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

Form 10-Q

(Mark One)

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

FOR THE QUARTERLY PERIOD ENDED SEPTEMBER 30, 2009.

OR

o **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

DISH Network Corporation
(Exact name of registrant as specified in its charter)

Nevada (State or other jurisdiction of incorporation or organization)	**88-0336997** (I.R.S. Employer Identification No.)
9601 South Meridian Boulevard **Englewood, Colorado** (Address of principal executive offices)	**80112** (Zip code)

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

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

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 o

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☑ **No** o

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

Large accelerated filer ☑	**Accelerated filer o**	**Non-accelerated filer o** **(Do not check if a smaller reporting company)**	**Smaller reporting company o**

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

As of October 23, 2009, the registrant's outstanding common stock consisted of 208,430,895 shares of Class A common stock and 238,435,208 shares of Class B common stock.

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PART I — FINANCIAL INFORMATION

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PART I — FINANCIAL INFORMATION

DISCLOSURE REGARDING FORWARD-LOOKING STATEMENTS

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

- Weakened economic conditions, including the recent downturn in financial markets and reduced consumer spending, may adversely affect our ability to grow or maintain our business.
- If we do not improve our operational performance and customer satisfaction, our gross subscriber additions may decrease and our subscriber churn may increase.
- If DISH Network gross subscriber additions decrease, or if subscriber churn, subscriber acquisition or retention costs increase, our financial performance will be further adversely affected.
- If we are unsuccessful in overturning the District Court's ruling on Tivo's motion for contempt, we are not successful in developing and deploying potential new alternative technology and we are unable to reach a license agreement with Tivo on reasonable terms, we would be subject to substantial liability and would be prohibited from offering DVR functionality that would result in a significant loss of subscribers and place us at a significant disadvantage to our competitors.
- We face intense and increasing competition from satellite television providers, cable television providers, telecommunications companies, and companies that provide/facilitate the delivery of video content via the Internet.
- We may be required to make substantial additional investments in order to maintain competitive high definition, or HD, programming offerings.
- Technology in our industry changes rapidly and could cause our services and products to become obsolete.
- We may need additional capital, which may not be available on acceptable terms or at all, in order to continue investing in our business and to finance acquisitions and other strategic transactions.
- A portion of our investment portfolio is invested in securities that have experienced limited or no liquidity in recent months and may not be immediately accessible to support our financing needs.
- AT&T's termination of its distribution agreement with us may increase churn.
- As technology changes, and in order to remain competitive, we may have to upgrade or replace subscriber equipment and make substantial investments in our infrastructure.
- We rely on EchoStar Corporation, or EchoStar, to design and develop all of our new set-top boxes and certain related components, and to provide transponder capacity, digital broadcast operations and other services for us. Our business would be adversely affected if EchoStar ceases to provide these services to us and we are unable to obtain suitable replacement services from third parties.
- We rely on one or a limited number of vendors, and the inability of these key vendors to meet our needs could have a material adverse effect on our business.
- Our programming signals are subject to theft, and we are vulnerable to other forms of fraud that could require us to make significant expenditures to remedy.
- We depend on third parties to solicit orders for DISH Network services that represent a significant percentage of our total gross subscriber acquisitions.

- We depend on others to provide the programming that we offer to our subscribers and, if we lose access to this programming, our subscriber additions may decline or we may suffer subscriber losses and subscriber churn may increase.
- Our competitors may be able to leverage their relationships with programmers so that they are able to reduce their programming costs and offer exclusive content that will place them at a competitive advantage to us.
- We depend on the Cable Act for access to programming from cable-affiliate programmers at cost-effective rates.
- We face increasing competition from other distributors of foreign language programming that may limit our ability to maintain our foreign language programming subscriber base.
- Our local programming strategy faces uncertainty because we may not be able to obtain necessary retransmission consents from local network stations.
- We are subject to significant regulatory oversight and changes in applicable regulatory requirements could adversely affect our business.
- We have made a substantial investment in certain 700 MHz wireless licenses and will be required to make significant additional investments in order to commercialize these licenses and recoup our investment.
- We have substantial debt outstanding and may incur additional debt.
- We have limited owned and leased satellite capacity and satellite failures could adversely affect our business.
- Our owned and leased satellites under construction are subject to risks related to launch that could limit our ability to utilize these satellites.
- Our owned and leased satellites in orbit are subject to significant operational and environmental risks that could limit our ability to utilize these satellites.
- Our owned and leased satellites have minimum design lives of 12 years, but could fail or suffer reduced capacity before then.
- We currently have no commercial insurance coverage on the satellites we own and could face significant impairment charges if one of our satellites fails.
- We may have potential conflicts of interest with EchoStar due to our common ownership and management.
- We rely on key personnel and the loss of their services may negatively affect our businesses.
- We are controlled by one principal stockholder who is also our Chairman, President and Chief Executive Officer.
- We are party to various lawsuits which, if adversely decided, could have a significant adverse impact on our business, particularly lawsuits regarding intellectual property.
- We may pursue acquisitions and other strategic transactions to complement or expand our business that may not be successful and with respect to which we may lose up to the entire value of our investment.
- Our business depends substantially on Federal Communications Commission, or FCC, licenses that can expire or be revoked or modified and applications for FCC licenses that may not be granted.
- We are subject to digital HD “carry-one-carry-all” requirements that cause capacity constraints.
- It may be difficult for a third party to acquire us, even if doing so may be beneficial to our shareholders, because of our capital structure.

- We cannot assure you that there will not be deficiencies leading to material weaknesses in our internal control over financial reporting.
- We may face other risks described from time to time in periodic and current reports we file with the Securities and Exchange Commission, or SEC.

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

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

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Item 1. FINANCIAL STATEMENTS

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

	As of September 30, 2009	As of December 31, 2008
Assets		
Current Assets:		
Cash and cash equivalents	$ 155,570	$ 98,574
Marketable investment securities	2,477,882	460,558
Trade accounts receivable — other, net of allowance for doubtful accounts of $15,786 and $15,207, respectively	799,417	799,139
Trade accounts receivable — EchoStar, net of allowance for doubtful accounts of zero	20,516	21,570
Inventories, net	278,118	426,671
Deferred tax assets	101,867	86,331
Income tax receivable	—	148,747
Other current assets	173,769	56,394
Total current assets	4,007,139	2,097,984
Noncurrent Assets:		
Restricted cash and marketable investment securities	141,701	83,606
Property and equipment, net of accumulated depreciation of $2,396,694 and $2,432,959, respectively	2,869,236	2,663,289
FCC authorizations	1,391,441	1,391,441
Marketable and other investment securities	168,784	158,296
Other noncurrent assets, net	80,438	65,431
Total noncurrent assets	4,651,600	4,362,063
Total assets	$ 8,658,739	$ 6,460,047
Liabilities and Stockholders' Equity (Deficit)		
Current Liabilities:		
Trade accounts payable — other	$ 262,061	$ 174,216
Trade accounts payable — EchoStar	297,715	297,629
Deferred revenue and other	810,612	830,529
Accrued programming	971,922	1,020,086
Other accrued expenses	902,070	619,210
3% Convertible Subordinated Note due 2011	25,000	25,000
Current portion of long-term debt and capital lease obligations	27,193	13,333
Total current liabilities	3,296,573	2,980,003
Long-Term Obligations, Net of Current Portion:		
Long-term debt and capital lease obligations, net of current portion	6,075,629	4,969,423
Deferred tax liabilities	280,442	235,551
Long-term deferred revenue, distribution and carriage payments and other long-term liabilities	387,467	224,176
Total long-term obligations, net of current portion	6,743,538	5,429,150
Total liabilities	10,040,111	8,409,153
Commitments and Contingencies (Note 10)		
Stockholders' Equity (Deficit):		
Class A common stock, $.01 par value, 1,600,000,000 shares authorized, 258,522,297 and 257,117,733 shares issued, 208,424,144 and 208,968,052 shares outstanding, respectively	2,585	2,571
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 issued and outstanding	—	—
Additional paid-in capital	2,113,743	2,090,527
Accumulated other comprehensive income (loss)	(2,123)	(107,998)
Accumulated earnings (deficit)	(2,036,138)	(2,492,804)
Treasury stock, at cost	(1,462,380)	(1,443,786)
Total DISH Network stockholders' equity (deficit)	(1,381,929)	(1,949,106)
Noncontrolling interest	557	—
Total stockholders' equity (deficit)	(1,381,372)	(1,949,106)
Total liabilities and stockholders' equity (deficit)	$ 8,658,739	$ 6,460,047

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

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

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2009	2008	2009	2008
Revenue:				
Subscriber-related revenue	$2,862,554	$2,886,157	$8,605,608	$8,572,163
Equipment sales and other revenue	23,393	41,918	74,876	95,755
Equipment sales — EchoStar	1,277	2,433	6,486	8,533
Transitional services and other revenue — EchoStar	4,923	6,273	14,199	19,714
Total revenue	2,892,147	2,936,781	8,701,169	8,696,165
Costs and Expenses:				
Subscriber-related expenses (exclusive of depreciation shown below — Note 11)	1,623,397	1,534,133	4,705,551	4,402,771
Satellite and transmission expenses (exclusive of depreciation shown below — Note 11):				
EchoStar	78,911	76,848	246,866	232,798
Other	8,962	7,651	24,701	22,890
Equipment, transitional services and other cost of sales	28,651	69,315	96,244	131,488
Subscriber acquisition costs:				
Cost of sales — subscriber promotion subsidies — EchoStar (exclusive of depreciation shown below — Note 11)	56,293	53,418	152,215	116,489
Other subscriber promotion subsidies	310,844	310,879	776,575	888,849
Subscriber acquisition advertising	72,453	73,469	191,275	178,800
Total subscriber acquisition costs	439,590	437,766	1,120,065	1,184,138
General and administrative expenses — EchoStar	11,022	14,300	34,577	40,740
General and administrative expenses	146,626	133,282	415,857	371,364
Tivo litigation expense	131,930	—	328,335	—
Depreciation and amortization (Note 11)	228,395	245,646	696,988	766,260
Total costs and expenses	2,697,484	2,518,941	7,669,184	7,152,449
Operating income (loss)	194,663	417,840	1,031,985	1,543,716
Other Income (Expense):				
Interest income	7,591	16,609	23,637	44,082
Interest expense, net of amounts capitalized	(98,857)	(101,802)	(273,926)	(284,845)
Other, net	(1,915)	(106,055)	(42,072)	(124,583)
Total other income (expense)	(93,181)	(191,248)	(292,361)	(365,346)
Income (loss) before income taxes	101,482	226,592	739,624	1,178,370
Income tax (provision) benefit, net	(20,989)	(134,697)	(283,027)	(492,007)
Net income (loss)	80,493	91,895	456,597	686,363
Less: Net income (loss) attributable to noncontrolling interest	(69)	—	(69)	—
Net income (loss) attributable to DISH Network common shareholders	$ 80,562	$ 91,895	$ 456,666	$ 686,363
Comprehensive Income (Loss):				
Net income (loss)	$ 80,493	$ 91,895	$ 456,597	$ 686,363
Foreign currency translation adjustments	—	(1,384)	(106)	(2,961)
Unrealized holding gains (losses) on available-for-sale securities	55,599	(170,447)	100,406	(231,869)
Recognition of previously unrealized (gains) losses on available-for-sale securities included in net income (loss)	(8)	148,423	5,447	146,112
Deferred income tax (expense) benefit	—	(29,398)	128	(10,174)
Comprehensive income (loss)	136,084	39,089	562,472	587,471
Less: Comprehensive income (loss) attributable to noncontrolling interest	(69)	—	(69)	—
Comprehensive income (loss) attributable to DISH Network common shareholders	$ 136,153	$ 39,089	$ 562,541	$ 587,471
Weighted-average common shares outstanding — Class A and B common stock:				
Basic	446,823	449,425	446,816	449,318
Diluted	447,431	460,042	448,313	461,040
Earnings per share — Class A and B common stock:				
Basic net income (loss) per share attributable to DISH Network common shareholders	$ 0.18	$ 0.20	$ 1.02	$ 1.53
Diluted net income (loss) per share attributable to DISH Network common shareholders	$ 0.18	$ 0.20	$ 1.02	$ 1.50

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

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

	For the Nine Months Ended September 30, 2009	2008
Cash Flows From Operating Activities:		
Net income (loss)	$ 456,597	$ 686,363
Adjustments to reconcile net income (loss) to net cash flows from operating activities:		
Depreciation and amortization	696,988	766,260
Equity in losses (earnings) of affiliates	4,149	1,884
Realized and unrealized losses (gains) on investments	40,518	120,669
Non-cash, stock-based compensation	8,557	11,690
Deferred tax expense (benefit)	29,131	151,638
Other, net	4,117	5,878
Change in noncurrent assets	6,769	8,470
Change in long-term deferred revenue, distribution and carriage payments and other long-term liabilities	44,074	31,010
Changes in current assets and current liabilities, net	600,829	41,525
Net cash flows from operating activities	1,891,729	1,825,387
Cash Flows From Investing Activities:		
Purchases of marketable investment securities	(4,056,711)	(4,344,319)
Sales and maturities of marketable investment securities	2,116,604	4,457,908
Purchases of property and equipment	(724,316)	(844,265)
Change in restricted cash and marketable investment securities	(58,398)	1,700
Deposit for 700 MHz wireless spectrum acquisition	—	(711,871)
Purchase of strategic investments included in noncurrent marketable and other investment securities	(47,142)	—
Proceeds from the sale of strategic investment	—	106,200
Other	(83)	(705)
Net cash flows from investing activities	(2,770,046)	(1,335,352)
Cash Flows From Financing Activities:		
Distribution of cash and cash equivalents to EchoStar in connection with the Spin-off	—	(585,147)
Proceeds from issuance of long-term debt	1,000,000	750,000
Deferred debt issuance costs	(28,618)	(4,972)
Repayment of long-term debt and capital lease obligations	(20,043)	(535,513)
Class A common stock repurchases	(18,594)	(81,906)
Net proceeds from Class A common stock options exercised and Class A common stock issued under the Employee Stock Purchase Plan	2,568	19,903
Net cash flows from financing activities	935,313	(437,635)
Net increase (decrease) in cash and cash equivalents	56,996	52,400
Cash and cash equivalents, beginning of period	98,574	919,543
Cash and cash equivalents, end of period	$ 155,570	$ 971,943
Supplemental Disclosure of Cash Flow Information:		
Cash paid for interest	$ 238,696	$ 240,437
Capitalized interest	$ 13,454	$ 11,812
Cash received for interest	$ 10,511	$ 36,354
Cash paid for income taxes	$ 250,576	$ 361,737
Employee benefits paid in Class A common stock	$ 12,198	$ 19,374
Vendor financing	$ —	$ 23,314
Satellites and other assets financed under capital lease obligations	$ 131,178	$ —
Net assets contributed in connection with the Spin-off, excluding cash and cash equivalents	$ —	$ 2,765,398

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

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

1. Organization and Business Activities

Principal Business

DISH Network Corporation is a holding company. Its subsidiaries (which together with DISH Network Corporation are referred to as “DISH Network,” the “Company,” “we,” “us” and/or “our”) operate the DISH Network® direct broadcast satellite (“DBS”) subscription television service in the United States which had 13.851 million subscribers as of September 30, 2009. We have deployed substantial resources to develop the “DISH Network DBS System.” The DISH Network DBS System consists of our licensed Federal Communications Commission (“FCC”) authorized DBS and Fixed Satellite Service (“FSS”) spectrum, our owned and leased satellites, receiver systems, third-party broadcast operations, customer service facilities, in-home service and call center operations and certain other assets utilized in our operations.

Spin-off of Technology and Certain Infrastructure Assets

On January 1, 2008, we completed a tax-free distribution of our technology and set-top box business and certain infrastructure assets (the “Spin-off”) into a separate publicly-traded company, EchoStar Corporation (“EchoStar”). DISH Network and EchoStar now operate as separate publicly-traded companies, and neither entity has any ownership interest in the other. However, a substantial majority of the voting power of both companies is owned beneficially by Charles W. Ergen, our Chairman, President and Chief Executive Officer or by certain trusts established by Mr. Ergen for the benefit of his family. The two entities consist of the following:

- *DISH Network Corporation* — which retained its DISH Network® subscription television business and
- *EchoStar Corporation* — which sells equipment, including set-top boxes and related components, to DISH Network and international customers, and provides digital broadcast operations and satellite services to DISH Network and other customers.

2. Summary of Significant Accounting Policies

Basis of Presentation

The accompanying unaudited Condensed Consolidated Financial Statements have been prepared in accordance with accounting principles generally accepted in the United States (“GAAP”) and with the instructions to Form 10-Q and Article 10 of Regulation S-X for interim financial information. Accordingly, these statements do not include all of the information and notes required for complete financial statements prepared under GAAP. In our opinion, all adjustments (consisting of normal recurring adjustments) considered necessary for a fair presentation have been included. Operating results for the nine months ended September 30, 2009 are not necessarily indicative of the results that may be expected for the year ending December 31, 2009. For further information, refer to the Consolidated Financial Statements and notes thereto included in our Annual Report on Form 10-K for the year ended December 31, 2008 (“2008 10-K”). Certain prior period amounts have been reclassified to conform to the current period presentation. In addition, the “Income tax (provision) benefit, net” was reduced by prior period adjustments totaling $25 million for each of the three and nine months ended September 30, 2009. Further, in connection with preparation of the condensed consolidated financial statements, we have evaluated subsequent events through the issuance of these financial statements on November 9, 2009.

Accounting Standards Codification

In June 2009, the Financial Accounting Standards Board (“FASB”) issued Statement of Financial Accounting Standards No. 168, “The FASB Accounting Standards Codification and the Hierarchy of Generally Accepted Accounting Principles — A Replacement of FASB Statement No. 162” (“SFAS 168”). SFAS 168 establishes the FASB Accounting Standards Codification (the “Codification”)

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

as the single source of authoritative accounting principles recognized by the FASB to be applied by nongovernmental entities in the preparation of financial statements in conformity with GAAP. The Codification does not change current GAAP, but is intended to simplify user access to all authoritative GAAP by providing all the authoritative literature in one place related to a particular topic. We were required to implement the Codification during the third quarter of 2009. The Codification did not have any impact on our consolidated financial position or results of operations. However, it affects the way we reference authoritative accounting literature in our Condensed Consolidated Financial Statements. Accordingly, this Quarterly Report on Form 10-Q and all subsequent applicable public filings will reference the Codification as the source of authoritative literature.

Principles of Consolidation

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

Use of Estimates

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

Fair Value of Financial Instruments

As of September 30, 2009 and December 31, 2008, the carrying value of our cash and cash equivalents, marketable investment securities, trade accounts receivable, net of allowance for doubtful accounts, and current liabilities is equal to or approximates fair value due to their short-term nature. See Note 7 for the fair value of our long-term debt.

3. Basic and Diluted Income (Loss) Per Share

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

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

The potential dilution from our subordinated notes convertible into common stock was computed using the "if converted method." The potential dilution from stock awards was computed using the treasury stock method based on the average market value of our Class A common stock. The following table presents earnings per share amounts for all periods and the basic and diluted weighted-average shares outstanding used in the calculation.

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2009	2008	2009	2008
	(In thousands, except per share amounts)			
Basic net income (loss) attributable to DISH Network common shareholders	$ 80,562	$ 91,895	$ 456,666	$ 686,363
Interest on dilutive subordinated convertible notes, net of related tax effect	—	1,537	351	6,494
Diluted net income (loss) attributable to DISH Network common shareholders	$ 80,562	$ 93,432	$ 457,017	$ 692,857
Weighted-average common shares outstanding — Class A and B common stock:				
Basic	446,823	449,425	446,816	449,318
Dilutive impact of stock awards outstanding	608	2,318	1,015	2,941
Dilutive impact of subordinated notes convertible into common shares	—	8,299	482	8,781
Diluted	447,431	460,042	448,313	461,040
Earnings per share — Class A and B common stock:				
Basic net income (loss) per share attributable to DISH Network common shareholders	$ 0.18	$ 0.20	$ 1.02	$ 1.53
Diluted net income (loss) per share attributable to DISH Network common shareholders	$ 0.18	$ 0.20	$ 1.02	$ 1.50
Shares of Class A common stock issuable upon conversion of:				
3% Convertible Subordinated Note due 2010 (repaid during third quarter 2008)	—	8,299	—	8,299
3% Convertible Subordinated Note due 2011 (repaid in October 2009)	482	482	482	482

As of September 30, 2009 and 2008, there were stock awards to purchase 9.1 million shares and 3.4 million shares, respectively, of Class A common stock outstanding not included in the above denominator as their effect is antidilutive. In addition, during the three months ended September 30, 2009, the convertible note is not included in the diluted EPS calculation as its conversion would be antidilutive.

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

	As of September 30,	
	2009	2008
	(In thousands)	
Performance-based options	9,633	9,548
Restricted performance units	585	571
Total	10,218	10,119

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

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

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

	As of September 30, 2009	As of December 31, 2008
	(In thousands)	
Marketable investment securities:		
Current marketable investment securities — VRDNs	$ 1,663,367	$ 239,611
Current marketable investment securities — strategic	211,503	13,561
Current marketable investment securities — other	603,012	207,386
Total current marketable investment securities	2,477,882	460,558
Restricted marketable investment securities (1)	10,388	22,407
Noncurrent marketable investment securities — ARS and MBS (2)	119,211	113,394
Total marketable investment securities	2,607,481	596,359
Restricted cash and cash equivalents (1)	131,313	61,199
Other investment securities:		
Other investment securities — cost method	49,573	15,795
Other investment securities — equity method	—	26,784
Other investment securities — fair value method	—	2,323
Total other investment securities (2)	49,573	44,902
Total marketable investment securities, restricted cash and other investment securities	$ 2,788,367	$ 702,460

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

(2) Noncurrent marketable investment securities — auction rate securities (“ARS”), mortgage backed securities (“MBS”) and other investment securities are included in “Marketable and other investment securities” on our Condensed Consolidated Balance Sheets.

Marketable Investment Securities

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

Current Marketable Investment Securities — VRDNs

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

Current Marketable Investment Securities — Strategic

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

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We account for certain debt securities acquired at a discount under the cost recovery method, partial accrual or full accrual methods based on management's quarterly evaluation of these securities. These debt securities were purchased at a discount due to their credit quality. As a result, the yield that may be accreted (accretable yield) is limited to the excess of our estimate of undiscounted expected principal, interest, and other cash flows (including the effects of prepayments) expected to be collected over our initial investment. The face value of these securities as of September 30, 2009 and December 31, 2008 was $137 million and $9 million, respectively. The carrying value, which is equal to fair value, of these securities as of September 30, 2009 and December 31, 2008 was $60 million and $2 million, respectively. The total discount on these securities was $91 million as of September 30, 2009 with $12 million classified as accretable yield and the remaining $79 million classified as non-accretable yield. As of December 31, 2008, the entire discount of $6 million was classified as non-accretable yield.

Current Marketable Investment Securities — Other

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

Restricted Cash and Marketable Investment Securities

As of September 30, 2009 and December 31, 2008, our restricted marketable investment securities, together with our restricted cash, included amounts required as collateral for our letters of credit or surety bonds. Restricted cash and marketable investment securities as of September 30, 2009 included $62 million related to our litigation with Tivo.

Noncurrent Marketable Investment Securities — ARS and MBS

We have investments in ARS and MBS which are classified as available-for-sale securities and reported at fair value. Events in the credit markets have reduced or eliminated current liquidity for certain of our ARS and MBS investments. As a result, we classify these investments as noncurrent assets as we intend to hold these investments until they recover or mature.

The valuation of our ARS and MBS investments portfolio is subject to uncertainties that are difficult to estimate. Due to the lack of observable market quotes for identical assets, we utilize analyses that rely on Level 2 and/or Level 3 inputs, as defined in "Fair Value Measurements." These inputs include, among other things, observed prices on similar assets as well as our assumptions and estimates related to the counterparty credit quality, default risk underlying the security and overall capital market liquidity. These securities were also compared, when possible, to other observable market data for financial instruments with similar characteristics.

Other Investment Securities

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

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

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Unrealized Gains (Losses) on Marketable Investment Securities

As of September 30, 2009 and December 31, 2008, we had accumulated net unrealized losses of $11 million and $116 million, both net of related tax effect, respectively, as a part of "Accumulated other comprehensive income (loss)" within "Total stockholders' equity (deficit)." A full valuation allowance has been established against the deferred tax assets associated with these unrealized capital losses. The components of our available-for-sale investments are detailed in the table below.

	As of September 30, 2009				As of December 31, 2008			
	Marketable Investment Securities	Unrealized Gains	Unrealized Losses	Net	Marketable Investment Securities	Unrealized Gains	Unrealized Losses	Net
	(In thousands)							
Debt securities:								
VRDNs	$ 1,663,367	$ 1	$ —	$ 1	$ 239,611	$ —	$ —	$ —
ARS and MBS	119,211	507	(73,121)	(72,614)	113,394	—	(103,943)	(103,943)
Other (including restricted)	741,833	38,972	(3,005)	35,967	231,863	—	(12,442)	(12,442)
Equity securities:								
Other	83,070	28,873	(2,759)	26,114	11,491	—	—	—
Total marketable investment securities	$ 2,607,481	$ 68,353	$ (78,885)	$ (10,532)	$ 596,359	$ —	$ (116,385)	$ (116,385)

As of September 30, 2009, restricted and non-restricted marketable investment securities include debt securities of $2.344 billion with contractual maturities of one year or less and $180 million with contractual maturities greater than one year. Actual maturities may differ from contractual maturities as a result of our ability to sell these securities prior to maturity.

Marketable Investment Securities in a Loss Position

The following table reflects the length of time that the individual securities, accounted for as available-for-sale, have been in an unrealized loss position, aggregated by investment category. As of September 30, 2009, the unrealized losses on our investments in equity securities represent investments in a broad based-index. As of September 30, 2009 and December 31, 2008, the unrealized losses on our investments in debt securities primarily represent investments in auction rate, mortgage and asset-backed securities. We do not intend to sell our investments in these debt securities before they recover or mature, and it is more likely than not that we will hold these investments until that time. In addition, we are not aware of any specific factors indicating that the underlying issuers of these debt securities would not be able to pay interest as it becomes due or repay the principal at maturity. Therefore, we believe that these changes in the estimated fair values of these marketable investment securities are related to temporary market fluctuations.

Investment Category	Primary Reason for Unrealized Loss	Total Fair Value	Less than Six Months Fair Value	Less than Six Months Unrealized Loss	Six to Nine Months Fair Value	Six to Nine Months Unrealized Loss	Nine Months or More Fair Value	Nine Months or More Unrealized Loss
			As of September 30, 2009 (In thousands)					
Debt securities	Temporary market fluctuations	$ 288,522	$ 111,128	$ (273)	$ —	$ —	$ 177,394	$ (75,853)
Equity securities	Temporary market fluctuations	47,241	47,241	(2,759)	—	—	—	—
Total		$ 335,763	$ 158,369	$ (3,032)	$ —	$ —	$ 177,394	$ (75,853)
			As of December 31, 2008 (In thousands)					
Debt securities	Temporary market fluctuations	$ 295,676	$ 2,070	$ (540)	$ 8,114	$ (24)	$ 285,492	$ (115,821)
Total		$ 295,676	$ 2,070	$ (540)	$ 8,114	$ (24)	$ 285,492	$ (115,821)

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Fair Value Measurements

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

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

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

	Total Fair Value As of September 30, 2009			
Assets	Total	Level 1	Level 2	Level 3
	(In thousands)			
Marketable investment securities	$ 2,607,481	$ 93,068	$ 2,403,350	$ 111,063

Changes in Level 3 instruments are as follows:

	Level 3		
	Total	Current and Noncurrent Marketable Investment Securities	Other Investment Securities
	(In thousands)		
Balance as of December 31, 2008	$ 106,679	$ 104,356	$ 2,323
Net realized/unrealized gains/(losses) included in earnings	(10,809)	(8,486)	(2,323)
Net realized/unrealized gains/(losses) included in other comprehensive income (loss)	31,460	31,460	—
Purchases, issuances and settlements, net	(16,267)	(16,267)	—
Balance as of September 30, 2009	$ 111,063	$ 111,063	$ —

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

"Other, net" income and expense included on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss) includes other changes in the carrying amount of our marketable and non-marketable investments as follows:

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Other Income (Expense):	For the Three Months Ended September 30, 2009	For the Three Months Ended September 30, 2008	For the Nine Months Ended September 30, 2009	For the Nine Months Ended September 30, 2008
	(In thousands)			
Marketable investment securities — gains (losses) on sales/exchange	$ 16	$ (363)	$ (4,716)	$ 2,120
Other investment securities — gains (losses) on sales	—	53,473	—	53,473
Marketable investment securities — other-than-temporary impairments	—	(148,003)	—	(148,003)
Other investment securities — unrealized gains (losses) on fair value investments and other-than-temporary impairments	(847)	(10,549)	(35,802)	(28,259)
Other	(1,084)	(613)	(1,554)	(3,914)
Total	$ (1,915)	$ (106,055)	$ (42,072)	$ (124,583)

5. Inventories

Inventories consist of the following:

	As of September 30, 2009	As of December 31, 2008
	(In thousands)	
Finished goods — DBS	$ 179,648	$ 238,343
Raw materials	72,310	146,353
Work-in-process — used	58,109	61,663
Work-in-process — new	1,234	2,414
Subtotal	311,301	448,773
Inventory allowance	(33,183)	(22,102)
Inventories, net	$ 278,118	$ 426,671

At September 30, 2009 our inventory balance was $278 million, a decline of $149 million compared to our balance at December 31, 2008. This decline primarily related to the impact of our sales and marketing promotions and reduced churn during the third quarter of 2009.

6. Satellites

We currently utilize eleven satellites in geostationary orbit approximately 22,300 miles above the equator, four of which are owned by us. Each of the owned satellites had an original estimated minimum useful life of at least 12 years. We currently lease capacity on five satellites from EchoStar with terms ranging from two to ten years. We account for these as operating leases. See Note 12 for further discussion of our satellite leases with EchoStar. We also lease two satellites from third parties, which are accounted for as capital leases and are depreciated over the shorter of the economic life or the term of the satellite agreement.

Operation of our programming service requires that we have adequate satellite transmission capacity for the programming we offer. Moreover, current competitive conditions require that we continue to expand our offering of new programming, particularly by expanding local HD coverage and offering more HD national channels. While we generally have had in-orbit satellite capacity sufficient to transmit our existing channels and some backup capacity to recover the transmission of certain critical programming, our backup capacity is limited.

In the event of a failure or loss of any of our satellites, we may need to acquire or lease additional satellite capacity or relocate one of our other satellites and use it as a replacement for the failed or lost satellite. Such a failure could result in a prolonged loss of critical programming or a significant delay in our plans to expand programming as necessary to remain competitive and thus may have a material adverse effect on our business, financial condition and results of operations.

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

Owned Satellites

EchoStar V. EchoStar V was originally designed with a minimum 12-year design life. Momentum wheel failures in prior years, together with relocation of the satellite between orbital locations, resulted in increased fuel consumption, as disclosed in previous SEC filings. During 2005, as a result of this increased fuel consumption, we reduced the remaining estimated useful life of the satellite and as of October 2008, the satellite was fully depreciated. In late July 2009, it was determined that the satellite had less fuel remaining than previously estimated. The satellite was removed from the 148 degree orbital location and retired from commercial service on August 3, 2009 and this retirement did not have a material impact on the DISH Network service.

As a result of the retirement of EchoStar V, we currently do not have any satellites positioned at the 148 degree orbital location. While we have requested a waiver from the FCC for the continued use of this orbital location, there can be no assurance that the FCC will determine that our proposed future use of this orbital location complies fully with all licensing requirements. If the FCC decides to revoke this license, we may be required to write-off its $68 million carrying value.

Leased Satellites

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

EchoStar XII. Prior to 2009, EchoStar XII experienced anomalies resulting in the loss of electrical power available from its solar arrays. During March and May 2009, EchoStar XII experienced more of these anomalies, which further reduced the electrical power available to operate EchoStar XII. We currently operate EchoStar XII in CONUS/spot beam hybrid mode. If we continue to operate the satellite in this mode, as a result of this loss of electrical power, we would be unable to use the full complement of its available transponders for the 12-year design life of the satellite. However, since the number of useable transponders on EchoStar XII depends on, among other things, whether EchoStar XII is operated in CONUS, spot beam, or hybrid CONUS/spot beam mode, we are unable to determine at this time the actual number of transponders that will be available at any given time or how many transponders can be used during the remaining estimated life of the satellite.

Nimiq 5. Nimiq 5 was launched in September 2009 and commenced commercial operation at the 72.7 degree orbital location during October 2009, where it provides additional high-powered capacity to support expansion of our programming services. See Note 12 for further discussion.

Long-Lived Satellite Assets

We evaluate our satellite fleet for impairment as one asset group and test for recoverability whenever events or changes in circumstances indicate that its carrying amount may not be recoverable. While certain of the anomalies discussed above, and previously disclosed, may be considered to represent a significant adverse change in the physical condition of an individual satellite, based on the redundancy designed within each satellite and considering the asset grouping, these anomalies are not considered to be significant events that would require evaluation for impairment recognition. Unless and until a specific satellite is abandoned or otherwise determined to have no service potential, the net carrying amount related to the satellite would not be written off.

7. Long-Term Debt

7 7/8% Senior Notes due 2019

On August 17, 2009, we issued $1.0 billion aggregate principal amount of our ten-year, 7 7/8% Senior Notes due September 1, 2019 at an issue price of 97.467%. Interest accrues at an annual rate of 7 7/8% and is payable semi-annually in cash, in arrears on March 1 and September 1 of each year, commencing on March 1, 2010.

On October 5, 2009, we issued $400 million aggregate principal amount of additional 7 7/8% Senior Notes due 2019 at an issue price of 101.750% plus accrued interest from August 17, 2009. These notes were issued as additional notes under the indenture, dated as of August 17, 2009 (the "Indenture"), pursuant to which we issued the $1.0 billion discussed above. These notes and the notes previously issued under the Indenture will be treated as a single class of debt securities under the Indenture.

The 7 7/8% Senior Notes are redeemable, in whole or in part, at any time at a redemption price equal to 100% of the principal amount plus a "make-whole" premium, as defined in the related Indenture, together with accrued and unpaid interest. Prior to September 1, 2012, we may also redeem up to 35% of each of the 7 7/8% Senior Notes at specified premiums with the net cash proceeds from certain equity offerings or capital contributions.

The 7 7/8% Senior Notes are:

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

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

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

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

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Fair Value of our Long-Term Debt

The following table summarizes the carrying value and fair values of our debt facilities as of September 30, 2009 and December 31, 2008:

	As of			
	September 30, 2009		December 31, 2008	
	Carrying Value	Fair Value	Carrying Value	Fair Value
	(In thousands)			
3% Convertible Subordinated Note due 2011	$ 25,000	$ 25,000	$ 25,000	$ 23,768
6 3/8% Senior Notes due 2011	1,000,000	1,021,250	1,000,000	899,000
7% Senior Notes due 2013	500,000	507,500	500,000	419,000
6 5/8% Senior Notes due 2014	1,000,000	977,500	1,000,000	840,300
7 3/4% Senior Notes due 2015	750,000	770,625	750,000	600,000
7 1/8% Senior Notes due 2016	1,500,000	1,492,500	1,500,000	1,246,890
7 7/8% Senior Notes due 2019 (1)	1,000,000	1,008,750	—	—
Mortgages and other notes payable	43,287	43,287	46,211	46,211
Subtotal	5,818,287	5,846,412	4,821,211	4,075,169
Capital lease obligations (2)	309,535	N/A	186,545	N/A
Total long-term debt (including current portion)	$ 6,127,822	$ 5,846,412	$ 5,007,756	$ 4,075,169

(1) Excludes $400 million in additional 7 7/8% Senior Notes due 2019 issued on October 5, 2009.

(2) Disclosure regarding fair value of capital leases is not required.

Capital Lease Obligations

Ciel II, a Canadian DBS satellite, was launched in December 2008 and commenced commercial operation at the 129 degree orbital location in February 2009. We have leased 100% of the capacity on the satellite for an initial term of ten years. Prior to the launch, we pre-paid $131 million to SES Americom in connection with the lease agreement and we capitalized $16 million of interest related to this satellite. We have accounted for this agreement as a capital lease asset by recording $277 million as the estimated fair value of the satellite and recording a capital lease obligation in the amount of $130 million.

As of September 30, 2009 and December 31, 2008, we had $500 million and $223 million, respectively, capitalized for satellites acquired under capital leases included in “Property and equipment, net” with related accumulated depreciation of $56 million and $26 million, respectively. This increase during the nine months ended September 30, 2009 related to the Ciel II satellite is discussed above.

In our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss), we recognized depreciation expense on satellites acquired under capital lease agreements as follows:

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2009	2008	2009	2008
	(In thousands)			
Depreciation expense — capital leases	$ 10,634	$ 3,724	$ 29,598	$ 11,171

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Future minimum lease payments under our capital lease obligations, together with the present value of the net minimum lease payments as of September 30, 2009, are as follows (in thousands):

For the Years Ended December 31,	
2009 (remaining three months)	$ 19,333
2010	81,266
2011	78,353
2012	75,970
2013	75,970
Thereafter	542,178
Total minimum lease payments	873,070
Less: Amount representing use of the orbital location and estimated executory costs (primarily insurance and maintenance) including profit thereon, included in total minimum lease payments	(400,509)
Net minimum lease payments	472,561
Less: Amount representing interest	(163,026)
Present value of net minimum lease payments	309,535
Less: Current portion	(23,058)
Long-term portion of capital lease obligations	$ 286,477

8. Stockholders' Equity (Deficit)

Common Stock Repurchase Program

Our board of directors previously authorized stock repurchases of up to $1.0 billion of our Class A common stock. During the nine months ended September 30, 2009, we repurchased 1.9 million shares of our common stock for $19 million. On November 3, 2009, our board of directors extended the plan and authorized an increase in the maximum dollar value of shares that may be repurchased under the plan, such that we are currently authorized to repurchase up to $1.0 billion of our outstanding shares through and including December 31, 2010.

9. Stock-Based Compensation

Stock Incentive Plans

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

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

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

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

We maintain stock incentive plans to attract and retain officers, directors and key employees. Stock awards under these plans include both performance and non-performance based stock incentives. As of September 30, 2009, we had outstanding under these plans stock options to acquire 21.7 million shares of our Class A common stock and 0.8 million restricted stock units. Stock options granted through September 30, 2009 were granted with exercise prices equal to or greater than the market value of our Class A common stock at the date of grant and with a maximum

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term of ten years. While historically we have issued stock awards subject to vesting, typically at the rate of 20% per year, some stock awards have been granted with immediate vesting and other stock awards vest only upon the achievement of certain company-wide objectives. As of September 30, 2009, we had 79.7 million shares of our Class A common stock available for future grant under our stock incentive plans. The 2009 Stock Incentive Plan, which was approved at the annual meeting of shareholders on May 11, 2009, allows us to grant new stock awards following the expiration of our 1999 Stock Incentive Plan on April 16, 2009.

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

	As of September 30, 2009			
	DISH Network Awards		EchoStar Awards	
Stock Awards Outstanding	Stock Options	Restricted Stock Units	Stock Options	Restricted Stock Units
Held by DISH Network employees	18,221,050	400,068	1,398,788	63,833
Held by EchoStar employees	3,451,851	410,374	N/A	N/A
Total	21,672,901	810,442	1,398,788	63,833

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

Stock Award Activity

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

	For the Nine Months Ended September 30, 2009	
	Options	Weighted-Average Exercise Price
Total options outstanding, beginning of period	21,835,687	$22.50
Granted	2,339,500	14.09
Exercised	(140,600)	6.27
Forfeited and cancelled	(2,361,686)	22.52
Total options outstanding, end of period	21,672,901	21.69
Performance based options outstanding, end of period (1)	9,632,750	16.64
Exercisable at end of period	7,379,219	29.25

(1) These stock options, which are included in the caption "Total options outstanding, end of period," were issued pursuant to two separate long-term, performance-based stock incentive plans. Vesting of these stock options is contingent upon meeting certain long-term company goals. See discussion of the 2005 LTIP and 2008 LTIP below.

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

	For the Three Months Ended September 30, 2009	For the Three Months Ended September 30, 2008	For the Nine Months Ended September 30, 2009	For the Nine Months Ended September 30, 2008
	(In thousands)			
Tax benefit from stock awards exercised	$ 245	$ 605	$ 260	$ 2,851

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

	As of September 30, 2009 Options Outstanding	As of September 30, 2009 Options Exercisable
	(In thousands)	
Aggregate intrinsic value	$ 64,836	$ 1,458

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

	For the Nine Months Ended September 30, 2009 Restricted Stock Units	For the Nine Months Ended September 30, 2009 Weighted-Average Grant Date Fair Value
Total restricted stock units outstanding, beginning of period	1,452,734	$27.87
Granted	6,666	11.11
Vested	(30,000)	25.90
Forfeited and cancelled	(618,958)	30.12
Total restricted stock units outstanding, end of period	810,442	26.10
Restricted performance units outstanding, end of period (1)	585,067	24.07

(1) These restricted performance units, which are included in the caption "Total restricted stock units outstanding, end of period," were issued pursuant to two separate long-term, performance-based stock incentive plans. Vesting of these restricted performance units is contingent upon meeting certain long-term company goals. See discussion of the 2005 LTIP and 2008 LTIP below.

Long-Term Performance-Based Plans

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

Contingent compensation related to the 2005 LTIP will not be recorded in our financial statements unless and until management concludes achievement of the performance condition is probable. Given the competitive nature of our business, small variations in subscriber churn, gross subscriber addition rates and certain other factors can significantly impact subscriber growth. Consequently, while it was determined that achievement of the goal was not probable as of September 30, 2009, that assessment could change at any time.

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

	2005 LTIP	
	Total	Vested Portion
	(In thousands)	
DISH Network awards held by DISH Network employees	$ 39,097	$ 13,856
EchoStar awards held by DISH Network employees	7,938	2,813
Total	$ 47,035	$ 16,669

2008 LTIP. In December 2008, we adopted a long-term, performance-based stock incentive plan (the "2008 LTIP"). The 2008 LTIP provides stock options and restricted stock units, either alone or in combination, which vest based on company-specific subscriber and financial metrics. Exercise of the stock awards is contingent on achieving these goals prior to December 31, 2015.

As of September 30, 2009, we generated cumulative free cash flow in excess of $1.0 billion which will result in approximately 10% of the 2008 LTIP stock awards vesting during the fourth quarter 2009. We recorded non-cash, stock-based compensation expense for the nine months ended September 30, 2009 as indicated in the table below. Additional compensation related to the 2008 LTIP will be recorded based on management's assessment of the probability of meeting the remaining performance conditions. If the remaining goals are probable of being achieved and stock awards vest, we will recognize the additional non-cash, stock-based compensation expense on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss) over the term of this stock incentive plan as follows.

2008 LTIP	Non-Cash Stock-Based Compensation Expense
	(In thousands)
Total expense	$ 26,214
Less:	
Expense recognized during the nine months ended September 30, 2009	(1,935)
Remaining expense expected to be recognized during 2009	(366)
Remaining expense over the term of the plan	$ 23,913

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued
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Of the 21.7 million stock options and 0.8 million restricted stock units outstanding under our stock incentive plans as of September 30, 2009, the following awards were outstanding pursuant to the 2005 LTIP and the 2008 LTIP:

	As of September 30, 2009	
	Number of Awards	Weighted-Average Exercise Price
Stock Options		
2005 LTIP	3,656,250	$25.06
2008 LTIP	5,976,500	$11.49
Total	9,632,750	$16.64
Restricted Performance Units		
2005 LTIP	504,245	
2008 LTIP	80,822	
Total	585,067	

Stock-Based Compensation

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

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2009	2008	2009	2008
	(In thousands)			
Subscriber-related	$ 241	$ 213	$ 747	$ 673
General and administrative	1,041	3,676	7,810	11,017
Total non-cash, stock-based compensation	$ 1,282	$ 3,889	$ 8,557	$ 11,690

As of September 30, 2009, our total unrecognized compensation cost related to our non-performance based unvested stock awards was $28 million and includes compensation expense that we will recognize for EchoStar stock awards held by our employees as a result of the Spin-off. This cost is based on an estimated future forfeiture rate of approximately 4.0% per year and will be recognized over a weighted-average period of approximately three years. Share-based compensation expense is recognized based on stock awards ultimately expected to vest and is reduced for estimated forfeitures. Forfeitures are estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates. Changes in the estimated forfeiture rate can have a significant effect on share-based compensation expense since the effect of adjusting the rate is recognized in the period the forfeiture estimate is changed.

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

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2009	2008	2009	2008
Stock Options				
Risk-free interest rate	2.67% - 3.00%	3.15%	1.97% - 3.19%	2.74% - 3.42%
Volatility factor	33.10% - 34.00%	24.90%	29.72% - 34.00%	19.98% - 24.90%
Expected term of options in years	6.2 - 6.7	6.1	6.0 - 7.3	6.0 - 6.1
Weighted-average fair value of options granted	$7.37 - $7.74	$6.65	$3.86 - $7.74	$6.65 - $8.72

On November 6, 2009, our board of directors declared a dividend of $2.00 per share on our outstanding Class A and Class B common stock. The dividend will be payable in cash on December 2, 2009 to shareholders of record on November 20, 2009. We do not intend to pay additional dividends on our common stock and accordingly, the dividend yield percentage used in the Black-Scholes option valuation model is set at zero for all periods. The Black-Scholes option valuation model was developed for use in estimating the fair value of traded stock options which have no vesting restrictions and are fully transferable. Consequently, our estimate of fair value may differ from other valuation models. Further, the Black-Scholes option valuation model requires the input of highly subjective assumptions. Changes in the subjective input assumptions can materially affect the fair value estimate. Therefore, we do not believe the existing models provide as reliable a single measure of the fair value of stock-based compensation awards as a market-based model would.

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

10. Commitments and Contingencies

Commitments

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

	Payments due by period						
	Total	2009	2010	2011	2012	2013	Thereafter
				(In thousands)			
Long-term debt obligations	$ 5,818,287	$ 26,181	$ 4,142	$ 1,004,375	$ 4,622	$ 504,183	$ 4,274,784
Capital lease obligations	309,535	4,886	22,382	21,054	20,582	22,646	217,985
Interest expense on long-term debt and capital lease obligations	2,695,287	118,866	438,690	433,780	368,089	365,985	969,877
Satellite-related obligations	1,639,821	81,900	116,795	107,082	154,222	154,005	1,025,817
Operating lease obligations	120,285	12,032	45,753	25,220	19,402	9,817	8,061
Purchase obligations	1,342,570	1,093,823	194,480	19,160	15,450	15,827	3,830
Total	$ 11,925,785	$ 1,337,688	$ 822,242	$ 1,610,671	$ 582,367	$ 1,072,463	$ 6,500,354

The table above does not include $246 million of liabilities associated with unrecognized tax benefits which were accrued and are included on our Condensed Consolidated Balance Sheets as of September 30, 2009. We do not expect any portion of this amount to be paid or settled within the next twelve months.

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

We have not yet procured a contract for the launch of our EchoStar XV satellite. While the cost of this launch will depend upon the terms and conditions of the contract, we estimate that the cost could range from approximately $90 million to $120 million, which is not included in the table above. We anticipate incurring this cost between the current period and the expected launch of the satellite in late 2010.

On November 6, 2009, our board of directors declared a dividend of $2.00 per share on our outstanding Class A and Class B common stock. The dividend will be payable in cash on December 2, 2009 to shareholders of record on November 20, 2009. Based on the number of shares of our Class A and B common stock outstanding as of October 23, 2009, we will distribute approximately $894 million in cash to our shareholders as part of the dividend. This dividend is not included in the table above.

Guarantees

In connection with the Spin-off, we distributed certain satellite lease agreements to EchoStar and remained the guarantor under those capital leases for payments totaling approximately $444 million over the next eight years that are not included in the table above.

In addition, during the third quarter of 2009, EchoStar entered into a new satellite transponder service agreement for Nimiq 5 through 2024. We sublease this capacity from EchoStar and also guarantee a certain portion of its obligation under this agreement through 2019. As of September 30, 2009, the remaining obligation under this agreement was $591 million and is included in the table above.

As of September 30, 2009, we have not recorded a liability on the balance sheet for any of these guarantees.

Contingencies

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

Acacia

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

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

Broadcast Innovation, L.L.C.

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

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

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

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — Continued
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Channel Bundling Class Action

On September 21, 2007, a purported class of cable and satellite subscribers filed an antitrust action against us in the United States District Court for the Central District of California. The suit also names as defendants DirecTV, Comcast, Cablevision, Cox, Charter, Time Warner, Inc., Time Warner Cable, NBC Universal, Viacom, Fox Entertainment Group, and Walt Disney Company. The suit alleges, among other things, that the defendants engaged in a conspiracy to provide customers with access only to bundled channel offerings as opposed to giving customers the ability to purchase channels on an "a la carte" basis. On October 16, 2009, the Court granted defendants' motion to dismiss with prejudice. The plaintiffs have appealed. We intend to vigorously defend this case. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

Enron Commercial Paper Investment

During October 2001, we received approximately $40 million from the sale of Enron commercial paper to a third party broker. That commercial paper was ultimately purchased by Enron. During November 2003, an action was commenced in the United States Bankruptcy Court for the Southern District of New York against approximately 100 defendants, including us, who invested in Enron's commercial paper. On April 7, 2009, we settled the litigation for an immaterial amount.

ESPN

On January 30, 2008, we filed a lawsuit against ESPN, Inc., ESPN Classic, Inc., ABC Cable Networks Group, Soapnet L.L.C., and International Family Entertainment (collectively "ESPN") for breach of contract in New York State Supreme Court. Our complaint alleges that ESPN failed to provide us with certain high-definition feeds of the Disney Channel, ESPN News, Toon, and ABC Family. ESPN asserted a counterclaim, and then filed a motion for summary judgment, alleging that we owed approximately $35 million under the applicable affiliation agreements. We brought a motion to amend our complaint to assert that ESPN was in breach of certain most-favored-nation provisions under the affiliation agreements. On April 15, 2009, the trial court granted our motion to amend the complaint, and granted, in part, ESPN's motion on the counterclaim, finding that we are liable for some of the amount alleged to be owing but that the actual amount owing is disputed and will have to be determined at a later date. We will appeal the partial grant of ESPN's motion. Since the partial grant of ESPN's motion, they have sought an additional $30 million under the applicable affiliation agreements. We intend to vigorously prosecute and defend this case. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

Finisar Corporation

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

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

We intend to vigorously prosecute this case. In the event that a Court ultimately determines that we infringe the asserted patent, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could require us to modify our system architecture. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

Global Communications

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

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

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

Guardian Media

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

Katz Communications

During June 2007, Ronald A. Katz Technology Licensing, L.P. (“Katz”) filed a patent infringement action against us in the United States District Court for the Northern District of California. The suit alleges infringement of 19 patents owned by Katz. The patents relate to interactive voice response, or IVR, technology.

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

Multimedia Patent Trust

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

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

NorthPoint Technology

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

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

Personalized Media Communications

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

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

Retailer Class Actions

During 2000, lawsuits were filed by retailers in Colorado state and federal courts attempting to certify nationwide classes on behalf of certain of our retailers. The plaintiffs are requesting the Courts declare certain provisions of, and changes to, alleged agreements between us and the retailers invalid and unenforceable, and to award damages for lost incentives and payments, charge backs, and other compensation. We have asserted a variety of counterclaims. The federal court action has been stayed during the pendency of the state court action. We filed a motion for summary judgment on all counts and against all plaintiffs. The plaintiffs filed a motion for additional time to conduct discovery to enable them to respond to our motion. The state court granted limited discovery which ended during 2004. The plaintiffs claimed we did not provide adequate disclosure during the discovery process. The state court agreed, and denied our motion for summary judgment as a result. In April 2008, the state court granted plaintiff's class certification motion and in January 2009, the state court entered an order excluding certain evidence that we can present at trial based on the prior discovery issues. The state court also denied plaintiffs' request to dismiss our counterclaims. The final impact of the court's evidentiary ruling cannot be fully assessed at this time. In May 2009, plaintiffs filed a motion for default judgment based on new allegations of discovery misconduct. We intend to vigorously defend this case. We cannot predict with any degree of certainty the outcome of the lawsuit or determine the extent of any potential liability or damages.

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Technology Development Licensing

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

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

Tivo Inc.

During January 2008, the United States Court of Appeals for the Federal Circuit affirmed in part and reversed in part the April 2006 jury verdict concluding that certain of our digital video recorders, or DVRs, infringed a patent held by Tivo. As of September 2008, we had recorded a total reserve of $132 million on our Condensed Consolidated Balance Sheets to reflect the April 2006 jury verdict, supplemental damages through September 2006 and pre-judgment interest awarded by the Texas court, together with the estimated cost of potential further software infringement prior to implementation of our alternative technology, discussed below, plus interest subsequent to entry of the judgment. In its January 2008 decision, the Federal Circuit affirmed the jury's verdict of infringement on Tivo's "software claims," and upheld the award of damages from the District Court. The Federal Circuit, however, found that we did not literally infringe Tivo's "hardware claims," and remanded such claims back to the District Court for further proceedings. On October 6, 2008, the Supreme Court denied our petition for certiorari. As a result, approximately $105 million of the total $132 million reserve was released from an escrow account to Tivo.

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

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

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

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

On August 3, 2009, the Patent and Trademark Office (the "PTO") issued an initial office action rejecting the software claims of United States Patent No. 6,233,389 (the '389 patent) as being invalid in light of two prior patents. These are the same software claims that we were found to have infringed and which underlie the contempt ruling now pending on appeal. We believe that the PTO's conclusions are relevant to the issues on appeal as well as the pending sanctions proceedings in the District Court. The PTO's conclusions support our position that our original alternative technology is more than colorably different than the devices found to infringe by the jury; that our original alternative technology does not infringe; and that we acted in good faith to design around Tivo's patent.

On September 4, 2009, the District Court partially granted Tivo's motion for contempt sanctions. In partially granting Tivo's motion for contempt sanctions, the District Court awarded $2.25 per DVR subscriber per month for the period from April 2008 to July 2009 (as compared to the award for supplemental damages for the prior period from September 2006 to April 2008, which was based on an assumed $1.25 per DVR subscriber per month). By the District Court's estimation, the total award for the period from April 2008 to July 2009 is approximately $200 million (the enforcement of the award has been stayed by the District Court pending DISH Network's appeal of the underlying June 2, 2009 contempt order). During the three and nine months ended September 30, 2009, we increased our total reserve by $132 million and $328 million, respectively, to reflect the supplemental damages and interest for the period from implementation of our original alternative technology through April 2008 and for the estimated cost of alleged software infringement (including contempt sanctions for the period from April 2008 through June 2009) for the period from April 2008 through September 2009 plus interest. Our total reserve at September 30, 2009 was $360 million and is included in "Other accrued expenses" on our Condensed Consolidated Balance Sheets.

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

If we are unsuccessful in overturning the District Court's ruling on Tivo's motion for contempt, we are not successful in developing and deploying potential new alternative technology and we are unable to reach a license agreement with Tivo on reasonable terms, we would be required to eliminate DVR functionality in all but approximately 192,000 digital set-top boxes in the field and cease distribution of digital set-top boxes with DVR functionality. In that event we would be at a significant disadvantage to our competitors who could continue offering DVR functionality, which would likely result in a significant decrease in new subscriber additions as well as a substantial loss of current subscribers. Furthermore, the inability to offer DVR functionality could cause certain of our distribution channels to terminate or significantly decrease their marketing of DISH Network services. The adverse effect on our financial position and results of operations if the District Court's contempt order is upheld is likely to be significant. Additionally, the supplemental damage award of $103 million and further award of approximately $200 million does not include damages, contempt sanctions or interest for the period after June 2009. In the event that we are unsuccessful in our appeal, we could also have to pay substantial additional damages, contempt sanctions and interest. Depending on the amount of any additional damage or sanction award or any monetary settlement, we may be required to raise additional capital at a time and in circumstances in which we would normally not raise capital. Therefore, any capital we raise may be on terms that are unfavorable to us, which might adversely affect our financial position and results of operations and might also impair our ability to raise capital on acceptable terms in the future to fund our own operations and initiatives. We believe the cost of such capital and its terms and conditions may be substantially less attractive than our previous financings.

If we are successful in overturning the District Court's ruling on Tivo's motion for contempt, but unsuccessful in defending against any subsequent claim in a new action that our original alternative technology or any potential new alternative technology infringes Tivo's patent, we could be prohibited from distributing DVRs or could be required to modify or eliminate our then-current DVR functionality in some or all set-top boxes in the field. In that event we would be at a significant disadvantage to our competitors who could continue offering DVR functionality and the adverse effect on our business could be material. We could also have to pay substantial additional damages.

Because both we and EchoStar are defendants in the Tivo lawsuit, we and EchoStar are jointly and severally liable to Tivo for any final damages and sanctions that may be awarded by the Court. We have determined that we are obligated under the agreements entered into in connection with the Spin-off to indemnify EchoStar for substantially all liability arising from this lawsuit. EchoStar has agreed to contribute an amount equal to its $5 million intellectual property liability limit under the Receiver Agreement. We and EchoStar have further agreed that EchoStar's $5 million contribution would not exhaust EchoStar's liability to us for other intellectual property claims that may arise under the Receiver Agreement. We and EchoStar also agreed that we would each be entitled to joint ownership of, and a cross-license to use, any intellectual property developed in connection with any potential new alternative technology.

Voom

On May 28, 2008, Voom HD Holdings ("Voom") filed a complaint against us in New York Supreme Court. The suit alleges breach of contract arising from our termination of the affiliation agreement we had with Voom for the carriage of certain Voom HD channels on the DISH Network satellite television service. In January 2008, Voom sought a preliminary injunction to prevent us from terminating the agreement. The Court denied Voom's motion, finding, among other things, that Voom was not likely to prevail on the merits of its case. Voom is claiming over $1.0 billion in damages. We intend to vigorously defend this case. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

Other

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

11. Depreciation and Amortization Expense

Depreciation and amortization expense consists of the following:

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2009	2008	2009	2008
	(In thousands)			
Equipment leased to customers	$ 191,778	$ 203,730	$ 591,729	$ 625,769
Satellites	22,184	21,581	64,247	71,596
Furniture, fixtures, equipment and other	11,824	18,817	35,327	60,674
Identifiable intangible assets subject to amortization	1,396	290	1,977	4,718
Buildings and improvements	1,213	1,228	3,708	3,503
Total depreciation and amortization	$ 228,395	$ 245,646	$ 696,988	$ 766,260

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

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12. Related Party Transactions with EchoStar

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

EchoStar is our primary supplier of set-top boxes and digital broadcast operations and our key supplier of transponder leasing. Generally the prices charged for products and services provided under the agreements entered into in connection with the Spin-off are based on pricing equal to EchoStar's cost plus a fixed margin (unless noted differently below), which will vary depending on the nature of the products and services provided. Prior to the Spin-off, these products were provided and services were performed internally at cost.

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

"Equipment sales — EchoStar"

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

"Transitional services and other revenue — EchoStar"

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

Management Services Agreement. We entered into a management services agreement with EchoStar pursuant to which we make certain of our officers available to provide services (which are primarily legal and accounting services) to EchoStar. Specifically, Bernard L. Han, R. Stanton Dodge and Paul W. Orban remain employed by us, but also serve as EchoStar's Executive Vice President and Chief Financial Officer, Executive Vice President and General Counsel, and Senior Vice President and Controller, respectively. EchoStar makes payments to us based upon an allocable portion of the personnel costs and expenses incurred by us with respect to such officers (taking into account wages and fringe benefits). These allocations are based upon the estimated percentages of time to be spent by our executive officers performing services for EchoStar under the management services agreement. EchoStar also reimburses us for direct out-of-pocket costs incurred by us for management services provided to EchoStar. We and EchoStar evaluate all charges for reasonableness at least annually and make any adjustments to these charges as we and EchoStar mutually agree upon.

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

Real Estate Lease Agreement. During 2008, we subleased space at 185 Varick Street, New York, New York to EchoStar for a period of approximately seven years. The rent on a per square foot basis for this sublease was comparable to per square foot rental rates of similar commercial property in the same geographic area at the time of the sublease, and EchoStar is responsible for its portion of the taxes, insurance, utilities and maintenance of the premises.

Packout Services Agreement. We entered into a packout services agreement with EchoStar, whereby EchoStar has the right, but not the obligation, to engage us to package and ship satellite receivers to customers that are not associated with us. The fees charged by us for the services provided under the packout services agreement are equal to our cost plus a fixed margin, which varies depending on the nature of the products and services provided. The original one year term of the packout services agreement was extended for an additional one year term and expires on December 31, 2009. EchoStar may terminate this agreement for any reason upon sixty days' prior written notice to us. In the event of an early termination of this agreement, EchoStar will be entitled to a refund of any unearned fees paid to us for the services. We do not expect to renew this agreement.

"Satellite and transmission expenses — EchoStar"

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

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

Nimiq 5 Lease Agreement. During March 2008, EchoStar entered into a fifteen-year satellite service agreement with Bell TV, to receive service on 16 DBS transponders on the Nimiq 5 satellite at the 72.7 degree orbital location (the "Bell Transponder Agreement"). During September 2009, EchoStar entered into a fifteen-year satellite service agreement with Telesat Canada ("Telesat") to receive service on all 32 DBS transponders on the Nimiq 5 satellite (the "Telesat Transponder Agreement"). As disclosed in EchoStar's Current Report on Form 8-K filed September 18, 2009, upon the occurrence of certain events, the Bell Transponder Agreement would terminate and the Telesat Transponder Agreement would become effective. As of October 8, 2009, the Bell Transponder Agreement terminated and the Telesat Transponder Agreement became effective. The Nimiq 5 satellite was placed into service on October 10, 2009.

During March 2008, EchoStar also entered into a satellite service agreement ("DISH Bell Agreement") with us, pursuant to which we will receive service from EchoStar on all of the DBS transponders covered by the Bell Transponder Agreement. We guaranteed certain obligations of EchoStar under the Bell Transponder Agreement. During September 2009, EchoStar also entered into a satellite service agreement (the "DISH Telesat Agreement")

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with us, pursuant to which we will receive service from EchoStar on all of the DBS transponders covered by the Telesat Transponder Agreement. We have also guaranteed certain obligations of EchoStar under the Telesat Transponder Agreement. See discussions under "Guarantees" in Note 10. As disclosed in our Current Report on Form 8-K filed September 18, 2009, upon the occurrence of certain events, the DISH Bell Agreement and our guarantee of certain obligations of EchoStar under the Bell Transponder Agreement would terminate and the DISH Telesat Agreement and our guarantee of certain obligations of EchoStar under the Telesat Transponder Agreement would become effective. As of October 8, 2009, the DISH Bell Agreement and associated guarantee terminated and the DISH Telesat Agreement and associated guarantee became effective.

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

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

Under the terms of the QuetzSat-1 Transponder Agreement, we will make certain monthly payments to EchoStar commencing when the QuetzSat-1 satellite is placed into service and continuing through the service term. Unless earlier terminated under the terms and conditions of the QuetzSat-1 Transponder Agreement, the service term will expire ten years following the actual service commencement date. Upon expiration of the initial term, we have the option to renew the QuetzSat-1 Transponder Agreement on a year-to-year basis through the end-of-life of the QuetzSat-1 satellite. Upon a launch failure, in-orbit failure or end-of-life of the QuetzSat-1 satellite, and in certain other circumstances, we have certain rights to receive service from EchoStar on a replacement satellite.

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

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

"Cost of sales — subscriber promotion subsidies — EchoStar"

Receiver Agreement. EchoStar is currently our sole supplier of set-top box receivers. The table below indicates the dollar value of set-top boxes and other equipment that we purchased from EchoStar as well as the amount of such purchases that are included in "Cost of sales — subscriber promotion subsidies — EchoStar" on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss). The remaining amount is included in "Inventories, net" and "Property and equipment, net" on our Condensed Consolidated Balance Sheets.

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	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2009	2008	2009	2008
	(In thousands)			
Set-top boxes and other equipment purchased from EchoStar	$ 314,362	$ 461,675	$ 838,965	$ 1,134,408
Set-top boxes and other equipment purchased from EchoStar included in “Cost of sales — subscriber promotion subsidies — EchoStar”	$ 56,293	$ 53,418	$ 152,215	$ 116,489

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

“General and administrative — EchoStar”

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

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

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

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

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

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

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

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

Other Agreements — EchoStar

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

Tivo. Because both we and EchoStar are defendants in the Tivo lawsuit, we and EchoStar are jointly and severally liable to Tivo for any final damages and sanctions that may be awarded by the Court. We have determined that we are obligated under the agreements entered into in connection with the Spin-off to indemnify EchoStar for substantially all liability arising from this lawsuit. EchoStar has agreed to contribute an amount equal to its $5 million intellectual property liability limit under the Receiver Agreement. We and EchoStar have further agreed that EchoStar's $5 million contribution would not exhaust EchoStar's liability to us for other intellectual property claims that may arise under the Receiver Agreement. We and EchoStar also agreed that we would each be entitled to joint ownership of, and a cross-license to use, any intellectual property developed in connection with any potential new alternative technology.

Other Agreements

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

13. Subsequent Events

3% Convertible Subordinated Note due 2011

On October 5, 2009, we repaid our $25 million 3% Convertible Subordinated Note due 2011.

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Dividend

On November 6, 2009, our board of directors declared a dividend of $2.00 per share on our outstanding Class A and Class B common stock. The dividend will be payable in cash on December 2, 2009 to shareholders of record on November 20, 2009. Based on the number of shares of our Class A and B common stock outstanding as of October 23, 2009, we will distribute approximately $894 million in cash to our shareholders as part of the dividend.

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

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

EXECUTIVE SUMMARY

Overview

DISH Network added approximately 241,000 and 173,000 net new subscribers during the three and nine months ended September 30, 2009, respectively. Our third quarter performance was positively impacted by our sales and marketing promotions and reduced churn. Our churn was positively impacted by, among other things, the second quarter 2009 completion of our security access device replacement program, an increase in our new subscriber commitment period and initiatives to retain subscribers. Historically, we have experienced slightly higher churn in the months following the expiration of programming commitments for new subscribers. In February 2008, we extended the required new subscriber programming commitment from 18 to 24 months. In the third quarter of 2009, due to the change in promotional mix, we have fewer expiring subscriber commitments. Current economic conditions have negatively impacted our subscriber growth. We continue to focus on addressing operational issues specific to DISH Network which we believe will contribute to long-term subscriber growth. "Subscriber-related expenses" have continued to increase and ARPU has been negatively impacted by promotional discounts on programming offered to new subscribers and our initiatives to retain subscribers, all of which negatively impact our subscriber-related margins. In addition, "Subscriber-related expenses" continued to be negatively impacted by increased programming costs, initiatives to retain subscribers and migrate certain subscribers to free up transponder capacity, and improve customer service.

The current overall economic environment has negatively impacted many industries including ours. In addition, the overall growth rate in the pay-TV industry has slowed in recent years as the penetration of pay-TV households approaches 90%. Within this maturing industry, competition has intensified with the rapid growth of fiber-based pay-TV services offered by telecommunications companies. Furthermore, new internet protocol television ("IPTV") products/services have begun to impact the pay-TV industry and such products/services will become more viable competition over time as their quality improves. In spite of these factors that have impacted the entire pay-TV industry, certain of our competitors have been able to achieve relatively strong subscriber growth in the current environment.

While economic factors have impacted the entire pay-TV industry, our relative performance has been mostly driven by issues specific to DISH Network. In recent years, DISH Network's position as the low cost provider in the pay-TV industry has been eroded by increasingly aggressive promotional pricing used by our competitors to attract new subscribers and similarly aggressive promotions and tactics used to retain existing subscribers. Some competitors have been especially aggressive and effective in marketing their service. Furthermore, our subscriber growth has been adversely affected by signal theft and other forms of fraud and by operational inefficiencies at DISH Network. We have not always met our own standards for performing high quality installations, effectively resolving customer issues when they arise, answering customer calls in an acceptable timeframe, effectively communicating with our subscriber base, reducing calls driven by the complexity of our business, improving the reliability of certain systems and subscriber equipment, and aligning the interests of certain third party retailers and installers to provide high quality service.

Our distribution relationship with AT&T was a substantial contributor to our gross and net subscriber additions over the past several years, accounting for approximately 17% of our gross subscriber additions for the year ended December 31, 2008. This distribution relationship ended January 31, 2009. Consequently, beginning with the second quarter 2009, AT&T no longer contributes to our gross subscriber additions. In addition, nearly one million of our current subscribers were acquired through our distribution relationship with AT&T and subscribers acquired through this channel have historically churned at a higher rate than our overall subscriber base. Although AT&T is not permitted to target these subscribers for transition to another pay-TV service and we and AT&T are required to maintain bundled billing and cooperative customer service for these subscribers, these subscribers may still churn at higher than historical rates following termination of the AT&T distribution relationship.

We have been investing more in advanced technology equipment as part of our subscriber acquisition and retention efforts. Recent initiatives to transmit certain programming only in MPEG-4 and to activate most new subscribers only with MPEG-4 receivers have accelerated our deployment of MPEG-4 receivers. To meet current demand, we have increased the rate at which we upgrade existing subscribers to HD and DVR receivers. While these efforts may increase our subscriber acquisition and retention costs, we believe that they will help reduce subscriber churn and costs over the long run.

We have also been changing equipment to migrate certain subscribers to free up transponder capacity in support of HD and other initiatives. We expect to continue these initiatives through 2010. We believe that the benefit from the increase in available transponder capacity outweighs the short-term cost of these equipment changes.

To combat signal theft and improve the security of our broadcast system, we recently completed the replacement of our security access devices to re-secure our system. We expect additional future replacements of these devices to be necessary to keep our system secure. To combat other forms of fraud, we have taken a wide range of actions including terminating retailers that we believe were in violation of DISH Network's business rules. While these initiatives may inconvenience our subscribers and disrupt our distribution channels in the short-term, we believe that the long-term benefits will outweigh the costs.

To address our operational inefficiencies, we continue to make significant investments in staffing, training, information systems, and other initiatives, primarily in our call center and in-home service businesses. These investments are intended to help combat inefficiencies introduced by the increasing complexity of our business, improve customer satisfaction, reduce churn, increase productivity, and allow us to scale better over the long run. We cannot, however, be certain that our increased spending will ultimately be successful in yielding such returns. In the meantime, we may continue to incur higher costs as a result of both our operational inefficiencies and increased spending. The adoption of these measures has contributed to higher expenses and lower margins. While we believe that the increased costs will be outweighed by longer-term benefits, there can be no assurance when or if we will realize these benefits at all.

Programming costs represent a large percentage of our "Subscriber-related expenses." As a result, our margins may face further downward pressure from price increases and the renewal of long-term programming contracts on less favorable pricing terms.

Over the long run, we plan to use Slingbox "placeshifting" technology and other technologies to maintain and enhance our competitiveness. We may also partner with or acquire companies whose lines of business are complementary to ours should attractive opportunities arise.

Liquidity Drivers

Like many companies, we make general investments in property such as satellites, information technology and facilities that support our overall business. As a subscriber-based company, however, we also make customer-specific investments to acquire new subscribers and retain existing subscribers. While the general investments may be deferred without impacting the business in the short-term, the customer-specific investments are less discretionary. Our overall objective is to generate sufficient cash flow over the life of each subscriber to provide an adequate return against the upfront investment. Once the upfront investment has been made for each subscriber, the subsequent cash flow is generally positive.

From a company standpoint, there are a number of factors that impact our future cash flow compared to the cash flow we generate at a given point in time. The first factor is how successful we are at retaining our current subscribers. As we lose subscribers from our existing base, the positive cash flow from that base is correspondingly reduced. The second factor is how successful we are at maintaining our subscriber-related margins. To the extent our "Subscriber-related expenses" grow faster than our "Subscriber-related revenue," the amount of cash flow that is generated per existing subscriber is reduced. The third factor is the rate at which we acquire new subscribers. The faster we acquire new subscribers, the more our positive ongoing cash flow from existing subscribers is offset by the negative upfront cash flow associated with new subscribers. Finally, our future cash flow is impacted by the rate at which we make general investments and any cash flow from financing activities.

Our customer-specific investments to acquire new subscribers have a significant impact on our cash flow. While fewer subscribers might translate into lower ongoing cash flow in the long-term, cash flow is actually aided in the short-term by the reduction in customer-specific investment spending. As a result, a slow down in our business due to external or internal factors does not introduce the same level of short-term liquidity risk as it might in other industries.

Availability of Credit and Effect on Liquidity

While the ability to raise capital has generally existed for DISH Network even during the recent market turmoil, the cost of such capital has not been as attractive as in prior periods. Because of the cash flow situation of our company and the absence of any material debt payments over the next two years, the higher cost of capital will not impact our current operational plans. However, we might be less likely than we would otherwise be to pursue initiatives which could increase shareholder value over the long run, such as making strategic investments, prepaying debt, or buying back our own stock. Alternatively, if we decided to still pursue such initiatives, the cost of doing so would be greater. Currently, we have no existing lines of credit, nor have we historically.

Future Liquidity

Our "Subscriber-related expenses" as a percentage of "Subscriber-related revenue" grew from 51.4% to 52.2% in 2008 and reached 54.7% during the nine months ended September 30, 2009, mainly as a result of an increase in "Subscriber-related expenses." Our "Subscriber-related expenses" continued to be negatively impacted by initiatives to retain subscribers, migrate certain subscribers to free up transponder capacity and improve customer service. In addition, our "Subscriber-related revenue" was negatively impacted by our increase in the use of promotional discounts on programming offered to new subscribers and retention initiatives offered to existing subscribers. Uncertainties about these trends may impact our cash flow and results of operations. In addition, although our subscribers have recently grown, we continue to be impacted by operational issues specific to DISH Network, as previously discussed.

If we are unsuccessful in overturning the District Court's ruling on Tivo's motion for contempt, we are not successful in developing and deploying potential new alternative technology and we are unable to reach a license agreement with Tivo on reasonable terms, we would be required to eliminate DVR functionality in all but approximately 192,000 digital set-top boxes in the field and cease distribution of digital set-top boxes with DVR functionality. In that event we would be at a significant disadvantage to our competitors who could continue offering DVR functionality, which would likely result in a significant decrease in new subscriber additions as well as a substantial loss of current subscribers. Furthermore, the inability to offer DVR functionality could cause certain of our distribution channels to terminate or significantly decrease their marketing of DISH Network services. The adverse effect on our financial position and results of operations if the District Court's contempt order is upheld is likely to be significant. Additionally, the supplemental damage award of $103 million and further award of approximately $200 million does not include damages, contempt sanctions or interest for the period after June 2009. In the event that we are unsuccessful in our appeal, we could also have to pay substantial additional damages, contempt sanctions and interest. Depending on the amount of any additional damage or sanction award or any monetary settlement, we may be required to raise additional capital at a time and in circumstances in which we would normally not raise capital. Therefore, any capital we raise may be on terms that are unfavorable to us, which might adversely affect our financial position and results of operations and might also impair our ability to raise capital on acceptable terms in the future to fund our own operations and initiatives. We believe the cost of such capital and its terms and conditions may be substantially less attractive than our previous financings.

If we are successful in overturning the District Court's ruling on Tivo's motion for contempt, but unsuccessful in defending against any subsequent claim in a new action that our original alternative technology or any potential new alternative technology infringes Tivo's patent, we could be prohibited from distributing DVRs or could be required to modify or eliminate our then-current DVR functionality in some or all set-top boxes in the field. In that event we would be at a significant disadvantage to our competitors who could continue offering DVR functionality and the adverse effect on our business could be material. We could also have to pay substantial additional damages.

Because both we and EchoStar are defendants in the Tivo lawsuit, we and EchoStar are jointly and severally liable to Tivo for any final damages and sanctions that may be awarded by the Court. We have determined that we are obligated under the agreements entered into in connection with the Spin-off to indemnify EchoStar for substantially all liability arising from this lawsuit. EchoStar has agreed to contribute an amount equal to its $5 million intellectual property liability limit under the Receiver Agreement. We and EchoStar have further agreed that EchoStar's $5 million contribution would not exhaust EchoStar's liability to us for other intellectual property claims that may arise under the Receiver Agreement. We and EchoStar also agreed that we would each be entitled to joint ownership of, and a cross-license to use, any intellectual property developed in connection with any potential new alternative technology.

The Spin-off

On January 1, 2008, we completed the separation of the assets and businesses we historically owned and operated into two companies (the "Spin-off"):

- *DISH Network Corporation* — which retained its DISH Network® subscription television business, and
- *EchoStar Corporation* ("EchoStar") — which sells equipment, including set-top boxes and related components, to DISH Network and international customers, and provides digital broadcast operations and satellite services to DISH Network and other customers.

DISH Network and EchoStar now operate as separate publicly traded companies, and neither entity has any ownership interest in the other. However, a substantial majority of the voting power of both companies is owned beneficially by Charles W. Ergen, our Chairman, President and Chief Executive Officer or by certain trusts established by Mr. Ergen for the benefit of his family. In connection with the Spin-off, DISH Network entered into certain agreements with EchoStar to define responsibility for obligations relating to, among other things, set-top box sales, transition services, taxes, employees and intellectual property, which impact several of our key operating metrics. The fees we pay to EchoStar to access assets or receive certain services following the Spin-off, after taking into account the cost savings realized from the Spin-off, have not had a significant impact on our operations. Subsequent to the Spin-off, we have entered into certain other agreements with EchoStar and may enter into additional agreements with EchoStar in the future.

EXPLANATION OF KEY METRICS AND OTHER ITEMS

Subscriber-related revenue. "Subscriber-related revenue" consists principally of revenue from basic, premium movie, local, pay-per-view, Latino and international subscription television services, equipment rental fees and other hardware related fees, including fees for DVRs and additional outlet fees from subscribers with multiple receivers, advertising services, fees earned from our DishHOME Protection Plan, equipment upgrade fees, HD programming and other subscriber revenue. Certain of the amounts included in "Subscriber-related revenue" are not recurring on a monthly basis.

Equipment sales and other revenue. "Equipment sales and other revenue" principally includes the non-subsidized sales of DBS accessories to retailers and other third-party distributors of our equipment domestically and to DISH Network subscribers.

Equipment sales, transitional services and other revenue — EchoStar. "Equipment sales, transitional services and other revenue — EchoStar" includes revenue related to equipment sales, and transitional services and other agreements with EchoStar associated with the Spin-off.

Subscriber-related expenses. "Subscriber-related expenses" principally include programming expenses, costs incurred in connection with our in-home service and call center operations, billing costs, refurbishment and repair costs related to receiver systems, subscriber retention and other variable subscriber expenses.

***Satellite and transmission expenses — EchoStar*.** "Satellite and transmission expenses — EchoStar" includes the cost of digital broadcast operations provided to us by EchoStar, including satellite uplinking/downlinking, signal processing, conditional access management, telemetry, tracking and control and other professional services. In addition, this category includes the cost of leasing satellite and transponder capacity on satellites from EchoStar.

***Satellite and transmission expenses — other*.** "Satellite and transmission expenses — other" includes executory costs associated with capital leases and costs associated with transponder leases and other related services.

Equipment, transitional services and other cost of sales. "Equipment, transitional services and other cost of sales" principally includes the cost of non-subsidized sales of DBS accessories to retailers and other distributors of our equipment domestically and to DISH Network subscribers. In addition, this category includes costs related to equipment sales, transitional services and other agreements with EchoStar associated with the Spin-off.

***Subscriber acquisition costs*.** In addition to leasing receivers, we generally subsidize installation and all or a portion of the cost of our receiver systems in order to attract new DISH Network subscribers. Our "Subscriber acquisition costs" include the cost of these receiver systems sold to retailers and other distributors of our equipment, the cost of these receiver systems sold directly by us to subscribers, net costs related to our promotional incentives, and costs related to installation and acquisition advertising. We exclude the value of equipment capitalized under our lease program for new subscribers from "Subscriber acquisition costs."

SAC. Management believes subscriber acquisition cost measures are commonly used by those evaluating companies in the pay-TV industry. We are not aware of any uniform standards for calculating the "average subscriber acquisition costs per new subscriber activation," or SAC, and we believe presentations of SAC may not be calculated consistently by different companies in the same or similar businesses. Our SAC is calculated as "Subscriber acquisition costs," plus the value of equipment capitalized under our lease program for new subscribers, divided by gross subscriber additions. We include all the costs of acquiring subscribers (e.g., subsidized and capitalized equipment) as our management believes it is a more comprehensive measure of how much we are spending to acquire subscribers. We also include all new DISH Network subscribers in our calculation, including DISH Network subscribers added with little or no subscriber acquisition costs.

***General and administrative expenses*.** "General and administrative expenses" consists primarily of employee-related costs associated with administrative services such as legal, information systems, accounting and finance, including non-cash, stock-based compensation expense. It also includes outside professional fees (e.g., legal, information systems and accounting services) and other items associated with facilities and administration.

Interest expense, net of amounts capitalized. "Interest expense, net of amounts capitalized" primarily includes interest expense, prepayment premiums and amortization of debt issuance costs associated with our senior debt and convertible subordinated debt securities (net of capitalized interest) and interest expense associated with our capital lease obligations.

Other, net. The main components of "Other, net" are unrealized gains and losses from changes in fair value of non-marketable strategic investments accounted for at fair value, equity in earnings and losses of our affiliates, gains and losses realized on the sale of investments, and impairment of marketable and non-marketable investment securities.

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

DISH Network subscribers. We include customers obtained through direct sales, and third-party retailers and other distribution relationships in our DISH Network subscriber count. We also provide DISH Network service to hotels, motels and other commercial accounts. For certain of these commercial accounts, we divide our total revenue for these commercial accounts by an amount approximately equal to the retail price of our Classic Bronze 100 programming package (but taking into account, periodically, price changes and other factors), and include the resulting number, which is substantially smaller than the actual number of commercial units served, in our DISH

Network subscriber count. Previously, our end of period DISH Network subscriber count was rounded down to the nearest five thousand. However, beginning December 31, 2008, we round to the nearest one thousand.

Average monthly revenue per subscriber ("ARPU"). We are not aware of any uniform standards for calculating ARPU and believe presentations of ARPU may not be calculated consistently by other companies in the same or similar businesses. We calculate average monthly revenue per subscriber, or ARPU, by dividing average monthly "Subscriber-related revenue" for the period (total "Subscriber-related revenue" during the period divided by the number of months in the period) by our average DISH Network subscribers for the period. Average DISH Network subscribers are calculated for the period by adding the average DISH Network subscribers for each month and dividing by the number of months in the period. Average DISH Network subscribers for each month are calculated by adding the beginning and ending DISH Network subscribers for the month and dividing by two.

Average monthly subscriber churn rate. We are not aware of any uniform standards for calculating subscriber churn rate and believe presentations of subscriber churn rates may not be calculated consistently by different companies in the same or similar businesses. We calculate subscriber churn rate for any period by dividing the number of DISH Network subscribers who terminated service during the period by the average monthly DISH Network subscribers during the period, and further dividing by the number of months in the period. When calculating subscriber churn, as is the case when calculating ARPU, the number of subscribers in a given month is based on the average of the beginning-of-month and the end-of-month subscriber counts.

Free cash flow. We define free cash flow as "Net cash flows from operating activities" less "Purchases of property and equipment," as shown on our Condensed Consolidated Statements of Cash Flows.

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

RESULTS OF OPERATIONS

Three Months Ended September 30, 2009 Compared to the Three Months Ended September 30, 2008.

	For the Three Months Ended September 30,		Variance	
Statements of Operations Data	**2009**	**2008**	**Amount**	**%**
	(In thousands)			
Revenue:				
Subscriber-related revenue	$2,862,554	$2,886,157	$ (23,603)	(0.8)
Equipment sales and other revenue	23,393	41,918	(18,525)	(44.2)
Equipment sales, transitional services and other revenue — EchoStar	6,200	8,706	(2,506)	(28.8)
Total revenue	2,892,147	2,936,781	(44,634)	(1.5)
Costs and Expenses:				
Subscriber-related expenses	1,623,397	1,534,133	89,264	5.8
% of Subscriber-related revenue	**56.7%**	**53.2%**		
Satellite and transmission expenses — EchoStar	78,911	76,848	2,063	2.7
% of Subscriber-related revenue	**2.8%**	**2.7%**		
Satellite and transmission expenses — Other	8,962	7,651	1,311	17.1
% of Subscriber-related revenue	**0.3%**	**0.3%**		
Equipment, transitional services and other cost of sales	28,651	69,315	(40,664)	(58.7)
Subscriber acquisition costs	439,590	437,766	1,824	0.4
General and administrative expenses	157,648	147,582	10,066	6.8
% of Total revenue	**5.5%**	**5.0%**		
Tivo litigation expense	131,930	—	131,930	NM
Depreciation and amortization	228,395	245,646	(17,251)	(7.0)
Total costs and expenses	2,697,484	2,518,941	178,543	7.1
Operating income (loss)	194,663	417,840	(223,177)	(53.4)
Other Income (Expense):				
Interest income	7,591	16,609	(9,018)	(54.3)
Interest expense, net of amounts capitalized	(98,857)	(101,802)	2,945	2.9
Other, net	(1,915)	(106,055)	104,140	98.2
Total other income (expense)	(93,181)	(191,248)	98,067	51.3
Income (loss) before income taxes	101,482	226,592	(125,110)	(55.2)
Income tax (provision) benefit, net	(20,989)	(134,697)	113,708	84.4
Effective tax rate	**20.7%**	**59.4%**		
Net income (loss)	80,493	91,895	(11,402)	(12.4)
Less: Net income (loss) attributable to noncontrolling interest	(69)	—	(69)	NM
Net income (loss) attributable to DISH Network common shareholders	$ 80,562	$ 91,895	$ (11,333)	(12.3)
Other Data:				
DISH Network subscribers, as of period end (in millions)	13.851	13.780	0.071	0.5
DISH Network subscriber additions, gross (in millions)	0.887	0.825	0.062	7.5
DISH Network subscriber additions, net (in millions)	0.241	(0.010)	0.251	NM
Average monthly subscriber churn rate	1.57%	2.02%	(0.45%)	(22.3)
Average monthly revenue per subscriber ("ARPU")	$ 69.51	$ 69.82	$ (0.31)	(0.4)
Average subscriber acquisition cost per subscriber ("SAC")	$ 694	$ 735	$ (41)	(5.6)
EBITDA	$ 421,212	$ 557,431	$(136,219)	(24.4)

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

Overview. Revenue totaled $2.892 billion for the three months ended September 30, 2009, a decrease of $45 million or 1.5% compared to the same period in 2008. "Net income (loss) attributable to DISH Network common shareholders" totaled $81 million, a decrease of $11 million or 12.3%.

DISH Network added approximately 241,000 net new subscribers during the three months ended September 30, 2009. Our third quarter performance was positively impacted by our sales and marketing promotions and reduced churn. Our churn was positively impacted by, among other things, the second quarter 2009 completion of our security access device replacement program, an increase in our new subscriber commitment period and initiatives to retain subscribers. Historically, we have experienced slightly higher churn in the months following the expiration of programming commitments for new subscribers. In February 2008, we extended the required new subscriber programming commitment from 18 to 24 months. In the third quarter of 2009, due to the change in promotional mix, we have fewer expiring subscriber commitments. Current economic conditions have negatively impacted our subscriber growth. We continue to focus on addressing operational issues specific to DISH Network which we believe will contribute to long-term subscriber growth. "Subscriber-related expenses" have continued to increase and ARPU has been negatively impacted by promotional discounts on programming offered to new subscribers and our initiatives to retain subscribers, all of which negatively impact our subscriber-related margins. In addition, "Subscriber-related expenses" continued to be negatively impacted by increased programming costs, initiatives to retain subscribers and migrate certain subscribers to free up transponder capacity, and improve customer service.

DISH Network subscribers. As of September 30, 2009, we had approximately 13.851 million DISH Network subscribers compared to approximately 13.780 million subscribers at September 30, 2008, an increase of 0.5%. DISH Network added approximately 887,000 gross new subscribers for the three months ended September 30, 2009, compared to approximately 825,000 gross new subscribers during the same period in 2008, an increase of 7.5%.

DISH Network added approximately 241,000 net new subscribers during the three months ended September 30, 2009, compared to a loss of approximately 10,000 net new subscribers during the same period in 2008. Our percentage monthly subscriber churn for the three months ended September 30, 2009 was 1.57%, compared to 2.02% for the same period in 2008. We believe this increase in net new subscribers and the decrease in churn primarily resulted from the factors discussed in the "Overview" above. Although churn declined during the quarter, given the increasingly competitive nature of our industry and the current economic conditions, we may not be able to continue to reduce churn without increasing our spending on customer retention incentives, which would have a negative effect on our results of operations and free cash flow.

We believe our gross and net subscriber additions as well as our subscriber churn have been negatively impacted by weaker economic conditions, aggressive promotional and retention offerings by our competition, the loss of our distribution relationship with AT&T discussed below, the heavy marketing of HD service by our competition, the growth of fiber-based and Internet-based pay TV providers, signal theft and other forms of fraud, and operational inefficiencies at DISH Network. We have not always met our own standards for performing high quality installations, effectively resolving customer issues when they arise, answering customer calls in an acceptable timeframe, effectively communicating with our customer base, reducing calls driven by the complexity of our business, improving the reliability of certain systems and customer equipment, and aligning the interests of certain third party retailers and installers with our interests to provide high quality service. Most of these factors have affected both gross new subscriber additions as well as existing subscriber churn. Our future gross subscriber additions and subscriber churn may continue to be negatively impacted by these factors, which could in turn adversely affect our revenue growth.

Our distribution relationship with AT&T was a substantial contributor to our gross and net subscriber additions over the past several years, accounting for approximately 17% of our gross subscriber additions for the year ended December 31, 2008. This distribution relationship ended January 31, 2009. Consequently, beginning with the second quarter 2009, AT&T no longer contributes to our gross subscriber additions. In addition, nearly one million of our current subscribers were acquired through our distribution relationship with AT&T and subscribers acquired through this channel have historically churned at a higher rate than our overall subscriber base. Although AT&T is not permitted to target these subscribers for transition to another pay-TV service and we and AT&T are required to maintain bundled billing and cooperative customer service for these subscribers, these subscribers may still churn at higher than historical rates following termination of the AT&T distribution relationship.

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

Subscriber-related revenue. DISH Network "Subscriber-related revenue" totaled $2.863 billion for the three months ended September 30, 2009, a decrease of $24 million or 0.8% compared to the same period in 2008. This change was primarily related to the decrease in "ARPU" discussed below.

ARPU. Monthly average revenue per subscriber was $69.51 during the three months ended September 30, 2009 versus $69.82 during the same period in 2008. ARPU is driven by a number of factors including, among other things, price increases and penetration rates of our programming and hardware offerings and promotional discounts on programming. The $0.31 or 0.4% decrease in ARPU was primarily attributable to an increase in the amount of promotional discounts on programming offered to our new subscribers and retention initiatives offered to existing subscribers, and a decrease in premium movie revenue. This decrease was partially offset by price increases in February 2009 to existing subscribers on some of our most popular programming packages, an increase in revenue from local programming and changes in the sales mix toward HD programming packages and advanced hardware offerings. As a result of our current promotions, which provide an incentive for advanced hardware offerings, we continue to see increased hardware related fees, which include fees earned from our DishHOME Protection Plan, rental fees and fees for DVRs.

Equipment sales and other revenue. "Equipment sales and other revenue" totaled $23 million during the three months ended September 30, 2009, a decrease of $19 million or 44.2% compared to the same period 2008. The decrease in "Equipment sales and other revenue" primarily resulted from lower non-subsidized sales of DBS accessories and digital converter boxes in 2009 compared to the same period in 2008.

Subscriber-related expenses. "Subscriber-related expenses" totaled $1.623 billion during the three months ended September 30, 2009, an increase of $89 million or 5.8% compared to the same period 2008. The increase in "Subscriber-related expenses" was primarily attributable to higher costs for programming content and call center operations. The increase in programming content costs was primarily related to price increases in certain of our programming contracts and the renewal of certain contracts at higher rates. The increases related to call center operations were driven in part by our investments in staffing, training, information systems, and other initiatives. These investments are intended to help combat inefficiencies introduced by the increasing complexity of our business and technology, improve customer satisfaction, reduce churn, increase productivity, and allow us to better scale our business over the long run. We cannot, however, be certain that our increased spending will ultimately yield these benefits. In the meantime, we may continue to incur higher costs as a result of both our operational inefficiencies and increased spending. "Subscriber-related expenses" represented 56.7% and 53.2% of "Subscriber-related revenue" during the three months ended September 30, 2009 and 2008, respectively. The increase in this expense to revenue ratio primarily resulted from the increase in "Subscriber-related expenses" and lower "Subscriber-related revenue" discussed above.

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

Equipment, transitional services and other cost of sales. "Equipment, transitional services and other cost of sales" totaled $29 million during the three months ended September 30, 2009, a decrease of $41 million or 58.7% compared to the same period in 2008. This decrease in "Equipment, transitional services and other cost of sales" primarily resulted from a decline in charges for slow moving and obsolete inventory and lower non-subsidized sales of DBS accessories and digital converter boxes in 2009 compared to the same period in 2008.

Subscriber acquisition costs. "Subscriber acquisition costs" totaled $440 million for the three months ended September 30, 2009, an increase of $2 million or 0.4% compared to the same period in 2008. This increase was primarily attributable to the increase in gross new subscribers discussed previously, partially offset by lower SAC discussed below.

SAC. SAC was $694 during the three months ended September 30, 2009 compared to $735 during the same period in 2008, a decrease of $41, or 5.6%. This decrease was primarily attributable to a change in sales mix, a decrease in advertising costs and hardware costs per activation. The decrease in hardware cost per activation principally related to a reduction in manufacturing costs, partially offset by an increase in deployment of more advanced set-top boxes, such as HD receivers and HD DVRs.

During the three months ended September 30, 2009 and 2008, the amount of equipment capitalized under our lease program for new subscribers totaled $176 million and $169 million, respectively. This increase in capital expenditures under our lease program for new subscribers resulted primarily from the increase in gross new subscribers, partially offset by lower hardware costs per activation, discussed above.

Capital expenditures resulting from our equipment lease program for new subscribers have been, and are expected to continue to be, partially mitigated by, among other things, the redeployment of equipment returned by disconnecting lease program subscribers. However, to remain competitive we upgrade or replace subscriber equipment periodically as technology changes, and the costs associated with these upgrades may be substantial. To the extent technological changes render a portion of our existing equipment obsolete, we would be unable to redeploy all returned equipment and consequently would realize less benefit from the SAC reduction associated with redeployment of that returned lease equipment.

Our SAC calculation does not reflect any benefit from payments we received in connection with equipment not returned to us from disconnecting lease subscribers and returned equipment that is made available for sale rather than being redeployed through our lease programs. During the three months ended September 30, 2009 and 2008, these amounts totaled $15 million and $34 million, respectively.

Several years ago, we began deploying receivers that utilize 8PSK modulation technology and receivers that utilize MPEG-4 compression technology. These technologies, when fully deployed, will allow more programming channels to be carried over our existing satellites. A majority of our customers today, however, do not have receivers that use MPEG-4 compression and a smaller but still significant percentage do not have receivers that use 8PSK modulation. We may choose to invest significant capital to accelerate the conversion of customers to MPEG-4 and/or 8PSK in order to realize the bandwidth benefits sooner. In addition, given that all of our HD content is broadcast in MPEG-4, any growth in HD penetration will naturally accelerate our transition to these newer technologies and may increase our subscriber acquisition and retention costs. All new receivers that we purchase from EchoStar now have MPEG-4 technology. Although we continue to refurbish and redeploy MPEG-2 receivers, as a result of our HD initiatives and current promotions, we currently activate most new customers with higher priced MPEG-4 technology. This limits our ability to redeploy MPEG-2 receivers and, to the extent that our promotions are successful, will accelerate the transition to MPEG-4 technology, resulting in an adverse effect on our SAC.

Our "Subscriber acquisition costs" and "SAC" may materially increase in the future to the extent that we transition to newer technologies, introduce more aggressive promotions, or provide greater equipment subsidies. See further discussion under *"Liquidity and Capital Resources — Subscriber Acquisition and Retention Costs."*

General and administrative expenses. "General and administrative expenses" totaled $158 million during the three months ended September 30, 2009, an increase of $10 million or 6.8% compared to the same period in 2008. This increase was primarily attributable to additional costs to support the DISH Network television service including personnel costs and professional fees. "General and administrative expenses" represented 5.5% and 5.0% of "Total revenue" during the three months ended September 30, 2009 and 2008, respectively. The increase in the ratio of the expenses to "Total revenue" was primarily attributable to the decrease in "Total revenue" and the increase in expenses discussed above.

Tivo litigation expense. We recorded $132 million of additional "Tivo litigation expense" during the three months ended September 30, 2009 for supplemental damages, contempt sanctions and interest. See Note 10 in the Notes to our Condensed Consolidated Financial Statements for further discussion.

Depreciation and amortization. "Depreciation and amortization" expense totaled $228 million during the three months ended September 30, 2009, a $17 million or 7.0% decrease compared to the same period in 2008. The decrease in "Depreciation and amortization" expense was primarily due to the declines in depreciation expense related to set-top boxes used in our lease programs, and depreciation expense associated with our satellites. The decrease in

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

expense related to set-top boxes resulted from an increase in the number of fully-depreciated set-top boxes still in service and in the capitalization of new advanced equipment which has a longer estimated useful life. The satellite depreciation expense declined due to the retirements of satellites from commercial service, partially offset by depreciation expense associated with Ciel II which was placed in service in February 2009.

Interest income. "Interest income" totaled $8 million during the three months ended September 30, 2009, a decrease of $9 million or 54.3% compared to the same period in 2008. This decrease principally resulted from lower percentage returns earned on our cash and marketable investment securities and lower average cash and marketable investment securities balances during the third quarter of 2009.

Other, net. "Other, net" expense totaled $2 million during the three months ended September 30, 2009, a decrease of $104 million compared to the same period in 2008. During the third quarter of 2008, we recorded impairments of $156 million on marketable and other investment securities, partially offset by a $53 million gain on the sale of a non-marketable investment.

Earnings before interest, taxes, depreciation and amortization. EBITDA was $421 million during the three months ended September 30, 2009, a decrease of $136 million or 24.4% compared to the same period in 2008. EBITDA for the three months ended September 30, 2009 was negatively impacted by the $132 million "Tivo litigation expense." The following table reconciles EBITDA to the accompanying financial statements.

	For the Three Months Ended September 30,	
	2009	2008
	(In thousands)	
EBITDA	$ 421,212	$ 557,431
Less:		
Interest expense, net	91,266	85,193
Income tax provision (benefit), net	20,989	134,697
Depreciation and amortization	228,395	245,646
Net income (loss) attributable to DISH Network common shareholders	$ 80,562	$ 91,895

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

Income tax (provision) benefit, net. Our income tax provision was $21 million during the three months ended September 30, 2009, a decrease of $114 million compared to the same period in 2008. The decrease in the provision was primarily related to the decrease in "Income (loss) before income taxes" and a decrease in our effective tax rate. During the three months ended September 30, 2009, our effective tax rate was positively impacted by prior period adjustments totaling $25 million. During the three months ended September 30, 2008, our effective tax rate was negatively impacted by the establishment of valuation allowances against deferred tax assets related to the impairment of marketable and non-marketable investment securities, partially offset by reductions in our accrual for uncertain tax positions.

Net income (loss) attributable to DISH Network common shareholders. "Net income (loss) attributable to DISH Network common shareholders" was $81 million during the three months ended September 30, 2009, a decrease of $11 million compared to $92 million for the same period in 2008. The decrease was primarily attributable to the changes in revenue and expenses discussed above.

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

Nine Months Ended September 30, 2009 Compared to the Nine Months Ended September 30, 2008.

Statements of Operations Data	For the Nine Months Ended September 30, 2009	2008	Variance Amount	%
		(In thousands)		
Revenue:				
Subscriber-related revenue	$ 8,605,608	$ 8,572,163	$ 33,445	0.4
Equipment sales and other revenue	74,876	95,755	(20,879)	(21.8)
Equipment sales, transitional services and other revenue — EchoStar	20,685	28,247	(7,562)	(26.8)
Total revenue	8,701,169	8,696,165	5,004	0.1
Costs and Expenses:				
Subscriber-related expenses	4,705,551	4,402,771	302,780	6.9
% of Subscriber-related revenue	**54.7%**	**51.4%**		
Satellite and transmission expenses — EchoStar	246,866	232,798	14,068	6.0
% of Subscriber-related revenue	**2.9%**	**2.7%**		
Satellite and transmission expenses — Other	24,701	22,890	1,811	7.9
% of Subscriber-related revenue	**0.3%**	**0.3%**		
Equipment, transitional services and other cost of sales	96,244	131,488	(35,244)	(26.8)
Subscriber acquisition costs	1,120,065	1,184,138	(64,073)	(5.4)
General and administrative expenses	450,434	412,104	38,330	9.3
% of Total revenue	**5.2%**	**4.7%**		
Tivo litigation expense	328,335	—	328,335	NM
Depreciation and amortization	696,988	766,260	(69,272)	(9.0)
Total costs and expenses	7,669,184	7,152,449	516,735	7.2
Operating income (loss)	1,031,985	1,543,716	(511,731)	(33.1)
Other Income (Expense):				
Interest income	23,637	44,082	(20,445)	(46.4)
Interest expense, net of amounts capitalized	(273,926)	(284,845)	10,919	3.8
Other, net	(42,072)	(124,583)	82,511	66.2
Total other income (expense)	(292,361)	(365,346)	72,985	20.0
Income (loss) before income taxes	739,624	1,178,370	(438,746)	(37.2)
Income tax (provision) benefit, net	(283,027)	(492,007)	208,980	42.5
Effective tax rate	**38.3%**	**41.8%**		
Net income (loss)	456,597	686,363	(229,766)	(33.5)
Less: Net income (loss) attributable to noncontrolling interest	(69)	—	(69)	NM
Net income (loss) attributable to DISH Network common shareholders	$ 456,666	$ 686,363	$ (229,697)	(33.5)
Other Data:				
DISH Network subscribers, as of period end (in millions)	13.851	13.780	0.071	0.5
DISH Network subscriber additions, gross (in millions)	2.271	2.308	(0.037)	(1.6)
DISH Network subscriber additions, net (in millions)	0.173	—	0.173	NM
Average monthly subscriber churn rate	1.71%	1.86%	(0.15%)	(8.1)
Average monthly revenue per subscriber ("ARPU")	$ 70.09	$ 69.04	$ 1.05	1.5
Average subscriber acquisition cost per subscriber ("SAC")	$ 689	$ 715	$ (26)	(3.6)
EBITDA	$ 1,686,970	$ 2,185,393	$ (498,423)	(22.8)

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

Subscriber-related revenue. DISH Network "Subscriber-related revenue" totaled $8.606 billion for the nine months ended September 30, 2009, an increase of $33 million or 0.4% compared to the same period in 2008. This increase was primarily related to subscriber growth and the increase in "ARPU" discussed below.

ARPU. Monthly average revenue per subscriber was $70.09 during the nine months ended September 30, 2009 versus $69.04 during the same period in 2008. The $1.05 or 1.5% increase in ARPU was primarily attributable to price increases in February 2009 and 2008 on some of our most popular programming packages and changes in the sales mix toward HD programming packages and advanced hardware offerings. As a result of our current promotions, which provide an incentive for advanced hardware offerings, we continue to see increased hardware related fees, which include fees earned from our DishHOME Protection Plan, rental fees and fees for DVRs. These increases were partially offset by increases in the amount of promotional discounts on programming offered to our new subscribers and retention initiatives offered to existing subscribers, and by decreases in pay-per-view buys and premium movie revenue.

Equipment sales and other revenue. "Equipment sales and other revenue" totaled $75 million during the nine months ended September 30, 2009, a decrease of $21 million or 21.8% compared to the same period 2008. The decrease in "Equipment sales and other revenue" primarily resulted from lower non-subsidized sales of DBS accessories in 2009.

Subscriber-related expenses. "Subscriber-related expenses" totaled $4.706 billion during the nine months ended September 30, 2009, an increase of $303 million or 6.9% compared to the same period 2008. The increase in "Subscriber-related expenses" was primarily attributable to higher costs for: (i) programming content partially offset by a non-recurring programming expense adjustment of approximately $27 million, (ii) call center operations, and (iii) customer retention. The increase in programming content costs was primarily related to price increases in certain of our programming contracts and the renewal of certain contracts at higher rates. The increases related to call center operations were driven in part by our investments in staffing, training, information systems, and other initiatives. These investments are intended to help combat inefficiencies introduced by the increasing complexity of our business and technology, improve customer satisfaction, reduce churn, increase productivity, and allow us to better scale our business over the long run. We cannot, however, be certain that our increased spending will ultimately yield these benefits. In the meantime, we may continue to incur higher costs as a result of both our operational inefficiencies and increased spending. The increase in customer retention expense was primarily driven by more upgrades of existing customers to HD and DVR receivers and the equipment replacement to migrate certain subscribers to free up transponder capacity to support HD programming and other initiatives. We expect to continue these initiatives through 2010. We believe that the benefit from the increase in available transponder capacity outweighs the short-term cost of these equipment changes. "Subscriber-related expenses" represented 54.7% and 51.4% of "Subscriber-related revenue" during the nine months ended September 30, 2009 and 2008, respectively. The increase in this expense to revenue ratio primarily resulted from the increase in "Subscriber-related expenses" discussed above, partially offset by an increase in ARPU.

Satellite and transmission expenses — EchoStar. "Satellite and transmission expenses — EchoStar" totaled $247 million during the nine months ended September 30, 2009, an increase of $14 million or 6.0% compared to the same period during 2008. This change was primarily attributable to an increase in uplink services provided by EchoStar related to the launch of Ciel II which commenced commercial operations in February 2009 and continued expansion of our HD local markets, partially offset by a decrease in the transponder capacity leased from EchoStar.

Equipment, transitional services and other cost of sales. "Equipment, transitional services and other cost of sales" totaled $96 million during the nine months ended September 30, 2009, a decrease of $35 million or 26.8% compared to the same period in 2008. This decrease in "Equipment, transitional services and other cost of sales" primarily resulted from lower non-subsidized sales of DBS accessories and a decline in charges for slow moving and obsolete inventory in 2009 compared to the same period in 2008.

Subscriber acquisition costs. "Subscriber acquisition costs" totaled $1.120 billion for the nine months ended September 30, 2009, a decrease of $64 million or 5.4% compared to the same period in 2008. This decrease was primarily attributable to the decrease in SAC discussed below and the decline in gross new subscribers.

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

SAC. SAC was $689 during the nine months ended September 30, 2009 compared to $715 during the same period in 2008, a decrease of $26, or 3.6%. This decrease was primarily attributable to a change in sales mix and a decrease in hardware costs per activation. The decrease in hardware cost per activation principally related to a reduction in manufacturing costs, partially offset by an increase in deployment of more advanced set-top boxes, such as HD receivers and HD DVRs and additional advertising costs per activation during the period.

During the nine months ended September 30, 2009 and 2008, the amount of equipment capitalized under our lease program for new subscribers totaled $444 million and $467 million, respectively. This decrease in capital expenditures under our lease programs for new subscribers resulted primarily from lower gross subscriber additions and lower hardware costs per activation.

Our SAC calculation does not reflect any benefit from payments we received in connection with equipment not returned to us from disconnecting lease subscribers and returned equipment that is made available for sale rather than being redeployed through our lease program. During the nine months ended September 30, 2009 and 2008, these amounts totaled $78 million and $96 million, respectively.

General and administrative expenses. "General and administrative expenses" totaled $450 million during the nine months ended September 30, 2009, an increase of $38 million or 9.3% compared to the same period in 2008. This increase was primarily attributable to additional costs to support the DISH Network television service including personnel costs and professional fees. "General and administrative expenses" represented 5.2% and 4.7% of "Total revenue" during the nine months ended September 30, 2009 and 2008, respectively. The increase in the ratio of the expenses to "Total revenue" was primarily attributable to the changes in "Total revenue" and the expenses discussed above.

Tivo litigation expense. We recorded $328 million of "Tivo litigation expense" during the nine months ended September 30, 2009 for supplemental damages, contempt sanctions and interest. See Note 10 in the Notes to our Condensed Consolidated Financial Statements for further discussion.

Depreciation and amortization. "Depreciation and amortization" expense totaled $697 million during the nine months ended September 30, 2009, a $69 million or 9.0% decrease compared to the same period in 2008. The decrease in "Depreciation and amortization" expense was primarily due to the declines in depreciation expense related to set-top boxes used in our lease programs and depreciation expense associated with our satellites, and the abandonment of a software development project designed to support our IT systems during 2008. The decrease in expense related to set-top boxes resulted from an increase in the number of fully-depreciated set-top boxes still in service and in the capitalization of new advanced equipment which has a longer estimated useful life. The satellite depreciation expense declined due to the retirements of satellites from commercial service, partially offset by depreciation expense associated with Ciel II which was placed in service in February 2009.

Interest income. "Interest income" totaled $24 million during the nine months ended September 30, 2009, a decrease of $20 million compared to the same period in 2008. This decrease principally resulted from lower percentage returns earned on our cash and marketable investment securities and lower average cash and marketable investment securities balances during the nine months ended September 30, 2009.

Other, net. "Other, net" expense totaled $42 million during the nine months ended September 30, 2009, a decrease of $83 million compared to the same period in 2008. This change primarily resulted from a decrease of $133 million of impairments on marketable and other investment securities, partially offset by a $53 million gain on the sale of a non-marketable investment during 2008.

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

Earnings before interest, taxes, depreciation and amortization. EBITDA was $1.687 billion during the nine months ended September 30, 2009, a decrease of $498 million or 22.8% compared to the same period in 2008. EBITDA for the nine months ended September 30, 2009 was negatively impacted by the $328 million "Tivo litigation expense." The following table reconciles EBITDA to the accompanying financial statements.

	For the Nine Months Ended September 30,	
	2009	2008
	(In thousands)	
EBITDA	$ 1,686,970	$ 2,185,393
Less:		
Interest expense, net	250,289	240,763
Income tax provision (benefit), net	283,027	492,007
Depreciation and amortization	696,988	766,260
Net income (loss) attributable to DISH Network common shareholders	$ 456,666	$ 686,363

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

Income tax (provision) benefit, net. Our income tax provision was $283 million during the nine months ended September 30, 2009, a decrease of $209 million compared to the same period in 2008. The decrease in the provision was primarily related to the decrease in "Income (loss) before income taxes" and a decrease in our effective tax rate. During the nine months ended September 30, 2009, our effective tax rate was positively impacted by prior period adjustments totaling $25 million, partially offset by the establishment of valuation allowances against certain deferred tax assets that are capital in nature. During the nine months ended September 30, 2008, our effective tax rate was negatively impacted by the establishment of valuation allowances against deferred tax assets related to the impairment of marketable and non-marketable investment securities, partially offset by reductions in our accrual for uncertain tax positions.

Net income (loss) attributable to DISH Network common shareholders. "Net income (loss) attributable to DISH Network common shareholders" was $457 million during the nine months ended September 30, 2009, a decrease of $230 million compared to $686 million for the same period in 2008. The decrease was primarily attributable to the changes in revenue and expenses discussed above.

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

LIQUIDITY AND CAPITAL RESOURCES

Cash, Cash Equivalents and Current Marketable Investment Securities

We consider all liquid investments purchased within 90 days of their maturity to be cash equivalents. See "Item 3. — Quantitative and Qualitative Disclosures about Market Risk" for further discussion regarding our marketable investment securities. As of September 30, 2009, our cash, cash equivalents and current marketable investment securities totaled $2.633 billion compared to $559 million as of December 31, 2008, an increase of $2.074 billion. This increase in cash, cash equivalents and current marketable investment securities was primarily related to an increase in cash generated from operations of $1.892 billion and the net proceeds of $971 million related to our 7 7/8% Senior Notes due 2019 issued in August 2009, partially offset by capital expenditures of $724 million.

In addition, on October 5, 2009, we issued $400 million aggregate principal amount of additional 7 7/8% Senior Notes due 2019.

We have investments in various debt and equity instruments including corporate bonds, corporate equity securities, government bonds, and variable rate demand notes ("VRDNs"). VRDNs are long-term floating rate municipal bonds with embedded put options that allow the bondholder to sell the security at par plus accrued interest. All of the put options are secured by a pledged liquidity source. Our VRDN portfolio is comprised of many municipalities and financial institutions that serve as the pledged liquidity source. While they are classified as marketable investment securities, the put option allows VRDNs to be liquidated on a same day or on a five business day settlement basis. As of September 30, 2009 and December 31, 2008, we held VRDNs with fair values of $1.663 billion and $240 million, respectively.

On November 6, 2009, our board of directors declared a dividend of $2.00 per share on our outstanding Class A and Class B common stock. The dividend will be payable in cash on December 2, 2009 to shareholders of record on November 20, 2009. Based on the number of shares of our Class A and B common stock outstanding as of October 23, 2009, we will distribute approximately $894 million in cash to our shareholders as part of the dividend.

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

Cash Flow

Cash flows from operating activities

For the nine months ended September 30, 2009, we reported net cash flows from operating activities of $1.892 billion. This amount is primarily comprised of net income adjusted for "Depreciation and amortization" of $1.154 billion. In addition, our operating cash flow was positively impacted by timing differences between book expense and cash payments related to the Tivo litigation charge of $328 million, and other changes in working capital of $272 million mainly related to a decrease in inventory and an increase in accounts payable and accrued expenses.

Cash flows from investing activities

For the nine months ended September 30, 2009, we reported net cash outflows from investing activities of $2.770 billion primarily related to net purchases of marketable investment securities of $1.940 billion, capital expenditures totaling $724 million, increases in restricted cash and marketable investment securities of $58 million and purchases of strategic investments of $47 million. The capital expenditures included $622 million associated with our subscriber acquisition and retention lease programs, $67 million of non-discretionary spending for satellite capital expenditures and $35 million of other corporate capital expenditures. The increase in restricted cash and marketable investment securities primarily related to our litigation with Tivo.

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

Cash flows from financing activities

For the nine months ended September 30, 2009, we reported net cash flows from financing activities of $935 million primarily resulting from the net proceeds of $971 million related to our 7 7/8% Senior Notes due 2019 issued in August 2009, partially offset by common stock repurchases of $19 million and debt repayments of $20 million.

Free Cash Flow

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

During the nine months ended September 30, 2009 and 2008, free cash flow was significantly impacted by changes in operating assets and liabilities as shown in the "Net cash flows from operating activities" section of our Condensed Consolidated Statements of Cash Flows included herein. Operating asset and liability balances can fluctuate significantly from period to period and there can be no assurance that free cash flow will not be negatively impacted by material changes in operating assets and liabilities in future periods, since these changes depend upon, among other things, management's timing of payments and control of inventory levels, and cash receipts. In addition to fluctuations resulting from changes in operating assets and liabilities, free cash flow can vary significantly from period to period depending upon, among other things, subscriber growth, subscriber revenue, subscriber churn, subscriber acquisition costs including amounts capitalized under our equipment lease programs, operating efficiencies, increases or decreases in purchases of property and equipment and other factors.

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

	For the Nine Months Ended September 30,	
	2009	2008
	(In thousands)	
Free cash flow	$ 1,167,413	$ 981,122
Add back:		
Purchases of property and equipment	724,316	844,265
Net cash flows from operating activities	$ 1,891,729	$ 1,825,387

Subscriber Churn

Our subscriber churn rate for the nine months ended September 30, 2009 and 2008 was 1.71% and 1.86%, respectively. Our ability to retain our current subscribers impacts our future cash flow. As we lose subscribers from our existing base, the positive cash flow from that base is correspondingly reduced.

Our distribution relationship with AT&T was a substantial contributor to our gross and net subscriber additions over the past several years, accounting for approximately 17% of our gross subscriber additions for the year ended December 31, 2008. This distribution relationship ended January 31, 2009. Consequently, beginning with the second quarter 2009, AT&T no longer contributes to our gross subscriber additions. In addition, nearly one million of our current subscribers were acquired through our distribution relationship with AT&T and subscribers acquired through this channel have historically churned at a higher rate than our overall subscriber base. Although AT&T is not permitted to target these subscribers for transition to another pay-TV service and we and AT&T are required to maintain bundled billing and cooperative customer service for these subscribers, these subscribers may still churn at higher than historical rates following termination of the AT&T distribution relationship.

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

Subscriber Acquisition and Retention Costs

We incur significant up-front costs to acquire subscribers, including advertising, retailer incentives, equipment, installation, and new customer promotions. While we attempt to recoup these up-front costs over the lives of their subscription, there can be no assurance that we will. We deploy business rules such as credit requirements and commitments to receive service for a minimum term, and we strive to provide outstanding customer service, to increase the likelihood of customers keeping their DISH Network service over longer periods of time. Our subscriber acquisition costs may vary significantly from period to period.

We incur significant costs to retain our existing customers, mostly by upgrading their equipment to HD and DVR receivers. As with our subscriber acquisition costs, our retention spending includes the cost of equipment and installation. We also offer free programming and/or promotional pricing for limited periods for existing customers in exchange for a commitment. A component of our retention efforts includes the installation of equipment for customers who move. Our subscriber retention costs may vary significantly from period to period.

Satellites

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

Security Systems

Increases in theft of our signal, or our competitors' signals, could in addition to reducing new subscriber activations, also cause subscriber churn to increase. We use microchips embedded in credit card-sized access cards, called "smart cards," or security chips in our receiver systems to control access to authorized programming content ("Security Access Devices"). Our signal encryption has been compromised in the past and may be compromised in the future even though we continue to respond with significant investment in security measures, such as Security Access Device replacement programs and updates in security software, that are intended to make signal theft more difficult. It has been our prior experience that security measures may be only effective for short periods of time or not at all and that we remain susceptible to additional signal theft. During the second quarter of 2009, we completed the replacement of our Security Access Devices and expect additional future replacements of these devices to be necessary to keep our system secure. We cannot assure you that we will be successful in reducing or controlling theft of our programming content and we may incur additional costs in the future if our Security Access Device replacement plan is not effective.

Other

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

Stock Repurchases

Our board of directors previously authorized stock repurchases of up to $1.0 billion of our Class A common stock. During the nine months ended September 30, 2009, we repurchased 1.9 million shares of our common stock for $19 million. On November 3, 2009, our board of directors extended the plan and authorized an increase in the maximum

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

dollar value of shares that may be repurchased under the plan, such that we are currently authorized to repurchase up to $1.0 billion of our outstanding shares through and including December 31, 2010.

Obligations and Future Capital Requirements

Contractual Obligations

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

	Payments due by period						
	Total	2009	2010	2011	2012	2013	Thereafter
				(In thousands)			
Long-term debt obligations	$ 5,818,287	$ 26,181	$ 4,142	$ 1,004,375	$ 4,622	$ 504,183	$ 4,274,784
Capital lease obligations	309,535	4,886	22,382	21,054	20,582	22,646	217,985
Interest expense on long-term debt and capital lease obligations	2,695,287	118,866	438,690	433,780	368,089	365,985	969,877
Satellite-related obligations	1,639,821	81,900	116,795	107,082	154,222	154,005	1,025,817
Operating lease obligations	120,285	12,032	45,753	25,220	19,402	9,817	8,061
Purchase obligations	1,342,570	1,093,823	194,480	19,160	15,450	15,827	3,830
Total	$ 11,925,785	$ 1,337,688	$ 822,242	$ 1,610,671	$ 582,367	$ 1,072,463	$ 6,500,354

The table above does not include $246 million of liabilities associated with unrecognized tax benefits which were accrued and are included on our Condensed Consolidated Balance Sheets as of September 30, 2009. We do not expect any portion of this amount to be paid or settled within the next twelve months.

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

We have not yet procured a contract for the launch of our EchoStar XV satellite. While the cost of this launch will depend upon the terms and conditions of the contract, we estimate that the cost could range from approximately $90 million to $120 million, which is not included in the table above. We anticipate incurring this cost between the current period and the expected launch of the satellite in late 2010.

On November 6, 2009, our board of directors declared a dividend of $2.00 per share on our outstanding Class A and Class B common stock. The dividend will be payable in cash on December 2, 2009 to shareholders of record on November 20, 2009. Based on the number of shares of our Class A and B common stock outstanding as of October 23, 2009, we will distribute approximately $894 million in cash to our shareholders as part of the dividend. This dividend is not included in the table above.

Future Capital Requirements

We expect to fund our future working capital, capital expenditure and debt service requirements from cash generated from operations, existing cash and marketable investment securities balances, and cash generated through new additional capital. The amount of capital required to fund our future working capital and capital expenditure needs varies, depending on, among other things, the rate at which we acquire new subscribers and the cost of subscriber acquisition and retention, including capitalized costs associated with our new and existing subscriber equipment lease programs. The majority of our capital expenditures for 2009 are driven by the costs associated with subscriber premises equipment, included in our firm purchase obligations, as well as capital expenditures for our satellite- related obligations. These expenditures are necessary to operate and maintain the DISH Network television service. Consequently, we consider them to be non-discretionary. The amount of capital required will also depend on the levels of investment necessary to support potential strategic initiatives, including our plans to expand our national and local HD offerings and other strategic opportunities that may arise from time to time. Our capital expenditures vary depending on the number of satellites leased or under construction at any point in time, and could increase materially as a result of increased competition, significant satellite failures, or continued general economic downturn. These factors could require that we raise additional capital in the future.

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

If we are unsuccessful in overturning the District Court's ruling on Tivo's motion for contempt, we are not successful in developing and deploying potential new alternative technology and we are unable to reach a license agreement with Tivo on reasonable terms, we would be required to eliminate DVR functionality in all but approximately 192,000 digital set-top boxes in the field and cease distribution of digital set-top boxes with DVR functionality. In that event we would be at a significant disadvantage to our competitors who could continue offering DVR functionality, which would likely result in a significant decrease in new subscriber additions as well as a substantial loss of current subscribers. Furthermore, the inability to offer DVR functionality could cause certain of our distribution channels to terminate or significantly decrease their marketing of DISH Network services. The adverse effect on our financial position and results of operations if the District Court's contempt order is upheld is likely to be significant. Additionally, the supplemental damage award of $103 million and further award of approximately $200 million does not include damages, contempt sanctions or interest for the period after June 2009. In the event that we are unsuccessful in our appeal, we could also have to pay substantial additional damages, contempt sanctions and interest. Depending on the amount of any additional damage or sanction award or any monetary settlement, we may be required to raise additional capital at a time and in circumstances in which we would normally not raise capital. Therefore, any capital we raise may be on terms that are unfavorable to us, which might adversely affect our financial position and results of operations and might also impair our ability to raise capital on acceptable terms in the future to fund our own operations and initiatives. We believe the cost of such capital and its terms and conditions may be substantially less attractive than our previous financings.

If we are successful in overturning the District Court's ruling on Tivo's motion for contempt, but unsuccessful in defending against any subsequent claim in a new action that our original alternative technology or any potential new alternative technology infringes Tivo's patent, we could be prohibited from distributing DVRs or could be required to modify or eliminate our then-current DVR functionality in some or all set-top boxes in the field. In that event we would be at a significant disadvantage to our competitors who could continue offering DVR functionality and the adverse effect on our business could be material. We could also have to pay substantial additional damages.

Because both we and EchoStar are defendants in the Tivo lawsuit, we and EchoStar are jointly and severally liable to Tivo for any final damages and sanctions that may be awarded by the Court. We have determined that we are obligated under the agreements entered into in connection with the Spin-off to indemnify EchoStar for substantially all liability arising from this lawsuit. EchoStar has agreed to contribute an amount equal to its $5 million intellectual property liability limit under the Receiver Agreement. We and EchoStar have further agreed that EchoStar's $5 million contribution would not exhaust EchoStar's liability to us for other intellectual property claims that may arise under the Receiver Agreement. We and EchoStar also agreed that we would each be entitled to joint ownership of, and a cross-license to use, any intellectual property developed in connection with any potential new alternative technology.

From time to time we evaluate opportunities for strategic investments or acquisitions that may complement our current services and products, enhance our technical capabilities, improve or sustain our competitive position, or otherwise offer growth opportunities. We may make investments in or partner with others to expand our business into mobile and portable video, data and voice services. Future material investments or acquisitions may require that we obtain additional capital, assume third party debt or incur other long-term obligations.

In 2008, we paid $712 million to acquire certain 700 MHz wireless licenses, which were granted to us by the FCC in February 2009. In order to commercialize these licenses and satisfy FCC build-out requirements, we may be required to make significant additional investments or partner with others. Depending on the nature and scope of such commercialization and build-out, our investment could vary significantly. Part or all of our licenses may be terminated for failure to satisfy FCC build-out requirements. We currently plan to perform a market test to evaluate different technologies and consumer acceptance during 2010.

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

A portion of our investment portfolio is invested in asset backed securities, auction rate securities, mortgage backed securities, special investment vehicles and strategic investments and as a result a portion of our portfolio has restricted liquidity. Liquidity in the markets for these investments has been impacted in the past year and these market conditions have adversely affected our liquidity. In addition, certain of these securities have defaulted or have been materially downgraded, causing us to record impairment charges. If the credit ratings of these securities further deteriorate or the lack of liquidity in the marketplace becomes prolonged, we may be required to record further impairment charges. Moreover, the current significant volatility of domestic and global financial markets has greatly affected the volatility and value of our marketable investment securities. To the extent we require access to funds, we may need to sell these securities under unfavorable market conditions, record further impairment charges and fall short of our financing needs.

Off-Balance Sheet Arrangements

Other than the "Guarantees" disclosed in Note 10 to our Condensed Consolidated Financial Statements, we generally do not engage in off-balance sheet financing activities.

Item 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Market Risks Associated With Financial Instruments

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

Cash, Cash Equivalents and Current Marketable Investment Securities

As of September 30, 2009, our cash, cash equivalents and current marketable investment securities had a fair value of $2.633 billion. Of that amount, a total of $2.421 billion was invested in: (a) cash; (b) debt instruments of the United States Government and its agencies; (c) commercial paper and corporate notes with an overall average maturity of less than one year and rated in one of the four highest rating categories by at least two nationally recognized statistical rating organizations; and (d) instruments with similar risk, duration and credit quality characteristics to the commercial paper described above. The primary purpose of these investing activities has been to preserve principal until the cash is required to, among other things, fund operations, make strategic investments and expand the business. Consequently, the size of this portfolio fluctuates significantly as cash is received and used in our business. The value of this portfolio is negatively impacted by credit losses; however, this risk is mitigated through diversification that limits our exposure to any one issuer.

Interest Rate Risk

A change in interest rates would affect the fair value of our cash, cash equivalents and current marketable investment securities portfolio. Based on our September 30, 2009 current non-strategic investment portfolio of $2.421 billion, a hypothetical 10% increase in average interest rates would result in a decrease of approximately $28 million in fair value of this portfolio. We normally hold these investments to maturity; however, the hypothetical loss in fair value would be realized if we sold the investments prior to maturity.

Our cash, cash equivalents and current marketable investment securities had an average annual rate of return for the nine months ended September 30, 2009 of 1.0%. A change in interest rates would affect our future annual interest income from this portfolio, since funds would be re-invested at different rates as the instruments mature. A hypothetical 10% decrease in average interest rates during 2009 would result in a decrease of approximately $1 million in annual interest income.

Strategic Marketable Investment Securities

As of September 30, 2009, we held strategic and financial debt and equity investments of public companies with a fair value of $212 million. These investments, which are held for strategic and financial purposes, are concentrated in a small number of companies, are highly speculative and have experienced and continue to experience volatility. The fair value of our strategic and financial debt and equity investments can be significantly impacted by the risk of adverse changes in securities markets generally, as well as risks related to the performance of the companies whose securities we have invested in, risks associated with specific industries, and other factors. These investments are subject to significant fluctuations in fair value due to the volatility of the securities markets and of the underlying businesses. In general, the debt instruments held in our strategic marketable investment securities portfolio are not significantly impacted by interest rate fluctuations as their value is more closely related to factors specific to the underlying business. A hypothetical 10% adverse change in the price of our public strategic debt and equity investments would result in a decrease of approximately $21 million in the fair value of these investments.

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

Restricted Cash and Marketable Investment Securities

As of September 30, 2009, we had $142 million of restricted cash and marketable investment securities invested in: (a) cash; (b) debt instruments of the United States Government and its agencies; (c) commercial paper and corporate notes with an overall average maturity of less than one year and rated in one of the four highest rating categories by at least

Item 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK — Continued

two nationally recognized statistical rating organizations; and (d) instruments with similar risk, duration and credit quality characteristics to the commercial paper described above. Based on our September 30, 2009 investment portfolio, a hypothetical 10% increase in average interest rates would not have a material impact in the fair value of our restricted cash and marketable investment securities.

Noncurrent Auction Rate and Mortgage Backed Securities

As of September 30, 2009, we held investments in auction rate securities (“ARS”) and mortgage backed securities (“MBS”) of $119 million, which are reported at fair value. Events in the credit markets have reduced or eliminated current liquidity for certain of our ARS and MBS investments. As a result, we classify these investments as noncurrent assets as we intend to hold these investments until they recover or mature, and therefore interest rate risk associated with these securities is mitigated. A hypothetical 10% adverse change in the price of these investments would result in a decrease of approximately $12 million in the fair value of these investments.

Other Investment Securities

As of September 30, 2009, we had $50 million of nonpublic debt and equity instruments that we hold for strategic business purposes. We account for these investments under the cost, equity and fair value methods of accounting.

Our ability to realize value from our strategic investments in companies that are not publicly traded depends on the success of those companies’ businesses and their ability to obtain sufficient capital to execute their business plans. Because private markets are not as liquid as public markets, there is also increased risk that we will not be able to sell these investments, or that when we desire to sell them we will not be able to obtain fair value for them. A hypothetical 10% adverse change in the price of these nonpublic debt and equity instruments would result in a decrease of approximately $5 million in the fair value of these investments.

Fixed Rate Debt, Mortgages and Other Notes Payable

As of September 30, 2009, we had fixed-rate debt, mortgages and other notes payable of $5.818 billion on our Condensed Consolidated Balance Sheets. We estimated the fair value of this debt to be approximately $5.846 billion using quoted market prices for our publicly traded debt, which constitutes approximately 99% of our debt. The fair value of our debt is affected by fluctuations in interest rates. A hypothetical 10% decrease in assumed interest rates would increase the fair value of our debt by approximately $189 million. To the extent interest rates increase, our costs of financing would increase at such time as we are required to refinance our debt. As of September 30, 2009, a hypothetical 10% increase in assumed interest rates would increase our annual interest expense by approximately $41 million.

Derivative Financial Instruments

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

Item 4. CONTROLS AND PROCEDURES

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

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

PART II — OTHER INFORMATION

Item 1. LEGAL PROCEEDINGS

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

Acacia

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

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

Broadcast Innovation, L.L.C.

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

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

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

PART II — OTHER INFORMATION — Continued

Channel Bundling Class Action

On September 21, 2007, a purported class of cable and satellite subscribers filed an antitrust action against us in the United States District Court for the Central District of California. The suit also names as defendants DirecTV, Comcast, Cablevision, Cox, Charter, Time Warner, Inc., Time Warner Cable, NBC Universal, Viacom, Fox Entertainment Group, and Walt Disney Company. The suit alleges, among other things, that the defendants engaged in a conspiracy to provide customers with access only to bundled channel offerings as opposed to giving customers the ability to purchase channels on an “a la carte” basis. On October 16, 2009, the Court granted defendants’ motion to dismiss with prejudice. The plaintiffs have appealed. We intend to vigorously defend this case. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

Enron Commercial Paper Investment

During October 2001, we received approximately $40 million from the sale of Enron commercial paper to a third party broker. That commercial paper was ultimately purchased by Enron. During November 2003, an action was commenced in the United States Bankruptcy Court for the Southern District of New York against approximately 100 defendants, including us, who invested in Enron’s commercial paper. On April 7, 2009, we settled the litigation for an immaterial amount.

ESPN

On January 30, 2008, we filed a lawsuit against ESPN, Inc., ESPN Classic, Inc., ABC Cable Networks Group, Soapnet L.L.C., and International Family Entertainment (collectively “ESPN”) for breach of contract in New York State Supreme Court. Our complaint alleges that ESPN failed to provide us with certain high-definition feeds of the Disney Channel, ESPN News, Toon, and ABC Family. ESPN asserted a counterclaim, and then filed a motion for summary judgment, alleging that we owed approximately $35 million under the applicable affiliation agreements. We brought a motion to amend our complaint to assert that ESPN was in breach of certain most-favored-nation provisions under the affiliation agreements. On April 15, 2009, the trial court granted our motion to amend the complaint, and granted, in part, ESPN’s motion on the counterclaim, finding that we are liable for some of the amount alleged to be owing but that the actual amount owing is disputed and will have to be determined at a later date. We will appeal the partial grant of ESPN’s motion. Since the partial grant of ESPN’s motion, they have sought an additional $30 million under the applicable affiliation agreements. We intend to vigorously prosecute and defend this case. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

Finisar Corporation

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

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

We intend to vigorously prosecute this case. In the event that a Court ultimately determines that we infringe the asserted patent, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could require us to modify our system architecture. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

PART II — OTHER INFORMATION — Continued

Global Communications

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

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

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

Guardian Media

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

Katz Communications

During June 2007, Ronald A. Katz Technology Licensing, L.P. (“Katz”) filed a patent infringement action against us in the United States District Court for the Northern District of California. The suit alleges infringement of 19 patents owned by Katz. The patents relate to interactive voice response, or IVR, technology.

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

Multimedia Patent Trust

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

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

PART II — OTHER INFORMATION — Continued

NorthPoint Technology

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

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

Personalized Media Communications

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

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

Retailer Class Actions

During 2000, lawsuits were filed by retailers in Colorado state and federal courts attempting to certify nationwide classes on behalf of certain of our retailers. The plaintiffs are requesting the Courts declare certain provisions of, and changes to, alleged agreements between us and the retailers invalid and unenforceable, and to award damages for lost incentives and payments, charge backs, and other compensation. We have asserted a variety of counterclaims. The federal court action has been stayed during the pendency of the state court action. We filed a motion for summary judgment on all counts and against all plaintiffs. The plaintiffs filed a motion for additional time to conduct discovery to enable them to respond to our motion. The state court granted limited discovery which ended during 2004. The plaintiffs claimed we did not provide adequate disclosure during the discovery process. The state court agreed, and denied our motion for summary judgment as a result. In April 2008, the state court granted plaintiff's class certification motion and in January 2009, the state court entered an order excluding certain evidence that we can present at trial based on the prior discovery issues. The state court also denied plaintiffs' request to dismiss our counterclaims. The final impact of the court's evidentiary ruling cannot be fully assessed at this time. In May 2009, plaintiffs filed a motion for default judgment based on new allegations of discovery misconduct. We intend to vigorously defend this case. We cannot predict with any degree of certainty the outcome of the lawsuit or determine the extent of any potential liability or damages.

Technology Development Licensing

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

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

PART II — OTHER INFORMATION — Continued

Tivo Inc.

During January 2008, the United States Court of Appeals for the Federal Circuit affirmed in part and reversed in part the April 2006 jury verdict concluding that certain of our digital video recorders, or DVRs, infringed a patent held by Tivo. As of September 2008, we had recorded a total reserve of $132 million on our Condensed Consolidated Balance Sheets to reflect the April 2006 jury verdict, supplemental damages through September 2006 and pre-judgment interest awarded by the Texas court, together with the estimated cost of potential further software infringement prior to implementation of our alternative technology, discussed below, plus interest subsequent to entry of the judgment. In its January 2008 decision, the Federal Circuit affirmed the jury's verdict of infringement on Tivo's "software claims," and upheld the award of damages from the District Court. The Federal Circuit, however, found that we did not literally infringe Tivo's "hardware claims," and remanded such claims back to the District Court for further proceedings. On October 6, 2008, the Supreme Court denied our petition for certiorari. As a result, approximately $105 million of the total $132 million reserve was released from an escrow account to Tivo.

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

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

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

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

On August 3, 2009, the Patent and Trademark Office (the "PTO") issued an initial office action rejecting the software claims of United States Patent No. 6,233,389 (the '389 patent) as being invalid in light of two prior patents. These are the same software claims that we were found to have infringed and which underlie the contempt ruling now pending on appeal. We believe that the PTO's conclusions are relevant to the issues on appeal as well as the pending sanctions proceedings in the District Court. The PTO's conclusions support our position that our original alternative technology is more than colorably different than the devices found to infringe by the jury; that our original alternative technology does not infringe; and that we acted in good faith to design around Tivo's patent.

On September 4, 2009, the District Court partially granted Tivo's motion for contempt sanctions. In partially granting Tivo's motion for contempt sanctions, the District Court awarded $2.25 per DVR subscriber per month for the period from April 2008 to July 2009 (as compared to the award for supplemental damages for the prior period from September 2006 to April 2008, which was based on an assumed $1.25 per DVR subscriber per month). By the District Court's estimation, the total award for the period from April 2008 to July 2009 is approximately $200 million (the enforcement of the award has been stayed by the District Court pending DISH Network's appeal of the underlying June 2, 2009 contempt order). During the three and nine months ended September 30, 2009, we increased our total reserve by $132 million and $328 million, respectively, to reflect the supplemental damages and interest for the period from implementation of our original alternative technology through April 2008 and for the estimated cost of alleged software infringement (including contempt sanctions for the period from April 2008 through June 2009) for the period from April 2008 through September 2009 plus interest. Our total reserve at September 30, 2009 was $360 million and is included in "Other accrued expenses" on our Condensed Consolidated Balance Sheets.

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

If we are unsuccessful in overturning the District Court's ruling on Tivo's motion for contempt, we are not successful in developing and deploying potential new alternative technology and we are unable to reach a license agreement with Tivo on reasonable terms, we would be required to eliminate DVR functionality in all but approximately 192,000 digital set-top boxes in the field and cease distribution of digital set-top boxes with DVR functionality. In that event we would be at a significant disadvantage to our competitors who could continue offering DVR functionality, which would likely result in a significant decrease in new subscriber additions as well as a substantial loss of current subscribers. Furthermore, the inability to offer DVR functionality could cause certain of our distribution channels to terminate or significantly decrease their marketing of DISH Network services. The adverse effect on our financial position and results of operations if the District Court's contempt order is upheld is likely to be significant. Additionally, the supplemental damage award of $103 million and further award of approximately $200 million does not include damages, contempt sanctions or interest for the period after June 2009. In the event that we are unsuccessful in our appeal, we could also have to pay substantial additional damages, contempt sanctions and interest. Depending on the amount of any additional damage or sanction award or any monetary settlement, we may be required to raise additional capital at a time and in circumstances in which we would normally not raise capital. Therefore, any capital we raise may be on terms that are unfavorable to us, which might adversely affect our financial position and results of operations and might also impair our ability to raise capital on acceptable terms in the future to fund our own operations and initiatives. We believe the cost of such capital and its terms and conditions may be substantially less attractive than our previous financings.

If we are successful in overturning the District Court's ruling on Tivo's motion for contempt, but unsuccessful in defending against any subsequent claim in a new action that our original alternative technology or any potential new alternative technology infringes Tivo's patent, we could be prohibited from distributing DVRs or could be required to modify or eliminate our then-current DVR functionality in some or all set-top boxes in the field. In that event we would be at a significant disadvantage to our competitors who could continue offering DVR functionality and the adverse effect on our business could be material. We could also have to pay substantial additional damages.

Because both we and EchoStar are defendants in the Tivo lawsuit, we and EchoStar are jointly and severally liable to Tivo for any final damages and sanctions that may be awarded by the Court. We have determined that we are obligated under the agreements entered into in connection with the Spin-off to indemnify EchoStar for substantially all liability arising from this lawsuit. EchoStar has agreed to contribute an amount equal to its $5 million intellectual property liability limit under the Receiver Agreement. We and EchoStar have further agreed that EchoStar's $5 million contribution would not exhaust EchoStar's liability to us for other intellectual property claims that may arise under the Receiver Agreement. We and EchoStar also agreed that we would each be entitled to joint ownership of, and a cross-license to use, any intellectual property developed in connection with any potential new alternative technology.

PART II — OTHER INFORMATION — Continued

Voom

On May 28, 2008, Voom HD Holdings ("Voom") filed a complaint against us in New York Supreme Court. The suit alleges breach of contract arising from our termination of the affiliation agreement we had with Voom for the carriage of certain Voom HD channels on the DISH Network satellite television service. In January 2008, Voom sought a preliminary injunction to prevent us from terminating the agreement. The Court denied Voom's motion, finding, among other things, that Voom was not likely to prevail on the merits of its case. Voom is claiming over $1.0 billion in damages. We intend to vigorously defend this case. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

Other

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

PART II — OTHER INFORMATION — Continued

Item 1A. RISK FACTORS

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

If we are unsuccessful in overturning the District Court's ruling on Tivo's motion for contempt, we are not successful in developing and deploying potential new alternative technology and we are unable to reach a license agreement with Tivo on reasonable terms, we would be subject to substantial liability and would be prohibited from offering DVR functionality that would result in a significant loss of subscribers and place us at a significant disadvantage to our competitors.

In June 2009, the United States District Court granted Tivo's motion for contempt finding that our next-generation DVRs continue to infringe Tivo's intellectual property and awarded Tivo an additional $103 million dollars in supplemental damages and interest for the period from September 2006 through April 2008. In September 2009, the District Court partially granted Tivo's motion for contempt sanctions. In partially granting Tivo's motion for contempt sanctions, the District Court awarded $2.25 per DVR subscriber per month for the period from April 2008 to July 2009 (as compared to the award for supplemental damages for the prior period from September 2006 to April 2008, which was based on an assumed $1.25 per DVR subscriber per month). By the District Court's estimation, the total award for the period from April 2008 to July 2009 is approximately $200 million (the enforcement of the award has been stayed by the District Court pending DISH Network's appeal of the underlying June 2009 contempt order). As previously disclosed, we increased our reserve for the Tivo litigation to reflect both the supplemental damages award for the period September 2006 to April 2008 and for the estimated cost of alleged software infringement for the period from April 2008 through June 2009.

If we are unsuccessful in overturning the District Court's ruling on Tivo's motion for contempt, we are not successful in developing and deploying potential new alternative technology and we are unable to reach a license agreement with Tivo on reasonable terms, we would be required to eliminate DVR functionality in all but approximately 192,000 digital set-top boxes in the field and cease distribution of digital set-top boxes with DVR functionality. In that event we would be at a significant disadvantage to our competitors who could continue offering DVR functionality, which would likely result in a significant decrease in new subscriber additions as well as a substantial loss of current subscribers. Furthermore, the inability to offer DVR functionality could cause certain of our distribution channels to terminate or significantly decrease their marketing of DISH Network services. The adverse effect on our financial position and results of operations if the District Court's contempt order is upheld is likely to be significant. Additionally, the awards described above do not include damages, contempt sanctions or interest for the period after June 2009. In the event that we are unsuccessful in our appeal, we could also have to pay substantial additional damages, contempt sanctions and interest. Depending on the amount of any additional damage or sanction award or any monetary settlement, we may be required to raise additional capital at a time and in circumstances in which we would normally not raise capital. Therefore, any capital we raise may be on terms that are unfavorable to us, which might adversely affect our financial position and results of operations and might also impair our ability to raise capital on acceptable terms in the future to fund our own operations and initiatives. We believe the cost of such capital and its terms and conditions may be substantially less attractive than our previous financings.

If we are successful in overturning the District Court's ruling on Tivo's motion for contempt, but unsuccessful in defending against any subsequent claim in a new action that our original alternative technology or any potential new alternative technology infringes Tivo's patent, we could be prohibited from distributing DVRs or could be required to modify or eliminate our then-current DVR functionality in some or all set-top boxes in the field. In that event we would be at a significant disadvantage to our competitors who could continue offering DVR functionality and the adverse effect on our business could be material. We could also have to pay substantial additional damages.

Because both we and EchoStar are defendants in the Tivo lawsuit, we and EchoStar are jointly and severally liable to Tivo for any final damages and sanctions that may be awarded by the Court. We have determined that we are obligated under the agreements entered into in connection with the Spin-off to indemnify EchoStar for substantially all liability arising from this lawsuit. EchoStar has agreed to contribute an amount equal to its $5 million intellectual property liability limit under the Receiver Agreement. We and EchoStar have further agreed that EchoStar's $5 million contribution would not exhaust EchoStar's liability to us for other intellectual property claims that may arise under the Receiver Agreement. We and EchoStar also agreed that we would each be entitled to joint ownership of, and a cross-license to use, any intellectual property developed in connection with any potential new alternative technology.

Item 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

Issuer Purchases of Equity Securities

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

Period	Total Number of Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Maximum Approximate Dollar Value of Shares that May Yet be Purchased Under the Plans or Programs (a)
				(In thousands)
July 1 – July 31, 2009	—	$ —	—	$ 980,580
August 1 – August 31, 2009	—	$ —	—	$ 980,580
September 1 – September 30, 2009	—	$ —	—	$ 980,580
Total	—	$ —	—	$ 980,580

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

Item 5. OTHER INFORMATION

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

Dividend

On November 6, 2009, our board of directors declared a dividend of $2.00 per share on our outstanding Class A and Class B common stock. The dividend will be payable in cash on December 2, 2009 to shareholders of record on November 20, 2009.

PART II — OTHER INFORMATION — Continued

Item 6. EXHIBITS

(a) Exhibits.

4.1*	Registration Rights Agreement, dated as of October 5, 2009, among DISH DBS Corporation, the guarantors named on the signature pages thereto and Deutsche Bank Securities Inc. (incorporated by reference from Exhibit 4.2 to the current report on Form 8-K of DISH Network filed on October 6, 2009).
10.1*	NIMIQ 5 Whole RF Channel Service Agreement, dated September 15, 2009, between Telesat Canada and EchoStar (incorporated by reference from Exhibit 10.1 to the Quarterly Report on Form 10-Q of EchoStar for the quarter ended September 30, 2009, Commission File No. 001-33807).***
10.2*	NIMIQ 5 Whole RF Channel Service Agreement, dated September 15, 2009, between EchoStar and DISH Network L.L.C. (incorporated by reference from Exhibit 10.2 to the Quarterly Report on Form 10-Q of EchoStar for the quarter ended September 30, 2009, Commission File No. 001-33807).***
10.3*	Professional Services Agreement, dated August 4, 2009, between EchoStar and DISH Network (incorporated by reference from Exhibit 10.3 to the Quarterly Report on Form 10-Q of EchoStar for the quarter ended September 30, 2009, Commission File No. 001-33807).***
10.4*	Allocation Agreement, dated August 4, 2009, between EchoStar and DISH Network (incorporated by reference from Exhibit 10.4 to the Quarterly Report on Form 10-Q of EchoStar for the quarter ended September 30, 2009, Commission File No. 001-33807).
31.1o	Section 302 Certification of Chief Executive Officer.
31.2o	Section 302 Certification of Chief Financial Officer.
32.1o	Section 906 Certification of Chief Executive Officer.
32.2o	Section 906 Certification of Chief Financial Officer.
101**	The following materials from the Quarterly Report on Form 10-Q of DISH Network for the quarter ended September 30, 2009, filed on November 9, 2009, formatted in eXtensible Business Reporting Language (“XBRL”): (i) Condensed Consolidated Balance Sheets, (ii) Condensed Consolidated Statements of Operations and Comprehensive Income (Loss), (iii) Condensed Consolidated Statements of Cash Flows, and (iv) related notes to these financial statements tagged as blocks of text.

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o Filed herewith.

* Incorporated by reference.

** In accordance with Rule 402 of Regulation S-T, the information in this Exhibit 101 shall not be deemed “filed” for the purposes of section 18 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or otherwise subject to the liability of that section, and shall not be incorporated by reference into any registration statement or other document filed under the Securities Act of 1933, as amended, or the Exchange Act, except as shall be expressly set forth by the specific reference in such filing.

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

SIGNATURES

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

DISH NETWORK CORPORATION

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

By: /s/ *Robert E. Olson*
Robert E. Olson
Executive Vice President and Chief Financial Officer
(Principal Financial Officer)

Date: November 9, 2009

EXHIBIT 31.1

CERTIFICATION OF CHIEF EXECUTIVE OFFICER
Section 302 Certification

I, Charles W. Ergen, certify that:

1. I have reviewed this quarterly report on Form 10-Q of DISH Network Corporation;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 9, 2009

/s/ Charles W. Ergen
Chairman, President and Chief Executive Officer

EXHIBIT 31.2

CERTIFICATION OF CHIEF FINANCIAL OFFICER
Section 302 Certification

I, Robert E. Olson, certify that:

1. I have reviewed this quarterly report on Form 10-Q of DISH Network Corporation;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 9, 2009

/s/ Robert E. Olson
Chief Financial Officer

EXHIBIT 32.1

CERTIFICATION OF CHIEF EXECUTIVE OFFICER
Section 906 Certification

Pursuant to 18 U.S.C. § 1350, the undersigned officer of DISH Network Corporation (the “Company”) hereby certifies that to the best of his knowledge the Company’s Quarterly Report on Form 10-Q for the three months ended September 30, 2009 (the “Report”) fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934 and that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: November 9, 2009

Name: /s/ *Charles W. Ergen*

Title: Chairman, President and Chief Executive Officer

The foregoing certification is being furnished solely pursuant to 18 U.S.C. § 1350 and is not being filed as part of the Report or as a separate disclosure document.

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

CERTIFICATION OF CHIEF FINANCIAL OFFICER

Section 906 Certification

Pursuant to 18 U.S.C. § 1350, the undersigned officer of DISH Network Corporation (the “Company”) hereby certifies that to the best of his knowledge the Company’s Quarterly Report on Form 10-Q for the three months ended September 30, 2009 (the “Report”) fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934 and that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated:	November 9, 2009
Name:	*/s/ Robert E. Olson*
Title:	Chief Financial Officer

The foregoing certification is being furnished solely pursuant to 18 U.S.C. § 1350 and is not being filed as part of the Report or as a separate disclosure document.

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.