

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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FORM 10-Q

(MARK ONE)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES  
EXCHANGE ACT OF 1934 FOR THE QUARTERLY PERIOD ENDED MARCH 31, 2001

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES  
EXCHANGE ACT OF 1934

For the transition period from \_\_\_\_\_ to \_\_\_\_\_.

Commission File Number: 0-26176

EHOSTAR COMMUNICATIONS CORPORATION  
(Exact name of registrant as specified in its charter)

NEVADA

(State or other jurisdiction of incorporation or organization)

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

5701 S. SANTA FE DRIVE  
LITTLETON, COLORADO  
(Address of principal executive offices)

80120  
(Zip code)

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

NOT APPLICABLE  
(Former name, former address and former fiscal year,  
if changed since last report)

INDICATE BY CHECK MARK WHETHER THE REGISTRANT (1) HAS FILED ALL REPORTS  
REQUIRED TO BE FILED BY SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF  
1934 DURING THE PRECEDING 12 MONTHS (OR FOR SUCH SHORTER PERIOD THAT THE  
REGISTRANT WAS REQUIRED TO FILE SUCH REPORTS), AND (2) HAS BEEN SUBJECT TO SUCH  
FILING REQUIREMENTS FOR THE PAST 90 DAYS. YES  NO

AS OF APRIL 27, 2001, THE REGISTRANT'S OUTSTANDING COMMON STOCK CONSISTED OF  
236,708,581 SHARES OF CLASS A COMMON STOCK AND 238,435,208 SHARES OF CLASS B  
COMMON STOCK.

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ECHOSTAR COMMUNICATIONS CORPORATION  
CONDENSED CONSOLIDATED BALANCE SHEETS  
(Dollars in thousands)

	DECEMBER 31, 2000	MARCH 31, 2001
	-----	-----
		(Unaudited)
<b>ASSETS</b>		
Current Assets:		
Cash and cash equivalents .....	\$ 856,818	\$ 801,081
Marketable investment securities .....	607,357	493,544
Trade accounts receivable, net of allowance for uncollectible accounts of \$31,241 and \$21,766, respectively .....	278,614	251,800
Insurance receivable .....	106,000	106,000
Inventories .....	161,161	149,243
Other current assets .....	50,827	51,471
	-----	-----
Total current assets .....	2,060,777	1,853,139
Restricted cash and marketable investment securities .....	3,000	3,000
Cash reserved for satellite insurance (Note 4) .....	82,393	78,295
Property and equipment, net .....	1,511,303	1,619,556
FCC authorizations, net .....	709,984	705,374
Other noncurrent assets .....	298,493	233,987
	-----	-----
Total assets .....	\$ 4,665,950	\$ 4,493,351
	=====	=====
<b>LIABILITIES AND STOCKHOLDERS' DEFICIT</b>		
Current Liabilities:		
Trade accounts payable .....	\$ 226,568	\$ 120,339
Deferred revenue .....	283,895	330,000
Accrued expenses .....	691,482	689,594
Current portion of long-term debt .....	21,132	17,375
	-----	-----
Total current liabilities .....	1,223,077	1,157,308
Long-term obligations, net of current portion:		
9 1/4% Seven Year Notes .....	375,000	375,000
9 3/8% Ten Year Notes .....	1,625,000	1,625,000
4 7/8% Convertible Notes .....	1,000,000	1,000,000
10 3/8% Seven Year Notes .....	1,000,000	1,000,000
Mortgages and other notes payable, net of current portion .....	14,812	14,585
Long-term deferred distribution and carriage revenue and other long-term liabilities .....	56,329	75,974
	-----	-----
Total long-term obligations, net of current portion .....	4,071,141	4,090,559
	-----	-----
Total liabilities .....	5,294,218	5,247,867
Commitments and Contingencies (Note 5)		
Stockholders' Deficit:		
6 3/4% Series C Cumulative Convertible Preferred Stock, 218,951 and 199,182 shares issued and outstanding, respectively .....	10,948	9,959
Class A Common Stock, \$.01 par value, 1,600,000,000 shares authorized, 235,749,557 and 236,360,794 shares issued and outstanding, respectively ..	2,357	2,364
Class B Common Stock, \$.01 par value, 800,000,000 shares authorized, 238,435,208 shares issued and outstanding .....	2,384	2,384
Class C common Stock, \$.01 par value, 800,000,000 shares authorized, none outstanding .....	--	--
Additional paid-in capital .....	1,700,367	1,702,246
Deferred stock-based compensation .....	(58,193)	(50,137)
Accumulated other comprehensive loss .....	(60,580)	(28,562)
Accumulated deficit .....	(2,225,551)	(2,392,770)
	-----	-----
Total stockholders' deficit .....	(628,268)	(754,516)
	-----	-----
Total liabilities and stockholders' deficit .....	\$ 4,665,950	\$ 4,493,351
	=====	=====

See accompanying Notes to Condensed Consolidated Financial Statements.

EHOSTAR COMMUNICATIONS CORPORATION  
 CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS  
 (In thousands, except per share amounts)  
 (Unaudited)

	THREE MONTHS ENDED MARCH 31,	
	2000	2001
<b>REVENUE:</b>		
DISH Network:		
Subscription television services .....	\$ 476,874	\$ 794,448
Other .....	1,313	2,483
	478,187	796,931
Total DISH Network .....		
DTH equipment sales and integration services .....	62,704	41,019
Other .....	24,830	23,980
	565,721	861,930
Total revenue .....		
<b>COSTS AND EXPENSES:</b>		
DISH Network Operating Expenses:		
Subscriber-related expenses .....	201,574	316,335
Customer service center and other .....	56,049	64,782
Satellite and transmission .....	12,476	9,095
	270,099	390,212
Total DISH Network operating expenses .....		
Cost of sales - DTH equipment and integration services .....	46,222	28,836
Cost of sales - other .....	8,116	15,929
Marketing:		
Subscriber promotion subsidies - promotional DTH equipment ..	172,138	190,265
Subscriber promotion subsidies - other .....	77,949	82,966
Advertising and other .....	23,170	26,927
	273,257	300,158
Total marketing expenses .....		
General and administrative .....	55,577	75,672
Non-cash, stock-based compensation .....	14,009	7,456
Depreciation and amortization .....	40,458	58,850
	707,738	877,113
Total costs and expenses .....		
Operating loss .....	(142,017)	(15,183)
Other Income (Expense):		
Interest income .....	18,998	24,564
Interest expense .....	(61,513)	(83,097)
Other .....	(543)	(93,276)
	(43,058)	(151,809)
Total other income (expense) .....		
Loss before income taxes .....	(185,075)	(166,992)
Income tax provision, net .....	(55)	(49)
	(185,130)	(167,041)
Net loss .....		
6 3/4% Series C Cumulative Convertible Preferred Stock dividends .....	(493)	(178)
	(185,623)	(167,219)
Numerator for basic and diluted loss per share - loss attributable to common shareholders .....		
Denominator for basic and diluted loss per share - weighted-average common shares outstanding .....	465,768	474,563
Net loss per common share:		
Basic and diluted net loss .....	\$ (0.40)	\$ (0.35)

See accompanying Notes to Condensed Consolidated Financial Statements.

ECHOSTAR COMMUNICATIONS CORPORATION  
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS  
(In thousands)  
(Unaudited)

	THREE MONTHS ENDED MARCH 31,	
	2000	2001
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>		
Net loss .....	\$(185,130)	\$(167,041)
Adjustments to reconcile net loss to net cash flows from operating activities:		
Deferred stock-based compensation recognized .....	13,709	7,456
Loss due to decline in the estimated fair value of strategic investments .....	--	91,803
Depreciation and amortization .....	40,458	58,850
Amortization of debt discount and deferred financing costs .....	1,534	1,878
Employee benefits funded by issuance of Class A Common Stock .....	7,280	--
Change in reserve for excess and obsolete inventory .....	303	679
Change in long-term deferred satellite services revenue and other long-term liabilities .....	7,448	19,645
Other, net .....	990	1,348
Changes in current assets and current liabilities, net .....	8,831	(34,941)
	(104,577)	(20,323)
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>		
Purchases of marketable investment securities .....	(218,888)	(706,698)
Sales of marketable investment securities .....	198,107	820,126
Purchases of property and equipment .....	(36,900)	(148,600)
Change in cash reserved for satellite insurance due to depreciation on related satellites (Note 4) .....	--	4,098
Investment in Wildblue Communications .....	(50,000)	--
Investment in Replay TV .....	(10,000)	--
Other .....	(694)	(1,675)
	(118,375)	(32,749)
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>		
Repayments of mortgage indebtedness and notes payable .....	(4,236)	(3,984)
Net proceeds from Class A Common Stock options exercised and Class A Common Stock issued to Employee Stock Purchase Plan .....	2,170	1,497
Other .....	(493)	(178)
	(2,559)	(2,665)
Net increase (decrease) in cash and cash equivalents .....	(225,511)	(55,737)
Cash and cash equivalents, beginning of period .....	905,299	856,818
	\$ 679,788	\$ 801,081
	=====	=====
<b>SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION:</b>		
6 3/4% Series C Cumulative Convertible Preferred Stock dividends .....	\$ --	\$ 178
Conversion of 6 3/4% Series C Cumulative Convertible Preferred Stock to Class A common stock .....	--	989
Forfeitures of deferred non-cash, stock-based compensation .....	--	600
Class A Common Stock issued related to acquisition of Kelly Broadcasting Systems, Inc. ....	31,556	--

See accompanying Notes to Condensed Consolidated Financial Statements.

ECHOSTAR COMMUNICATIONS CORPORATION  
 NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS  
 (Unaudited)

1. ORGANIZATION AND BUSINESS ACTIVITIES

Principal Business

The operations of EchoStar Communications Corporation ("ECC," and together with its subsidiaries, or referring to particular subsidiaries in certain circumstances, "EchoStar" or the "Company") include two interrelated business units (Note 6):

- o The DISH Network - a direct broadcast satellite ("DBS") subscription television service in the United States. As of March 31, 2001, we had approximately 5.7 million DISH Network subscribers.
- o EchoStar Technologies Corporation ("ETC") - engaged in the design, development, distribution and sale of DBS set-top boxes, antennae and other digital equipment for the DISH Network ("EchoStar receiver systems"), the design, development and distribution of similar equipment for international direct-to-home ("DTH") satellite and other systems and the provision of uplink center design, construction oversight and other project integration services for international DTH ventures.

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

2. SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with generally accepted accounting principles and with the instructions to Form 10-Q and Article 10 of Regulation S-X for interim financial information. Accordingly, these statements do not include all of the information and footnotes required by generally accepted accounting principles for complete financial statements. In the opinion of management, all adjustments (consisting of normal recurring adjustments) considered necessary for a fair presentation have been included. All significant intercompany accounts and transactions have been eliminated in consolidation. Operating results for the three months ended March 31, 2001 are not necessarily indicative of the results that may be expected for the year ending December 31, 2001. For further information, refer to the consolidated financial statements and footnotes thereto included in EchoStar's Annual Report on Form 10-K for the year ended December 31, 2000. Certain prior year amounts have been reclassified to conform with the current year presentation.

Use of Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses for each reporting period. Actual results could differ from those estimates.

ECHOSTAR COMMUNICATIONS CORPORATION  
 NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - CONTINUED  
 (Unaudited)

Investment Securities

As of March 31, 2001, EchoStar has classified all marketable investment securities as available-for-sale. The fair market value of marketable investment securities approximates the carrying value and represents the quoted market prices at the balance sheet dates. Related unrealized gains and losses are reported as a separate component of stockholders' deficit, net of related deferred income taxes, if applicable. The specific identification method is used to determine cost in computing realized gains and losses. Such unrealized losses totaled approximately \$29 million as of March 31, 2001. Approximately \$19 million of these unrealized losses relate to a decline in the value of OpenTV. EchoStar acquired that stock in connection with the establishment of a strategic relationship with OpenTV which did not involve an investment of cash by EchoStar.

In accordance with generally accepted accounting principles, declines in the market value of a marketable investment security which are estimated to be "other than temporary" must be recognized in the statement of operations, thus establishing a new cost basis for such investment. EchoStar reviewed the fair value of its marketable investment securities as of March 31, 2001 and determined that some declines in market value have occurred which may be other than temporary. As such, EchoStar established a new cost basis for these securities, and accordingly reduced its previously recorded unrealized loss and recorded a charge to earnings of approximately \$32.4 million during the three months ended March 31, 2001.

EchoStar also has made strategic equity investments in certain non-marketable investment securities including Wildblue Communications, StarBand Communications, VisionStar, Inc. and Replay TV. The original cost basis of EchoStar's investments in these non-marketable investment securities totaled approximately \$116 million. The securities of these companies are not publicly traded. EchoStar's ability to create realizable value for its strategic investments in companies that are not public is dependent on the success of their business plans and ability to obtain sufficient capital to execute their business plans. StarBand and Wildblue recently cancelled their planned initial public stock offerings. As a result of the cancellation of those offerings and other factors, during the three months ended March 31, 2001, EchoStar recorded a non-recurring charge of approximately \$59.4 million to reduce the carrying value of certain of these non-marketable investment securities to their estimated fair values. StarBand and Wildblue need to obtain significant additional capital in the near term. Absent such funding, additional write-downs of EchoStar's investments could be necessary.

Comprehensive Income (Loss)

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

	THREE MONTHS ENDED MARCH 31,	
	2000	2001
	(Unaudited)	
Net loss .....	\$(185,130)	\$(167,041)
Unrealized holding losses on available-for-sale securities arising during period .....	1,463	(385)
Reclassification adjustment for impairment losses on available-for-sale securities included in net loss .....	--	32,403
Comprehensive loss .....	\$(183,667)	\$(135,023)

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

EHOSTAR COMMUNICATIONS CORPORATION  
 NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - CONTINUED  
 (Unaudited)

Basic and Diluted Loss Per Share

Statement of Financial Accounting Standards No. 128, "Earnings Per Share" ("FAS No. 128") requires entities to present both basic earnings per share ("EPS") and diluted EPS. Basic EPS excludes dilution and is computed by dividing income (loss) available to 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 options or warrants were exercised or convertible securities were converted to common stock, resulting in the issuance of common stock that then would share in any earnings of the Company. We had net losses for the three months ending March 31, 2000 and 2001. Therefore, the effect of the common stock equivalents and convertible securities is excluded from the computation of diluted earnings (loss) per share since the effect is anti-dilutive.

As of March 31, 2001 and 2000, options to purchase a total of approximately 24,825,000 and 27,861,000 shares of Class A common stock were outstanding, respectively. Approximately 3,269,000 and 5,713,000 shares of Class A common stock were issuable upon conversion of the 6 3/4 Series C Cumulative Convertible Preferred Stock as of March 31, 2001 and 2000, respectively. As of March 31, 2001, the 4 7/8% Convertible Subordinated Notes are convertible into approximately 22 million shares of Class A common stock.

3. INVENTORIES

Inventories consist of the following (in thousands):

	DECEMBER 31, 2000	MARCH 31, 2001
	-----	-----
Finished goods - DBS .....	\$ 96,362	\$ 88,727
Raw materials .....	40,247	43,195
Finished goods - reconditioned and other .....	23,101	18,905
Work-in-process .....	8,879	6,178
Consignment .....	2,478	1,465
Reserve for excess and obsolete inventory .....	(9,906)	(9,227)
	-----	-----
	\$ 161,161	\$ 149,243
	=====	=====

4. SATELLITE INSURANCE

As a result of the failure of EchoStar IV solar arrays to fully deploy and the failure of 28 transponders to date, a maximum of approximately 14 of the 44 transponders on EchoStar IV are available for use at this time. Due to the normal degradation of the solar arrays, the number of available transponders will further decrease over time. In addition to the transponder and solar array failures, EchoStar IV experienced anomalies affecting its thermal systems and propulsion system. There can be no assurance that further material degradation, or total loss of use, of EchoStar IV will not occur in the immediate future.

In September 1998, EchoStar filed a \$219.3 million insurance claim for a constructive total loss under the launch insurance policies covering EchoStar IV. The satellite insurance consists of separate identical policies with different carriers for varying amounts which, in combination, create a total insured amount of \$219.3 million.

The insurance carriers offered EchoStar a total of approximately \$88 million, or 40% of the total policy amount, in settlement of the EchoStar IV insurance claim. The insurers allege that all other impairment to the satellite occurred after expiration of the policy period and is not covered. EchoStar strongly disagrees with the position of the insurers and has filed an arbitration claim against them for breach of contract, failure to pay a valid insurance claim and bad faith denial of a valid claim, among other things. There can be no assurance that EchoStar will receive the amount claimed or, if EchoStar does, that EchoStar will retain title to EchoStar IV with its reduced capacity.



ECHOSTAR COMMUNICATIONS CORPORATION  
 NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - CONTINUED  
 (Unaudited)

At the time EchoStar filed its claim in 1998, EchoStar recognized an impairment loss of \$106 million to write-down the carrying value of the satellite and related costs, and simultaneously recorded an insurance claim receivable for the same amount. EchoStar continues to believe it will ultimately recover at least the amount originally recorded and does not intend to adjust the amount of the receivable until there is greater certainty with respect to the amount of the final settlement.

As a result of the thermal and propulsion system anomalies, EchoStar reduced the estimated remaining useful life of EchoStar IV to approximately 4 years during January 2000. EchoStar will continue to evaluate the performance of EchoStar IV and may modify its loss assessment as new events or circumstances develop.

The in-orbit insurance policies for EchoStar I, EchoStar II, and EchoStar III expired July 25, 2000. The insurers have to date refused to renew insurance on EchoStar I, EchoStar II and EchoStar III on reasonable terms. Based on, among other things, the insurance carriers' unanimous refusal to negotiate reasonable renewal insurance coverage, EchoStar believes that the carriers colluded and conspired to boycott EchoStar unless EchoStar accepts their offer to settle the EchoStar IV claim for \$88 million.

Based on the carriers' actions, EchoStar has added causes of action in its EchoStar IV demand for arbitration for breach of the duty of good faith and fair dealing, and unfair claim practices. Additionally, EchoStar filed a lawsuit against the insurance carriers in the United States District Court for the District of Colorado asserting causes of action for violation of Federal and State Antitrust laws. While EchoStar believes it is entitled to the full amount claimed under the EchoStar IV insurance policy and believes the insurance carriers are in violation of Antitrust laws and have committed further acts of bad faith in connection with their refusal to negotiate reasonable insurance coverage on EchoStar's other satellites, there can be no assurance as to the outcome of these proceedings. During March 2001, EchoStar voluntarily dismissed the antitrust lawsuit without prejudice. EchoStar has the right to re-file an antitrust action against the insurers again in the future.

The indentures related to the outstanding senior notes of EDBS contain restrictive covenants that require EchoStar to maintain satellite insurance with respect to at least half of the satellites it owns. Insurance coverage is therefore required for at least three of EchoStar's six satellites currently in orbit. EchoStar has procured normal and customary launch insurance for EchoStar VI. This launch insurance policy provides for insurance of \$225.0 million. The EchoStar VI launch insurance policy expires in July 2001. EchoStar is currently self-insuring EchoStar I, EchoStar II, EchoStar III, EchoStar IV and EchoStar V. To satisfy insurance covenants related to the outstanding EDBS senior notes, as of March 31, 2001, EchoStar has reclassified approximately \$78 million from cash and cash equivalents to restricted cash and marketable investment securities on its balance sheet. The reclassification will continue until such time, if ever, as the insurers are again willing to insure EchoStar's satellites on commercially reasonable terms. The amount of cash reserved for satellite insurance will be increased by approximately \$60 million in the event EchoStar has not procured satellite insurance by July 2001. EchoStar believes it has in-orbit satellite capacity sufficient to expeditiously recover transmission of most programming in the event one of its in-orbit satellites was to fail. However, the cash reserved for satellite insurance is not adequate to fund the construction, launch and insurance for a replacement satellite in the event of a complete loss of a satellite and programming continuity could not be assured in the event of multiple satellite losses.

5. COMMITMENTS AND CONTINGENCIES

VisionStar

During November 2000, one of EchoStar's wholly owned subsidiaries purchased a 49.9% interest in VisionStar, Inc. VisionStar holds an FCC license, and is constructing a Ka-band satellite, to launch into the 113 W.L. orbital slot. Together with VisionStar, EchoStar has requested FCC approval to acquire control over VisionStar by increasing its ownership of VisionStar to 90%, for a total purchase price of approximately \$2.8 million. EchoStar has also provided loans to VisionStar totaling less than \$10 million to date for the construction of their satellite and expects to provide additional funding to VisionStar in the future. EchoStar is not obligated to

ECHOSTAR COMMUNICATIONS CORPORATION  
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - CONTINUED  
(Unaudited)

finance the full remaining cost to construct and launch the VisionStar satellite, but VisionStar's FCC license currently requires construction of the satellite to be completed by April 30, 2002 or the license could be revoked. EchoStar currently expects to continue to fund loans and equity contributions for construction of the satellite in the near term from cash on hand, and expects that it may spend approximately \$79.5 million during 2001 for that purpose subject to, among other things, FCC action.

#### DirectTV

During February 2000, EchoStar filed suit against DirectTV and Thomson Consumer Electronics/RCA in the Federal District Court of Colorado. The suit alleges that DirecTV has utilized improper conduct in order to fend off competition from the DISH Network. According to the complaint, DirecTV has demanded that certain retailers stop displaying EchoStar's merchandise and has threatened to cause economic damage to retailers if they continue to offer both product lines in head-to-head competition. The suit alleges, among other things, that DirecTV has acted in violation of federal and state anti-trust laws in order to protect DirecTV's market share. EchoStar is seeking injunctive relief and monetary damages. EchoStar subsequently amended the Complaint adding claims against Circuit City, Radio Shack and Best Buy, alleging that these retailers are engaging in improper conduct that has had an anti-competitive impact on EchoStar. It is too early in the litigation to make an assessment of the probable outcome. During October 2000, DirecTV filed a motion for summary judgment asking that the Court enter judgment in DirecTV's favor on certain of EchoStar's claims. DirecTV's motion for summary judgment remains pending.

The DirecTV defendants filed a counterclaim against EchoStar. DirecTV alleges that EchoStar tortiously interfered with a contract that DirecTV allegedly had with Kelly Broadcasting Systems, Inc. ("KBS"). DirecTV alleges that EchoStar "merged" with KBS, in contravention of DirecTV's contract with KBS. DirecTV also alleges that EchoStar has falsely advertised to consumers about its right to offer network programming. DirecTV further alleges that EchoStar improperly used certain marks owned by PrimeStar, now owned by DirecTV. Finally, DirecTV alleges that EchoStar has been marketing National Football League games in a misleading manner. Discovery has been stayed until the next scheduling conference on June 13, 2001. The amount of damages DirecTV is seeking is as yet unquantified. However, in an arbitration proceeding related to DirecTV's allegations with respect to KBS, DirecTV has claimed damages totaling hundreds of millions of dollars. It is too early in the litigation to make an assessment of the probable outcome. EchoStar and KBS intend to vigorously defend against DirecTV's allegations in the litigation and in the arbitration.

#### Fee Dispute

EchoStar had a contingent fee arrangement with the attorneys who represented EchoStar in the litigation with News Corporation. The contingent fee arrangement provides for the attorneys to be paid a percentage of any net recovery obtained by EchoStar in the News Corporation litigation. The attorneys have asserted that they may be entitled to receive payments totaling hundreds of millions of dollars under this fee arrangement.

During mid-1999, EchoStar initiated litigation against the attorneys in the Arapahoe County, Colorado, District Court arguing that the fee arrangement is void and unenforceable. In December 1999, the attorneys initiated an arbitration proceeding before the American Arbitration Association. The litigation has been stayed while the arbitration is ongoing. The arbitration hearing commenced April 2, 2001 and continued through April 13, 2001. The hearing could not be completed during that time period and has been continued until August 7, 2001, when it will resume until it is presumably completed. While there can be no assurance that the attorneys will not continue to claim a right to hundreds of millions of dollars, the damage model the attorneys presented during the arbitration was for \$56 million. EchoStar believes that even that amount significantly overstates the amount the attorneys should reasonably be entitled to receive under the fee agreement but it is not possible for EchoStar to predict what the decision of the three person arbitrator panel will be with any degree of certainty. EchoStar continues to vigorously contest the attorneys' interpretation of the fee arrangement, which EchoStar believes significantly overstates the magnitude of its liability.

ECHOSTAR COMMUNICATIONS CORPORATION  
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - CONTINUED  
(Unaudited)

WIC Premium Television Ltd.

During July 1998, a lawsuit was filed by WIC Premium Television Ltd., an Alberta corporation, in the Federal Court of Canada Trial Division, against General Instrument Corporation, HBO, Warner Communications, Inc., John Doe, Showtime, United States Satellite Broadcasting Company, Inc., EchoStar Communications Corporation, and two of EchoStar's wholly-owned subsidiaries, Echosphere Corporation and Dish, Ltd. The lawsuit seeks, among other things, an interim and permanent injunction prohibiting the defendants from activating receivers in Canada and from infringing any copyrights held by WIC. It is too early to determine whether or when any other lawsuits or claims will be filed.

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

EchoStar filed motions to dismiss each of the actions for lack of personal jurisdiction. The Court in the Alberta action recently denied EchoStar's Motion to Dismiss, which EchoStar appealed. The Alberta Court also granted a motion to add more EchoStar parties to the lawsuit. EchoStar Satellite Corporation, EDBS, EchoStar Technologies Corporation, and EchoStar Satellite Broadcast Corporation have been added as defendants in the litigation. The newly added defendants have also challenged jurisdiction. The Court of Appeals denied EchoStar's appeal and the Alberta Court has asserted jurisdiction over all of the EchoStar defendants. The Court in the Federal action has stayed that case pending the outcome of the Alberta action. The case is now currently in discovery. EchoStar intends to vigorously defend the suit. It is too early to make an assessment of the probable outcome of the litigation or to determine the extent of any potential liability or damages.

Broadcast network programming

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

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

In February 1999, the networks filed a "Motion for Temporary Restraining Order, Preliminary Injunction and Contempt Finding" against DirectTV, Inc. in Miami related to the delivery of distant network channels to DirectTV customers by satellite. DirectTV settled this lawsuit with the networks. Under the terms of the settlement between DirectTV and the networks, some DirectTV customers were scheduled to lose access to their satellite-provided distant network channels by July 31, 1999, while other DirectTV customers were to be disconnected by December 31, 1999. Subsequently, PrimeTime 24 and substantially all providers of satellite-delivered network

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programming other than EchoStar agreed to this cut-off schedule, although EchoStar does not know if they adhered to this schedule.

In December 1998, the networks filed a Motion for Preliminary Injunction against EchoStar in the Miami court, and asked the court to enjoin EchoStar from providing network programming except under limited circumstances. A preliminary injunction hearing was held on September 21, 1999. The court took the issues under advisement to consider the networks' request for an injunction, whether to hear live testimony before ruling upon the request, and whether to hear argument on why the Satellite Home Viewer Act may be unconstitutional, among other things.

In March 2000, the networks filed an emergency motion again asking the court to issue an injunction requiring EchoStar to turn off network programming to certain of its customers. At that time, the networks also argued that EchoStar's compliance procedures violate the Satellite Home Viewer Improvement Act. EchoStar opposed the networks' motion and again asked the court to hear live testimony before ruling upon the networks' injunction request.

During September 2000, the Court granted the Networks' motion for preliminary injunction, denied the Network's emergency motion and denied EchoStar's request to present live testimony and evidence. The Court's original order required EchoStar to terminate network programming to certain subscribers "no later than February 15, 1999," and contained other dates which would be physically impossible to comply with. The order imposes restrictions on EchoStar's past and future sale of distant ABC, NBC, CBS and Fox channels similar to those imposed on PrimeTime 24 (and, EchoStar believes, on DirecTV and others). Some of those restrictions go beyond the statutory requirements imposed by the Satellite Home Viewer Act and the Satellite Home Viewer Improvement Act. For these and other reasons EchoStar believes the Court's order is, among other things, fundamentally flawed, unconstitutional and should be overturned. However, it is very unusual for a Court of Appeals to overturn a lower court's order and there can be no assurance whatsoever that it will be overturned.

On October 3, 2000, and again on October 25, 2000, the Court amended its original preliminary injunction order in an effort to fix some of the errors in the original order. The twice amended preliminary injunction order required EchoStar to shut off, by February 15, 2001, all subscribers who are ineligible to receive distant network programming under the court's order. EchoStar has appealed the September 2000 preliminary injunction order and the October 3, 2000 amended preliminary injunction order. On November 22, 2000, the United States Court of Appeals for the Eleventh Circuit stayed the Florida Court's preliminary injunction order pending EchoStar's appeal. At that time, the Eleventh Circuit also expedited its consideration of EchoStar's appeal.

During November 2000, EchoStar filed its appeal brief with the Eleventh Circuit. During December 2000, the Satellite Broadcasting and Communications Association submitted an amicus brief in support of EchoStar's appeal. The Consumer Federation of America and the Media Access Project have also submitted an amicus brief in support of EchoStar's appeal. The Networks have responded to EchoStar's appeal brief and the amicus briefs filed by the Consumer Federation of America and the Media Access Project and the Satellite Broadcasting and Communications Association. In December 2000, the Department of Justice filed a motion to intervene with respect to EchoStar's constitutional challenge of the Satellite Home Viewers Act, and the National Association of Broadcasters filed an amicus brief in support of the Networks' position in the appeal. During January 2001, EchoStar filed its reply appeal brief and asked the Eleventh Circuit for an opportunity to respond to the amicus brief filed by the National Association of Broadcasters and the brief filed by the Department of Justice. On January 11, 2001, the Networks advised the Eleventh Circuit that they did not object to EchoStar's filing a response to the National Association of Broadcasters' amicus brief or the Department of Justice's brief. On January 19, 2001, EchoStar filed its supplemental brief responding to the Department of Justice's brief. On January 23, 2001, the Department of Justice filed a motion to strike EchoStar's supplemental brief or for an opportunity to reply to EchoStar's supplemental brief. On February 2, 2001, without explanation, the Eleventh Circuit issued an order striking EchoStar's supplemental reply and denying EchoStar an opportunity to file a response to the Department of Justice's motion to intervene. The Eleventh Circuit has currently set oral argument for May 24, 2001. EchoStar

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cannot predict when the Eleventh Circuit will rule on its appeal, but it could be as early as May 2001. EchoStar's appeal effort may not be successful and EchoStar may be required to comply with the Court's preliminary injunction order on short notice. The preliminary injunction could force EchoStar to terminate delivery of distant network channels to a substantial portion of its distant network subscriber base, which could also cause many of these subscribers to cancel their subscription to EchoStar's other services. Such terminations would result in a small reduction in EchoStar's reported average monthly revenue per subscriber and could result in a temporary increase in churn.

#### Starsight

During October 2000, Starsight Telecast, Inc., a subsidiary of Gemstar-TV Guide, filed a suit for patent infringement against EchoStar and certain of its subsidiaries in the United States District Court for the Western District of North Carolina, Asheville Division. The suit alleges infringement of United States Patent No. 4,706,121 (the "121 Patent") which relates to certain electronic program guide functions. EchoStar has examined this patent and believes that it is not infringed by any of its products or services.

In December 2000, EchoStar filed suit against Gemstar - TV Guide International, Inc. (and certain of its subsidiaries) in the United States District Court for the District of Colorado alleging violations by Gemstar of various federal and state anti-trust laws and laws governing unfair competition. The lawsuit seeks an injunction and monetary damages. The Court recently denied a motion by Gemstar to transfer this case to the Western District of North Carolina.

In February 2001, Gemstar filed patent infringement actions against EchoStar in District Court in Atlanta, Georgia and in the International Trade Commission (ITC). These suits allege infringement of United States Patent Nos. 5,252,066, 5,479,268 and 5,809,204 which all relate to certain electronic program guide functions. In addition, the ITC action alleges infringement of the 121 Patent which is asserted in the North Carolina case. In the Atlanta District Court case, Gemstar seeks damages and an injunction. We expect the Atlanta and North Carolina cases will be stayed pending resolution of the ITC action. ITC actions typically proceed according to an expedited schedule. EchoStar expects the ITC action to go to trial by the end of 2001. EchoStar further expects that the ITC will issue an initial determination by March of 2002 and that a final determination will be issued by June 2002. While the ITC cannot award damages, it can issue exclusion orders that would prevent the importation of articles that are found to infringe the asserted patents. In addition, it can issue cease and desist orders that would prohibit the sale of infringing products that had been previously imported. EchoStar has examined these patents and believes they are not infringed by any of EchoStar's products or services. EchoStar will vigorously contest the ITC, North Carolina and Atlanta allegations of infringement and will, among other things, challenge both the validity and enforceability of the asserted patents.

During 2000, Superguide Corp. also filed suit against EchoStar, DirecTV and others in the same North Carolina Court, alleging infringement of United States Patent Nos. 5,038,211, 5,293,357 and 4,751,578 which relate to certain electronic program guide functions, including the use of electronic program guides to control VCRs. It is EchoStar's understanding that these patents may be licensed by Superguide to Gemstar, although Gemstar has not asserted the patents against EchoStar. Nevertheless, Gemstar was recently added by the Court as a party to this lawsuit. EchoStar has examined these patents and believes that they are not infringed by any of its products or services. EchoStar intends to vigorously defend against this action and assert a variety of counterclaims.

In the event it is ultimately determined that EchoStar infringes on any of the aforementioned patents EchoStar may be subject to substantial damages, and/or an injunction that could require EchoStar to materially modify certain user friendly electronic programming guide and related features it currently offers to consumers. It is too early to make an assessment of the probable outcome of the suits.

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#### IPPV Enterprises

IPPV Enterprises, LLC and MAAST, Inc. filed a patent infringement suit against EchoStar in the United States District Court for the District of Delaware. The suit alleges infringement of 5 patents. The patents disclose various systems for the implementation of features such as impulse-pay-per view, parental control and category lock-out. One patent relates to an encryption technique. Three of the patents have expired. The trial is expected to commence July 9, 2001. EchoStar is vigorously defending against the suit based, among other things, on non-infringement, invalidity and failure to provide notice of alleged infringement.

In the event it is ultimately determined that EchoStar infringes on any of these patents, EchoStar may be subject to substantial damages, and/or an injunction with respect to the two unexpired patents, that could require EchoStar to materially modify certain user friendly features it currently offers to consumers. It is too early to make an assessment of the probable outcome of the suit.

#### Retailer Class Actions

EchoStar has been sued by retailers in three separate class actions. In two separate lawsuits filed in the District Court, Arapahoe County, State of Colorado and the United States District Court for the District of Colorado, respectively, Air Communication & Satellite, Inc. and John DeJong, et. al. filed lawsuits on October 6, 2000 on behalf of themselves and a class of persons similarly situated. The plaintiffs are attempting to certify nationwide classes allegedly brought on behalf of persons, primarily retail dealers, who were alleged signatories to certain retailer agreements with EchoStar Satellite Corporation. The plaintiffs are requesting the Court to declare certain provisions of the alleged agreements invalid and unenforceable, to declare that certain changes to the agreements are invalid and unenforceable, and to award damages for lost commissions and payments, charge backs, and other compensation. The plaintiffs are alleging breach of contract and breach of the covenant of good faith and fair dealing and are seeking declaratory relief, compensatory damages, injunctive relief, and pre-judgment and post-judgment interest. EchoStar intends to vigorously defend against the suits and to assert a variety of counterclaims. It is too early to make an assessment of the probable outcome of the litigation or to determine the extent of any potential liability or damages.

Satellite Dealers Supply, Inc. filed a lawsuit in the United States District Court for the Eastern District of Texas on September 25, 2000, on behalf of itself and a class of persons similarly situated. The plaintiff is attempting to certify a nationwide class on behalf of sellers, installers, and servicers of satellite equipment who contract with EchoStar and claims the alleged class has been "subject to improper chargebacks." The plaintiff alleges that (1) EchoStar charged back certain fees paid by members of the class to professional installers in violation of contractual terms; (2) EchoStar manipulated the accounts of subscribers to deny payments to class members; and (3) EchoStar misrepresented to class members who owns certain equipment related to the provision of satellite television service. The plaintiff is requesting a permanent injunction and monetary damages. EchoStar intends to vigorously defend the lawsuit and to assert a variety of counterclaims. It is too early to make an assessment of the probable outcome of the litigation or to determine the extent of any potential liability or damages.

EchoStar is subject to various other legal proceedings and claims which arise in the ordinary course of business. In the opinion of management, the amount of ultimate liability with respect to those actions will not materially affect EchoStar's financial position or results of operations.

#### Meteoroid Events

Meteoroid events pose a potential threat to all in orbit geosynchronous satellites including EchoStar's DBS satellites. While the probability that EchoStar's satellites will be damaged by meteoroids is very small, that probability increases significantly when the Earth passes through the particulate stream left behind by various comets.

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Due to the current peak in the 11-year solar cycle, increased solar activity is likely for the next year. Some of these solar storms pose a potential threat to all in-orbit geosynchronous satellites including EchoStar's DBS satellites. The probability that the effects from the storms will damage our satellites or cause service interruptions is generally very small.

Some decommissioned spacecraft are in uncontrolled orbits which pass through the geostationary belt at various points, and present hazards to operational spacecraft including EchoStar's DBS satellites. The locations of these hazards are generally well known and may require EchoStar to perform maneuvers to avoid collisions.

6. SEGMENT REPORTING

Financial Data by Business Unit (in thousands)

Statement of Financial Accounting Standard No. 131, "Disclosures About Segments of an Enterprise and Related Information" ("FAS No. 131") establishes standards for reporting information about operating segments in annual financial statements of public business enterprises and requires that those enterprises report selected information about operating segments in interim financial reports issued to shareholders. Operating segments are components of an enterprise about which separate financial information is available and regularly evaluated by the chief operating decision maker(s) of an enterprise. During 2000, under this definition, we were operating as three separate business units. However, beginning 2001, it was determined that the chief operating decision maker of our Company regularly evaluates the following two separate business units. All prior year amounts have been restated to conform to the current year presentation.

	DISH NETWORK -----	ECHOSTAR TECHNOLOGIES CORPORATION -----	ELIMINATIONS AND OTHER, NET -----	CONSOLIDATED TOTAL -----
<b>THREE MONTHS ENDED MARCH 31, 2000</b>				
Revenue .....	\$ 484,448	\$ 52,469	\$ 28,804	\$ 565,721
Net income (loss) .....	(190,764)	(4,494)	10,128	(185,130)
<b>THREE MONTHS ENDED MARCH 31, 2001</b>				
Revenue .....	\$ 817,991	\$ 18,728	\$ 25,211	\$ 861,930
Net income (loss) .....	(221,867)	(7,788)	62,614	(167,041)

7. SUBSEQUENT EVENTS

EchoStar VI

EchoStar VI is equipped with a total of 48 transponders, including 16 spares. During April, 2001, EchoStar VI experienced a series of anomalous events resulting in a temporary interruption of service. The satellite was quickly restored to normal operations mode. However, spare transponders and a station-keeping thruster were activated while the anomaly investigation period proceeds. The satellite is equipped with a substantial number of backup transponders and thrusters. Consequently, the anomalous events have not impacted commercial operation of the satellite. However, until the root cause of the most recent anomaly is finally determined, there can be no assurance future similar anomalies will not cause further losses which could impact commercial operation of the satellite.

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

All statements contained herein, as well as statements made in press releases and oral statements that may be made by us or by officers, directors or employees acting on our behalf, that are not statements of historical fact constitute "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Such forward-looking statements involve known and unknown risks, uncertainties and other factors that could cause our actual results to be materially different from historical results or from any future results expressed or implied by such forward-looking statements. Among the factors that could cause our actual results to differ materially are the following: a total or partial loss of one or more satellites due to operational failures, space debris or otherwise; delays in the construction of our seventh, eighth or ninth satellites; an unsuccessful deployment of future satellites; inability to settle outstanding claims with insurers; a decrease in sales of digital equipment and related services to international direct-to-home service providers; a decrease in DISH Network subscriber growth; an increase in subscriber turnover; an increase in subscriber acquisition costs; an inability to obtain certain retransmission consents; our inability to retain necessary authorizations from the FCC; an inability to obtain patent licenses from holders of intellectual property or redesign our products to avoid patent infringement; an increase in competition from cable as a result of digital cable or otherwise, direct broadcast satellite, other satellite system operators, and other providers of subscription television services; the introduction of new technologies and competitors into the subscription television business; a change in the regulations governing the subscription television service industry; the outcome of any litigation in which we may be involved; general business and economic conditions; and other risk factors described from time to time in our reports and statements filed with the Securities and Exchange Commission. In addition to statements that explicitly describe such risks and uncertainties, readers are urged to consider statements that include the terms "believes," "belief," "expects," "plans," "anticipates," "intends" or the like to be uncertain and forward-looking. All cautionary statements made herein should be read as being applicable to all forward-looking statements wherever they appear. In this connection, investors should consider the risks described herein and should not place undue reliance on any forward-looking statements.

RESULTS OF OPERATIONS

Three Months Ended March 31, 2001 Compared to the Three Months Ended March 31, 2000.

Revenue. Total revenue for the three months ended March 31, 2001 was \$862 million, an increase of \$296 million compared to total revenue for the three months ended March 31, 2000 of \$566 million. The increase in total revenue was primarily attributable to DISH Network subscriber growth. We expect that our revenues will continue to increase significantly as the number of DISH Network subscribers increases.

DISH Network subscription television services revenue totaled \$794 million for the three months ended March 31, 2001, an increase of \$317 million compared to the same period in 2000. DISH Network subscription television services revenue principally consists of revenue from basic, premium and pay-per-view subscription television services. This increase was directly attributable to the increase in the number of DISH Network subscribers and higher average revenue per subscriber. DISH Network added approximately 460,000 net new subscribers for the three months ended March 31, 2001 compared to approximately 455,000 net subscriber additions during the same period in 2000. As of March 31, 2001, we had approximately 5.7 million DISH Network subscribers compared to approximately 3.9 million at March 31, 2000, an increase of approximately 48%. The subscriber growth reflects the impact of aggressive marketing promotions, including our free installation program, together with increased interest in satellite television resulting from the availability of local network channels by satellite. DISH Network subscription television services revenue will continue to increase to the extent we are successful in increasing the number of DISH Network subscribers and maintaining or increasing revenue per subscriber. While there can be no assurance, assuming the U.S. economy continues to grow at a slow pace, we expect to add approximately 1.5 to 2.0 million net new subscribers during 2001, and to obtain a majority of all net new DBS subscribers.

Monthly average revenue per subscriber was approximately \$48.23 during the three months ended March 31, 2001 and approximately \$43.85 during the same period in 2000. The increase in monthly average revenue per subscriber is primarily attributable to a \$1.00 price increase in America's Top 100 CD, our most popular programming package, during both May 2000 and February 2001, the increased availability of local channels by satellite, the successful introduction of our \$39.99 per month America's Top 150 programming package during April



ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS - CONTINUED

2000 together with an increase in subscriber penetration in our higher priced Digital Home Plans. While there can be no assurance, we expect our moderate historical increases in revenue per subscriber to continue during 2001 and expect to reach monthly average revenue per subscriber of approximately \$50 by the end of December 2001.

For the three months ended March 31, 2001, DTH equipment sales and integration services totaled \$41 million, a decrease of \$22 million compared to the same period during 2000. DTH equipment sales consist of sales of digital set-top boxes and other digital satellite broadcasting equipment to international DTH service operators and sales of DBS accessories. This decrease in DTH equipment sales and integration services revenue was primarily attributable to a decrease in international demand for digital set-top boxes as compared to the same period during 2000.

A significant portion of DTH equipment sales and integration services revenues have resulted from sales to two international DTH providers. We currently have agreements to provide equipment to DTH service operators in Spain and Canada. Our future revenue from the sale of DTH equipment and integration services in international markets depends largely on the success of these DTH operators and continued demand for our digital set-top boxes. While we have binding purchase orders from both providers for 2001, we expect overall demand for 2001 to be lower than the same period in 2000. As a result, we expect total DTH equipment sales and integration services revenue to decrease in 2001 compared to 2000. Although we continue to actively pursue additional distribution and integration service opportunities internationally, no assurance can be given that any such efforts will be successful.

In order, among other things, to commence compliance with the injunction issued against us in our pending litigation with the four major broadcast networks and their affiliate groups, we have terminated the delivery of distant network channels to certain of our subscribers. Additionally, during 2000, the FCC issued rules which impair our ability to deliver certain superstation channels to our customers. Those rules will increase the cost of our delivery of superstations, and could require that we terminate the delivery of certain superstations to a material portion of our subscriber base. In combination, these terminations would result in a small reduction in average monthly revenue per subscriber and could increase subscriber turnover. While there can be no assurance, any such decreases could be offset by increases in average monthly revenue per subscriber resulting from the delivery of local network channels by satellite, and increases in other programming offerings.

DISH Network Operating Expenses. DISH Network operating expenses totaled \$390 million during the three months ended March 31, 2001, an increase of \$120 million or 44% compared to the same period in 2000. DISH Network operating expenses represented 49% and 57% of subscription television services revenue during the three months ended March 31, 2001 and 2000, respectively. The increase in DISH Network operating expenses in total was consistent with, and primarily attributable to, the increase in the number of DISH Network subscribers. We expect to continue to control costs and create operating efficiencies. While there can be no assurance, we expect operating expenses as a percentage of subscription television services revenue to remain near current levels during the remainder of 2001.

Subscriber-related expenses totaled \$316 million during the three months ended March 31, 2001, an increase of \$114 million compared to the same period in 2000. Such expenses, which include programming expenses, copyright royalties, residuals currently payable to retailers and distributors, and billing, lockbox and other variable subscriber expenses, represented 40% and 42% of subscription television services revenues during the three months ended March 31, 2001 and 2000, respectively. Although we do not currently expect subscriber-related expenses as a percentage of subscription television services revenue to increase materially in future periods, there can be no assurance this expense to revenue ratio will not materially increase.

Customer service center and other expenses principally consist of costs incurred in the operation of our DISH Network customer service centers, such as personnel and telephone expenses, as well as other operating expenses related to our service and installation business. Customer service center and other expenses totaled \$65 million during the three months ended March 31, 2001, an increase of \$9 million as compared to the same period in 2000. The increase in customer service center and other expenses primarily resulted from increased personnel and telephone expenses to support the growth of the DISH Network and from operating expenses related to the expansion of our installation and service business. Customer service center and other expenses totaled 8% of subscription television

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS - CONTINUED

services revenue during the three months ended March 31, 2001, as compared to 12% during the same period in 2000. The decrease in this expense to revenue ratio primarily resulted from the on-going construction and start-up costs of our fifth customer service center in Virginia and our sixth customer service center in West Virginia during 2000. While there can be no assurance, we expect these expenses in total, and as a percentage of subscription television services revenue, to remain near current levels during the remainder of 2001. We continue to work to automate simple phone responses, and intend to increase internet based customer assistance in the future, in order to better manage customer service costs.

Satellite and transmission expenses include expenses associated with the operation of our digital broadcast center, contracted satellite telemetry, tracking and control services, and commercial satellite in-orbit insurance premiums. Satellite and transmission expenses totaled \$9 million during the three months ended March 31, 2001, a \$3 million decrease compared to the same period in 2000. This decrease resulted from the expiration of the commercial in-orbit satellite insurance policies for EchoStar I, EchoStar II and EchoStar III during July 2000. As discussed below, we are currently self-insuring these satellites. Satellite and transmission expenses totaled 1% and 3% of subscription television services revenue during the three months ended March 31, 2001 and 2000, respectively. We expect satellite and transmission expenses in total and as a percentage of subscription television services revenue, to increase in the future as additional satellites or digital broadcast centers are placed in service and to the extent we successfully renegotiate commercial in-orbit insurance.

Cost of sales - DTH equipment and Integration Services. Cost of sales - DTH equipment and integration services totaled \$29 million during the three months ended March 31, 2001, a decrease of \$17 million compared to the same period in 2000. Cost of sales - DTH equipment and integration services principally includes costs associated with digital set-top boxes and related components sold to international DTH operators and DBS accessories. This decrease in cost of sales - DTH equipment and integration services is consistent with the decrease in DTH equipment sales and integration services revenue. Cost of sales - DTH equipment and integration services represented 70% and 74% of DTH equipment revenue, during the three months ended March 31, 2001 and 2000, respectively.

Marketing Expenses. We subsidize the cost and installation of EchoStar receiver systems in order to attract new DISH Network subscribers. Consequently, our subscriber acquisition costs are significant. Marketing expenses totaled \$300 million during the three months ended March 31, 2001, an increase of \$27 million compared to the same period in 2000. The increase in marketing expenses was primarily attributable to an increase in subscriber promotion subsidies. Subscriber promotion subsidies - promotional DTH equipment includes the cost related to EchoStar receiver systems distributed to retailers and other distributors of our equipment. Subscriber promotion subsidies - other includes net costs related to our free installation promotion and other promotional incentives. Advertising and other expenses totaled \$27 million and \$23 million during the three months ended March 31, 2001 and 2000, respectively.

During the three months ended March 31, 2001, our marketing promotions included our Digital Home Plan, Free Now and a free installation program. Our subscriber acquisition costs under these programs are significantly higher than those under our marketing programs historically.

During July 2000, we announced the commencement of our new Digital Dynamite promotion. This promotion was re-named the Digital Home Plan effective February 1, 2001. The Digital Home Plan offers four choices to consumers, ranging from the use of one EchoStar receiver system and our America's Top 100 CD programming package for \$35.99 per month, to providing consumers two EchoStar receiver systems and our America's Top 150 programming package for \$49.99 per month. With each plan, consumers receive in-home-service, must agree to a one-year commitment and incur a one-time set-up fee of \$49.99, which includes the first month's programming payment.

During February 2001, we announced our Free Now promotion offering all new subscribers a free base-level EchoStar receiver system and free installation. To be eligible for this program, a subscriber must provide a valid major credit card and make a one-year commitment to subscribe to either our America's Top 150 programming package or our America's Top 100 CD or DISH Latino Dos programming package plus additional programming totaling at least \$39.98 per month. Subscriber acquisition costs are materially higher under this plan compared to historical promotions. To the extent that actual consumer participation levels exceed present expectations, subscriber

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS - CONTINUED

acquisition costs may increase. Although there can be no assurance as to the ultimate duration of the Free Now promotion, we intend to continue it through at least May 2001.

We subsidize the cost and installation of EchoStar receiver systems in order to attract new DISH Network subscribers. There is no clear industry standard used in the calculation of subscriber acquisition costs. Our subscriber acquisition costs include subscriber promotion subsidies - promotional DTH equipment, subscriber promotion subsidies - other and DISH Network acquisition marketing expenses. During the three months ended March 31, 2001, our subscriber acquisition costs totaled approximately \$297 million, or approximately \$432 per new subscriber activation. Since we retain ownership of the equipment, amounts capitalized under our Digital Home Plan are not included in our calculation of these subscriber acquisition costs. Comparatively, our subscriber acquisition costs during the three months ended March 31, 2000, prior to the introduction of our Digital Home Plan, totaled \$273 million, or approximately \$467 per new subscriber activation. The increase in our total subscriber acquisition expenses principally resulted from strong DISH Network subscriber growth during the three months ended March 31, 2001. As a result of continuing competition and our plans to attempt to continue to drive rapid subscriber growth, we expect our per subscriber acquisition costs for 2001 will remain in a range consistent with our 2000 average of approximately \$452 per new subscriber activation.

Our subscriber acquisition costs, both in the aggregate and on a per new subscriber activation basis, may materially increase further to the extent that we continue or expand our Free Now program, or introduce other more aggressive promotions if we determine that they are necessary to respond to competition, or for other reasons.

General and Administrative Expenses. General and administrative expenses totaled \$76 million during the three months ended March 31, 2001, an increase of \$20 million as compared to the same period in 2000. The increase in G&A expenses was principally attributable to increased personnel expenses to support the growth of the DISH Network. G&A expenses represented 9% and 10% of total revenue during the three months ended March 31, 2001 and 2000, respectively. Although we expect G&A expenses as a percentage of total revenue to remain near the current level or decline modestly in future periods, this expense to revenue ratio could increase.

Non-cash, Stock-based Compensation. During 1999, we adopted an incentive plan which provided certain key employees with incentives including stock options. The payment of these incentives was contingent upon our achievement of certain financial and other goals. We met certain of these goals during 1999. Accordingly, during 1999, we recorded approximately \$179 million of deferred compensation related to post-grant appreciation of stock options granted pursuant to the 1999 incentive plan. The related deferred compensation will be recognized over the five-year vesting period. Accordingly, during the three months ended March 31, 2001 and 2000 we recognized \$7 million and \$14 million, respectively, under this performance-based plan.

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

	MARCH 31,	
	2000	2001
	-----	-----
Customer service center and other .....	\$ 655	\$ 233
Satellite and transmission .....	655	466
General and administrative .....	12,699	6,757
	-----	-----
Total non-cash, stock-based compensation .....	\$14,009	\$ 7,456
	=====	=====

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS - CONTINUED

**Pre-Marketing Cash Flow.** Pre-marketing cash flow is comprised of EBITDA plus total marketing expenses. Pre-marketing cash flow was \$351 million during the three months ended March 31, 2001, an increase of 89% compared to the same period in 2000. Our pre-marketing cash flow as a percentage of total revenue was approximately 40% during the three months ended March 31, 2001 compared to 33% during the same period in 2000. We believe that pre-marketing cash flow can help to measure of operating efficiency for companies in the DBS industry. While there can be no assurance, we expect pre-marketing cash flow as a percentage of total revenue to remain near the current level during the remainder of 2001.

**Earnings Before Interest, Taxes, Depreciation and Amortization.** EBITDA represents earnings before interest, taxes, depreciation, amortization, and non-cash, stock-based compensation. EBITDA was \$51 million during the three months ended March 31, 2001, compared to negative \$88 million during the same period in 2000. This improvement in EBITDA was directly attributable to the increase in the number of DISH Network subscribers and higher average revenue per subscriber, resulting in recurring revenue which was large enough to support the cost of new and existing subscribers, together with the introduction of our Digital Home Plan in July 2000. Our calculation of EBITDA for the three months ended March 31, 2001 and 2000 does not include approximately \$7 million and \$14 million, respectively, of non-cash compensation expense resulting from post-grant appreciation of employee stock options. While there can be no assurance, we expect to continue to have positive EBITDA for the year ended December 31, 2001. As previously discussed, to the extent we expand our current marketing promotions and our subscriber acquisition costs materially increase, our EBITDA results will be negatively impacted because subscriber acquisition costs are generally expensed as incurred.

It is important to note that EBITDA and pre-marketing cash flow do not represent cash provided or used by operating activities. EBITDA and pre-marketing cash flow should not be considered in isolation or as a substitute for measures of performance prepared in accordance with generally accepted accounting principles.

**Depreciation and Amortization.** Depreciation and amortization expenses aggregated \$59 million during the three months ended March 31, 2001, a \$19 million increase compared to the same period in 2000. The increase in depreciation and amortization expenses principally resulted from an increase in depreciation related to the commencement of operation of EchoStar VI in October 2000 and other depreciable assets placed in service during late 2000.

**Other Income and Expense.** Other expense, net, totaled \$152 million during the three months ended March 31, 2001, an increase of \$109 million compared to the same period in 2000. This increase primarily resulted from impairment losses on marketable and non-marketable investment securities of approximately \$92 million, as discussed below, and from an increase in interest expense as a result of the issuance of our 10 3/8% Senior Notes due 2007 in September 2000. This increase in interest expense was partially offset by an increase in interest income.

LIQUIDITY AND CAPITAL RESOURCES

Cash Sources

As of March 31, 2001, our unrestricted cash, cash equivalents and marketable investment securities totaled \$1.295 billion compared to \$1.464 billion as of December 31, 2000. For the three months ended March 31, 2001 and 2000, we reported net cash flows from operating activities of negative \$20 million and negative \$105 million, respectively. The decrease in net cash flow used in operating activities reflects, among other things, an increase in the number of DISH Network subscribers and higher average revenue per subscriber, resulting in recurring revenue which is large enough to support the cost of new and existing subscribers.

We expect that our future working capital, capital expenditure and debt service requirements will be satisfied primarily from existing cash and investment balances and cash generated from operations. Our ability to generate positive future operating and net cash flows is dependent upon our ability to continue to expand our DISH Network subscriber base, retain existing DISH Network subscribers, and our ability to grow our ETC and Satellite Services businesses. There can be no assurance that we will be successful in achieving our goals. The amount of capital

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS - CONTINUED

required to fund our remaining 2001 working capital and capital expenditure needs will vary, depending, among other things, on the rate at which we acquire new subscribers and the cost of subscriber acquisition. Our working capital and capital expenditure requirements could increase materially in the event of increased competition for subscription television customers, significant satellite failures, or in the event of a general economic downturn, among other factors. These factors could require that we raise additional capital in the future.

Subscriber Turnover

Our percentage churn for the three months ended March 31, 2001 was generally consistent with our percentage churn for the same period in 2000. We believe that our percentage churn continues to be lower than satellite and cable industry averages. While we have successfully managed churn within a narrow range historically, our maturing subscriber base, a slowing economy, the effects of rapid growth, bounty programs offered by competitors and other factors could cause future increases in churn. Further, we expect a temporary increase in our percentage churn during the second quarter of 2001 due in part to price increases in certain of our programming packages, which went into effect on February 1, 2001. Finally, impacts from our litigation with the networks in Miami, new FCC rules governing the delivery of superstations and other factors, could cause us to terminate delivery of distant network channels and superstations to a material portion of our subscriber base, which could cause many of those customers to cancel their subscription to our other services. Any such terminations could result in a small reduction in average monthly revenue per subscriber and could result in an increase in our percentage churn. While there can be no assurance, notwithstanding the issues discussed above we have and expect to be able to continue to manage our percentage churn below industry averages during the remainder of 2001.

Subscriber Acquisition Costs

As previously described, we subsidize the cost and installation of EchoStar receiver systems in order to attract new DISH Network subscribers. Our average subscriber acquisition costs were \$432 per new subscriber activation during the three months ended March 31, 2001. Since we retain ownership of the equipment, amounts capitalized under our Digital Home Plan are not included in our calculation of these subscriber acquisition costs. As a result of continuing competition and our plans to attempt to continue to drive rapid subscriber growth, we expect our per subscriber acquisition costs for 2001 will remain in a range consistent with our 2000 average of approximately \$452 per new subscriber activation. Our subscriber acquisition costs, both in the aggregate and on a per new subscriber activation basis, may materially increase to the extent that we continue or expand our Free Now promotion, or introduce other more aggressive promotions if we determine that they are necessary to respond to competition, or for other reasons.

Funds necessary to meet subscriber acquisition costs will be satisfied from existing cash and investment balances to the extent available. We may, however, be required to raise additional capital in the future to meet these requirements. If we were required to raise capital today, a variety of debt and equity funding sources would likely be available to us. However, there can be no assurance that additional financing will be available on acceptable terms, or at all, if needed in the future.

Digital Home Plan

During July 2000, we announced the commencement of our new Digital Dynamite promotion, which was re-named the Digital Home Plan effective February 1, 2001. The Digital Home Plan offers four choices to consumers, ranging from the use of one EchoStar receiver system and our America's Top 100 CD programming package for \$35.99 per month, to providing consumers two EchoStar receiver systems and our America's Top 150 programming package for \$49.99 per month. With each plan, consumers receive in-home-service, must agree to a one-year commitment and incur a one-time set-up fee of \$49.99, which includes the first month's programming payment. Our Digital Home Plan promotion allows us to capitalize and depreciate over 4 years equipment costs that would otherwise be expensed at the time of sale, but also results in increased capital expenditures. Capital expenditures under our Digital Home Plan promotion totaled approximately \$62.7 million for the three months ended March 31, 2001.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS - CONTINUED

Conditional Access System

The access control system is central to the security network that prevents unauthorized viewing of programming. Theft of cable and satellite programming has been widely reported and our signal encryption has been pirated and could be further compromised in the future. Theft of our programming reduces future potential revenue and increases our net subscriber acquisition costs. If other measures are not successful, it could be necessary to replace the credit card size card that controls the security of each consumer set top box at a material cost to us.

Intellectual Property

Many entities, including some of our competitors, now have and may in the future obtain patents and other intellectual property rights that cover or affect products or services directly or indirectly related to those that we offer. In general, if a court determines that one or more of our products infringes on intellectual property held by others, we would be required to cease developing or marketing those products, to obtain licenses to develop and market those products from the holders of the intellectual property, or to redesign those products in such a way as to avoid infringing the patent claims. Various parties have asserted patent and other intellectual property rights with respect to components within our direct broadcast satellite system. Certain of these parties have filed suit against us, including Starsight, Superguide, and IPPV Enterprises, as previously described. We cannot be certain that these persons do not own the rights they claim, that our products do not infringe on these rights, that we would be able to obtain licenses from these persons on commercially reasonable terms or, if we were unable to obtain such licenses, that we would be able to redesign our products to avoid infringement.

Obligations and Future Capital Requirements

Semi-annual cash debt service of approximately \$94 million related to our 9 1/4% Senior Notes due 2006 (Seven Year Notes) and our 9 3/8% Senior Notes due 2009 (Ten Year Notes), is payable in arrears on February 1 and August 1 each year. Semi-annual cash debt service requirements of approximately \$24 million related to our 4 7/8% Convertible Subordinated Notes due 2007 is payable in arrears on January 1 and July 1 of each year. Semi-annual cash debt service of approximately \$52 million related to our 10 3/8% Senior Notes due 2007 is payable in arrears on April 1 and October 1 of each year, commencing April 1, 2001. There are no scheduled principal payment or sinking fund requirements prior to maturity of any of these notes.

The indentures related to our 9 1/4% Senior Notes due 2006 (the "Seven Year Notes") and our 9 3/8% Senior Notes due 2009 (the "Ten Year Notes") (collectively, the "Seven and Ten Year Notes Indentures") contain restrictive covenants that require us to maintain satellite insurance with respect to at least half of the satellites we own. Insurance coverage is therefore required for at least three of our six satellites currently in orbit. We have procured normal and customary launch insurance for EchoStar VI. This launch insurance policy provides for insurance of \$225.0 million. The EchoStar VI launch insurance policy expires in July 2001. We are currently self-insuring EchoStar I, EchoStar II, EchoStar III, EchoStar IV and EchoStar V. During 2000, to satisfy insurance covenants related to the outstanding EchoStar DBS senior notes, we reclassified the depreciated cost of two of our satellites from cash and cash equivalents to cash reserved for satellite insurance on our balance sheet. As of March 31, 2001, cash reserved for satellite insurance totaled approximately \$78 million. The reclassifications will continue until such time, if ever, as the insurers are again willing to insure our satellites on commercially reasonable terms. The amount of cash reserved for satellite insurance will be increased by approximately \$60 million in the event we have not procured satellite insurance by July 2001. We believe we have in-orbit satellite capacity sufficient to expeditiously recover transmission of most programming in the event one of our in-orbit satellites was to fail. However, the cash reserved for satellite insurance is not adequate to fund the construction, launch and insurance for a replacement satellite in the event of a complete loss of a satellite and programming continuity could not be assured in the event of multiple satellite losses.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS - CONTINUED

We utilized \$91 million of satellite vendor financing for our first four satellites. As of March 31, 2001, approximately \$22 million of that satellite vendor financing remained outstanding. The satellite vendor financing bears interest at 8 1/4% and is payable in equal monthly installments over five years following launch of the satellite to which it relates. A portion of the contract price with respect to EchoStar VII is payable over a period of 13 years following launch with interest at 8%, and a portion of the contract price with respect to EchoStar VIII and EchoStar IX is payable following launch with interest at 8%. Those in orbit payments are contingent on the continued health of the satellite.

Dividends on our 6 3/4% Series C Cumulative Convertible Preferred Stock began to accrue on November 2, 1999. Holders of the Series C Preferred Stock are entitled to receive cumulative dividends at an annual rate of 6 3/4% of the Liquidation Preference of \$50 per share. Dividends are payable quarterly in arrears, commencing February 1, 2000, when, as, and if declared by our Board of Directors. All accumulated and unpaid dividends may, at our option, be paid in cash, Class A common stock, or a combination thereof upon conversion or redemption.

During the remainder of 2001, we anticipate total capital expenditures of between \$450-\$750 million depending upon the strength of the economy and other factors. We expect approximately 40% of that amount to be utilized for satellite construction and approximately 60% for EchoStar receiver systems in connection with our Digital Home Plan and for general corporate expansion. Our anticipated capital expenditures related to the Digital Home Plan promotion may materially increase to the extent this promotion is successful and to the extent that we continue or expand our Digital Home Plan promotion.

In addition to our DBS business plan, we have licenses, or applications pending with the FCC, for a two satellite FSS Ku-band satellite system and a two satellite FSS Ka-band satellite system. We will need to raise additional capital to fully construct these satellites. During February 2000, we announced agreements for the construction and delivery of three new satellites. Two of these satellites, EchoStar VII and EchoStar VIII, will be advanced, high-powered DBS satellites. The third satellite, EchoStar IX, will be a hybrid Ku/Ka-band satellite.

During November 2000, one of our wholly owned subsidiaries purchased a 49.9% interest in VisionStar, Inc. VisionStar holds an FCC license, and is constructing a Ka-band satellite, to launch into the 113 W.L. orbital slot. Together with VisionStar we have requested FCC approval to acquire control over VisionStar by increasing our ownership of VisionStar to 90%, for a total purchase price of approximately \$2.8 million. We have also provided loans to VisionStar totaling less than \$10 million to date for the construction of their satellite and expect to provide additional funding to VisionStar in the future. We are not obligated to finance the full remaining cost to construct and launch the VisionStar satellite, but VisionStar's FCC license currently requires construction of the satellite to be completed by April 30, 2002 or the license could be revoked. We currently expect to continue to fund loans and equity contributions for construction of the satellite in the near term from cash on hand, and expect that we may spend approximately \$79.5 million during 2001 for that purpose subject to, among other things, FCC action. In the future we may fund construction, launch and insurance of the satellite through cash from operations, public or private debt or equity financing, joint ventures with others, or from other sources.

We expect that our future working capital, capital expenditure and debt service requirements will be satisfied from existing cash and investment balances, and cash generated from operations. Our ability to generate positive future operating and net cash flows is dependent, among other things, upon our ability to retain existing DISH Network subscribers, our ability to manage the growth of our subscriber base, and our ability to grow our ETC and Satellite Services businesses. During the first quarter of 2001, subscriber growth was strong. To the extent future subscriber growth exceeds our expectations, it may be necessary for us to raise additional capital to fund increased working capital requirements. There may be a number of other factors, some of which are beyond our control or ability to predict, that could require us to raise additional capital. These factors include unexpected increases in operating costs and expenses, a defect in or the loss of any satellite, or an increase in the cost of acquiring subscribers due to additional competition, among other things. If cash generated from our operations is not sufficient to meet our debt service requirements or other obligations, we would be required to obtain cash from other financing sources. If we were required to raise capital today a variety of debt and equity funding sources would likely be available to us. However, there can be no assurance that such financing would be available on terms acceptable to us, or if available, that the proceeds of such financing would be sufficient to enable us to meet all of our obligations.

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

## MARKET RISKS ASSOCIATED WITH FINANCIAL INSTRUMENTS

As of March 31, 2001, our unrestricted cash, cash equivalents and marketable investment securities had a fair value of \$1.295 billion. Of that amount, a total of \$1.204 billion was invested in: (a) cash; (b) debt instruments of the U.S. Government and its agencies; (c) commercial paper with an 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 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 fund operations. Consequently, the size of this portfolio fluctuates significantly as cash is raised and used in our business.

The value of certain of the investments in this portfolio can be impacted by, among other things, the risk of adverse changes in securities and economic markets generally, as well as the risks related to the performance of the companies whose commercial paper and other instruments we hold. However, the high quality of these investments (as assessed by independent rating agencies), reduces these risks. The value of these investments can also be impacted by interest rate fluctuations. At March 31, 2001, all of our investments in this category were in fixed rate instruments or money market type accounts. While an increase in interest rates would ordinarily adversely impact the fair value of fixed rate investments, we normally hold these investments to maturity. Consequently, neither interest rate fluctuations nor other market risks typically result in significant gains or losses to this portfolio. A decrease in interest rates has the effect of reducing our future annual interest income from this portfolio, since funds would be re-invested at lower rates as the instruments mature. Over time, any net percentage decrease in interest rates could be reflected in a corresponding net percentage decrease in our interest income. During the three months ending March 31, 2000 and 2001, the impact of interest rate fluctuations, changed business prospects and all other factors did not have a material impact on the fair value of the portfolio, or on our income derived from this portfolio.

We also invest in debt and equity of public and private companies for strategic business purposes. As of March 31, 2001, we held strategic debt and equity investments of public companies with a fair value of approximately \$91 million. We acquired stock in one of those companies, OpenTV, in connection with establishment of a strategic relationship which did not involve the investment of cash by us. None of these investments accounted for more than 40% of the total fair value of the portfolio. We may make additional strategic investments in other debt and equity securities in the future.

The fair value of our strategic debt investments can be impacted by interest rate fluctuations. Absent the effect of other factors, a hypothetical 10% increase in LIBOR would result in a decrease in the fair value of our investments in these debt instruments of approximately \$8 million. The fair value of our strategic debt and equity investments can also 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 market value due to the volatility of the securities markets and of the underlying businesses. A hypothetical 10% adverse change in the price of our public strategic debt and equity investments would result in approximately a \$9.1 million decrease in the fair value of that portfolio.

In accordance with generally accepted accounting principles, declines in the market value of a marketable investment securities which are estimated to be "other than temporary" must be recognized in the statement of operations, thus establishing a new cost basis for such investment. We reviewed the fair value of our marketable investment securities as of March 31, 2001 and determined that some declines in market value have occurred which may be other than temporary. As a result, we established a new cost basis for certain of these investments, and accordingly reduced our previously recorded unrealized loss and recorded a charge to earnings of approximately \$32.4 million during the three months ended March 31, 2001. We have not used derivative financial instruments for speculative purposes. We have not hedged or otherwise protected against the risks associated with any of our investing or financing activities.



## ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK - CONTINUED

In addition to the \$1.295 billion, we have made strategic equity investments in certain non-marketable investment securities including Wildblue Communications, StarBand Communications, VisionStar, Inc. and Replay TV. The original cost basis of our investments in these non-marketable investment securities totaled approximately \$116 million. The securities of these companies are not publicly traded. Our ability to create realizable value for our strategic investments in companies that are not public is dependent on the success of their business plans. Among other things, there is relatively greater risk that those companies may not be able to raise sufficient capital to fully finance their business plans and ability to obtain sufficient capital to execute their business plans. Since 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 that we will be able to obtain full value for them. StarBand and Wildblue recently cancelled their planned initial public stock offerings. As a result of the cancellation of those offerings and other factors, during the three months ended March 31, 2001, we recorded a non-recurring charge of approximately \$59.4 million to reduce the carrying value of certain of our non-marketable investment securities to their estimated fair values. Starband and Wildblue need to obtain significant additional capital in the near term. Absent such funding, additional write-downs of our investments could be necessary.

## PART II - OTHER INFORMATION

## ITEM 1. LEGAL PROCEEDINGS

## DirectTV

During February 2000, we filed suit against DirectTV and Thomson Consumer Electronics/RCA in the Federal District Court of Colorado. The suit alleges that DirectTV has utilized improper conduct in order to fend off competition from the DISH Network. According to the complaint, DirectTV has demanded that certain retailers stop displaying our merchandise and has threatened to cause economic damage to retailers if they continue to offer both product lines in head-to-head competition. The suit alleges, among other things, that DirectTV has acted in violation of federal and state anti-trust laws in order to protect DirectTV's market share. We are seeking injunctive relief and monetary damages. We subsequently amended the Complaint adding claims against Circuit City, Radio Shack and Best Buy, alleging that these retailers are engaging in improper conduct that has had an anti-competitive impact on us. It is too early in the litigation to make an assessment of the probable outcome. During October 2000, however, DirectTV filed a motion for summary judgment asking that the Court enter judgment in DirectTV's favor on certain of our claims. DirectTV's motion for summary judgment remains pending.

The DirectTV defendants filed a counterclaim against us. DirectTV alleges that we tortiously interfered with a contract that DirectTV allegedly had with Kelly Broadcasting Systems, Inc. DirectTV alleges that we "merged" with KBS, in contravention of DirectTV's contract with KBS. DirectTV also alleges that we have falsely advertised to consumers about our right to offer network programming. DirectTV further alleges that we improperly used certain marks owned by PrimeStar, now owned by DirectTV. Finally, DirectTV alleges that we have been marketing National Football League games in a misleading manner. Discovery has been stayed until the next scheduling conference on June 13, 2001. The amount of damages DirectTV is seeking is as yet unquantified. However, in an arbitration proceeding related to DirectTV's allegations with respect to KBS, DirectTV has claimed damages totaling hundreds of millions of dollars. It is too early in the litigation to make an assessment of the probable outcome. We and KBS intend to vigorously defend against DirectTV's allegations in the litigation and in the arbitration.

## Fee Dispute

We had a contingent fee arrangement with the attorneys who represented us in the litigation with News Corporation. The contingent fee arrangement provides for the attorneys to be paid a percentage of any net recovery obtained by us in the News Corporation litigation. The attorneys have asserted that they may be entitled to receive payments totaling hundreds of millions of dollars under this fee arrangement.

During mid-1999, we initiated litigation against the attorneys in the Arapahoe County, Colorado, District Court arguing that the fee arrangement is void and unenforceable. In December 1999, the attorneys initiated an arbitration proceeding before the American Arbitration Association. The litigation has been stayed while the arbitration is ongoing. The arbitration hearing commenced April 2, 2001 and continued through April 13, 2001. The hearing could not be completed during that time period and has been continued until August 7, 2001, when it will resume until it is presumably completed. While there can be no assurance that the attorneys will not continue to claim a right to hundreds of millions of dollars, the damage model the attorneys presented during the arbitration was for \$56 million. We believe that even that amount significantly overstates the amount the attorneys should reasonably be entitled to receive under the fee agreement but it is not possible for us to predict what the decision of the three person arbitrator panel will be with any degree of certainty. We continue to vigorously contest the attorneys' interpretation of the fee arrangement, which we believe significantly overstates the magnitude of our liability.

## WIC Premium Television Ltd.

During July 1998, a lawsuit was filed by WIC Premium Television Ltd., an Alberta corporation, in the Federal Court of Canada Trial Division, against General Instrument Corporation, HBO, Warner Communications, Inc., John Doe, Showtime, United States Satellite Broadcasting Company, Inc., EchoStar Communications Corporation, and two of EchoStar's wholly-owned subsidiaries, Echosphere Corporation and Dish, Ltd. The lawsuit seeks, among other things, an interim and permanent injunction prohibiting the defendants from activating receivers

## PART II - OTHER INFORMATION

in Canada and from infringing any copyrights held by WIC. It is too early to determine whether or when any other lawsuits or claims will be filed.

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

We filed motions to dismiss each of the actions for lack of personal jurisdiction. The Court in the Alberta action recently denied our Motion to Dismiss, which we appealed. The Alberta Court also granted a motion to add more EchoStar parties to the lawsuit. EchoStar Satellite Corporation, EDBS, EchoStar Technologies Corporation, and EchoStar Satellite Broadcast Corporation have been added as defendants in the litigation. The newly added defendants have also challenged jurisdiction. The Court of Appeals denied our appeal and the Alberta Court has asserted jurisdiction over all of the EchoStar defendants. The Court in the Federal action has stayed that case pending the outcome of the Alberta action. The case is now currently in discovery. We intend to vigorously defend the suit. It is too early to make an assessment of the probable outcome of the litigation or to determine the extent of any potential liability or damages.

#### Broadcast network programming

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

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

In February 1999, the networks filed a "Motion for Temporary Restraining Order, Preliminary Injunction and Contempt Finding" against DirecTV, Inc. in Miami related to the delivery of distant network channels to DirecTV customers by satellite. DirecTV settled this lawsuit with the networks. Under the terms of the settlement between DirecTV and the networks, some DirecTV customers were scheduled to lose access to their satellite-provided distant network channels by July 31, 1999, while other DirecTV customers were to be disconnected by December 31, 1999. Subsequently, PrimeTime 24 and substantially all providers of satellite-delivered network programming other than EchoStar agreed to this cut-off schedule, although we do not know if they adhered to this schedule.

In December 1998, the networks filed a Motion for Preliminary Injunction against us in the Miami court, and asked the court to enjoin us from providing network programming except under limited circumstances. A preliminary injunction hearing was held on September 21, 1999. The court took the issues under advisement to consider the networks' request for an injunction, whether to hear live testimony before ruling upon the request, and whether to hear argument on why the Satellite Home Viewer Act may be unconstitutional, among other things.

## PART II - OTHER INFORMATION

In March 2000, the networks filed an emergency motion again asking the court to issue an injunction requiring us to turn off network programming to certain of its customers. At that time, the networks also argued that our compliance procedures violate the Satellite Home Viewer Improvement Act. We opposed the networks' motion and again asked the court to hear live testimony before ruling upon the networks' injunction request.

During September 2000, the Court granted the Networks' motion for preliminary injunction, denied the Network's emergency motion and denied our request to present live testimony and evidence. The Court's original order required us to terminate network programming to certain subscribers "no later than February 15, 1999," and contained other dates which would be physically impossible to comply with. The order imposes restrictions on our past and future sale of distant ABC, NBC, CBS and Fox channels similar to those imposed on PrimeTime 24 (and, we believe, on DirecTV and others). Some of those restrictions go beyond the statutory requirements imposed by the Satellite Home Viewer Act and the Satellite Home Viewer Improvement Act. For these and other reasons we believe the Court's order is, among other things, fundamentally flawed, unconstitutional and should be overturned. However, it is very unusual for a Court of Appeals to overturn a lower court's order and there can be no assurance whatsoever that it will be overturned.

On October 3, 2000, and again on October 25, 2000, the Court amended its original preliminary injunction order in an effort to fix some of the errors in the original order. The twice amended preliminary injunction order required us to shut off, by February 15, 2001, all subscribers who are ineligible to receive distant network programming under the court's order. We have appealed the September 2000 preliminary injunction order and the October 3, 2000 amended preliminary injunction order. On November 22, 2000, the United States Court of Appeals for the Eleventh Circuit stayed the Florida Court's preliminary injunction order pending our appeal. At that time, the Eleventh Circuit also expedited its consideration of our appeal.

During November 2000, we filed our appeal brief with the Eleventh Circuit. During December 2000, the Satellite Broadcasting and Communications Association submitted an amicus brief in support of our appeal. The Consumer Federation of America and the Media Access Project have also submitted an amicus brief in support of our appeal. The Networks have responded to our appeal brief and the amicus briefs filed by the Consumer Federation of America and the Media Access Project and the Satellite Broadcasting and Communications Association. In December 2000, the Department of Justice filed a motion to intervene with respect to our constitutional challenge of the Satellite Home Viewers Act, and the National Association of Broadcasters filed an amicus brief in support of the Networks' position in the appeal. During January 2001, we filed our reply appeal brief and asked the Eleventh Circuit for an opportunity to respond to the amicus brief filed by the National Association of Broadcasters and the brief filed by the Department of Justice. On January 11, 2001, the Networks advised the Eleventh Circuit that they did not object to our filing a response to the National Association of Broadcasters' amicus brief or the Department of Justice's brief. On January 19, 2001, we filed our supplemental brief responding to the Department of Justice's brief. On January 23, 2001, the Department of Justice filed a motion to strike our supplemental brief or for an opportunity to reply to our supplemental brief. On February 2, 2001, without explanation, the Eleventh Circuit issued an order striking our supplemental reply and denying us an opportunity to file a response to the Department of Justice's motion to intervene. The Eleventh Circuit has currently set oral argument for May 24, 2001. We cannot predict when the Eleventh Circuit will rule on our appeal, but it could be as early as May 2001. Our appeal effort may not be successful and we may be required to comply with the Court's preliminary injunction order on short notice. The preliminary injunction could force us to terminate delivery of distant network channels to a substantial portion of our distant network subscriber base, which could also cause many of these subscribers to cancel their subscription to our other services. Such terminations would result in a small reduction in our reported average monthly revenue per subscriber and could result in a temporary increase in churn.

Starsight

During October 2000, Starsight Telecast, Inc., a subsidiary of Gemstar-TV Guide, filed a suit for patent infringement against us and certain of our subsidiaries in the United States District Court for the Western District of North Carolina, Asheville Division. The suit alleges infringement of United States Patent No. 4,706,121 (the "121

## PART II - OTHER INFORMATION

Patent") which relates to certain electronic program guide functions. We have examined this patent and believe that it is not infringed by any of our products or services.

In December 2000, we filed suit against Gemstar - TV Guide International, Inc. (and certain of its subsidiaries) in the United States District Court for the District of Colorado alleging violations by Gemstar of various federal and state anti-trust laws and laws governing unfair competition. The lawsuit seeks an injunction and monetary damages. The Court recently denied a motion by Gemstar to transfer this case to the Western District of North Carolina.

In February 2001, Gemstar filed patent infringement actions against us in District Court in Atlanta, Georgia and in the International Trade Commission (ITC). These suits allege infringement of United States Patent Nos. 5,252,066, 5,479,268 and 5,809,204 which all relate to certain electronic program guide functions. In addition, the ITC action alleges infringement of the 121 Patent which is asserted in the North Carolina case. In the Atlanta District Court case, Gemstar seeks damages and an injunction. EchoStar expects the Atlanta and North Carolina cases will be stayed pending resolution of the ITC action. ITC actions typically proceed according to an expedited schedule. We expect the ITC action to go to trial by the end of 2001. We further expect that the ITC will issue an initial determination by March of 2002 and that a final determination will be issued by June 2002. While the ITC cannot award damages, it can issue exclusion orders that would prevent the importation of articles that are found to infringe the asserted patents. In addition, it can issue cease and desist orders that would prohibit the sale of infringing products that had been previously imported. We have examined these patents and believe they are not infringed by any of our products or services. We will vigorously contest the ITC, North Carolina and Atlanta allegations of infringement and will, among other things, challenge both the validity and enforceability of the asserted patents.

During 2000, Superguide Corp. also filed suit against us, DirecTV and others in the same North Carolina Court, alleging infringement of United States Patent Nos. 5,038,211, 5,293,357 and 4,751,578 which relate to certain electronic program guide functions, including the use of electronic program guides to control VCRs. It is our understanding that these patents may be licensed by Superguide to Gemstar, although Gemstar has not asserted the patents against us. Nevertheless, Gemstar was recently added by the Court as a party to this lawsuit. We have examined these patents and believe that they are not infringed by any of our products or services. We intend to vigorously defend against this action and assert a variety of counterclaims.

In the event it is ultimately determined that we infringe on any of the aforementioned patents we may be subject to substantial damages, and/or an injunction that could require us to materially modify certain user friendly electronic programming guide and related features we currently offer to consumers. It is too early to make an assessment of the probable outcome of the suits.

#### IPPV Enterprises

IPPV Enterprises, LLC and MAAST, Inc. filed a patent infringement suit against us in the United States District Court for the District of Delaware. The suit alleges infringement of 5 patents. The patents disclose various systems for the implementation of features such as impulse-pay-per view, parental control and category lock-out. One patent relates to an encryption technique. Three of the patents have expired. The trial is expected to commence July 9, 2001. We are vigorously defending against the suit based, among other things, on non-infringement, invalidity and failure to provide notice of alleged infringement.

In the event it is ultimately determined that we infringe on any of these patents, we may be subject to substantial damages, and/or an injunction with respect to the two unexpired patents, that could require us to materially modify certain user friendly features we currently offer to consumers. It is too early to make an assessment of the probable outcome of the suit.

## PART II - OTHER INFORMATION

## Retailer Class Actions

We have been sued by retailers in three separate class actions. In two separate lawsuits filed in the District Court, Arapahoe County, State of Colorado and the United States District Court for the District of Colorado, respectively, Air Communication & Satellite, Inc. and John DeJong, et. al. filed lawsuits on October 6, 2000 on behalf of themselves and a class of persons similarly situated. The plaintiffs are attempting to certify nationwide classes allegedly brought on behalf of persons, primarily retail dealers, who were alleged signatories to certain retailer agreements with EchoStar Satellite Corporation. The plaintiffs are requesting the Court to declare certain provisions of the alleged agreements invalid and unenforceable, to declare that certain changes to the agreements are invalid and unenforceable, and to award damages for lost commissions and payments, charge backs, and other compensation. The plaintiffs are alleging breach of contract and breach of the covenant of good faith and fair dealing and are seeking declaratory relief, compensatory damages, injunctive relief, and pre-judgment and post-judgment interest. We intend to vigorously defend against the suits and to assert a variety of counterclaims. It is too early to make an assessment of the probable outcome of the litigation or to determine the extent of any potential liability or damages.

Satellite Dealers Supply, Inc. filed a lawsuit in the United States District Court for the Eastern District of Texas on September 25, 2000, on behalf of itself and a class of persons similarly situated. The plaintiff is attempting to certify a nationwide class on behalf of sellers, installers, and servicers of satellite equipment, who contract with the us and claims the alleged class has been "subject to improper chargebacks." The plaintiff alleges that (1) we charged back certain fees paid by members of the class to professional installers in violation of contractual terms; (2) we manipulated the accounts of subscribers to deny payments to class members; and (3) we misrepresented to class members who owns certain equipment related to the provision of satellite television services. The plaintiff is requesting a permanent injunction and monetary damages. We intend to vigorously defend the lawsuit and to assert a variety of counterclaims. It is too early to make an assessment of the probable outcome of the litigation or to determine the extent of any potential liability or damages.

## Satellite Insurance

As a result of the failure of EchoStar IV solar arrays to fully deploy and the failure of 28 transponders to date, a maximum of approximately 14 of the 44 transponders on EchoStar IV are available for use at this time. Due to the normal degradation of the solar arrays, the number of available transponders will further decrease over time. In addition to the transponder and solar array failures, EchoStar IV experienced anomalies affecting its thermal systems and propulsion system. There can be no assurance that further material degradation, or total loss of use, of EchoStar IV will not occur in the immediate future.

In September 1998, we filed a \$219.3 million insurance claim for a constructive total loss under the launch insurance policies covering EchoStar IV. The satellite insurance consists of separate identical policies with different carriers for varying amounts which, in combination, create a total insured amount of \$219.3 million.

The insurance carriers offered us a total of approximately \$88 million, or 40% of the total policy amount, in settlement of the EchoStar IV insurance claim. The insurers allege that all other impairment to the satellite occurred after expiration of the policy period and is not covered. We strongly disagree with the position of the insurers and have filed an arbitration claim against them for breach of contract, failure to pay a valid insurance claim and bad faith denial of a valid claim, among other things. There can be no assurance that we will receive the amount claimed or, if we do, that we will retain title to EchoStar IV with its reduced capacity.

At the time we filed our claim in 1998, we recognized an impairment loss of \$106 million to write-down the carrying value of the satellite and related costs, and simultaneously recorded an insurance claim receivable for the same amount. We continue to believe we will ultimately recover at least the amount originally recorded and do not intend to adjust the amount of the receivable until there is greater certainty with respect to the amount of the final settlement.

## PART II - OTHER INFORMATION

As a result of the thermal and propulsion system anomalies, we reduced the estimated remaining useful life of EchoStar IV to approximately 4 years during January 2000. We will continue to evaluate the performance of EchoStar IV and may modify our loss assessment as new events or circumstances develop.

The in-orbit insurance policies for EchoStar I, EchoStar II, and EchoStar III expired July 25, 2000. The insurers have to date refused to renew insurance on EchoStar I, EchoStar II and EchoStar III on reasonable terms. Based on, among other things, the insurance carriers' unanimous refusal to negotiate reasonable renewal insurance coverage, we believe that the carriers colluded and conspired to boycott us unless we accept their offer to settle the EchoStar IV claim for \$88 million.

Based on the carriers' actions, we have added causes of action in our EchoStar IV demand for arbitration for breach of the duty of good faith and fair dealing, and unfair claim practices. Additionally, we filed a lawsuit against the insurance carriers in the United States District Court for the District of Colorado asserting causes of action for violation of Federal and State Antitrust laws. While we believe we are entitled to the full amount claimed under the EchoStar IV insurance policy and believe the insurance carriers are in violation of Antitrust laws and have committed further acts of bad faith in connection with their refusal to negotiate reasonable insurance coverage on our other satellites, there can be no assurance as to the outcome of these proceedings. During March 2001, we voluntarily dismissed the antitrust lawsuit without prejudice. We have the right to re-file an antitrust action against the insurers again in the future.

We are subject to various other legal proceedings and claims which arise in the ordinary course of business. In the opinion of management, the amount of ultimate liability with respect to those actions will not materially affect our financial position or results of operations.

## ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K

## (a) Exhibits.

10.1+ Contract for Launch Services, dated January 31, 2001, between Lockheed Martin's International Launch Services and EchoStar Orbital Corporation. \*\*

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

## (b) Reports on Form 8-K.

No reports on Form 8-K were filed during the first quarter of 2001.

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.

ECHOSTAR COMMUNICATIONS CORPORATION

By: /s/ David K. Moskowitz

-----  
David K. Moskowitz  
Senior Vice President, General Counsel,  
Secretary and Director  
(Duly Authorized Officer)

By: /s/ Michael R. McDonnell

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

Date: May 3, 2001



## INDEX TO EXHIBITS

EXHIBIT NUMBER	DESCRIPTION
10.1+	Contract for Launch Services, dated January 31, 2001, between Lockheed Martin's International Launch Services and EchoStar Orbital Corporation. **
+	Filed herewith.
**	Certain provisions have been omitted and filed separately with the Securities and Exchange Commission pursuant to a request for confidential treatment. A conforming electronic copy is being filed herewith.

Certain portions of this document have been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934.

LAUNCH SERVICE CONTRACT

BETWEEN

LOCKHEED MARTIN COMMERCIAL LAUNCH SERVICES, INC.

AND

ECHOSTAR ORBITAL CORPORATION

CONFIDENTIAL TREATMENT

## CONTRACT FOR LAUNCH SERVICES

This Contract is made and entered into as of January 31, 2001 by and between Lockheed Martin Commercial Launch Services, Inc., a Delaware corporation, having its principal place of business at 1660 International Drive, Suite 800, McLean, Virginia 22102 ("Contractor") and EchoStar Orbital Corporation, a Colorado corporation, having its principal place of business at 5701 South Santa Fe Drive, Littleton, Colorado 80120 ("Customer").

ARTICLE 1  
DEFINITIONS

Capitalized terms used and not otherwise defined herein shall have the following meanings:

CSLA means the Commercial Space Launch Act, 49 U.S.C. Sections 70101 - 70119, as amended.

Constructive Total Failure [CONFIDENTIAL MATERIAL REDACTED]

Contract means this instrument and all exhibits attached hereto, as the same may be amended from time to time in accordance with the terms hereof, including:

Exhibit A - Atlas Launch Services Statement of Work for the EchoStar Program, which presently covers Atlas Launch Services for EchoStar VII and EchoStar VIII, [CONFIDENTIAL MATERIAL REDACTED]

Exhibit B - EchoStar VII Interface Control Document

Exhibit C - Proton Launch Services Statement of Work for the EchoStar Program, which presently covers Proton Launch Services for EchoStar VII and EchoStar VIII, [CONFIDENTIAL MATERIAL REDACTED]

Exhibit D - EchoStar VIII Interface Control Document

Contract Price means, with respect to a particular Launch Service, the Contract Price as set forth in Article 4 entitled "Contract Price" for the relevant Launch Service.

Excusable Delay shall have the meaning set forth in Section 8.1 entitled "Excusable Delays Defined."

Failure Review Board shall have the meaning and the duties set forth in Section 19.5 entitled "Failure Review Board."

Insured Launch Activities [CONFIDENTIAL MATERIAL REDACTED]

Intentional Ignition means (a) for Atlas, the point in time during the launch countdown when the engine start command is issued, causing the start bottle to be

pressurized and hypergolics to enter the chamber, and (b) for Proton, the ignition of the first-stage motor(s) of the Launch Vehicle.

L means the first day of the Launch Period, Launch Slot, or Launch Date, whichever is in then effect.

Launch [CONFIDENTIAL MATERIAL REDACTED]

Launch Date means the calendar date within the Launch Slot during which the Launch is scheduled to occur, as established in accordance with Article 6 entitled "Launch Schedule" and as such Launch Date may be adjusted in accordance with Article 7 entitled "Launch Schedule Adjustments."

Launch Opportunity [CONFIDENTIAL MATERIAL REDACTED]

Launch Period [CONFIDENTIAL MATERIAL REDACTED]

Launch Service means those services to be provided by Contractor to Customer for a single Launch as set forth in the applicable Statement of Work.

Launch Site means (a) for Atlas, Cape Canaveral Air Station located in Florida and (b) for Proton, the Baikonur Cosmodrome located in Kazakhstan, or such other place as mutually agreed by the Parties.

Launch Slot [CONFIDENTIAL MATERIAL REDACTED]

Launch Vehicle [CONFIDENTIAL MATERIAL REDACTED]

Optional Launch Service means a Launch Service which may be ordered by the Customer pursuant to Article 3.

Partial Failure [CONFIDENTIAL MATERIAL REDACTED]

Party or Parties means Contractor, Customer or both.

Reflight Launch means the additional Launch Service(s) that may be provided to Customer in accordance with Article 19 entitled "Reflight Launch or Refund Protection."

Reflight Launch Fee means the fee for Reflight Launch protection set forth in Article 19 entitled "Reflight Launch or Refund Protection."

Refund means the amount that may be payable to Customer pursuant to Section 19.3 entitled "Terms Governing Refund" in the event the Launch Service is a Total Failure, Constructive Total Failure or Partial Failure.

Refund Fee means the fee for Refund protection set forth in Article 19 entitled "Reflight Launch or Refund Protection."

Related Third Parties [CONFIDENTIAL MATERIAL REDACTED]

Satellite means the applicable Customer-provided satellite among EchoStar VII, EchoStar VIII and additional satellites, if any, covered by Optional Launch Services (with specific satellites to be identified later) and associated property to be launched on the Launch Vehicle, with technical specifications and characteristics set forth in the applicable Statement of Work.

Satellite Separation means the physical separation of the Satellite from the Launch Vehicle pursuant to the command activating the separation system that releases the Satellite.

Statement of Work means that document attached as Exhibit A to this Contract for Atlas and as Exhibit C to this Contract for Proton, as applicable.

Terminated Ignition [CONFIDENTIAL MATERIAL REDACTED]

Termination Charge means the charge calculated in accordance with Section 21.7 entitled "Termination Charge."

Third Party [CONFIDENTIAL MATERIAL REDACTED]

Total Failure [CONFIDENTIAL MATERIAL REDACTED]

Trade Agreement [CONFIDENTIAL MATERIAL REDACTED]

## ARTICLE 2 SERVICES TO BE PROVIDED

2.1 Base-Lined Launch Services. Contractor shall furnish a Launch Service for one Launch of the EchoStar VII Satellite from Cape Canaveral Air Station ("CCAS"), Florida, United States of America, in accordance with Exhibit A entitled "Atlas Launch Services Statement of Work for the EchoStar Program," and a Launch Service for one Launch of the EchoStar VIII Satellite from Baikonur Cosmodrome ("Baikonur") in Baikonur, Kazakhstan, in accordance with Exhibit C entitled "Proton Launch Services Statement of Work for the EchoStar Program," each scheduled for the Launch Periods as specified in Section 6.1 entitled "Launch Period."

2.2 Optional Launch Services. Contractor shall furnish up to [CONFIDENTIAL MATERIAL REDACTED] Launches of Satellites from CCAS and/or Baikonur in accordance with Exhibit A entitled "Atlas Launch Services Statement of Work for the EchoStar Program" and/or Exhibit C entitled "Proton Launch Services Statement of Work for the EchoStar Program," as applicable, should one or more Optional Launch

Services be exercised by Customer in accordance with Article 3 entitled "Optional Launch Services."

2.3 [CONFIDENTIAL MATERIAL REDACTED]

ARTICLE 2A  
[CONFIDENTIAL MATERIAL REDACTED]

ARTICLE 2B  
[CONFIDENTIAL MATERIAL REDACTED]

ARTICLE 2C  
[CONFIDENTIAL MATERIAL REDACTED]

ARTICLE 3  
OPTIONAL LAUNCH SERVICES

3.1 Period of Performance of Optional Launch Services. In no event shall Customer have the right to order Optional Launch Services under this Contract that have initial Launch Period end dates that are later than [CONFIDENTIAL MATERIAL REDACTED]. Once an Optional Launch Service is ordered by Customer, it shall be considered a Launch Service under this Contract.

3.2 Exercising of Optional Launch Services. No later than [CONFIDENTIAL MATERIAL REDACTED], Customer will provide Contractor a written notice containing the requested Launch Vehicle performance capabilities, Customer's Launch Vehicle preferences for the mission, Satellite configuration, three-month Launch Period and option exercise date for such Launch Service. Contractor shall [CONFIDENTIAL MATERIAL REDACTED]. After receipt of the Contractor's letter, Customer may, consistent with Section 3.3 and subject to Section 3.6, exercise the Optional Launch Service by providing a written notice to the Contractor containing the pertinent Satellite information, the desired three-month Launch Period, the desired Atlas or Proton configuration, as applicable, the name and general description of the mission, and [CONFIDENTIAL MATERIAL REDACTED], all no later than [CONFIDENTIAL MATERIAL REDACTED] prior to the first day of the desired Launch Period [CONFIDENTIAL MATERIAL REDACTED]

[CONFIDENTIAL MATERIAL REDACTED]

ARTICLE 4  
CONTRACT PRICE

4.1 Baseline Contract Prices. The Contract Price for each baseline Launch Service for payment purposes shall be:

Atlas IIIB(D): [CONFIDENTIAL MATERIAL REDACTED]  
Proton K/Block DM: [CONFIDENTIAL MATERIAL REDACTED]

4.2 Optional Launch Service Prices. The Contract Price for each Optional Launch Service shall be:

Atlas IIIB(d): [CONFIDENTIAL MATERIAL REDACTED]  
Atlas V(401): [CONFIDENTIAL MATERIAL REDACTED]  
Atlas V(402): [CONFIDENTIAL MATERIAL REDACTED]  
Proton K/Block DM: [CONFIDENTIAL MATERIAL REDACTED]  
Proton M/Breeze M: [CONFIDENTIAL MATERIAL REDACTED]

4.3 Taxes for Atlas Launch Services.

[CONFIDENTIAL MATERIAL REDACTED]

4.4 Duties and Taxes for Proton

[CONFIDENTIAL MATERIAL REDACTED]

ARTICLE 5  
PAYMENT

5.1 Timing of Payments. Payment of the Contract Price and all other amounts set forth herein shall be in United States Dollars, subject to conditions set forth in Article 7 and made in accordance with the following schedule:

5.1.1 Initial Payments. Customer will make an initial payment of [CONFIDENTIAL MATERIAL REDACTED] of the Contract Price for each Launch Service as set forth in Article 4. This initial payment is due at Contract signing for the two baseline Launch Services and with the Optional Launch Service exercise notification letter for each Optional Launch Service exercised by Customer.

5.1.2 Remaining Payments. The balance of the payments for each Launch Service specified in Article 2 entitled "Services To Be Provided" shall be paid in accordance with the schedule set forth in Table 5.1, 5.2, or 5.3, as applicable, where "L" is the [CONFIDENTIAL MATERIAL REDACTED]. If a payment due date falls on a Saturday, Sunday or legal bank holiday, then payment shall be due on the following

business day. Except as otherwise set forth to the contrary in Article 19, no portion of the Contract Price shall be refundable in the event the Launch Service fails to perform in accordance with the Statement of Work. Any portion of the Contract Price set forth in Table 5.1, 5.2, or 5.3, below, due after Launch shall be payable on the date due whether or not the Launch Service performs in accordance with the Statement of Work.

5.1.3 Shortened Delivery Schedule. In the event that the Parties mutually agree to a shorter delivery schedule than [CONFIDENTIAL MATERIAL REDACTED] for a particular Optional Launch Service, then the initial payment due from Customer shall be equal to the sum of all payments that would otherwise be due and payable under Table 5.3 below at the time Customer exercises that particular Optional Launch Service.

Table 5.1 Launch Payment Schedule for baseline Atlas Launch

Service

Payment Number -----	Percent of Contract Price -----	Payment Due Date -----
2	[CONFIDENTIAL MATERIAL REDACTED]	
3	[CONFIDENTIAL MATERIAL REDACTED]	
4	[CONFIDENTIAL MATERIAL REDACTED]	
5	[CONFIDENTIAL MATERIAL REDACTED]	
6	[CONFIDENTIAL MATERIAL REDACTED]	
7	[CONFIDENTIAL MATERIAL REDACTED]	
8	[CONFIDENTIAL MATERIAL REDACTED]	
9	[CONFIDENTIAL MATERIAL REDACTED]	
10	[CONFIDENTIAL MATERIAL REDACTED]	

Table 5.2 Launch Payment Schedule for baseline Proton Launch

Service

Payment Number -----	Percent of Contract Price -----	Payment Due Date -----
2	[CONFIDENTIAL MATERIAL REDACTED]	Contract Signing
3	[CONFIDENTIAL MATERIAL REDACTED]	
4	[CONFIDENTIAL MATERIAL REDACTED]	
5	[CONFIDENTIAL MATERIAL REDACTED]	
6	[CONFIDENTIAL MATERIAL REDACTED]	
7	[CONFIDENTIAL MATERIAL REDACTED]	
8	[CONFIDENTIAL MATERIAL REDACTED]	
9	[CONFIDENTIAL MATERIAL REDACTED]	
10	[CONFIDENTIAL MATERIAL REDACTED]	



Table 5.3 Launch Payment Schedule for Optional Launch Services

Payment Number -----	Percent of Contract Price -----	Payment Due Date -----
2	[CONFIDENTIAL MATERIAL REDACTED]	
3	[CONFIDENTIAL MATERIAL REDACTED]	
4	[CONFIDENTIAL MATERIAL REDACTED]	
5	[CONFIDENTIAL MATERIAL REDACTED]	
6	[CONFIDENTIAL MATERIAL REDACTED]	
7	[CONFIDENTIAL MATERIAL REDACTED]	
8	[CONFIDENTIAL MATERIAL REDACTED]	

[CONFIDENTIAL MATERIAL REDACTED]

Payment Number -----	Price -----	Payment Due Date -----
1	[CONFIDENTIAL MATERIAL REDACTED]	

[CONFIDENTIAL MATERIAL REDACTED]

Payment Number -----	Price -----	Payment Due Date -----
1	[CONFIDENTIAL MATERIAL REDACTED]	

5.2 Payment Instructions. All payments to Contractor will be by check hand-delivered to Jack Zivic (or other individual authorized by Contractor in writing to receive such payments) at Customer's office at 5701 S. Santa Fe Drive, Littleton, Colorado 80120.

5.3 Invoices. All payments in connection with this Contract shall be made on their respective due dates, or within thirty (30) days after Customer's receipt of the corresponding invoice, whichever is later, except for the first two payments for the base-lined Launch Services and the first payment for each Optional Launch Service, which shall be made at the times set forth above. Payments shall be deemed made upon delivery of notice to Contractor that a valid check for the payable amount is available to be picked up at the above address.

5.4 Interest on Payments Due. If any amount due to either Party under this Contract shall remain unpaid after its due date, then the paying Party shall pay simple interest to the other Party [CONFIDENTIAL MATERIAL REDACTED]. Interest will be computed commencing on the due date to but not including the day payment is actually made. The Party owed the interest shall provide the paying Party an invoice for payment (due within thirty (30) days after receipt of the invoice) of the interest as soon as practicable after the paying Party has completed its payment obligations on the original amount due.

5.5 Accelerated Payments. In the event that any Launch Service is accelerated as described in Article 7 entitled "Launch Schedule Adjustments," the next payment due for such Launch Service following such acceleration shall be increased to include the balance

of the payments that would have been made had the Contract payments been scheduled on the basis of the accelerated Launch Period.

5.6 Postponed Payments.

5.6.1 Postponements by Contractor. In the event of postponement declared by Contractor for any reason including without limitation those in Article 7 entitled "Launch Schedule Adjustments," the Contract payments shall be suspended for the length of the delay and then resumed with all remaining payments postponed by the amount of the delay, except for any payments due after Launch.

5.6.2 Postponements by Customer. In the event of postponement declared by Customer for any reason including those in Article 7 entitled "Launch Schedule Adjustments," the Contract payments, including due dates, will not be affected and shall remain [CONFIDENTIAL MATERIAL REDACTED]

ARTICLE 6  
LAUNCH SCHEDULE

6.1 Launch Period. The Launch Period(s) for the Launch Service(s) shall be as follows:

Launch Period -----	Launch Service -----	Satellite -----
#1: 01 October through 31 December 2001	Atlas IIIB(d)	EchoStar VII
#2: 01 January through 31 March 2002 [CONFIDENTIAL MATERIAL REDACTED]	Proton K/Block DM	EchoStar VIII

Customer shall use its reasonable commercial efforts to support the Launches during the Launch Periods stated above.

6.2 Determination of Launch Slot. A one month Launch Slot shall be established at least six months prior to the first day of the Launch Period in accordance with the following procedure. The Contractor will give notice to the Customer of a proposed Launch Slot within the Launch Period taking into account the requirements for a Launch Opportunity. The Parties will cooperate in good faith to agree on the selection of the Launch Slot. However, in the event that the Parties cannot mutually agree upon a Launch Slot within thirty (30) days of Contractor's proposal, then Contractor shall make such selection, as close as reasonably possible to the Customer's requirement, taking into account the available Launch Opportunities and the requirements and interests of all customers [CONFIDENTIAL MATERIAL REDACTED]

Launch Date. A Launch Date shall be established at least three months prior to the first day of the Launch Slot, once established, in accordance with the following procedure. The Contractor will give notice to the Customer of a proposed Launch Date within the Launch Slot taking into account the requirements for a Launch Opportunity and general constraints on the satellite injection into the required orbit. The Parties will cooperate in good faith to agree on the selection of the Launch Date. However, in the event that the Parties cannot mutually agree upon a Launch Date within fifteen (15) days of Contractor's proposal, then Contractor shall make such selection, [CONFIDENTIAL MATERIAL REDACTED], taking into account the available Launch Opportunities and the requirements and interests of all customers [CONFIDENTIAL MATERIAL REDACTED]

ARTICLE 7  
LAUNCH SCHEDULE ADJUSTMENTS

7.1 Customer Launch Schedule Adjustments. Notwithstanding Customer's obligation to use its reasonable commercial efforts to support the Launches during the Launch Periods stated in Section 6.1 above, Customer may request either a postponement or advancement of the Launch Period, Launch Slot or Launch Date previously determined under Article 6 of this Contract entitled "Launch Schedule," by giving written notice to Contractor requesting a new Launch Period, Launch Slot or Launch Date. If the launch schedule adjustment results in a later Launch Period, Launch Slot or Launch Date, then the total number of calendar days of delay requested by Customer shall be attributed to Customer. The Parties will cooperate in good faith to select a new Launch Period, Launch Slot or Launch Date. However, in the event that the Parties cannot mutually agree within sixty (60) days of Customer's notice (or such shorter time period as Contractor may determine, in light of the proximity to the Launch), Contractor shall make such determination taking into account the available Launch Opportunities and the requirements and interests of all customers [CONFIDENTIAL MATERIAL REDACTED]

7.1.1 Base-lined Launch Services. Actual postponements or notices of postponement by Customer under this Article 7 for each base-lined Launch Service shall not extend beyond [CONFIDENTIAL MATERIAL REDACTED], after which date Contractor shall have the right to terminate the Launch Service pursuant to Section 21.4. In the event that a single actual postponement or notice of postponement, or cumulative actual postponements or notices of postponement, attributed to Customer of a base-lined Launch Service exceed a total of [CONFIDENTIAL MATERIAL REDACTED]

7.1.2 Optional Launch Services. Actual postponements or notices of postponement by Customer under this Article 7 for each Optional Launch Service exercised by Customer shall not extend beyond [CONFIDENTIAL MATERIAL REDACTED], after which Contractor shall have the right to

terminate the Launch Service pursuant to Section 21.4, [CONFIDENTIAL MATERIAL REDACTED]

7.1.3 Should Range Support by the United States government be initiated prior to the receipt of Customer's notice of postponement or prior to the determination of a final Launch Period or Launch Date as described in Section 7.1 that is different from the then-current launch schedule, Customer will be liable for the costs charged to Contractor by the United States government (on a pass-through basis, without mark-up) for any such Range Support during the period from and including six (6) days before the then-current Launch Date until such Range Support ceases. Such costs will be paid within thirty (30) days of receipt of the Contractor's invoice and shall in no event exceed a total amount of [CONFIDENTIAL MATERIAL REDACTED] for the baselined Atlas Launch Service. For each Atlas Optional Launch Service exercised by Customer, [CONFIDENTIAL MATERIAL REDACTED]. Range Support, as used in the preceding sentence, means those activities conducted by the United States government in connection with a Launch Service as described in Exhibit A entitled "Atlas Launch Services Statement of Work for the EchoStar Program" and supplies used in connection therewith, including supplying and loading of rocket propellant into the Launch Vehicle, and shall be coordinated by Contractor.

[CONFIDENTIAL MATERIAL REDACTED]

7.2 Contractor Launch Schedule Adjustments. Contractor may postpone or request an advancement of the Launch Period, Launch Slot or Launch Date previously determined under Article 6 entitled "Launch Schedule" by giving notice to Customer proposing a new Launch Period, Launch Slot or Launch Date. The Parties will cooperate in good faith to select a new Launch Period, Launch Slot or Launch Date. However, in the case of a postponement, if the Parties cannot mutually agree within sixty (60) days of Contractor's proposal (or such shorter time period as Contractor may determine, in light of the proximity to the Launch), Contractor shall make such determination in good faith taking into account the available Launch Opportunities and the requirements and interests of all customers [CONFIDENTIAL MATERIAL REDACTED]. Until the new Launch Period, Launch Slot or Launch Date is selected in accordance with this Section 7.2, the then-current launch schedule shall remain in effect.

7.2.1 If the final launch schedule adjustment results in a later Launch Period, Launch Slot or Launch Date, then the total number of calendar days of delay originally requested by Contractor shall be attributed to Contractor.

7.2.2 Postponements by Contractor under this Article 7 shall not exceed a total of [CONFIDENTIAL MATERIAL REDACTED] for each Launch Service. In the event that a single actual postponement or notice of postponement, or cumulative actual postponements or notices of postponement, attributed to Contractor exceed such maximum permissible postponement for any one Launch

Service, that Launch Service shall, at the election of Customer, be subject to termination by Customer in accordance with Section 21.2.1.

7.3 Reserved.

7.4 Excusable Delays. [CONFIDENTIAL MATERIAL REDACTED], days during which an Excusable Delay exists as defined in Article 8 entitled "Excusable Delays" and which affect the launch schedule will not be included in determining the length of a postponement attributable to either Contractor or Customer under this Article 7.

7.5 Reserved.

7.6 Postponements Attributed to Non-Complying Party under Article 10. Should the failure of either Party to provide required data, hardware and services result in a delay to the launch schedule, then such delay shall be deemed a postponement attributed to the non-complying Party in accordance with this Article 7. Requirements to provide data, hardware and services, delays and the consequences of postponement attributable to the non-complying Party are described in Article 10 entitled "Additional Contractor and Customer Obligations Prior to Launch."

7.7 Obligation to Give Prompt Notice. Contractor and Customer acknowledge and agree that it is in the best interests of both Parties to promote certainty in launch schedule decisions and minimize disruption to other customers of Contractor. Therefore, the Parties agree to give prompt notice of any need for schedule change under this Article 7 or any actual or potential delay that might impact the launch schedule.

#### ARTICLE 8 EXCUSABLE DELAYS

[CONFIDENTIAL MATERIAL REDACTED]

8.2 Notice(s) of Excusable Delays. Contractor and Customer each acknowledge and agree that it is in the best interests of both Parties to promote certainty in launch schedule decisions and minimize disruption to other customers of Contractor. Therefore, the Parties agree to give prompt notice of any actual or potential Excusable Delay under this Article 8.

#### ARTICLE 9 COORDINATION AND COMMUNICATION BETWEEN CUSTOMER AND CONTRACTOR

9.1 Mission Managers and Program Directors. Each Party hereby identifies to the other the following Program Manager, Mission Manager and Program Directors to

coordinate the activities under this Contract. The Program Manager, Mission Manager and Program Directors are not authorized to direct work contrary to the requirements of this Contract or make modifications to this Contract. All modifications to the terms, conditions and requirements of this Contract shall be made pursuant to Article 26 entitled "Amendment."

Contractor Program Directors are:

Mr. Marv Steinman (primary)  
Ms Ann Wildgen (Atlas back-up)  
Mr. John Casani (Proton back-up)

Contractor's Atlas Program Manager is:

Mr. Tony Narde

Contractor's Proton Program Directors are:

Mr. Vladimir Bronfman (LMCSS Satellite)  
Mr. Vitaly Lopan (Loral Satellite)

Customer's Mission Manager is:

Mr. Rohan Zaveri

[CONFIDENTIAL MATERIAL REDACTED]

9.3 Notices. All notices that are required or permitted to be given under this Contract shall be in writing and shall be delivered in person or sent by telefax, certified mail (return receipt requested) or air courier service to the representative and address set forth below, or to such other representative or address specified in a notice to the other Party. Notices shall be deemed effective upon delivery in person or upon confirmation of receipt in the case of telefax, certified mail or air courier.

Notices to Contractor:

Mr. Jack Zivic  
Manager, Business Operations  
International Launch Services  
12999 Deer Creek Canyon Road  
M/S DC1400  
Littleton, Colorado 80127-5146  
Fax: (303) 971-9456

Notices to Customer:

Mr. Rohan Zaveri  
Director of Space Programs  
EchoStar Orbital Corporation  
5701 S. Santa Fe Drive  
Littleton, Colorado 80120  
Fax: (303) 723-1099

with copies to:

Charlie Ergen  
President and Chief Executive Officer  
(same address and fax number as above)

David Moskowitz  
Senior Vice President and General Counsel  
(same address as above)  
Fax: (303) 723-1699

9.4 Communications in English. All documentation, notices, reports and correspondence under this Contract shall be in the English language. Contractor will translate all appropriate documents from Khrunichev and provide Russian translators for Khrunichev personnel as necessary for meetings, regardless of location.

ARTICLE 10  
ADDITIONAL CONTRACTOR AND CUSTOMER OBLIGATIONS  
PRIOR TO LAUNCH

10.1 Obligation to Provide Information. Contractor shall provide to Customer the data, hardware and services identified in Section 6 of Exhibit A entitled "Atlas Launch Services Statement of Work for EchoStar Program" and Section 6 of Exhibit C entitled "Proton Launch Services Statement of Work for EchoStar Program" and Customer shall provide to Contractor the data, hardware and services identified in Section 6 of Exhibit A entitled "Atlas Launch Services Statement of Work for EchoStar Program" and Section 6 of Exhibit C entitled "Proton Launch Services Statement of Work for EchoStar Program,"

in accordance with the schedules contained therein. The data, hardware and services shall be delivered in a condition suitable for their intended use.

10.2 Notification of Non-Compliance. The Party receiving the data, hardware or services referred to in Section 10.1 shall promptly notify the other in accordance with Section 9.3 in the event the data, hardware or services are not consistent with the requirements contained in the applicable Statement of Work or are delivered in a condition not suitable for their intended purpose. The notification shall contain a statement of the discrepancy and recommend solutions. The Party receiving the notification shall provide written direction to the other Party as to how to proceed, taking into account the recommended solutions within seven (7) days following receipt of notice.

10.3 Impact of Non-Compliance on Launch Schedule. In the event that the data, hardware or services to be supplied by one Party to the other, in accordance with Section 10.1 above, are not furnished in accordance with the required schedules set forth in the applicable Statement of Work or are delivered in a condition not suitable for their intended purpose, the receiving Party shall use reasonable commercial efforts to continue its obligations under this Contract without affecting the launch schedule or incurring additional expense. If however, despite the receiving Party's reasonable commercial efforts, such continuation is not possible and, as a result of the other Party's failure to provide data, hardware or services as required in accordance with Section 10.1 above, the launch schedule is adversely affected, then a launch schedule postponement shall be declared by the receiving Party under the appropriate provisions of Article 7 attributable to the Party failing to provide the data, hardware or services as required by the applicable Statement of Work or failing to deliver the data, hardware or services in a condition suitable for their intended purpose.

ARTICLE 11  
FACTORY AND LAUNCH SITE ACCESS

[CONFIDENTIAL MATERIAL REDACTED]

ARTICLE 12  
LICENSES, CLEARANCES AND PERMITS AND COMPLIANCE WITH UNITED STATES GOVERNMENT  
REQUIREMENTS FOR ATLAS LAUNCH SERVICES

12.1 Responsibility for Licenses, Clearances and Permits. Each Party shall be responsible for obtaining any licenses, clearances, permits and governmental authorizations, and for taking any actions, necessary to carry out its obligations under this Contract. Each Party shall use its reasonable commercial efforts to cooperate with the other Party and provide without cost all reasonable and necessary support for the other



Party to apply for and maintain such licenses, clearances, permits and governmental authorizations.

12.2 Transfers of Technical Data. Each Party shall be responsible for compliance with applicable United States government laws and regulations relating to the transfer of technical data to the other Party or to Third Parties.

12.3 Customer Compliance with Requirements. Contractor has executed agreements with various United States government agencies for use of United States government-owned property and facilities relating to launch operations at CCAS in Florida. Customer and Contractor agree that they will comply with the United States government's laws, regulations, policies and directives as they relate to the performance of this Contract. Customer will indemnify Contractor and Contractor will indemnify Customer for any direct damages arising from violation of such laws, regulations, policies or directives by the indemnifying Party or its Related Third Parties. The Parties shall, before Launch, execute and deliver the Agreement for Waiver of Claims and Assumption of Responsibility, the execution of which is required by the United States Department of Transportation (C.F.R. Section 440.17(c)), as a condition of granting Contractor's license to conduct launch activities and Launch the Satellite.

12.4 Government Need. It is the policy of the United States government to support the commercialization of domestic launch services by making available to United States launch services providers its launch-related facilities. However, both Customer and Contractor agree that, in the event of imperative national need as set forth in the CSLA (49 U.S.C. Section 70109), the United States government may require use of United States government or Contractor property and personnel. In the event such use by the United States government necessitates subsequent rescheduling of Customer's Launch Service(s), Contractor will promptly notify Customer of the delay(s) and will reschedule any affected Launch Service(s) to accommodate all customers to the extent possible. Such delay shall be considered an Excusable Delay under Article 8. The United States government shall not be liable to Customer for any costs or damages, including any direct, indirect, special, incidental or consequential damages or any other revenue or business injury or loss, arising out of a delay caused by such priority use of property or personnel.

12.5 Compliance with U.S. Government Export/Import Statutes and Regulations.

12.5.1 Customer and Contractor hereby acknowledge that they will comply with all applicable statutes, regulations and licenses relating to the export and import of commodities, services or technical data out of and into the United States of America.

12.5.2 Customer acknowledges that Contractor must refuse to admit to any meeting and refuse to transmit any commodities, technical data or provide any defense services to a non-U.S. citizen participant who is not covered by an

applicable license or agreement issued by the United States government and duly executed by the appropriate parties.

ARTICLE 13  
GOVERNMENTAL APPROVALS, LICENSES, CLEARANCES, PERMITS AND COMPLIANCE WITH  
REQUIREMENTS FOR PROTON LAUNCH SERVICES

13.1 Parties Respective Obligations. Unless otherwise specified in this Contract, each Party is responsible for obtaining all governmental approvals, including without limitation any licenses, clearances or permits, from any governmental authority which has jurisdiction or authority to require such approvals, licenses, clearances or permits necessary to carry out such Party's respective obligations in accordance with this Contract.

13.2 Mutual Assistance. The Parties shall use reasonable commercial efforts to cooperate and provide each other upon request and without cost all reasonable and necessary assistance in obtaining any and all governmental approvals which they may respectively be required to obtain pursuant to this Contract.

13.3 Documentation. The Parties shall provide to each other upon request and without cost, acceptable documents or other reasonable evidence to show that they have obtained any and all governmental approvals which they respectively are required to obtain pursuant to this Contract.

13.4 Satellite Approvals. Unless otherwise specified herein, Customer shall obtain all governmental approvals necessary for the transfer of the Satellite and any Customer furnished items from the Satellite's country of origin to the Launch Site, and Customer agrees to provide and comply with any and all assurances which it may be required to provide to the government of the country of origin under that country's laws and regulations so that Customer may obtain such governmental approvals.

13.5 Launch Vehicle and Launch Site Approvals. Except as provided by Section 13.4, Contractor shall obtain all governmental approvals necessary for the transfer of the Launch Vehicle and any auxiliary equipment to the Launch Site and shall obtain all governmental approvals necessary for the use of the Launch Site and its facilities.

[CONFIDENTIAL MATERIAL REDACTED]

13.7 U.S. Export Requirements. Contractor's performance hereunder is subject to all laws, rules and regulations, including any requirements set forth in applicable licenses and approvals of the United States regarding the export of information and technology, including the United States Department of State International Traffic in Arms Regulations (ITAR) and export control regulations of the United States Department of Commerce. Contractor shall use its best efforts to comply with such licenses and approvals.

13.8 Contractor Assistance for Proton Launch Services. Contractor will assist the Customer and its directors, officers, agents and employees with all administrative arrangements necessary in connection with the transportation of each Satellite and Customer's and its Related Third Parties' personnel, from the point of entry into the territory of Russia or Kazakhstan, to the Launch Site, and for the storage of each Satellite in the above-mentioned territories. Contractor shall take all necessary steps before each Satellite is shipped to the above-mentioned territories, or any of the Customer or its Related Third Parties' personnel visit said territories for the purposes of this Contract, to obtain all necessary consents and permissions from the relevant government authorities as may be required to permit the bringing of such Satellite into said territories and the entry and stay in the said territories of all such personnel. This paragraph shall not be interpreted as requiring Contractor to bear the cost of travel and accommodations for Customer or Customer's Affiliates.

13.9 Security. Customer shall abide by and require its employees, agents and subcontractors to abide by all applicable United States and Russian and Kazakh government and Contractor security rules and regulations while they are on Contractor or its Related Third Parties' premises in connection with this Contract.

13.10 Export Requirements. When applicable or required, Contractor and Customer agree that all exports of goods and data made pursuant to this Contract shall be in strict compliance with all laws, rules and regulations of the United States regarding exportation and re-exportation of technical data including the United States Department of State International Traffic in Arms Regulations (ITAR), the export regulations of the United States Department of Commerce, and the requirements of any export license issued by the United States government.

13.11 Customer acknowledges that Contractor must refuse admittance to any meeting or transmission of any commodities, technical data or provision of defense services to a non-U.S. citizen participant who is not covered by an applicable license or agreement issued by the United States government and duly executed by the appropriate parties.

ARTICLE 14  
COMPLETION OF CONTRACTOR'S OBLIGATION  
TO PROVIDE LAUNCH SERVICES

Each Launch Service to be provided under this Contract shall be considered complete upon Launch and the submission of data required by the applicable Statement of Work. A Launch shall not be deemed complete in the event of a Terminated Ignition.

ARTICLE 15  
EXCLUSION OF WARRANTY AND WAIVER OF LIABILITY  
AND ALLOCATION OF CERTAIN RISKS FOR ATLAS LAUNCH SERVICES

[CONFIDENTIAL MATERIAL REDACTED]

ARTICLE 16  
[CONFIDENTIAL MATERIAL REDACTED]

ARTICLE 17  
INSURANCE

17.1 Third Party Liability Insurance for Atlas. Contractor shall procure and maintain in effect insurance for third party liability to provide for the payment of claims resulting from property loss or damage or bodily injury, including death, sustained by Third Parties caused by an occurrence resulting from Insured Launch Activities. The insurance shall have a limit of one hundred and sixty-four million dollars (\$164,000,000) per occurrence and in the aggregate, or such other amount as may be required by the United States Department of Transportation, whichever is higher. Coverage for damage, loss or injury sustained by Third Parties arising in any manner in connection with Insured Launch Activities shall attach upon arrival of the Satellite at CCAS or the Satellite processing facility (wherever located), whichever occurs first, and will terminate upon the earlier to occur of the return of all parts of the Launch Vehicle to Earth or twelve (12) months following the date of Launch, unless the Satellite is removed from the Satellite processing facility other than for the purpose of transportation to CCAS or is removed from CCAS other than by Launch, in which case, coverage shall extend only until such removal. Such insurance shall not cover loss of or damage to the Satellite even if such claim is brought by any Third Party or Related Third Parties. Such insurance also shall not pay claims made by the United States government for loss of or damage to United States government property in the care, custody and control of Customer or Contractor.

17.2 Insurance Required by Atlas Launch License. Contractor shall provide such insurance as is required by the launch license issued by the United States Department of Transportation for loss of or damage to United States government property.

17.3 Miscellaneous Requirements for Atlas. The third party liability insurance required under Section 17.1 shall name as named insured Contractor and as additional insureds Customer and the respective Related Third Parties of the Parties identified by each Party, the United States government and any of its agencies and such other persons as Contractor may determine. Such insurance shall provide that the insurers shall waive all rights of subrogation that may arise by contract or at law against the named insured or any additional insured.

17.4 Third Party Liability Insurance for Proton. Contractor shall procure and maintain in effect insurance for third party liability to provide for the payment of claims resulting from property loss or damage or bodily injury, including death, sustained by Third Parties caused by an occurrence resulting from Insured Launch Activities. [CONFIDENTIAL MATERIAL REDACTED] and in the aggregate, or such other amount as may be

required by the government of the Russian Federation, whichever is higher. Coverage for damage, loss or injury sustained by Third Parties arising in any manner in connection with Insured Launch Activities shall attach upon arrival of the Satellite at the Launch Site and will terminate upon the earlier to occur of the return of all parts of the Launch Vehicle to Earth or twelve (12) months following the date of Launch, unless the Satellite is removed from the Satellite processing area or the Launch Site other than by Launch, in which case, coverage shall extend only until such removal. Such insurance shall not cover loss of or damage to the Satellite even if such claim is brought by any Third Party or Related Third Parties.

17.5 Property Insurance for Proton. Contractor shall provide such insurance as may be required by applicable law or governmental authority within Russia and/or Kazakhstan having jurisdiction over the Launch Site.

17.6 Miscellaneous Requirements for Proton. The third party liability insurance required under Section 17.4 shall name as named insured Contractor and shall name as additional insureds Customer and the respective Related Third Parties of the Parties identified by each Party and such other persons as Contractor may determine. Such insurance shall provide that the insurers shall waive all rights of subrogation that may arise by contract or at law against the named insured or any additional insured.

[CONFIDENTIAL MATERIAL REDACTED]

#### ARTICLE 18 REMEDIES AND LIMITATIONS ON REMEDIES

This provision is intended to highlight notice to the Parties of certain exclusive rights and remedies of the Parties under this Contract, but shall not be construed as being an all-inclusive list thereof. The exclusive rights and remedies of a Party with respect to postponement of a Launch Period, Launch Slot or Launch Date attributed to the other Party are as provided in [CONFIDENTIAL MATERIAL REDACTED] and Sections 5.6.1, 5.6.2, 7.1.1, 7.1.2, 7.1.3, 7.1.4, 7.2.2, 21.2.1, 21.4 entitled "Termination by Contractor for Excessive Launch Postponements" and 21.7 entitled "Termination Charge". The exclusive remedy for failure by either Party to provide the data, hardware or services it is required to provide pursuant to Section 10.1 shall be the adjustment in the Launch Schedule contemplated in Section 10.3. Customer shall have no remedy against Contractor in the event of a failure of the Launch Vehicle or other performance of the Launch Service, other than as provided in Section 15.3 or 16.3, as applicable, and Articles 17, 19 and 20. The exclusive rights and remedy of Customer for claims by Third Parties for property loss or damage, personal injury or bodily injury, including death, arising in any manner from the operation or performance of the Launch Vehicle, to the extent such claims are not otherwise eligible for payment as provided in Section 15.3.2 or 16.3.2, as applicable, shall be the indemnification by Contractor as provided in Section 15.3.2 or 16.3.2, as applicable. The exclusive rights and remedy of Contractor for claims by Third Parties for property loss or damage, personal injury or bodily injury, including death,

arising in any manner from the processing, testing, operation or performance of the Satellite, to the extent such claims are not otherwise eligible for payment as provided in Section 15.3.3 or 16.3.3, as applicable, shall be the indemnification by Customer as provided in Section 15.3.3 or 16.3.3, as applicable. The exclusive rights and remedy of the Parties for claims resulting from the infringement, or claims of infringement, of patent rights or any other intellectual property rights of a Third Party shall be the indemnification as provided in Section 15.5 or 16.4, as applicable. The exclusive rights and remedy of Customer to terminate this Contract for convenience are described in Section 21.1 entitled "Termination by Customer for Convenience." The exclusive rights and remedy of Contractor to terminate this Contract in the event of nonpayment are described in Section 21.3 entitled "Termination by Contractor for Nonpayment." [CONFIDENTIAL MATERIAL REDACTED]. The exclusive rights and remedy of Contractor in the event that, in connection with an Optional Launch Service, a single postponement or cumulative postponements attributed to Customer exceeds [CONFIDENTIAL MATERIAL REDACTED] requested by Customer, are described in Section 7.1.2. The exclusive rights and remedy of Contractor in the event that Customer fails to perform its obligations under Section 17.8(a) above, are described in Section 17.8(d) above.

ARTICLE 19  
REFLIGHT LAUNCH OR REFUND PROTECTION

19.1 Reflight Launch or Refund. There is a single Contract Price for each Launch Service to be provided hereunder which does not obligate the Contractor to provide a Reflight Launch nor Refund of the Contract Price in the event of one or more Launch Service failure(s). If Reflight Launch or Refund protection is available from Contractor's insurers at the prices quoted herein, then Customer shall have the right to purchase this protection as specified herein.

For the two base-lined Launch Services identified in Section 4.1, the price of the reflight/refund insurance purchased by Contractor from its insurers is [CONFIDENTIAL MATERIAL REDACTED] times the amount of coverage purchased. Customer may elect protection in the form of: (a) either a Reflight Launch or Refund, plus [CONFIDENTIAL MATERIAL REDACTED].

For the optional Launch Services identified in Section 4.2, no later than one hundred and eighty (180) days prior to the Launch Slot or Launch Date, as applicable, the Contractor, upon the Customer's request, shall provide a price quotation to the Customer for: (a) protection in the form of either a Reflight Launch or Refund, [CONFIDENTIAL MATERIAL REDACTED].

The Customer may elect either Reflight Launch or Refund protection in accordance with this Article 19 by so notifying the Contractor within sixty (60) days of receipt of Contractor's price quotation.

Payments for the Reflight Launch or Refund protection shall be due to the Contractor from Customer within thirty (30) days of receipt by Customer of Contractor's invoice(s) (which will be issued in support of Contractor's payment obligation to the insurers) or three (3) business days prior to the due date for Contractor's corresponding payment to the insurers, whichever occurs later. Reflight Launch protection will be available in the event of a Total Failure or Constructive Total Failure as determined under Section 19.5 entitled "Failure Review Board." Refund protection shall be available in the event of Total Failure, Constructive Total Failure or Partial Failure, as determined under Section 19.5 entitled "Failure Review Board." The following terms in this Article 19 are indicative only, and will be amended to incorporate any differences in the insurance policy purchased by Contractor on a pass-through basis without mark-up.

19.2 Terms Governing Reflight Launch. The following conditions will apply if Customer has elected Reflight Launch protection:

19.2.1 Customer will continue to pay the Contract Price, as specified in Article 4 entitled "Contract Price" for the Launch Service, which excludes the adjustment for the Reflight Launch Fee which is paid separately per Section 19.1.

19.2.2 One (1) Reflight Launch will be provided in the event that a Launch Service is a Total Failure or Constructive Total Failure only and not for a Partial Failure, all as determined under Section 19.5 entitled "Failure Review Board." Customer's right to a Reflight Launch in connection with one Launch Service is not transferable to another Launch Service, if any, under this Contract. Any Reflight Launch(es) to which Customer may be entitled under this Contract shall be deemed to be Launch Service(s) for all purposes under this Contract, except that Customer shall not be entitled to a second Reflight Launch following a failure of a Reflight Launch.

19.2.3 Contractor will conduct a Reflight Launch within [CONFIDENTIAL MATERIAL REDACTED] of receipt of written notice from Customer requesting such Reflight Launch.

19.2.4 Reflight Launch protection does not include the cost of the replacement satellite, which cost shall be borne by Customer.

19.2.5 The Reflight Launch will be governed by the terms and conditions of this Contract, except for [CONFIDENTIAL MATERIAL REDACTED] Article 5 entitled "Payment."

19.2.6 The configuration and mission requirements of the replacement satellite must conform as closely as reasonably possible to the mission description contained in Exhibit B entitled "EchoStar VII Interface Control Document" or Exhibit D entitled "EchoStar VIII Interface Control Document", as applicable.

19.2.7 In the performance of any Reflight Launch, Contractor reserves the right to substitute for the Launch Vehicle any other launch vehicle [CONFIDENTIAL MATERIAL REDACTED]

19.3 Terms Governing Refund. The following conditions will apply if Customer elects Refund protection:

19.3.1 Customer will continue to pay the Contract Price, as specified in Article 4 entitled "Contract Price" for the Launch Service which excludes the Refund Fee which is paid separately per Section 19.1.

19.3.2 In the event that the Launch Service is a Total Failure or Constructive Total Failure, as determined under Section 19.5 entitled "Failure Review Board," Contractor shall pay to Customer a Refund equal to the applicable level of protection purchased by Customer.

19.3.3 In the event that the Launch Service is a Partial Failure, as determined under Section 19.5 entitled "Failure Review Board," Contractor shall pay to Customer a Refund equal to a prorated amount of the applicable level of protection purchased by Customer. Customer's right to a Refund in connection with one Launch Service is not transferable to another Launch Service, if any, under this Contract. The proration to be applied to determine the appropriate Refund shall be calculated as follows:

$$\text{Proration} = 3.333 \times (80\% - Cp) \times 80\%$$

where, Cp (capability percentage) equals the percentage, if any, greater than fifty percent (50%) of the greater of: (i) planned lifetime (less any margin), or (ii) operational capacity (after application of all redundant and spare components) expected after Partial Failure.

19.3.4 Refunds [CONFIDENTIAL MATERIAL REDACTED]

19.3.5 In no event shall the aggregate amount of any Refund in connection with a Launch Service exceed the applicable level of protection purchased by Customer.

19.4 Terms Applicable to Both Reflight Launch and Refund. [CONFIDENTIAL MATERIAL REDACTED]

## ARTICLE 20 REPLACEMENT LAUNCH

20.1 Terms Governing Replacement Launch Service. Customer may request a Replacement Launch Service in the event of Launch Vehicle failure or Satellite failure by giving written notice to Contractor of such request within [CONFIDENTIAL



MATERIAL REDACTED] of Launch in which a Constructive Total Failure or Total Failure has occurred.

20.1.1 Contractor will conduct the Replacement Launch within the period of [CONFIDENTIAL MATERIAL REDACTED] of receipt of Customer's written notice requesting such Replacement Launch, taking into consideration all of the requirements for a Launch Opportunity, provided that Contractor will use its reasonable commercial efforts to conduct the Replacement Launch as early as possible.

20.1.2 A Replacement Launch Service does not include replacement cost of the Satellite.

20.1.3 The Replacement Launch Service shall be governed by the terms and conditions of this Contract, except that a Replacement Launch Service shall not be available for the Replacement Launch Service provided in accordance with this Article 20 nor shall it be covered by [CONFIDENTIAL MATERIAL REDACTED]. Except as otherwise provided in this Article 20, the Replacement Launch to which Customer may be entitled under this Contract shall be purchased as an Optional Launch Service in accordance with Article 3 and then deemed to be a Launch Service for all purposes under this Contract, [CONFIDENTIAL MATERIAL REDACTED]

20.1.4 The configuration and mission requirements of the replacement satellite shall conform as closely as reasonably possible to the mission description contained in Exhibit B entitled "EchoStar VII Interface Control Document" or Exhibit D entitled "EchoStar VIII Interface Control Document", as applicable.

20.1.5 Contractor shall not be obligated to provide a Replacement Launch to Customer in the event that Customer is entitled to a Reflight Launch under the provisions of Article 19 of this Contract.

#### ARTICLE 21 TERMINATION

21.1 Termination by Customer for Convenience. Customer may terminate any Launch Service under this Contract for any reason following written notice to Contractor given at least thirty (30) days prior to the then-scheduled Launch Period, Launch Slot, or Launch Date. If Customer terminates a Launch Service under this Section 21.1, Contractor shall be entitled to retain the Termination Charge set forth in Section 21.7.

21.2 Termination by Customer for Cause.

21.2.1 Customer may terminate a Launch Service under this Contract for excessive postponements by Contractor only as expressly permitted in Article 7

entitled "Launch Schedule Adjustments". [CONFIDENTIAL MATERIAL REDACTED]

21.3 Termination by Contractor for Non-Payment. Except for a bona fide dispute concerning payments, Contractor may terminate a Launch Service under this Contract if Customer fails to make any payment to Contractor relating to such Launch Service on the due date as required by this Contract, provided Customer fails to remedy such non-payment within [CONFIDENTIAL MATERIAL REDACTED] of notice from Contractor describing such non-payment and stating Contractor's intent to terminate the Launch Service. If Contractor terminates a Launch Service in accordance with this Section 21.3, Contractor shall be entitled to the Termination Charge set forth in Section 21.7.

21.4 Termination by Contractor for Excessive Launch Postponements. Contractor may terminate a Launch Service under this Contract for excessive postponements by Customer only as expressly permitted in Article 7. If Contractor does not provide a notice of termination to Customer within [CONFIDENTIAL MATERIAL REDACTED] of postponement or notice of postponement by Customer, Contractor waives its right to terminate the postponed Launch Service under this Section 21.4 unless Customer further postpones the Launch Service under Article 7. If Contractor terminates a Launch Service in accordance with this Section 21.4, Contractor shall be entitled to retain the Termination Charge set forth in Section 21.7.

[CONFIDENTIAL MATERIAL REDACTED]

21.6 Termination Date. The effective termination date of any Launch Service or the Contract terminated under this Article 21 shall be the date of receipt of notice of termination.

21.7 [CONFIDENTIAL MATERIAL REDACTED]

21.8 Effect of Termination. If either Party terminates one or more Launch Service(s) or this Contract under this Article 21, both Parties' obligations under this Contract with respect to such Launch Service(s) or the entire Contract, as applicable, shall be discharged as of the Launch Service(s)' or Contract's, as applicable, effective termination date except that Customer's obligation to pay the Termination Charge described in Section 21.7 and Contractor's obligation to reimburse certain amounts to Customer under Section 21.2.7 and 21.7 shall survive the termination of this Contract. If less than all Launch Service(s) to be furnished under this Contract are terminated pursuant to this Article 21, the provisions of this Article shall apply to the terminated Launch Service(s) only, and the Parties shall continue to perform their obligations with respect to any Launch Service(s) not terminated under this Article. If all remaining Launch Service(s) to be furnished under this Contract are terminated pursuant to this Article 21, the entire

Contract shall be deemed to have been terminated as of the effective termination date of the last terminated Launch Service.

ARTICLE 22  
DISPUTE RESOLUTION

22.1 Dispute Resolution. Any dispute arising under or relating to this Contract or the breach thereof, including any dispute concerning the validity, scope or enforceability of this provision, that is not promptly resolved directly by the Parties shall be resolved through negotiation, mediation, arbitration or court proceedings as set forth in this Article 22. The use or attempted use of any alternative dispute resolution procedures, such as negotiation, mediation, arbitration or any other non-court procedure shall not be construed under the doctrines of laches, waiver, estoppel or res judicata to affect adversely the rights of either Party, unless otherwise agreed upon by the Parties as part of the relevant alternative dispute resolution procedure.

22.2 Negotiation. Any dispute arising hereunder that is not promptly resolved by the individuals identified in Article 9 shall be referred to the senior management of Contractor and Customer designated by the Parties. If such senior management cannot satisfactorily resolve the dispute in a timely fashion, as reasonably determined by either Party, the matter shall be resolved through mediation, arbitration or court proceedings as provided below.

22.3 Mediation. Any dispute arising hereunder that is not promptly resolved through the negotiation procedure described in Section 22.2 shall be referred to mediation. Mediation shall be an informal, non-binding dispute resolution process mutually agreed by the Parties or by a mutually acceptable alternative dispute resolution organization. If such mediation does not satisfactorily resolve the dispute, such dispute shall be referred to arbitration as provided below.

22.4 Arbitration. If any dispute arising hereunder is not promptly resolved through negotiation or mediation within a period of sixty (60) days, either Party may request, by written notice to the other Party ("Notice of Arbitration"), that the dispute be settled by arbitration in accordance with terms and conditions of this Section 22.4, subject to the consent of the other Party.

22.4.1 Rules. Arbitration proceedings in connection with this Contract shall be administered in accordance with the provisions of the [CONFIDENTIAL MATERIAL REDACTED]

22.4.2 Language. Arbitration proceedings in connection with this Contract shall be conducted in the English language, provided that at the request and expense of the requesting Party, documents and testimony shall be translated into any language specified by the requesting Party.

22.4.3 Locale of Meetings and Selection of Arbitrators. Any such arbitration shall be conducted in [CONFIDENTIAL MATERIAL REDACTED] by a panel of three arbitrators who shall be selected within sixty (60) days of such Notice of Arbitration, as follows: (i) one arbitrator shall be selected by each Party; and (ii) the third arbitrator shall be selected by the arbitrators chosen by the Parties. In resolving any dispute, the arbitrators shall apply the substantive laws of the State of New York (without regard to its conflict of law rules), [CONFIDENTIAL MATERIAL REDACTED], and shall take into account usages, customs and practices in the performance of contracts for commercial launch services.

22.4.4 Injunctive Relief. Neither Party to this Contract may make an application to the arbitrators seeking injunctive relief with respect to the performance by the Parties of this Contract.

22.4.5 Consolidation. Arbitration proceedings in connection with this Contract may be consolidated with arbitration proceedings pending between a Party and any subcontractor if the arbitration proceedings arise out of the same transaction or relate to the same subject matter and if such Party and subcontractors are bound by an arbitration agreement that is substantially similar to that contained in this Contract. If proceedings are consolidated, all references to Party in this Section 22.4 shall also mean subcontractor.

22.4.6 Review of Decision. Any decision rendered by the arbitrators of a dispute arising under this Contract may be submitted by either Party for review by a court of competent jurisdiction in accordance with Article 27.

22.4.7 Awards and Judgment. The arbitrators shall have no authority to award punitive damages, or any other damages except as authorized under the express terms and conditions of this Contract. For example and without limitation of the foregoing, in no event shall any award to either party exceed the applicable limitations set forth in Sections 15.10, 15.11, 16.8 or 16.9. Either Party shall have the right to subject any decision of the arbitrators for review by a court of competent jurisdiction.

22.4.8 Confidentiality. Without the prior written consent of the Parties to any arbitration proceeding in connection with this Contract, no Party or arbitrator may disclose (a) the existence, content or results of such proceeding, or (b) any information or documents disclosed by any Party in connection with such proceeding.

22.4.9 Fees and Expenses. Each Party shall bear its own costs and expenses (including the costs and expenses of the arbitrator it selected) and one-half of the costs and expenses of the third arbitrator, unless otherwise determined in the arbitral award.

22.5 Court Proceedings. Any dispute that is not resolved otherwise by the Parties through negotiation, mediation or arbitration as provided in this Article 22 may be submitted for resolution to a court of competent jurisdiction in accordance with Article 27. With respect to any court proceedings, any information deemed by either Party to be of a commercially sensitive nature shall be entitled to the protection afforded by protective orders issued by a court of competent jurisdiction.

ARTICLE 23  
CONFIDENTIALITY

23.1 Contract Provisions

23.1.1 Each Party shall make reasonable commercial efforts to assure that its employees do not disclose the terms or conditions of this Contract, except as may be required to perform this Contract, to acquire insurance or the benefit thereof, in support of arbitration or legal proceedings relating hereto, as required by their respective governments, or in the normal course of reporting to its parent company.

23.1.2 No publicity or information regarding this Contract will be given or released without the prior written consent of the other Party. Consent to release of information by either Party shall not be unreasonably withheld.

23.2 Proprietary Data. It is recognized that Customer and Contractor each will have developed technical information relating to the mating and launching of the Launch Vehicle and the Satellite which will be exchanged between the Parties. To the extent that such data is considered "Proprietary Information" by either Party (and, if disclosed in writing, is conspicuously marked "Proprietary" and, if disclosed orally, is identified as "Proprietary Information" at the time of disclosure), such disclosures shall be handled in accordance with this Article 23.

23.2.1 In addition, "Proprietary Information" (i) shall be that business, financial, technical or other information, data or material in written form that is conspicuously marked "Proprietary," and that is delivered by Contractor or by Customer to the other Party and (ii) shall include all copies in whole or in part made of such information, data or material or derivative uses thereof. Oral disclosure, if identified as "Proprietary Information" at the time of disclosure, will be treated as proprietary under this Article.

23.2.2 Each Party agrees not to use the other Party's Proprietary Information for any purpose other than for the performance of this Contract. Any other use or disclosure of such Proprietary Information shall be made only upon prior written consent of the other Party.

23.2.3 Each Party agrees to restrict disclosures of the Proprietary Information of the other Party to only those having a need to know in the performance of this Contract and to have all such Proprietary Information protected with a level of care similar to that normally used to protect its own Proprietary Information within its own organization, and in all events at least a reasonable degree of care. If such care is used, the recipient shall not be liable for the unauthorized disclosure of Proprietary Information.

23.2.4 The aforementioned restrictions on use and disclosure of Proprietary Information will not apply:

- 23.2.4.1 If either Party can show that the Proprietary Information received from the other is or has become generally available through the public domain without fault of such Party;
- 23.2.4.2 If the Proprietary Information is in a written record in one Party's files prior to its receipt from the other Party and is not otherwise restricted as to its use or disclosure;
- 23.2.4.3 If either Party at any time lawfully obtains the Proprietary Information in writing from a Third Party under circumstances permitting its disclosure;
- 23.2.4.4 If the Proprietary Information is disclosed with the prior written consent of the other Party, provided such disclosure complies in all respects with the terms of the written consent;
- 23.2.4.5 When the Proprietary Information is disclosed more than six (6) years after the date of receipt of the information.
- 23.2.4.6 If the Party can show that it developed the information independently without reliance upon the other Party's Proprietary Information.

23.2.5 Upon termination or expiration of this Contract, the Parties, within a reasonable period of time, will return all Proprietary Information received from the other Party under the terms of this Contract or certify that all the Proprietary Information has been destroyed.

23.2.6 It is understood that neither Party assumes any liability to the other for damages arising from the other Parties use of or reliance upon any Proprietary Information disclosed pursuant to this Article except as provided elsewhere herein.

ARTICLE 24  
INTELLECTUAL PROPERTY

24.1 Neither Party will acquire, as a result of the services to be provided under this Contract, any rights to the inventions, patents, copyrights, trademarks, or other technical property or any rights to the proprietary data of the other Party or the Related Third Parties of the other Party, except as set forth elsewhere in this Contract.

24.2 Customer grants to Contractor and its affiliates a royalty-free, nonexclusive, non-transferable right to use the trademarks/logos of the Customer ("Licensed Marks") on Contractor's Launch Vehicle(s) used in connection with the Launch Service(s), and in connection with all advertising and marketing activities occurring prior to, during and subsequent to the Launch(s), subject to Customer's prior written approval, which approval shall not unreasonably withheld or delayed ("Licensed Uses"). Customer represents that it is the owner of all rights, title and interest in and to the Licensed Marks and the goodwill associated with the Licensed Marks. Contractor's use of the Licensed Marks in connection with the Contractor's Licensed Uses shall inure to the benefit of the Customer and shall be of a quality commensurate with the quality of the products and services of the Customer.

ARTICLE 25  
RIGHT OF OWNERSHIP AND CUSTODY RIGHT

25.1 Customer hereby acknowledges and agrees that at no time shall it obtain title to or ownership of or any other legal or equitable right or interest in any part of the Launch Vehicle or in any other tangible or intangible property or hardware of Contractor or its Related Third Parties, including, without limitation, any patent or data rights used or furnished in providing Launch Services under this Contract. Such property shall be considered the sole and exclusive property of Contractor.

25.2 Contractor hereby acknowledges and agrees that at no time shall it obtain title to or ownership of or any other legal or equitable right or interest in any part of the Satellite or in any other tangible or intangible property or hardware of Customer or its Related Third Parties, including, without limitation, any patent or data rights with respect to the Satellite. Such property shall be considered the sole and exclusive property of Customer.

ARTICLE 26  
AMENDMENT

Except as may be specifically provided elsewhere in this Contract, any amendment, modification or change to this Contract, including but not limited to launch requirements, changes in quantity or schedule adjustments, or any waiver of performance hereunder may only be made in writing and upon mutual agreement of Customer and Contractor.

ARTICLE 27  
GOVERNING LAW

27.1 This Contract shall be governed by and construed in accordance with the laws of the State of New York, United States of America, exclusive of that jurisdiction's choice of law rules. The provisions of the United Nations Convention for the International Sale of Goods shall not be applicable to this Contract.

27.2 WAIVER OF JURY TRIAL. THE PARTIES WAIVE THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS CONTRACT IN ANY ACTION, PROCEEDING OR OTHER LITIGATION OF ANY TYPE BROUGHT BY EITHER PARTY AGAINST THE OTHER PARTY, WHETHER WITH RESPECT TO CONTRACT CLAIMS, TORT CLAIMS OR OTHERWISE.

27.3 Customer and Contractor are subject to civil and commercial law with respect to their obligations hereunder, and the execution, delivery and performance of this Contract by Customer and Contractor constitute private and commercial acts rather than public or governmental acts. Neither Customer, Contractor nor any of their property has any sovereign immunity from jurisdiction of any court or from set-off or any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) under applicable law.

ARTICLE 28  
WAIVER OF BREACH

The failure of either Party, at any time, to require performance of the other Party of any provision of this Contract shall not waive the requirement for such performance at any time thereafter.

ARTICLE 29  
ASSIGNMENT

This Contract shall not be transferred, assigned in full, as security or otherwise or delegated to any other individual, firm, institution, organization or government agency by either Party without the prior written consent of the other Party, except for assignments or delegations made by Customer or Contractor to its parent company, a subsidiary of Customer or Contractor or its parent company, or a division. Consent to assignment or delegation by either Party shall not be unreasonably withheld. Any attempted assignment or delegation, without such consent, shall be void and without effect. Any permitted assignment or delegation shall not act to release a Party from its obligations under this Contract unless the consent to assignment or delegation from the other Party specifically provides for such release.



ARTICLE 30  
ORDER OF PRECEDENCE

In the event of any conflict or inconsistency among the various portions of this Contract, the following order of precedence shall prevail:

Articles 1 through 34

Exhibit A - "Atlas Launch Services Statement of Work for the EchoStar Program"

Exhibit C - "Proton Launch Services Statement of Work for the EchoStar Program"

All other Exhibits to this Contract.

ARTICLE 31  
ENTIRE AGREEMENT

This Contract constitutes the entire agreement and understanding between the Parties. No other promises or representations, either verbal or written, with the exception of duly executed subsequent written modifications to the Contract shall have any force or effect in regard to the contractual obligations of the Parties herein.

ARTICLE 32  
SEVERABILITY

The invalidity, unenforceability or illegality of any provision hereto shall not affect the validity or enforceability of the other provisions of this Contract, which provisions shall remain in full force and effect.

ARTICLE 33  
PUBLIC RELEASE OF INFORMATION

Except as required by law or regulation, no news release, public announcement, or advertising material concerned with this Contract shall be issued by either Party without prior written consent of the other Party. Such consent shall not be unreasonably withheld. All releases shall be coordinated between both Parties.

ARTICLE 34  
[CONFIDENTIAL MATERIAL REDACTED]

IN WITNESS WHEREOF, the Parties hereto have executed this Contract as of the day and year first above written:

For Customer

For Contractor

ECHOSTAR ORBITAL  
CORPORATION

LOCKHEED MARTIN COMMERCIAL  
LAUNCH SERVICES, INC.

By:

By:

Name: Charlie Ergen

Name: Jack Zivic

Title: President and Chief Executive  
Officer

Title: Manager, Business Operations