faith in an effort to agree upon such a suitable and equitable provision to effect the original intent of the parties hereto.
11. Waiver.
  - (a) Any term or provision of this Agreement may be waived, or the time for its performance may be extended, by the party or the parties hereto entitled to the benefit thereof. Any such waiver shall be validly and sufficiently given for the purposes of this Agreement if, as to any party hereto, it is in writing signed by an authorized representative of such party.
  - (b) Waiver by any party hereto of any default by the other party hereto of any provision of this Agreement shall not be construed to be a waiver by the waiving party of any subsequent or other default, nor shall it in any way affect the validity of this Agreement or any party hereof or prejudice the rights of the other party thereafter to enforce each and ever such provision. No failure or delay by any party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
12. Controlling Documents. To the extent that the provisions of this Allocation Agreement, conflict with the provisions of the Separation Agreement or any other agreement between DISH and any of its subsidiaries on the one hand, and SATS and any of its subsidiaries, on the other hand, the provisions of this Allocation Agreement shall govern.

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13. Specific Performance. The parties hereto agree that the remedy at law for any breach of this Agreement may be inadequate, and that, as between DISH and SATS, any party hereto by whom this Agreement is enforceable shall be entitled to specific performance in addition to any other appropriate relief or remedy. Such party may, in its sole discretion, apply to a court of competent jurisdiction for specific performance or injunctive or such other relief as such court may deem just and proper in order to enforce this Agreement as between DISH and SATS, or prevent any violation hereof, and, to the extent permitted by Applicable Law, as between DISH and SATS, each party hereto waives any objection to the imposition of such relief.

14. Amendments. No provisions of this Agreement shall be deemed amended, modified or supplemented by any party hereto, unless such amendment, supplement or modification is in writing and signed by the authorized representative of the party against whom it is sought to enforce such amendment, supplement or modification.

15. Notices. All notices or other communications required or permitted to be given hereunder shall be in writing, shall be delivered by hand or sent by facsimile or sent, postage prepaid, by registered, certified or express mail or overnight courier service and shall be deemed given when so delivered by hand or facsimile (upon receipt of confirmation), or if mailed, one day after mailing, as follows:

If to DISH:                    9601 S. Meridian Blvd.  
   Englewood, CO 80112  
   Attention: General Counsel  
   Fax: (303) 723-1699

If to SATS:                    100 Inverness Terrace East  
   Englewood, CO 80112  
   Attention: General Counsel  
   Fax: (303) 723-1699

16. Headings; Construction. The captions of sections and subsections in this Agreement are provided for convenience only and shall not be considered in resolving questions of interpretation or construction of this Agreement. DISH and SATS hereby acknowledge and agree that the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments hereof.

17. Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the parties thereto and delivered to the other party or parties.

WHEREFORE, the parties have signed this Agreement effective as of the date first set forth above.

DISH NETWORK CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

ECHOSTAR CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

**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 Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 9, 2009

/s/ CHARLES W. ERGEN

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*Chairman, President and Chief Executive Officer*

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[CERTIFICATION OF CHIEF EXECUTIVE OFFICER Section 302 Certification](#)

**CERTIFICATION OF CHIEF FINANCIAL OFFICER**  
Section 302 Certification

I, Bernard L. Han, certify that:

1. I have reviewed this quarterly report on Form 10-Q of EchoStar Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 9, 2009

/s/ BERNARD L. HAN

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*Chief Financial Officer*

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[CERTIFICATION OF CHIEF FINANCIAL OFFICER Section 302 Certification](#)



**CERTIFICATION OF CHIEF EXECUTIVE OFFICER**  
Section 906 Certification

Pursuant to 18 U.S.C. § 1350, the undersigned officer of EchoStar Corporation (the "Company") hereby certifies that to the best of his knowledge the Company's Quarterly Report on Form 10-Q for the three months ended September 30, 2009 (the "Report") fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934 and that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: November 9, 2009

Name: /s/ CHARLES W. ERGEN

Title: *Chairman, President and Chief  
Executive Officer*

The foregoing certification is being furnished solely pursuant to 18 U.S.C. § 1350 and is not being filed as part of the Report or as a separate disclosure document.

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

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[CERTIFICATION OF CHIEF EXECUTIVE OFFICER Section 906 Certification](#)

**CERTIFICATION OF CHIEF FINANCIAL OFFICER**  
Section 906 Certification

Pursuant to 18 U.S.C. § 1350, the undersigned officer of EchoStar Corporation (the "Company") hereby certifies that to the best of his knowledge the Company's Quarterly Report on Form 10-Q for the three months ended September 30, 2009 (the "Report") fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934 and that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: November 9, 2009

Name: /s/ BERNARD L. HAN

Title: *Chief Financial Officer*

The foregoing certification is being furnished solely pursuant to 18 U.S.C. § 1350 and is not being filed as part of the Report or as a separate disclosure document.

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

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[CERTIFICATION OF CHIEF FINANCIAL OFFICER Section 906 Certification](#)