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, 2005**

**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**

# EchoStar Communications Corporation

(Exact name of registrant as specified in its charter)

| | |
|---|---|
| **Nevada**<br>(State or other jurisdiction of incorporation or organization) | **88-0336997**<br>(I.R.S. Employer Identification No.) |
| **9601 South Meridian Boulevard**<br>**Englewood, Colorado**<br>(Address of principal executive offices) | **80112**<br>(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 is an accelerated filer (as defined by Rule 12b-2 of the Exchange Act). Yes** ☑ **No** o

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

**As of October 31, 2005, the Registrant's outstanding common stock consisted of 211,567,477 shares of Class A common stock and 238,435,208 Shares of Class B common stock.**

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### PART I — FINANCIAL INFORMATION



### PART II — OTHER 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 turn out to be correct, 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 document completely and with the understanding that actual future results may be materially different from what we expect. Whether actual events or results will conform to our expectations and predictions is subject to a number of risks and uncertainties. These risks and uncertainties include, but are not limited to, the following:

- we face intense and increasing competition from satellite and cable television providers; new competitors, including telephone companies, are entering the subscription television business, and new technologies, including video over the internet, are likely to further increase competition;
- as technology changes, and in order to remain competitive, we will have to upgrade or replace some, or all, subscriber equipment periodically. We will not be able to pass on to our customers the entire cost of these upgrades;
- DISH Network subscriber growth may decrease, subscriber turnover may increase and subscriber acquisition costs may increase;
- satellite programming signals have been pirated and will continue to be pirated in the future; pirating could cause us to lose subscribers and revenue, and result in higher costs to us;
- we depend on others to produce programming; programming costs may increase beyond our current expectations; we may be unable to obtain or renew programming agreements on acceptable terms or at all; existing programming agreements could be subject to cancellation; foreign programming is increasingly offered on other platforms which could cause our subscriber additions and related revenue to decline and could cause our subscriber turnover to increase;
- we depend on the Telecommunications Act of 1996 As Amended (“Communications Act”) and Federal Communications Commission (“FCC”) program access rules to secure nondiscriminatory access to programming produced by others, neither of which assure that we have fair access to all programming that we need to remain competitive;
- the regulations governing our industry may change;
- certain provisions of the Satellite Home Viewer Extension and Reauthorization Act of 2004, or SHVERA, may force us to stop offering local channels in certain markets or may force us to incur additional costs to continue offering local channels in certain markets;
- our satellite launches may be delayed or fail, or our satellites may fail in orbit prior to the end of their scheduled lives causing extended interruptions of some of the channels we offer;
- we currently do not have commercial insurance covering losses incurred from the failure of satellite launches and/or in-orbit satellites we own;
- service interruptions arising from technical anomalies on satellites or on-ground components of our direct broadcast satellite (“DBS”) system, or caused by war, terrorist activities or natural disasters, may cause customer cancellations or otherwise harm our business;
- we are heavily dependent on complex information technologies; weaknesses in our information technology systems could have an adverse impact on our business; we may have difficulty attracting and retaining qualified personnel to maintain our information technology infrastructure;
- we rely on key personnel including Charlie W. Ergen, our chairman and chief executive officer, and other executives; we do not maintain “key man” insurance;
- we may be unable to obtain needed retransmission consents, FCC authorizations or export licenses, and we may lose our current or future authorizations;
- we are party to various lawsuits which, if adversely decided, could have a significant adverse impact on our business;

- we may be unable to obtain patent licenses from holders of intellectual property or redesign our products to avoid patent infringement;
- sales of digital equipment and related services to international direct-to-home service providers may decrease;
- we are highly leveraged and subject to numerous constraints on our ability to raise additional debt;
- acquisitions, business combinations, strategic partnerships, divestitures and other significant transactions may involve additional uncertainties;
- weakness in the global or U.S. economy may harm our business generally, and adverse political or economic developments may occur in some of our markets;
- terrorist attacks, the possibility of war or other hostilities, natural and man-made disasters, and changes in political and economic conditions as a result of these events may continue to affect the U.S. and the global economy and may increase other risks;
- we periodically evaluate and test our internal control over financial reporting in order to satisfy the requirements of Section 404 of the Sarbanes-Oxley Act. Although our management concluded that our internal control over financial reporting was effective as of December 31, 2004, and while there has been no material change in our internal control over financial reporting during the nine months ended September 30, 2005, if in the future we are unable to report that our internal control over financial reporting is effective (or if our auditors do not agree with our assessment of the effectiveness of, or are unable to express an opinion on, our internal control over financial reporting), we could lose investor confidence in our financial reports, which could have a material adverse effect on our stock price and our business; and
- we may face other risks described from time to time in periodic and current reports we file with the Securities and Exchange Commission ("SEC").

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

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 document, the words "we," "our" and "us" refer to EchoStar Communications Corporation and its subsidiaries, unless the context otherwise requires. "EDBS" refers to EchoStar DBS Corporation and its subsidiaries.

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

| | As of | |
|---|---|---|
| | September 30, 2005 | December 31, 2004 |
| **Assets** | | |
| *Current Assets:* | | |
| Cash and cash equivalents | $ 1,012,522 | $ 704,560 |
| Marketable investment securities | 504,986 | 451,073 |
| Trade accounts receivable, net of allowance for uncollectible accounts of $10,086 and $9,542, respectively | 471,011 | 478,310 |
| Inventories, net (Note 4) | 236,322 | 271,581 |
| Insurance receivable (Note 6) | — | 106,000 |
| Current deferred tax assets (Note 3) | 124,483 | — |
| Other current assets | 154,400 | 101,784 |
| Total current assets | 2,503,724 | 2,113,308 |
| Restricted cash and marketable investment securities | 67,909 | 57,552 |
| Property and equipment, net of accumulated depreciation of $1,976,462 and $1,560,902, respectively | 3,188,589 | 2,640,168 |
| FCC authorizations | 739,326 | 739,326 |
| Long-term deferred tax assets (Note 3) | 514,966 | — |
| Intangible assets, net (Note 8) | 235,822 | 240,186 |
| Other noncurrent assets, net | 282,881 | 238,737 |
| Total assets | $ 7,533,217 | $ 6,029,277 |
| | | |
| **Liabilities and Stockholders' Equity (Deficit)** | | |
| *Current Liabilities:* | | |
| Trade accounts payable | $ 290,425 | $ 247,698 |
| Deferred revenue and other | 717,525 | 757,302 |
| Accrued programming | 688,870 | 604,934 |
| Other accrued expenses | 440,417 | 416,869 |
| Current portion of capital lease and other long-term obligations (Note 9) | 45,941 | 45,062 |
| Total current liabilities | 2,183,178 | 2,071,865 |
| | | |
| *Long-term obligations, net of current portion:* | | |
| 5¾% Convertible Subordinated Notes due 2008 | 1,000,000 | 1,000,000 |
| 9⅛% Senior Notes due 2009 | 441,964 | 446,153 |
| 3% Convertible Subordinated Note due 2010 | 500,000 | 500,000 |
| Floating Rate Senior Notes due 2008 | 500,000 | 500,000 |
| 5¾% Senior Notes due 2008 | 1,000,000 | 1,000,000 |
| 6⅜% Senior Notes due 2011 | 1,000,000 | 1,000,000 |
| 3% Convertible Subordinated Note due 2011 | 25,000 | 25,000 |
| 6⅝% Senior Notes due 2014 | 1,000,000 | 1,000,000 |
| Capital lease obligations, mortgages and other notes payable, net of current portion (Note 9) | 438,217 | 286,673 |
| Long-term deferred revenue, distribution and carriage payments and other long-term liabilities | 230,033 | 277,798 |
| Total long-term obligations, net of current portion | 6,135,214 | 6,035,624 |
| Total liabilities | 8,318,392 | 8,107,489 |
| | | |
| Commitments and Contingencies (Note 11) | | |
| | | |
| *Stockholders' Equity (Deficit):* | | |
| Class A common stock, $.01 par value, 1,600,000,000 shares authorized, 249,999,640 and 249,028,664 shares issued, 213,287,425 and 217,235,150 shares outstanding, respectively | 2,500 | 2,490 |
| 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 | 1,865,697 | 1,764,973 |
| Accumulated other comprehensive income (loss) | 3,133 | 53,418 |
| Accumulated earnings (deficit) | (1,519,562) | (2,901,477) |
| Treasury stock, at cost | (1,139,327) | (1,000,000) |
| Total stockholders' equity (deficit) | (785,175) | (2,078,212) |
| Total liabilities and stockholders' equity (deficit) | $ 7,533,217 | $ 6,029,277 |

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

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

| | For the Three Months Ended September 30, | | For the Nine Months Ended September 30, | |
|---|---|---|---|---|
| | 2005 | 2004 | 2005 | 2004 |
| **Revenue:** | | | | |
| Subscriber-related revenue | $2,007,592 | $1,733,494 | $5,891,030 | $4,887,506 |
| Equipment sales | 98,724 | 97,777 | 286,056 | 260,107 |
| Other | 21,905 | 31,342 | 70,621 | 72,509 |
| Total revenue | 2,128,221 | 1,862,613 | 6,247,707 | 5,220,122 |
| **Costs and Expenses:** | | | | |
| Subscriber-related expenses (exclusive of depreciation shown below — Note 12) | 986,693 | 929,008 | 2,987,023 | 2,601,450 |
| Satellite and transmission expenses (exclusive of depreciation shown below — Note 12) | 34,239 | 28,697 | 98,092 | 82,259 |
| Cost of sales — equipment | 82,906 | 85,659 | 234,767 | 206,543 |
| Cost of sales — other | 4,811 | 11,431 | 20,623 | 23,563 |
| *Subscriber acquisition costs:* | | | | |
| Cost of sales — subscriber promotion subsidies (exclusive of depreciation shown below — Note 12) | 23,641 | 90,361 | 95,080 | 399,246 |
| Other subscriber promotion subsidies | 330,690 | 256,389 | 855,540 | 666,167 |
| Subscriber acquisition advertising | 48,234 | 30,354 | 130,420 | 93,334 |
| Total subscriber acquisition costs | 402,565 | 377,104 | 1,081,040 | 1,158,747 |
| General and administrative | 116,250 | 101,817 | 342,314 | 286,761 |
| Non-cash, stock-based compensation | — | — | — | 1,180 |
| Depreciation and amortization (Note 12) | 208,873 | 133,973 | 568,336 | 358,512 |
| Total costs and expenses | 1,836,337 | 1,667,689 | 5,332,195 | 4,719,015 |
| Operating income (loss) | 291,884 | 194,924 | 915,512 | 501,107 |
| **Other income (expense):** | | | | |
| Interest income | 12,668 | 7,868 | 29,995 | 34,527 |
| Interest expense, net of amounts capitalized | (94,022) | (92,176) | (278,396) | (367,024) |
| Gain on insurance settlement (Note 6) | — | — | 134,000 | — |
| Other | 7,342 | (1,516) | 41,424 | (13,225) |
| Total other income (expense) | (74,012) | (85,824) | (72,977) | (345,722) |
| Income (loss) before income taxes | 217,872 | 109,100 | 842,535 | 155,385 |
| Income tax benefit (provision), net (Note 3) | (9,008) | (6,839) | 539,380 | (10,694) |
| Net income (loss) | $ 208,864 | $ 102,261 | $1,381,915 | $ 144,691 |
| Denominator for basic net income (loss) per share — weighted-average common shares outstanding | 451,732 | 454,556 | 453,358 | 467,065 |
| Denominator for diluted net income (loss) per share — weighted-average common shares outstanding | 483,792 | 457,803 | 485,536 | 470,781 |
| **Net income (loss) per share:** | | | | |
| Basic net income (loss) | $ 0.46 | $ 0.22 | $ 3.05 | $ 0.31 |
| Diluted net income (loss) | $ 0.46 | $ 0.22 | $ 2.92 | $ 0.31 |

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

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

| | For the Nine Months Ended September 30, 2005 | For the Nine Months Ended September 30, 2004 |
|---|---|---|
| **Cash Flows From Operating Activities:** | | |
| Net income (loss) | $1,381,915 | $ 144,691 |
| *Adjustments to reconcile net income (loss) to net cash flows from operating activities:* | | |
| Depreciation and amortization | 568,336 | 358,512 |
| Equity in losses (earnings) of affiliates | (385) | (100) |
| Realized and unrealized losses (gains) on investments | (46,567) | 6,955 |
| Gain on insurance settlement (Note 6) | (134,000) | — |
| Non-cash, stock-based compensation recognized | — | 1,180 |
| Deferred tax expense (benefit) (Note 3) | (569,214) | 6,899 |
| Amortization of debt discount and deferred financing costs | 4,734 | 16,593 |
| Change in noncurrent assets | 6,845 | (91,656) |
| Change in long-term deferred revenue, distribution and carriage payments and other long-term liabilities | (29,197) | 112,206 |
| Other, net | 3,919 | 5,604 |
| Changes in current assets and current liabilities, net | 185,633 | 193,700 |
| Net cash flows from operating activities | 1,372,019 | 754,584 |
| **Cash Flows From Investing Activities:** | | |
| Purchases of marketable investment securities | (553,793) | (1,631,358) |
| Sales and maturities of marketable investment securities | 462,490 | 3,587,163 |
| Purchases of property and equipment | (951,994) | (638,841) |
| Proceeds from insurance settlement (Note 6) | 240,000 | — |
| Change in cash reserved for satellite insurance | — | 75,664 |
| Change in restricted cash and marketable investment securities | (16,677) | (10) |
| Asset acquisition | — | (238,610) |
| FCC auction deposits | (4,245) | (26,684) |
| Purchase of technology-based intangibles | (25,500) | — |
| Purchase of strategic investments | (24,878) | (6,900) |
| Other | (524) | 468 |
| Net cash flows from investing activities | (875,121) | 1,120,892 |
| **Cash Flows From Financing Activities:** | | |
| Proceeds from issuance of 3% Convertible Subordinated Note due 2011 | — | 25,000 |
| Redemption of 9⅜% Senior Notes due 2009 | — | (1,423,351) |
| Repurchase of 9⅛% Senior Notes due 2009 | (4,189) | (8,847) |
| Class A common stock repurchases (Note 10) | (152,464) | (809,609) |
| Repayment of capital lease obligations, mortgages and other notes payable | (41,467) | (6,268) |
| Net proceeds from Class A common stock options exercised and Class A common stock issued under Employee Stock Purchase Plan | 9,184 | 8,438 |
| Net cash flows from financing activities | (188,936) | (2,214,637) |
| Net increase (decrease) in cash and cash equivalents | 307,962 | (339,161) |
| Cash and cash equivalents, beginning of period | 704,560 | 1,290,859 |
| Cash and cash equivalents, end of period | $1,012,522 | $ 951,698 |
| **Supplemental Disclosure of Cash Flow Information:** | | |
| Cash paid for interest | $ 222,244 | $ 276,533 |
| Capitalized interest | $ 5,264 | $ 1,947 |
| Cash received for interest | $ 23,981 | $ 48,231 |
| Cash paid for income taxes | $ 8,280 | $ 5,337 |
| Assumption of net operating liabilities in asset acquisition | $ — | $ 25,685 |
| Assumption of liabilities and long-term deferred revenue | $ — | $ 69,357 |
| Employee benefits paid in Class A common stock | $ 13,055 | $ 16,375 |
| Satellite financed under capital lease obligation (Note 9) | $ 191,950 | $ — |
| Vendor financing | $ 1,940 | $ 6,519 |

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

## 1. Organization and Business Activities

***Principal Business***

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

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

Since 1994, we have deployed substantial resources to develop the "EchoStar DBS System." The EchoStar DBS System consists of our FCC-allocated DBS spectrum, our owned and leased satellites, EchoStar receiver systems, digital broadcast operations centers, customer service facilities, and certain other assets utilized in our operations. Our principal business strategy is to continue developing our subscription television service in the United States to provide consumers with a fully competitive alternative to cable television service.

## 2. Significant Accounting Policies

***Basis of Presentation***

The accompanying unaudited Condensed Consolidated Financial Statements have been prepared in accordance with 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. In our opinion, all adjustments (consisting of normal recurring adjustments) considered necessary for a fair presentation have been included. Certain prior year amounts have been reclassified to conform to the current year presentation. Operating results for the nine months ended September 30, 2005 are not necessarily indicative of the results that may be expected for the year ending December 31, 2005. 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, 2004 ("2004 10-K") and all of our other reports filed with the SEC after such date and through the date of this report.

***Principles of Consolidation***

We consolidate all majority owned subsidiaries and investments in entities in which we have controlling influence. Non-majority owned investments are accounted for using the equity method when we have the ability to significantly influence the operating decisions of the issuer. When we do not have the ability to significantly influence the operating decisions of an issuer, the cost method is used. For entities that are considered variable interest entities we apply the provisions of FASB Interpretation No. (FIN) 46-R, "Consolidation of Variable Interest Entities — An Interpretation of ARB No. 51" ("FIN 46-R"). 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 revenues and expenses for each reporting period. Estimates are used in accounting for, among other things, allowances for uncollectible accounts, inventory allowances, self insurance obligations, deferred taxes and related valuation allowances, loss contingencies, fair values 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 commissions, programming expenses, subscriber lives including those related to our co-branding and other distribution relationships, royalty obligations and smart card replacement obligations. 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 in the period they occur.

***Comprehensive Income (Loss)***

The components of comprehensive income (loss) are as follows:

| | For the Three Months Ended September 30, | | For the Nine Months Ended September 30, | |
|---|---|---|---|---|
| | 2005 | 2004 | 2005 | 2004 |
| | (In thousands) | | | |
| Net income (loss) | $208,864 | $102,261 | $1,381,915 | $144,691 |
| Foreign currency translation adjustments | (101) | 19 | (694) | (162) |
| Unrealized holding gains (losses) on available-for-sale securities | (1,222) | 12,277 | (43,161) | (5,359) |
| Recognition of previously unrealized (gains) losses on available-for-sale securities included in net income (loss) | (5,235) | (1,342) | (5,251) | (34,147) |
| Deferred income tax (expense) benefit attributable to unrealized holding gains (losses) on available-for-sale securities | 2,260 | — | (1,179) | — |
| Comprehensive income (loss) | $204,566 | $113,215 | $1,331,630 | $105,023 |

"Accumulated other comprehensive income (loss)" presented on the accompanying Condensed Consolidated Balance Sheets consists of the accumulated net unrealized gains (losses) on available-for-sale securities and foreign currency translation adjustments, net of deferred taxes.

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

Statement of Financial Accounting Standards No. 128, "Earnings Per Share" ("SFAS 128") requires entities to present both basic earnings per share ("EPS") and diluted EPS. Basic EPS excludes dilution and is computed by dividing net income (loss) by the weighted-average number of common shares outstanding for the period. Diluted EPS reflects the potential dilution that could occur if stock options were exercised and convertible securities were converted to common stock.

The potential dilution from our subordinated notes convertible into common stock was computed using the if-converted method, and the potential dilution from stock options exercisable into common stock was computed using the treasury stock method based on the average market value of our Class A common stock for the period. The following table reflects the basic and diluted weighted-average shares outstanding used to calculate basic and diluted net income (loss) per share. Earnings per share amounts for all periods are presented below in accordance with the requirements of SFAS 128.

| | For the Three Months Ended September 30, | | For the Nine Months Ended September 30, | |
|---|---|---|---|---|
| | 2005 | 2004 | 2005 | 2004 |
| | (In thousands) | | | |
| **Numerator:** | | | | |
| Numerator for basic net income (loss) per share — Net income (loss) | $208,864 | $102,261 | $1,381,915 | $144,691 |
| Interest on subordinated notes convertible into common shares, net of related tax effect | 11,537 | — | 34,611 | — |
| Numerator for diluted net income (loss) per share | $220,401 | $102,261 | $1,416,526 | $144,691 |
| **Denominator:** | | | | |
| Denominator for basic net income (loss) per share — weighted-average common shares outstanding | 451,732 | 454,556 | 453,358 | 467,065 |
| Dilutive impact of options outstanding | 1,695 | 3,247 | 1,813 | 3,716 |
| Dilutive impact of subordinated notes convertible into common shares | 30,365 | — | 30,365 | — |
| Denominator for diluted net income (loss) per share — weighted-average diluted common shares outstanding | 483,792 | 457,803 | 485,536 | 470,781 |
| **Net income (loss) per share:** | | | | |
| Basic net income (loss) | $ 0.46 | $ 0.22 | $ 3.05 | $ 0.31 |
| Diluted net income (loss) | $ 0.46 | $ 0.22 | $ 2.92 | $ 0.31 |
| **Shares of Class A common stock issuable upon conversion of:** | | | | |
| 5¾% Convertible Subordinated Notes due 2008 | 23,100 | 23,100 | 23,100 | 23,100 |
| 3% Convertible Subordinated Note due 2010 | 6,866 | 6,866 | 6,866 | 6,866 |
| 3% Convertible Subordinated Note due 2011 | 399 | 399 | 399 | 399 |

As of September 30, 2005, there were approximately 8.0 million outstanding options to purchase shares of Class A common stock not included in the above denominator as their effect is antidilutive. Further, as of September 30, 2005, there were options to purchase approximately 11.4 million shares of our Class A common stock, and rights to acquire approximately 548,000 shares of our Class A common stock ("Restricted Performance Units"), outstanding under our long term incentive plans not included in the above denominator. Vesting of these options and Restricted Performance Units is contingent upon meeting certain longer-term goals which have not yet been achieved, and as a consequence, are not included in the diluted EPS calculation.

***Accounting for Stock-Based Compensation***

We apply the intrinsic value method of accounting under Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees," ("APB 25") and related interpretations in accounting for our stock-based compensation plans. Under APB 25, we generally do not recognize compensation expense on the grant of options under our stock incentive plans because typically the option terms are fixed and the exercise price equals or exceeds the market price of the underlying stock on the date of grant. We apply the disclosure only provisions of Statement of Financial Accounting Standards No. 123, "Accounting and Disclosure of Stock-Based Compensation," ("SFAS 123").

In December 2004, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards No. 123 (Revised 2004), "Share Based Payment" ("SFAS 123(R)") which (i) revises SFAS 123 to eliminate the disclosure only provisions of that statement and the alternative to follow the intrinsic value method of accounting under APB 25 and related interpretations, and (ii) requires a public entity to measure the cost of employee services received in exchange for an award of equity instruments, including grants of employee stock options, based on the grant-date fair value of the award and recognize that cost in its results of operations over the period during which an employee is required to provide the requisite service in exchange for that award. On April 14, 2005, the SEC deferred the effective date we are required to adopt this statement until January 1, 2006. Companies may elect to apply this statement either prospectively, or on a modified version of retrospective application under which financial statements for prior periods are adjusted on a basis consistent with the pro forma disclosures required for those periods under SFAS 123. We are currently evaluating which transitional provision and fair value methodology we will follow. However, we expect that any expense associated with the adoption of the provisions of SFAS 123(R) will have a material negative impact on our results of operations.

Pro forma information regarding net income and earnings per share is required by SFAS 123 and has been determined as if we had accounted for our stock-based compensation plans using the fair value method prescribed by that statement. For purposes of pro forma disclosures, the estimated fair value of the options is amortized to expense over the options' vesting period on a straight-line basis. All options are initially assumed to vest. Compensation previously recognized is reversed to the extent applicable to forfeitures of unvested options. The following table illustrates the effect on net income (loss) per share if we had accounted for our stock-based compensation plans using the fair value method:

| | For the Three Months Ended September 30, | | For the Nine Months Ended September 30, | |
|---|---|---|---|---|
| | 2005 | 2004 | 2005 | 2004 |
| | (In thousands) | | | |
| Net income (loss), as reported | $208,864 | $102,261 | $1,381,915 | $144,691 |
| Add: Stock-based employee compensation expense included in reported net income (loss), net of related tax effect | — | — | — | 1,139 |
| Deduct: Total stock-based employee compensation expense determined under fair value based method for all awards, net of related tax effect | (3,260) | (6,259) | (10,585) | (16,982) |
| Pro forma net income (loss) | $205,604 | $ 96,002 | $1,371,330 | $128,848 |
| Basic income (loss) per share, as reported | $ 0.46 | $ 0.22 | $ 3.05 | $ 0.31 |
| Diluted income (loss) per share, as reported | $ 0.46 | $ 0.22 | $ 2.92 | $ 0.31 |
| Pro forma basic income (loss) per share | $ 0.46 | $ 0.21 | $ 3.02 | $ 0.28 |
| Pro forma diluted income (loss) per share | $ 0.45 | $ 0.21 | $ 2.90 | $ 0.27 |

For purposes of this pro forma presentation, the fair value of each option was estimated at the date of the grant using a Black-Scholes option pricing model. The Black-Scholes option valuation model was developed for use in estimating the fair value of traded options which have no vesting restrictions and are fully transferable. Consequently, our estimate of fair value may differ from other valuation models. Further, the Black-Scholes model requires the input of highly subjective assumptions and because changes in the subjective input assumptions can materially affect the fair value estimate, the existing models do not necessarily provide a reliable single measure of the fair value of stock-based compensation awards.

Options to purchase 6.6 million shares pursuant to a long-term incentive plan under our 1995 Stock Incentive Plan (the "1999 LTIP"), and 4.8 million shares pursuant to long-term incentive plans under our 1999 Stock Incentive Plan (the "2005 LTIP") were outstanding as of September 30, 2005. These options were granted with exercise prices at least equal to the market value of the underlying shares on the dates they were issued. The weighted-average exercise price of these options is $8.95 under our 1999 LTIP and $29.42 under our 2005 LTIP. Further, pursuant to the 2005 LTIP, there were also approximately 548,000 outstanding Restricted Performance Units as of September 30, 2005. Vesting of these options and Restricted Performance Units is contingent upon meeting certain longer-term goals which have not yet been achieved. Consequently, no compensation was recorded during the nine months ended September 30, 2005 related to these long-term options and Restricted Performance Units. We will record the related compensation upon the achievement of the performance goals, if ever. This compensation, if recorded, would likely result in material non-cash, stock-based compensation expense in our Condensed Consolidated Statements of Operations.

### 3. Reversal of Deferred Tax Asset Valuation Allowance

Our income tax policy is to record the estimated future tax effects of temporary differences between the tax bases of assets and liabilities and amounts reported in our Condensed Consolidated Balance Sheets, as well as operating loss, tax credit and other carry-forwards. We follow the guidelines set forth in Statement of Financial Accounting Standards No. 109, “Accounting for Income Taxes” (“SFAS 109”) regarding the recoverability of any tax assets recorded on the balance sheet and provide any necessary valuation allowances as required. In accordance with SFAS 109, we periodically evaluate our need for a valuation allowance. Determining necessary valuation allowances requires us to make assessments about historical financial information as well as the timing of future events, including the probability of expected future taxable income and available tax planning opportunities. We had income before taxes for the nine months ended September 30, 2005, and for the years ended December 31, 2004 and 2003. We concluded the recoverability of certain of our deferred tax assets is more likely than not, and accordingly, on June 30, 2005, we reversed our recorded valuation allowance for those deferred tax assets that we believe will become realizable in future years, less approximately $144.3 million which includes deferred tax assets expected to be utilized to offset taxable income during the remainder of 2005 and capital loss and other credit carry-forwards which begin to expire in the year 2006. The second quarter 2005 reversal of our valuation allowance resulted in an approximate $592.8 million credit to our provision for income taxes during the nine months ended September 30, 2005, or $1.31 per basic share and $1.22 per diluted share. Further, we reversed an additional net amount of approximately $72.6 million from our remaining recorded tax valuation allowance related to income before taxes generated during the three months ended September 30, 2005. As a result, net income increased by a corresponding amount.

As of September 30, 2005, we had current and long-term net deferred tax assets of approximately $639.4 million compared to a current and long-term net deferred tax liability of approximately $20.1 million as of December 31, 2004. The increase in our current and long-term net deferred tax assets was primarily related to our reduction in the valuation allowance recorded against our net deferred tax assets as follows (in thousands):

| | |
|---|---|
| Valuation Allowance as of December 31, 2004 | $(1,001,974) |
| Decrease of valuation allowance for current period deferred tax activity within the tax provision during the nine months ended September 30, 2005 | 259,098 |
| Valuation allowance offsetting deferred tax asset adjustments for filed returns | (12,205) |
| Decrease of valuation allowance for tax-effected changes in stockholders’ equity during the nine months ended September 30, 2005 | 4,170 |
| Credit to stockholders’ equity related to reversal of valuation allowance | 74,261 |
| Credit to provision for income taxes related to reversal of valuation allowance | 592,804 |
| Valuation Allowance as of September 30, 2005 | $ (83,846) |

If we are unable to generate sufficient future taxable income through operating results, or if our estimates of expected future taxable income change significantly, a portion or all of our deferred tax assets may have to be reserved through adjustments to net income.

## 4. Inventories

Inventories consist of the following:

| | As of | |
|---|---|---|
| | September 30, 2005 | December 31, 2004 |
| | (In thousands) | |
| Finished goods — DBS | $ 132,088 | $ 159,350 |
| Raw materials | 77,671 | 68,144 |
| Work-in-process — service repair | 25,439 | 40,720 |
| Work-in-process | 10,813 | 11,112 |
| Consignment | 419 | 2,644 |
| Inventory allowance | (10,108) | (10,389) |
| Inventories, net | $ 236,322 | $ 271,581 |

## 5. Marketable and Non-Marketable Investment Securities

We currently classify all marketable investment securities as available-for-sale. We adjust the carrying value of our available-for-sale securities to fair market value and report the related temporary unrealized gains and losses as a separate component of "Accumulated other comprehensive income (loss)" within "Total stockholders' equity (deficit)," net of related deferred income tax. Declines in the fair market value of a marketable investment security which are estimated to be "other than temporary" are recognized in the Condensed Consolidated Statement of Operations, thus establishing a new cost basis for such investment. We evaluate our marketable investment securities portfolio on a quarterly basis to determine whether declines in the fair market value of these securities are other than temporary. This quarterly evaluation consists of reviewing, among other things, the fair market value of our marketable investment securities compared to the carrying amount, the historical volatility of the price of each security and any market and company specific factors related to each security. Generally, absent specific factors to the contrary, declines in the fair market value of investments below cost basis for a period of less than six months are considered to be temporary. Declines in the fair market value of investments for a period of six to nine months are evaluated on a case by case basis to determine whether any company or market-specific factors exist which would indicate that such declines are other than temporary. Declines in the fair market value of investments below cost basis for greater than nine months are considered other than temporary and are recorded as charges to earnings, absent specific factors to the contrary.

Some of our investments in marketable securities have declined below our cost. The following table reflects the length of time that the individual securities have been in a continuous unrealized loss position, aggregated by investment category, where those declines are considered temporary in accordance with our policy:

| | As of September 30, 2005 | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | Less than Six Months | | Six to Nine Months | | Nine Months or More | | Total | |
| | Fair Market Value | Unrealized Loss | Fair Market Value | Unrealized Loss | Fair Market Value | Unrealized Loss | Fair Market Value | Unrealized Loss |
| | (In thousands) | | | | | | | |
| Government bonds | $ — | $ — | $ 19,812 | $ (186) | $100,878 | $(1,062) | $120,690 | $ (1,248) |
| Corporate equity securities | — | — | 50,437 | (19,481) | — | — | 50,437 | (19,481) |
| Total | $ — | $ — | $ 70,249 | $(19,667) | $100,878 | $(1,062) | $171,127 | $(20,729) |
| | As of December 31, 2004 | | | | | | | |
| Government bonds | $ — | $ — | $143,928 | $ (1,377) | $ 50,759 | $ (692) | $194,687 | $ (2,069) |

***Government Bonds***. The unrealized losses on our investments in U.S. Treasury obligations and direct obligations of U.S. government agencies were caused by interest rate increases. At September 30, 2005 and December 31, 2004, maturities on these government bonds ranged from one to nine months. We have the ability and intent to hold these investments until maturity when the Government is required to redeem them at their full face value. Accordingly, we do not consider these investments to be other-than-temporarily impaired as of September 30, 2005 or December 31, 2004.

***Corporate Equity Securities.*** The unrealized loss on our investments in corporate equity securities represents an investment in the marketable common stock of a company in the home entertainment industry. We believe the unrealized loss is generally attributable to market uncertainty surrounding the company's business outlook. However, after evaluating, among other factors, the company, the length of time the investment has been in a loss position and recent analyst reports, we believe that it is currently undervalued. Although there is significant risk the investment will not recover its full value, we are not aware of any specific factors which indicate the unrealized loss is other than temporary. We continue to evaluate the company's performance, and if the fair market value of our investment remains below its cost basis as of the year ended December 31, 2005, we will recognize an impairment on this investment as a charge to earnings, absent specific factors to the contrary, in accordance with our policies discussed above.

As of September 30, 2005 and December 31, 2004, we had unrealized gains net of related tax effect of approximately $2.2 million and $51.8 million, respectively, as a part of "Accumulated other comprehensive income (loss)" within "Total stockholders' equity (deficit)." During the nine months ended September 30, 2005 and 2004, we did not record any charge to earnings for other than temporary declines in the fair market value of our marketable investment securities. During the nine months ended September 30, 2005 and 2004, we realized net gains of approximately $8.7 million and net losses of $7.0 million on sales of marketable and non-marketable investment securities, respectively. Realized gains and losses are accounted for on the specific identification method.

Our approximately $1.585 billion of restricted and unrestricted cash, cash equivalents and marketable investment securities includes debt and equity securities which we own for strategic and financial purposes. The fair market value of these strategic marketable investment securities aggregated approximately $113.0 million and $174.3 million as of September 30, 2005 and December 31, 2004, respectively. Our portfolio generally, and our strategic investments particularly, have experienced and continue to experience volatility. If the fair market value of our strategic marketable investment securities portfolio does not remain above cost basis or if we become aware of any market or company specific factors that indicate that the carrying value of certain of our strategic marketable investment securities is impaired, we may be required to record charges to earnings in future periods equal to the amount of the decline in fair market value.

We also have strategic equity investments in certain non-marketable securities which are included in "Other noncurrent assets, net" on our Condensed Consolidated Balance Sheets. We account for our unconsolidated equity investments under the equity method or cost method of accounting, or as available-for-sale. These equity securities are not publicly traded and accordingly, it is not practical to regularly estimate the fair value of the investments, however, these investments are subject to an evaluation for other than temporary impairment on a quarterly basis. This quarterly evaluation consists of reviewing, among other things, company business plans and current financial statements, if available, for factors that may indicate an impairment of our investment. Such factors may include, but are not limited to, cash flow concerns, material litigation, violations of debt covenants and changes in business strategy. The fair value of these equity investments is not estimated unless there are identified changes in circumstances that may indicate an impairment exists and are likely to have a significant adverse effect on the fair value of the investment. As of September 30, 2005 and December 31, 2004, we had $98.1 million and $90.4 million aggregate carrying amount of non-marketable, unconsolidated strategic equity investments, respectively, of which $52.7 million is accounted for under the cost method. During the nine months ended September 30, 2005 and 2004, we did not record any impairment charges with respect to these investments.

We also have a strategic investment in the non-public preferred stock and convertible debt of a public company which is included in "Other noncurrent assets, net" on our Condensed Consolidated Balance Sheets. The investment is convertible into the issuer's common shares. We account for the investment at fair value with changes in fair value reported each period as unrealized gains or losses in "Other" income or expense in our Condensed Consolidated Statement of Operations. As of September 30, 2005, the fair value of the investment was approximately $50.6 million based on the trading price of the issuer's shares on that date, and we recognized a pre-tax unrealized gain of approximately $40.9 million for the change in the fair value of the investment. Among other factors, as the result of the relatively large number of shares we would hold upon conversion compared to the issuer's limited public trading volume, there can be no assurance that we will be able to obtain full value for our investment upon a sale of the common shares.

Our ability to realize value from our strategic investments is dependent on the success of the issuer's business and ability to obtain sufficient capital to execute their business plans. Since private markets are not as liquid as public markets, there is also increased risk that we will not be able to sell these investments, or that when we desire to sell them we will not be able to obtain full value for them.

### 6. Settlement of EchoStar IV Arbitration

During March 2005, we settled our insurance claim and related claims for accrued interest and bad faith with the insurers of our EchoStar IV satellite for the net amount of $240.0 million. We also retained title to and use of the EchoStar IV satellite. The $134.0 million received in excess of our previously recorded $106.0 million receivable related to this insurance claim was recognized as a "Gain on insurance settlement" in our Condensed Consolidated Statement of Operations during March 2005. We have received all amounts due under the settlement.

### 7. Satellites

We presently have nine owned and three leased satellites in geostationary orbit approximately 22,300 miles above the equator. While we believe that overall our satellite fleet is in general good health, during 2005 and prior periods, certain satellites within our fleet have experienced various anomalies, some of which have had a significant adverse impact on their commercial operation. We currently do not carry insurance for any of our owned in-orbit satellites. We believe we have in-orbit satellite capacity sufficient to expeditiously recover transmission of most programming in the event one of our in-orbit satellites fails. However, programming continuity cannot be assured in the event of multiple satellite losses.

Recent developments with respect to certain of our satellites are discussed below.

#### *EchoStar I and II*

EchoStar I and II currently operate at the 148 degree orbital location. Each of these Series 7000 class satellites, designed and manufactured by Lockheed Martin Corporation ("Lockheed"), has 16 transponders that operate at approximately 130 watts of power. While both satellites are currently functioning properly in orbit, similar Lockheed Series 7000 class satellites owned by third parties have experienced total in-orbit failure. While no telemetry or other data indicates EchoStar I or EchoStar II would be expected to experience a similar failure, Lockheed has been unable to conclude these and other Series 7000 satellites will not experience similar failures. EchoStar I and II are each equipped with 24 Traveling Wave Tube Amplifiers ("TWTA"), of which 16 are required to support full operation on each satellite. Prior to 2005, anomalies left each satellite with 23 usable TWTAs. While we don't expect a large number of additional TWTAs to fail in any year, it is likely that additional TWTA failures will occur from time to time in the future, and that those failures may impact commercial operation of the satellites.

***EchoStar III***

Our EchoStar III satellite was originally designed to operate a maximum of 32 transponders at approximately 120 watts per channel, switchable to 16 transponders operating at over 230 watts per channel, and the satellite was equipped with a total of 44 TWTAs to provide redundancy. Prior to 2005, nine TWTA pairs failed. During May 2005, an additional TWTA pair failed resulting in a total of 20 failed TWTAs on the satellite to date. As a result, EchoStar III can now operate a maximum of 24 transponders, but due to redundancy switching limitations and specific channel authorizations, it currently can only operate 18 of the 19 FCC authorized frequencies we utilize at the 61.5 degree west orbital location. While we don’t expect a large number of additional TWTAs to fail in any year, it is likely that additional TWTA failures will occur from time to time in the future, and that those failures will further impact commercial operation of the satellite. The TWTA failures have not reduced the remaining estimated useful life of the satellite.

***EchoStar IV***

During July 2005, we relocated our EchoStar IV satellite from our 157 degree orbital location to a third party Mexican DBS orbital slot located at 77 degrees. During the relocation, EchoStar IV experienced a thruster anomaly which has not impacted commercial operation of the satellite. As previously disclosed, EchoStar IV is only capable of operating six of its 44 transponders and is fully depreciated.

***EchoStar V***

EchoStar V momentum wheel failures in prior years resulted in increased fuel consumption and caused a minor reduction of spacecraft life. During 2005, we determined those anomalies will reduce the life of EchoStar V more than previously estimated, and as a result, we reduced the estimated remaining useful life of the satellite from approximately seven years to approximately six years effective January 2005. EchoStar V has been utilized as an in-orbit spare since February 2003. On June 30, 2005, the FCC approved our request to use this satellite to provide service to the United States from a third party Canadian DBS orbital slot located at 129 degrees. Due to the increase in fuel consumption resulting from the relocation of EchoStar V from the 119 degree orbital location, and our intent to place it into commercial operation at the 129 degree orbital location, effective July 1, 2005, we further reduced the satellite’s estimated remaining useful life from approximately six years to approximately 40 months. These reductions in estimated remaining useful life during 2005 will increase our depreciation expense related to the satellite by approximately $7.7 million in 2005 and by approximately $15.3 million annually thereafter. Prior to 2005, EchoStar V experienced anomalies resulting in the loss of five solar array strings out of a total of 96 available, reducing solar array power to approximately 95% of its original capacity. During August 2005, EchoStar V lost an additional solar array string. The loss is not expected to impact commercial operation of the satellite or its remaining useful life. There can be no assurance that future anomalies will not further impact the useful life or commercial operation of the satellite.

***EchoStar VI***

EchoStar VI has a total of 112 solar array strings. Approximately 106 are required to assure full power availability for the estimated 12-year design life of the satellite. Prior to 2005, EchoStar VI lost a total of five solar array strings. During 2005, EchoStar VI experienced anomalies resulting in the loss of 11 additional solar array strings bringing the total number of string losses to 16, and reducing the number of functional solar array strings available to 96. While originally designed to operate a maximum of 32 transponders at approximately 120 watts per channel, switchable to 16 transponders operating at approximately 240 watts per channel, the solar array anomalies will prevent the use of some of those transponders for the full 12-year design life of the satellite. See discussion of evaluation for impairment below. The solar array anomalies have not impacted commercial operation of the satellite or reduced its estimated useful life below 12 years. There can be no assurance future anomalies will not cause further losses which could impact commercial operation of the satellite.

***EchoStar VIII***

During January 2005, one of the computer components in our EchoStar VIII satellite control electronics experienced an anomaly. The processors were successfully reset, during April 2005, restoring full redundancy in the spacecraft control electronics. In July 2005, a thruster experienced a “bubble” event in a propellant line which caused improper pointing of the satellite resulting in a loss of service. Service was restored within several hours and the thruster is currently operating normally. An investigation of the anomaly is continuing. During February 2005, EchoStar VIII lost a solar array string, reducing solar array power to approximately 99% of its original capacity. Until the root cause of these anomalies are determined, there can be no assurance that a repeat of the July 2005 anomaly, or other anomalies, will not cause further losses which could materially impact its commercial operation, or result in a total loss of the satellite. These and other anomalies previously disclosed have not reduced the 12 year estimated design life of the satellite. We depend on EchoStar VIII to provide local channels to over 40 markets at least until such time as our EchoStar X satellite is successfully launched and placed in operation, which is currently expected during the first half of 2006. In the event that EchoStar VIII experienced a total or substantial failure, we could transmit many, but not all, of those channels from other in-orbit satellites.

***Long-Lived Satellite Assets***

We account for long-lived satellite assets in accordance with the provisions of Statement of Financial Accounting Standards No. 144, “*Accounting for the Impairment or Disposal of Long-Lived Assets*” (“SFAS 144”). SFAS 144 requires a long-lived asset or asset group to be tested for recoverability whenever events or changes in circumstance indicate that its carrying amount may not be recoverable. Based on the guidance under SFAS 144, we evaluate our satellite fleet for recoverability as an asset group. 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 (none of which caused a loss of service for an extended period) are not considered to be significant events that would require evaluation for impairment recognition pursuant to the guidance under SFAS 144. Should any one satellite be abandoned or determined to have no service potential, the net carrying amount would be written off.

**8. Goodwill and Intangible Assets**

As of September 30, 2005 and December 31, 2004, our identifiable intangibles subject to amortization consisted of the following:

| | As of | | | |
|---|---|---|---|---|
| | September 30, 2005 | | December 31, 2004 | |
| | Intangible Assets | Accumulated Amortization | Intangible Assets | Accumulated Amortization |
| | (In thousands) | | | |
| Contract-based | $189,426 | $(25,692) | $223,873 | $(46,852) |
| Customer relationships | 73,298 | (27,237) | 73,298 | (13,493) |
| Technology-based | 32,234 | (9,567) | 17,181 | (17,181) |
| Total | $294,958 | $(62,496) | $314,352 | $(77,526) |

Amortization of these intangible assets, recorded on a straight line basis over an average finite useful life primarily ranging from approximately four to twelve years, was $29.9 million for the nine months ended September 30, 2005. For all of 2005, the aggregate amortization expense related to these identifiable assets is estimated to be $39.0 million. The aggregate amortization expense is estimated to be approximately $36.7 million for 2006, $36.1 million for 2007, $22.5 million for 2008, $17.7 million for 2009 and $110.3 million thereafter. In addition, we had approximately $3.4 million of goodwill as of September 30, 2005 and December 31, 2004 which arose from a 2002 acquisition.

## 9. Capital Lease Obligations

During February 2004, we entered into a satellite service agreement with SES Americom for all of the capacity on a new FSS satellite, AMC-16, which successfully launched during December 2004 and commenced commercial operations in February 2005. In connection with this agreement, we prepaid $29.0 million to SES Americom during 2004. The ten-year satellite service agreement is renewable by us on a year to year basis following the initial term, and provides us with certain rights to replacement satellites. We are required to make monthly payments to SES Americom under this agreement over the next ten years. In accordance with Statement of Financial Accounting Standards No. 13 (“SFAS 13”), we have accounted for this agreement as a capital lease asset by recording approximately $220.9 million as the estimated fair value of the satellite and recording a capital lease obligation in the amount of approximately $191.9 million.

As of September 30, 2005 and December 31, 2004, we had approximately $551.7 million and $330.8 million capitalized for the estimated fair value of satellites acquired under capital leases included in “Property and equipment, net,” respectively, with related accumulated depreciation of approximately $39.5 million and zero, respectively. Approximately $13.8 million and $39.5 million of depreciation expense related to these satellites was recognized during the three and nine months ended September 30, 2005, respectively, and is included in “Depreciation and amortization” in our Condensed Consolidated Statement of Operations. Future minimum lease payments under our capital lease obligations for our AMC-15 and AMC-16 satellites, together with the present value of net minimum lease payments as of September 30, 2005 are as follows:

| | |
|---|---|
| For the Year Ending December 31, | |
| 2005 | $ 14,460 |
| 2006 | 86,759 |
| 2007 | 86,759 |
| 2008 | 86,759 |
| 2009 | 86,759 |
| Thereafter | 432,023 |
| Total minimum lease payments | 793,519 |
| Less: Amount representing lease of orbital location and estimated executory costs (primarily insurance and maintenance) including profit thereon, included in total minimum lease payments | (145,945) |
| Net minimum lease payments | 647,574 |
| Less: Amount representing interest | (205,240) |
| Present value of net minimum lease payments | 442,334 |
| Less: Current portion | (29,248) |
| Long-term portion of capital lease obligations | $ 413,086 |

## 10. Stockholders’ Equity (Deficit)

### *Common Stock Repurchases*

During the third quarter of 2004, our Board of Directors authorized the repurchase of an aggregate of up to an additional $1.0 billion of our Class A common stock. During the nine months ended September 30, 2005, we purchased approximately 5.3 million shares of our Class A common stock under this plan for approximately $152.5 million.

## 11. Commitments and Contingencies

***Contingencies***

*Distant Network Litigation*

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

In October 1998, we filed a declaratory judgment action against ABC, NBC, CBS and FOX in the United States District Court for the District of Colorado. We asked the Court to find that our method of providing distant network programming did not violate the Satellite Home Viewer Improvement Act (“SHVIA”) and hence did not infringe the networks’ copyrights. In November 1998, the networks and their affiliate association groups filed a complaint against us in Miami Federal Court alleging, among other things, copyright infringement. The Court combined the case that we filed in Colorado with the case in Miami and transferred it to the Miami Federal Court.

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

In April 2002, we reached a private settlement with ABC, Inc., one of the plaintiffs in the litigation, and jointly filed a stipulation of dismissal. In November 2002, we reached a private settlement with NBC, another of the plaintiffs in the litigation and jointly filed a stipulation of dismissal. During March 2004, we reached a private settlement with CBS, another of the plaintiffs in the litigation and jointly filed a stipulation of dismissal. We have also reached private settlements with many independent stations and station groups. We were unable to reach a settlement with five of the original eight plaintiffs — Fox and the independent affiliate groups associated with each of the four networks.

A trial took place during April 2003 and the District Court issued a final judgment in June 2003. The District Court found that with one exception our current distant network qualification procedures comply with the law. We have revised our procedures to comply with the District Court’s Order. Although the plaintiffs asked the District Court to enter an injunction precluding us from selling any local or distant network programming, the District Court refused. While the plaintiffs did not claim monetary damages and none were awarded, the plaintiffs were awarded approximately $4.8 million in attorneys’ fees. This amount is substantially less than the amount the plaintiffs sought. We asked the Court to reconsider the award and the Court has vacated the fee award. When the award was vacated, the District Court also allowed us an opportunity to conduct discovery concerning the amount of plaintiffs’ requested fees. The parties have agreed to postpone discovery and an evidentiary hearing regarding attorney’s fees until after the Court of Appeals rules on the pending appeal of the Court’s June 2003 final judgment. It is not possible to make a firm assessment of the probable outcome of plaintiffs’ outstanding request for fees.

The District Court’s injunction requires us to use a computer model to re-qualify, as of June 2003, all of our subscribers who receive ABC, NBC, CBS or Fox programming by satellite from a market other than the city in which the subscriber lives. The Court also invalidated all waivers historically provided by network stations. These waivers, which have been provided by stations for the past several years through a third party automated system, allow subscribers who believe the computer model improperly disqualified them for distant network channels to nonetheless receive those channels by satellite. Further, the District Court terminated the right of our grandfathered subscribers to continue to receive distant network channels.

We believe the District Court made a number of errors and appealed the decision. Plaintiffs cross-appealed. The Court of Appeals granted our request to stay the injunction until our appeal is decided. Oral arguments occurred during February 2004. It is not possible to predict how or when the Court of Appeals will rule on the merits of our appeal. On April 13, 2005, Plaintiffs filed a motion asking the Court of Appeals to vacate the stay of the injunction that was issued in August 2004. We responded on April 25, 2005. It is not possible to predict how or when the Court of Appeals will rule on Plaintiffs' motion to vacate the stay.

In the event the Court of Appeals upholds the injunction or lifts the stay as plaintiffs now request, and if we do not reach private settlement agreements with additional stations, we will attempt to assist subscribers in arranging alternative means to receive network channels, including migration to local channels by satellite where available, and free off air antenna offers in other markets. However, we cannot predict with any degree of certainty how many subscribers would cancel their primary DISH Network programming as a result of termination of their distant network channels. We could be required to terminate distant network programming to all subscribers in the event the plaintiffs prevail on their cross-appeal and we are permanently enjoined from delivering all distant network channels. Termination of distant network programming to subscribers would result, among other things, in a reduction in average monthly revenue per subscriber and a temporary increase in subscriber churn.

*Superguide*

During 2000, Superguide Corp. ("Superguide") filed suit against us, DirecTV and others in the United States District Court for the Western District of North Carolina, Asheville Division, alleging infringement of United States Patent Nos. 5,038,211 (the '211 patent), 5,293,357 (the '357 patent) and 4,751,578 (the '578 patent) which relate to certain electronic program guide functions, including the use of electronic program guides to control VCRs. Superguide sought injunctive and declaratory relief and damages in an unspecified amount.

On summary judgment, the District Court ruled that none of the asserted patents were infringed by us. These rulings were appealed to the United States Court of Appeals for the Federal Circuit. During February 2004, the Federal Circuit affirmed in part and reversed in part the District Court's findings and remanded the case back to the District Court for further proceedings. In July 2005, SuperGuide indicated that it would no longer pursue infringement allegations with respect to the '211 and '357 patents and those patents have now been dismissed from the suit. We examined the '578 patent and believe that it is not infringed by any of our products or services. We will continue to vigorously defend this case. In the event that a Court ultimately determines that we infringe on any of the 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 electronic programming guide and related features that we currently offer to consumers. The case is stayed pending the District Court's ruling. A trial date has not been set. It is not possible to make a firm assessment of the probable outcome of the suit or to determine the extent of any potential liability or damages.

*Broadcast Innovation, L.L.C.*

In November of 2001, Broadcast Innovation, L.L.C. filed a lawsuit against us, DirecTV, Thomson Consumer Electronics and others in Federal 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. We examined these patents and believe that they are not infringed by any of our products or services. Subsequently, DirecTV and Thomson settled with Broadcast Innovation leaving us as the only defendant.

During January 2004, the judge issued an order finding the '066 patent invalid. In August of 2004, the Court ruled the '094 invalid in a parallel case filed by Broadcast Innovation against Charter and Comcast. In August of 2005, the United States Court of Appeals for the Federal Circuit ("CAFC") overturned this finding of invalidity and remanded the case back to the District Court. Charter has filed a petition for rehearing and the CAFC has asked Broadcom to respond to the petition. Our case remains stayed pending resolution of the Charter case. We intend to continue to vigorously defend this case. In the event that a Court ultimately determines that we infringe on any of the 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. It is not possible to make a firm assessment of the probable outcome of the suit or to determine the extent of any potential liability or damages.

*TiVo Inc.*

During January 2004, TiVo Inc. ("TiVo") filed a lawsuit against us in the United States District Court for the Eastern District of Texas. The suit alleges infringement of United States Patent No. 6,233,389 (the '389 patent). The '389 patent relates to certain methods and devices for providing what the patent calls "time-warping." We have examined this patent and do not believe that it is infringed by any of our products or services. During March 2005, the Court denied our motion to transfer this case to the United States District Court for the Northern District of California. The trial has been continued to March 2006 in Marshall, Texas unless TiVo consents to move the trial to Texarkana, Texas for an earlier trial date. We intend to vigorously defend this case. In the event that a Court ultimately determines that we infringe this 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. It is not possible to make a firm assessment of the probable outcome of the suit or to determine the extent of any potential liability or damages.

On April 29, 2005, we filed a lawsuit in the United States District Court for the Eastern District of Texas against TiVo and Humax USA, Inc. alleging infringement of U.S. Patent Nos. 5,774,186 (the '186 patent), 6,529,685 (the '685 patent), 6,208,804 (the '804 patent) and 6,173,112 (the '112 patent). These patents relate to digital video recorder ("DVR") technology. Trial is currently scheduled for February 2007.

*Acacia*

In June 2004, Acacia Media Technologies filed a lawsuit against us 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 intellectual property holding company which seeks to license the patent portfolio that it has acquired. The suit alleges infringement of United States Patent Nos. 5,132,992 (the '992 patent), 5,253,275 (the '275 patent), 5,550,863 (the '863 patent), 6,002,720 (the '720 patent) and 6,144,702 (the '702 patent). The '992, '863, '720 and '702 patents have been asserted against us.

The asserted patents relate to various systems and methods related to the transmission of digital data. The '992 and '702 patents have also been asserted against several internet adult content providers in the United States District Court for the Central District of California. On July 12, 2004, that Court issued a Markman ruling which found that the '992 and '702 patents were not as broad as Acacia had contended.

Acacia's various patent infringement cases have now been consolidated for pre-trial purposes in the United States District court for the Northern District of California. We intend to vigorously defend this case. In the event that a Court ultimately determines that we infringe on any of the 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. It is not possible to make a firm assessment of the probable outcome of the suit or to determine the extent of any potential liability or damages.

*Forgent*

In July of 2005, Forgent Networks, Inc. filed a lawsuit against us in the United States District Court for the Eastern District of Texas. The suit also named DirecTV, Charter, Comcast, Time Warner Cable, Cable One and Cox as defendants. The suit alleges infringement of United States Patent No. 6,285,746 ( the ‘746 patent).

The ‘746 patent discloses a video teleconferencing system which utilizes digital telephone lines. We have examined this patent and do not believe that it is infringed by any of our products or services. Trial is currently scheduled for May 2007 in Tyler, Texas. We intend to vigorously defend this case. In the event that a Court ultimately determines that we infringe this 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. It is not possible to make a firm assessment of the probable outcome of the suit or to determine the extent of any potential liability or damages.

*California Action*

A purported class action relating to the use of terms such as “crystal clear digital video,” “CD-quality audio,” and “on-screen program guide,” and with respect to the number of channels available in various programming packages was filed against us in the California State Superior Court for Los Angeles County in 1999 by David Pritikin and by Consumer Advocates, a nonprofit unincorporated association. The complaint alleges breach of express warranty and violation of the California Consumer Legal Remedies Act, Civil Code Sections 1750, et seq., and the California Business & Professions Code Sections 17500 & 17200. A hearing on the plaintiffs’ motion for class certification and our motion for summary judgment was held during 2002. At the hearing, the Court issued a preliminary ruling denying the plaintiffs’ motion for class certification. However, before issuing a final ruling on class certification, the Court granted our motion for summary judgment with respect to all of the plaintiffs’ claims. The plaintiffs filed a notice of appeal of the court’s granting of our motion for summary judgment. During December 2003, the Court of Appeals affirmed in part; and reversed in part, the lower court’s decision granting summary judgment in our favor. Specifically, the Court found there were triable issues of fact whether we may have violated the alleged consumer statutes “with representations concerning the number of channels and the program schedule.” However, the Court found no triable issue of fact as to whether the representations “crystal clear digital video” or “CD quality” audio constituted a cause of action. Moreover, the Court affirmed that the “reasonable consumer” standard was applicable to each of the alleged consumer statutes. Plaintiff argued the standard should be the “least sophisticated” consumer. The Court also affirmed the dismissal of Plaintiffs’ breach of warranty claim. Plaintiff filed a Petition for Review with the California Supreme Court and we responded. During March 2004, the California Supreme Court denied Plaintiff’s Petition for Review. Therefore, the action has been remanded to the trial court pursuant to the instructions of the Court of Appeals. Hearings on class certification were conducted during December 2004 and February 2005. The Court subsequently denied Plaintiff’s motion for class certification. The Plaintiff has appealed this decision. It is not possible to make an assessment of the probable outcome of the litigation or to determine the extent of any potential liability.

*Retailer Class Actions*

During October 2000, two separate lawsuits were filed by retailers in the Arapahoe County District Court in the State of Colorado and the United States District Court for the District of Colorado, respectively, by Air Communication & Satellite, Inc. and John DeJong, et al. on behalf of themselves and a class of persons similarly situated. The plaintiffs are attempting to certify nationwide classes on behalf of certain of our satellite hardware retailers. The plaintiffs are requesting the Courts to 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 are vigorously defending against the suits and have asserted a variety of counterclaims. The United States District Court for the District of Colorado stayed the Federal Court action to allow the parties to pursue a comprehensive adjudication of their dispute in the Arapahoe County State Court. John DeJong, d/b/a Nexwave, and Joseph Kelley, d/b/a Keltronics, subsequently intervened in the Arapahoe County Court action as plaintiffs and proposed class representatives. We have 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 Court granted a limited discovery period which ended November 15, 2004. The Court is hearing discovery related motions and has set a briefing schedule for the motion for summary judgment to begin 30 days after the ruling on those motions. A trial date has not been set. It is not possible to make an assessment of the probable outcome of the litigation or to determine the extent of any potential liability or damages.

*StarBand Shareholder Lawsuit*

During August 2002, a limited group of shareholders in StarBand, a broadband Internet satellite venture in which we invested, filed an action in the Delaware Court of Chancery against us and EchoBand Corporation, together with four EchoStar executives who sat on the Board of Directors for StarBand, for alleged breach of the fiduciary duties of due care, good faith and loyalty, and also against us and EchoBand Corporation for aiding and abetting such alleged breaches. Two of the individual defendants, Charles W. Ergen and David K. Moskowitz, are members of our Board of Directors. The action stems from the defendants' involvement as directors, and our position as a shareholder, in StarBand. During July 2003, the Court granted the defendants' motion to dismiss on all counts. The Plaintiffs appealed. On July 21, 2005, the Delaware Supreme Court affirmed the Chancery Court's judgment.

*Enron Commercial Paper Investment Complaint*

During October 2001, EchoStar received approximately $40.0 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. The complaint alleges that Enron's October 2001 purchase of its commercial paper was a fraudulent conveyance and voidable preference under bankruptcy laws. We dispute these allegations. We typically invest in commercial paper and notes which are rated in one of the four highest rating categories by at least two nationally recognized statistical rating organizations. At the time of our investment in Enron commercial paper, it was considered to be high quality and considered to be a very low risk. The defendants moved the Court to dismiss the case on grounds that Enron's complaint does not adequately state a legal claim, which motion was denied but is subject to an appeal. It is too early to make an assessment of the probable outcome of the litigation or to determine the extent of any potential liability or damages.

*Bank One*

During March 2004, Bank One, N.A. ("Bank One") filed suit against us and one of our subsidiaries, EchoStar Acceptance Corporation ("EAC"), in the Court of Common Pleas of Franklin County, Ohio alleging breach of a duty to indemnify. Bank One alleges that EAC is contractually required to indemnify Bank One for a settlement it paid to consumers who entered private label credit card agreements with Bank One to purchase satellite equipment in the late 1990s. Bank One alleges that we entered into a guarantee wherein we agreed to pay any indemnity obligation incurred by Bank One. During April 2004, we removed the case to federal court in Columbus, Ohio. We deny the allegations and intend to vigorously defend against the claims. We filed a motion to dismiss the Complaint which was granted in part and denied in part. The Court granted our motion, agreeing we did not owe Bank One a duty to defend the underlying lawsuit. However, the Court denied the motion in that Bank One will be allowed to attempt to prove that we owed Bank One a duty to indemnify. The case is currently in discovery. A trial date has not been set. It is too early in the litigation to make an assessment of the probable outcome of the litigation or to determine the extent of any potential liability or damages.

*Church Communications Network, Inc.*

During August 2004, Church Communications Network, Inc. ("CCN") filed suit against us in the United States District Court for the Northern District of Alabama, asserting causes of action for breach of contract, negligent misrepresentation, intentional and reckless misrepresentation, and non-disclosure based on a 2003 contract with us. The action was transferred to the United States District Court for the District of Colorado. The Court permitted CCN to amend its complaint to assert the same claims based on a 2000 contract with us. We have filed motions for summary judgment on all claims in the case. CCN has filed a motion for summary judgment on the issue of liability on its intentional and reckless misrepresentation claim. CCN claims approximately $20.0 million in damages plus punitive damages, attorney fees and costs. Discovery has been concluded but no trial date has been set. It is not possible to make a firm assessment of the probable outcome of the litigation or to determine the extent of any potential liability or damages.

*Vivendi*

In January 2005, Vivendi Universal, S.A. ("Vivendi"), filed suit against us in the United States District Court for the Southern District of New York alleging that we have anticipatorily repudiated or are in breach of an alleged agreement between us and Vivendi pursuant to which we are allegedly required to broadcast a music-video channel provided by Vivendi. Vivendi's complaint seeks injunctive and declaratory relief, and damages in an unspecified amount. On April 12, 2005, the Court granted Vivendi's motion for a preliminary injunction and directed us to broadcast the music-video channel during the pendency of the litigation. In connection with that order, we have also agreed to provide marketing support to Vivendi during the pendency of the litigation. In the event that the Court ultimately determines that we have a contractual obligation to broadcast the Vivendi music-video channel and that we are in breach of that obligation, we may be required to continue broadcasting the Vivendi music-video channel and may also be subject to substantial damages. We intend to vigorously defend this case.

*Shareholder Derivative Lawsuit*

During March 2005, a shareholder derivative lawsuit was filed against us, our chairman and chief executive officer Charles W. Ergen and the members of our board of directors in the District Court of Douglas County, Colorado. The complaint alleges, among other things, that the members of our board of directors breached their fiduciary duties in connection with the matters that were the subject of our Audit Committee's review, during late 2004 and early 2005, of recordkeeping and internal control issues relating to certain of our vendor and third party relationships. It is not possible to make a firm assessment of the probable outcome of the litigation or to 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. 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.

*Reauthorization of Satellite Home Viewer Improvement Act*

We currently offer local broadcast channels in 164 markets across the United States. In 38 of those markets, a second dish is necessary to receive some local channels in the market. SHVERA now requires, among other things, that all local broadcast channels delivered by satellite to any particular market be available from a single dish within 18 months of the law's December 8, 2004 effective date. Satellite capacity limitations could force us to move the local channels in all 38 markets to different satellites, requiring subscribers in those markets to install a second or a different dish to continue receiving their local network channels. We may be forced to stop offering local channels in some of those markets altogether.

The transition of all local channels to the same dish could result in disruptions of service for a substantial number of our customers. Further, our ability to timely comply with this requirement without incurring significant additional costs is dependent on, among other things, the successful launch and commencement of commercial operations of our EchoStar X satellite during the first half of 2006 and continued operation of our EchoStar V satellite at the 129 degree orbital location until that time. Delays in launch or commencement of commercial operation of EchoStar X would likely require us to cease offering local channels by satellite in many markets absent regulatory relief from the single dish obligation. Further, if regulatory or operational impediments to our preferred transition plan arise, it is possible that the costs of compliance with this requirement could exceed $100.0 million. To the extent subscribers are unwilling for any reason to upgrade to a new dish, our subscriber churn could be negatively impacted. It is too early to make a firm determination of the cost of compliance.

## 12. 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, | |
|---|---|---|---|---|
| | 2005 | 2004 | 2005 | 2004 |
| | (In thousands) | | | |
| Equipment leased to customers | $116,431 | $ 58,939 | $298,460 | $144,274 |
| Satellites | 50,982 | 33,640 | 144,941 | 100,921 |
| Furniture, fixtures and equipment | 30,485 | 27,659 | 89,536 | 81,270 |
| Identifiable intangible assets subject to amortization | 9,171 | 11,724 | 29,864 | 23,590 |
| Buildings and improvements | 1,712 | 1,155 | 4,096 | 3,425 |
| Tooling and other | 92 | 856 | 1,439 | 5,032 |
| Total depreciation and amortization | $208,873 | $133,973 | $568,336 | $358,512 |

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

## 13. Segment Reporting

***Financial Data by Business Unit***

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

| | For the Three Months Ended September 30, | | For the Nine Months Ended September 30, | |
|---|---|---|---|---|
| | 2005 | 2004 | 2005 | 2004 |
| | (In thousands) | | | |
| **Revenue** | | | | |
| DISH Network | $2,057,768 | $1,800,342 | $6,045,833 | $5,071,892 |
| ETC | 40,730 | 36,913 | 130,918 | 79,650 |
| All other | 32,762 | 27,635 | 79,666 | 74,760 |
| Eliminations | (3,039) | (2,277) | (8,710) | (6,180) |
| Total revenue | $2,128,221 | $1,862,613 | $6,247,707 | $5,220,122 |
| **Net income (loss)** | | | | |
| DISH Network | $ 198,044 | $ 100,967 | $1,361,106 | $ 146,284 |
| ETC | (4,538) | (9,336) | (9,617) | (22,674) |
| All other | 15,358 | 10,630 | 30,426 | 21,081 |
| Total net income (loss) | $ 208,864 | $ 102,261 | $1,381,915 | $ 144,691 |

### 14. Related Party

We own 50% of NagraStar L.L.C. (“NagraStar”), a joint venture that is our exclusive provider of security access devices. During the nine months ended September 30, 2005, we purchased approximately $104.7 million of security access devices from NagraStar. As of September 30, 2005, we were committed to purchase approximately $69.4 million of security access devices from NagraStar.

### 15. Subsequent Events

***Cablevision Satellite Acquisition***

On October 12, 2005, the FCC approved our purchase for $200.0 million of certain satellite assets from Rainbow DBS Co., a subsidiary of Cablevision Systems Corporation. We have agreed to purchase Rainbow 1, a direct broadcast satellite located at 61.5 degrees west longitude, together with rights to 11 DBS frequencies at that location. The satellite includes 13 transponders, up to 12 of which can be operated in “spot beam” mode. Also, as part of this transaction, which is expected to close during the fourth quarter 2005, we will acquire ground facilities and related assets in Black Hawk, S.D.

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

### EXPLANATION OF KEY METRICS AND OTHER ITEMS

***Subscriber-related revenue.*** "Subscriber-related revenue" consists principally of revenue from basic, movie, local, international and pay-per-view subscription television services, advertising sales, DVR fees, equipment rental fees and additional outlet fees from subscribers with multiple set-top boxes and other subscriber revenue. Contemporaneous with the commencement of sales of co-branded services pursuant to our agreement with SBC Communications, Inc. ("SBC") during the first quarter of 2004, "Subscriber-related revenue" also includes revenue from equipment sales, installation and other services related to that agreement. Revenue from equipment sales to SBC is deferred and recognized over the estimated average co-branded subscriber life. Revenue from installation and certain other services performed at the request of SBC is recognized upon completion of the services.

Development and implementation fees received from SBC are being recognized in "Subscriber-related revenue" over the next several years. In order to estimate the amount recognized monthly, we first divide the number of co-branded subscribers activated during the month under the SBC agreement by total estimated co-branded subscriber activations during the life of the contract. We then multiply this percentage by the total development and implementation fees received from SBC. The resulting estimated monthly amount is recognized as revenue ratably over the estimated average co-branded subscriber life.

***Equipment sales.*** "Equipment sales" consist of sales of non-DISH Network digital receivers and related components by our ETC subsidiary to an international DBS service provider, and by our EchoStar International Corporation ("EIC") subsidiary to international customers. "Equipment sales" also include unsubsidized sales of DBS accessories to retailers and other distributors of our equipment domestically and to DISH Network subscribers. "Equipment sales" does not include revenue from sales of equipment to SBC.

***"Other" sales.*** "Other" sales consist principally of revenues from subscription and satellite services from the C-band subscription television service business of Superstar/Netlink Group L.L.C. ("SNG") that we acquired in April 2004.

***Subscriber-related expenses.*** "Subscriber-related expenses" principally include programming expenses, costs incurred in connection with our in-home service and call center operations, overhead costs associated with our installation business, copyright royalties, residual commissions paid to retailers or distributors, billing, lockbox, subscriber retention and other variable subscriber expenses. Contemporaneous with the commencement of sales of co-branded services pursuant to our agreement with SBC during the first quarter of 2004, "Subscriber-related expenses" also include the cost of sales from equipment sales and expenses related to installation and other services from that relationship. Cost of sales from equipment sales to SBC are deferred and recognized over the estimated average co-branded subscriber life. Expenses from installation and certain other services performed at the request of SBC are recognized as the services are performed.

***Satellite and transmission expenses.*** "Satellite and transmission expenses" include costs associated with the operation of our digital broadcast centers, the transmission of local channels, satellite telemetry, tracking and control services, satellite and transponder leases, and other related services.

***Cost of sales — equipment.*** "Cost of sales — equipment" principally includes costs associated with non-DISH Network digital receivers and related components sold by our ETC subsidiary to an international DBS service provider and by our EIC subsidiary to international customers. "Cost of sales — equipment" also include unsubsidized sales of DBS accessories to retailers and other distributors of our equipment domestically and to DISH Network subscribers. "Cost of sales — equipment" does not include the costs from sales of equipment to SBC.

***Cost of sales — other.*** "Cost of sales — other" principally includes costs related to satellite services and programming and other expenses associated with the C-band subscription television service business of SNG we acquired in April 2004.

***Subscriber acquisition costs.*** We generally subsidize installation of EchoStar receiver systems and lease receivers in order to attract new DISH Network subscribers. Our "Subscriber acquisition costs" include the cost of EchoStar receiver systems sold to retailers and other distributors of our equipment, the cost of 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." We also exclude payments we receive in connection with equipment that is not returned to us from disconnecting lease subscribers, and the value of equipment returned to the extent we make that equipment available for sale rather than redeploying it through the lease program from our calculation of "Subscriber acquisition costs."

***SAC and Equivalent SAC.*** We are not aware of any uniform standards for calculating "subscriber acquisition costs per new subscriber activation," or SAC, and believe presentations of SAC may not be calculated consistently by different companies in the same or similar businesses. We calculate SAC by dividing the amount of our expense line item "Subscriber acquisition costs" for a period, by our gross new DISH Network subscribers added during that period. We include all new DISH Network subscribers in our calculation, including DISH Network subscribers added with little or no subscriber acquisition costs. To calculate "Equivalent SAC," we add the value of equipment capitalized under our lease program for new subscribers to the expense line item "Subscriber acquisition costs," subtract certain offsetting amounts, and divide the result by our gross new subscriber number. These offsetting amounts include payments we receive in connection with equipment that is not returned to us from disconnecting lease subscribers, and the value of equipment returned to the extent we make that equipment available for sale rather than redeploying it through the lease program.

***General and administrative expenses.*** "General and administrative expenses" primarily include employee-related costs associated with administrative services such as legal, information systems, accounting and finance. It also includes outside professional fees (i.e. legal and accounting services) and building maintenance expense and other items associated with administration.

***Interest expense.*** "Interest expense" 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" income (expense).*** The main components of "Other" income and expense 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)" plus "Interest expense" net of "Interest income," "Taxes" and "Depreciation and amortization."

***DISH Network subscribers.*** We include customers obtained through direct sales, and through our retail networks, including our co-branding relationship with SBC and other distribution relationships, in our DISH Network subscriber count. We believe our overall economic return for co-branded and traditional subscribers will be comparable. 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 most widely distributed programming package, AT60 (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.

During April 2004, we acquired the C-band subscription television service business of SNG, the assets of which primarily consist of acquired customer relationships. Although we are converting some of these customer relationships from C-band subscription television services to our DISH Network DBS subscription television service, acquired C-band subscribers are not included in our DISH Network subscriber count unless they have also subscribed to our DISH Network DBS television service.

***Monthly average 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 revenues" 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.

***Subscriber churn/subscriber turnover.*** We are not aware of any uniform standards for calculating subscriber churn and believe presentations of subscriber churn may not be calculated consistently by different companies in the same or similar businesses. We calculate percentage monthly subscriber churn by dividing the number of DISH Network subscribers who terminate service during each month by total DISH Network subscribers as of the beginning of that month. We calculate average subscriber churn for any period by dividing the number of DISH Network subscribers who terminated service during that period by the average number of DISH Network subscribers subject to churn during the period, and further dividing by the number of months in the period. Average DISH Network subscribers subject to churn during the period are calculated by adding the DISH Network subscribers as of the beginning of each month in the period and dividing by the total number of months in the period.

***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.

***Impact on metrics of revised SBC agreement.*** We recently modified and extended our distribution and sales agency agreement with SBC. We believe our overall economic return will be similar under both arrangements. However, the impact of subscriber acquisition on many of our line item business metrics was substantially different under the prior SBC agreement, compared to most other sales channels (including the revised SBC agreement).

Among other things, our "Subscriber-related revenue" will be impacted in a number of respects. Commencing in the fourth quarter of 2005, new subscribers acquired under our SBC agreement will no longer generate equipment sales, installation or other services revenue. However, our programming services revenue will be greater for subscribers acquired under the revised SBC agreement.

Deferred equipment sales revenue relating to subscribers acquired through our prior SBC agreement will continue to have a positive impact on "Subscriber-related revenue" over the estimated average life of those subscribers. Further, development and implementation fees received from SBC will continue to be recognized over the estimated average subscriber life of all subscribers acquired under both the previous and revised agreements with SBC.

The changes to our agreement with SBC will also impact ARPU. The magnitude of that impact, and whether ARPU increases or decreases during particular future periods, will depend on the timing and number of subscribers acquired pursuant to the modified agreement with SBC.

Under the revised SBC agreement, we will include costs from equipment and installations in "Subscriber acquisition costs" or in capital expenditures, rather than in "Subscriber-related expenses." To the extent all other factors remain constant, this will tend to improve operating margins. We will continue to include in "Subscriber-related expenses" the costs deferred from equipment sales made to SBC. These costs will be amortized over the life of the subscribers acquired under the previous SBC agreement.

Since equipment and installation costs previously reflected in "Subscriber-related expenses" will be included in "Subscriber acquisition costs" or in capital expenditures under the revised agreement, to the extent all other factors remain constant, the revised SBC agreement will also cause increases in "Subscriber acquisition costs," SAC and Equivalent SAC. This will tend to negatively impact free cash flow in the short term if substantial additional subscribers are added through SBC in the future, but we believe that free cash flow will improve over time since better operating margins are expected from those customers under the terms of the revised SBC agreement. We also expect that the historical negative impact on subscriber turnover from subscribers acquired pursuant to our agreement with SBC will decline.

RESULTS OF OPERATIONS

*Three Months Ended September 30, 2005 Compared to the Three Months Ended September 30, 2004.*

| Statements of Operations Data | For the Three Months Ended September 30, 2005 | 2004 | Variance Amount | % |
|---|---|---|---|---|
| | (In thousands) | | | |
| **Revenue:** | | | | |
| Subscriber-related revenue | $2,007,592 | $1,733,494 | $274,098 | 15.8% |
| Equipment sales | 98,724 | 97,777 | 947 | 1.0% |
| Other | 21,905 | 31,342 | (9,437) | (30.1%) |
| Total revenue | 2,128,221 | 1,862,613 | 265,608 | 14.3% |
| **Costs and Expenses:** | | | | |
| Subscriber-related expenses | 986,693 | 929,008 | 57,685 | 6.2% |
| **% of Subscriber-related revenue** | **49.1%** | **53.6%** | | |
| Satellite and transmission expenses | 34,239 | 28,697 | 5,542 | 19.3% |
| **% of Subscriber-related revenue** | **1.7%** | **1.7%** | | |
| Cost of sales — equipment | 82,906 | 85,659 | (2,753) | (3.2%) |
| **% of Equipment sales** | **84.0%** | **87.6%** | | |
| Cost of sales — other | 4,811 | 11,431 | (6,620) | (57.9%) |
| Subscriber acquisition costs | 402,565 | 377,104 | 25,461 | 6.8% |
| General and administrative | 116,250 | 101,817 | 14,433 | 14.2% |
| **% of Total revenue** | **5.5%** | **5.5%** | | |
| Depreciation and amortization | 208,873 | 133,973 | 74,900 | 55.9% |
| Total costs and expenses | 1,836,337 | 1,667,689 | 168,648 | 10.1% |
| Operating income (loss) | 291,884 | 194,924 | 96,960 | 49.7% |
| **Other income (expense):** | | | | |
| Interest income | 12,668 | 7,868 | 4,800 | 61.0% |
| Interest expense, net of amounts capitalized | (94,022) | (92,176) | (1,846) | 2.0% |
| Other | 7,342 | (1,516) | 8,858 | NM |
| Total other income (expense) | (74,012) | (85,824) | 11,812 | (13.8%) |
| Income (loss) before income taxes | 217,872 | 109,100 | 108,772 | 99.7% |
| Income tax benefit (provision), net | (9,008) | (6,839) | (2,169) | 31.7% |
| Net income (loss) | $ 208,864 | $ 102,261 | $106,603 | 104.2% |
| **Other Data:** | | | | |
| DISH Network subscribers, as of period end (in millions) | 11.710 | 10.475 | 1.235 | 11.8% |
| DISH Network subscriber additions, gross (in millions) | 0.900 | 0.895 | 0.005 | 0.6% |
| DISH Network subscriber additions, net (in millions) | 0.255 | 0.350 | (0.095) | (27.1%) |
| Monthly churn percentage | 1.86% | 1.77% | 0.09% | 5.1% |
| Average revenue per subscriber ("ARPU") | $ 57.78 | $ 56.11 | $ 1.67 | 3.0% |
| Average subscriber acquisition costs per subscriber ("SAC") | $ 447 | $ 421 | $ 26 | 6.2% |
| Equivalent average subscriber acquisition costs per subscriber ("Equivalent SAC") | $ 670 | $ 588 | $ 82 | 13.9% |
| EBITDA | $ 508,099 | $ 327,381 | $180,718 | 55.2% |

***DISH Network subscribers.*** As of September 30, 2005, we had approximately 11.710 million DISH Network subscribers compared to approximately 10.475 million subscribers at September 30, 2004, an increase of approximately 11.8%. DISH Network added approximately 900,000 gross new subscribers for the quarter ended September 30, 2005, compared to approximately 895,000 gross new subscribers during the same period in 2004, an increase of approximately 5,000 gross new subscribers. The increase in gross new subscribers resulted from a number of factors, including an increase in sales through our agency relationships and an increase in our distribution channels, partially offset by a decline in gross activations under our co-branding agreement with SBC. A substantial majority of our gross new subscriber additions are acquired through our equipment lease program.

DISH Network added approximately 255,000 net new subscribers for the quarter ended September 30, 2005, compared to approximately 350,000 net new subscribers during the same period in 2004, a decrease of approximately 27.1%. This decrease was primarily a result of increased subscriber churn on a larger subscriber base, and the estimated impact of hurricanes Katrina and Rita discussed below. In addition, even if percentage subscriber churn had remained constant or had declined, increasing numbers of gross new subscribers are required to sustain net subscriber growth.

During August and September 2005, hurricanes Katrina and Rita caused damage to significant portions of Louisiana, Mississippi, Alabama and Texas. While many of our customers in the impacted areas whom we have not been able to contact remain current in their payments to us, we have estimated the number of these customers we believe are unlikely to continue as subscribers and have reflected that estimate in churn and subscriber counts for the quarter. Although we continue to assess the potential impact of these hurricanes, and hurricane Wilma, on our subscriber base, we currently do not expect lost revenue or additional expenses incurred as a result of these storms to have a material affect on our overall financial position.

During the first half of 2005, SBC shifted its DISH Network marketing and sales efforts to focus on limited geographic areas and customer segments. As a result of SBC's de-emphasized sales of DISH Network services, a decreasing percentage of our new subscriber additions are derived from our relationship with SBC. SBC also previously announced that in 2005 it will begin deploying an advanced fiber network that will enable it to offer video services directly, and other regional bell operating companies have announced similar plans. While it is possible that the fourth quarter 2005 revision to our SBC agreement may drive increased subscriber growth, our net new subscriber additions and certain of our other key operating metrics could continue to be adversely affected to the extent SBC further de-emphasizes, or discontinues altogether, its efforts to acquire DISH Network subscribers, and as a result of competition from video services offered by SBC or other regional bell operating companies.

Our net new subscriber additions would also be negatively impacted to the extent existing or new competitors offer more attractive consumer promotions, including, among other things, better priced or more attractive programming packages or more compelling consumer electronic products and services, including advanced DVRs, video on demand services, and high definition television services or additional local channels. Many of our competitors are also better equipped than we are to offer video services bundled with other telecommunications services such as telephone and broadband data services, including wireless services.

***Subscriber-related revenue.*** DISH Network "Subscriber-related revenue" totaled $2.008 billion for the three months ended September 30, 2005, an increase of $274.1 million or 15.8% compared to the same period in 2004. This increase was directly attributable to continued DISH Network subscriber growth and the increase in "ARPU" discussed below.

***ARPU.*** Monthly average revenue per subscriber was approximately $57.78 during the three months ended September 30, 2005 and approximately $56.11 during the same period in 2004. The $1.67 or 3.0% increase in ARPU is primarily attributable to price increases in February 2005 on some of our most popular packages, higher equipment rental fees resulting from increased penetration of our equipment leasing programs, increased availability of local channels by satellite and fees for DVRs. This increase was partially offset by a greater number of new DISH Network subscribers receiving subsidized programming through our free and discounted programming promotions discussed below.

During May 2005, we introduced a promotion which offers new Digital Home Advantage lease program subscribers our "America's Top 180" package for $19.99 for each of the first three months of service. Effective June 2005, the promotion was modified to provide a $12.00 discount per month on qualifying programming packages, together with free HBO and Showtime programming, for each of the first three months of service. The promotion, which continued through August 15, 2005, required a one year minimum programming commitment. Our ARPU has been, and will continue to be, negatively impacted during 2005 as a result of DISH Network subscribers acquired under this promotion.

During August 2005, we introduced a promotion which offers new Digital Home Advantage lease program subscribers a free month of qualifying programming, three free months of HBO, Showtime and Cinemax programming, and a free DVR upgrade. Further, in exchange for an 18 month minimum programming commitment, new lease program subscribers receive a credit of the one-time set-up fee of $49.99. Effective November 3, 2005, instead of one month free, new lease program subscribers can elect to receive a $12.00 discount for the first three months of service on qualifying programming. These promotions will continue through at least January 31, 2006. As a result, our ARPU has been, and will continue to be, negatively impacted during 2005 and into 2006 as we acquire new DISH Network subscribers under these promotions.

Impacts from our litigation with the networks in Florida, FCC rules governing the delivery of superstations and other factors could cause us to terminate delivery of network channels and superstations to a substantial number of our subscribers, which could cause many of those customers to cancel their subscription to our other services. In the event the Court of Appeals upholds the Miami District Court's network litigation injunction, and if we do not reach private settlement agreements with additional stations, we will attempt to assist subscribers in arranging alternative means to receive network channels, including migration to local channels by satellite where available, and free off air antenna offers in other markets. However, we cannot predict with any degree of certainty how many subscribers might ultimately cancel their primary DISH Network programming as a result of termination of their distant network channels. We could be required to terminate distant network programming to all subscribers in the event the plaintiffs prevail on their cross-appeal and we are permanently enjoined from delivering all distant network channels. Termination of distant network programming to subscribers would result in, among other things, a reduction in ARPU and a temporary increase in subscriber churn.

***Equipment sales.*** For the three months ended September 30, 2005, "Equipment sales" totaled $98.7 million, an increase of $0.9 million or 1.0% compared to the same period during 2004. This increase principally resulted from an increase in sales of non-DISH Network digital receivers to an international DBS service provider and to other international customers, partially off-set by a decrease in sales of DBS accessories domestically.

***Subscriber-related expenses.*** "Subscriber-related expenses" totaled $986.7 million during the three months ended September 30, 2005, an increase of $57.7 million or 6.2% compared to the same period in 2004. The increase in "Subscriber-related expenses" was primarily attributable to the increase in the number of DISH Network subscribers, which resulted in increased expenses to support the DISH Network. The increase was partially offset by a $35.1 million non-recurring vendor credit. "Subscriber-related expenses" represented 49.1% and 53.6% of "Subscriber-related revenue" during the three months ended September 30, 2005 and 2004, respectively. The decrease in this expense to revenue ratio primarily resulted from the increase in "Subscriber-related revenue" and the vendor credit discussed above, and an increase in the number of DISH Network subscribers participating in our lease program for existing subscribers. Since certain subscriber retention costs associated with our lease program are capitalized rather than expensed, our "Subscriber-related expenses" decreased and our capital expenditures increased. To a lesser extent, the decrease in the ratio also resulted from reduced costs associated with our installation and in-home service operations, partially offset by increases in certain of our programming costs during the three months ended September 30, 2005. In addition, the quarter ended September 30, 2004 was positively impacted by approximately $21.0 million of accrual reductions. The ratio of "Subscriber-related expenses" to "Subscriber-related revenue" could increase if our programming costs increase at a greater rate than our "Subscriber-related revenue," if we are unable to continue to maintain or improve efficiencies related to our installation, in-home service and call center operations, or if a significant number of our existing subscribers desire to purchase rather than lease upgraded equipment.

Our "Subscriber-related expenses" and capital expenditures related to our lease program for existing subscribers may materially increase in the future to the extent that we upgrade or replace subscriber equipment periodically as technology changes, we introduce other more aggressive promotions, or for other reasons. See further discussion under *"Liquidity and Capital Resources — Subscriber Acquisition and Retention Costs."*

***Satellite and transmission expenses.*** "Satellite and transmission expenses" totaled $34.2 million during the three months ended September 30, 2005, a $5.5 million or 19.3% increase compared to the same period in 2004. This increase primarily resulted from commencement of service and operational costs associated with the increasing number of markets in which we offer local network channels by satellite discussed below, and operational costs associated with our capital leases of AMC-15 and AMC-16 which commenced commercial operations in January and February 2005, respectively. "Satellite and transmission expenses" totaled 1.7% of "Subscriber-related revenue" during each of the three months ended September 30, 2005 and 2004. These expenses will increase further in the future as we increase the size of our satellite fleet, if we obtain in-orbit satellite insurance, as we increase the number and operations of our digital broadcast centers and as additional local markets and other programming services are launched.

***Cost of sales — equipment.*** "Cost of sales — equipment" totaled $82.9 million during the three months ended September 30, 2005, a decrease of $2.8 million or 3.2% compared to the same period in 2004. Cost of sales — equipment" represented 84.0% and 87.6% of "Equipment sales," during the three months ended September 30, 2005 and 2004, respectively. The improvement in the expense to revenue ratio principally related to lower 2005 charges for slow moving and obsolete inventory and higher margins on sales to international customers. This improvement was partially offset by a decline in margins on sales to an international DBS service provider, and on sales of DBS accessories domestically.

***Subscriber acquisition costs.*** "Subscriber acquisition costs" totaled approximately $402.6 million for the three months ended September 30, 2005, an increase of $25.5 million, or 6.8%, compared to the same period in 2004. The increase in "Subscriber acquisition costs" was attributable to an increase in the number of non co-branded subscribers acquired during the three months ended September 30, 2005, partially offset by a greater percentage of DISH Network subscribers participating in our equipment lease program for new subscribers as compared to the same period during 2004.

***SAC and Equivalent SAC.*** Subscriber acquisition costs per new subscriber activation were approximately $447 for the three months ended September 30, 2005 and approximately $421 during the same period in 2004, an increase of $26 or 6.2%. Most of the factors contributing to the increase in Equivalent SAC during the three months ended September 30, 2005, as discussed below, also placed increasing pressure on SAC. However, those factors were partially offset by the greater percentage of new DISH Network subscribers choosing to lease equipment, rather than purchase subsidized equipment.

Equivalent SAC was approximately $670 during the three months ended September 30, 2005 compared to $588 during the same period in 2004, an increase of $82, or 13.9%. This increase was primarily attributable to a decrease in the number of co-branded subscribers acquired during 2005, a greater number of SuperDISH installations, and more DISH Network subscribers activating higher priced advanced products, such as receivers with multiple tuners, DVRs and high definition receivers. Activation of these more advanced and complex products also resulted in higher installation costs during 2005 as compared to 2004. The increase in Equivalent SAC was also attributable to higher costs for acquisition advertising, and promotional incentives paid to our independent dealer network. The value of equipment capitalized under our lease program for new subscribers totaled approximately $225.0 million and $165.8 million for the three months ended September 30, 2005 and 2004, respectively.

During the three months ended September 30, 2005, the percentage of our new subscribers choosing to lease rather than purchase equipment continued to increase compared to the three months ended September 30, 2004. The increase in leased equipment and related reduction in subsidized equipment sales caused our capital expenditures to increase, while our "Subscriber acquisition costs" and SAC declined.

The increase in capital expenditures resulting from our equipment lease program for new subscribers has been, and we expect it will continue to be, partially mitigated by, among other things, the redeployment of equipment returned by disconnecting lease program subscribers. However, to remain competitive we will have to upgrade or replace subscriber equipment periodically as technology changes, and the associated costs may be substantial. To the extent technological changes render existing equipment obsolete, we would cease to benefit from the Equivalent SAC reduction associated with redeployment of that returned lease equipment.

Several years ago we began deploying satellite receivers capable of exploiting 8PSK modulation technology. Since that technology is now standard in all of our new satellite receivers, our cost to migrate programming channels to that technology in the future will be substantially lower than if it were necessary to replace all existing consumer equipment.

As we implement 8PSK technology, bandwidth efficiency will improve, significantly increasing the number of programming channels we can transmit over our existing satellites as an alternative or supplement to the acquisition of additional spectrum or the construction of additional satellites. New channels we add to our service using only that technology may allow us to further reduce conversion costs and create additional revenue opportunities. Similarly beginning in late 2005 or early 2006, we intend to make MPEG-4 technology standard in all satellite receivers for new customers who subscribe to our high definition programming packages. This technology will result in further bandwidth efficiencies over time. We have not yet determined the extent to which we will convert the EchoStar DBS System to these new technologies, or the period of time over which the conversions will occur. Provided EchoStar X launches successfully during 2006 and other planned satellites are successfully deployed, our 8PSK transition will afford us greater flexibility in delaying and reducing the costs to convert our subscriber base to MPEG-4.

While we may be able to generate increased revenue from such conversions, the deployment of equipment including new technologies will increase the cost of our consumer equipment, at least in the short term. To the extent we subsidize those costs, SAC and Equivalent SAC will increase as well. However, the increases in these costs would be mitigated by, among other things, our expected migration away from relatively expensive and complex SuperDISH installations (assuming successful launch of our EchoStar X satellite and the continued availability of our other in-orbit satellites). These increases may also be mitigated to the extent we successfully redeploy existing set-top boxes and implement other SAC reduction strategies.

Our "Subscriber acquisition costs," both in the aggregate and on a per new subscriber activation basis, may materially increase to the extent that we introduce more aggressive promotions in the future, or for other reasons. See further discussion under *"Liquidity and Capital Resources — Subscriber Acquisition and Retention Costs."*

***General and administrative expenses.*** "General and administrative expenses" totaled $116.3 million during the three months ended September 30, 2005, an increase of $14.4 million or 14.2% compared to the same period in 2004. The increase in "General and administrative expenses" was primarily attributable to increased personnel and infrastructure expenses to support the growth of the DISH Network. "General and administrative expenses" represented 5.5% of "Total revenue" during each of the three months ended September 30, 2005 and 2004.

***Depreciation and amortization.*** "Depreciation and amortization" expense totaled $208.9 million during the three months ended September 30, 2005, a $74.9 million or 55.9% increase compared to the same period in 2004. The increase in "Depreciation and amortization" expense was primarily attributable to additional depreciation of equipment leased to subscribers resulting from increased penetration of our equipment lease programs. Further, depreciation of our AMC-15 and AMC-16 satellites, which commenced commercial operations during January and February 2005, respectively, contributed to this increase.

***Earnings before interest, taxes, depreciation and amortization.*** EBITDA was $508.1 million during the three months ended September 30, 2005, an increase of $180.7 million or 55.2% compared to the same period in 2004. The increase in EBITDA was primarily attributable to the changes in operating revenues and expenses discussed above. EBITDA does not include the impact of capital expenditures under our new and existing subscriber equipment lease programs of approximately $248.9 million and $187.2 million during the three months ended September 30, 2005 and 2004, respectively. The following table reconciles EBITDA to the accompanying financial statements:

| | For the Three Months Ended September 30, | |
|---|---|---|
| | 2005 | 2004 |
| | (In thousands) | |
| EBITDA | $ 508,099 | $ 327,381 |
| Less: | | |
| Interest expense, net | 81,354 | 84,308 |
| Income tax provision (benefit), net | 9,008 | 6,839 |
| Depreciation and amortization | 208,873 | 133,973 |
| Net income (loss) | $ 208,864 | $ 102,261 |

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 multi-channel video programming distribution industry. Conceptually, EBITDA measures the amount of income generated each period that could be used to service debt, pay taxes and fund capital expenditures. EBITDA should not be considered in isolation or as a substitute for measures of performance prepared in accordance with GAAP.

***Income tax benefit (provision), net.*** During the three months ended September 30, 2005, we reversed a net amount of approximately $72.6 million from our recorded valuation allowance related to income before taxes generated during the three months ended September 30, 2005 (see Note 3 to the Condensed Consolidated Financial Statements), which increased our income tax benefit for the quarter.

***Net income (loss).*** Net income was $208.9 million during the three months ended September 30, 2005, an increase of $106.6 million compared to $102.3 million for the same period in 2004. The increase was primarily attributable to higher "Operating income" resulting from the factors discussed above.

We currently offer local broadcast channels in 164 markets across the United States. In 38 of those markets, a second dish is necessary to receive some local channels in the market. SHVERA now requires, among other things, that all local broadcast channels delivered by satellite to any particular market be available from a single dish within 18 months of the law's December 8, 2004 effective date. Satellite capacity limitations could force us to move the local channels in all 38 markets to different satellites, requiring subscribers in those markets to install a second or a different dish to continue receiving their local network channels. We may be forced to stop offering local channels in some of those markets altogether.

The transition of all local channels to the same dish could result in disruptions of service for a substantial number of our customers. Further, our ability to timely comply with this requirement without incurring significant additional costs is dependent on, among other things, the successful launch and commencement of commercial operation of our EchoStar X satellite during the first half of 2006 and continued operation of our EchoStar V satellite at the 129 degree orbital location until that time. Delays in launch or commencement of commercial operation of EchoStar X would likely require us to cease offering local channels by satellite in many markets absent regulatory relief from the single dish obligation. Further, if regulatory or operational impediments to our preferred transition plan arise, it is possible that the costs of compliance with this requirement could exceed $100.0 million. To the extent subscribers are unwilling for any reason to upgrade to a new dish, our subscriber churn could be negatively impacted.

In addition, we depend on our EchoStar VIII satellite to provide local channels to over 40 markets at least until such time as our EchoStar X satellite has successfully launched and commenced commercial operations. In the event that EchoStar VIII experienced a total or substantial failure, we could transmit many, but not all, of those channels from other in-orbit satellites. The potential relocation of some channels, and elimination of others, could cause a material adverse impact on our business, including, among other things, a reduction in revenues, an increase in operating expenses, a decrease in new subscriber activations and an increase in subscriber churn.

*Nine Months Ended September 30, 2005 Compared to the Nine Months Ended September 30, 2004.*

| Statements of Operations Data | For the Nine Months Ended September 30, 2005 | 2004 | Variance Amount | % |
|---|---|---|---|---|
| | | (In thousands) | | |
| **Revenue:** | | | | |
| Subscriber-related revenue | $ 5,891,030 | $ 4,887,506 | $ 1,003,524 | 20.5% |
| Equipment sales | 286,056 | 260,107 | 25,949 | 10.0% |
| Other | 70,621 | 72,509 | (1,888) | (2.6%) |
| Total revenue | 6,247,707 | 5,220,122 | 1,027,585 | 19.7% |
| **Costs and Expenses:** | | | | |
| Subscriber-related expenses | 2,987,023 | 2,601,450 | 385,573 | 14.8% |
| **% of Subscriber-related revenue** | **50.7%** | **53.2%** | | |
| Satellite and transmission expenses | 98,092 | 82,259 | 15,833 | 19.2% |
| **% of Subscriber-related revenue** | **1.7%** | **1.7%** | | |
| Cost of sales — equipment | 234,767 | 206,543 | 28,224 | 13.7% |
| **% of Equipment sales** | **82.1%** | **79.4%** | | |
| Cost of sales — other | 20,623 | 23,563 | (2,940) | (12.5%) |
| Subscriber acquisition costs | 1,081,040 | 1,158,747 | (77,707) | (6.7%) |
| General and administrative | 342,314 | 286,761 | 55,553 | 19.4% |
| **% of Total revenue** | **5.5%** | **5.5%** | | |
| Non-cash, stock-based compensation | — | 1,180 | (1,180) | (100.0%) |
| Depreciation and amortization | 568,336 | 358,512 | 209,824 | 58.5% |
| Total costs and expenses | 5,332,195 | 4,719,015 | 613,180 | 13.0% |
| Operating income (loss) | 915,512 | 501,107 | 414,405 | 82.7% |
| **Other income (expense):** | | | | |
| Interest income | 29,995 | 34,527 | (4,532) | (13.1%) |
| Interest expense, net of amounts capitalized | (278,396) | (367,024) | 88,628 | (24.1%) |
| Gain on insurance settlement | 134,000 | — | 134,000 | NM |
| Other | 41,424 | (13,225) | 54,649 | NM |
| Total other income (expense) | (72,977) | (345,722) | 272,745 | (78.9%) |
| Income (loss) before income taxes | 842,535 | 155,385 | 687,150 | NM |
| Income tax benefit (provision), net | 539,380 | (10,694) | 550,074 | NM |
| Net income (loss) | $ 1,381,915 | $ 144,691 | $ 1,237,224 | NM |
| **Other Data:** | | | | |
| DISH Network subscribers, as of period end (in millions) | 11.710 | 10.475 | 1.235 | 11.8% |
| DISH Network subscriber additions, gross (in millions) | 2.499 | 2.529 | (0.030) | (1.2%) |
| DISH Network subscriber additions, net (in millions) | 0.805 | 1.050 | (0.245) | (23.3%) |
| Monthly churn percentage | 1.67% | 1.66% | 0.01% | 0.6% |
| Average revenue per subscriber ("ARPU") | $ 57.75 | $ 54.54 | $ 3.21 | 5.9% |
| Average subscriber acquisition costs per subscriber ("SAC") | $ 433 | $ 458 | $ (25) | (5.5%) |
| Equivalent average subscriber acquisition costs per subscriber ("Equivalent SAC") | $ 654 | $ 589 | $ 65 | 11.0% |
| EBITDA | $ 1,659,272 | $ 846,394 | $ 812,878 | 96.0% |

***Subscriber-related revenue.*** DISH Network "Subscriber-related revenue" totaled $5.891 billion for the nine months ended September 30, 2005, an increase of $1.004 billion or 20.5% compared to the same period in 2004. This increase was directly attributable to continued DISH Network subscriber growth and the increase in "ARPU" discussed below.

***ARPU.*** Monthly average revenue per DISH Network subscriber was approximately $57.75 during the nine months ended September 30, 2005 and approximately $54.54 during the same period in 2004. The $3.21 or 5.9% increase in ARPU is primarily attributable to price increases in February 2005 and 2004 on some of our most popular packages, higher equipment rental fees resulting from increased penetration of our equipment leasing programs, fees for DVRs, and a reduction in the number of DISH Network subscribers receiving subsidized programming through our free and discounted programming promotions. This increase was also attributable to the increased availability of local channels by satellite, and our relationship with SBC, including revenues from equipment sales, installation and other services related to that agreement.

***Equipment sales.*** For the nine months ended September 30, 2005, "Equipment sales" totaled $286.1 million, an increase of $25.9 million or 10.0% compared to the same period during 2004. This increase principally resulted from an increase in sales of non-DISH Network digital receivers and related components to an international DBS service provider, partially offset by decreases in sales of DBS accessories domestically.

***Subscriber-related expenses.*** "Subscriber-related expenses" totaled $2.987 billion during the nine months ended September 30, 2005, an increase of $385.6 million or 14.8% compared to the same period in 2004. The increase in "Subscriber-related expenses" was primarily attributable to the increase in the number of DISH Network subscribers which resulted in increased expenses to support the DISH Network, partially offset by a $35.1 million non-recurring vendor credit. "Subscriber-related expenses" represented 50.7% and 53.2% of "Subscriber-related revenue" during the nine months ended September 30, 2005 and 2004, respectively. The decrease in this expense to revenue ratio primarily resulted from the increase in "Subscriber-related revenue," the vendor credit discussed above, and an increase in the number of DISH Network subscribers participating in our lease program for existing subscribers. Since certain subscriber retention costs associated with this program are capitalized rather than expensed, our "Subscriber-related expenses" decreased and our capital expenditures increased. The decrease in the ratio also resulted from improved efficiencies associated with our installation and in-home service operations. The decrease in this expense to revenue ratio was partially offset by increases in certain of our programming costs, the cost of equipment sales, and expenses related to installation and other services, from our relationship with SBC, and costs associated with our call center operations. The decrease in the ratio was also partially offset by an approximate $13.0 million reduction in our accrual for the replacement of smart cards in satellite receivers sold to and owned by subscribers during the nine months ended September 30, 2004, and an approximate $22.2 million charge for the replacement of smart cards in satellite receivers leased to subscribers during the nine months ended September 30, 2005.

***Satellite and transmission expenses.*** "Satellite and transmission expenses" totaled $98.1 million during the nine months ended September 30, 2005, a $15.8 million or 19.2% increase compared to the same period in 2004. This increase primarily resulted from commencement of service and operational costs associated with the increasing number of markets in which we offer local network channels by satellite as previously discussed, increases in our satellite lease payment obligations for AMC-2, and operational costs associated with our capital leases of AMC-15 and AMC-16 which commenced commercial operations in January and February 2005, respectively. The increase was partially offset by a non-recurring credit received from a vendor during the nine months ended September 30, 2005. "Satellite and transmission expenses" totaled 1.7% of "Subscriber-related revenue" during each of the nine months ended September 30, 2005 and 2004.

***Cost of sales — equipment.*** "Cost of sales — equipment" totaled $234.8 million during the nine months ended September 30, 2005, an increase of $28.2 million or 13.7% compared to the same period in 2004. This increase related primarily to the increase in sales of non-DISH Network digital receivers and related components to an international DBS service provider discussed above. Charges for slow moving and obsolete inventory were lower during 2005 compared to 2004. This difference, together with the decrease in sales of DBS accessories domestically discussed above, and a decrease in sales of non-DISH Network digital receivers sold to other international customers partially offset the amount of the increase. "Cost of sales — equipment" represented 82.1% and 79.4% of "Equipment sales," during the nine months ended September 30, 2005 and 2004, respectively. The increase in the expense to revenue ratio principally related to a decline in margins on sales to the international DBS service provider, and on sales of DBS accessories domestically. This increase was partially offset by the lower 2005 charges for slow moving and obsolete inventory discussed above.

***Subscriber acquisition costs.*** "Subscriber acquisition costs" totaled approximately $1.081 billion for the nine months ended September 30, 2005, a decrease of $77.7 million or 6.7% compared to the same period in 2004. The decrease in "Subscriber acquisition costs" was attributable to a higher number of DISH Network subscribers participating in our equipment lease program for new subscribers and a decrease in gross DISH Network subscriber additions.

***SAC and Equivalent SAC.*** SAC was approximately $433 for the nine months ended September 30, 2005 and approximately $458 during the same period in 2004. The $25, or 5.5% decrease in SAC was primarily attributable to a greater number of DISH Network subscribers participating in our equipment lease program, partially offset by an increase in the number of non co-branded subscribers acquired and by the other factors contributing to the increase in Equivalent SAC discussed below.

Equivalent SAC was approximately $654 during the nine months ended September 30, 2005 compared to $589 during the same period in 2004, an increase of $65, or 11.0%. This increase was primarily attributable to a greater number of SuperDISH installations, and more DISH Network subscribers activating higher priced advanced products, such as receivers with multiple tuners, DVRs and high definition receivers. Activation of these more advanced and complex products also resulted in higher installation costs during 2005 as compared to 2004. The increase in Equivalent SAC was also attributable to higher costs for acquisition advertising and promotional incentives paid to our independent dealer network. Penetration of our equipment lease program for new subscribers increased during the nine months ended September 30, 2005 compared to the same period in 2004. The value of equipment capitalized under our lease program for new subscribers totaled approximately $617.8 million and $375.2 million for the nine months ended September 30, 2005 and 2004, respectively.

***General and administrative expenses.*** "General and administrative expenses" totaled $342.3 million during the nine months ended September 30, 2005, an increase of $55.6 million or 19.4% compared to the same period in 2004. The increase in "General and administrative expenses" was primarily attributable to increased personnel and infrastructure expenses to support the growth of the DISH Network. "General and administrative expenses" represented 5.5% of "Total revenue" during each of the nine months ended September 30, 2005 and 2004.

***Depreciation and amortization.*** "Depreciation and amortization" expense totaled $568.3 million during the nine months ended September 30, 2005, a $209.8 million or 58.5% increase compared to the same period in 2004. The increase in "Depreciation and amortization" expense was primarily attributable to additional depreciation of equipment leased to subscribers resulting from increased penetration of our equipment lease programs. Further, depreciation of our AMC-15 and AMC-16 satellites, which commenced commercial operations during January and February 2005, respectively, contributed to this increase.

***Interest expense, net of amounts capitalized.*** "Interest expense" totaled $278.4 million during the nine months ended September 30, 2005, a decrease of $88.6 million, or 24.1% compared to the same period in 2004. This decrease primarily resulted from a decrease in prepayment premiums and write-off of debt issuance costs totaling approximately $78.4 million, and a net reduction in interest expense of approximately $40.7 million related to the redemption, repurchases and refinancing of our previously outstanding senior debt during 2004. This decrease was partially offset by $26.8 million of additional interest expense during 2005 associated with our capital lease obligations for the AMC-15 and AMC-16 satellites.

***Gain on insurance settlement.*** During March 2005, we settled our insurance claim and related claims for accrued interest and bad faith with the insurers of our EchoStar IV satellite for the net amount of $240.0 million. The $134.0 million received in excess of our previously recorded $106.0 million receivable related to this insurance claim was recognized as a "Gain on insurance settlement" during the nine months ended September 30, 2005.

***Other.*** "Other" income totaled $41.4 million during the nine months ended September 30, 2005, an increase of $54.6 million compared to "Other" expense of $13.2 million during the same period in 2004. The increase primarily resulted from an approximate $40.9 million unrealized gain for the change in fair value of a non-marketable strategic investment accounted for at fair value during the nine months ended September 30, 2005. "Other" expense during the nine months ended September 30, 2004 includes a $7.0 million net realized loss on the sale of investments which also contributed to the comparative current period increase.

***Earnings before interest, taxes, depreciation and amortization***. EBITDA was $1.659 billion during the nine months ended September 30, 2005, compared to $846.4 million during the same period in 2004. The increase in EBITDA was primarily attributable to the changes in operating revenues and expenses, the "Gain on insurance settlement" and the increase in "Other" income discussed above. EBITDA does not include the impact of capital expenditures under our new and existing subscriber equipment lease programs of approximately $707.8 million and $412.8 million during the nine months ended September 30, 2005 and 2004, respectively. The following table reconciles EBITDA to the accompanying financial statements:

| | For the Nine Months Ended September 30, | |
|---|---|---|
| | 2005 | 2004 |
| | (In thousands) | |
| EBITDA | $ 1,659,272 | $ 846,394 |
| Less: | | |
| Interest expense, net | 248,401 | 332,497 |
| Income tax provision (benefit), net | (539,380) | 10,694 |
| Depreciation and amortization | 568,336 | 358,512 |
| Net income (loss) | $ 1,381,915 | $ 144,691 |

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 multi-channel video programming distribution industry. Conceptually, EBITDA measures the amount of income generated each period that could be used to service debt, pay taxes and fund capital expenditures. EBITDA should not be considered in isolation or as a substitute for measures of performance prepared in accordance with GAAP.

***Income tax benefit (provision), net.*** Our "Income tax benefit, net" was $539.4 million during the nine months ended September 30, 2005, an increase of $550.1 million compared to an "Income tax (provision), net" of $10.7 million during the same period in 2004. This increase was primarily related to an approximate $592.8 million credit to our provision for income taxes in June 2005 resulting from the reversal of our recorded valuation allowance for those deferred tax assets that we believe will become realizable. Further, we reversed an additional net amount of approximately $72.6 million from our remaining recorded valuation allowance related to net income activity during the three months ended September 30, 2005 (see Note 3 to the Condensed Consolidated Financial Statements).

***Net income (loss).*** "Net income" was $1.382 billion during the nine months ended September 30, 2005, an increase of $1.237 billion compared to $144.7 million for the same period in 2004. The increase was primarily attributable to the reversal of our recorded valuation allowance for deferred tax assets, higher "Operating income," the "Gain on insurance settlement," lower "Interest expense, net of amounts capitalized" and the increase in "Other" income resulting from the factors discussed above.

## LIQUIDITY AND CAPITAL RESOURCES

### Cash and Cash Equivalents and 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. Our restricted and unrestricted cash, cash equivalents and marketable investment securities as of September 30, 2005 totaled $1.585 billion, including approximately $67.9 million of restricted cash and marketable investment securities, compared to $1.213 billion, including $57.6 million of restricted cash and marketable investment securities as of December 31, 2004. As previously discussed, during March 2005, we settled our insurance claim and related claims for accrued interest and bad faith with the insurers of our EchoStar IV satellite. As of September 30, 2005, we had received all of the $240.0 million due under the settlement, which increased our unrestricted cash and marketable investment securities during the period. Repurchases of our Class A common stock reduced our unrestricted cash and marketable investment securities by approximately $152.5 million during the nine months ended September 30, 2005.

### 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."

Free cash flow was $420.0 million and $115.7 million for the nine months ended September 30, 2005 and 2004, respectively. The increase from 2004 to 2005 of approximately $304.3 million, or 263.0%, resulted from an increase in "Net cash flows from operating activities" of approximately $617.4 million, or 81.8%, offset by a 49.0% increase in "Purchases of property and equipment," or approximately $313.2 million. The increase in "Net cash flows from operating activities" was primarily attributable to higher net income during the nine months ended September 30, 2005 compared to the same period in 2004, partially offset by less cash generated from changes in operating assets and liabilities in 2005 as compared to 2004. Cash flow from changes in operating assets and liabilities was $163.3 million during the nine months ended September 30, 2005 compared to $214.3 million for the same period in 2004, a decrease of $51.0 million, or 23.8%. This decrease resulted from decreases in cash flows from net changes in (i) deferred revenue primarily attributable to equipment sales to SBC which commenced during the first quarter of 2004, (ii) accrued expenses and (iii) accounts payable. The decrease in cash flows from changes in operating assets and liabilities was partially offset by an increase in cash flows from net changes in (i) inventory, (ii) accounts receivable and (iii) noncurrent assets primarily attributable to equipment sales to SBC. The increase in "Purchases of property and equipment" was primarily attributable to increased spending for (i) equipment under our lease programs, (ii) satellite construction and (iii) general expansion to support the growth of the DISH Network. The following table reconciles free cash flow to "Net cash flows from operating activities."

| | For the Nine Months Ended September 30, | |
|---|---|---|
| | 2005 | 2004 |
| | (In thousands) | |
| Free cash flow | $ 420,025 | $ 115,743 |
| Add back: | | |
| Purchases of property and equipment | 951,994 | 638,841 |
| Net cash flows from operating activities | $ 1,372,019 | $ 754,584 |

During the nine months ended September 30, 2005 and 2004, 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. 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.

We currently offer local broadcast channels in 164 markets across the United States. In 38 of those markets, a second dish is necessary to receive some local channels in the market. SHVERA now requires, among other things, that all local broadcast channels delivered by satellite to any particular market be available from a single dish within 18 months of the law's December 8, 2004 effective date. Satellite capacity limitations could force us to move the local channels in all 38 markets to different satellites, requiring subscribers in those markets to install a second or a different dish to continue receiving their local network channels. We may be forced to stop offering local channels in some of those markets altogether.

The transition of all local channels to the same dish could result in disruptions of service for a substantial number of our customers. Further, our ability to timely comply with this requirement without incurring significant additional costs is dependent on, among other things, the successful launch and commencement of commercial operations of our EchoStar X satellite during the first half of 2006 and continued operation of our EchoStar V satellite at the 129 degree orbital location until that time. Delays in launch or commencement of commercial operation of EchoStar X would likely require us to cease offering local channels by satellite in many markets absent regulatory relief from the single dish obligation. Further, if regulatory or operational impediments to our preferred transition plan arise, it is possible that the costs of compliance with this requirement could exceed $100.0 million. To the extent subscribers are unwilling for any reason to upgrade to a new dish, our subscriber churn could be negatively impacted.

In addition, we depend on our EchoStar VIII satellite to provide local channels to over 40 markets at least until such time as our EchoStar X satellite has successfully launched and commenced commercial operations. In the event that EchoStar VIII experienced a total or substantial failure, we could transmit many, but not all, of those channels from other in-orbit satellites. The potential relocation of some channels, and elimination of others, could cause a material adverse impact on our business, including, among other things, a reduction in revenues, an increase in operating expenses, a decrease in new subscriber activations and an increase in subscriber churn.

Impacts from our litigation with the networks in Florida, FCC rules governing the delivery of superstations and other factors could cause us to terminate delivery of network channels and superstations to a substantial number of our subscribers, which could cause many of those customers to cancel their subscription to our other services. In the event the Court of Appeals upholds the Miami District Court's network litigation injunction, and if we do not reach private settlement agreements with additional stations, we will attempt to assist subscribers in arranging alternative means to receive network channels, including migration to local channels by satellite where available, and free off air antenna offers in other markets. However, we cannot predict with any degree of certainty how many subscribers might ultimately cancel their primary DISH Network programming as a result of termination of their distant network channels. We could be required to terminate distant network programming to all subscribers in the event the plaintiffs prevail on their cross-appeal and we are permanently enjoined from delivering all distant network channels. Termination of distant network programming to subscribers would result in, among other things, a reduction in ARPU and a temporary increase in subscriber churn.

Our future capital expenditures could increase or decrease depending on the strength of the economy, strategic opportunities or other factors.

### Investment Securities

We currently classify all marketable investment securities as available-for-sale. We adjust the carrying value of our available-for-sale securities to fair market value and report the related temporary unrealized gains and losses as a separate component of "Accumulated other comprehensive income (loss)" within "Total stockholders' equity (deficit)," net of related deferred income tax. Declines in the fair market value of a marketable investment security which are estimated to be "other than temporary" are recognized in the Condensed Consolidated Statement of Operations, thus establishing a new cost basis for such investment. We evaluate our marketable investment securities portfolio on a quarterly basis to determine whether declines in the fair market value of these securities are other than temporary. This quarterly evaluation consists of reviewing, among other things, the fair market value of our marketable investment securities compared to the carrying amount, the historical volatility of the price of each security and any market and company specific factors related to each security. Generally, absent specific factors to the contrary, declines in the fair market value of investments below cost basis for a period of less than six months are considered to be temporary. Declines in the fair market value of investments for a period of six to nine months are evaluated on a case by case basis to determine whether any company or market-specific factors exist which would indicate that such declines are other than temporary. Declines in the fair market value of investments below cost basis for greater than nine months are considered other than temporary and are recorded as charges to earnings, absent specific factors to the contrary.

Our marketable investment securities portfolio includes an investment in the publicly traded common stock of a company in the home entertainment industry with a fair market value of approximately $50.4 million, including an unrealized loss of approximately $19.5 million as of September 30, 2005. We believe the unrealized loss is generally attributable to market uncertainty surrounding the company's business outlook. However, after evaluating, among other factors, the company, the length of time the investment has been in a loss position and recent analyst reports, we believe that it is currently undervalued. Although there is significant risk the investment will not recover its full value, we are not aware of any specific factors which indicate the unrealized loss is other than temporary. We continue to evaluate the company's performance, and if the fair market value of our investment remains below its cost basis as of the year ended December 31, 2005, we will recognize an impairment on this investment as a charge to earnings, absent specific factors to the contrary, in accordance with our policies discussed above.

As of September 30, 2005 and December 31, 2004, we had unrealized gains net of related tax effect of approximately $2.2 million and $51.8 million, respectively, as a part of "Accumulated other comprehensive income (loss)" within "Total stockholders' equity (deficit)." During the nine months ended September 30, 2005 and 2004, we did not record any charge to earnings for other than temporary declines in the fair market value of our marketable investment securities. During the nine months ended September 30, 2005 and 2004, we realized net gains of approximately $8.7 million and net losses of $7.0 million on sales of marketable and non-marketable investment securities, respectively. Realized gains and losses are accounted for on the specific identification method.

Our approximately $1.585 billion of restricted and unrestricted cash, cash equivalents and marketable investment securities includes debt and equity securities which we own for strategic and financial purposes. The fair market value of these strategic marketable investment securities aggregated approximately $113.0 million and $174.3 million as of September 30, 2005 and December 31, 2004, respectively. Our portfolio generally, and our strategic investments particularly, have experienced and continue to experience volatility. If the fair market value of our strategic marketable investment securities portfolio does not remain above cost basis or if we become aware of any market or company specific factors that indicate that the carrying value of certain of our strategic marketable investment securities is impaired, we may be required to record charges to earnings in future periods equal to the amount of the decline in fair market value.

We also have strategic equity investments in certain non-marketable securities which are included in "Other noncurrent assets, net" on our Condensed Consolidated Balance Sheets. We account for our unconsolidated equity investments under the equity method or cost method of accounting, or as available-for-sale. These equity securities are not publicly traded and accordingly, it is not practical to regularly estimate the fair value of the investments, however, these investments are subject to an evaluation for other than temporary impairment on a quarterly basis. This quarterly evaluation consists of reviewing, among other things, company business plans and current financial statements, if available, for factors that may indicate an impairment of our investment. Such factors may include, but are not limited to, cash flow concerns, material litigation, violations of debt covenants and changes in business strategy. The fair value of these equity investments is not estimated unless there are identified changes in circumstances that may indicate an impairment exists and are likely to have a significant adverse effect on the fair value of the investment. As of September 30, 2005 and December 31, 2004, we had $98.1 million and $90.4 million aggregate carrying amount of non-marketable, unconsolidated strategic equity investments, respectively, of which $52.7 million is accounted for under the cost method. During the nine months ended September 30, 2005 and 2004, we did not record any impairment charges with respect to these investments.

We also have a strategic investment in the non-public preferred stock and convertible debt of a public company which is included in "Other noncurrent assets, net" on our Condensed Consolidated Balance Sheets. The investment is convertible into the issuer's common shares. We account for the investment at fair value with changes in fair value reported each period as unrealized gains or losses in "Other" income or expense in our Condensed Consolidated Statement of Operations. As of September 30, 2005, the fair value of the investment was approximately $50.6 million based on the trading price of the issuer's shares on that date, and we recognized a pre-tax unrealized gain of approximately $40.9 million for the change in the fair value of the investment. Among other factors, as the result of the relatively large number of shares we would hold upon conversion compared to the issuer's limited public trading volume, there can be no assurance that we will be able to obtain full value for our investment upon a sale of the common shares.

Our ability to realize value from our strategic investments is dependent on the success of the issuer's business and ability to obtain sufficient capital to execute their business plans. Since private markets are not as liquid as public markets, there is also increased risk that we will not be able to sell these investments, or that when we desire to sell them we will not be able to obtain full value for them.

### Subscriber Turnover

Our percentage monthly subscriber churn for the nine months ended September 30, 2005 was approximately 1.67%, compared to our percentage monthly subscriber churn for the same period in 2004 of approximately 1.66%. Absent the impact of hurricanes Katrina and Rita, our percentage monthly churn would have been slightly improved over the prior period. While the impact of hurricane Wilma on our subscriber churn has not yet been determined, it could be more significant than the affect of hurricanes Katrina and Rita since a greater number of our subscribers reside in the impacted area. Our subscriber churn may be negatively impacted by a number of other factors, including but not limited to, an increase in competition from digital cable and video services offered by regional bell operating companies, cable bounties, piracy, and increasingly complex products. There can be no assurance that these and other factors will not contribute to relatively higher churn than we have experienced historically. Additionally, certain of our promotions allow consumers with relatively lower credit to become subscribers and these subscribers typically churn at a higher rate. However, these subscribers are also acquired at a lower cost resulting in a smaller economic loss upon disconnect.

We currently offer local broadcast channels in 164 markets across the United States. In 38 of those markets, a second dish is necessary to receive some local channels in the market. SHVERA now requires, among other things, that all local broadcast channels delivered by satellite to any particular market be available from a single dish within 18 months of the law's December 8, 2004 effective date. Satellite capacity limitations could force us to move the local channels in all 38 markets to different satellites, requiring subscribers in those markets to install a second or a different dish to continue receiving their local network channels. We may be forced to stop offering local channels in some of those markets altogether.

The transition of all local channels to the same dish could result in disruptions of service for a substantial number of our customers. Further, our ability to timely comply with this requirement without incurring significant additional costs is dependent on, among other things, the successful launch and commencement of commercial operations of our EchoStar X satellite during the first half of 2006 and continued operation of our EchoStar V satellite at the 129 degree orbital location until that time. Delays in launch or commencement of commercial operation of EchoStar X would likely require us to cease offering local channels by satellite in many markets absent regulatory relief from the single dish obligation. Further, if regulatory or operational impediments to our preferred transition plan arise, it is possible that the costs of compliance with this requirement could exceed $100.0 million. To the extent subscribers are unwilling for any reason to upgrade to a new dish, our subscriber churn could be negatively impacted.

In addition, we depend on our EchoStar VIII satellite to provide local channels to over 40 markets at least until such time as our EchoStar X satellite has successfully launched and commenced commercial operations. In the event that EchoStar VIII experienced a total or substantial failure, we could transmit many, but not all, of those channels from other in-orbit satellites. The potential relocation of some channels, and elimination of others, could cause a material adverse impact on our business, including, among other things, a reduction in revenues, an increase in operating expenses, a decrease in new subscriber activations and an increase in subscriber churn.

Impacts from our litigation with the networks in Florida, FCC rules governing the delivery of superstations and other factors could cause us to terminate delivery of network channels and superstations to a substantial number of our subscribers, which could cause many of those customers to cancel their subscription to our other services. In the event the Court of Appeals upholds the Miami District Court's network litigation injunction, and if we do not reach private settlement agreements with additional stations, we will attempt to assist subscribers in arranging alternative means to receive network channels, including migration to local channels by satellite where available, and free off air antenna offers in other markets. However, we cannot predict with any degree of certainty how many subscribers might ultimately cancel their primary DISH Network programming as a result of termination of their distant network channels. We could be required to terminate distant network programming to all subscribers in the event the plaintiffs prevail on their cross-appeal and we are permanently enjoined from delivering all distant network channels. Termination of distant network programming to subscribers would result in, among other things, a reduction in ARPU and a temporary increase in subscriber churn.

Increases in piracy or theft of our signal, or our competitors' signals, also could cause subscriber churn to increase in future periods. We continue to respond to compromises of our encryption system with security measures intended to make signal theft of our programming more difficult. In order to combat piracy and maintain the functionality of active set-top boxes, we are in the process of replacing older generation smart cards with newer generation smart cards. We expect to complete the replacement of older generation smart cards during the second half of 2005.

However, there can be no assurance that these security measures or any future security measures we may implement will be effective in reducing piracy of our programming signals.

Additionally, as the size of our subscriber base continues to increase, even if percentage subscriber churn remains constant or declines, increasing numbers of gross new DISH Network subscribers are required to sustain net subscriber growth.

**Subscriber Acquisition and Retention Costs**

Our subscriber acquisition and retention costs can vary significantly from period to period which can in turn cause significant variability to our net income (loss) and free cash flow between periods. Our "Subscriber acquisition costs," SAC and "Subscriber-related expenses" may materially increase to the extent that we introduce more aggressive promotions in the future if we determine they are necessary to respond to competition, or for other reasons.

During the nine months ended September 30, 2005, the percentage of our new subscribers choosing to lease rather than purchase equipment continued to increase compared to the nine months ended September 30, 2004. The increase in leased equipment and related reduction in subsidized equipment sales caused our capital expenditures to increase, while our "Subscriber acquisition costs" and SAC declined.

The increase in capital expenditures resulting from our equipment lease program for new subscribers has been, and we expect it will continue to be, partially mitigated by, among other things, the redeployment of equipment returned by disconnecting lease program subscribers. However, to remain competitive we will have to upgrade or replace subscriber equipment periodically as technology changes, and the associated costs may be substantial. To the extent technological changes render existing equipment obsolete, we would cease to benefit from the Equivalent SAC reduction associated with redeployment of that returned lease equipment.

Several years ago we began deploying satellite receivers capable of exploiting 8PSK modulation technology. Since that technology is now standard in all of our new satellite receivers, our cost to migrate programming channels to that technology in the future will be substantially lower than if it were necessary to replace all existing consumer equipment.

As we implement 8PSK technology, bandwidth efficiency will improve, significantly increasing the number of programming channels we can transmit over our existing satellites as an alternative or supplement to the acquisition of additional spectrum or the construction of additional satellites. New channels we add to our service using only that technology may allow us to further reduce conversion costs and create additional revenue opportunities. Similarly beginning in late 2005 or early 2006, we intend to make MPEG-4 technology standard in all satellite receivers for new customers who subscribe to our high definition programming packages. This technology will result in further bandwidth efficiencies over time. We have not yet determined the extent to which we will convert the EchoStar DBS System to these new technologies, or the period of time over which the conversions will occur. Provided EchoStar X launches successfully during 2006 and other planned satellites are successfully deployed, our 8PSK transition will afford us greater flexibility in delaying and reducing the costs to convert our subscriber base to MPEG-4.

While we may be able to generate increased revenue from such conversions, the deployment of equipment including new technologies will increase the cost of our consumer equipment, at least in the short term. To the extent we subsidize those costs, SAC and Equivalent SAC will increase as well. However, the increases in these costs would be mitigated by, among other things, our expected migration away from relatively expensive and complex SuperDISH installations (assuming successful launch of our EchoStar X satellite and the continued availability of our other in-orbit satellites). These increases may also be mitigated to the extent we successfully redeploy existing set-top boxes and implement other SAC reduction strategies.

In an effort to reduce subscriber turnover, we offer existing subscribers a variety of options for upgraded and add on equipment. We generally lease receivers and subsidize installation of EchoStar receiver systems under these subscriber retention programs. As discussed above, we will have to upgrade or replace subscriber equipment periodically as technology changes. As a consequence, our retention costs for subscribers that currently own equipment, which are included in "Subscriber-related expenses," and our capital expenditures related to our equipment lease program for existing subscribers, will increase, at least in the short term, to the extent we subsidize the costs of those upgrades and replacements. Our capital expenditures related to subscriber retention programs could also increase in the future to the extent we increase penetration of our equipment lease program for existing subscribers, if we introduce other more aggressive promotions, if we offer existing subscribers HD receivers or EchoStar receivers with other enhanced technologies, or for other reasons.

Cash necessary to fund retention programs and total subscriber acquisition costs are expected to be satisfied from existing cash and marketable investment securities balances and cash generated from operations to the extent available. We may, however, decide to raise additional capital in the future to meet these requirements. If we decided to raise capital today, a variety of debt and equity funding sources would likely be available to us. However, there can be no assurance that additional financing will be available on acceptable terms, or at all, if needed in the future.

**Obligations and Future Capital Requirements**

As of September 30, 2005, our purchase obligations, primarily consisting of binding purchase orders for EchoStar receiver systems and related equipment, and products and services related to the operation of our DISH Network totaled approximately $1.352 billion. These obligations also include certain guaranteed fixed contractual commitments to purchase programming content. Our purchase obligations can fluctuate significantly from period to period due to, among other things, management's control of inventory levels, and can materially impact our future operating asset and liability balances, and our future working capital requirements.

During August 2005, we entered into an agreement for capacity on a Canadian DBS satellite currently scheduled to be launched during 2008. We can renew the ten-year agreement on a year to year basis following the initial term. Following commencement of commercial operations, we are required to make monthly payments over the ten-year term of the agreement, with an option during construction to prepay as much as approximately $100.0 million of the total amount.

On October 12, 2005, the FCC approved our agreement to purchase the Rainbow 1 satellite and related assets for $200.0 million, which is expected to close during the fourth quarter 2005 (See Note 15 to the Condensed Consolidated Financial Statements).

We expect that our future working capital, capital expenditure and debt service requirements will be satisfied primarily from existing cash and marketable investment securities balances and cash generated from operations. Our ability to generate positive future operating and net cash flows is dependent upon, among other things, our ability to retain existing DISH Network subscribers. There can be no assurance we will be successful in executing our business plan. The amount of capital required to fund our future working capital and capital expenditure needs will vary, depending, among other things, on the rate at which we acquire new subscribers and the cost of subscriber acquisition and retention, including capitalized costs associated with our new and existing subscriber equipment lease programs. The amount of capital required will also depend on our levels of investment necessary to support possible strategic initiatives. Our capital expenditures will vary depending on the number of satellites leased or under construction at any point in time. Our working capital and capital expenditure requirements could increase materially in the event of increased competition for subscription television customers, significant satellite failures, or in the event of general economic downturn, among other factors. These factors could require that we raise additional capital in the future.

From time to time, we evaluate opportunities for strategic investments or acquisitions that would complement our current services and products, enhance our technical capabilities or otherwise offer growth opportunities. Future material investments or acquisitions may require that we obtain additional capital. Our Board of Directors has approved the repurchase of up to $1.0 billion of our Class A common stock, which could require that we raise additional capital. Further, effective January 15, 2006, we can redeem our outstanding 9 1/8% Senior Notes due 2009 at a price of 104.563%. While we have not yet determined whether to redeem any or all of those notes, a total of $462.1 million plus accrued and unpaid interest would be required to repurchase the notes on January 15, 2006. There can be no assurance that we could raise all required capital or that required capital would be available on acceptable terms.

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

### Market Risks Associated With Financial Instruments

As of September 30, 2005, our restricted and unrestricted cash, cash equivalents and marketable investment securities had a fair market value of approximately $1.585 billion. Of that amount, a total of approximately $1.368 billion was invested in: (a) cash; (b) debt instruments of the U.S. Government and its agencies; (c) commercial paper and 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 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.

Our restricted and unrestricted cash, cash equivalents and marketable investment securities had an average annual return for the nine months ended September 30, 2005 of approximately 3.1%. A hypothetical 10.0% decrease in interest rates would result in a decrease of approximately $4.0 million in annual interest income. The value of certain of the investments in this portfolio can be impacted by, among other things, the risk of adverse changes in securities and economic markets generally, as well as the risks related to the performance of the companies whose commercial paper and other instruments we hold. However, the high quality of these investments (as assessed by independent rating agencies), reduces these risks. The value of these investments can also be impacted by interest rate fluctuations.

At September 30, 2005, $1.472 billion of our restricted and unrestricted cash, cash equivalents and marketable investment securities was invested in fixed or variable rate instruments or money market type accounts. While an increase in interest rates would ordinarily adversely impact the fair market value of fixed and variable rate investments, we normally hold these investments to maturity. Consequently, neither interest rate fluctuations nor other market risks typically result in significant realized gains or losses to this portfolio. A decrease in interest rates has the effect of reducing our future annual interest income from this portfolio, since funds would be re-invested at lower rates as the instruments mature. Over time, any net percentage decrease in interest rates could be reflected in a corresponding net percentage decrease in our interest income.

Included in our marketable investment securities portfolio balance is debt and equity of public and private companies we hold for strategic and financial purposes. As of September 30, 2005, we held strategic and financial debt and equity investments of public companies with a fair market value of approximately $113.0 million. We may make additional strategic and financial investments in debt and other equity securities in the future. The fair market 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 market value due to the volatility of the securities markets and of the underlying businesses. A hypothetical 10.0% adverse change in the price of our public strategic debt and equity investments would result in approximately a $11.3 million decrease in the fair market value of that portfolio. The fair market value of our strategic debt investments are currently not materially impacted by interest rate fluctuations due to the nature of these investments.

We currently classify all marketable investment securities as available-for-sale. We adjust the carrying value of our available-for-sale securities to fair market value and report the related temporary unrealized gains and losses as a separate component of “Accumulated other comprehensive income (loss)” within “Total stockholders’ equity (deficit),” net of related deferred income tax. Declines in the fair market value of a marketable investment security which are estimated to be “other than temporary” are recognized in the Condensed Consolidated Statement of Operations, thus establishing a new cost basis for such investment. We evaluate our marketable investment securities portfolio on a quarterly basis to determine whether declines in the fair market value of these securities are other than temporary. This quarterly evaluation consists of reviewing, among other things, the fair market value of our marketable investment securities compared to the carrying amount, the historical volatility of the price of each security and any market and company specific factors related to each security. Generally, absent specific factors to the contrary, declines in the fair market value of investments below cost basis for a period of less than six months are considered to be temporary. Declines in the fair market value of investments for a period of six to nine months are evaluated on a case by case basis to determine whether any company or market-specific factors exist which would indicate that such declines are other than temporary. Declines in the fair market value of investments below cost basis for greater than nine months are considered other than temporary and are recorded as charges to earnings, absent specific factors to the contrary.

Our marketable investment securities portfolio includes an investment in the publicly traded common stock of a company in the home entertainment industry with a fair market value of approximately $50.4 million, including an unrealized loss of approximately $19.5 million as of September 30, 2005. We believe the unrealized loss is generally attributable to market uncertainty surrounding the company’s business outlook. However, after evaluating, among other factors, the company, the length of time the investment has been in a loss position and recent analyst reports, we believe that it is currently undervalued. Although there is significant risk the investment will not recover its full value, we are not aware of any specific factors which indicate the unrealized loss is other than temporary. We continue to evaluate the company’s performance, and if the fair market value of our investment remains below its cost basis as of the year ended December 31, 2005, we will recognize an impairment on this investment as a charge to earnings, absent specific factors to the contrary, in accordance with our policies discussed above.

As of September 30, 2005, we had unrealized gains net of related tax effect of approximately $2.2 million as a part of “Accumulated other comprehensive income (loss)” within “Total stockholders’ equity (deficit).” During the nine months ended September 30, 2005, we did not record any charge to earnings for other than temporary declines in the fair market value of our marketable investment securities, and we realized net gains of approximately $8.7 million on sales of marketable and non-marketable investment securities. Realized gains and losses are accounted for on the specific identification method. During the nine months ended September 30, 2005, our portfolio generally, and our strategic investments particularly, have experienced and continue to experience volatility. If the fair market value of our strategic marketable investment securities portfolio does not remain above cost basis or if we become aware of any market or company specific factors that indicate that the carrying value of certain of our strategic marketable investment securities is impaired, we may be required to record charges to earnings in future periods equal to the amount of the decline in fair market value.

We also have strategic equity investments in certain non-marketable securities which are included in “Other noncurrent assets, net” on our Condensed Consolidated Balance Sheets. We account for our unconsolidated equity investments under the equity method or cost method of accounting, or as available-for-sale. These equity securities are not publicly traded and accordingly, it is not practical to regularly estimate the fair value of the investments, however, these investments are subject to an evaluation for other than temporary impairment on a quarterly basis. This quarterly evaluation consists of reviewing, among other things, company business plans and current financial statements, if available, for factors that may indicate an impairment of our investment. Such factors may include, but are not limited to, cash flow concerns, material litigation, violations of debt covenants and changes in business strategy. The fair value of these equity investments is not estimated unless there are identified changes in circumstances that may indicate an impairment exists and are likely to have a significant adverse effect on the fair value of the investment. As of September 30, 2005, we had $98.1 million aggregate carrying amount of non-marketable, unconsolidated strategic equity investments, respectively, of which $52.7 million is accounted for under the cost method. During the nine months ended September 30, 2005, we did not record any impairment charges with respect to these investments.

We also have a strategic investment in the non-public preferred stock and convertible debt of a public company which is included in “Other noncurrent assets, net” on our Condensed Consolidated Balance Sheets. The investment is convertible into the issuer’s common shares. We account for the investment at fair value with changes in fair value reported each period as unrealized gains or losses in “Other” income or expense in our Condensed Consolidated Statement of Operations. We estimate the fair value of the investment using certain assumptions and judgments in applying a discounted cash flow analysis and the Black-Scholes option pricing model. As of September 30, 2005, the fair value of the investment was approximately $50.6 million based on the trading price of the issuer’s shares on that date, and we recognized a pre-tax unrealized gain of approximately $40.9 million for the change in the fair value of the investment. Among other factors, as the result of the relatively large number of shares we would hold upon conversion compared to the issuer’s limited public trading volume, there can be no assurance that we will be able to obtain full value for our investment upon a sale of the common shares. The issuer’s publicly traded shares have experienced, and will continue to experience volatility. The fair value of this investment can be significantly impacted by the risk of adverse changes in the issuer’s share price, currency exchange rates, and to a lesser extent, interest rates. A hypothetical 10% adverse change in the price of the issuer’s common shares, or in the Euro to U.S. dollar currency exchange rate, would result in an approximate $5.1 million decrease in the fair value of this investment.

Our ability to realize value from our strategic investments is dependent on the success of the issuer’s business and ability to obtain sufficient capital to execute their business plans. Since private markets are not as liquid as public markets, there is also increased risk that we will not be able to sell these investments, or that when we desire to sell them we will not be able to obtain full value for them.

As of September 30, 2005, we estimated the fair value of our variable and fixed-rate debt and capital lease obligations, mortgages and other notes payable to be approximately $5.891 billion using quoted market prices where available, and third party valuations or discounted cash flow analyses when it was practicable to do so. The interest rates assumed in these discounted cash flow analyses reflect interest rates currently being offered for loans with similar terms to borrowers of similar credit quality. The fair value of our fixed-rate debt and mortgages is affected by fluctuations in interest rates. A hypothetical 10.0% decrease in assumed interest rates would increase the fair value of our debt by approximately $167.2 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, 2005, a hypothetical 10.0% increase in assumed interest rates would increase our annual interest expense by approximately $38.0 million.

We have not used derivative financial instruments for hedging or speculative purposes.

## Item 4. CONTROLS AND PROCEDURES

Under the supervision and with the participation of our management, including our Chief Executive Officer and Principal Financial Officer, we evaluated the effectiveness of the design and operation 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 on that evaluation, our Chief Executive Officer and Principal Financial Officer concluded that our disclosure controls and procedures are effective.

There has been no change in the Company’s internal control over financial reporting during the three months ended September 30, 2005 that has materially affected, or is reasonably likely to materially affect, the Company’s internal control over financial reporting.

## PART II — OTHER INFORMATION

### Item 1. LEGAL PROCEEDINGS

***Distant Network Litigation***

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

In October 1998, we filed a declaratory judgment action against ABC, NBC, CBS and FOX in the United States District Court for the District of Colorado. We asked the Court to find that our method of providing distant network programming did not violate the Satellite Home Viewer Improvement Act ("SHVIA") and hence did not infringe the networks' copyrights. In November 1998, the networks and their affiliate association groups filed a complaint against us in Miami Federal Court alleging, among other things, copyright infringement. The Court combined the case that we filed in Colorado with the case in Miami and transferred it to the Miami Federal Court.

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

In April 2002, we reached a private settlement with ABC, Inc., one of the plaintiffs in the litigation, and jointly filed a stipulation of dismissal. In November 2002, we reached a private settlement with NBC, another of the plaintiffs in the litigation and jointly filed a stipulation of dismissal. During March 2004, we reached a private settlement with CBS, another of the plaintiffs in the litigation and jointly filed a stipulation of dismissal. We have also reached private settlements with many independent stations and station groups. We were unable to reach a settlement with five of the original eight plaintiffs — Fox and the independent affiliate groups associated with each of the four networks.

A trial took place during April 2003 and the District Court issued a final judgment in June 2003. The District Court found that with one exception our current distant network qualification procedures comply with the law. We have revised our procedures to comply with the District Court's Order. Although the plaintiffs asked the District Court to enter an injunction precluding us from selling any local or distant network programming, the District Court refused. While the plaintiffs did not claim monetary damages and none were awarded, the plaintiffs were awarded approximately $4.8 million in attorneys' fees. This amount is substantially less than the amount the plaintiffs sought. We asked the Court to reconsider the award and the Court has vacated the fee award. When the award was vacated, the District Court also allowed us an opportunity to conduct discovery concerning the amount of plaintiffs' requested fees. The parties have agreed to postpone discovery and an evidentiary hearing regarding attorney's fees until after the Court of Appeals rules on the pending appeal of the Court's June 2003 final judgment. It is not possible to make a firm assessment of the probable outcome of plaintiffs' outstanding request for fees.

The District Court's injunction requires us to use a computer model to re-qualify, as of June 2003, all of our subscribers who receive ABC, NBC, CBS or Fox programming by satellite from a market other than the city in which the subscriber lives. The Court also invalidated all waivers historically provided by network stations. These waivers, which have been provided by stations for the past several years through a third party automated system, allow subscribers who believe the computer model improperly disqualified them for distant network channels to nonetheless receive those channels by satellite. Further, the District Court terminated the right of our grandfathered subscribers to continue to receive distant network channels.

We believe the District Court made a number of errors and appealed the decision. Plaintiffs cross-appealed. The Court of Appeals granted our request to stay the injunction until our appeal is decided. Oral arguments occurred during February 2004. It is not possible to predict how or when the Court of Appeals will rule on the merits of our appeal. On April 13, 2005, Plaintiffs filed a motion asking the Court of Appeals to vacate the stay of the injunction that was issued in August 2004. We responded on April 25, 2005. It is not possible to predict how or when the Court of Appeals will rule on Plaintiffs' motion to vacate the stay.

In the event the Court of Appeals upholds the injunction or lifts the stay as plaintiffs now request, and if we do not reach private settlement agreements with additional stations, we will attempt to assist subscribers in arranging alternative means to receive network channels, including migration to local channels by satellite where available, and free off air antenna offers in other markets. However, we cannot predict with any degree of certainty how many subscribers would cancel their primary DISH Network programming as a result of termination of their distant network channels. We could be required to terminate distant network programming to all subscribers in the event the plaintiffs prevail on their cross-appeal and we are permanently enjoined from delivering all distant network channels. Termination of distant network programming to subscribers would result, among other things, in a reduction in average monthly revenue per subscriber and a temporary increase in subscriber churn.

***Superguide***

During 2000, Superguide Corp. ("Superguide") filed suit against us, DirecTV and others in the United States District Court for the Western District of North Carolina, Asheville Division, alleging infringement of United States Patent Nos. 5,038,211 (the '211 patent), 5,293,357 (the '357 patent) and 4,751,578 (the '578 patent) which relate to certain electronic program guide functions, including the use of electronic program guides to control VCRs. Superguide sought injunctive and declaratory relief and damages in an unspecified amount.

On summary judgment, the District Court ruled that none of the asserted patents were infringed by us. These rulings were appealed to the United States Court of Appeals for the Federal Circuit. During February 2004, the Federal Circuit affirmed in part and reversed in part the District Court's findings and remanded the case back to the District Court for further proceedings. In July 2005, SuperGuide indicated that it would no longer pursue infringement allegations with respect to the '211 and '357 patents and those patents have now been dismissed from the suit. We examined the '578 patent and believe that it is not infringed by any of our products or services. We will continue to vigorously defend this case. In the event that a Court ultimately determines that we infringe on any of the 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 electronic programming guide and related features that we currently offer to consumers. The case is stayed pending the District Court's ruling. A trial date has not been set. It is not possible to make a firm assessment of the probable outcome of the suit or to determine the extent of any potential liability or damages.

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

In November of 2001, Broadcast Innovation, L.L.C. filed a lawsuit against us, DirecTV, Thomson Consumer Electronics and others in Federal 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. We examined these patents and believe that they are not infringed by any of our products or services. Subsequently, DirecTV and Thomson settled with Broadcast Innovation leaving us as the only defendant.

During January 2004, the judge issued an order finding the '066 patent invalid. In August of 2004, the Court ruled the '094 invalid in a parallel case filed by Broadcast Innovation against Charter and Comcast. In August of 2005, the United States Court of Appeals for the Federal Circuit ("CAFC") overturned this finding of invalidity and remanded the case back to the District Court. Charter has filed a petition for rehearing and the CAFC has asked Broadcom to respond to the petition. Our case remains stayed pending resolution of the Charter case. We intend to continue to vigorously defend this case. In the event that a Court ultimately determines that we infringe on any of the 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. It is not possible to make a firm assessment of the probable outcome of the suit or to determine the extent of any potential liability or damages.

## PART II — OTHER INFORMATION

***TiVo Inc.***

During January 2004, TiVo Inc. (“TiVo”) filed a lawsuit against us in the United States District Court for the Eastern District of Texas. The suit alleges infringement of United States Patent No. 6,233,389 (the ‘389 patent). The ‘389 patent relates to certain methods and devices for providing what the patent calls “time-warping.” We have examined this patent and do not believe that it is infringed by any of our products or services. During March 2005, the Court denied our motion to transfer this case to the United States District Court for the Northern District of California. The trial has been continued to March 2006 in Marshall, Texas unless TiVo consents to move the trial to Texarkana, Texas for an earlier trial date. We intend to vigorously defend this case. In the event that a Court ultimately determines that we infringe this 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. It is not possible to make a firm assessment of the probable outcome of the suit or to determine the extent of any potential liability or damages.

On April 29, 2005, we filed a lawsuit in the United States District Court for the Eastern District of Texas against TiVo and Humax USA, Inc. alleging infringement of U.S. Patent Nos. 5,774,186 (the ‘186 patent), 6,529,685 (the ‘685 patent), 6,208,804 (the ‘804 patent) and 6,173,112 (the ‘112 patent). These patents relate to digital video recorder (“DVR”) technology. Trial is currently scheduled for February 2007.

***Acacia***

In June 2004, Acacia Media Technologies filed a lawsuit against us 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 intellectual property holding company which seeks to license the patent portfolio that it has acquired. The suit alleges infringement of United States Patent Nos. 5,132,992 (the ‘992 patent), 5,253,275 (the ‘275 patent), 5,550,863 (the ‘863 patent), 6,002,720 (the ‘720 patent) and 6,144,702 (the ‘702 patent). The ‘992, ‘863, ‘720 and ‘702 patents have been asserted against us.

The asserted patents relate to various systems and methods related to the transmission of digital data. The ‘992 and ‘702 patents have also been asserted against several internet adult content providers in the United States District Court for the Central District of California. On July 12, 2004, that Court issued a Markman ruling which found that the ‘992 and ‘702 patents were not as broad as Acacia had contended.

Acacia’s various patent infringement cases have now been consolidated for pre-trial purposes in the United States District court for the Northern District of California. We intend to vigorously defend this case. In the event that a Court ultimately determines that we infringe on any of the 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. It is not possible to make a firm assessment of the probable outcome of the suit or to determine the extent of any potential liability or damages.

***Forgent***

In July of 2005, Forgent Networks, Inc. filed a lawsuit against us in the United States District Court for the Eastern District of Texas. The suit also named DirecTV, Charter, Comcast, Time Warner Cable, Cable One and Cox as defendants. The suit alleges infringement of United States Patent No. 6,285,746 ( the ‘746 patent).

The ‘746 patent discloses a video teleconferencing system which utilizes digital telephone lines. We have examined this patent and do not believe that it is infringed by any of our products or services. Trial is currently scheduled for May 2007 in Tyler, Texas. We intend to vigorously defend this case. In the event that a Court ultimately determines that we infringe this 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. It is not possible to make a firm assessment of the probable outcome of the suit or to determine the extent of any potential liability or damages.

## PART II — OTHER INFORMATION

***California Action***

A purported class action relating to the use of terms such as “crystal clear digital video,” “CD-quality audio,” and “on-screen program guide,” and with respect to the number of channels available in various programming packages was filed against us in the California State Superior Court for Los Angeles County in 1999 by David Pritikin and by Consumer Advocates, a nonprofit unincorporated association. The complaint alleges breach of express warranty and violation of the California Consumer Legal Remedies Act, Civil Code Sections 1750, et seq., and the California Business & Professions Code Sections 17500 & 17200. A hearing on the plaintiffs’ motion for class certification and our motion for summary judgment was held during 2002. At the hearing, the Court issued a preliminary ruling denying the plaintiffs’ motion for class certification. However, before issuing a final ruling on class certification, the Court granted our motion for summary judgment with respect to all of the plaintiffs’ claims. The plaintiffs filed a notice of appeal of the court’s granting of our motion for summary judgment. During December 2003, the Court of Appeals affirmed in part; and reversed in part, the lower court’s decision granting summary judgment in our favor. Specifically, the Court found there were triable issues of fact whether we may have violated the alleged consumer statutes “with representations concerning the number of channels and the program schedule.” However, the Court found no triable issue of fact as to whether the representations “crystal clear digital video” or “CD quality” audio constituted a cause of action. Moreover, the Court affirmed that the “reasonable consumer” standard was applicable to each of the alleged consumer statutes. Plaintiff argued the standard should be the “least sophisticated” consumer. The Court also affirmed the dismissal of Plaintiffs’ breach of warranty claim. Plaintiff filed a Petition for Review with the California Supreme Court and we responded. During March 2004, the California Supreme Court denied Plaintiff’s Petition for Review. Therefore, the action has been remanded to the trial court pursuant to the instructions of the Court of Appeals. Hearings on class certification were conducted during December 2004 and February 2005. The Court subsequently denied Plaintiff’s motion for class certification. The Plaintiff has appealed this decision. It is not possible to make an assessment of the probable outcome of the litigation or to determine the extent of any potential liability.

***Retailer Class Actions***

During October 2000, two separate lawsuits were filed by retailers in the Arapahoe County District Court in the State of Colorado and the United States District Court for the District of Colorado, respectively, by Air Communication & Satellite, Inc. and John DeJong, et al. on behalf of themselves and a class of persons similarly situated. The plaintiffs are attempting to certify nationwide classes on behalf of certain of our satellite hardware retailers. The plaintiffs are requesting the Courts to 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 are vigorously defending against the suits and have asserted a variety of counterclaims. The United States District Court for the District of Colorado stayed the Federal Court action to allow the parties to pursue a comprehensive adjudication of their dispute in the Arapahoe County State Court. John DeJong, d/b/a Nexwave, and Joseph Kelley, d/b/a Keltronics, subsequently intervened in the Arapahoe County Court action as plaintiffs and proposed class representatives. We have 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 Court granted a limited discovery period which ended November 15, 2004. The Court is hearing discovery related motions and has set a briefing schedule for the motion for summary judgment to begin 30 days after the ruling on those motions. A trial date has not been set. It is not possible to make an assessment of the probable outcome of the litigation or to determine the extent of any potential liability or damages.

***StarBand Shareholder Lawsuit***

During August 2002, a limited group of shareholders in StarBand, a broadband Internet satellite venture in which we invested, filed an action in the Delaware Court of Chancery against us and EchoBand Corporation, together with four EchoStar executives who sat on the Board of Directors for StarBand, for alleged breach of the fiduciary duties of due care, good faith and loyalty, and also against us and EchoBand Corporation for aiding and abetting such alleged breaches. Two of the individual defendants, Charles W. Ergen and David K. Moskowitz, are members of our Board of Directors. The action stems from the defendants’ involvement as directors, and our position as a shareholder, in StarBand. During July 2003, the Court granted the defendants’ motion to dismiss on all counts. The Plaintiffs appealed. On July 21, 2005, the Delaware Supreme Court affirmed the Chancery Court’s judgment.

## PART II — OTHER INFORMATION

***Enron Commercial Paper Investment Complaint***

During October 2001, EchoStar received approximately $40.0 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. The complaint alleges that Enron's October 2001 purchase of its commercial paper was a fraudulent conveyance and voidable preference under bankruptcy laws. We dispute these allegations. We typically invest in commercial paper and notes which are rated in one of the four highest rating categories by at least two nationally recognized statistical rating organizations. At the time of our investment in Enron commercial paper, it was considered to be high quality and considered to be a very low risk. The defendants moved the Court to dismiss the case on grounds that Enron's complaint does not adequately state a legal claim, which motion was denied but is subject to an appeal. It is too early to make an assessment of the probable outcome of the litigation or to determine the extent of any potential liability or damages.

***Bank One***

During March 2004, Bank One, N.A. ("Bank One") filed suit against us and one of our subsidiaries, EchoStar Acceptance Corporation ("EAC"), in the Court of Common Pleas of Franklin County, Ohio alleging breach of a duty to indemnify. Bank One alleges that EAC is contractually required to indemnify Bank One for a settlement it paid to consumers who entered private label credit card agreements with Bank One to purchase satellite equipment in the late 1990s. Bank One alleges that we entered into a guarantee wherein we agreed to pay any indemnity obligation incurred by Bank One. During April 2004, we removed the case to federal court in Columbus, Ohio. We deny the allegations and intend to vigorously defend against the claims. We filed a motion to dismiss the Complaint which was granted in part and denied in part. The Court granted our motion, agreeing we did not owe Bank One a duty to defend the underlying lawsuit. However, the Court denied the motion in that Bank One will be allowed to attempt to prove that we owed Bank One a duty to indemnify. The case is currently in discovery. A trial date has not been set. It is too early in the litigation to make an assessment of the probable outcome of the litigation or to determine the extent of any potential liability or damages.

***Church Communications Network, Inc.***

During August 2004, Church Communications Network, Inc. ("CCN") filed suit against us in the United States District Court for the Northern District of Alabama, asserting causes of action for breach of contract, negligent misrepresentation, intentional and reckless misrepresentation, and non-disclosure based on a 2003 contract with us. The action was transferred to the United States District Court for the District of Colorado. The Court permitted CCN to amend its complaint to assert the same claims based on a 2000 contract with us. We have filed motions for summary judgment on all claims in the case. CCN has filed a motion for summary judgment on the issue of liability on its intentional and reckless misrepresentation claim. CCN claims approximately $20.0 million in damages plus punitive damages, attorney fees and costs. Discovery has been concluded but no trial date has been set. It is not possible to make a firm assessment of the probable outcome of the litigation or to determine the extent of any potential liability or damages.

***Vivendi***

In January 2005, Vivendi Universal, S.A. ("Vivendi"), filed suit against us in the United States District Court for the Southern District of New York alleging that we have anticipatorily repudiated or are in breach of an alleged agreement between us and Vivendi pursuant to which we are allegedly required to broadcast a music-video channel provided by Vivendi. Vivendi's complaint seeks injunctive and declaratory relief, and damages in an unspecified amount. On April 12, 2005, the Court granted Vivendi's motion for a preliminary injunction and directed us to broadcast the music-video channel during the pendency of the litigation. In connection with that order, we have also agreed to provide marketing support to Vivendi during the pendency of the litigation. In the event that the Court ultimately determines that we have a contractual obligation to broadcast the Vivendi music-video channel and that we are in breach of that obligation, we may be required to continue broadcasting the Vivendi music-video channel and may also be subject to substantial damages. We intend to vigorously defend this case.

## PART II — OTHER INFORMATION

***Shareholder Derivative Lawsuit***

During March 2005, a shareholder derivative lawsuit was filed against us, our chairman and chief executive officer Charles W. Ergen and the members of our board of directors in the District Court of Douglas County, Colorado. The complaint alleges, among other things, that the members of our board of directors breached their fiduciary duties in connection with the matters that were the subject of our Audit Committee's review, during late 2004 and early 2005, of recordkeeping and internal control issues relating to certain of our vendor and third party relationships. It is not possible to make a firm assessment of the probable outcome of the litigation or to 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. In our opinion, the amount of ultimate liability with respect to any of these actions is unlikely to materially affect our financial position, results of operations or liquidity.

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

***Issuer Purchases of Equity Securities***

The following table provides information regarding purchases of our Class A common stock made by us for the period from January 1, 2005 through October 31, 2005.

| Period | Total Number of Shares Purchased (a) | Average Price Paid per Share | Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs (b) | Maximum Approximate Dollar Value of Shares that May Yet be Purchased Under the Plans or Programs (b) |
|---|---|---|---|---|
| | | | (In thousands, except share data) | |
| January 1 - January 31, 2005 | — | $ — | — | $ 1,000,000 |
| February 1 - February 28, 2005 | 90,000 | $ 28.96 | 90,000 | $ 997,394 |
| March 1 - March 31, 2005 | 1,368,200 | $ 28.71 | 1,368,200 | $ 958,117 |
| April 1 - April 30, 2005 | 859,633 | $ 28.85 | 859,633 | $ 933,314 |
| May 1 - May 31, 2005 | 2,225,700 | $ 28.59 | 2,225,700 | $ 869,679 |
| June 1 - June 30, 2005 | 7,000 | $ 29.01 | 7,000 | $ 869,476 |
| July 1 - July 31, 2005 | 595,200 | $ 28.80 | 595,200 | $ 852,333 |
| August 1 - August 31, 2005 | 10,000 | $ 28.86 | 10,000 | $ 852,044 |
| September 1 - September 30, 2005 | 155,600 | $ 28.97 | 155,600 | $ 847,536 |
| October 1 - October 31, 2005 | 1,729,000 | $ 27.76 | 1,729,000 | $ 799,542 |
| Total | 7,040,333 | $ 28.47 | 7,040,333 | $ 799,542 |

(a) During the period from January 1, 2005 through October 31, 2005 all purchases were made pursuant to the program discussed below in open market transactions.

(b) Our Board of Directors authorized the purchase of up to $1.0 billion of our Class A Common Stock on August 9, 2004. All purchases were made in accordance with Rule 10b-18 of the Securities Exchange Act of 1934 pursuant to our Rule 10b5-1 plan entered into on September 1, 2004 which was to expire on August 31, 2005. During the quarter, the Board of Directors extended the plan to expire on the earlier of December 31, 2005 or when an aggregate amount of $1.0 billion of stock has been purchased. We may elect not to purchase the maximum amount of shares allowable under this plan and we may also enter into additional Rule 10b5-1 plans to facilitate the share repurchases authorized by our Board of Directors. All purchases may be through open market purchases under the plan or privately negotiated transactions subject to market conditions and other factors. To date, no plans or programs for the purchase of our stock have been terminated prior to their expiration. There were also no other plans or programs for the purchase of our stock that expired during the period from January 1, 2005 through October 31, 2005. Purchased shares have and will be held as Treasury shares and may be used for general corporate purposes.

## PART II — OTHER INFORMATION

**Item 6. EXHIBITS**

*(a) Exhibits.*

31.1 Section 302 Certification by Chairman and Chief Executive Officer.

31.2 Section 302 Certification by Executive Vice President and Chief Financial Officer.

32.1 Section 906 Certification by Chairman and Chief Executive Officer.

32.2 Section 906 Certification by Executive Vice President and Chief Financial Officer.

99.1 Satellite Service Agreement, dated August 19, 2005, between Ciel Satellite Communications Inc. and EchoStar. ***

---

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

## SIGNATURES

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

ECHOSTAR COMMUNICATIONS CORPORATION

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

By: /s/ David J. Rayner
David J. Rayner
Executive Vice President and Chief Financial Officer
*(Principal Financial Officer)*

Date: November 8, 2005

## Exhibit Index

**Item 6. EXHIBITS**

*(a) Exhibits.*

| | |
|---|---|
| 31.1 | Section 302 Certification by Chairman and Chief Executive Officer. |
| 31.2 | Section 302 Certification by Executive Vice President and Chief Financial Officer. |
| 32.1 | Section 906 Certification by Chairman and Chief Executive Officer. |
| 32.2 | Section 906 Certification by Executive Vice President and Chief Financial Officer. |
| 99.1 | Satellite Service Agreement, dated August 19, 2005, between Ciel Satellite Communications Inc. and EchoStar.*** |

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

**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 EchoStar Communications 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 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 8, 2005

*/s/ Charles W. Ergen*

Chairman and Chief Executive Officer

**EXHIBIT 31.2**

**CERTIFICATION OF CHIEF FINANCIAL OFFICER**
Section 302 Certification

I, David J. Rayner, certify that:

1. I have reviewed this quarterly report on Form 10-Q of EchoStar Communications 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 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 8, 2005

*/s/ David J. Rayner*

Executive Vice President and 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 EchoStar Communications 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, 2005 (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 8, 2005 |
| Name: | /s/ Charles W. Ergen |
| Title: | Chairman of the Board of Directors and Chief Executive Officer |

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.

**EXHIBIT 32.2**

**CERTIFICATION OF CHIEF FINANCIAL OFFICER**
Section 906 Certification

Pursuant to 18 U.S.C. § 1350, the undersigned officer of EchoStar Communications 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, 2005 (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 8, 2005 |
| Name: | */s/ David J. Rayner* |
| Title: | Executive Vice President and Chief Financial Officer |

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.

Exhibit 99.1

## SATELLITE SERVICE AGREEMENT FOR CIEL-2

**THIS AGREEMENT** between Ciel Satellite Communications Inc. ("Ciel"), on the one hand, and EchoStar Satellite L.L.C. ("Customer") *** on the other hand, is made effective as of 19 August 2005 (the "Effective Date"). Defined terms used in this Agreement have the meanings specified herein. ***

## ARTICLE 1. SERVICE PROVIDED

**1.A.** **Scope.** Ciel is the licensee of the BSS frequencies at the 129° W.L. orbital location (the "Orbital Location") and intends to construct, launch and operate a BSS communications satellite designated as the "Ciel 2 Satellite" in one Orbital Location. Ciel intends to begin providing commercial service on the Ciel-2 Satellite to the *** In accordance with and subject to the terms and conditions of this Agreement, Ciel has agreed to provide certain satellite services to Customer and reserve certain of the capacity of the Ciel-2 Satellite in observance of Ciel's obligations set forth in the Conditions of Licence. *** The Service shall be provided in accordance with and subject to the terms and conditions set forth in this agreement, including Attachments A — H (as listed below), which are hereby incorporated by reference in their entirety (collectively, the "Agreement"). In the event of any conflict or inconsistency between the terms and conditions set forth in the body of this Agreement and the terms and conditions set forth in any Attachment hereto, then the terms and conditions set forth in the body of this Agreement shall control.

Attachment A — Technical Performance Specifications

***

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

**1.B(3)** Ciel and Customer shall collaborate in good faith toward reaching agreements on the Technical Performance Specifications and other requirements for, and toward the successful construction, insurance and launch of, the Ciel-2 Satellite, provided that in the event that Ciel and Customer are not able to otherwise agree on any of the above-listed items, then ***

Subject to the parties' respective rights and obligations set forth in the immediately preceding paragraph, the parties shall use commercially reasonable efforts to cause the execution of the Construction Contract and complete the Technical Performance Specifications *** Upon completion, the Technical Performance Specifications shall be attached hereto as Attachment A, and shall be deemed to be incorporated by reference in their entirety. ***

******* the relevant parameters established pursuant to the Construction Contract shall be extracted and used as the basis for the values to be utilized in the Technical Performance Specifications to this Agreement. ***

**1.B(4) ***** Notwithstanding the foregoing, Ciel agrees to notify Customer of all changes to the

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Satellite (even if the relevant changes do not affect the Technical Performance Specifications), within a reasonable period of time after making such changes.***

**1.B(7)** Ciel agrees to keep Customer promptly apprised of all material third party discussions related to the Launch Service Agreement. Ciel, *** shall collaborate with and include Customer in all significant decisions related to the Launch Service Agreement, *** Subject to any applicable ITAR and EAR restrictions, Customer and Customer's U.S. citizen representatives shall be permitted to participate in reviews of each of the launch service provider's milestone events with respect to launch of the Satellite. Customer and Customer's guests may *** attend the launch of the Satellite.

**1.B(8)** Ciel agrees to keep Customer promptly apprised of all material third party discussions related to insurance. Ciel, *** shall collaborate with and include Customer in all significant decisions related to insurance, including without limitation the placement of insurance, ***

**1.B(13)** *** In the event of any conflict or inconsistency between Ciel's obligations in this Subsection 1.B(13), any other provision of this Agreement and the Conditions of Licence, the Conditions of Licence shall prevail over Ciel's obligations in this Subsection 1.B(13) and any other provision of this Agreement, and Ciel's obligations in this Subsection 1.B(13) shall prevail over any other provision of this Agreement.

**1.C. <u>Service Term.</u>** The term for Service (the "Service Term") on any Satellite *** shall commence on the In-Service Date for that Satellite, and, except as otherwise provided herein, shall expire on the earlier of (1) ten (10) years after such In-Service Date (the "Initial Term"), or (2) the date that Satellite becomes a Failed Satellite. The Service Term on any Satellite *** that is not a Failed Satellite may be extended at Customer's sole option for successive one-year periods (or a portion thereof in the case of the final extension) until the Satellite reaches its End-of-Life (each an "Extended Term"), upon written notice to Ciel provided at least *** prior to the end of the Initial Term and/or the then current Extended Term, and provided that, at the time of each such extension, Customer is in full compliance with all of its obligations under this Agreement.

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

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

**If to be given to Customer:**

Attn: David Bair
Senior Vice President, Space Programs and Operations
EchoStar Satellite L.L.C.

P.O. Box 6655 (for first class certified mail)
Englewood, CO 80155

9601 S. Meridian Blvd. (for overnight courier)
Englewood, CO 80112

Fax #: ***

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

cc: R. Stanton Dodge, Esq.
Senior Vice President & Deputy General Counsel
Fax #: ***
(same addresses)

**If to be given to Ciel:**

Attn: Kevin Smyth
Chief Executive Officer
Ciel Satellite Communications Inc.
Suite 104
240 Terence Matthews Crescent
Kanata, ON
Canada K2M 2C4

Fax #: ***

cc: Scott Gibson
Vice President and General Counsel
(same address and fax number)

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**Customer’s 24-Hour Emergency Telephone # for Technical/Operational Issues:**
Tel #: ***

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

**2.B. <u>Monthly Recurring Charges.</u>**

**2.B(1)** Commencing on the In-Service Date and for the duration of the Service Term (including any Extended Terms) Customer shall pay to Ciel for the Service a monthly recurring service charge (the “MRC”) with respect to the Ciel-2 Satellite ***

**2.C. <u>Monthly Recurring Charges Adjustments/Refunds.</u>**

**2.C(1)** In the event of a Partial Loss (but not a Satellite Failure), Customer shall be entitled to a refund of any MRC already paid, and a reduction of the MRC to be paid, in either case applicable to the period of such Partial Loss until either (a) such Partial Loss is restored through the use of spare equipment on the Satellite, or (b) the Service Term ends, in an amount calculated in accordance with the provisions in Attachment B hereto, ***. Ciel shall refund to Customer any Charges paid for periods subsequent to the date of a Satellite Failure, including the period between and including the date of the Satellite Failure and the date upon which it is determined that a Satellite Failure has occurred.

*****

**ARTICLE 3. REPRESENTATIONS, WARRANTIES AND COVENANTS**

**3.A. <u>Ciel’s Representations, Warranties and Covenants.</u>** Ciel hereby represents, warrants and covenants to Customer as follows:

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

**3.A(2)** The execution, delivery and performance (as provided herein) by Ciel of this Agreement has been duly authorized by all requisite corporate action of Ciel (including without limitation any necessary action of its directors and shareholders) and shall not violate any applicable provisions of law or any order of any court or any agency of government and shall not conflict with or result in a breach under (a) its constating documents, or (b) any material agreement to which Ciel is a party or by which it is bound. This Agreement is a legal, valid and binding obligation of Ciel, enforceable in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors’ rights generally.

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

**3.A(4)** In connection with Ciel's performance under this Agreement, Ciel shall comply in all material respects with all applicable laws, regulations, or orders of any Governmental Entity, including without limitation IC.

*****

**3.A(9)** Ciel's Program Management for a Satellite shall apply the same degree of care as is normally applied by Ciel and its Affiliates to satellite construction efforts for the other satellites owned by Ciel and its Affiliates.

*****

**3.B. <u>Customer's Representations, Warranties and Covenants.</u>** Customer hereby represents, warrants and covenants to Ciel as follows:

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

**3.B(2)** The execution, delivery and performance (as provided herein) by Customer of this Agreement has been duly authorized by all requisite corporate action of Customer (including without limitation any necessary action of its directors and shareholders) and shall not violate any applicable provisions of law or any order of any court or agency of government and shall not conflict with or result in a breach under (a) its Articles of Incorporation or By-Laws, or (b) any material agreement to which Customer is a party or by which it is bound. This Agreement is a legal, valid and binding obligation of Customer, enforceable in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally.

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

**3.B(4)** In connection with Customer's performance under this Agreement, Customer shall comply in all material respects with all applicable laws, regulations, or orders of any Governmental Entity, including without limitation those governing content of transmissions and all IC and FCC licence requirements.

**3.B(5)** Customer shall properly illuminate and shall use commercially reasonable efforts to cause third parties that Customer authorizes to use the Service to properly illuminate the Transponders.

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***

## ARTICLE 4. SERVICE RESPONSIBILITIES

**4.A.** **Laws and Regulations Governing Service.** Construction, launch, location and operation of the Satellite, Ciel's satellite system and Ciel's performance of all obligations pursuant to this Agreement are subject to all applicable laws and regulations of both Canada and the United States, including without limitation ITAR and EAR, the Radiocommunication Act and the Communications Act, the rules and regulations of IC and of the FCC, and coordination agreements with other operators and administrations. Customer's performance of all obligations pursuant to this Agreement is subject to all applicable laws and regulations of both Canada and the United States, including without limitation ITAR and EAR, the Radiocommunication Act and the Communications Act, the rules and regulations of IC and of the FCC, and coordination agreements with other operators and administrations.

**4.B.** **Use Conditions.**

**4.B(1)** Customer shall use the Service in accordance with (a) all applicable laws and regulations and (b) the conditions of use to be contained in a Commercial Operations Systems User's Guide to be agreed to by the parties (the "User's Guide"). Customer shall not use the Service for any unlawful purpose, ***. If Customer's non-compliance with the preceding two sentences causes or threatens, or other circumstances arise from Customer's use of the Service which cause or threaten, damage to the Satellite, *** Ciel may take actions (including suspension and/or restriction of Service) it reasonably believes necessary to ensure Customer's compliance with the User's Guide or Ciel's compliance with law. Ciel shall provide Customer with advance notice as soon as reasonably practicable prior to taking any such action; provided that the foregoing shall not preclude Ciel from taking prompt action to preserve its interests. Ciel shall also provide continuous monitoring of the Satellite in accordance with generally accepted industry standards.

***

## ARTICLE 5. OPERATIONAL MATTERS

**5.A.** **Service Access.** Customer is responsible for providing, operating and maintaining the equipment necessary to access the Satellite and Service. When signals are being transmitted from an earth station provided by Customer, Customer shall be responsible for proper illumination of the Transponders. Should improper illumination be detected by Ciel, Customer shall be notified and shall take corrective action promptly. Ciel shall be solely responsible for providing TT&C service for the Satellite, and shall perform TT&C service to customary industry standards (and to no less than a reasonable degree of care). Customer at its expense shall provide Ciel with any descrambling or decoding devices that may be required for signal monitoring. At a mutually agreed time, and prior to Customer transmitting from its earth station(s), Customer shall demonstrate to Ciel's designated Technical Operations Centre that its earth station(s) comply with the satellite access specifications contained in the User's Guide.

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

**5.B. <u>Action to Protect Satellite and Access to Spare Equipment.</u>**

**5.B(1)** *<u>General.</u>* Ciel shall have sole and exclusive control of operation of the Satellite. If circumstances occur which in Ciel's reasonable judgment pose a threat to the stable operation of the Satellite, Ciel shall have the right to take action it reasonably believes necessary to protect the Satellite, including discontinuance or suspension of operation of the Satellite or any Transponder, without any liability to Customer, except as otherwise set forth in this Agreement, *** If the discontinuance or suspension of operation is permanent, then, if the discontinuance applies to the entire Satellite, it shall be treated as a Satellite Failure for purposes of Section 2.C, and if the discontinuance applies to ***, it shall be treated as a Partial Loss or, if applicable, a Failed Payload for purposes of Section 2.C. Ciel shall give Customer as much notice as practical under the circumstances of any such discontinuance or suspension. If it becomes necessary to discontinue or suspend service ***

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

*****

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

## ARTICLE 8. CONFIDENTIALITY AND NONDISCLOSURE

**8.A. <u>Certain Information Regarding Service.</u>** Except for disclosures required by a court or governmental agency or to assignees permitted under Section 10.I, each party hereby agrees not to disclose to third parties (without the prior written consent of the other party) the material terms and conditions of this Agreement (including but not limited to the prices, payment terms, schedules, protection arrangements, and restoration provisions thereof), and all information provided to Customer and Ciel related to the design and performance characteristics of the Satellite, and any subsystems or components thereof, including the Transponders. Notwithstanding the foregoing, Customer (and not Ciel) may disclose to its third-party customers making use of the Service, and Ciel (and not Customer) may disclose to its third party vendors and contractors providing services relating to the Satellite ***, the Technical Performance Specifications, the User's Guide, and the protection arrangements and restoration provisions of the Service.

**8.B. <u>Proprietary Information.</u>**

**8.B(1)** To the extent that either party discloses to the other any other information which it considers proprietary or is proprietary information of a third party, in written or tangible form, said party shall identify such information as proprietary when disclosing it to the other party by marking it clearly and conspicuously as proprietary information. Any proprietary disclosure to either party, if made orally, shall

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be identified as proprietary information at the time of disclosure, if the disclosing party wishes to keep such information proprietary under this Agreement. Any such information disclosed under this Agreement shall be used by the recipient thereof only in its performance under this Agreement.

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

**8.B(3)** In addition, neither party shall be liable for the disclosure of any proprietary information which it receives under this Agreement pursuant to judicial action or decree, or pursuant to any requirement of any Government or any agency or department thereof, having jurisdiction over such party, provided that in the reasonable opinion of counsel for such party such disclosure is required, and provided further that such party shall have given the other party notice, to the extent reasonably practical, prior to such disclosure.

*******

**8.C. <u>Survival.</u>** The provisions of this Article 8 are in addition to, and not in lieu of, any agreements of the parties regarding confidentiality executed by the parties on or before the date hereof and shall survive expiration or termination of this Agreement indefinitely.

## ARTICLE 9. TERMINATION

**9.A. <u>Termination for Default.</u>** In addition to any rights of termination provided in other Articles of this Agreement, either party may terminate this Agreement (a “Termination for Default”) (such a termination by Customer constituting a Refund Eligible Termination) by giving the other party written notice thereof in the event: (1) the other party materially breaches this Agreement *** and fails to cure such breach within *** days after receipt of written notice thereof ***; or (2) the other party becomes insolvent or the subject of insolvency proceedings, including without limitation if the other party is judicially declared insolvent or bankrupt, or if any assignment is made of the other party’s property for the benefit of its creditors or if a receiver, conservator, trustee in bankruptcy or other similar officer is appointed by a court of competent jurisdiction to take charge of all or any substantial part of the other party’s property, or if a petition is filed by or against the other party under any provision of the Bankruptcy Act (Canada) or the Bankruptcy Code (U.S.) now or hereafter enacted, and such proceeding is not dismissed within sixty (60) days after filing, or if a petition is filed by the other party under any provision of the Bankruptcy Act (Canada) or the Bankruptcy Code (U.S.) now or hereinafter enacted. ***

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

*****

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

*****

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

*****

## ARTICLE 10. GENERAL PROVISIONS

**10.A. Force Majeure.** If a Force Majeure Event under this Agreement has occurred and is continuing, then the performance obligations of the party directly affected by such Force Majeure Event under this Agreement shall be tolled for the duration of such Force Majeure Event and such party shall not be liable to the other by reason of any delay or failure in performance of this Agreement which arises out of such Force Majeure Event; provided that the party directly affected by such Force Majeure Event shall promptly take and continue to take all reasonable actions to abate such Force Majeure Event as soon as possible. *** If Service is unavailable as a result of a Force Majeure Event affecting the Satellite, then Customer's obligation to pay the Charges shall be suspended during such period Service is unavailable and shall resume upon the Service becoming available.

**10.B. No Implied Licence.** Except to the extent that the Satellite and associated equipment are used for the Intended Purpose (or as otherwise set forth to the contrary in this Agreement) the provision of services or the conveying of any information under this Agreement shall not convey any licence by implication, estoppel or otherwise, under any patents or other intellectual property rights of Customer or Ciel, and their Affiliates, contractors and vendors ***.

**10.C. No Third-Party Rights; No Fiduciary Relationship.** This Agreement does not, is not intended to, and shall not be deemed or construed by the parties or by any third party to confer any enforceable rights or remedies on, or create any obligations or interests in, any person other than the signatories to this Agreement; or to create the relationship of principal and agent, partnership or joint venture or any other fiduciary relationship or association among the signatories to this Agreement.

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

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

**10.F.** **Governing Law and Exclusive Jurisdiction.** This Agreement shall be governed by and interpreted in accordance with the laws ***

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

*****

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

**10.K.** **Publicity.** Neither party shall in any way or in any form publicize or advertise in any manner this Agreement or the Services to be provided pursuant to this Agreement without the express written approval (which shall not be unreasonably withheld, conditioned or delayed) of the other party, obtained in advance, for each item of advertising or publicity. The foregoing prohibition shall include but not be limited to news releases, letters, correspondence, literature, promotional materials or displays of any nature or form. Each request for approval hereunder shall be submitted in writing to the representative designated in writing; and approval, in each instance, shall be effective only if in writing and signed by said representative. Nothing herein shall prevent either party from providing IC, the FCC, or any other Governmental Entity, information concerning this Agreement as required by law or in response to a request for information by such Governmental Entity, provided that the party providing such information shall have given the other party notice, to the extent reasonably practical, prior to such disclosure. Notwithstanding the foregoing, either party may refer to the fact that Ciel is providing the Service to

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Customer without the other party's prior approval so long as such statements are limited to a statement of such fact and are not an endorsement (positive or negative) of any product or service.

**10.L. ITAR/EAR.** Information exchanged under this Agreement may be subject to U.S. export control laws and regulations, such as the ITAR and the EAR. The parties agree that information subject to the export control laws and regulations shall not be disclosed or transferred to a third party without first obtaining written approval from the disclosing party and complying with all applicable U.S. export control laws and regulations.

**10.M. Currency.** All monetary amounts in this Agreement are expressed in U.S. dollars and shall be paid in U.S. dollars.

**10.N. Documents.** Subject to compliance with applicable legal requirements of Canada and the United States (*e.g.*, ITAR and EAR), each party agrees to provide information and to execute, and if necessary to file with the appropriate Governmental Entities and international organizations, such documents as the other party shall reasonably request in order to carry out the purposes of this Agreement.

**10.O. Survival.** Neither party shall have any further obligations or liability to the other under this Agreement in the event of the termination or expiration of this Agreement, except for any obligations or liability (a) arising prior to such termination or expiration, (b) expressly arising upon or as a result of such termination or expiration, (c) expressly described in this Agreement as surviving such expiration or termination, (d) that logically would be expected to survive termination or expiration, or (e) arising as a result of or in connection with the representations, warranties and covenants in Article 3.

**10.P. Entire Agreement.** This Agreement contains the entire and exclusive understanding of the parties with respect to the subject matters hereof and, ***

## ARTICLE 11. DEFINITIONS

As used in this Agreement:

***

C. "Affiliate" means, with respect to a party, any person or entity (1) more than 50% of the capital securities of which on an as-converted basis are owned by, or (2) directly or indirectly controlling, controlled by, or under common control with, such party at the time when the determination of affiliation is being made. For purposes of this definition, the term "control" (including the correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to a person or entity, shall mean the possession, directly or indirectly, of the power to (a) direct or cause the direction of management policies of such person or entity, whether through the ownership of voting securities or by contract or otherwise, or (b) select a majority of the Board of Directors of such person or entity. ***

D. "Agreement" shall have the meaning specified in Section 1.A.

***

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

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***

K. “<u>BSS</u>” means the Broadcasting-Satellite Service, as defined by the Radio Regulations of the ITU.

L. “<u>Business Day</u>” means Monday through Friday, 8:30 a.m. to 5:00 p.m. (local time in Ottawa, Ontario) exclusive of banking holidays observed in Ottawa.

***

R. “<u>Ciel</u>” shall have the meaning specified in the preamble paragraph.

S. “<u>Ciel 2 Satellite</u>” shall have the meaning specified in Section 1A.

***

U. “<u>Communications Act</u>” means the Communications Act of 1934 (United States), as amended.

V. “<u>Conditions of Licence</u>” shall have the meaning specified in Subsection 2.G(3).

***

EE. “Customer” shall have the meaning specified in the preamble paragraph.

***

JJ. “EAR” means the United States Export Administration Act and Export Administration Regulations, as amended.

KK. “Effective Date” shall have the meaning specified in the preamble paragraph.

LL. “End-of-Life” means the date on which, in Ciel’s reasonable judgment, the Satellite should be taken out of service because of insufficient fuel, ***

NN. “Extended Term” shall have the meaning specified in Section 1.C.

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***

RR. "FCC" means the United States Federal Communications Commission and any successor agency thereto.

***

UU. "Force Majeure Event" means acts of God, acts of the other party, acts of government authority, strikes or other labor disturbances, or any other cause beyond the reasonable control of that party, that (1) as to Ciel, relates to or affects its ability to provide the Service, (2) as to either party, relates to or affects that party's ability to make a payment ***

VV. "Governmental Entity" means any (1) multinational, federal, provincial, state, municipal, local or other government, governmental or public department, central bank, court, commission, board, bureau, agency or instrumentality, domestic or foreign, (2) subdivision, agent, commission, board, or authority of any of the foregoing, or (3) quasi-governmental or private body validly exercising any regulatory, expropriation or taxing authority under or for the account of any of the foregoing, in each case in the proper exercise of its governmental authority.

***

XX. "IC" means Canada's Department of Industry and any successor agency thereto.

YY. "In-Service" means that the Satellite *** is deployed at the Orbital Location, and, following Ciel testing and verification of the entire satellite, Ciel determines in its reasonable business judgment that such satellite or all usable capacity thereof, is ready for commercial operation in accordance with the applicable Technical Performance Specifications, provided that the satellite is not a Satellite Failure. Ciel agrees that it shall provide written notice of such determination to Customer on the date that Ciel makes its determination.

ZZ. "In-Service Date" means the date on which the Satellite *** is In-Service.

AAA. "Initial Term" shall have the meaning specified in Section 1.C.

***

NNN. "ITAR" means the United States Arms Export Control Act and International Traffic in Arms Regulations, as amended.

OOO. "ITU" means the International Telecommunication Union.

***

UUU. "MRC" shall have the meaning specified in Subsection 2.B(1).

***

ZZZ. "Partial Loss" means any failure of a Transponder to operate in accordance with the Technical Performance Specifications that does not result in a Satellite Failure.

***

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BBBB. “Prime Rate” means the “prime rate” of interest as shown in the Money and Investing Section of the *Wall Street Journal* as of the applicable date.

***

HHHH. “Regulatory Provisions” means all applicable requirements of the Communications Act and the published policies, rules, decisions, and regulations of the FCC, in each case as amended from time to time.

***

KKKK. “RFP” means a request for proposal.

LLLL. “Satellite” means the Ciel-2 Satellite, ***

***

ZZZZ. “Taxes” means taxes (including duties, fees or charges in the nature of taxes) levied by Governmental Authorities, ***.

AAAAA. “Technical Performance Specifications” means the technical performance criteria for the Service on the Ciel-2 Satellite.

***

DDDDD. “Termination for Default” shall have the meaning specified in Section 9.A.

***

IIIII. “TT&C” means telemetry, tracking and control.

***

KKKKK. “User’s Guide” shall have the meaning specified in Subsection 4.B(1).

***

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IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this agreement as of the Effective Date.

| **ECHOSTAR SATELLITE L.L.C.** | **CIEL SATELLITE COMMUNICATIONS INC.** |
| --- | --- |
| By: ____________________<br>*(Signature)* | By: ____________________<br>*(Signature)* |
| Name: ____________________<br>*(Typed or Printed Name)* | Name: ____________________<br>*(Typed or Printed Name)* |
| Title: ____________________ | Title:____________________ |

*******

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