UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form 10-Q

(Mark One)

[X] QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 FOR THE QUARTERLY PERIOD ENDED SEPTEMBER 30, 2002

OR

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

For the transition period from _____ to _____

Commission File Number: 0-26176

EchoStar Communications Corporation

(Exact name of registrant as specified in its charter)

Nevada (State or other jurisdiction of incorporation or organization)	**88-0336997** (I.R.S. Employer Identification No.)
5701 S. Santa Fe Drive **Littleton, Colorado** (Address of principal executive offices)	**80120** (Zip code)

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

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

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes [X] No [ ]

Indicate by check mark whether the registrant is an accelerated filer (as defined by Rule 12b-2 of the Exchange Act). Yes [X] No [ ]

As of November 11, 2002, the registrant’s outstanding common stock consisted of 242,353,739 shares of Class A Common Stock and 238,435,208 shares of Class B Common Stock.

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DISCLOSURE REGARDING FORWARD-LOOKING STATEMENTS

We make "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995 throughout this document. Whenever you read a statement that is not simply a statement of historical fact (such as when we describe what we "believe," "expect" or "anticipate" will occur, and other similar statements), you must remember that our expectations may not be correct, even though we believe they are reasonable. We do not guarantee that the transactions and events described in this document will happen as described or that they will happen at all. You should read this document completely and with the understanding that actual future results may be materially different from what we expect. Whether actual results will conform with our expectations and predictions is subject to a number of risks and uncertainties. The risks and uncertainties include, but are not limited to: our proposed merger with Hughes Electronics Corporation may not occur as a result of: (1) the failure to obtain necessary federal antitrust clearance, Federal Communications Commission, or FCC, approval or the requisite approval from General Motors' stockholders, (2) shareholder, state attorney general or other litigation challenging the merger, or (3) the failure to satisfy other conditions; while we need substantial additional financing, we are highly leveraged and subject to numerous constraints on our ability to raise additional debt; we may incur unanticipated costs in connection with the Hughes merger financing or any refinancings we must undertake or consents we must obtain to enable us to consummate the Hughes merger; regulatory authorities may impose burdensome terms on us as a condition of granting their approval of the Hughes merger or the acquisition of Hughes' interest in PanAmSat, and legislative and regulatory developments may create unexpected challenges for us; we may not realize the benefits and synergies we expect from, and may incur unanticipated costs with respect to, the Hughes merger due to delays, burdensome conditions imposed by regulatory authorities, difficulties in integrating the businesses or disruptions in relationships with employees, customers or suppliers; we may be required to pay a $600 million termination fee to Hughes; we may be required to purchase Hughes' interest in PanAmSat for approximately $2.7 billion, which may be in excess of the fair market value of PanAmSat at the time of the stock purchase; 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; we may be unable to obtain needed retransmission consents, FCC authorizations or export licenses; the regulations governing our industry may change; our satellite launches may be delayed or fail, our satellites may fail prematurely in orbit, we currently do not have traditional commercial insurance covering losses incurred from the failure of launches and/or satellites; and we may be unable to settle outstanding claims with insurers; weakness in the global economy may harm our business generally, and adverse local political or economic developments may occur in some of our markets; service interruptions arising from technical anomalies on some satellites, or caused by war, terrorist activities or natural disasters, may cause customer cancellations or otherwise harm our business; we face intense and increasing competition from the cable television industry, new competitors may enter the subscription television business, and new technologies may increase competition; DISH Network subscriber growth may decrease; subscriber turnover may increase; and subscriber acquisition costs may increase; sales of digital equipment and related services to international direct-to-home service providers may decrease; future acquisitions, business combinations, strategic partnerships and divestitures may involve additional uncertainties; the September 11, 2001 terrorist attacks and changes in international political conditions as a result of these events may continue to affect the U.S. and the global economy and may increase other risks; and we may face other risks described from time to time in periodic reports we file with the Securities and Exchange Commission. All cautionary statements made herein should be read as being applicable to all forward-looking statements wherever they appear. In this connection, investors should consider the risks described herein and should not place undue reliance on any forward-looking statements.

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

	December 31, 2001	September 30, 2002
Assets		
Current Assets:		
Cash and cash equivalents	$ 1,677,889	$ 3,428,487
Marketable investment securities	1,150,408	817,737
Trade accounts receivable, net of allowance for uncollectible accounts of $22,770 and $28,405, respectively	318,128	327,335
Insurance receivable	106,000	106,000
Inventories	190,747	156,409
Other current assets	68,795	69,252
Total current assets	3,511,967	4,905,220
Restricted cash and marketable investment securities	1,288	9,403
Cash reserved for satellite insurance (Note 6)	122,068	159,448
Property and equipment, net	1,904,012	2,027,198
FCC authorizations, net	696,409	696,409
Other noncurrent assets	283,942	232,881
Total assets	$ 6,519,686	$ 8,030,559
Liabilities and Stockholders' Deficit		
Current Liabilities:		
Trade accounts payable	$ 254,868	$ 280,387
Deferred revenue	359,424	420,416
Accrued expenses	859,293	859,700
Current portion of long-term debt	14,782	14,926
Total current liabilities	1,488,367	1,575,429
Long-term obligations, net of current portion:		
9 1/4% Seven Year Notes	375,000	375,000
9 3/8% Ten Year Notes	1,625,000	1,625,000
10 3/8% Seven Year Notes	1,000,000	1,000,000
9 1/8% Seven Year Notes	700,000	700,000
4 7/8% Convertible Notes	1,000,000	1,000,000
5 3/4% Convertible Notes	1,000,000	1,000,000
Contingent value rights (Note 3)	—	170,579
Mortgages and other notes payable, net of current portion	6,480	35,013
Long-term deferred distribution and carriage payments and other long-term liabilities	102,611	91,095
Total long-term obligations, net of current portion	5,809,091	5,996,687
Total liabilities	7,297,458	7,572,116
Commitments and Contingencies (Note 8)		
Series D Convertible Preferred Stock and contingent value rights (Note 3)	—	1,452,753
Stockholders' Deficit:		
Class A Common Stock, $.01 par value, 1,600,000,000 shares authorized, 241,015,004 and 242,340,945 shares issued and outstanding, respectively	2,410	2,423
Class B Common Stock, $.01 par value, 800,000,000 shares authorized, 238,435,208 shares issued and outstanding	2,384	2,384
Class C common Stock, $.01 par value, 800,000,000 shares authorized, none outstanding	—	—
Additional paid-in capital	1,709,797	1,771,282
Deferred stock-based compensation	(25,456)	(12,379)
Accumulated other comprehensive income (loss)	3,594	(59,564)
Accumulated deficit	(2,470,501)	(2,698,456)
Total stockholders' deficit	(777,772)	(994,310)
Total liabilities and stockholders' deficit	$ 6,519,686	$ 8,030,559

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

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

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2001	2002	2001	2002
Revenue:				
DISH Network:				
Subscription television services	$ 920,970	$1,120,448	$2,598,473	$3,208,350
Other	3,672	3,558	9,400	14,228
Total DISH Network	924,642	1,124,006	2,607,873	3,222,578
DTH equipment sales	73,238	76,559	161,416	201,749
Other	24,626	22,284	81,419	71,674
Total revenue	1,022,506	1,222,849	2,850,708	3,496,001
Costs and Expenses:				
DISH Network Operating Expenses:				
Subscriber-related expenses	362,834	449,444	1,037,803	1,287,454
Customer service center and other	72,790	109,791	207,486	290,483
Satellite and transmission	11,294	15,918	29,210	43,940
Total DISH Network operating expenses (exclusive of depreciation shown below — Note 9)	446,918	575,153	1,274,499	1,621,877
Cost of sales — DTH equipment	49,358	40,396	109,354	123,875
Cost of sales — other	15,684	11,016	54,185	37,186
Cost of sales — subscriber promotion subsidies (exclusive of depreciation shown below — Note 9)	111,302	108,668	344,017	290,370
Other subscriber promotion subsidies	112,923	144,097	380,293	415,469
Advertising and other	45,375	47,130	99,179	116,016
General and administrative	85,772	98,976	249,121	278,735
Non-cash, stock-based compensation	6,831	3,722	21,298	7,557
Depreciation and amortization (Note 9)	72,871	97,822	194,560	267,340
Total costs and expenses	947,034	1,126,980	2,726,506	3,158,425
Operating income	75,472	95,869	124,202	337,576
Other Income (Expense):				
Interest income	27,657	28,236	74,417	87,375
Interest expense, net of amounts capitalized	(95,429)	(117,599)	(264,584)	(363,114)
Changes in valuation of contingent value rights (Note 3)	—	(134,477)	—	(139,855)
Other	(4,490)	(40,614)	(106,450)	(78,194)
Total other expense	(72,262)	(264,454)	(296,617)	(493,788)
Income (loss) before income taxes	3,210	(168,585)	(172,415)	(156,212)
Income tax benefit (provision), net	(115)	636	(212)	(9,883)
Net income (loss)	3,095	(167,949)	(172,627)	(166,095)
6 3/4% Series C Cumulative Convertible Preferred Stock dividends	(1)	—	(337)	—
Accretion of Series D Convertible Preferred Stock (Note 3)	—	—	—	(61,860)
Numerator for basic and diluted income (loss) per share — income (loss) available (attributable) to common shareholders	$ 3,094	$ (167,949)	$ (172,964)	$ (227,955)
Denominator for basic net income (loss) per share — weighted-average common shares outstanding	478,931	480,721	476,437	480,289
Denominator for diluted net income (loss) per share — weighted-average diluted common shares outstanding	486,592	480,721	476,437	480,289
Basic and diluted net income (loss) per common share	$ 0.01	$ (0.35)	$ (0.36)	$ (0.47)

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

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

	Nine Months Ended September 30,	
	2001	2002
Cash Flows From Operating Activities:		
Net income (loss)	$ (172,627)	$ (166,095)
Adjustments to reconcile net loss to net cash flows from operating activities:		
Equity in losses of affiliates	20,930	8,012
Change in valuation of contingent value rights (Note 3)	—	139,855
Realized and unrealized loss on investments	85,264	66,648
Deferred stock-based compensation recognized	21,298	7,557
Deferred tax expense	—	6,828
Recognition of bridge commitment fees from reduction of bridge financing commitments (Note 7)	—	15,112
Depreciation and amortization	194,560	267,340
Amortization of debt discount and deferred financing costs	6,592	8,847
Change in long-term deferred distribution and carriage payments and other long-term liabilities	27,679	12,838
Other, net	19,832	(1,146)
Changes in current assets and current liabilities, net	129,008	97,491
Net cash flows from operating activities	332,536	463,287
Cash Flows From Investing Activities:		
Purchases of marketable investment securities	(1,854,264)	(4,107,963)
Sales of marketable investment securities	1,480,550	4,329,509
Purchases of property and equipment	(493,415)	(356,087)
Cash reserved for satellite insurance (Note 6)	(59,488)	(59,680)
Change in cash reserved for satellite insurance relating to depreciation on related satellites (Note 6)	13,663	22,300
Investment in StarBand Communications	(50,000)	—
Capitalized merger-related costs	—	(25,475)
Other	(664)	(3,709)
Net cash flows from investing activities	(963,618)	(201,105)
Cash Flows From Financing Activities:		
Net proceeds from issuance of Series D Convertible Preferred Stock	—	1,483,477
Net proceeds from issuance of 5 3/4% Convertible Notes	980,000	—
Repayments of mortgage indebtedness and notes payable	(9,710)	(1,655)
Net proceeds from Class A Common Stock options exercised and Class A Common Stock issued to Employee Stock Purchase Plan	7,943	7,639
Other	(340)	(1,045)
Net cash flows from financing activities	977,893	1,488,416
Net increase in cash and cash equivalents	346,811	1,750,598
Cash and cash equivalents, beginning of period	856,818	1,677,889
Cash and cash equivalents, end of period	$ 1,203,629	$ 3,428,487
Supplemental Disclosure of Cash Flow Information:		
Conversion of 6 3/4% Series C Cumulative Convertible Preferred Stock to Class A common stock	$ 10,948	$ —
Forfeitures of deferred non-cash, stock-based compensation	3,471	5,520
Capitalized interest	17,682	20,934
EchoStar VII and EchoStar VIII satellite vendor financing	—	30,000
Initial estimated value of contingent value rights (Note 3)	—	30,724

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

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

1. Organization and Business Activities

Principal Business

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

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

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

The Proposed Merger of EchoStar with Hughes

During October, 2001, EchoStar, Hughes Electronics Corporation (“Hughes”) and General Motors (“GM”), which is Hughes’ parent company, signed definitive agreements relating to the merger of EchoStar and Hughes in a stock-for-stock transaction.

On October 10, 2002, the Federal Communications Commission (“FCC”) announced that it declined to approve the transfer of the licenses necessary to allow EchoStar’s merger with Hughes to close and designated the application for hearing by an administrative law judge. The FCC, however, has given the parties until November 27, 2002 to file an amended application to address the FCC’s concerns and to file a petition to suspend the hearing. On October 31, 2002, the U.S. Department of Justice (“DOJ”), twenty-three states, the District of Columbia and Puerto Rico filed a complaint for permanent injunctive relief in the United States District Court for the District of Columbia against EchoStar, GM and Hughes. The suit seeks to permanently enjoin EchoStar and Hughes from merging and requests a ruling that the proposed merger violates Section 7 of the Clayton Act. EchoStar, Hughes and GM sought an expedited schedule with a trial date in November. The DOJ and states proposed that the trial commence in June. On November 5, 2002, the District Court denied our petition for an expedited trial and denied plantiffs’ proposed trial date, suggesting instead a late February or early March trial date. No trial date has yet been set. The merger agreement provides that either party may, in certain circumstances, terminate prior to the trial date suggested by the Court. Hughes and GM have to date been unwilling to agree to an extension of any merger termination date. EchoStar intends to continue to discuss how to proceed with GM and Hughes. However, no assurances can be given that the required regulatory clearances and approvals will be obtained from the DOJ and the FCC within the timeframes required by the merger agreement, or if so obtained, that all other conditions to the transactions will be satisfied such that the merger can be completed.

Assuming consummation, the surviving corporation in the merger would carry the EchoStar name and would provide direct broadcast satellite services in the United States and Latin America, global fixed satellite services and other broadband communication services. The merger is subject to numerous conditions and risks. The agreements among the parties require that EchoStar arrange for the availability of $7.025 billion of cash in connection with the merger and related transactions. EchoStar expects that it will provide about $1.5 billion of this amount from available cash at the time of signing the merger agreement. In addition, EchoStar and Hughes obtained a $5.525 billion bridge

financing commitment to assure that the remaining required cash would be available if and to the extent it could not be obtained through traditional capital markets or bank financing transactions. The bridge commitment was reduced to $3.325 billion as a result of the sale of $700 million of EchoStar DBS Corporation's 9 1/8% senior notes due 2009 and a $1.5 billion investment by Vivendi Universal ("Vivendi") in EchoStar, which resulted in the issuance of 5,760,479 shares of EchoStar's Series D convertible preferred stock to a subsidiary of Vivendi. While there can be no assurance, the remaining $3.325 billion bridge commitment is expected to be reduced to zero through a combination of financings by EchoStar, Hughes or a subsidiary of Hughes on or prior to the closing of the Hughes merger through public or private debt or equity offerings, bank debt or a combination thereof. The amount of such cash that could be raised by EchoStar prior to completion of the Hughes merger is severely restricted. EchoStar's agreements with GM and Hughes also severely restrict the amount of additional equity capital that can be raised by EchoStar, which restrictions may continue for up to two years following completion of the Hughes merger, absent possible favorable IRS rulings or termination of the Hughes merger.

If the Hughes merger is terminated, under certain circumstances EchoStar may be required to pay a $600 million termination fee to Hughes, and may, under certain circumstances, be required to purchase Hughes' interest in PanAmSat for approximately $2.7 billion, either directly or through a merger or tender offer. In the event that only Hughes' interest in PanAmSat is initially acquired, EchoStar would also be required to offer to acquire all of the remaining outstanding stock of PanAmSat at $22.47 per share. EchoStar expects that its acquisition of Hughes' interest in PanAmSat, which would be at a price of $22.47 per share, together with its assumed purchase of the remaining outstanding PanAmSat shares and its payment of the termination fee to GM would require at least $3.4 billion of cash and approximately $600 million of EchoStar's class A common stock (although EchoStar might instead choose to use a greater proportion of cash, and less or no stock for the purchase). EchoStar expects that it would meet this cash requirement by utilizing a portion of its cash, cash equivalents, and marketable investment securities on hand.

As of September 30, 2002, EchoStar has capitalized approximately $43 million in merger related costs. If the Hughes merger is not consummated, EchoStar may be required to record a charge to earnings in future periods equal to all or a portion of this amount, plus remaining deferred bridge commitment fees of approximately $33 million. In addition, EchoStar may be required to record charges to earnings for any amount by which the actual PanAmSat purchase price exceeds the estimated fair value of the investment, and, if applicable, the potential $600 million termination fee discussed above.

2. Significant Accounting Policies

Basis of Presentation

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with generally accepted accounting principles and with the instructions to Form 10-Q and Article 10 of Regulation S-X for interim financial information. Accordingly, these statements do not include all of the information and footnotes required by generally accepted accounting principles for complete financial statements. In the opinion of management, all adjustments (consisting of normal recurring adjustments) considered necessary for a fair presentation have been included. All significant intercompany accounts and transactions have been eliminated in consolidation. Operating results for the nine months ended September 30, 2002 are not necessarily indicative of the results that may be expected for the year ending December 31, 2002. For further information, refer to the consolidated financial statements and footnotes thereto included in EchoStar's Annual Report on Form 10-K for the year ended December 31, 2001.

Use of Estimates

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

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

During the three months ended June 30, 2002, EchoStar recorded an adjustment to Cost of sales — subscriber promotion subsidies of approximately $17 million to reduce accrued royalty expenses related to the production of EchoStar receiver systems. The reduction in accrued royalty expenses primarily resulted from the completion of royalty arrangements with more favorable terms than estimated amounts previously accrued.

During the three months ended September 30, 2002, as a result of favorable litigation developments, EchoStar recorded a non-recurring reduction in the cost of set-top box equipment. The following details the decrease in the financial statement line items affected by this adjustment (in thousands):

	Three Months Ended September 30, 2002
Property and equipment, net	$ (5,916)
Cost of sales — DTH equipment	(5,002)
Cost of sales — subscriber promotion subsidies	(30,872)
Depreciation and amortization	(1,430)

Comprehensive Income (Loss)

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

	Nine Months Ended September 30,	
	2001	2002
	(Unaudited)	
Net loss	$(172,627)	$(166,095)
Unrealized holding losses on available-for-sale securities arising during period	(14,438)	(112,721)
Reclassification adjustment for other than temporary impairment losses on available-for-sale securities included in net loss	33,259	49,563
Comprehensive loss	$(153,806)	$(229,253)

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, net of deferred taxes.

Basic and Diluted Net Income (Loss) Per Share

Statement of Financial Accounting Standards No. 128, “Earnings Per Share” (“FAS No. 128”) requires entities to present both basic earnings per share (“EPS”) and diluted EPS. Basic EPS excludes dilution and is computed by dividing income (loss) available to common shareholders by the weighted-average number of common shares outstanding for the period. Diluted EPS reflects the potential dilution that could occur if stock options or warrants were exercised or convertible securities were converted to common stock, resulting in the issuance of common stock that then would share in any earnings of the Company.

EchoStar had net losses for the three month period ending September 30, 2002 and for the nine month periods ending September 30, 2001 and 2002. Therefore, the effect of the common stock equivalents and convertible securities is excluded from the computation of diluted earnings (loss) per share for these periods since the effect is anti-dilutive. Since EchoStar reported net income attributable to common shareholders for the three month period ending September 30, 2001, the potential dilution from stock options exercisable into common stock for those periods was computed using the treasury stock method based on the average fair market value of the Class A common stock for the respective periods. The following table reflects the basic and diluted weighted-average shares (in thousands).

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

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2001	2002	2001	2002
Denominator for basic income (loss) per share — weighted-average common shares outstanding	478,931	480,721	476,437	480,289
Dilutive impact of options outstanding	7,661	—	—	—
Dilutive impact of Series D Convertible Preferred Stock	—	—	—	—
Denominator for diluted income (loss) per share — weighted-average diluted common shares outstanding	486,592	480,721	476,437	480,289

As of September 30, 2001 and 2002, options to purchase a total of approximately 23,738,000 and 21,182,000 shares of Class A common stock were outstanding, respectively. As of September 30, 2002, the 4 7/8% Convertible Subordinated Notes and the 5 3/4% Convertible Subordinated Notes were convertible into approximately 22 million shares and 23 million shares of Class A common stock, respectively. The convertible notes are not included in the diluted EPS calculation as the notes are anti-dilutive because the interest per common share obtainable on conversion of these securities exceeds the basic earnings (loss) per share.

New Accounting Pronouncements

In July 2001, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards No. 142, “Goodwill and Other Intangible Assets” (“FAS 142”), which requires goodwill and intangible assets with indefinite useful lives to no longer be amortized but to be tested for impairment at least annually. Intangible assets that have finite lives will continue to be amortized over their estimated useful lives. The amortization and non-amortization provisions of FAS 142 will be applied to all goodwill and intangible assets acquired after September 30, 2001. Effective January 1, 2002, EchoStar adopted the provisions of FAS 142 and ceased amortization of its FCC authorizations, which were determined to have indefinite lives. In accordance with FAS 142, EchoStar tested its FCC authorizations for impairment as of the date of adoption and determined that there was no impairment. The following table reconciles previously reported net income (loss) and basic and diluted loss per common share as if the provisions of FAS 142 were in effect for the three and nine months ended September 30, 2001 (in thousands).

	Three Months Ended September 30, 2001	Nine Months Ended September 30, 2001
Net income (loss), as reported	$3,095	$(172,627)
Add back: FCC authorization amortization	4,908	14,129
Net income (loss), as adjusted	$8,003	$(158,498)
Basic and diluted net income (loss) per common share, as reported	$ 0.01	$ (0.36)
Add back: FCC authorization amortization	0.01	0.03
Basic and diluted net income (loss) per common share, as adjusted	$ 0.02	$ (0.33)

As of December 31, 2001 and September 30, 2002, EchoStar had approximately $52 million and $54 million of gross identifiable acquisition intangibles, respectively, with related accumulated amortization of approximately $22 million and $30 million for each period, respectively. These identifiable acquisition intangibles primarily include acquired contracts and technology-based intangibles. Amortization of these intangible assets with an average finite useful life of approximately five years was $3 million and $8 million for the three and nine months ended September 30, 2002, respectively. EchoStar estimates that such amortization expense will aggregate approximately $11 million annually for the remaining useful life of these intangible assets of approximately 2.25 years.

In July 2002, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards No. 146, "Accounting for Costs Associated with Exit or Disposal Activities" ("FAS 146"), which will require companies to record exit, including restructuring, or disposal costs when they are incurred and can be measured at fair value, and subsequently adjust the recorded liability for changes in estimated cash flows. FAS 146 also provides specific guidance on accounting for employee and contract terminations that are part of restructuring activities. The new requirements in FAS 146 are effective prospectively for exit or disposal activities initiated after December 31, 2002. EchoStar is currently evaluating the potential impact, if any, the adoption of FAS 146 will have on its financial position and results of operations.

3. Vivendi Universal

In connection with Vivendi's purchase of Series D convertible preferred stock during January 2002, Vivendi received contingent value rights. If during a 20 day trading period preceding the three-year anniversary of the completion of the Hughes merger, or if the merger is not completed, the 30 month settlement date specified below (if the Hughes merger is not completed), the average price of EchoStar's class A common stock is above the $26.04 price per share paid by Vivendi, then no amount will be payable. If the average price of EchoStar's class A common stock during the relevant 20 day period is below that price, then EchoStar is obligated to pay Vivendi the difference between the price paid by Vivendi and the then current average price, up to a maximum payment under the rights of $225 million if the Hughes merger is completed, or $525 million if the Hughes merger is not completed. Any amount owed under these rights, which may be paid in cash or in EchoStar's class A common stock at EchoStar's option, would be settled three years after completion of the Hughes merger, except in certain limited circumstances. If the Hughes merger is not consummated, these rights will be settled at the earlier of 30 months after the acquisition of Hughes' 81% interest in PanAmSat or the termination of the merger agreement and the PanAmSat stock purchase agreement. Any sale, transfer, or other disposition of the Series D convertible preferred stock, or the EchoStar class A common stock issued upon conversion of the Series D convertible preferred stock (other than to certain wholly owned subsidiaries), will result in termination of the portion of the contingent value rights corresponding to the number of shares transferred. Generally, in the event that the price of EchoStar's class A common stock is at or above $31.25 for 90 consecutive calendar days prior to maturity of the contingent value rights, the rights automatically expire. However, during the period prior to either consummation of the transactions contemplated by the merger agreement with Hughes or termination of the merger agreements by the parties, Vivendi is prohibited from directly or indirectly selling or otherwise disposing of any EchoStar class A common stock, Series D convertible preferred stock, or any other EchoStar equity security, including from engaging in any hedging or derivative transaction involving such securities, and the contingent value rights cannot expire during that period regardless of the trading price.

EchoStar used a Black-Scholes pricing model, a widely accepted tool which is commonly used to value financial instruments such as options, warrants, etc., and applied certain other assumptions and judgments described below, to value the contingent rights. The current settlement amount of the contingent value rights is re-estimated on a quarterly basis by revising the current stock price included in the Black-Scholes model and re-evaluating all assumptions, as well as using management's estimates considering relevant facts and circumstances. Changes in the estimated value are recorded as charges to earnings. As of September 30, 2002, the estimated value of the contingent value rights is approximately $171 million.

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The Black-Scholes assumptions used to value the contingent value rights are as follows:

	January 22, 2002 (CVR issuance date)	September 30, 2002
Black-Scholes Assumptions:		
Risk-free interest rate	3.48%	2.02%
Volatility factor	56.96%	52.05%
Dividend yield	0.00%	0.00%
Expected term of options	3-3.5 years	2.8-3.1 years

Since the maximum possible payment under the contingent value rights is different depending on whether the merger with Hughes is consummated, the contingent value rights valuation also requires an assumption to be made with respect to the probability that the merger with Hughes will be consummated. As of September 30, 2002, if management decreased by 10 percentage points its estimate regarding the likelihood that the merger will be consummated, without changing any other assumptions, our liabilities, and the estimated value of the contingent value rights, would increase by approximately $9.9 million, resulting in a charge to earnings in the same amount. Similarly, if management increased by 10 percentage points its estimate regarding the likelihood the merger will be consummated, our liabilities, and the estimated value of the contingent value rights, would decrease by approximately $9.9 million, resulting in an increase in earnings by the same amount.

Further, the contingent rights might terminate prior to their maturity date, either as a result of sales by Vivendi of underlying equity, or as a result of the price of EchoStar’s common stock trading, for 90 consecutive days, at least 20% above the price per share initially paid by Vivendi. As a result, the contingent value rights valuation also requires an adjustment to be made to the Black-Scholes Model to account for the possibility that the contingent value rights will terminate in whole or in part prior to their maturity date. As of September 30, 2002, if management decreased by 10 percentage points its estimate regarding the possibility that the contingent value rights might terminate prior to their maturity, without changing any other assumptions, our liabilities, and the estimated value of the contingent value rights, would increase by approximately $34.1 million, resulting in a charge to earnings in the same amount. Similarly, if management increased by 10 percentage points its estimate of the likelihood the contingent value rights might terminate prior to their maturity date, our liabilities, and the estimated value of the contingent value rights, would decrease by approximately $34.1 million, resulting in an increase in earnings by the same amount.

As of September 30, 2002, if EchoStar’s stock price decreased by 10%, without changing any other assumptions, our liabilities, and the estimated value of the contingent value rights, would increase by approximately $8.9 million, resulting in a charge to earnings in the same amount. A 10% increase in EchoStar’s stock price, without changing any other assumptions, would result in a decrease in our liabilities, and the estimated value of the contingent value rights, by approximately $8.6 million, and an increase in earnings by the same amount. If all three of the above described factors were simultaneously decreased by the percentages discussed above, our liabilities, and the estimated value of the contingent value rights, would increase by approximately $57.4 million, resulting in a charge to earnings in the same amount. A simultaneous increase of each factor by the percentages discussed above would result in a decrease in our liabilities, and the estimated value of the contingent value rights, by approximately $48.5 million, and an increase in earnings by the same amount.

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The per share conversion price for the Series D convertible preferred stock was set at $26.04 upon execution of the investment agreement on December 14, 2001. Further, the effective per share value of the Series D convertible preferred stock excluding the contingent value rights was calculated as $25.51. However, the investment was not consummated until January 22, 2002, when the price of EchoStar's class A common stock was $26.58. Since the price as of the date of consummation of the investment was above the effective per share value and since consummation of the investment was contingent upon regulatory approval, the Series D preferred stock was deemed to be issued with a beneficial conversion feature. This feature required the difference between the effective per share value and the price as of the date of consummation to be recorded as a discount on the Series D convertible preferred stock. Since the Series D convertible preferred stock is immediately convertible at the holder's option, the Series D convertible preferred stock was accreted to its conversion value through a charge to retained earnings equal to the discount of approximately $61.9 million as of the date of issuance.

The issuance costs of approximately $16.5 million related to the Series D convertible preferred stock were recorded as a discount on the Series D convertible preferred stock. However, since the Series D convertible preferred stock is redeemable at the holder's option upon a change of control, as defined in the related agreement, and the redemption price of the Series D convertible preferred stock exceeds the discounted carrying value, the discount would be charged to retained earnings to restore the Series D convertible preferred stock to its redemption value if redemption of the Series D convertible preferred stock became probable. The merger of EchoStar and Hughes does not constitute a change of control with respect to the Series D convertible preferred stock. As of September 30, 2002, redemption of the Series D convertible preferred stock is not considered probable and thus no charge to retained earnings has been recorded.

The $30.7 million initial estimated value of the contingent value rights, together with aggregate quarterly adjustments through June 30, 2002 of approximately $5.4 million, were originally recorded as a component of net income (loss) available (attributable) to common shareholders and reflected in net income (loss) per common share, but were not included as a component of net income (loss). These amounts were also included as a credit to Series D convertible preferred stock and contingent value rights, and therefore were not reflected as liabilities on the March 31, 2002 and June 30, 2002 balance sheets. As of September 30, 2002, the contingent value rights have been reclassified from Series D convertible preferred stock to a liability on the accompanying balance sheets. Changes in the estimated value of the contingent value rights, approximating $134.5 million for the three months ended September 30, 2002, have been recorded as a charge to earnings for the period. In addition, the statement of operations for the nine months ended September 30, 2002 has been adjusted to reflect the changes in the estimated value of the contingent value rights during the six months ended June 30, 2002, aggregating approximately $5.4 million, as a charge to earnings. Accordingly, the estimated value of the contingent value rights of approximately $171 million is reflected as a liability as of September 30, 2002 and the aggregate changes in estimated value of $139.9 million have been reflected as charges to earnings for the nine months then ended. These adjustments had no impact on reported net income (loss) available (attributable) to common shareholders or basic and diluted net income (loss) per share for the nine months ended September 30, 2002, or for any previously reported period. These adjustments also caused an increase to additional paid-in capital of approximately $30.7 million and a corresponding decrease in Series D convertible preferred stock to reflect the allocation of the original proceeds to the contingent value rights and the corresponding impact on the beneficial conversion feature.

4. Marketable and Non-Marketable Investment Securities

EchoStar currently classifies all marketable investment securities as available-for-sale. In accordance with generally accepted accounting principles, EchoStar adjusts the carrying value of its available-for-sale marketable investment securities to fair market value and reports the related temporary unrealized gains and losses as a separate component of stockholders' deficit, net of related deferred income tax, if applicable. Declines in the fair market value of a marketable investment security which are estimated to be "other than temporary" must be recognized in the statement of operations, thus establishing a new cost basis for such investment. EchoStar evaluates its marketable investment securities portfolio on a quarterly basis to determine whether declines in the market value of these securities

are other than temporary. This quarterly evaluation consists of reviewing, among other things, the fair value of EchoStar's marketable investment securities compared to the carrying value of these securities, the historical volatility of the price of each security and any market and company specific factors related to each security. Generally, absent specific factors to the contrary, declines in the fair value of investments below cost basis for a period of less than six months are considered to be temporary. Declines in the fair value of investments for a period of six to nine months are evaluated on a case by case basis to determine whether any company or market-specific factors exist which would indicate that such declines are other than temporary. Declines in the fair value of investments below cost basis for greater than nine months are considered other than temporary and are recorded as charges to earnings, absent specific factors to the contrary.

As of September 30, 2002, EchoStar recorded unrealized losses of approximately $60 million as a separate component of stockholders' deficit. During the nine months ended September 30, 2002, EchoStar also recorded an aggregate charge to earnings for other than temporary declines in the fair market value of certain of its marketable investment securities of approximately $50 million, and established a new cost basis for these securities. This amount does not include realized gains of approximately $13 million on the sales of marketable investment securities. EchoStar's approximately $4.2 billion of cash, cash equivalents and marketable investment securities include debt and equity securities which EchoStar owns for strategic and financial purposes. The fair market value of these strategic marketable investment securities aggregated approximately $75 million as of September 30, 2002. During the quarter ended September 30, 2002, EchoStar's portfolio generally, and EchoStar's strategic investments particularly, experienced and continue to experience volatility. If the fair market value of EchoStar's marketable securities portfolio does not increase to cost basis or if EchoStar becomes aware of any market or company specific factors that indicate that the carrying value of certain of its securities is impaired, EchoStar may be required to record additional charges to earnings in future periods equal to the amount of the decline in fair value.

EchoStar also has made strategic equity investments in certain non-marketable investment securities. EchoStar's ability to create realizable value from its strategic investments in companies that are not public is dependent on the success of their business and their 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 EchoStar will not be able to sell these investments, or that when EchoStar desires to sell them that it will not be able to obtain full value for them. EchoStar evaluates its non-marketable investment securities on a quarterly basis to determine whether the carrying value of each investment is impaired. The securities of these companies are not publicly traded. As a result, this quarterly evaluation consists of reviewing, among other things, company business plans and current financial statements, if available, for factors which may indicate an impairment in EchoStar's investment. Such factors may include, but are not limited to, cash flow concerns, material litigation, violations of debt covenants and changes in business strategy.

EchoStar made a strategic investment in StarBand Communications, Inc. During April 2002, EchoStar changed its sales and marketing relationship with StarBand and ceased subsidizing StarBand equipment. During the first quarter of 2002, EchoStar determined that the carrying value of its investment in StarBand, net of approximately $8 million of equity in losses of StarBand recorded during 2002, was not recoverable and recorded an impairment charge of approximately $28 million to reduce the carrying value of its StarBand investment to zero. The determination was based, among other things, on EchoStar's continuing evaluation of StarBand's business model, including further deterioration of StarBand's limited available cash, combined with increasing cash requirements, resulting in a critical need for additional funding, with no clear path to obtain that cash. StarBand subsequently filed for bankruptcy during June 2002.

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5. Inventories

Inventories consist of the following (in thousands):

	December 31, 2001	September 30, 2002
Finished goods — DBS	$127,186	$ 94,844
Raw materials	45,725	35,237
Finished goods — reconditioned and other	19,548	23,465
Work-in-process	7,924	8,759
Consignment	3,611	324
Reserve for excess and obsolete inventory	(13,247)	(6,220)
	$190,747	$156,409

6. Property and Equipment

EchoStar V

During 2000 and 2001, EchoStar V experienced anomalies resulting in the loss of two solar array strings and during August 2002, EchoStar V experienced anomalies resulting in the loss of an additional solar array string. The satellite has a total of approximately 96 solar array strings and approximately 92 are required to assure full power availability for the 12-year design life of the satellite. An investigation of the solar array anomalies, none of which have impacted commercial operation of the satellite, is continuing. Until the root cause of these anomalies is finally determined, there can be no assurance future anomalies will not cause further losses which could impact commercial operation of the satellite.

EchoStar VI

During 2001, EchoStar VI experienced anomalies resulting in the loss of two solar array strings and during July 2002, EchoStar VI experienced anomalies resulting in the loss of an additional solar array string. The satellite has a total of approximately 112 solar array strings and approximately 106 are required to assure full power availability for the 12-year design life of the satellite. An investigation of the solar array anomalies, none of which have impacted commercial operation of the satellite, is continuing. Until the root cause of these anomalies is finally determined, there can be no assurance future anomalies will not cause further losses which could impact commercial operation of the satellite.

EchoStar VIII

During October 2002, EchoStar VIII, which launched successfully on August 21, 2002 from the Baikonur Cosmodrome, Kazakhstan, reached its final orbital location at 110 degrees West Longitude and commenced commercial operation after completing in-orbit testing.

During September and October 2002 two of the thrusters on EchoStar VIII experienced anomalous events and are not currently in use. The satellite is equipped with a total of 12 thrusters that help control attitude and pointing. An investigation of the thruster anomalies, none of which have impacted commercial operation of the satellite to date, is continuing. The satellite can operate using a combination of the other 10 thrusters. Until the root cause of these anomalies is finally determined, there can be no assurance future anomalies will not cause further losses which could impact commercial operation of the satellite.

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Satellite Insurance

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

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

The insurance carriers offered EchoStar a total of approximately $88 million, or 40% of the total policy amount, in settlement of the EchoStar IV insurance claim. The insurers assert that EchoStar IV was not a constructive total loss, as that term is defined in the policy, and that EchoStar did not abide by the exact terms of the insurance policies. EchoStar strongly disagrees and filed arbitration claims against the insurers for breach of contract, failure to pay a valid insurance claim and bad faith denial of a valid claim, among other things. There can be no assurance that EchoStar will receive the amount claimed or, if EchoStar does, that EchoStar will retain title to EchoStar IV with its reduced capacity. While there can be no assurance, the arbitration is expected to occur during 2003.

At the time EchoStar filed its claim in 1998, EchoStar recognized an impairment loss of $106 million to write-down the carrying value of the satellite and related costs, and simultaneously recorded an insurance claim receivable for the same amount. EchoStar will have to reduce the amount of the receivable if a final settlement is reached for less than this amount.

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

The indentures related to certain of EchoStar DBS Corporation's ("EDBS") senior notes contain restrictive covenants that require EchoStar to maintain satellite insurance with respect to at least half of the satellites it owns or leases. In addition, the indenture related to EchoStar Broadband Corporation's ("EBC") senior notes requires EchoStar to maintain satellite insurance on the lesser of half of its satellites or three of its satellites. All of EchoStar's eight in-orbit DBS satellites are currently owned by direct or indirect subsidiaries of EDBS. Insurance coverage is therefore required for at least four of EchoStar's eight satellites. The launch and/or in-orbit insurance policies for EchoStar I through EchoStar VII have expired. EchoStar has been unable to obtain insurance on any of these satellites on terms acceptable to EchoStar. As a result, EchoStar is currently self-insuring these satellites. To satisfy insurance covenants related to EDBS' and EBC's senior notes, EchoStar has reclassified an amount equal to the depreciated cost of four of

its satellites from cash and cash equivalents to cash reserved for satellite insurance on its balance sheet. As of September 30, 2002, cash reserved for satellite insurance totaled approximately $159 million. The reclassifications will continue until such time, if ever, as EchoStar can again insure its satellites on acceptable terms and for acceptable amounts, or until the covenants requiring the insurance are no longer applicable.

7. Bridge Financing Commitments

In connection with the proposed merger between EchoStar and Hughes, EchoStar and Hughes obtained a $5.525 billion bridge financing commitment and EchoStar paid approximately $55 million of commitment fees in connection therewith. As a result of the sale of 9 1/8% Senior Notes due 2009 by EDBS during December 2001 and the closing of the $1.5 billion Vivendi investment in EchoStar during January 2002, the bridge commitment was reduced to $3.325 billion.

Approximately $7.4 million of deferred commitment fees were expensed upon issuance of the 9 1/8% Senior Notes by EDBS and approximately $15 million of deferred commitment fees were expensed upon closing of the $1.5 billion equity investment in EchoStar by Vivendi. Approximately $33 million of deferred commitment fees remain as of September 30, 2002. That amount will be charged to interest expense as and if the bridge commitment is further reduced. If the Hughes merger is not consummated, total remaining commitment fees will be immediately charged to earnings. In the event that the bridge commitment is drawn, any deferred commitment fees not previously expensed will be amortized to interest expense in future periods.

A fee of .50% per year on the aggregate bridge financing commitment outstanding is payable quarterly, in arrears, until the closing of the Hughes merger, or the termination or expiration of the agreements relating to the bridge commitments. These fees are expensed as incurred. During the nine months ended September 30, 2002, EchoStar expensed approximately $13 million for these fees.

8. Commitments and Contingencies

Fee Dispute

EchoStar had a dispute regarding the contingent fee arrangement with the attorneys who represented EchoStar in prior litigation with The News Corporation, Ltd. In early July 2002, the parties resolved their dispute.

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WIC Premium Television Ltd

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

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

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

Distant Network Litigation

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

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

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

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

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certain of its customers. At that time, the networks also argued that EchoStar's compliance procedures violated the Satellite Home Viewer Improvement Act. EchoStar opposed the networks' motion and again asked the Court to hear live testimony before ruling upon the networks' injunction request.

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

Twice during October 2000, the Court amended its original preliminary injunction order in an effort to fix some of the errors in the original order. The twice amended preliminary injunction order required EchoStar to shut off, by February 15, 2001, all subscribers who were ineligible to receive distant network programming under the Court's order. EchoStar appealed the preliminary injunction orders. During September 2001, the United States Court of Appeals for the Eleventh Circuit vacated the District Court's nationwide preliminary injunction, which the Eleventh Circuit had stayed in November 2000. The Eleventh Circuit also rejected EchoStar's First Amendment challenge to the Satellite Home Viewer Act. However, the Eleventh Circuit found that the District Court had made factual findings that were clearly erroneous and not supported by the evidence, and that the District Court had misinterpreted and misapplied the law. The Eleventh Circuit issued an order during January 2002, remanding the case to the Florida District Court. During March 2002, the Florida District Court entered an order setting the trial in the matter for January 13, 2003 and setting a discovery and pretrial schedule. In this order, the District Court denied certain of EchoStar's outstanding motions to compel discovery as moot and granted the networks' motion to compel. The trial date has now been moved to February 10, 2003. During April 2002, the District Court denied the networks' motion for preliminary injunction as moot. In June 2002, EchoStar filed a counterclaim against the networks asking the District Court to find that EchoStar is not violating the Satellite Home Viewer Act and seeking damages resulting from the networks' tortious interference with EchoStar's business relationships and from the networks' conduct amounting to unfair competition. The networks filed a motion to dismiss these claims. In August 2002, the District Court denied the networks' motion to dismiss. In September 2002, the networks answered our counterclaim.

In April 2002, EchoStar reached a private settlement with ABC, Inc., one of the plaintiffs in the litigation and jointly filed a stipulation of dismissal. On April 16, 2002, the District Court entered an order dismissing the claims between ABC, Inc. and EchoStar.

If after a trial the District Court enters an injunction against EchoStar, the injunction could force EchoStar to terminate delivery of distant network channels to a substantial portion of its distant network subscriber base, which could also cause many of these subscribers to cancel their subscription to EchoStar's other programming services. Any such terminations would result in a small reduction in EchoStar's reported average monthly revenue per subscriber and could result in a temporary increase in churn. If EchoStar loses the case at trial, the judge could, as one of many possible remedies, prohibit all future sales of distant network programming by EchoStar, which would have a material adverse affect on its business.

Gemstar

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

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(Unaudited)

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

In February 2001, Gemstar filed patent infringement actions against EchoStar in the District Court in Atlanta, Georgia and with the ITC. These suits allege infringement of United States Patent Nos. 5,252,066, 5,479,268 and 5,809,204 all of which relate to certain electronic program guide functions. In addition, the ITC action alleges infringement of the `121 Patent which is asserted in the North Carolina case previously discussed. In the Georgia district court case, Gemstar seeks damages and an injunction. The Georgia case was stayed pending resolution of the ITC action and remains stayed at this time. ITC actions typically proceed according to an expedited schedule. In December 2001, the ITC held a 15-day hearing before an administrative judge. Prior to the hearing, Gemstar dropped its allegations regarding United States Patent No. 5,252,066 with respect to which EchoStar had asserted substantial allegations of inequitable conduct. The hearing addressed, among other things, Gemstar's allegations of patent infringement and respondents' (SCI, Scientific Atlanta, Pioneer and EchoStar) allegations of patent misuse. During June 2002, the Administrative Law Judge issued a Final Initial Determination finding that none of the patents asserted by Gemstar had been infringed. In addition, the Judge found that Gemstar was guilty of patent misuse with respect to the `121 Patent and that the `121 Patent was unenforceable because it failed to name an inventor. The parties then filed petitions for the full ITC to review the Judge's Final Initial Determination. On August 29, 2002, the full ITC adopted the Judge's findings regarding non-infringement and the unenforceability of the `121 Patent. The ITC did not adopt, but did not overturn, the Judge's findings of patent misuse. Gemstar has indicated that it plans to appeal the decision of the ITC to the United States Court of Appeals for the Federal Circuit. If the Federal Circuit were to overturn the Judge's decision, such an adverse decision in this case could temporarily halt the import of EchoStar receivers and could require EchoStar to materially modify certain user-friendly electronic programming guides and related features it currently offer to consumers. Based upon EchoStar's review of these patents, and based upon the ITC's decision, EchoStar continues to believe that these patents are not infringed by any of its products or services. EchoStar intends to continue to vigorously contest the ITC, North Carolina and Georgia suits and will, among other things, continue to challenge both the validity and enforceability of the asserted patents.

During 2000, Superguide Corp. ("Superguide") also filed suit against EchoStar, DIRECTV and others in the United States District Court for the Western District of North Carolina, Asheville Division, alleging infringement of United States Patent Nos. 5,038,211, 5,293,357 and 4,751,578 which relate to certain electronic program guide functions, including the use of electronic program guides to control VCRs. Superguide sought injunctive and declaratory relief and damages in an unspecified amount. It is EchoStar's understanding that these patents may be licensed by Superguide to Gemstar. Gemstar was added as a party to this case and asserted these patents against EchoStar. EchoStar has examined these patents and believes that they are not infringed by any of its products or services. A Markman ruling interpreting the patent claims was issued by the Court and in response to that ruling EchoStar filed motions for summary judgment of non-infringement for each of the asserted patents. Gemstar filed a motion for summary judgment of infringement with respect to one of the patents. On July 3, 2002, the Court issued a Memorandum of Opinion on the summary judgment motions. In its Opinion, the Court ruled that none of EchoStar's products infringe the 5,038,211 and 5,293,357 patents. With respect to the 4,751,578 patent, the Court ruled that none of EchoStar's current products infringed that patent and asked for additional information before it could rule on certain low-volume products that are no longer in production. On July 26, 2002, the Court summarily ruled that the

aforementioned low-volume products did not infringe any of the asserted patents. Accordingly, the Court dismissed the case and awarded EchoStar its court costs. Superguide and Gemstar are appealing this case to the United States Court of Appeals for the Federal Circuit. EchoStar will continue to vigorously defend this case. In the event the Federal Circuit ultimately determines that EchoStar infringes on any of the aforementioned patents, EchoStar may be subject to substantial damages, which may include treble damages and/or an injunction that could require EchoStar to materially modify certain user-friendly electronic programming guide and related features that EchoStar currently offers to consumers. It is too early to make an assessment of the probable outcome of the suits.

IPPV Enterprises

IPPV Enterprises, LLC (“IPPV”) and MAAST, Inc. filed a patent infringement suit against EchoStar, and our conditional access vendor Nagra, in the United States District Court for the District of Delaware. The suit alleged infringement of five patents. One patent claim was subsequently dropped by plaintiffs. Three of the remaining patents disclose various systems for the implementation of features such as impulse-pay-per-view, parental control and category lock-out. The fourth remaining patent relates to an encryption technique. The Court entered summary judgment in our favor on the encryption patent. Plaintiffs had claimed $80 million in damages with respect to the encryption patent. On July 13, 2001, a jury found that the remaining three patents were infringed and awarded damages of $15 million. The jury also found that one of the patents was willfully infringed, permitting the Judge to increase the award of damages. On post-trial motions, the Judge reduced damages to $7.33 million, found that one of the infringed patents was invalid, and reversed the finding of willful infringement. In addition, the Judge denied IPPV’s request for treble damages and attorney fees. EchoStar intends to file an appeal. Any final award of damages would be split between EchoStar and Nagra in percentages to be agreed upon between EchoStar and Nagra.

California Actions

A purported class action was filed against EchoStar in the California State Superior Court for Alameda County during May 2001 by Andrew A. Werby. The complaint, relating to late fees, alleges unlawful, unfair and fraudulent business practices in violation of California Business and Professions Code Section 17200 et seq., false and misleading advertising in violation of California Business and Professions Code Section 17500, and violation of the California Consumer Legal Remedies Act. During September 2001, EchoStar filed an answer denying all material allegations of the complaint, and the Court entered an Order Pursuant to Stipulation for a provisional certification of the class, for an orderly exchange of information and for mediation. The provisional Order specifies that the class will be de-certified upon notice if mediation does not resolve the dispute. A settlement has been reached with plaintiff’s counsel and the Court issued its preliminary approval of the settlement on October 18, 2002. The Court has set a March 7, 2003 date for hearing on final approval after notice to the class. If the settlement is not approved, EchoStar intends to deny all liability and to vigorously defend the lawsuit. The settlement confirms that the late fee charged by EchoStar is appropriate and will not change.

A purported class action relating to the use of terms such as “crystal clear digital video,” “CD-quality audio,” and “on-screen program guide,” and with respect to the number of channels available in various programming packages was also filed against EchoStar in the California State Superior Court for Los Angeles County in 1999 by David Pritikin and by Consumer Advocates, a nonprofit unincorporated association. The complaint alleges breach of express warranty and violation of the California Consumer Legal Remedies Act, Civil Code Sections 1750, et seq., and the California Business & Professions Code Sections 17500 & 17200. A hearing on the plaintiffs’ Motion for Class Certification and EchoStar’s Motion for Summary Judgment was held on June 28, 2002. At the hearing, the Court issued a preliminary ruling denying the plaintiffs’ Motion for Class Certification. However, before issuing a final ruling on Class Certification, the Court granted EchoStar’s Motion for Summary Judgment with respect to all of the plaintiffs’ claims. The plaintiffs filed a Notice of Appeal of the Court’s grant of EchoStar’s Motion for Summary Judgment. It is too early to make an assessment of the probable outcome of the appeal or to determine the extent of any potential liability or damages.

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

State Investigation

During April 2002, two state Attorneys General commenced a civil investigation concerning certain of EchoStar's business practices. Over the course of the next six months, 11 additional states ultimately joined the investigation. The states allege failure to comply with consumer protection laws based on EchoStar's call response times and policies, advertising and customer agreement disclosures, policies for handling consumer complaints, issuing rebates and refunds and charging cancellation fees to consumers, and other matters. EchoStar has cooperated fully in the investigation. It is too early to make an assessment of the probable outcome, or to determine the extent of any damages or injunctive relief which could result.

Retailer Class Actions

EchoStar has been sued by retailers in three separate purported class actions. During October 2000, two separate lawsuits were filed in the Arapahoe County District Court in the State of Colorado and the United States District Court for the District of Colorado, respectively, by Air Communication & Satellite, Inc. and John DeJong, et al. on behalf of themselves and a class of persons similarly situated. The plaintiffs are attempting to certify nationwide classes on behalf of certain of EchoStar's satellite hardware retailers. The plaintiffs are requesting the Courts to declare certain provisions of, and changes to, alleged agreements between EchoStar and the retailers invalid and unenforceable, and to award damages for lost incentives and payments, charge backs, and other compensation. EchoStar intends to vigorously defend against the suits and to assert a variety of counterclaims. The United States District Court for the District of Colorado stayed the Federal Court action to allow the parties to pursue a comprehensive adjudication of their dispute in the Arapahoe County State Court. John DeJong, d/b/a Nexwave, and Joseph Kelley, d/b/a Keltronics, subsequently intervened in the Arapahoe County Court action as plaintiffs and proposed class representatives. 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. A class certification hearing for the Arapahoe County Court action is scheduled for November 26, 2002.

Satellite Dealers Supply, Inc. filed a lawsuit in the United States District Court for the Eastern District of Texas during September 2000, on behalf of itself and a class of persons similarly situated. The plaintiff is attempting to certify a nationwide class on behalf of sellers, installers, and servicers of satellite equipment who contract with EchoStar and who allege that EchoStar: (1) charged back certain fees paid by members of the class to professional installers in violation of contractual terms; (2) manipulated the accounts of subscribers to deny payments to class members; and (3) misrepresented, to class members, who owns certain equipment related to the provision of satellite television service. During September 2001, the Court granted EchoStar's Motion to Dismiss for Lack of Personal Jurisdiction. The plaintiff moved for reconsideration of the Court's order dismissing the case and the Court denied Plaintiff's Motion for Reconsideration. The plaintiff filed a Notice of Appeal of the Court's denial of Plaintiff's Motion for Reconsideration. It is too early to make an assessment of the probable outcome of the appeal or to determine the extent of any potential liability or damages.

StarBand Shareholder Lawsuit

On August 20, 2002, a shareholder in StarBand Communications Corporation ("StarBand") filed an action in the Delaware Court of Chancery against EchoStar and EchoBand Corporation, together with four EchoStar executives who sat on the Board of Directors for StarBand, for alleged breach of the fiduciary duties of due care, good faith and loyalty, and also against EchoStar and EchoBand Corporation for aiding and abetting such alleged breaches. Two of the individual defendants, Charles W. Ergen and David Moskowitz, are members of the Board of Directors of EchoStar. The action stems from the defendants' involvement as directors, and EchoBand's position as a shareholder in StarBand, a broadband Internet satellite venture that is currently in bankruptcy. Plaintiffs allege that the defendants conspired to ensure StarBand's failure in order to guarantee that EchoStar's pending merger with Hughes would be successful. Plaintiffs seek an accounting of damages for their $25 million investment in StarBand in addition to costs and disbursements. Defendants deny the allegations in the complaint and intend to defend the litigation vigorously. On October 28, 2002, EchoStar, along with the other defendants filed motions to dismiss the complaint in its entirety.

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EchoStar and EchoBand filed a motion to dismiss based on lack of personal jurisdiction. 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.

PrimeTime 24 Joint Venture

PrimeTime 24 Joint Venture ("PrimeTime 24") filed suit against EchoStar during September 1998 seeking damages in excess of $10 million and alleging breach of contract, wrongful termination of contract, interference with contractual relations, trademark infringement and unfair competition. EchoStar denied all of PrimeTime 24's allegations and asserted various counterclaims. EchoStar has reached a settlement agreement with PrimeTime 24 pursuant to which the parties agreed to release all parties from any liability and dismiss the case with prejudice. The settlement amount is immaterial to EchoStar.

Merger Related Proceedings

A purported shareholder derivative action was filed against EchoStar and all of the current members of its Board of Directors in the United States District Court for Clark County, Nevada during October 2002 by Robert Busch on behalf of EchoStar shareholders. The complaint alleges breach of fiduciary duty, corporate waste and other unlawful acts relating to EchoStar's agreement to pay Hughes Electronics Corporation a $600 million termination fee in certain circumstances in the event the merger with DirecTV is not completed by January 21, 2003. No answer is due yet from the defendants. EchoStar and the individual defendants intend to deny all liability and to defend this action vigorously. It is too early to make an assessment of the probable outcome of the litigation or to determine the extent of any potential liability or damages.

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

9. Depreciation and Amortization Expense

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

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2001	2002	2001	2002
Digital Home Plan equipment	$18,793	$35,159	$ 34,909	$ 93,943
Satellites	28,677	31,945	85,021	92,148
Furniture, fixtures and equipment	16,078	25,303	47,634	67,337
FCC licenses and other amortizable intangibles	7,530	2,584	22,215	8,242
Buildings and improvements	687	862	2,025	2,496
Tooling and other	1,106	1,969	2,756	3,174
	$72,871	$97,822	$194,560	$267,340

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

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10. Income Taxes

Internal Revenue Service

During 2001 the Internal Revenue Service (“IRS”) conducted an audit of EchoStar’s consolidated federal income tax returns for the years 1997, 1998, and 1999. As a result of this review the IRS challenged the timing of deduction of certain subscriber acquisition costs. In July 2002, EchoStar received notification from the IRS of their decision to allow the deduction of the subscriber acquisition costs in accordance with EchoStar’s filed returns.

11. Segment Reporting

Financial Data by Business Unit (in thousands)

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

	Dish Network	EchoStar Technologies Corporation	All Other	Eliminations	Consolidated Total
Three Months Ending September 30, 2001					
Revenue	$ 944,274	$ 52,526	$27,066	$(1,360)	$1,022,506
Net income (loss)	2,063	1,149	(117)	—	3,095
Three Months Ending September 30, 2002					
Revenue	$1,149,381	$ 50,525	$24,782	$(1,839)	$1,222,849
Net income (loss)	(184,489)	6,498	10,042	—	(167,949)
Nine Months Ending September 30, 2001					
Revenue	$2,668,855	$ 97,014	$87,908	$(3,069)	$2,850,708
Net income (loss)	(169,005)	(14,108)	10,486	—	(172,627)
Nine Months Ending September 30, 2002					
Revenue	$3,297,234	$124,593	$78,955	$(4,781)	$3,496,001
Net income (loss)	(192,938)	4,331	22,512	—	(166,095)

12. Subsequent Events

Effective November 5, 2002, EDBS completed its offer to exchange all of the $1 billion principal outstanding of EBC’s 10 3/8% Senior Notes due 2007 (the “EBC Notes”) for substantially identical notes of EDBS. Tenders have been received from holders of over 99% of the EBC Notes. Per the terms of the indenture related to the EBC Notes, if at least 90% in aggregate principal amount of the outstanding EBC Notes have accepted the exchange offer, then all of the then outstanding EBC Notes shall be deemed to have been exchanged for the EDBS Notes.

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

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 and "EBC" refers to EchoStar Broadband Corporation and its subsidiaries. "General Motors" or "GM" refers to General Motors Corporation, "Hughes" refers to Hughes Electronics Corporation, or a holding company that is expected to be formed to hold all of the stock of Hughes, and "PanAmSat" refers to PanAmSat Corporation, in each case including their respective subsidiaries, unless the context otherwise requires. We expect that consummation of the Hughes merger and related transactions and consummation of the PanAmSat acquisition described in our Annual Report on Form 10-K for the year ended December 31, 2001 would have material effects on our results of operations and liquidity and capital resources. Our historical financial information contained in this document does not give effect to either of these transactions, on a pro forma or any other basis, and our liquidity and capital resources discussions do not take these transactions into account. The amended EchoStar information statement, which we filed with the Securities and Exchange Commission on September 30, 2002 and expect to distribute to our common stockholders later this year, includes pro forma financial information of the combined company as if the Hughes merger had been consummated and for us as if the Pan AmSat acquisition had been consummated, each in accordance with the rules and regulations of the Securities and Exchange Commission. Please see our Annual Report on Form 10-K for the year ended December 31, 2001 for a description of how you can obtain a copy of the EchoStar information statement from the Securities and Exchange Commission.

Principal Business

Our operations include two interrelated business units:

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

Since 1994, we have deployed substantial resources to develop the "EchoStar DBS System." The EchoStar DBS System currently consists of EchoStar's FCC-allocated DBS spectrum, eight DBS satellites ("EchoStar I" through "EchoStar VIII"), EchoStar receiver systems, digital broadcast operations centers, customer service facilities, and other assets utilized in its operations. 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.

Results of Operations

Three Months Ended September 30, 2002 Compared to Three Months Ended September 30, 2001.

Revenue. "Total revenue" for the three months ended September 30, 2002 was $1.223 billion, an increase of $200 million compared to "Total revenue" for the three months ended September 30, 2001 of $1.023 billion. The increase in "Total revenue" was primarily attributable to continued DISH Network subscriber growth. As discussed below, in order to attract new subscribers, certain of our promotions currently include free or reduced price programming. We expect to continue these promotions at least through the remainder of this year. Consequently, assuming a continued slow economy, we currently expect that our revenues will increase approximately 20% in 2002 compared to 2001 as the number of DISH Network subscribers increases.

DISH Network "Subscription television services" revenue totaled $1.120 billion for the three months ended September 30, 2002, an increase of $199 million compared to the same period in 2001. DISH Network "Subscription television services" revenue principally consists of revenue from basic, premium, local, international and pay-per-view subscription television services. This increase was attributable to continued DISH Network subscriber growth.

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

DISH Network added approximately 320,000 net new subscribers for the three months ended September 30, 2002 compared to approximately 360,000 net new subscribers during the same period in 2001. We believe the reduction in net new subscribers for the three months ended September 30, 2002, compared to the same period in 2001, resulted from a number of factors, including the continued weak U.S. economy and stronger competition from advanced digital cable and cable modems. Additionally, as the size of our subscriber base continues to increase, even if percentage churn remains constant, increasing numbers of gross new subscribers are required to sustain net subscriber growth. As of September 30, 2002, we had approximately 7.78 million DISH Network subscribers compared to approximately 6.43 million at September 30, 2001, an increase of approximately 21%. DISH Network “Subscription television services” revenue will continue to increase to the extent we are successful in increasing the number of DISH Network subscribers and maintaining or increasing revenue per subscriber. While there can be no assurance, notwithstanding our expectation of a continued slow U.S. economy, we expect to end 2002 with more than 8.1 million DISH Network subscribers, and increase compared to our prior guidance.

Monthly average revenue per subscriber was approximately $49.04 during the three months ended September 30, 2002 and approximately $49.26 during the same period in 2001. The decrease in monthly average revenue per subscriber is primarily attributable to certain promotions, discussed below, under which new subscribers received free programming for the first three months of their term of service, and other promotions under which subscribers received discounted programming for 12 months. While there can be no assurance, since we expect to continue free and reduced price programming promotions at least through the end of the year, and as a result of other factors, we currently expect that monthly average revenue per subscriber for 2002 will be near current levels, but that it will not reach or exceed average revenue per subscriber levels achieved during 2001.

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 distant network channels and superstations to a material portion of our subscriber base, which could cause many of those customers to cancel their subscription to our other services. Any such terminations could result in a small reduction in average monthly revenue per subscriber and could result in an increase in our percentage churn.

Commencing January 1, 2002, we were required to comply with the statutory requirement to carry all qualified over the air television stations by satellite in any market where we carry any local network channels by satellite. In April 2002, the Media Bureau of the FCC (the “Bureau”) concluded that our “must carry” implementation methods were not in compliance with the “must carry” rules. While we continue to believe our practices comply with the law, the Bureau offered a number of remedial actions we could implement in order to meet the FCC’s standards. We have implemented many such remedial actions which we believe should satisfy the Bureau and have filed compliance reports with the FCC describing our “must carry” implementation measures made in response to the Bureau’s order. We have not received a ruling from the Bureau either accepting or rejecting those measures. There can be no assurance that our remedial actions will ultimately be deemed satisfactory by the FCC. In the event that our remedial actions are found to be unsatisfactory by the FCC, we could be forced to reduce the number of markets in which we provide local channels in order to meet the FCC’s interpretation of “must carry” obligations. Any reduction in the number of markets we serve in order to comply with “must carry” requirements for other markets would adversely affect our operations and could result in a temporary increase in churn. In combination, these resulting subscriber terminations would result in a small reduction in average monthly revenue per subscriber and could increase our percentage churn.

For the three months ended September 30, 2002, “DTH equipment sales” revenue totaled $77 million, an increase of $4 million compared to the same period during 2001. “DTH equipment sales” consist of sales of digital set-top boxes and other digital satellite broadcasting equipment to international DTH service operators and sales of DBS accessories in the United States. The increase in “DTH equipment sales” revenue principally resulted from an increase in sales of DBS accessories to DISH Network subscribers. This increase was partially offset by a decrease in sales of digital set-top boxes to our international DTH customers discussed below.

A significant portion of “DTH equipment sales” revenue through 2001 resulted from sales to Via Digital and Bell ExpressVu. Our future revenue from the sale of DTH equipment in international markets depends largely on the

success of these DTH operators and continued demand for our digital set-top boxes. For 2002, we have binding purchase orders from Bell ExpressVu and we are actively trying to secure new orders from Via Digital. However, we cannot guarantee at this time that those negotiations will be successful. Further, Via Digital has signed a merger agreement with Canal Satelite, and may cease commercial operations in 2003 if Spanish authorities approve the merger. While there can be no assurance, we expect total "DTH equipment sales" revenue in 2002 to approximate 2001 levels. Although we continue to actively pursue additional distribution and integration service opportunities internationally, no assurance can be given that any such efforts will be successful.

DISH Network Operating Expenses. "DISH Network operating expenses" totaled $575 million during the three months ended September 30, 2002, an increase of $128 million or 29% compared to the same period in 2001. The increase in "DISH Network operating expenses" in total was consistent with, and primarily attributable to, the increase in the number of DISH Network subscribers. "DISH Network operating expenses" represented 51% and 49% of "Subscription television services" revenue during the three months ended September 30, 2002 and 2001, respectively. The increase in "DISH Network operating expenses" as a percentage of "Subscription television services" revenue primarily resulted from the expansion of our installation and service business, the opening of a new call center, increased costs in order to meet the demands of current "must carry" requirements and costs associated with offering additional markets where we carry local channels. While there can be no assurance, we expect operating expenses as a percentage of "Subscription television services" revenue to remain near current levels during the remainder of 2002.

"Subscriber-related expenses" totaled $449 million during the three months ended September 30, 2002, an increase of $86 million compared to the same period in 2001. The increase in total "Subscriber-related expenses" is primarily attributable to the increase in DISH Network subscribers. Such expenses, which include programming expenses, copyright royalties, residuals currently payable to retailers and distributors, and billing, lockbox and other variable subscriber expenses, represented 40% and 39% of "Subscription television services" revenues during the three months ended September 30, 2002 and 2001, respectively. While there can be no assurance, we expect "Subscriber-related expenses" as a percentage of "Subscription television services" revenue to remain near current levels during the remainder of 2002.

"Customer service center and other" expenses principally consist of costs incurred in the operation of our DISH Network customer service centers, such as personnel and telephone expenses, as well as other operating expenses related to our service and installation business. "Customer service center and other" expenses totaled $110 million during the three months ended September 30, 2002, an increase of $37 million as compared to the same period in 2001. "Customer service center and other" expenses totaled 10% and 8% of "Subscription television services" revenue during the three months ended September 30, 2002 and 2001, respectively. The increase in "Customer service center and other" expenses in total and as a percentage of "Subscription television services" revenue primarily resulted from increased personnel and telephone expenses to support the growth of the DISH Network, the opening of a new call center, increased operating expenses related to the expansion of our installation and service business and increased installation costs due to second-dish installations in order to meet the demands of "must carry". While there can be no assurance, we expect these expenses in total and as a percentage of "Subscription television services" revenue to remain near current levels during the remainder of 2002. These expenses and percentages could temporarily increase in the future as additional infrastructure is added to meet future growth. We intend to continue to implement the automation of simple telephone responses, and to increase Internet and satellite receiver-based customer assistance in the future, in order to better manage customer service costs.

"Satellite and transmission" expenses include expenses associated with the operation of our digital broadcast centers, and contracted satellite telemetry, tracking and control services. "Satellite and transmission" expenses totaled $16 million during the three months ended September 30, 2002, a $5 million increase compared to the same period in 2001. The increase in "Satellite and transmission" expenses primarily resulted from increased operations at our digital broadcast centers in order to meet the demands of current "must carry" requirements and offer additional markets where we carry local channels. During the three months ended September 30, 2002, we launched eight additional local markets. "Satellite and transmission" expenses totaled 1% of "Subscription television services" revenue during each of the three months ended September 30, 2002 and 2001. We expect "Satellite and transmission" expenses in total and as a percentage of "Subscription television services" revenue to increase in the future as additional

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

satellites are placed in service, to the extent we successfully obtain commercial in-orbit insurance and to the extent we increase the operations at our digital broadcast centers in order, among other reasons, to meet the demands of current "must carry" requirements.

Cost of sales — DTH equipment. "Cost of sales — DTH equipment" totaled $40 million during the three months ended September 30, 2002, a decrease of $9 million compared to the same period in 2001. "Cost of sales — DTH equipment" principally includes costs associated with digital set-top boxes and related components sold to international DTH operators and DBS accessories. DTH equipment represented 53% and 67% of DTH equipment revenue, during the three months ended September 30, 2002 and 2001, respectively. The decrease, both in aggregate and as a percentage of revenue, primarily related to reductions in the cost of manufactured equipment, increased sales of higher-margin DBS accessories and favorable litigation developments resulting in a non-recurring reduction in the cost of set-top box equipment of approximately $5 million.

Subscriber Promotions. During the three months ended September 30, 2002, our marketing promotions included our Free Dish, 1-2-3 Great TV, free installation program, Free for All and Digital Home Plan, which are described below.

Free Dish — Our Free Dish promotion, under which subscribers receive a free base-level EchoStar receiver system, commenced during August 2001. To be eligible, subscribers must provide a valid major credit card and make a one-year commitment to subscribe to a qualified programming package. Effective July 13, 2002, eligible subscribers are able to purchase a second receiver for $49.99. Although there can be no assurance as to the ultimate duration of the Free Dish promotion, we expect it to continue through at least January 2003.

1-2-3 Great TV — During January 2002, we commenced our 1-2-3 Great TV promotion. Under this promotion, subscribers who purchased one or more receivers, provided a valid major credit card and made a one-year commitment, received the first three months of qualified programming and installation of up to two receivers for free. This promotion expired on July 31, 2002.

Free Installation — Under our free installation program all subscribers who purchased an EchoStar receiver system from September 2000 to December 2001, were eligible to receive a free professional installation of one EchoStar receiver system. Effective December 2001, all subscribers who purchase an EchoStar receiver system are eligible to receive free professional installation of up to two receivers. Although there can be no assurance as to the ultimate duration of the Free Installation promotion, we expect it to continue through at least January 2003.

Free for All — Effective August 1, 2002, we commenced our Free for All promotion. Under this promotion, subscribers who purchase up to two receivers for $149 or more, depending on the models chosen, and subscribe to a qualifying programming package, receive free installation, together with credits of $12.50 or $17.00 applied to their programming bill each month for a year. Although there can be no assurance as to the ultimate duration of the Free For All promotion, we expect it to continue through at least January 2003.

Digital Home Plan — Our Digital Home Plan promotion, introduced during July 2000, offers several choices to consumers, ranging from the use of one EchoStar receiver system and our America's Top 50 CD programming package for $27.99 per month, to providing consumers our America's Top 150 programming package and two or more EchoStar receiver systems for $50.99 to $60.99 per month. Each plan includes in-home service, and the consumer must agree to a one-year commitment and incur a one-time set-up fee of $49.99. During July 2002, the promotion also included the first three months of qualified programming free for qualified Digital Home Plan programming packages. Effective August 1, 2002, the one-time set-up fee includes only the first month's qualified programming payment. For an additional $50.00, consumers can also choose to include a Dish PVR in the Digital Home Plan. Dish PVR receivers include a built-in hard drive that allows viewers to pause and record live programming without the need for videotape. Since we retain ownership of equipment installed pursuant to the Digital Home Plan promotion, equipment costs are capitalized and depreciated over a period of three to four years. Although there can be no assurance as to the ultimate duration of the Digital Home Plan promotion, we expect it to continue through at least January 2003.

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

Subscriber Acquisition Costs. Generally, under most promotions, we subsidize the installation and all or a portion of the cost of EchoStar receiver systems in order to attract new DISH Network subscribers. There is no clear industry standard used in the calculation of subscriber acquisition costs. Our subscriber acquisition costs include "Cost of sales — subscriber promotion subsidies", "Other subscriber promotion subsidies" and DISH Network acquisition marketing expenses. "Cost of sales — subscriber promotion subsidies" includes the cost related to the distribution of EchoStar receiver systems to retailers and other distributors of our equipment. "Other subscriber promotion subsidies" includes net costs related to our free installation promotion and other promotional incentives.

During the three months ended September 30, 2002, our subscriber acquisition costs totaled approximately $298 million, or approximately $413 per new subscriber activation. Comparatively, our subscriber acquisition costs during the three months ended September 30, 2001 totaled approximately $268 million, or approximately $392 per new subscriber activation. The increase in total subscriber acquisition costs primarily resulted from an increase in "Other subscriber promotion subsidies" related to additional subsidies on second receiver installations, an increase in "Advertising and other" expense related to our 2002 marketing promotions, and a decrease in Digital Home Plan penetration compared to 2001. The increase in subscriber acquisition costs was partially offset during the three months ended September 30, 2002 by favorable litigation developments resulting in a non-recurring reduction in the cost of set-top box equipment of approximately $31 million. The increase was also partially offset by a decrease in "Cost of sales — subscriber promotion subsidies" due to reductions in the cost and sales price of manufactured equipment.

While there can be no assurance, we currently expect per subscriber acquisition costs for the full year to be approximately $430. Anticipated per subscriber acquisition costs for the full year take into consideration, among other things, anticipated advertising costs, and promotions targeting subscribers who want multiple receivers. Those promotions result in higher equipment subsidies and increased dealer commissions compared to our typical historical promotions. While there can be no assurance, we believe heightened credit procedures we implemented during the first quarter, together with promotions tailored towards subscribers with multiple receivers, will attract better long-term subscribers than could be obtained through less costly promotions.

Since we retain ownership of the equipment, amounts capitalized under our Digital Home Plan are not included in our calculation of these subscriber acquisition costs. Capital expenditures under our Digital Home Plan promotion totaled approximately $74 million and $109 million for the three months ended September 30, 2002 and 2001, respectively. Cash and returned equipment received as a result of Digital Home Plan customer disconnects totaling approximately $10 million and $8 million during the three months ended September 30, 2002 and 2001, respectively, also is not included in our calculation of subscriber acquisition costs.

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 other more aggressive promotions if we determine that they are necessary to respond to competition, or for other reasons.

General and Administrative Expenses. "General and administrative" expenses totaled $99 million during the three months ended September 30, 2002, an increase of $13 million compared to the same period in 2001. The increase in "G&A" expenses was primarily attributable to increased personnel and infrastructure expenses to support the growth of the DISH Network. This increase was partially offset by a decrease in legal expenses. "G&A" expenses represented 8% of "Total revenue" during each of the three months ended September 30, 2002 and 2001. While there can be no assurance, we expect "G&A" expenses as a percentage of "Total revenue" for the remainder of 2002 to be consistent with the expense to revenue ratio for the nine months ended September 30, 2002.

Non-cash, Stock-based Compensation. During 1999, we adopted an incentive plan which provided certain key employees with incentives including stock options. The payment of these incentives was contingent upon our achievement of certain financial and other goals. We met certain of these goals during 1999. Accordingly, during 1999 we recorded approximately $179 million of deferred compensation related to post-grant appreciation of stock options granted pursuant to the 1999 incentive plan. The related deferred compensation will be recognized over the five-year vesting period. Accordingly, during the three months ended September 30, 2002 we recognized $4 million of compensation under this performance-based plan, a decrease of $3 million compared to the same period in 2001.

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

This decrease is primarily attributable to stock option forfeitures. The remaining deferred compensation of $12 million, which will be reduced by future forfeitures, if any, will be recognized over the remaining vesting period.

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

	Three Months Ended September 30,	
	2001	2002
Customer service center and other	$ 311	$ 182
Satellite and transmission	388	183
General and administrative	6,132	3,357
Total non-cash, stock-based compensation	$6,831	$3,722

Options to purchase an additional 9.1 million shares are outstanding as of September 30, 2002 and were granted at fair market value during 1999, 2000 and 2001 pursuant to our Long Term Incentive Plan. The weighted-average exercise price of these options is $9.02. Vesting of these options is contingent upon meeting certain longer-term goals, which would be achieved following consummation of the proposed merger with Hughes. The vesting of these options will not accelerate as a result of the proposed merger with Hughes. Since the merger has not yet occurred, the goals have not yet been achieved. Consequently, no compensation was recorded during the three months ended September 30, 2001 and 2002 related to these long-term options. We will record the related compensation at the earlier of achievement of the performance goals or consummation of the proposed merger with Hughes. Such compensation, if recorded, would result in material non-cash, stock-based compensation expense in our statements of operations.

Pre-Marketing Cash Flow. Pre-marketing cash flow is comprised of EBITDA, as defined below, plus "Cost of sales — subscriber promotion subsidies," "Other subscriber promotion subsidies" and "Advertising and other "expenses. Pre-marketing cash flow was $497 million during the three months ended September 30, 2002, an increase of $72 million or 17% compared to the same period in 2001. Our pre-marketing cash flow as a percentage of "Total revenue" was approximately 41% and 42% during the three months ended September 30, 2002 and 2001, respectively. While there can be no assurance, during the remainder of 2002 we expect pre-marketing cash flow as a percentage of "Total revenue" to be generally consistent with year to date percentages.

Earnings Before Interest, Taxes, Depreciation and Amortization. EBITDA is defined as "Operating income (loss)" plus "Depreciation and amortization," and is adjusted for "Non-cash, stock-based compensation." EBITDA was $197 million during the three months ended September 30, 2002, compared to $155 million during the same period in 2001. The improvement in EBITDA was directly attributable to the increase in the number of DISH Network subscribers, which continues to result in revenue sufficient to support the cost of new and existing subscribers, and to favorable litigation developments resulting in a non-recurring reduction in the cost of set-top box equipment totaling approximately $36 million. The improvement was partially offset by a decrease in Digital Home Plan penetration compared to the same period in 2001, resulting in a reduction in capitalized costs for the period. Our calculation of EBITDA for the three months ended September 30, 2002 and 2001 does not include approximately $4 million and $7 million, respectively, of non-cash compensation expense resulting from post-grant appreciation of employee stock options. In addition, EBITDA does not include the impact of capital expenditures under our Digital Home Plan promotion of approximately $74 million and $109 million during 2002 and 2001, respectively. While there can be no assurance, we currently expect to end 2002 with EBITDA of approximately $750-$800 million, based upon our increased subscriber addition expectation and as a result of anticipated lower penetration rates in our Digital Home Plan promotion. As previously discussed, to the extent we introduce more aggressive marketing promotions and our subscriber acquisition costs materially increase, our EBITDA results will be negatively impacted because subscriber acquisition costs are generally expensed as incurred.

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

It is important to note that EBITDA and pre-marketing cash flow do not represent cash provided or used by operating activities. We use EBITDA and pre-marketing cash flow as a few of the key measurements of operating efficiency and overall financial performance and believe these can be helpful measures for those evaluating companies in the multi-channel video programming distribution industry. Conceptually, EBITDA measures the amount of income generated each period that could be used to service debt, pay taxes and fund capital expenditures because EBITDA is independent of the actual leverage and capital expenditures employed by the business. Pre-marketing cash flow measures EBITDA before costs incurred to acquire subscribers to help assess the amount of income generated each period to be used to service debt and acquire subscribers. EBITDA and pre-marketing cash flow should not be considered in isolation or as a substitute for measures of performance prepared in accordance with generally accepted accounting principles.

Depreciation and Amortization. "Depreciation and amortization" expense totaled $98 million during the three months ended September 30, 2002, a $25 million increase compared to the same period in 2001. The increase in "Depreciation and amortization" expense principally resulted from an increase in depreciation related to the commencement of commercial operation of EchoStar VII in April 2002 and Digital Home Plan equipment and other depreciable assets placed in service during late 2001 and thereafter. This increase was partially offset by a reduction of approximately $5 million of amortization expense as a result of our adoption of Statement of Financial Accounting Standards No. 142 ("FAS 142"). In accordance with FAS 142, effective January 2002 we ceased amortization of our FCC authorizations. During October 2002, in connection with the commencement of commercial operations, we began depreciating EchoStar VIII.

Other Income and Expense. "Other expense," net, totaled $264 million during the three months ended September 30, 2002, an increase of $192 million compared to the same period in 2001. This increase is primarily attributable to an increase of approximately $134 million resulting from an increase in valuation of contingent value rights associated with the Vivendi equity investment. This increase also resulted from an increase in "Other" as a result of net losses on marketable and non-marketable investment securities of approximately $40 million recorded in 2002 compared to approximately $3 million recorded in 2001, and an increase in "Interest expense" as a result of the issuance of our 9 1/8% Senior Notes in December 2001 and approximately $4 million of bridge financing fees.

Net income (loss). "Net loss" was $168 million during the three months ended September 30, 2002, a decrease of $171 million compared to "Net income" of $3 million for the same period in 2001. This decrease is primarily attributable to increases in operating and other expenses discussed above and an increase in "Other income (expense)" discussed above. This decrease was partially offset by favorable litigation developments resulting in a non-recurring reduction in the cost of set-top box equipment of approximately $36 million.

Net income (loss) available (attributable) to common shareholders. "Net loss attributable to common shareholders" was $168 million during the three months ended September 30, 2002, a decrease of $171 million compared to "Net income available to common shareholders" of $3 million for the same period in 2001. This decrease is primarily attributable to the increased "Net loss", as discussed above.

Nine Months Ended September 30, 2002 Compared to Nine Months Ended September 30, 2001.

Revenue. "Total revenue" for the nine months ended September 30, 2002 was $3.496 billion, an increase of $645 million compared to "Total revenue" for the nine months ended September 30, 2001 of $2.851 billion. The increase in "Total revenue" was primarily attributable to continued DISH Network subscriber growth.

DISH Network "Subscription television services" revenue totaled $3.208 billion for the nine months ended September 30, 2002, an increase of $610 million compared to the same period in 2001. This increase was directly attributable to continued DISH Network subscriber growth.

For the nine months ended September 30, 2002, "DTH equipment sales" revenue totaled $202 million, an increase of $41 million compared to the same period during 2001. The increase in "DTH equipment sales" revenue

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

principally resulted from an increase in sales of digital set-top boxes to Bell ExpressVu and an increase in sales of DBS accessories to DISH Network subscribers. This increase was partially offset by a decrease in sales of digital set-top boxes to Via Digital.

DISH Network Operating Expenses. "DISH Network operating expenses" totaled $1.622 billion during the nine months ended September 30, 2002, an increase of $348 million or 27% compared to the same period in 2001. The increase in "DISH Network operating expenses" in total was consistent with, and primarily attributable to, the increase in the number of DISH Network subscribers. "DISH Network operating expenses" represented 51% and 49% of "Subscription television services" revenue during the nine months ended September 30, 2002 and 2001, respectively. The increase in "DISH Network operating expenses" as a percentage of "Subscription television services" revenue primarily resulted from the expansion of our installation and service business, the opening of a new call center, increased costs in order to meet the demands of current "must carry" requirements and costs associated with offering additional markets where we carry local channels.

"Subscriber-related expenses" totaled $1.287 billion during the nine months ended September 30, 2002, an increase of $249 million compared to the same period in 2001. The increase in total "Subscriber-related expenses" is primarily attributable to the increase in DISH Network subscribers. Such expenses represented 40% of "Subscription television services" revenues during each of the nine months ended September 30, 2002 and 2001.

"Customer service center and other" expenses totaled $290 million during the nine months ended September 30, 2002, an increase of $83 million as compared to the same period in 2001. "Customer service center and other" expenses totaled 9% and 8% of "Subscription television services" revenue during the nine months ended September 30, 2002 and 2001, respectively. The increase in "Customer service center and other" expenses in total and as a percentage of "Subscription television services" revenue primarily resulted from increased personnel and telephone expenses to support the growth of the DISH Network, the opening of a new call center, increased operating expenses related to the expansion of our installation and service business and increased installation costs due to second-dish installations in order to meet the demands of "must carry".

"Satellite and transmission" expenses totaled $44 million during the nine months ended September 30, 2002, a $15 million increase compared to the same period in 2001. The increase in "Satellite and transmission" expenses primarily resulted from increased operations at our digital broadcast centers in order to meet the demands of current "must carry" requirements and offer additional markets where we carry local channels. During the nine months ended September 30, 2002, we launched 11 additional local markets. "Satellite and transmission" expenses totaled 1% of "Subscription television services" revenue during each of the nine months ended September 30, 2002 and 2001.

Cost of sales — DTH equipment. "Cost of sales — DTH equipment" totaled $124 million during the nine months ended September 30, 2002, an increase of $15 million compared to the same period in 2001. The increase in "Cost of sales — DTH equipment" principally resulted from a increase in sales of digital set-top boxes to Bell ExpressVu. "Cost of sales — DTH equipment" represented 61% and 68% of "DTH equipment sales" revenue, during the nine months ended September 30, 2002 and 2001, respectively. The decrease in "Cost of sales — DTH equipment" as a percentage of "DTH equipment sales" revenue primarily related to increased sales of higher-margin DBS accessories and favorable litigation developments resulting in a non-recurring reduction in the cost of set-top box equipment of approximately $5 million.

Subscriber Acquisition Costs. During the nine months ended September 30, 2002, our subscriber acquisition costs totaled approximately $812 million, or approximately $409 per new subscriber activation. Comparatively, our subscriber acquisition costs during the nine months ended September 30, 2001 totaled approximately $816 million, or approximately $403 per new subscriber activation. Total subscriber acquisition costs for the nine months ended September 30, 2002 include adjustments which reduce the costs related to the production of EchoStar receiver systems. During the second quarter of 2002, we recorded an adjustment of approximately $17 million resulting from the completion of royalty arrangements with more favorable terms than estimated amounts previously accrued. During the third quarter of 2002, as a result of favorable litigation developments we recorded a non-recurring reduction in the cost of set-top box equipment of approximately $31 million. The increase in total subscriber acquisition costs, absent these

adjustments, primarily resulted from an increase in "Other subscriber promotion subsidies" primarily related to additional subsidies on second receiver installations, an increase in "Advertising and other" expense related to our 2002 marketing promotions, and a decrease in Digital Home Plan penetration compared to 2001. The increase was partially offset by a decrease in "Cost of sales — subscriber promotion subsidies" due to reductions in the cost and sales price of manufactured equipment.

Since we retain ownership of the equipment, amounts capitalized under our Digital Home Plan are not included in our calculation of these subscriber acquisition costs. Capital expenditures under our Digital Home Plan promotion totaled approximately $240 million and $258 million for the nine months ended September 30, 2002 and 2001, respectively. Cash and returned equipment received as a result of Digital Home Plan customer disconnects totaling approximately $30 million and $10 million during the nine months ended September 30, 2002 and 2001, respectively, also is not included in our calculation of subscriber acquisition costs.

General and Administrative Expenses. "General and administrative" expenses totaled $279 million during the nine months ended September 30, 2002, an increase of $30 million as compared to the same period in 2001. The increase in "G&A" expenses was principally attributable to increased personnel and infrastructure expenses to support the growth of the DISH Network. "G&A" expenses represented 8% and 9% of "Total revenue" during the nine months ended September 30, 2002 and 2001, respectively.

Non-cash, Stock-based Compensation. As a result of substantial post-grant appreciation of stock options, during the nine months ended September 30, 2002 we recognized $8 million of compensation under the 1999 incentive plan, a decrease of $13 million compared to the same period in 2001. This decrease is primarily attributable to stock option forfeitures resulting from employee terminations. The remaining deferred compensation of $12 million, which will be reduced by future forfeitures, if any, will be recognized over the remaining vesting period.

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

	Nine Months Ended September 30,	
	2001	**2002**
Customer service center and other	$ 932	$ 547
Satellite and transmission	1,165	(189)
General and administrative	19,201	7,199
Total non-cash, stock-based compensation	$21,298	$7,557

Pre-Marketing Cash Flow. Pre-marketing cash flow is comprised of EBITDA, as defined below, plus "Cost of sales — subscriber promotion subsidies," "Other subscriber promotion subsidies" and "Advertising and other" expenses. Pre-marketing cash flow was $1.434 billion during the nine months ended September 30, 2002, an increase of $270 million or 23% compared to the same period in 2001. Our pre-marketing cash flow as a percentage of "Total revenue" was approximately 41% during each of the nine months ended September 30, 2002 and 2001.

Earnings Before Interest, Taxes, Depreciation and Amortization. EBITDA is defined as "Operating income (loss)" plus "Depreciation and amortization," and is adjusted for "Non-cash, stock-based compensation." EBITDA was $612 million during the nine months ended September 30, 2002, compared to $340 million during the same period in 2001. The improvement in EBITDA was directly attributable to the increase in the number of DISH Network subscribers, which continues to result in revenue sufficient to support the cost of new and existing subscribers, and to previously discussed adjustments totaling approximately $53 million which reduce the costs related to the production of EchoStar receiver systems. The improvement was partially offset by a decrease in Digital Home Plan penetration

compared to the same period in 2001, resulting in a reduction in capitalized costs for the period. Our calculation of EBITDA for the nine months ended September 30, 2002 and 2001 does not include approximately $8 million and $21 million, respectively, of non-cash compensation expense resulting from post-grant appreciation of employee stock options. In addition, EBITDA does not include the impact of capital expenditures under our Digital Home Plan promotion of approximately $240 million and $258 million during 2002 and 2001, respectively.

It is important to note that EBITDA and pre-marketing cash flow do not represent cash provided or used by operating activities. We use EBITDA and pre-marketing cash flow as a few of the key measurements of operating efficiency and overall financial performance and believe these can be helpful measures for those evaluating companies in the multi-channel video programming distribution industry. Conceptually, EBITDA measures the amount of income generated each period that could be used to service debt, pay taxes and fund capital expenditures because EBITDA is independent of the actual leverage and capital expenditures employed by the business. Pre-marketing cash flow measures EBITDA before costs incurred to acquire subscribers to help assess the amount of income generated each period to be used to service debt and acquire subscribers. EBITDA and pre-marketing cash flow should not be considered in isolation or as a substitute for measures of performance prepared in accordance with generally accepted accounting principles.

Depreciation and Amortization. "Depreciation and amortization" expense aggregated $267 million during the nine months ended September 30, 2002, a $72 million increase compared to the same period in 2001. The increase in "Depreciation and amortization" expense principally resulted from an increase in depreciation related to the commencement of commercial operations of EchoStar VII in April 2002 and Digital Home Plan equipment and other depreciable assets placed in service during late 2001 and thereafter. This increase was partially offset by a reduction of approximately $14 million of amortization expense as a result of our adoption of FAS 142. In accordance with FAS 142, effective January 2002 we ceased amortization of our FCC authorizations. During October 2002, in connection with the commencement of commercial operations, we began depreciating EchoStar VIII.

Other Income and Expense. "Other expense," net, totaled $494 million during the nine months ended September 30, 2002, an increase of $197 million compared to $297 million for the same period in 2001. This increase is primarily attributable to an increase of approximately $140 million resulting from an increase in valuation of contingent value rights associated with the Vivendi equity investment. This increase also resulted from an increase in "Interest expense" as a result of the issuance of our 5 3/4% Convertible Subordinated Notes in May 2001, the issuance of our 9 1/8% Senior Notes in December 2001, and approximately $28 million of bridge financing commitment fees. The increase in "Other expense" was partially offset by a decrease of approximately $12 million in equity in losses of affiliates and an increase in "Interest income" of approximately $13 million due to an increase in cash, cash equivalents and marketable investment securities raised through debt and equity financings during 2002.

Net income (loss). "Net loss" was $166 million during the nine months ended September 30, 2002, a $7 million improvement compared to a "Net loss" of $173 million for the same period in 2001. This improvement is primarily attributable to the increase in the number of DISH Network subscribers which continues to result in revenue sufficient to support the cost of new and existing subscribers and to previously discussed adjustments totaling approximately $53 million which reduce the costs related to the production of EchoStar receiver systems. The improvement in "Net loss" was partially offset by the increase in "Other expense", net, discussed above.

Net income (loss) available (attributable) to common shareholders. "Net loss attributable to common shareholders" was $228 million during the nine months ended September 30, 2002, an increase of $55 million compared to a "Net loss attributable to common shareholders" of $173 million for the same period in 2001. This increase in "Net loss attributable to common shareholders" was primarily attributable to $62 million of non-cash retained earnings charges resulting from the beneficial conversion features associated with the Vivendi equity investment. This item is not a component of "Net income (loss)" but is included in "Net income (loss)" available (attributable) to common shareholders for purposes of computing net income (loss) per common share. The increase was partially offset by the improvement in "Net loss" discussed above.

LIQUIDITY AND CAPITAL RESOURCES

Cash Sources

As of September 30, 2002, our cash, cash equivalents and marketable investment securities totaled $4.415 billion, including $159 million of cash reserved for satellite insurance and approximately $9 million of restricted cash,

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compared to $2.952 billion, including $122 million of cash reserved for satellite insurance and $1 million of restricted cash, as of December 31, 2001. For the nine months ended September 30, 2002 and 2001, we reported net cash flows from operating activities of $463 million and $333 million, respectively. The $130 million increase in net cash flow from operating activities reflects, among other things, changes in working capital and an increase in the number of DISH Network subscribers.

Except with respect to the Hughes merger, if completed, we expect that our future working capital, capital expenditure and debt service requirements will be satisfied primarily from existing cash and investment balances and cash generated from operations. As previously discussed, if the Hughes merger is terminated, under certain circumstances we may be required to pay a $600 million termination fee to Hughes, and may be required to purchase Hughes' interest in PanAmSat for approximately $2.7 billion. While we expect to meet these cash requirements by utilizing a portion of our cash, cash equivalents and marketable investment securities on hand, we may be required to raise additional capital in the future to meet future working capital, capital expenditure, debt service and other funding requirements. There can be no assurance that additional financing will be available on acceptable terms, or at all, if needed in the future. Our ability to generate positive future operating and net cash flows is dependent upon our ability to continue to expand our DISH Network subscriber base, retain existing DISH Network subscribers, and our ability to grow our EchoStar Technologies Corporation's business. There can be no assurance that we will be successful in achieving any or all of our goals. The amount of capital required to fund our 2002 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, including capitalized costs associated with our Digital Home Plan. 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 continued 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. As a result, acquisition discussions and offers, and in some cases, negotiations may take place and future material investments or acquisitions involving cash, debt or equity securities or a combination thereof may result.

Investment Securities

We currently classify all marketable investment securities as available-for-sale. In accordance with generally accepted accounting principles, we adjust the carrying value of our available-for-sale marketable investment securities to fair market value and report the related temporary unrealized gains and losses as a separate component of stockholders' deficit. Declines in the fair market value of a marketable investment security which are estimated to be "other than temporary" must be recognized in the statement of operations, thus establishing a new cost basis for such investment. We evaluate our marketable investment securities portfolio on a quarterly basis to determine whether declines in the market value of these securities are other than temporary. This quarterly evaluation consists of reviewing, among other things, the fair value of our marketable investment securities compared to the carrying value of these securities, the historical volatility of the price of each security and any market and company specific factors related to each security. Generally, absent specific factors to the contrary, declines in the fair value of investments below cost basis for a period of less than six months are considered to be temporary. Declines in the fair value of investments for a period of six to nine months are evaluated on a case by case basis to determine whether any company or market-specific factors exist which would indicate that such declines are other than temporary. Declines in the fair value of investments below cost basis for greater than nine months are considered other than temporary and are recorded as charges to earnings, absent specific factors to the contrary.

As of September 30, 2002, we recorded unrealized losses of approximately $60 million as a separate component of stockholders' deficit. During the nine months ended September 30, 2002, we also recorded an aggregate charge to earnings for other than temporary declines in the fair market value of certain of our marketable investment securities of approximately $50 million, and established a new cost basis for these securities. This amount does not include realized gains of approximately $13 million on the sales of marketable investment securities. Our approximately $4.2 billion of cash, cash equivalents and marketable investment securities include debt and equity

securities which we own for strategic and financial purposes. The fair market value of these strategic marketable investment securities aggregated approximately $75 million as of September 30, 2002. During the quarter ended September 30, 2002, our portfolio generally, and our strategic investments particularly, experienced and continue to experience, volatility. If the fair market value of our marketable securities portfolio does not increase to cost basis or if we become aware of any market or company specific factors that indicate that the carrying value of certain of our securities is impaired, we may be required to record additional charges to earnings in future periods equal to the amount of the decline in fair value.

We also have made strategic equity investments in certain non-marketable investment securities. Our ability to create realizable value from our strategic investments in companies that are not public is dependent on the success of their business and their ability to obtain sufficient capital to execute their business plans. Since private markets are not as liquid as public markets, there is also increased risk that we will not be able to sell these investments, or that when we desire to sell them that we will not be able to obtain full value for them. We evaluate our non-marketable investment securities on a quarterly basis to determine whether the carrying value of each investment is impaired. The securities of these companies are not publicly traded. As such, this quarterly evaluation consists of reviewing, among other things, company business plans and current financial statements, if available, for factors which may indicate an impairment in 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.

We made a strategic investment in StarBand Communications, Inc. During April 2002, we changed our sales and marketing relationship with StarBand and ceased subsidizing StarBand equipment. During the first quarter of 2002, we determined that the carrying value of our investment in StarBand, net of approximately $8 million of equity in losses of StarBand recorded during 2002, was not recoverable and recorded an impairment charge of approximately $28 million to reduce the carrying value of our StarBand investment to zero. The determination was based, among other things, on our continuing evaluation of StarBand's business model, including further deterioration of StarBand's limited available cash, combined with increasing cash requirements, resulting in a critical need for additional funding, with no clear path to obtain that cash. StarBand subsequently filed for bankruptcy during June 2002.

Subscriber Turnover

Our percentage churn for the nine months ended September 30, 2002 decreased compared to our percentage churn for the same period in 2001. An approximation of our churn levels can be calculated using our net new subscriber numbers and our subscriber acquisition costs, both in the aggregate and on a per new subscriber basis. While there can be no assurance, we currently expect that our percentage churn during 2002 will be generally consistent with our percentage churn during 2001. We also expect that our churn will continue to be lower than satellite and cable industry averages. However, 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 distant network channels and superstations to a material portion of our subscriber base, which could cause many of those customers to cancel their subscription to our other services. Any such terminations could result in a small reduction in average monthly revenue per subscriber and could result in an increase in our percentage churn.

Commencing January 1, 2002, we were required to comply with the statutory requirement to carry all qualified over the air television stations by satellite in any market where we carry any local network channels by satellite. In April 2002, the Media Bureau of the FCC (the "Bureau") concluded that our "must carry" implementation methods were not in compliance with the "must carry" rules. While we continue to believe our practices comply with the law, the Bureau offered a number of remedial actions we could implement in order to meet their standards. We have implemented many such remedial actions which we believe should satisfy the Bureau and have filed compliance reports with the FCC describing our "must carry" implementation measures made in response to the Bureau's order. We have not received a ruling from the Bureau either accepting or rejecting those measures. However, there can be no assurance that our remedial actions will ultimately be deemed satisfactory by the FCC. In the event that our remedial actions are found to be unsatisfactory by the FCC, we could be forced to reduce the number of markets where we provide local channels in order to meet their interpretation of "must carry" obligations. Any reduction in the number of markets we serve in order to comply with "must carry" requirements for other markets would adversely affect our

operations and could result in a temporary increase in churn. In combination, these resulting subscriber terminations would result in a small reduction in average monthly revenue per subscriber and could increase our percentage churn.

Subscriber Acquisition Costs

As previously described, we generally subsidize the cost and installation of EchoStar receiver systems in order to attract new DISH Network subscribers. Our average subscriber acquisition costs were approximately $409 per new subscriber activation during the nine months ended September 30, 2002. While there can be no assurance, we currently expect per subscriber acquisition costs for the full year to be approximately $430. Anticipated per subscriber acquisition costs for the full year take into consideration, among other things, anticipated advertising costs, and promotions targeting subscribers who want multiple receivers. Those promotions result in higher equipment subsidies and increased dealer commissions compared to our typical historical promotions. While there can be no assurance, we believe heightened credit procedures we implemented during the first quarter, together with promotions tailored towards subscribers with multiple receivers, will attract better long-term subscribers than could be obtained through less costly promotions. 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 other more aggressive promotions if we determine that they are necessary to respond to competition, or for other reasons.

Since we retain ownership of the equipment, amounts capitalized under our Digital Home Plan promotion are not included in our calculation of these subscriber acquisition costs. Capital expenditures under our Digital Home Plan promotion totaled approximately $240 million for the nine months ended September 30, 2002. Cash and returned equipment received as a result of Digital Home Plan customer disconnects totaling approximately $30 million during the nine months ended September 30, 2002, also is not included in our calculation of subscriber acquisition costs.

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

Conditional Access System

The access control system is central to the security network that prevents unauthorized viewing of programming. Theft of cable and satellite programming has been widely reported and our signal encryption has been pirated and could be further compromised in the future. Theft of our programming reduces future potential revenue and increases our net subscriber acquisition costs. In order to combat piracy and to generate additional future revenue opportunities, we may decide to replace smart cards at any time in the future. Total cash expended to replace the smart cards, together with temporary increases in customer care and other related costs, could total approximately $100 million, but are not expected to have a material impact on earnings. Smart card replacement could also result in a temporary increase in churn.

Merger Obligations

On October 10, 2002, the Federal Communications Commission ("FCC") announced that it declined to approve the transfer of the licenses necessary to allow our merger with Hughes to close and designated the application for hearing by an administrative law judge. The FCC, however, has given the parties until November 27, 2002 to file an amended application to address the FCC's concerns and to file a petition to suspend the hearing. On October 31, 2002, the U.S. Department of Justice ("DOJ"), twenty-three states, the District of Columbia and Puerto Rico filed a complaint for permanent injunctive relief in the United States District Court for the District of Columbia against GM, Hughes and us. The suit seeks to permanently enjoin us from merging with Hughes and requests a ruling that the proposed merger violates Section 7 of the Clayton Act. EchoStar, Hughes and GM sought an expedited schedule with a trial date in November. The DOJ and states proposed that the trial commence in June. On November 5, 2002, the District Court

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

denied our petition for an expedited trial and denied plantiffs' proposed trial date, suggesting instead a late February or early March trial date. No trial date has yet been set. The merger agreement provides that either party may, in certain circumstances, terminate prior to the trial date suggested by the Court. Hughes and GM have to date been unwilling to agree to an extension of any merger termination date. We intend to continue to discuss how to proceed with GM and Hughes. However, no assurances can be given that the required regulatory clearances and approvals will be obtained from the DOJ and the FCC within the timeframes required by the merger agreement, or if so obtained, that all other conditions to the transactions will be satisfied such that the merger can be completed.

The agreements related to our merger with Hughes require that we arrange for the availability of $7.025 billion of cash in connection with the merger and related transactions. We expect that we will provide about $1.5 billion of this amount from available cash at the time of signing the merger agreement. In addition, we and Hughes obtained a $5.525 billion bridge financing commitment to assure that the remaining required cash would be available if and to the extent it could not be obtained through traditional capital markets or bank financing transactions. The bridge commitment was reduced to $3.325 billion as a result of the sale of $700 million of EDBS' 9 1/8% senior notes due 2009 and a $1.5 billion investment by Vivendi Universal in us, which resulted in the issuance of 5,760,479 shares of our Series D convertible preferred stock to a subsidiary of Vivendi. While there can be no assurance, the remaining $3.325 billion bridge commitment is expected to be reduced to zero through a combination of financings by us, Hughes or a subsidiary of Hughes on or prior to the closing of the Hughes merger through public or private debt or equity offerings, bank debt or a combination thereof. The amount of such cash that could be raised by us prior to the completion of the Hughes merger is severely restricted. Our agreements with GM and Hughes also severely restrict the amount of additional equity capital that can be raised by us, which restrictions may continue for up to two years following completion of the Hughes merger, absent possible favorable IRS rulings or termination of the Hughes merger.

In connection with the bridge commitment, during 2001 we paid approximately $55 million of commitment fees. Approximately $7.4 million of deferred commitment fees were expensed upon issuance of the 9 1/8% Senior Notes by EDBS and approximately $15 million of deferred commitment fees were expensed upon closing of the $1.5 billion equity investment in us by Vivendi. Approximately $33 million of deferred commitment fees remain as of September 30, 2002. That amount will be charged to interest expense as and if the bridge commitment is further reduced. If the Hughes merger is not consummated, total remaining commitment fees will be immediately charged to earnings. In the event that the bridge commitment is drawn, any deferred commitment fees not previously expensed will be amortized to interest expense in future periods.

A fee of .50% per year on the aggregate bridge financing commitment outstanding is payable quarterly, in arrears, until the closing of the Hughes merger, or the termination or expiration of the agreements relating to the bridge commitments. These fees are expensed as incurred. During the nine months ended September 30, 2002, we expensed approximately $13 million for these fees.

If the Hughes merger is terminated, under certain circumstances we may be required to pay a $600 million termination fee to Hughes, and may, under certain circumstances, be required to purchase Hughes' interest in PanAmSat for approximately $2.7 billion, either directly or through a merger or tender offer. In the event that only Hughes' interest in PanAmSat is initially acquired, we would also be required to offer to acquire all of the remaining outstanding stock of PanAmSat at $22.47 per share. We expect that our acquisition of Hughes' interest in PanAmSat, which would be at a price of $22.47 per share, together with our assumed purchase of the remaining outstanding PanAmSat shares and our payment of the termination fee to GM would require at least $3.4 billion of cash and approximately $600 million of our class A common stock (although we might instead choose to use a greater proportion of cash, and less or no stock for the purchase). We expect that we would meet this cash requirement by utilizing a portion of our cash, cash equivalents, and marketable investment securities on hand.

As of September 30, 2002, we have capitalized approximately $43 million in merger related costs. If the Hughes merger is not consummated, we may be required to record a charge to earnings in future periods equal to all or a portion of this amount, plus remaining deferred bridge commitment fees of approximately $33 million. In addition, we may be required to record charges to earnings for any amount by which the actual PanAmSat

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

purchase price exceeds the estimated fair value of the investment, and, if applicable, the $600 million termination fee discussed above.

Certain of the indentures governing our debt or convertible debt instruments contain change in control provisions which, as a result of our merger with Hughes, would require the combined entity to make an offer to re-purchase those obligations at 101% of the principal amount thereof, together with accrued but unpaid interest on the obligations.

It may be possible to obtain the consent of the holders of those obligations in order to avoid implementation of the change in control offers. A successful consent solicitation could require us to make cash payments to the holders and/or to amend certain terms of the relevant indentures for the benefit of the holders, potentially including terms relating to the maturity of the obligations, the interest payable on the obligations, or to provide other similar inducements to the holders. The amounts and significance of those payments or inducements would depend in large part upon the prices at which our debt and convertible debt instruments are trading at the time of the solicitations. These trading prices depend on investors’ continuing assessment of our prospects and the prospects for the combined entity, the credit rating on those instruments, and upon prevailing interest rates and other broad factors which impact the markets or the industry segments in which we operate.

We have not yet determined whether or when to undertake those solicitations or whether to pursue a different resolution. Pursuant to the merger agreement with Hughes, as amended, subsequent to regulatory approval of the merger, we will be required to use commercially reasonable efforts to solicit consents from the holders of the applicable debt instruments so that completion of the merger will not constitute a change in control under the relevant indentures, including our offering a reasonable and customary consent fee or interest payment modification; or obtain additional committed financing in an amount sufficient to refinance all indebtedness outstanding under those indentures to which an amendment to the relevant change in control provision was not obtained.

The cost to obtain all of the requisite consents could be substantial, and could, under certain circumstances, have a material adverse affect on our financial condition and on consummation of the merger.

Vivendi Equity Investment

In connection with Vivendi’s purchase of Series D convertible preferred stock during January 2002, Vivendi received contingent value rights. If during a 20 day trading period preceding the three-year anniversary of the completion of the Hughes merger, or if the merger is not completed, the 30 month settlement date specified below (if the Hughes merger is not completed), the average price of our class A common stock is above the $26.04 price per share paid by Vivendi, then no amount will be payable. If the average price of our class A common stock during the relevant 20 day period is below that price, then we are obligated to pay Vivendi the difference between the price paid by Vivendi and the then current average price, up to a maximum payment under the rights of $225 million if the Hughes merger is completed, or $525 million if the Hughes merger is not completed. Any amount owed under these rights, which may be paid in cash or in EchoStar’s class A common stock at our option, would be settled three years after completion of the Hughes merger, except in certain limited circumstances. If the Hughes merger is not consummated, these rights will be settled at the earlier of 30 months after the acquisition of Hughes’ 81% interest in PanAmSat or the termination of the merger agreement and the PanAmSat stock purchase agreement. Any sale, transfer, or other disposition of the Series D convertible preferred stock, or the EchoStar class A common stock issued upon conversion of the Series D convertible preferred stock (other than to certain wholly owned subsidiaries), will result in termination of the portion of the contingent value rights corresponding to the number of shares transferred. Generally, in the event that the price of our class A common stock is at or above $31.25 for 90 consecutive calendar days prior to maturity of the contingent value rights, the rights automatically expire. However, during the period prior to either consummation of the transactions contemplated by the merger agreement with Hughes or termination of the merger agreements by the parties, Vivendi is prohibited from directly or indirectly selling or otherwise disposing of any EchoStar class A common stock, Series D convertible preferred stock, or any other EchoStar equity security, including from engaging in any hedging or derivative transaction involving such securities, and the contingent value rights cannot expire during that period regardless of the trading price.

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

We used a Black-Scholes pricing model, a widely accepted tool which is commonly used to value financial instruments such as options, warrants, etc., and applied certain other assumptions and judgments described below, to value the contingent rights. The current settlement amount of the contingent value rights is re-estimated on a quarterly basis by revising the current stock price included in the Black-Scholes model and re-evaluating all assumptions, as well as using management's estimates considering relevant facts and circumstances. Changes in the estimated value are recorded as charges to earnings. As of September 30, 2002, the estimated value of the contingent value rights is approximately $171 million.

The Black-Scholes assumptions used to value the contingent value rights are as follows:

	January 22, 2002 (CVR issuance date)	September 30, 2002
Black-Scholes Assumptions:		
Risk-free interest rate	3.48%	2.02%
Volatility factor	56.96%	52.05%
Dividend yield	0.00%	0.00%
Expected term of options	3-3.5 years	2.8-3.1 years

Since the maximum possible payment under the contingent value rights is different depending on whether the merger with Hughes is consummated, the contingent value rights valuation also requires an assumption to be made with respect to the probability that the merger with Hughes will be consummated. As of September 30, 2002, if management decreased by 10 percentage points its estimate regarding the likelihood that the merger will be consummated, without changing any other assumptions, our liabilities, and the estimated value of the contingent value rights, would increase by approximately $9.9 million, resulting in a charge to earnings in the same amount. Similarly, if management increased by 10 percentage points its estimate regarding the likelihood the merger will be consummated, our liabilities, and the estimated value of the contingent value rights, would decrease by approximately $9.9 million, resulting in an increase in earnings by the same amount.

Further, the contingent rights might terminate prior to their maturity date, either as a result of sales by Vivendi of underlying equity, or as a result of the price of our common stock trading, for 90 consecutive days, at least 20% above the price per share initially paid by Vivendi. As a result, the contingent value rights valuation also requires an adjustment to be made to the Black-Scholes Model to account for the possibility that the contingent value rights will terminate in whole or in part prior to their maturity date. As of September 30, 2002, if management decreased by 10 percentage points its estimate regarding the possibility that the contingent value rights might terminate prior to their maturity, without changing any other assumptions, our liabilities, and the estimated value of the contingent value rights, would increase by approximately $34.1 million, resulting in a charge to earnings in the same amount. Similarly, if management increased by 10 percentage points its estimate of the likelihood the contingent value rights might terminate prior to their maturity date, our liabilities, and the estimated value of the contingent value rights, would decrease by approximately $34.1 million, resulting in an increase in earnings by the same amount.

As of September 30, 2002, if our stock price decreased by 10%, without changing any other assumptions, our liabilities, and the estimated value of the contingent value rights, would increase by approximately $8.9 million, resulting in a charge to earnings in the same amount. A 10% increase in our stock price, without changing any other assumptions, would result in a decrease in our liabilities, and the estimated value of the contingent value rights, by approximately $8.6 million, and an increase in earnings by the same amount. If all three of the above described factors were simultaneously decreased by the percentages discussed above, our liabilities, and the estimated value of the contingent value rights, would increase by approximately $57.4 million, resulting in a charge to earnings in the same amount. A simultaneous increase of each factor by the percentages discussed above would result in a decrease in our liabilities, and the estimated value of the contingent value rights, by approximately $48.5 million, and an increase in earnings by the same amount.

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

The $30.7 million initial estimated value of the contingent value rights, together with aggregate quarterly adjustments through June 30, 2002 of approximately $5.4 million, were originally recorded as a component of net income (loss) available (attributable) to common shareholders and reflected in net income (loss) per common share, but were not included as a component of net income (loss). These amounts were also included as a credit to Series D convertible preferred stock and contingent value rights, and therefore were not reflected as liabilities on the March 31, 2002 and June 30, 2002 balance sheets. As of September 30, 2002, the contingent value rights have been reclassified from Series D convertible preferred stock to a liability on the accompanying balance sheets. Changes in the estimated value of the contingent value rights, approximating $134.5 million for the three months ended September 30, 2002, have been recorded as a charge to earnings for the period. In addition, the statement of operations for the nine months ended September 30, 2002 has been adjusted to reflect the changes in the estimated value of the contingent value rights during the six months ended June 30, 2002, aggregating approximately $5.4 million, as a charge to earnings. Accordingly, the estimated value of the contingent value rights of approximately $171 million is reflected as a liability as of September 30, 2002 and the aggregate changes in estimated value of $139.9 million have been reflected as charges to earnings for the nine months then ended. These adjustments had no impact on reported net income (loss) available (attributable) to common shareholders or basic and diluted net income (loss) per share for the nine months ended September 30, 2002, or for any previously reported period. These adjustments also caused an increase to additional paid-in capital of approximately $30.7 million and a corresponding decrease in Series D convertible preferred stock to reflect the allocation of the original proceeds to the contingent value rights and the corresponding impact on the beneficial conversion feature.

Obligations and Future Capital Requirements

The indentures related to certain of EDBS' senior notes contain restrictive covenants that require us to maintain satellite insurance with respect to at least half of the satellites we own or lease. In addition, the indenture related to EBC's senior notes requires us to maintain satellite insurance on the lesser of half of our satellites or three of our satellites. All of our eight in-orbit DBS satellites are currently owned by direct or indirect subsidiaries of EDBS. Insurance coverage is therefore required for at least four of our eight satellites. The launch and/or in-orbit insurance policies for EchoStar I through EchoStar VII have expired. We have been unable to obtain insurance on any of these satellites on terms acceptable to us. As a result, we are currently self-insuring these satellites. To satisfy insurance covenants related to EDBS' and EBC's senior notes, we have reclassified an amount equal to the depreciated cost of four of our satellites from cash and cash equivalents to cash reserved for satellite insurance on our balance sheet. As of September 30, 2002, cash reserved for satellite insurance totaled approximately $159 million. The reclassifications will continue until such time, if ever, as we can again insure our satellites on acceptable terms and for acceptable amounts, or until the covenants requiring the insurance are no longer applicable. 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, the cash reserved for satellite insurance is not adequate to fund the construction, launch and insurance for a replacement satellite in the event of a complete loss of a satellite. Programming continuity cannot be assured in the event of multiple satellite losses.

While we have secured $125 million in commercial insurance for the launch of EchoStar VIII, we may not be able to obtain additional commercial insurance covering the launch and/or in-orbit operation of EchoStar VIII at rates acceptable to us and for the full amount necessary to construct, launch and insure a replacement satellite. In that event, we will be forced to self-insure all or a portion of the launch and/or in-orbit operation of EchoStar VIII. In addition, $65 million of coverage obtained to date did not protect against the risk of partial launch failure or launch failure attributable to the satellite.

We utilized $91 million of satellite vendor financing for our first four satellites. As of September 30, 2002, approximately $14 million of that satellite vendor financing remained outstanding. The satellite vendor financing bears interest at 8 1/4% and is payable in equal monthly installments over five years following launch of the satellite to which it relates. A portion of the contract price with respect to EchoStar VII and EchoStar VIII is payable over a period of 13 years and 14 years, respectively, following each launch with interest at 8%, and a portion of the contract price with respect to EchoStar IX is payable following launch with interest at 8%. As of September 30, 2002, approximately $15 million of EchoStar VII and $15 million of EchoStar VIII satellite vendor financing remained outstanding.

During the remainder of 2002, we anticipate total capital expenditures of between $75-$125 million depending upon the strength of the economy, the number of new subscribers obtained pursuant to our various promotions, and other factors. We expect the majority of that amount to be utilized for EchoStar receiver systems in connection with our Digital Home Plan and for general corporate expansion. These percentages, as well as the overall expenditures, could change depending on a variety of factors including Digital Home Plan penetration and the extent we contract for the construction of additional satellites.

In addition to our DBS business plan, we have a business plan for a two-satellite FSS Ku-band satellite system and a two-satellite FSS Ka-band satellite system. We will need to raise additional capital to complete construction of these satellites. We are currently funding the construction phase for one of these satellites, EchoStar IX, a hybrid C/Ku/Ka-band satellite. On July 1, 2002, the FCC International Bureau cancelled our license for a Ka-band satellite system at the 83 and 121 degree orbital locations, citing concerns that we do not intend to put these frequencies to use. We have filed a request to reinstate this license and have provided the FCC with a detailed

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

description of the EchoStar IX satellite, including the satellite's Ka-band payload, which is nearing completion roughly two years ahead of the FCC deadline. We cannot predict whether the license will be reinstated by the FCC.

We currently own a 90% interest in VisionStar, Inc., ("VisionStar") which holds a Ka-band FCC license at the 113 degree orbital location. VisionStar's FCC license currently requires construction of the satellite to be completed by April 30, 2002 and the satellite to be operational by May 31, 2002. We did not complete construction or launch of the satellite by those dates and have requested an extension of these milestones from the FCC. Failure to receive an extension, of which there can be no assurance, will render the license invalid. In the future, we may fund construction, launch, operation and insurance of the satellite through cash from operations, public or private debt or equity financing, joint ventures with others, or from other sources, although there is no assurance that such funding will be available.

In the future, we may fund construction, launch and insurance of additional satellites through cash from operations, public or private debt or equity financing, joint ventures with others, or from other sources, although there is no assurance that such funding will be available.

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. As a result, acquisition discussions and offers, and in some cases, negotiations may take place and future material investments or acquisitions involving cash, debt or equity securities or a combination thereof may result.

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

Item 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Market Risks Associated With Financial Instruments

As of September 30, 2002, our cash, cash equivalents and marketable investment securities had a fair value of approximately $4.4 billion. Of that amount, a total of approximately $4.3 billion was invested in: (a) cash; (b) debt instruments of the U.S. Government and its agencies; (c) commercial paper and notes with an average maturity of less than one year and rated in one of the four highest rating categories by at least two nationally recognized statistical rating organizations; and (d) instruments with similar risk characteristics to the commercial paper described above. The primary purpose of these investing activities has been to preserve principal until the cash is required to fund operations. Consequently, the size of this portfolio fluctuates significantly as cash is received and used in our business.

The value of certain of the investments in this portfolio can be impacted by, among other things, the risk of adverse changes in securities and economic markets generally, as well as the risks related to the performance of the companies whose commercial paper and other instruments we hold. However, the high quality of these investments (as assessed by independent rating agencies), reduces these risks. The value of these investments can also be impacted by interest rate fluctuations. At September 30, 2002, all of our investments in this category were in fixed rate instruments or money market type accounts. While an increase in interest rates would ordinarily adversely impact the fair value of fixed rate investments, we normally hold these investments to maturity. Consequently, neither interest rate fluctuations

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

nor other market risks typically result in significant gains or losses to this portfolio. A decrease in interest rates has the effect of reducing our future annual interest income from this portfolio, since funds would be re-invested at lower rates as the instruments mature. Over time, any net percentage decrease in interest rates could be reflected in a corresponding net percentage decrease in our interest income. As of September 30, 2002 our marketable securities portfolio balance was approximately $4.4 billion with an average annual return for the nine months ended September 30, 2002 of approximately 2.6%. A hypothetical 10% decrease in interest rates would result in a decrease of approximately $11 million in annual interest income.

We also invest in debt and equity of public and private companies for strategic and financial purposes. As of September 30, 2002, we held strategic and financial debt and equity investments of public companies with a fair value of approximately $75 million. We acquired stock in one of those companies, OpenTV, in connection with establishment of a strategic relationship which did not involve the investment of cash by us. We may make additional strategic and financial investments in other debt and equity securities in the future.

The fair value of our strategic debt investments can be impacted by interest rate fluctuations. Absent the effect of other factors, a hypothetical 10% increase in LIBOR would result in a decrease in the fair value of our investments in these debt instruments of approximately $5.4 million. The fair value of our strategic and financial debt and equity investments can also be significantly impacted by the risk of adverse changes in securities markets generally, as well as risks related to the performance of the companies whose securities we have invested in, risks associated with specific industries, and other factors. These investments are subject to significant fluctuations in fair market value due to the volatility of the securities markets and of the underlying businesses. A hypothetical 10% adverse change in the price of our public strategic debt and equity investments would result in approximately a $7.5 million decrease in the fair value of that portfolio.

In accordance with generally accepted accounting principles, we adjust the carrying value of our available-for-sale marketable investment securities to fair market value and report the related temporary unrealized gains and losses as a separate component of stockholders' deficit. Declines in the fair market value of a marketable investment security which are estimated to be "other than temporary" must be recognized in the statement of operations, thus establishing a new cost basis for such investment. We evaluate our marketable investment securities portfolio on a quarterly basis to determine whether declines in the market value of these securities are other than temporary. This quarterly evaluation consists of reviewing, among other things, the fair value of our marketable investment securities compared to the carrying value of these securities, the historical volatility of the price of each security and any market and company specific factors related to each security. Generally, absent specific factors to the contrary, declines in the fair value of investments below cost basis for a period of less than six months are considered to be temporary. Declines in the fair value of investments for a period of six to nine months are evaluated on a case by case basis to determine whether any company or market-specific factors exist which would indicate that such declines are other than temporary. Declines in the fair value of investments below cost basis for greater than nine months are considered other than temporary and are recorded as charges to earnings, absent specific factors to the contrary.

As of September 30, 2002, we recorded unrealized losses of approximately $60 million as a separate component of stockholders' deficit. During the nine months ended September 30, 2002, we also recorded an aggregate charge to earnings for other than temporary declines in the fair market value of certain of our marketable investment securities of approximately $50 million, and established a new cost basis for these securities. This amount does not include realized gains of approximately $13 million on the sales of marketable investment securities. Our approximately $4.2 billion of cash, cash equivalents and marketable investment securities include debt and equity securities which we own for strategic and financial purposes. The fair market value of these strategic marketable investment securities aggregated approximately $75 million as of September 30, 2002. During the quarter ended September 30, 2002, our portfolio generally, and our strategic investments particularly, experienced and continue to experience, volatility. If the fair market value of our marketable securities portfolio does increase to cost basis or if we become aware of any market or company specific factors that indicate that the carrying value of certain of our securities is impaired, we may be required to record additional charges to earnings in future periods equal to the amount of the decline in fair value.

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

In addition to the $4.2 billion in cash, cash equivalents and marketable investment securities, we also have made strategic equity investments in certain non-marketable investment securities. Our ability to create realizable value from our strategic investments in companies that are not public is dependent on the success of their business and their ability to obtain sufficient capital to execute their business plans. Since private markets are not as liquid as public markets, there is also increased risk that we will not be able to sell these investments, or that when we desire to sell them that we will not be able to obtain full value for them. We evaluate our non-marketable investment securities on a quarterly basis to determine whether the carrying value of each investment is impaired. The securities of these companies are not publicly traded. As such, this quarterly evaluation consists of reviewing, among other things, company business plans and current financial statements, if available, for factors which may indicate an impairment in 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.

We made a strategic investment in StarBand Communications, Inc. During April 2002, we changed our sales and marketing relationship with StarBand and ceased subsidizing StarBand equipment. During the first quarter of 2002, we determined that the carrying value of our investment in StarBand, net of approximately $8 million of equity in losses of StarBand recorded during 2002, was not recoverable and recorded an impairment charge of approximately $28 million to reduce the carrying value of our StarBand investment to zero. The determination was based, among other things, on our continuing evaluation of StarBand's business model, including further deterioration of StarBand's limited available cash, combined with increasing cash requirements, resulting in a critical need for additional funding, with no clear path to obtain that cash. StarBand subsequently filed for bankruptcy during June 2002.

As of September 30, 2002, we estimated the fair value of our fixed-rate debt and mortgages and other notes payable to be approximately $5 billion using quoted market prices where available, or discounted cash flow analyses. The interest rates assumed in such 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% decrease in assumed interest rates would increase the fair value of our debt by approximately $239 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, 2002, a hypothetical 10% increase in assumed interest rates would increase our annual interest expense by approximately $46 million.

We have not used derivative financial instruments for speculative purposes. We have not hedged or otherwise protected against the risks associated with any of our investing or financing activities.

Item 4. CONTROLS AND PROCEDURES

(a) Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we conducted an evaluation of our disclosure controls and procedures pursuant to Rule 13a-14(c) promulgated under the Securities Exchange Act of 1934, within 90 days of filing this report. Based on their evaluation, our Chief Executive Officer and Chief Financial Officer concluded that the design and operation of EchoStar's disclosure controls and procedures were effective as of the date of the evaluation.

(b) There have been no significant changes (including corrective actions with regard to significant deficiencies or material weaknesses) in our internal controls or in other factors that could significantly affect these controls subsequent to the date of the evaluation referenced in paragraph (a) above.

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PART II — OTHER INFORMATION

Item 1. LEGAL PROCEEDINGS

Fee Dispute

We had a dispute regarding the contingent fee arrangement with the attorneys who represented us in prior litigation with The News Corporation, Ltd. In early July 2002, the parties resolved their dispute.

WIC Premium Television Ltd

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

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

The Court in the Alberta action denied our Motion to Dismiss, and our appeal of that decision. The Federal action has been stayed pending the outcome of the Alberta action. The case is now in discovery. We intend to continue to vigorously defend the suit. Recently, the Supreme Court of Canada ruled that the receipt in Canada of programming from United States pay television providers is prohibited. While we were not a party to that case, the ruling could aversely affect our defense. It is too early to make an assessment of the probable outcome of the litigation or to determine the extent of any potential liability or damages.

Distant Network Litigation

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

In October 1998, 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 enter judgment declaring that its method of providing distant network programming did not violate the Satellite Home Viewer Act and hence did not infringe the networks’ copyrights. In November 1998, the networks and their affiliate groups filed a complaint against 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. The case remains pending in Florida. While the networks have not sought monetary damages, they have sought to recover attorney fees if they prevail.

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

PART II — OTHER INFORMATION

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

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

Twice during October 2000, the Court amended its original preliminary injunction order in an effort to fix some of the errors in the original order. The twice amended preliminary injunction order required us to shut off, by February 15, 2001, all subscribers who were ineligible to receive distant network programming under the Court's order. We appealed the preliminary injunction orders. During September 2001, the United States Court of Appeals for the Eleventh Circuit vacated the District Court's nationwide preliminary injunction, which the Eleventh Circuit had stayed in November 2000. The Eleventh Circuit also rejected our First Amendment challenge to the Satellite Home Viewer Act. However, the Eleventh Circuit found that the District Court had made factual findings that were clearly erroneous and not supported by the evidence, and that the District Court had misinterpreted and misapplied the law. The Eleventh Circuit issued an order during January 2002, remanding the case to the Florida District Court. During March 2002, the Florida District Court entered an order setting the trial in the matter for January 13, 2003 and setting a discovery and pretrial schedule. In this order, the District Court denied certain of our outstanding motions to compel discovery as moot and granted the networks' motion to compel. The trial date has now been moved to February 10, 2003. During April 2002, the District Court denied the networks' motion for preliminary injunction as moot. In June 2002, we filed a counterclaim against the networks asking the District Court to find that we are not violating the Satellite Home Viewer Act and seeking damages resulting from the networks' tortious interference with our business relationships and from the networks' conduct amounting to unfair competition. The networks filed a motion to dismiss these claims. In August 2002, the District Court denied the networks' motion to dismiss. In September 2002, the networks answered our counterclaim.

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. On April 16, 2002, the District Court entered an order dismissing the claims between ABC, Inc. and us.

If after a trial the District Court enters an injunction against us, the injunction could force us to terminate delivery of distant network channels to a substantial portion of our distant network subscriber base, which could also cause many of these subscribers to cancel their subscription to our other programming services. Any such terminations would result in a small reduction in our reported average monthly revenue per subscriber and could result in a temporary increase in churn. If we lose the case at trial, the judge could, as one of many possible remedies, prohibit all future sales of distant network programming by us, which would have a material adverse affect on our business.

Gemstar

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

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supported by findings of the International Trade Commission (“ITC”) which are discussed below. Gemstar has moved to stay the North Carolina action pending appeal of the ITC decision. We are opposing Gemstar’s motion.

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

In February 2001, Gemstar filed patent infringement actions against us in the District Court in Atlanta, Georgia and with the ITC. These suits allege infringement of United States Patent Nos. 5,252,066, 5,479,268 and 5,809,204 all of which relate to certain electronic program guide functions. In addition, the ITC action alleges infringement of the `121 Patent which is asserted in the North Carolina case previously discussed. In the Georgia district court case, Gemstar seeks damages and an injunction. The Georgia case was stayed pending resolution of the ITC action and remains stayed at this time. ITC actions typically proceed according to an expedited schedule. In December 2001, the ITC held a 15-day hearing before an administrative judge. Prior to the hearing, Gemstar dropped its allegations regarding United States Patent No. 5,252,066 with respect to which we had asserted substantial allegations of inequitable conduct. The hearing addressed, among other things, Gemstar’s allegations of patent infringement and respondents’ (SCI, Scientific Atlanta, Pioneer and us) allegations of patent misuse. During June 2002, the Administrative Law issued a Final Initial Determination finding that none of the patents asserted by Gemstar had been infringed. In addition, the Judge found that Gemstar was guilty of patent misuse with respect to the `121 Patent and that the `121 Patent was unenforceable because it failed to name an inventor. The parties then filed petitions for the full ITC to review the Judge’s Final Initial Determination. On August 29, 2002, the full ITC adopted the Judge’s findings regarding non-infringement and the unenforceability of the `121 Patent. The ITC did not adopt, but did not overturn, the Judge’s findings of patent misuse. Gemstar has indicated that it plans to appeal the decision of the ITC to the United States Court of Appeals for the Federal Circuit. If the Federal Circuit were to overturn the Judge’s decision, such an adverse decision in this case could temporarily halt the import of our receivers and could require us to materially modify certain user-friendly electronic programming guides and related features we currently offer to consumers. Based upon our review of these patents, and based upon the ITC’s decision, we continue to believe that these patents are not infringed by any of our products or services. We intend to continue to vigorously contest the ITC, North Carolina and Georgia suits and will, among other things, continue to challenge both the validity and enforceability of the asserted patents.

During 2000, Superguide Corp. (“Superguide”) also 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, 5,293,357 and 4,751,578 which relate to certain electronic program guide functions, including the use of electronic program guides to control VCRs. Superguide sought injunctive and declaratory relief and damages in an unspecified amount. It is our understanding that these patents may be licensed by Superguide to Gemstar. Gemstar was added as a party to this case and asserted these patents against us. We have examined these patents and believe that they are not infringed by any of our products or services. A Markman ruling interpreting the patent claims was issued by the Court and in response to that ruling we filed motions for summary judgment of non-infringement for each of the asserted patents. Gemstar filed a motion for summary judgment of infringement with respect to one of the patents. On July 3, 2002, the Court issued a Memorandum of Opinion on the summary judgment motions. In its Opinion, the Court ruled that none of our products infringe the 5,038,211 and 5,293,357 patents. With respect to the 4,751,578 patent, the Court ruled that none of our current products infringed that patent and asked for additional information before it could rule on certain low-volume products that are no longer in production. On July 26, 2002, the Court summarily ruled that the aforementioned low-volume products did not infringe any of the asserted

patents. Accordingly, the Court dismissed the case and awarded us our court costs. Superguide and Gemstar are appealing this case to the United States Court of Appeals for the Federal Circuit. We will continue to vigorously defend this case. In the event the Federal Circuit ultimately determines that we infringe on any of the aforementioned 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 offers to consumers. It is too early to make an assessment of the probable outcome of the suits.

IPPV Enterprises

IPPV Enterprises, LLC (“IPPV”) and MAAST, Inc. filed a patent infringement suit against us, and our conditional access vendor Nagra, in the United States District Court for the District of Delaware. The suit alleged infringement of five patents. One patent claim was subsequently dropped by plaintiffs. Three of the remaining patents disclose various systems for the implementation of features such as impulse-pay-per-view, parental control and category lock-out. The fourth remaining patent relates to an encryption technique. The Court entered summary judgment in our favor on the encryption patent. Plaintiffs had claimed $80 million in damages with respect to the encryption patent. On July 13, 2001, a jury found that the remaining three patents were infringed and awarded damages of $15 million. The jury also found that one of the patents was willfully infringed, permitting the Judge to increase the award of damages. On post-trial motions, the Judge reduced damages to $7.33 million, found that one of the infringed patents was invalid, and reversed the finding of willful infringement. In addition, the Judge denied IPPV’s request for treble damages and attorney fees. We intend to file an appeal. Any final award of damages would be split between us and Nagra in percentages to be agreed upon between us and Nagra.

California Actions

A purported class action was filed against us in the California State Superior Court for Alameda County during May 2001 by Andrew A. Werby. The complaint, relating to late fees, alleges unlawful, unfair and fraudulent business practices in violation of California Business and Professions Code Section 17200 et seq., false and misleading advertising in violation of California Business and Professions Code Section 17500, and violation of the California Consumer Legal Remedies Act. During September 2001, we filed an answer denying all material allegations of the complaint, and the Court entered an Order Pursuant to Stipulation for a provisional certification of the class, for an orderly exchange of information and for mediation. The provisional Order specifies that the class will be de-certified upon notice if mediation does not resolve the dispute. A settlement has been reached with plaintiff’s counsel and the Court issued its preliminary approval of the settlement on October 18, 2002. The Court has set a March 7, 2003 date for hearing on final approval after notice to the class. If the settlement is not approved, we intend to deny all liability and to vigorously defend the lawsuit. The settlement confirms that the late fee charged by EchoStar is appropriate and will not change.

A purported class action relating to the use of terms such as “crystal clear digital video,” “CD-quality audio,” and “on-screen program guide,” and with respect to the number of channels available in various programming packages was also filed against 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 on June 28, 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 grant of our Motion for Summary Judgment. It is too early to make an assessment of the probable outcome of the appeal or to determine the extent of any potential liability or damages.

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PART II — OTHER INFORMATION

State Investigation

During April 2002, two state Attorneys General commenced a civil investigation concerning certain of our business practices. Over the course of the next six months, 11 additional states ultimately joined the investigation. The states allege failure to comply with consumer protection laws based on our call response times and policies, advertising and customer agreement disclosures, policies for handling consumer complaints, issuing rebates and refunds and charging cancellation fees to consumers, and other matters. We have cooperated fully in the investigation. It is too early to make an assessment of the probable outcome, or to determine the extent of any damages or injunctive relief which could result.

Retailer Class Actions

We have been sued by retailers in three separate purported class actions. During October 2000, two separate lawsuits were filed in the Arapahoe County District Court in the State of Colorado and the United States District Court for the District of Colorado, respectively, by Air Communication & Satellite, Inc. and John DeJong, et al. on behalf of themselves and a class of persons similarly situated. The plaintiffs are attempting to certify nationwide classes on behalf of certain of 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 intend to vigorously defend against the suits and to assert a variety of counterclaims. The United States District Court for the District of Colorado stayed the Federal Court action to allow the parties to pursue a comprehensive adjudication of their dispute in the Arapahoe County State Court. John DeJong, d/b/a Nexwave, and Joseph Kelley, d/b/a Keltronics, subsequently intervened in the Arapahoe County Court action as plaintiffs and proposed class representatives. 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. A class certification hearing for the Arapahoe County Court action is scheduled for November 26, 2002.

Satellite Dealers Supply, Inc. filed a lawsuit in the United States District Court for the Eastern District of Texas during September 2000, on behalf of itself and a class of persons similarly situated. The plaintiff is attempting to certify a nationwide class on behalf of sellers, installers, and servicers of satellite equipment who contract with us and who allege that we: (1) charged back certain fees paid by members of the class to professional installers in violation of contractual terms; (2) manipulated the accounts of subscribers to deny payments to class members; and (3) misrepresented, to class members, who owns certain equipment related to the provision of satellite television service. During September 2001, the Court granted our Motion to Dismiss for Lack of Personal Jurisdiction. The plaintiff moved for reconsideration of the Court’s order dismissing the case and the Court denied Plaintiff’s Motion for Reconsideration. The plaintiff filed a Notice of Appeal of the Court’s denial of Plaintiff’s Motion for Reconsideration. It is too early to make an assessment of the probable outcome of the appeal or to determine the extent of any potential liability or damages.

StarBand Shareholder Lawsuit

On August 20, 2002, a shareholder in StarBand Communications Corporation (“StarBand”) filed an action in the Delaware Court of Chancery against us and EchoBand Corporation, together with four of our executives who sate on the Board of Directors of 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 Moskowitz, are members of our Board of Directors. The action stems from the defendants’ involvement as directors, and EchoBand’s position as a shareholder in StarBand, a broadband Internet satellite venture that is currently in bankruptcy. Plaintiffs allege that the defendants conspired to ensure StarBand’s failure in order to guarantee that our pending merger with Hughes would be successful. Plaintiffs seek an accounting of damages for their $25 million investment in StarBand in addition to costs and disbursements. Defendants deny the allegations in the complaint and intend to defend the litigation vigorously. On October 28, 2002, EchoStar, along with the other defendants filed motions to dismiss the complaint in its entirety. EchoStar and EchoBand filed a motion to dismiss based on lack of personal jurisdiction. 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.

PART II — OTHER INFORMATION

PrimeTime 24 Joint Venture

PrimeTime 24 Joint Venture (“PrimeTime 24”) filed suit against us during September 1998 seeking damages in excess of $10 million and alleging breach of contract, wrongful termination of contract, interference with contractual relations, trademark infringement and unfair competition. We denied all of PrimeTime 24’s allegations and asserted various counterclaims. We have reached a settlement agreement with PrimeTime 24 pursuant to which the parties agreed to release all parties from any liability and dismiss the case with prejudice. The settlement amount is immaterial to us.

Merger Related Proceedings

A purported shareholder derivative action was filed against us and all of the current members of its Board of Directors in the United States District Court for Clark County, Nevada during October 2002 by Robert Busch of EchoStar shareholders. The complaint alleges breach of fiduciary duty, corporate waste and other unlawful acts relating to our agreement to pay Hughes Electronics Corporation a $600 million termination fee in certain circumstances in the event the merger with DirecTV is not completed by January 21, 2003. No answer is due yet from the defendants. We and the individual defendants intend to deny all liability and to defend this action vigorously. It is too early to make an assessment of the probable outcome of the litigation or to determine the extent of any potential liability or damages.

Satellite Insurance

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

The insurance carriers offered us a total of approximately $88 million, or 40% of the total policy amount, in settlement of the EchoStar IV insurance claim. The insurers assert that EchoStar IV was not a constructive total loss, as that term is defined in the policy, and that we did not abide by the exact terms of the insurance policies. We strongly disagree and filed arbitration claims against the insurers for breach of contract, failure to pay a valid insurance claim and bad faith denial of a valid claim, among other things. There can be no assurance that we will receive the amount claimed or, if we do, that we will retain title to EchoStar IV with its reduced capacity. While there can be no assurance, the arbitration is expected to occur during 2003.

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

PART II — OTHER INFORMATION

Item 6. EXHIBITS AND REPORTS ON FORM 8-K

(a) Exhibits.

*10.1	License and OEM Manufacturing Agreement, dated July 1, 2002, between EchoStar Satellite Corporation, EchoStar Technologies Corporation and Thomson multimedia, Inc.**
*10.2	Amendment No. 1 to License and OEM Manufacturing Agreement, dated July 1, 2002, between EchoStar Satellite Corporation, EchoStar Technologies Corporation and Thomson multimedia, Inc.
*10.3	Amendment No. 2 to License and OEM Manufacturing Agreement, dated July 1, 2002, between EchoStar Satellite Corporation, EchoStar Technologies Corporation and Thomson multimedia, Inc.
*10.4	Amendment No. 3 to License and OEM Manufacturing Agreement, dated July 1, 2002, between EchoStar Satellite Corporation, EchoStar Technologies Corporation and Thomson multimedia, Inc.
*10.5	Amendment No. 4 to License and OEM Manufacturing Agreement, dated July 1, 2002, between EchoStar Satellite Corporation, EchoStar Technologies Corporation and Thomson multimedia, Inc.
*10.6	Amendment No. 5 to License and OEM Manufacturing Agreement, dated July 1, 2002, between EchoStar Satellite Corporation, EchoStar Technologies Corporation and Thomson multimedia, Inc.
*10.7	Amendment No. 6 to License and OEM Manufacturing Agreement, dated July 1, 2002, between EchoStar Satellite Corporation, EchoStar Technologies Corporation and Thomson multimedia, Inc.
*10.8	Amendment No. 7 to License and OEM Manufacturing Agreement, dated July 1, 2002, between EchoStar Satellite Corporation, EchoStar Technologies Corporation and Thomson multimedia, Inc.
*10.9	Amendment No. 8 to License and OEM Manufacturing Agreement, dated July 1, 2002, between EchoStar Satellite Corporation, EchoStar Technologies Corporation and Thomson multimedia, Inc.
*10.10	Amendment No. 9 to License and OEM Manufacturing Agreement, dated July 1, 2002, between EchoStar Satellite Corporation, EchoStar Technologies Corporation and Thomson multimedia, Inc.
*10.11	Amendment No. 10 to License and OEM Manufacturing Agreement, dated July 1, 2002, between EchoStar Satellite Corporation, EchoStar Technologies Corporation and Thomson multimedia, Inc.
*10.12	Amendment No. 11 to License and OEM Manufacturing Agreement, dated July 1, 2002, between EchoStar Satellite Corporation, EchoStar Technologies Corporation and Thomson multimedia, Inc.
*10.13	Amendment No. 12 to License and OEM Manufacturing Agreement, dated July 1, 2002, between EchoStar Satellite Corporation, EchoStar Technologies Corporation and Thomson multimedia, Inc.

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* Filed herewith.

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

(b) Reports on Form 8-K.

On August 14, 2002, we filed a Current Report on Form 8-K in connection with the filing of our Quarterly Report on Form 10-Q for the period ended June 30, 2002 stating that our Chief Executive Officer and our Chief

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Financial Officer certified our report pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002.

On August 14, 2002, we filed a Current Report on Form 8-K stating that we filed with the Securities and Exchange Commission original sworn statements of our Chief Executive Officer and Chief Financial Officer as required by the SEC's Order 4-460 issued on June 27, 2002.

SIGNATURES

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

ECHOSTAR COMMUNICATIONS CORPORATION

By: /s/ *Charles W. Ergen*

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

By: /s/ *Michael R. McDonnell*

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

Date: November 14, 2002

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

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

4. The registrant’s other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:

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

   b) evaluated the effectiveness of the registrant’s disclosure controls and procedures as of a date within 90 days prior to the filing date of this quarterly report (the “Evaluation Date”); and

   c) presented in this quarterly report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

5. The registrant’s other certifying officers and I have disclosed, based on our most recent evaluation, to the registrant’s auditors and the audit committee of registrant’s board of directors (or persons performing the equivalent function):

   a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant’s ability to record, process, summarize and report financial data and have identified for the registrant’s auditors any material weaknesses in internal controls; and

   b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant’s internal controls; and

6. The registrant’s other certifying officers and I have indicated in this quarterly report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: November 14, 2002

/s/ Charles W. Ergen

Chairman and Chief Executive Officer

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CERTIFICATION OF CHIEF FINANCIAL OFFICER
Section 302 Certification

I, Michael R. McDonnell, certify that:

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

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

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

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:

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

    b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this quarterly report (the "Evaluation Date"); and

    c) presented in this quarterly report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

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

    a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and

    b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and

6. The registrant's other certifying officers and I have indicated in this quarterly report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: November 14, 2002

/s/ Michael R. McDonnell

Senior Vice President and Chief Financial Officer

LICENSE AND OEM MANUFACTURING AGREEMENT

This License and OEM Manufacturing Agreement (the "Agreement") is made and effective as of this 1st day of July, 2002, by and among EchoStar Satellite Corporation ("ESC"), having a place of business at 5701 S. Santa Fe Drive, Littleton, Colorado 80120, EchoStar Technologies Corporation ("ETC"), having a place of business at 90 Inverness Circle East, Englewood, Colorado 80112, and Thomson multimedia Inc. ("Licensee"), having a place of business at 10330 North Meridian Street, Indianapolis, Indiana 46290.

INTRODUCTION

This Agreement confirms the terms and conditions upon which: (i) Licensee shall manufacture and sell (under license from ETC) Licensee Receivers to Licensee Retailers, (ii) Licensee shall manufacture and sell (under license from ETC) ETC Receivers to ETC, and (iii) ETC shall manufacture and sell OEM Receivers to Licensee.

1. DEFINITIONS

In addition to any other defined terms in this Agreement and except as otherwise expressly provided for in this Agreement, the following terms shall have the following meanings:

1.1 "Accessories" means a remote control, antenna, LNB, feedarm and related components, as such components may change from time to time in ETC's sole judgment.

1.2 "Activate" means the authorization of a Smart Card to permit a Receiver to access DISH Network programming.

1.3 "Additional Revenue Receivers" shall have the meaning ascribed to that term in Section 1.20 below.

1.4 "Affiliate" shall mean, with respect to a party, any person or entity directly or indirectly controlling, controlled by, or under common control with such party.

1.5 "Business Rule" means any term, requirement, condition, condition precedent, process or procedure associated with a Promotional Program or otherwise identified as a Business Rule associated with a Promotional Program by ESC, which is communicated to Licensee by ESC or any Affiliate of ESC. ESC reserves the right, in its sole discretion, to modify any Business Rule at any time by providing Licensee with ***.

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1.6 "Certificate Program" means any Promotional Program offered by ESC wherein (i) Licensee purchases a serialized certificate (a "Promotional Certificate") from ESC or an Affiliate of ESC for resale directly to a Licensee Retailer, (ii) the Licensee Retailer purchases the Promotional Certificate from Licensee for resale directly to an end-user, and (iii) the Promotional Certificate, among other things, entitles the end-user to a Receiver (or the use of a Receiver, if the program involves leasing the Receiver to the end-user) and installation of the Receiver.

1.7 "DBS" shall mean direct broadcast satellite.

1.8 "Design Review" shall mean a review conducted between ETC and Licensee to establish whether Licensee's implementation of the Licensee Receiver complies with the ETC Receiver Specifications.

1.9 "DISH Network" shall mean the DBS network owned and operated in the United States by ESC and its Affiliates.

1.10 "EchoStar Parties" shall mean ETC and ESC.

1.11 "Eligible Programming" means the then-current DISH Network programming packages for which ESC pays a monthly incentive to its retailers generally, which programming packages may change at any time and from time to time in the sole judgment of ESC.

1.12 "ETC Marks" shall mean trademarks, service marks and trade names owned by ETC and/or its Affiliates or for which ETC and/or its Affiliates have the right to grant a sublicense.

1.13 "ETC Receiver Specifications" shall mean those specifications defining DISH Network broadcast reception requirements, Receiver performance requirements, Receiver mechanical configuration, and other Receiver form, fit, look, feel and function as specified by ETC from time to time.

1.14 "ETC Receivers" shall mean Receivers that are manufactured in strict conformance with the ETC Receiver Specifications by Licensee or on behalf of Licensee by *** and branded with such trademarks as ETC may designate from time to time in its sole judgment,

1.15 "ETC Technology" shall have the meaning ascribed to that term in Section 2.1 below.

1.16 "Integrated Receivers" shall have the meaning ascribed to that term in Section 1.20 below.

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1.17 "License" shall have the meaning ascribed to that term in Section 2.2.1 below.

1.18 "License Fee" shall have the meaning ascribed to that term in Section 2.5 below.

1.19 "Licensed Technology" shall have the meaning ascribed to that term in Section 2.2.1 below.

1.20 "Licensee Receivers" shall mean Receivers that are manufactured in strict conformance with the ETC Receiver Specification by Licensee or on behalf of Licensee by ***. Licensee shall be entitled to apply Licensee branding to Licensee Receivers in accordance with ETC's trademark usage guidelines, the current version of which is attached hereto as Exhibit A, as such guidelines may change from time to time in ETC's sole judgment upon written notice to Licensee, provided that Licensee shall have a commercially reasonable period of time to implement changes to such guidelines. Licensee Receivers shall specifically include Receivers that are combined with or incorporated into another product, i.e., a television or VCR, ("Integrated Receivers"), but shall specifically exclude Receivers that are combined with or incorporated into another product that has the independent potential to generate subscription revenues or other additional revenue streams from end users ("Additional Revenue Receivers").

1.21 "Licensee Retailer" shall have the meaning ascribed to that term in Section 4.1 below.

1.22 "ODU" shall mean the outdoor unit satellite reception device used in conjunction with a Receiver to obtain DISH Network programming.

1.23 "Optional Accessories" shall mean accessories (other than Accessories) that are of subordinate importance to a Licensee Receiver or OEM Receiver and are not essential to the use of a Licensee Receiver or OEM Receiver, but rather are supplementary and serve the purpose of merely adding to the convenience or effectiveness of a Licensee Receiver or OEM Receiver, such as replacement remote controls, cables, off-air antennas, replacement LNBs, surge protectors and telephone line extenders. For the avoidance of doubt, nothing set forth herein is intended or shall be construed as granting Licensee any rights whatsoever to affix any ETC Marks on, or to incorporate any ETC Technology into, any Optional Accessories.

1.24 "OEM Receivers" shall have the meaning ascribed to that term in Section 3.1 below.

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1.25 "Other Manufacturer" shall have the meaning ascribed to that term in Section 2.11 below

1.26 "contractor" shall have the meaning ascribed to that term in Section 2.4.4 below.

1.27 "Primary Receiver" shall mean the first Receiver to be Activated on a new Subscriber Account.

1.28 "Promotional Program" means: (i) a promotional offer presented to Licensee by ESC, which Licensee may present to Licensee Retailers and Licensee Retailers may in turn present to end users in connection with such Licensee Retailer's promotion and solicitation of orders for DISH Network programming; (ii) the incentives that Licensee may receive in connection with such promotional offer; and (iii) the Business Rules setting forth the details (including restrictions) governing the promotional offer and corresponding incentives. ESC reserves the right to discontinue any Promotional Program at any time and from time to time in its sole discretion upon notice to Licensee.

1.29 "Qualifying Residential Subscriber" means an individual at a Residential Location who orders DISH Network programming from ESC for reception in connection with an OEM Receiver or Licensee Receiver, as the case may be, who pays all programming and other charges to ESC and its Affiliates in full during the applicable chargeback period described in Section 1.38 below, and who has never received any video programming services from ESC or any of its Affiliates. A Qualifying Residential Subscriber shall not include any individual who would otherwise qualify, but whose equipment ESC, in its sole judgment, declines to Activate.

1.30 "Receiver" shall mean a digital DBS receiver that: (i) is a stand-alone set top box or integrated with another consumer electronics device in a set top box configuration; (ii) is solely compatible with DISH Network, unless the cause for compatibility beyond DISH Network originates solely from (a) compliance with the ETC Receiver Specifications, and/or (b) incorporation of ETC Technology, and/or (c) third party intervention (e.g., hacking of DISH Network's conditional access system) absent negligence on Licensee's part; and (iii) is intended for resale solely in the Territory.

1.31 "Residential Location" means a single family residential dwelling (i.e., single family houses, apartments, condominiums or other dwellings used primarily for residential purposes), located in the Territory; provided, however, in no case shall any satellite master antenna television system or private cable system in a residential multiple dwelling unit or any similar programming reception system (i.e., dormitories, etc.) be considered a Residential Location. ESC shall have the right to determine, in its

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sole judgment, whether a location constitutes a Residential Location, or is more appropriately considered a commercial location or other non-residential location.

1.32 "Retailer Incentive Agreements" shall have the meaning ascribed to that term in Section 4.2 below.

1.33 *** shall mean ***.

1.34 "Secondary Receiver" shall mean any Receiver that is Activated on a Subscriber Account other than the Primary Receiver.

1.35 "Smart Card" means the removable conditional access card, which, through the use of a secure microprocessor, controls the ability of a Licensee Receiver, ETC Receiver or OEM Receiver, as the case may be, to access DISH Network programming.

1.36 "ETC Software" shall mean the object code software modules delivered to Licensee by ETC for use in the manufacture and/or operation of the Licensee Receivers and ETC Receivers.

1.37 "Specialty OEM Receiver" shall mean an OEM Receiver model that is substantially the same as any Receiver model manufactured by or on behalf of ETC other than the Receiver models in the most prevalent family of Receiver models manufactured by and on behalf of ETC (as determined based on the total number of units manufactured by and on behalf of ETC for each family of Receiver models during the immediately preceding 180 days). For purposes of this Section 1.37, a "family" of Receivers models shall mean Receiver models using the same core chipset technology. For example, as of the date first set forth above, the 301 model would be included in the most prevalent family of Receiver models and the 322 model would not be included in the most prevalent family of Receiver models, because the 322 model uses different core chipset technology than the 301 model.

1.38 "Subscriber Account" means the account set up and maintained by ESC for a Qualifying Residential Subscriber for whom Eligible Programming has been activated by ESC and which account remains active and in good standing throughout the standard charge back period set forth in ESC's standard incentivized retailer agreement, attached hereto as Exhibit B, or in the applicable Business Rules, as such standard incentivized retailer agreement and applicable Business Rules may change at any time and from time to time in ESC's sole judgment upon written notice to Licensee; provided that, in the event of any conflict or inconsistency between the standard charge back period set forth in ESC's standard incentivized retailer agreement and the standard charge back period set forth in the applicable Business Rules, then the standard charge back period set forth in the applicable Business Rules shall control.

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1.39 "Territory" shall mean the geographic boundaries of the continental United States.

1.40 "Third Party Intellectual Property" shall have the meaning ascribed to that term in Section 10.2.1(c).

1.41 "Third Party Mark" shall mean the *** standard trademarks and any other trademark, trade name or service mark owned by a third party and for which neither ETC or any of its Affiliates nor Licensee or any of its Affiliates have the right to grant a sublicense.

1.42 "Trademark Agreement" shall have the meaning ascribed to that term in Section 11.16 below.

2. LICENSE

2.1 Background. ETC and its Affiliates have designed, developed and acquired through license, certain intellectual property and other proprietary technology for the design, development and manufacture of current generation Receivers in accordance with the ETC Receiver Specifications and continue to design, develop and attempt to acquire through license certain intellectual property and other proprietary technology for the design, development and manufacture of next generation Receivers in accordance with the ETC Receiver Specifications (collectively, the "ETC Technology"). ETC shall use its reasonable commercial efforts to compile for Licensee a list of ETC Technology, provided the parties recognize such list will not be entirely comprehensive.

2.2 Grant of License.

2.2.1 Subject to the terms and conditions set forth below (including without limitation payment of the License Fee pursuant to Section 2.5 below and the restrictions set forth in Section 2.4 below), ETC hereby grants to Licensee a limited, non-exclusive, non-transferable, indivisible license (the "License") to use the ETC Technology that is owned exclusively by ETC and its Affiliates and the ETC Technology that ETC and its Affiliates have the right to sublicense to Licensee without imposing terms and conditions in addition to those set forth herein (collectively, the "Licensed Technology") solely for the purposes of: (i) manufacturing, or having manufactured by ***, Licensee Receivers in strict conformance with ETC Receiver Specifications (absent prior written agreement by ETC to deviations from the ETC Receiver Specifications, which agreement shall not be unreasonably withheld or delayed) and selling such Licensee Receivers (a) directly to Licensee Retailers for resale by such Licensee

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Retailers directly to end-users in the Territory for use in connection with DISH Network, (b) to Licensee's and its Affiliates' employees, friends and family pursuant to the terms and conditions of a program to be mutually agreed upon by Licensee and ESC; and (c) directly to end-users through RCA.com pursuant to the terms and conditions of a program to be mutually agreed upon by Licensee and ESC, and (ii) manufacturing, or having manufactured by ***, ETC Receivers in strict conformance with ETC Receiver Specifications (absent prior written agreement by ETC to deviations from the ETC Receiver Specifications, which shall not be unreasonably withheld or delayed) and selling such ETC Receivers directly to ETC, its Affiliates and designees. Licensee agrees that it will not sell any Licensee Receivers to any person or entity who Licensee knows or has reason to know intends to use it, or resell it for use, in Canada or at any other location outside of the Territory.

2.2.2 Exhibit C attached hereto sets forth the technologies for which ETC is presently paying a royalty in connection with Receivers manufactured by, or on behalf of, ETC. ***. The parties shall mutually agree from time to time upon whether Licensee or ETC shall be responsible for the payment of royalties for the technologies set forth on Exhibit C attached hereto in connection with Licensee Receivers.

2.3 ETC Marks. Upon request by ETC, Licensee shall affix such ETC Marks as ETC may designate from time to time in writing to the bezel (front panel) and electronic program guide of the Licensee Receivers, any Accessories included therewith, any packaging therefor, and ODUs in accordance with: (i) ETC's trademark usage guidelines, the current version of which is attached hereto as Exhibit A; and (ii) ETC's user interface specification, as such guidelines and specification may change from time to time in ETC's sole discretion upon written notice to Licensee, provided that Licensee shall have a commercially reasonable period of time to implement changes to such guidelines and specification. In furtherance and without limitation of the foregoing, Licensee agrees to: (a) affix such ETC Marks in the center of, and above the Licensee branding and Third Party Marks (as defined in Section 1.41 above) affixed to, all ODUs intended for use with Licensee Receivers; and (b) otherwise affix such ETC Marks such that they are displayed in a manner which is at least equally as prominent as the Licensee branding affixed to the same. Notwithstanding the foregoing, Licensee shall have no obligation *** nothing in this Section 2.3 shall preclude Licensee from using its marks on the Licensee Receiver, provided such usage otherwise complies with the terms and conditions of this Section 2.3.

2.4 License Restrictions.

2.4.1 Licensee shall use the Licensed Technology for the sole purposes of developing, manufacturing, repairing, servicing and selling the Licensee Receivers and ETC Receivers, subject to the terms and conditions set forth herein, and not for any other purpose. Subject to the limitations set forth below, Licensee shall have the right to

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incorporate all or part of the Licensed Technology into Integrated Receivers, but shall have no right to incorporate the Licensed Technology into a particular Additional Revenue Receiver unless and until such time as Licensee, ETC and the licensor(s), if any, of the technology necessary to generate the additional revenue streams, agree upon their respective rights to, and obligations regarding, that technology and the aggregate revenue stream generated by the Additional Revenue Receiver.

2.4.2 Licensee will not be entitled to manufacture any Licensee Receivers under any brand names other than RCA, GE and RCA Scenium, without the prior written consent of ETC and ESC, which consent shall not be unreasonably withheld or delayed. ETC shall commence delivery of Licensed Technology to Licensee following payment of the first installment of the License Fee by Licensee. In no event shall a party be obligated to provide any technology or other information to another party unless the provision of such technology and information is in full compliance with applicable laws and regulations of the United States, including, but not limited to, those relating to the export of technology.

2.4.3 Licensee shall manufacture the Licensee Receivers and ETC Receivers so that *** absent specific prior written agreement of the parties to the contrary. In addition, absent specific prior written agreement of the parties to the contrary, Licensee shall be expressly prohibited from *** Licensee shall further be prohibited from *** without ETC's prior written consent, which consent may be withheld in ETC's sole judgment.

2.4.4 Licensee shall have no right to grant sublicenses with respect to the Licensed Technology, without the prior written consent of ETC, which consent may be withheld in ETC's sole judgment. ***

2.4.5 Notwithstanding anything to the contrary set forth herein, this Agreement is not intended and shall not be construed as limiting the right of Licensee to directly license from third parties any technology proprietary to such third party for purposes unrelated to Licensee's relationship with ETC and ESC.

2.5 License Fee. In consideration for the License and related technical assistance to be furnished to Licensee by ETC during the Term, effort expended by ETC during the Term, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Licensee irrevocably and absolutely agrees to pay to ETC the amount of *** (the "License Fee"), as previously agreed by the parties hereto in Section 2.4 of the Memorandum OEM Manufacturing Agreement dated January 9, 2002, by and among the parties hereto. The License Fee shall be payable in ***. ETC hereby acknowledges receipt of ***. The parties agree that ***shall be made by Licensee to ETC in immediately available funds on or before the last business day of ***. Notwithstanding any provision of this Agreement to the contrary, all installments

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shall be paid by Licensee to ETC regardless of whether this Agreement has previously been terminated and regardless of the reason for any such termination. Licensee hereby acknowledges and agrees that its obligation to pay ***License fee is unconditional and absolute. ***

2.6 Smart Cards.

2.6.1 General Terms of Purchase and Supply. Licensee shall purchase exclusively from ETC all Smart Cards necessary to: (i) develop and manufacture Licensee Receivers and ETC Receivers under the terms of this Agreement, (ii) fulfill its warranty obligations regarding Licensee Receivers and ETC Receivers under the terms of this Agreement, and (iii) perform out-of-warranty service and repair or replacement of Licensee Receivers. ETC shall supply Licensee, at the price specified below, with a float of Smart Cards for use in the fulfillment of its warranty obligations regarding Licensee Receivers and ETC Receivers hereunder and for use in the performance of out-of-warranty repair and service of Licensee Receivers in a quantity per 1,000 sales of Licensee Receivers and ETC Receivers to end users that is consistent with ETC's Smart Card warranty replacement history; provided, however, that ETC shall provide Smart Cards in excess of that quantity in the event that Licensee can adequately justify its need therefore for use in the fulfillment of its warranty obligations regarding Licensee Receivers and ETC Receivers hereunder and for use in the performance of out-of-warranty repair and service of Licensee Receivers. ETC shall supply Licensee with such additional quantity of Smart Cards, without unreasonable delay, at the price specified below, as ETC following consultation with Licensee determines is reasonably necessary for use in the development of Licensee Receivers and ETC Receivers. Licensee acknowledges and agrees that Smart Cards are only being made available to Licensee under this Section 2.6.1 for Licensee to: (a) develop and manufacture Licensee Receivers and ETC Receivers under the terms of this Agreement, (b) to perform its reasonable warranty fulfillment obligations regarding Licensee Receivers and ETC Receivers under the terms of this Agreement, and (c) to perform reasonable out-of-warranty repair and service of Licensee Receivers. In view of the potential for a subscriber to defraud ESC by improperly obtaining a replacement Smart Card under a false warranty claim, Licensee agrees that it will not use Smart Cards provided by ETC under this Section 2.6.1 for any purpose whatsoever other than to: (1) develop and manufacture Licensee Receivers and ETC Receivers under the terms of this Agreement, (2) fulfill its warranty obligations regarding Licensee Receivers and ETC Receivers under the terms of this Agreement, and (3) provide reasonable out-of-warranty repair and service of Licensee Receivers. Licensee further acknowledges and agrees that, with respect to Smart Cards that have been lost, stolen or destroyed end users must purchase replacement Smart Cards directly from ETC (or such other entity as ETC may designate from time to time in writing) subject to such terms and conditions and at such prices as ETC may determine from time to time in its sole judgment. Specifically but not by limitation, under no circumstances shall Licensee sell Smart Cards other than a single Smart Card integrated with each Licensee

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Receiver and each ETC Receiver without prior written consent or direction from ETC. Licensee agrees to provide ETC with a written report matching the identification number of each replacement Smart Card with the CAID number and serial number of the Licensee Receiver or ETC Receiver, as the case may be, into which it is installed prior to returning the Licensee Receiver or ETC Receiver, as the case may be, to the end-user. In addition, Licensee shall notify ETC of the disposition and identification number of all Smart Cards that Licensee has replaced but not yet returned to ETC within five (5) business days of such replacement.

2.6.2 Price.

(a) Subject to Section 2.6.1 above, ETC agrees to supply Smart Cards to Licensee to manufacture, or have manufactured *** , ETC Receivers at the price of *** per Smart Card.

(b) Subject to Section 2.6.1 above, ETC agrees to supply Smart Cards to Licensee to: (i) develop Licensee Receivers and ETC Receivers; (ii) manufacture, or have manufactured ***, Licensee Receivers, (iii) perform, or have performed ***, warranty repair of Licensee Receivers and ETC Receivers, and (iv) perform, or have performed *** , out-of-warranty repair of Licensee Receivers at the initial price of *** per Smart Card. ***

(c) ***

2.6.3 Shipping Costs. All Smart Cards purchased by Licensee under Section 2.6.1 above shall be shipped F.O.B. point of shipment (a) Huntsville, Alabama USA, (b) Denver, Colorado USA, or (c) Atlanta, Georgia USA, at ETC's option exercisable from time to time in its sole judgment. Title and risk of loss of Smart Cards purchased by Licensee under Section 2.6.1 above shall pass to Licensee upon delivery by ETC or its agent to the carrier for shipment thereof. Licensee shall be responsible for all costs of shipping and insurance of Smart Cards purchased by Licensee under Section 2.6.1 above. Licensee shall have the sole responsibility to file any claims with the carrier for damage, missing items or otherwise, and ETC shall have no liability or responsibility if Licensee is unable to obtain full compensation for any loss from the claim. Licensee shall select the method of shipment and carrier; provided, however, that, in the event that Licensee fails to make the necessary arrangements for shipment, Licensee acknowledges and agrees that ETC shall, without incurring any liability, have the option, in its sole judgment, to select the method of shipment and the carrier on Licensee's behalf and at Licensee's expense.

2.6.4 Smart Card Warranty.

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(a) With respect to Smart Cards purchased by Licensee from ETC in conjunction with an OEM Receiver or under Section 2.6.1, ETC shall pass through to Licensee the then-current warranty provided to ETC by NagraStar LLC with respect to the relevant Smart Cards, as such warranty may change at any time and from time to time in NagraStar LLC's sole judgment. On the date first set forth above, NagraStar LLC presently warrants to ETC that Smart Cards shall be free from defects in materials and workmanship for the shorter of: (i) *** after the Smart Card is activated for program reception, or (ii) *** after the Smart Card is shipped to ETC by NagraStar LLC (the "Warranty Period"). Licensee shall return defective Smart Cards purchased by Licensee from ETC in conjunction with an OEM Receiver or under Section 2.6.1 above at Licensee's expense. If a Smart Card purchased by Licensee from ETC in conjunction with an OEM Receiver or under Section 2.6.1 above is: (i) verified as having failed during the Warranty Period; (ii) returned to ETC by Licensee within *** after expiration of the Warranty Period; and (iii) confirmed as defective by ETC, Licensee's exclusive remedy for fulfillment of this warranty shall be for ETC to repair and return or replace and return conforming Smart Cards to Licensee at no charge to Licensee; provided that ETC may elect instead to refund Licensee the purchase price of such defective Smart Cards if ETC determines in its reasonable judgment that a refund is preferable to replacement for security or other legitimate business reasons.

(b) THE LIMITED WARRANTY PROVIDED BY ETC FOR SMART CARDS IN SECTION 2.6.4(a) IS IN LIEU OF ALL OTHER WARRANTIES, WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OF FITNESS FOR A PARTICULAR USE OR PURPOSE. IN NO EVENT SHALL ETC BE LIABLE FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF USE) ARISING OUT OF OR IN CONNECTION WITH THE SALE, USE OR PERFORMANCE OF ANY SMART CARDS AND REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED UPON BREACH OF WARRANTY OR CONTRACT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER LEGAL THEORY.

2.6.5 Smart Card Returns. With respect to obsolete Smart Cards in Licensee's inventory that are returned to ETC by Licensee at Licensee's expense, ETC shall replace and return current Smart Cards to Licensee at no charge to Licensee; provided that ETC may elect instead to refund Licensee the purchase price of such obsolete Smart Cards if ETC determines in its reasonable judgment that a refund is preferable to replacement for security or other legitimate business reasons.

2.7 Matching Purchases by ETC.

2.7.1 General Terms and Conditions. Licensee agrees to manufacture and sell to ETC, and ETC agrees to purchase from Licensee: (a) *** ETC Receivers *** beginning upon commencement of the first mass production run of

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Licensee Receivers by Licensee; and (b) *** ETC Receivers, for each Licensee Receiver and Specialty OEM Receiver that is (i) sold by Licensee directly to a Licensee Retailer, (ii) is resold by such Licensee Retailer directly to an end-user in the Territory, and (iii) results in the creation of a new Subscriber Account; provided that the *** set forth in Subsection (a) above shall count towards ETC's purchase obligations under Subsection (b) above. ETC shall have *** from the date of Activation of the underlying Licensee Receiver or Specialty OEM Receiver to order and accept delivery of its matching purchase of an ETC Receiver under Subsection (b) above from Licensee. ETC's purchase obligations under this Section 2.7.1 are subject to the forecasting, ordering, shipping and delivery terms and conditions set forth in Sections 2.7.4, 2.7.5 and 2.7.6 below, and are contingent upon Licensee meeting or exceeding ETC's reasonable manufacture and delivery requirements that do not conflict with Sections 2.7.4, 2.7.5, 2.7.6 and 2.16 below.

2.7.2 ETC shall be entitled to choose, in its sole judgment from available Licensee Receiver models, the ETC Receiver model that it will purchase, regardless of the underlying model Licensee Receiver or Specialty OEM Receiver giving rise to ETC's purchase obligations under Section 2.7.1 above. ETC's purchase obligations under Section 2.7.1 shall be contingent upon: (i) the ETC Receivers meeting ETC's quality and compatibility standards; ***

2.7.3 Upon request, Licensee shall affix such ETC Marks and Third Party Marks as ETC may designate from time to time in writing on the ETC Receivers (including without limitation on the bezel (front panel) and electronic program guide), any Accessories included therewith, any packaging therefor, and ODUs in accordance with: (i) ETC's trademark usage guidelines, the current version of which is attached hereto as Exhibit A; and (ii) ETC's user interface specification, as such guidelines and specification may change from time to time in ETC's sole discretion upon written notice to Licensee, and as ETC may otherwise direct at any time and from time to time; provided that Licensee shall have a commercially reasonable period of time to implement changes to such guidelines, specification and direction. Licensee shall have no right whatsoever to affix any Licensee branding or other marks to ETC Receivers without ETC's prior written consent, which consent may be withheld in ETC's sole judgment. Except as otherwise set forth to the contrary in this Section 2.7.3, all ETC Receivers delivered hereunder to ETC (or its designees) shall be identical in functionality and technical specifications to Licensee Receivers, and shall be identical in appearance to Licensee Receivers. Notwithstanding the above, Licensee shall not be obligated to include *** provided that Licensee shall be obligated to include ***.

2.7.4 Commencing with the first full calendar month in the Term and during each calendar month in the Term thereafter, ETC shall provide Licensee with a forecast specifying quantities of each available Licensee Receiver model that ETC expects to purchase in each of the *** months following the calendar month in which the forecast was provided to Licensee (the "Forecast Month"). With respect to

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the *** months of the initial forecast and the *** month of each forecast submitted thereafter, the specified quantities for each forecasted model of ETC Receiver may be increased or decreased by ETC by *** upon issuance of the next forecast. With respect to the *** month of each forecast, the specified quantities for each forecasted model of ETC Receiver may be increased or decreased by ETC by *** upon issuance of the next forecast. With respect to the *** month of each forecast, the specified quantities for each forecasted model of ETC Receiver may be increased or decreased by ETC by *** upon issuance of the next forecast. With respect to the *** month of each forecast, the specified quantities for each forecasted model of ETC Receiver may be increased or decreased by ETC by *** upon issuance of the next forecast. Subject to the above, a new monthly forecast will always supercede completely any previous forecasts. Licensee shall order or inventory component parts sufficient to meet the requirements specified in the *** months of each forecast. For components whose purchase lead times exceed *** months, Licensee will calculate component quantity requirements corresponding to those components' lead times, and approach ETC for authorization to purchase those parts. ETC may then authorize purchase of some or all of the components beyond the *** month time horizon, and will become liable for the cost of these components should ETC's future purchase orders not consume those authorized quantities. Licensee shall approach ETC for re-authorization monthly for all such long lead time components.

2.7.5 ETC will use reasonable commercial efforts to translate the *** months of the initial forecast and the *** month of each forecast submitted thereafter into a purchase order, including requested delivery dates, on or before the *** day of the applicable Forecast Month. Purchase orders of ETC shall state only: (i) identity of goods; (ii) quantity of goods; (iii) purchase price of goods; and (iv) requested ship date of goods. In the event of any conflict or inconsistency between the terms of a purchase order and the terms of this Agreement, the terms of this Agreement shall prevail. Licensee will make commercially reasonable efforts to fulfill all valid purchase orders issued by ETC. Any failure to confirm such a purchase order shall not be deemed acceptance by Licensee. Licensee will inform ETC of the acceptance or rejection of a purchase order, in whole or in part, within a reasonable time after receipt of the relevant purchase order. Should Licensee reject the applicable purchase order or should Licensee's acceptance include different delivery dates or product mix than in the ETC purchase order, ETC shall be permitted to modify the purchase order in whole or in part and the process shall be repeated until full agreement is reached. ETC shall have the option, exercisable in its sole discretion, to reduce its obligation to purchase ETC Receivers from Licensee under Section 2.7.1 above by the difference between the original quantity ordered by ETC, and the quantity finally agreed upon pursuant to the above process, which shall be deemed to be zero (0) in the event that Licensee rejected the applicable purchase order or the parties are unable to agree upon a final quantity; provided that, in the event that the original quantity ordered by ETC is greater than the average monthly quantity ordered by ETC from *** and all Other Manufacturers over the

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preceding twelve (12) months (the "Average Quantity"), then ETC shall only have the option, exercisable in its sole discretion, to reduce its obligation to purchase ETC Receivers from Licensee under Section 2.7.1 above by the difference between the Average Quantity, and the quantity finally agreed upon pursuant to the above process. The quantities specified for each model of ETC Receiver in a purchase order issued by ETC under this Section 2.7.5 may be increased or decreased by ETC by *** without penalty, subject to its obligation under Section 2.7.1 to (a) purchase *** ETC Receivers within the *** period beginning upon commencement of the first mass production run of Licensee Receivers by Licensee and (b) order and accept delivery of its matching purchase of *** ETC Receivers from Licensee within *** from the date of Activation of the underlying Licensee Receiver or Specialty OEM Receiver, as the case may be. Additionally, ETC shall have the right to modify any purchase order issued under this Section 2.7.5 to extend delivery dates and change delivery locations upon written notice to Licensee received at least two (2) business days prior to the scheduled ship date, subject to its obligations under Section 2.7.1 to (a) purchase *** ETC Receivers within the six (6) month period beginning upon commencement of the first mass production run of Licensee Receivers by Licensee and (b) order and accept delivery of its matching purchase *** ETC Receivers from Licensee within six (6) months from the date of Activation of the underlying Licensee Receiver or Specialty OEM Receiver, as the case may be.

2.7.6 All ETC Receivers shall be shipped D.D.P. ETC's warehouse (a) Denver, Colorado USA, or (b) Atlanta, Georgia USA, at ETC's option exercisable from time to time in its sole judgment, but title and risk of loss shall pass to ETC when the applicable ETC Receivers cross into the customs territory of the United States. Licensee shall obtain, at its own expense, cargo insurance for each shipment of ETC Receivers. Such insurance shall be on terms and conditions reasonably acceptable to ETC and shall be placed with reputable underwriters or a reputable insurance company reasonably acceptable to ETC. Such insurance shall name ETC as an additional insured and shall name ETC as sole loss payee from and after the point at which title and risk of loss for the relevant shipment of ETC Receivers passes to ETC (as provided above). The duration of such insurance cover shall be from the point at which title and risk of loss for the relevant shipment of ETC Receivers passes to ETC (as provided above) through delivery of the relevant shipment of ETC Receivers to ETC at the agreed point at the named place of destination. The minimum insurance shall cover the price provided in this Agreement for the relevant ETC receivers and shall be provided in the currency set forth herein. Licensee shall, upon ETC's request, provide ETC with any and all relevant insurance policies or other evidence of relevant insurance cover reasonably acceptable to ETC. Licensee shall have the sole responsibility to file any claims with the carrier for damage, missing

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items or otherwise arising prior to the transfer of title and risk of loss to ETC, and ETC shall have no liability or responsibility if Licensee is unable to obtain full compensation for any loss from any such claim. ETC shall have the sole responsibility to file any claims with the carrier for damage, missing items or otherwise arising after the transfer of title and risk of loss to ETC, and Licensee shall have no liability or responsibility if ETC is unable to obtain full compensation for any loss from any such claim. Licensee shall be responsible for all costs of shipping of ETC Receivers. Licensee and ETC shall mutually agree upon the method of shipment and carrier. Shipments will be made in standard shipping packages that have been approved by ETC. All shipments will include a packing slip which lists items contained in the shipment by part number, descriptions (including the CAID number, serial number and corresponding Smart Card number for each ETC Receiver), quantity, and purchase order number. Not later than *** before the scheduled delivery dates, ETC will notify Licensee in writing of the specific shipping destinations and the specific quantity of ETC Receivers to be shipped to each destination, which ETC agrees will be in full truckloads with at least one full truckload per destination or such other minimum quantity as the parties may agree to from time to time. Licensee will use reasonable efforts to make shipments of ETC Receivers by the dates specified in purchase orders accepted from ETC; provided, however, that Licensee shall be permitted to modify shipping dates due to circumstances beyond Licensee's reasonable control. All deliveries are contingent on Licensee or ***, as the case may be, receiving timely shipment of necessary materials for production. Within five (5) days after Licensee becomes aware that it will not be able to make shipment of ETC Receivers by the date specified in a purchase order accepted from ETC, Licensee shall give ETC notice setting forth an estimated delivery date. ETC shall have the right to cancel or modify any purchase order for which Licensee extends the shipping date by more than thirty (30) days or fails to ship within thirty (30) days of the shipping date specified in the purchase order, by means of a written notice to Licensee within five (5) days following written notice by Licensee to ETC of such modification or failure to ship. ETC shall have the option, exercisable in its sole discretion, to apply the quantity of ETC Receivers set forth in purchase orders canceled by ETC under this Section 2.7.6 towards the quantity of ETC Receivers required to be purchased by ETC under Section 2.7.1 above.

2.7.7 Price Increases. Increases in the price of any ETC Receivers shall not apply to any units of ETC Receivers that have been ordered under a firm and binding purchase order by ETC on or before the effective date of such price increase, provided the original shipment date specified by ETC is not more than thirty days after the date of Licensee's acceptance of such order.

2.7.8 Price Reductions.

(a) Price reductions shall be effective immediately, unless Licensee specifies otherwise. In the event of a price reduction on an ETC Receiver, ETC is entitled to request in writing a credit ("DISH Price Reduction Credit") in an amount based on the inventory of ETC, distributors and retailers of that particular ETC Receiver, in accordance with the terms of this section. The amount of credit shall *** multiplied by the *** as of the effective date of the price reduction.

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(b) The ETC Receivers shall be compared for "sameness", counted and priced as systems or individual components in accordance with how they were originally purchased by ETC from Licensee (ETC Receivers originally purchased as systems shall not be eligible for a DISH Price Reduction Credit if the price reduction applies to an individual component, and ETC Receivers originally purchased as individual components shall not be eligible for a DISH Price Reduction Credit if the price reduction applies to a system). Within five (5) business days after the effective date of such price change, ETC shall furnish Licensee with an itemized inventory (including all inventory located at any distributor or retailer location that is the subject of the request for the DISH Price Reduction Credit), with serial numbers, of the relevant ETC Receivers and corresponding Smart Cards for each ETC Receiver, as of such date, including information as to the mode of original purchase from Licensee (as systems or individual components), the amount of time such ETC Receivers have been held in the inventory of ETC, a distributor or a retailer and any other information Licensee may reasonably request. Any DISH Price Reduction Credit shall be applied by Licensee to the purchase price of ETC's subsequent orders of ETC Receivers from Licensee in the form of a credit memo issued to ETC by Licensee. If at the time of the price reduction, ETC has ordered but not yet paid for ETC Receivers, ETC shall only be required to pay for such ETC Receivers at the reduced price. Therefore, no DISH Price Reduction Credit shall accrue with respect to those orders.

(c) Licensee shall have the right to audit upon reasonable notice the inventory of ETC, any distributor or any retailer to verify the accuracy of any request by ETC for a DISH Price Reduction Credit. ETC shall also provide, at Licensee's request, the supporting information described in the preceding paragraph in electronic format to facilitate the verification by Licensee that an ETC Receiver subject to a request for a DISH Price Reduction Credit has not been Activated.

2.7.9 In addition to the purchases described in Section 2.7.1 above, ETC shall have the option, exercisable in its sole judgment at any time and from time to time to purchase ETC Receivers from Licensee, subject to the forecasting, ordering, shipping and delivery terms set forth in Sections 2.7.4, 2.7.5 and 2.7.6.

2.7.10 Licensee will only be authorized to sell ETC Receivers to ETC and such other persons and entities as ETC may approve from time to time in writing in ETC's sole judgment. ETC's approval of a person or entity under this Section 2.7.10 shall apply to all orders placed by said person or entity until written notice of revocation of such approval has been received by Licensee.

2.7.11 All invoices to ETC hereunder shall be due, in immediately available funds, within *** from the date of invoice, which shall be issued no earlier than the ship date for the ETC Receivers covered by the invoice.

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2.7.12 Default. If ETC defaults in any payment due Licensee, or ETC violates any material term or condition of this Agreement or of any credit extended by Licensee or any Affiliate to ETC, Licensee reserves the right to: (i) suspend any shipment to ETC; (ii) require payment for shipments prior to shipment or delivery; and/or (iii) require payment of all unpaid balances prior to any shipment and payment for that shipment. Exercise of any of the above rights by Licensee shall not be construed as a limitation of Licensee's authority to exercise any other rights which Licensee may have at law, in equity, under contract or otherwise.

2.7.13 Sale of ETC Receivers by Licensee.

(a) While, subject to Sections 2.7.5 and 2.7.6, ETC's obligation to honor purchase orders submitted to Licensee is absolute, in the event that ETC breaches this obligation, then ETC shall have the option to pay to Licensee, in advance, all costs ("ETC Retrofit Costs") anticipated by Licensee as reasonable and necessary to remove all ETC Marks from the ETC Receivers covered by the relevant purchase order(s) ("ETC Excess Inventory") and otherwise retrofit the ETC Excess Inventory for sale as RCA, GE or RCA Scenium brand product

(b) In the event that ETC pays the ETC Retrofit Costs to Licensee, in advance and within five (5) business days after receipt of Licensee's invoice, Licensee agrees to retrofit the units of ETC Excess Inventory, as necessary, and use reasonable commercial efforts to resell the ETC Excess Inventory, at prices determined by Licensee, to any person or entity authorized by Licensee as an RCA, GE or RCA Scenium retailer. In the event that Licensee is unable, through the exercise of reasonable commercial efforts, to resell any such ETC Excess Inventory, Licensee shall be entitled to exercise any other remedies available to Licensee under this Agreement, at law, in equity or otherwise for breach of ETC's obligations regarding the relevant purchase order.

(c) In the event that (i) ETC does not opt to pay the Retrofit Costs or (ii) ETC opts to pay the Retrofit Costs but does not actually pay the ETC Retrofit Costs to Licensee, in advance and within five (5) business days after receipt of such invoice, then in addition to all other remedies available to Licensee under this Agreement, at law, in equity, under contract or otherwise Licensee and/or any of its Affiliates shall have the right, but not the obligation, to sell ETC Excess Inventory without removing the ETC Marks. ETC hereby grants to Licensee and its Affiliates a license to the ETC Marks as necessary for the marketing and sale of such ETC Excess Inventory under this Section 2.7.13(c).

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(d) This Section 2.7.13 shall not be construed as creating an obligation upon Licensee to mitigate its damages by removing ETC Marks or otherwise retrofitting ETC Excess Inventory for sale as RCA, GE or RCA Scenium brand products, and its is hereby expressly agreed by the parties that Licensee has no such obligation, it being recognized by the parties that Licensee and its Affiliates would incur additional risk and cost in exercising such remedy including but not limited to lost opportunity costs.

2.8 Responsibilities. Licensee shall be solely responsible for the manufacture of the Licensee Receivers and ETC Receivers. Notwithstanding the foregoing, ETC shall provide Licensee with a reasonable amount of technical assistance from ETC relating to the development, manufacture and testing of the Licensee Receivers and ETC Receivers, particularly as relates to the Licensed Technology.

2.9 Expenses/Intellectual Property Ownership.

2.9.1 Manufacturing and Sales Costs. All costs and expenses incurred by a party in connection with the manufacture and sale of the OEM Receivers, Licensee Receivers and the ETC Receivers shall be the sole responsibility of such party.

2.9.2 EchoStar Technology. EchoStar shall own all technology solely developed by EchoStar. Furthermore, EchoStar shall own all derivative works, enhancements, improvements and modifications to the Licensed Technology that is proprietary to ETC and is provided to Licensee pursuant to this agreement (collectively "Advancements to EchoStar Technology"). Advancements to EchoStar Technology are intended to encompass all developments which either would not or could not have been made absent access to the Licensed Technology that is proprietary to ETC and is provided to Licensee pursuant to this agreement. Such Advancements to EchoStar Technology are not intended to cover features which are completely independent and separable from the Licensed Technology that is proprietary to ETC and is provided to Licensee pursuant to this agreement.

2.9.3 Licensee Technology. Licensee shall own all technology solely developed by Licensee. Furthermore, Licensee shall own all derivative works, enhancements, improvements and modifications to the technology that is proprietary to Licensee and is provided to ETC pursuant to this agreement (collectively "Advancements to Licensee Technology"). Advancements to Licensee Technology are intended to encompass all developments which either would not or could not have been made absent access to the technology that is proprietary to Licensee and is provided to ETC pursuant to this agreement. Such advancements to Licensee Technology are not intended to cover features which are completely independent and separable from the

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technology that is proprietary to Licensee and is provided to ETC pursuant to this agreement.

2.9.4 Joint Intellectual Property. The parties shall jointly own any intellectual property jointly developed by both parties. Absent a written agreement to the contrary, each party shall be deemed to own an equal and undivided interest in and to such jointly developed intellectual property and shall be entitled to license, sublicense, make any use of or derive any benefits, royalties, or compensation from the licensing, use or other exploitation of such jointly developed intellectual property without the written consent of, or accounting to, the other party. Absent a written agreement to the contrary, neither party shall be required to file or prosecute any patent applications or maintain any issued patents to protect such jointly developed intellectual property. However, if one party decides to file a patent application, the other party shall be required to provide all reasonable assistance and cooperation to ensure the successful progress and issuance of such patent application. Absent a written agreement, such reasonable assistance and cooperation shall not include the payment of any costs or attorney fees associated with the prosecution, issuance or maintenance of any patents based upon such patent application. Nevertheless, the fact that one party has not paid any cost or attorney fees associated with any costs or attorney fees associated with the prosecution, issuance or maintenance of any patents based upon such patent application, shall not reduce, eliminate or in any way alter the status of the non-paying party's equal and undivided interest in and to such patent application and any patent which issues therefrom.

2.9.5 Contested Technology. The parties recognize that they are each engaged in, among other things, the development of satellite television receivers. Accordingly, each party may employ features for which the other party has filed a patent application or received an issued patent. The fact that one party has received such patent protection does not mean that it is in fact entitled to own such patent protection and the parties recognize that the U.S. laws regarding inventorship shall govern any such disputes.

2.9.6 NREs. Notwithstanding the foregoing, Licensee shall be solely responsible for any and all costs and expenses incurred in connection with any non-recurring expenses (NREs) associated with equipping Licensee's factory with the necessary tooling and test equipment for the manufacture of Licensee Receivers and ETC Receivers, with the exception of: (i) the costs of tooling that is solely required for the ETC Receivers, which cost shall be covered by ETC, and (ii) the cost of test equipment that is solely required for the ETC receivers, which cost shall be treated in the most favorable manner to Licensee that the same cost is treated to *** or any Other Manufacturer.

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2.10 Volume Commitment. Licensee agrees to sell a total of at least *** Licensee Receivers, OEM Receivers and Promotional Certificates (or Activations that qualify for an Incentive under Section 5.1.1(d) or Section 5.1.1(e)) directly to Licensee Retailers during the *** period commencing on the date first set forth above, and agrees to sell a total of at least *** additional Licensee Receivers during each subsequent *** period, pro-rated for the final period if less than ***.

2.11 Subsidy. For each Licensee Receiver that is sold by Licensee directly to a Licensee Retailer at an invoice price (exclusive of rebates, co-op payments, and other incentives or other payments or credits of any nature whatsoever that have the net effect of reducing the price of such Licensee Receivers to the Licensee Retailer) below the price (F.O.B. point of shipment in the continental United States of America) charged to ETC by *** or any other regular third party manufacturer regularly utilized by ETC, for commercial quantities of Receivers performing substantially similar functions as the relevant Licensee Receiver (an "Other Manufacturer"), ESC will pay Licensee a subsidy (the "Subsidy") equal to the *** as established prior to the beginning of each calendar quarter. In the event that ESC elects in its sole judgment to offer non-standard retailer economics to a particular Licensee Retailer, then the *** used in Subsection (b) above with respect to a particular model Licensee Receiver shall be the *** charged to retailers in the Territory receiving substantially same non-standard retailer economics as the applicable Licensee Retailer by Echosphere for Receivers performing substantially similar functions the relevant Licensee Receiver, as established prior to the beginning of each calendar quarter. Licensee shall only be eligible to receive *** Subsidy under this Section 2.11 with respect to any Licensee Receiver, regardless of the number of times such Licensee Receiver is Activated for different Subscriber Accounts. The Subsidy shall be paid, *** to Licensee *** after sale of the applicable Licensee Receiver to the Licensee Retailer. In the event that ETC elects, in its sole judgment, to subsidize the cost to *** or any Other Manufacturer, as the case may be, of a component incorporated into, or an intellectual property royalty payable in connection with, a Receiver used to set the invoice price described in Subsection (a) above and ETC elects, in its sole judgment, not to make the same subsidy available to Licensee, then Licensee shall be entitled ***.

2.12 Serial Numbers and Smart Card Numbers. For the purpose of facilitating the Activation of Licensee Receivers and ETC Receivers by ESC, Licensee will provide ESC with a list on electronic media (and/or paper media upon ETC's request) in the format requested by ESC, which includes (a) the CAID number and serial number of each Licensee Receiver and ETC Receiver, (b) the corresponding Smart Card number for each Licensee Receiver and ETC Receiver, and (c) such further information as ETC may reasonably request, in each case prior to: (i) delivery of the Licensee Receiver to a Licensee Retailer, or (ii) delivery of the ETC Receiver to ETC, its Affiliates or its designee.

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2.13 Written Materials. Licensee agrees that it will include within the consumer packaging for each Licensee Receiver and ETC Receiver, at Licensee's sole cost and expense (except that ETC shall be responsible for providing such items to Licensee or reimbursing Licensee for the direct costs of printing such items), copies of such written materials as ETC then currently includes within the consumer packaging for substantially similar Receivers packaged by or on behalf of ETC and its Affiliates; provided that solely with respect to Licensee Receivers, such written materials shall not include third party offers and promotional materials regarding products and services that are competitive with Licensee's core businesses without Licensee's prior written consent. Licensee agrees to include such written materials in the same manner as the then-current method used to include such written materials with each substantially similar Receiver packaged by or on behalf of ETC and its Affiliates, as such method may change from time to time in ETC's sole judgment. The Licensee may include within the consumer packaging for each Licensee Receiver, at Licensee's sole expense inclusive of direct material costs, promotional material relevant to Licensee's business which is not competitive with the core businesses of ETC, ESC and their Affiliates, subject to ETC's approval not to be unreasonably withheld or delayed.

2.14 Call Center Costs/Software and Other Changes.

2.14.1 In the event that the proportion of problem calls received by or on behalf of ESC with respect to particular model Licensee Receiver or ETC Receiver, as the case may be, is noticeably greater than the proportion of problem calls received by or on behalf of ESC with respect to the Receiver model manufactured by or on behalf of ETC performing substantially similar functions as the relevant model Licensee Receiver or ETC Receiver, as the case may be, then Licensee agrees to promptly review the problem with ETC and to jointly establish a corrective course of action to correct the root cause of the problem, ***.

2.14.2 In the event Licensee is notified in a timely manner of the need to effect software or other changes to ETC Receivers or Licensee Receivers as a result of system or similar changes initiated by ETC or ESC, but Licensee does not effect such changes within substantially the same time period as ETC implements changes to its Receivers generally for the applicable change(s), and if as a result of such failure to implement the change(s) the proportion of problem calls received by or on behalf of ESC with respect to particular models of Licensee Receivers or ETC Receivers is noticeably greater than the proportion of problem calls received by or on behalf of ESC with respect to the Receiver models manufactured by or on behalf of ETC performing substantially similar functions, ***

2.15 Warranty.

2.15.1 Licensee Receivers Purchased by End-Users.

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(a) Licensee shall extend ETC's then current standard consumer warranty to the end users of Licensee Receivers. In addition, Licensee will provide ***.

(b) In the event that Licensee Receivers purchased by end-users are returned to ETC or any of its affiliates for service or repair, ETC shall be entitled to ***. In the event that Licensee refuses to service, repair or replace such Licensee Receivers, such refusal shall constitute a breach of this Agreement, and in addition to any other remedies available to ETC (including without limitation termination of this Agreement pursuant to Section 6.2(ii)), ETC shall be entitled to ***. In the event that the defined path for servicing such Licensee Receivers is through direct return to the Licensee, and not ETC, then ETC agrees to attempt to minimize the errant return of Licensee Receivers to ETC through using its reasonable commercial efforts to confirm the brand and model of receiver prior to issuing a return authorization, educate customer service personnel regarding appropriate procedures and implement other commercially reasonable methods as may be established by EchoStar.

2.15.2 ETC Receivers and Licensee Receivers Leased by End-Users.

(a) Licensee warrants to ETC that each ETC Receiver will be free from defects in materials and workmanship (labor and parts) for a period of *** from the date of shipment by Licensee or a *** to ETC, its Affiliates or its designee. This warranty shall not apply to: (i) any ETC Receiver that is abused, damaged by external causes, altered or misused; or (ii) any ETC Receiver that is damaged due to improper installation or use.

(b) With respect to Licensee Receivers that are leased by end-users from ETC or its Affiliates, Licensee shall warrant to ETC and any lessee thereof that each Licensee Receiver will be free from defects in materials and workmanship (labor and parts) for a period of *** from the date of Activation by the original end user of the relevant Licensee Receivers, which date of Activation shall be provided to Licensee by ETC upon request. This warranty shall not apply to: (i) any Licensee Receiver that is abused, damaged by external causes, altered or misused; or (ii) any Licensee Receiver that is damaged due to improper installation or use. In addition, Licensee will provide ***.

(c) Licensee Receivers leased from ETC by end-users and ETC Receivers shall be considered free from defects in workmanship if they are manufactured in accordance with ETC's manufacturing workmanship standards (or those of any third party which manufactures Receivers on ETC's behalf), conform to the product specifications, and successfully complete product acceptance tests for the product.

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(d) Deadline for Claims; Disclaimer. ALL CLAIMS FOR WARRANTY FULFILLMENT UNDER SECTIONS 2.15.2 (a) AND 2.15.2 (b) MUST BE RECEIVED BY LICENSEE (OR ITS DESIGNEE) NO LATER THAN *** AFTER THE EXPIRATION OF THE APPLICABLE WARRANTY PERIOD FOR THE PRODUCT. THIS WARRANTY IS THE ONLY WARRANTY GIVEN TO ETC BY LICENSEE FOR LICENSEE RECEIVERS LEASED FROM ETC AND ETC RECEIVERS. LICENSEE MAKES, AND ETC RECEIVES, NO OTHER WARRANTY EITHER EXPRESS OR IMPLIED. ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE, ARE EXPRESSLY DISCLAIMED AND EXCLUDED HEREFROM.

(e) In the event that Licensee fails to repair or replace (with new or remanufactured product at the Licensee's sole discretion) defective in-warranty ETC Receivers or Licensee Receivers that are leased by end-users from ETC or its Affiliates within *** after ETC delivers such receivers to Licensee, the Licensee and ETC shall work in good faith to cure the delinquent service time, ***. In the event Licensee has not cured the delinquent service time problem within ***, then such failure shall constitute a breach of this Agreement, entitling ETC to terminate this Agreement pursuant to Section 6.2.1(ii) in addition to any other remedies available to ETC. ETC shall be responsible for the cost of shipping such receivers to be serviced to Licensee's service facilities, and Licensee shall be responsible for the costs of shipping repaired or replacement units to ETC.

(f) In the event that receivers returned to Licensee pursuant to Section 2.15.2(d) above are determined by Licensee to be non-defective, then ETC shall be responsible for shipping charges to return the units to ETC and Licensee may, at its option, charge ETC a diagnostic and handling charge of *** per non-defective unit.

2.16 Quality Control.

2.16.1 Incorporation of Specifications. Licensee undertakes and agrees to incorporate the ETC Receiver Specifications in the manufacture of the Licensee Receivers and agrees to comply with any and all industry and governmental standards and regulations, including, without limitation, product safety standards, which may apply to the manufacture, sale and use of the Licensee Receivers in the Territory. ETC and Licensee shall regularly conduct Design Reviews to reach mutual agreement regarding Licensee's plans for implementation of Licensee Receivers and ETC Receivers. Licensee agrees that in the manufacture of the Licensee Receivers pursuant to this Agreement, manufacturing operations shall at all times be conducted to ensure that the Licensee Receivers manufactured by Licensee or *** shall be in strict conformance with the ETC Receiver Specifications (absent prior written agreement by ETC to deviations from the ETC Receiver Specifications, which shall not be unreasonably withheld or delayed). Changes to the ETC Receiver Specifications shall

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be made in accordance with ETC's standard Engineering Change Request ("ECR") procedure, as such ECR procedure may change from time to time in ETC's sole judgment upon written notice to Licensee. Licensee shall incorporate all changes to the ETC Receiver Specifications into Licensee Receivers not yet manufactured within a commercially reasonable amount of time taking into account the design effort required, the need to order new materials and any requirements for obtaining agency and other governmental approvals, and ETC shall be entitled to incorporate any such changes into Licensee Receivers through flash download of revised software to Licensee Receivers in the field. ETC will provide Licensee with the same advance notice (if any) of each flash download of software as ETC provides to its customer service centers and its Affiliates' customer service centers with respect to the applicable flash downloads of software. ETC shall be solely responsible for any loss or damage suffered by a third party as a result of any flash downloads of software to Licensee Receivers, unless the loss or damage was contributed to by Licensee's failure to manufacture the applicable Licensee Receiver(s) in strict conformance with the ETC Receiver Specification.

2.16.2 Marking Licensee Receivers and ETC Receivers. Licensee agrees to individually mark each unit of Licensee Receiver manufactured by Licensee pursuant to this Agreement with a unique serial number (in strict conformance with ETC's then current serial number format and specification, as such format and specification may change at any time and from time to time in ETC's sole judgment upon reasonable prior written notice to Licensee provided that such change does not require Licensee to incur unreasonable expense) and a clear and distinct designation of the country of manufacture and/or assembly origin in accordance with applicable laws.

2.16.3 Compliance with Import Laws. Licensee will, at Licensee's sole cost and expense, comply with all laws, rules and regulations relating to the importation by Licensee of machinery, equipment, parts, components and materials required or used in the manufacture, assembly and testing of the Licensee Receivers, without any responsibility or liability on the part of ETC with respect to such import licenses or imports. Upon request, ETC shall provide Licensee with copies of all governmental determinations, authorizations, rulings, or other similar communications obtained or received by ETC regarding the importation of ETC Technology and media containing ETC Technology.

2.16.4 Location(s); Inspection of Location(s) and Licensee Receivers

(a) Location. The Licensee Receivers shall be manufactured, assembled and tested at the Location(s) operated by Licensee or by *** (the "Locations").

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(b) Location Inspection. Licensee will permit ETC to enter Location(s) upon reasonable prior notice during normal business hours to inspect the facilities, equipment and materials used in manufacturing, assembling and testing the Licensee Receivers, to check operations and methods, and to take with them reasonable samples of the Licensee Receivers subject to the limitations set forth in Section 2.16.4(c)

(c) Approval of Licensee Receivers. Licensee shall, at Licensee's cost, provide ETC up to *** (as determined by ETC in its sole judgment) production intent (pre-pilot) samples of each model Licensee Receiver and ETC Receiver prior to their full-scale manufacture by Licensee. ETC will notify Licensee in writing of the conformity or otherwise of each model Licensee Receiver and ETC Receiver to the ETC Receiver Specifications within fifteen (15) days of receipt by ETC of the relevant model Licensee Receiver or ETC Receiver, as the case may be. Licensee also shall, at Licensee's cost, provide ETC up to *** (as determined by ETC in its sole judgment) production samples of each model Licensee Receiver and ETC Receiver prior to its full-scale manufacture by Licensee. ETC will notify Licensee in writing of the conformity (through a letter of conformity) or otherwise of each model Licensee Receiver and ETC Receiver to the ETC Receiver Specifications within thirty (30) days of receipt by ETC of the relevant model Licensee Receiver or ETC Receiver, as the case may be. The written test procedures and test plan that is used to determine conformity of the Licensee Receivers and ETC Receivers to the ETC Receiver Specifications ("Test Procedures and Plan"), shall be furnished to Licensee by ETC. If ETC reasonably determines that any of Licensee's samples fail to meet the quality, performance and compatibility standards in the Test Procedures and Plan, then Licensee shall promptly correct the deficiency before continuing the manufacture of the Licensee Receivers or ETC Receivers, as the case may be. The examination by ETC of the conformity of the Licensee Receivers and ETC Receivers to the Test Procedures and Plan shall not be construed as constituting a certification or warranty. Licensee shall not be authorized to refer to ETC's examination in connection with the sale of the Licensee Receivers or ETC Receivers as a certification or warranty by ETC, unless expressly agreed by ETC. ETC shall have no liability whatsoever arising from its examination of the Licensee Receivers or ETC Receivers.

2.16.5 Quality Control Procedures. Licensee and its *** shall maintain a quality control program which ensures compliance with any and all applicable governmental standards, regulations or certifications. All work undertaken by Licensee shall be performed in accordance with Licensee established quality control procedures and guidelines, which Licensee shall provide to ETC for ETC's approval (which approval shall not be unreasonably withheld or delayed), at ETC's request.

2.16.6 Factory Testing. Prior to shipment from Location(s), each Licensee Receiver shall be factory tested by Licensee or its *** in accordance with the

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Test Procedures and Plan, and Licensee and its *** shall submit to ETC, upon request of ETC, complete certified test results. Upon reasonable prior notice, Licensee will permit ETC to have access to all such testing records for Licensee and its *** at Licensee Location(s) during normal business hours.

2.16.7 Purchase of Components. Except as expressly set forth to the contrary in Section 2.9.5 above, Licensee acknowledges and agrees that it is solely responsible for the purchase of all parts, components and materials necessary for the manufacture of the Licensee Receivers, including, without limitation, any tooling and test equipment, and any and all other costs associated with the manufacture, assembly, testing, labeling and packaging of the Licensee Receivers.

2.17 Use of Licensed Technology.

2.17.1 No Reverse Engineering. Licensee may not use Licensed Technology that is proprietary to ETC and is provided to Licensee pursuant to this agreement for reverse engineering. To this end, Licensee shall not provide any access to the Licensed Technology that is proprietary to ETC and is provided to Licensee pursuant to this agreement to anyone who is involved in determining whether Licensee's intellectual property is being used.

2.17.2 Locations. Licensee shall not, without the prior written consent of ETC, which consent shall not be unreasonably withheld or delayed, use the Licensed Technology or any derivative thereof at any location other than the Location(s).

2.17.3 Licensee Developments.

(a) Only to the extent expressly permitted in Sections 2.2, 2.4 and 2.16.1 above, ETC acknowledges that Licensee may develop and incorporate into Licensee Receivers made under this Agreement features that are proprietary to Licensee ("Licensee Technology").

(b) In the event that ETC permits Licensee, pursuant to Section 2.2, 2.4 or 2.16.1, to make feature or other changes to Licensee Receivers that are not included in the ETC Receiver Specifications, then Licensee agrees to reimburse ESC for all reasonable costs and expenses incurred by ESC and its affiliates to support such feature and other changes, including without limitation technical support and other call center costs, subject to applicable documentation and audit by Licensee, unless otherwise agreed in writing by the parties.

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2.17.4 Third Party Intellectual Property. Except as expressly set forth to the contrary herein and with respect to ETC Technology which ETC and/or its Affiliates have the right to sublicense to Licensee without imposing terms and conditions in addition to those set forth herein, neither party shall have any rights to any intellectual property developed by a third party for or in conjunction with the other party. Each party understands and acknowledges that it may be restricted from being permitted to use any intellectual property developed by a third party for or in conjunction with the other party, including, but not limited to, intellectual property with regard to Receivers. To the extent that (i) the ETC Receiver Specifications or (ii) Accessories or *** purchased by Licensee pursuant to Section 2.19 below contain third party intellectual property that neither ETC nor any of its Affiliates have the right to sublicense to Licensee without imposing terms and conditions in addition to those set forth herein, ETC will use reasonable commercial efforts to assist Licensee in obtaining a license or agreement to license that will enable Licensee to perform the activities contemplated in this Agreement, such as assisting Licensee in obtaining a license for the OpenTV platform.

2.17.5 U.S. Export Law Compliance Requirements.

(a) Licensee understands and acknowledges that ETC's obligations to Licensee under this Agreement, including, without limitation, any and all obligations of ETC to provide the Licensed Technology (including the ETC Receiver Specifications), any technical assistance, any media in which any of the foregoing is contained and related technical data (collectively referred to as the "Data") are subject to compliance with all applicable laws and regulations of the United States of America, and with the terms of any applicable U.S. export licenses issued in connection with the furnishing of the Data to Licensee under this Agreement, and in the event that the obligations of ETC or Licensee should conflict with any law, regulation or export license, ETC or Licensee, as the case may be, shall be excused from performance of such obligations to the extent required for compliance therewith.

(b) Licensee represents, warrants and covenants that it will comply with all terms of any U.S. export licenses or regulations affecting Licensee's use or disposition of technical data or the product thereof, or any know-how, technical information, manufacturing or test equipment, components or software supplied by ETC under this Agreement. In furtherance and not in limitation of the foregoing, Licensee represents, warrants and covenants that it will not export or reexport: (1) the Licensed Technology; (2) any Smart Cards purchased in conjunction with an OEM Receiver or under Section 2.6.1 above; or (3) any Licensee Receiver, ETC Receiver or OEM Receiver or other product designed, developed or manufactured utilizing the Licensed Technology, to any destination country prohibited under United States law without the prior approval of the United States Government; and that it will not use: (i) the Licensed Technology; (ii) any Smart Cards purchased in conjunction with an OEM Receiver or under Section 2.6.1 above; or (iii) or any Licensee Receiver, ETC Receiver or OEM

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Receiver or other product designed, developed or manufactured utilizing the Licensed Technology, to support directly or indirectly the design, development, production or use of nuclear, chemical or biological weapons or ballistic missiles.

(c) Licensee acknowledges and understands that U.S. export laws relating to the Licensee Receivers, OEM Receivers, Smart Cards and Licensed Technology may change from time to time in the future. Licensee further acknowledges and agrees that it is Licensee's sole responsibility to be and remain informed of all U.S. laws relating to the export of Licensee Receivers, OEM Receivers, Smart Cards and Licensed Technology outside of the U.S. Licensee further acknowledges and agrees that ETC has absolutely no obligation to update Licensee regarding the status of U.S. export laws or any other U.S. laws relating to the export of Licensee Receivers, OEM Receivers, Smart Cards or Licensed Technology outside of the U.S. Without limitation of the foregoing, upon request, ETC shall provide Licensee with copies of all export authorizations, licenses, classifications or other relevant determinations obtained or received by ETC in connection with Licensed Technology (including the ETC Receiver Specification) and any media in which the foregoing is contained. Without ETC giving any consent for export of the Licensee Receivers, OEM Receivers, Smart Cards or Licensed Technology and subject to territorial limitations of this Agreement, Licensee agrees that prior to exporting and/or selling any Licensee Receivers, OEM Receivers, Smart Cards or Licensed Technology outside of the U.S., it will investigate all applicable U.S. laws relating to the export of Licensee Receivers, OEM Receivers, Smart Cards and Licensed Technology outside of the U.S. The parties shall cooperate with each other in making application for and securing any required export licenses, approvals or other authorizations and shall prepare, execute and deliver all documents that may be required in connection therewith. Licensee is strictly prohibited from violating any U.S. law relating to the export of Licensee Receivers, OEM Receivers, Smart Cards and Licensed Technology outside of the U.S. Should Licensee export or sell any Licensee Receiver, OEM Receiver, Smart Card or Licensed Technology outside of the U.S. in violation of this Agreement and/or U.S. law, this Agreement shall automatically terminate.

(d) Licensee represents and warrants that it will comply in all respects with the export and reexport restrictions set forth in any applicable U.S. export licenses with respect to any item used in the manufacture of the Licensee Receivers and ETC Receivers by Licensee and will otherwise comply with any and all applicable U.S. export and reexport laws and regulations or other United States laws and regulations in effect from time to time.

2.18 Accessories and ODUs. Licensee may, at its option, bundle Accessories and/or ODUs with Licensee Receivers. ETC shall grant all necessary authorizations for Licensee to purchase Accessories and ODUs ***.

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2.19 Optional Accessories. Licensee shall have the right to manufacture, or have manufactured, market, distribute and sell Optional Accessories for use with Receivers. Licensee shall not be obligated to include ***.

2.20 Service Contracts. The EchoStar Parties and Licensee agree that Licensee may offer, directly and through Licensee Retailers, service contracts on Licensee Receivers and OEM Receivers; provided that Licensee and the EchoStar Parties mutually agree in writing upon a plan for the implementation thereof, which, among other things, minimizes disruption to the customer service and general business practices of the EchoStar Parties and does not negatively effect the overall service level provided to the DISH Network customers. The parties mutually agree to commence discussions regarding the possibility of Licensee offering such service contracts within ninety (90) days after the date first set forth above.

2.21 Anything herein to the contrary notwithstanding, nothing herein shall preclude Licensee from asserting any of its patents against any product that is not manufactured by Licensee.

3. OEM MANUFACTURING

3.1 General. At Licensee's option, exercisable upon delivery of written notice to ETC, Licensee shall have the right to purchase from ETC, and ETC shall agree to sell to Licensee, such Receiver models as are then-currently being manufactured by or for ETC ("OEM Receivers"). For the avoidance of doubt, each OEM Receiver purchased by Licensee hereunder shall include a corresponding Smart Card. Licensee shall be only authorized to resell OEM Receivers: (i) directly to Licensee Retailers for resale by such Licensee Retailers directly to end-users in the Territory for use in connection with DISH Network; (ii) to Licensee's and its Affiliates' employees, friends and family pursuant to the terms and conditions of a program to be mutually agreed upon by Licensee and ESC; and (iii) directly to end-users through RCA.com pursuant to the terms and conditions of a program to be mutually agreed upon by Licensee and ESC.

3.2 Licensee Branding. Upon written request by Licensee, ETC shall manufacture OEM Receivers with the Licensee brand (with a Licensee logo approved in advance by Licensee) affixed to the bezel (front panel) of the OEM Receivers; provided, however, that ETC shall have no obligation under this Section 3.2 unless at the time of such request Licensee issues and delivers to ETC a firm purchase order for not less than *** of the particular OEM Receiver model requested to be manufactured with such Licensee brand, unless such OEM Receiver model has previously been manufactured by ETC hereunder with such Licensee Brand. At the request of Licensee, new Licensee brands may be substituted upon prior written approval of ETC (which approval shall not be unreasonably withheld or delayed).

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3.3 Costs. Licensee shall be responsible, and shall pay *** (which shall be mutually agreed upon by Licensee and ETC in advance) for the customization of an OEM Receiver model with any Licensee brand name hereunder, including without limitation: (a) any tooling required; (b) silk-screening front panels of the satellite receivers; and (c) all costs in connection with the customization of any packaging for OEM Receivers.

3.4 ETC Marks.

3.4.1 In addition to the Licensee brand name affixed to the OEM Receivers under this Agreement, ETC shall have the right to affix such ETC Marks as ETC may designate from time to time in writing on the OEM Receivers (including without limitation on the bezel (front panel) and electronic program guide), any Accessories included therewith, on the packaging therefor and any ODUs, in each case in accordance with: (i) ETC's trademark Usage Guidelines, the current version of which is attached hereto as Exhibit A; and (ii) ETC's user interface specification, as such guidelines and specification may change from time to time in ETC's sole discretion upon written notice to Licensee. In furtherance and without limitation of the foregoing, Licensee agrees that ETC shall be entitled to: (a) affix such ETC Marks in the center of, and above the Licensee brand name and Third Party Marks affixed to, all ODUs provided to Licensee by ETC hereunder; and (b) affix such ETC Marks on the OEM Receivers (including without limitation on the bezel (front panel) and electronic program guide), any Accessories included therewith, on the packaging therefor and on any ODUs, such that the ETC Marks are displayed in a manner which is at least equally as prominent as the Licensee brand affixed to the same. Notwithstanding the foregoing, ETC shall have no right to ***.

3.4.2 Licensee agrees not to use any of the ETC Marks in any manner inconsistent with ETC's trademark Usage Guidelines, the current version of which is attached hereto as Exhibit A, as such guidelines may change from time to time in ETC's sole discretion upon written notice to Licensee and without the prior written consent of ETC, which consent ETC may withhold in its sole judgment. Licensee expressly acknowledges and understands that ETC and its Affiliates claim to have the absolute ownership of the ETC Marks that are proprietary to ETC. Regardless of whether ETC grants Licensee permission to use any ETC Mark, Licensee agrees that it will not in any way dispute or impugn the validity of any of the ETC Marks that are proprietary to ETC or for which ETC has an exclusive license or registrations of the ETC Marks that are proprietary to ETC or for which ETC has an exclusive license, nor the sole proprietary right of ETC and its Affiliates to the ETC Marks that are proprietary to ETC, nor the right of ETC and its Affiliates to use or license the use of the ETC Marks that are proprietary to ETC or for which ETC has an exclusive license in the Territory or elsewhere, either during the Term or at any time thereafter. Licensee further agrees not to perform,

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either during the Term or at any time thereafter, any act or deed either of commission or of omission which is inconsistent with ETC or its Affiliates proprietary rights in and to the ETC Marks that are proprietary to ETC, whether or not the ETC Marks are registered.

3.5 Third Party Trademarks. Licensee may also request that ETC affix Third Party Marks to the OEM Receivers. Licensee recognizes and understands that ETC has no authority to grant Licensee any rights to affix the *** standard trademarks to an OEM Receiver. Should Licensee desire to do so or to affix other Third Party Marks that ETC does not have the right to sublicense to Licensee without imposing terms and conditions in addition to those set forth herein, Licensee must negotiate the entitlement of such rights with the applicable rights holders. Licensee hereby acknowledges that, in the future, ETC may be obligated to affix the trademarks, service marks or trade names of the owners of third party technology that is presently, or at some time in the future, incorporated into the OEM Receiver, and Licensee hereby grants its approval for ETC to affix any such trademarks, service marks or trade names to the OEM Receiver. None of the third party trademarks referenced above shall be more than half as large as the Licensee brand and ETC Marks affixed to the applicable OEM Receiver, unless the parties mutually otherwise agree in writing.

3.6 Identical Receivers. All OEM Receivers delivered hereunder to Licensee shall be identical in functionality and technical specifications to Receivers manufactured by or for ETC, and shall be identical in appearance to such Receivers except for the placement of Licensee brand names on OEM Receivers pursuant to Section 3.2 above or as otherwise mutually agreed by the parties in writing.

3.7 Price.

3.7.1 OEM Receivers. Licensee shall pay ETC for OEM Receivers an amount equal to the ***. For purposes of this Agreement, *** may change from time to time in their respective sole judgments. In the event that ESC elects in its sole judgment to offer non-standard retailer economics to a particular Licensee Retailer, then for each OEM Receiver that is sold by Licensee directly to such Licensee Retailer, ETC shall *** for the applicable OEM Receiver and the *** (as determined at the time ETC accepts the applicable purchase order from Licensee) at which Echosphere, ETC, ESC or any other Affiliate of ETC or ESC, sells a Receiver performing substantially similar functions as the relevant OEM Receiver to retailers in the Territory receiving substantially the same non-standard retailer economics as the applicable Licensee Retailer, which price Echosphere, ETC, ESC and such Affiliates may change from time to time in their respective sole judgments (a "Rebate"). Licensee shall only be eligible to receive one Rebate under this Section 3.7.1 with respect to any OEM Receiver, regardless of the number of times such OEM Receiver is Activated for different Subscriber Accounts. The Rebate shall be paid, *** to Licensee *** after sale of the applicable OEM Receiver to the Licensee Retailer.

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3.7.2 Promotional Certificates. Licensee shall pay ETC for Promotional Certificates an amount equal to the Current Wholesale Certificate Price. For purposes of this Agreement, "Current Wholesale Certificate Price" means, *** which prices Echosphere, ETC, ESC and such Affiliates may change from time to time in their respective sole judgments.

3.7.3 *** Notwithstanding Section 3.7.1 above, *** shall not apply to any OEM Products that have been ordered under a firm and binding purchase order by Licensee on or before the effective date of such price increase, provided the original shipment date specified by Licensee is not more than *** after the date of ETC's acceptance of such order.

3.7.4 Price Reductions.Notwithstanding Section 3.7.1 above:

(a) Price reductions shall be effective *** unless ETC specifies otherwise. In the event of a price reduction on an OEM Product, Licensee is entitled to request in writing a credit ("Price Reduction Credit") in an amount based on *** in accordance with the terms of this section. The amount of credit shall *** less any applicable discounts, rebates, *** multiplied by *** or *** as of the effective date of the price reduction.

(b) The OEM Products shall be compared for "sameness", counted and priced as systems or individual components in accordance with how they were originally purchased by Licensee from ETC (OEM Products originally purchased as systems shall not be eligible for a Price Reduction Credit if the price reduction applies to an individual component, and OEM Products originally purchased as individual components shall not be eligible for a Price Reduction Credit if the price reduction applies to a system). Within five (5) business days after the effective date of such price change, Licensee shall furnish ETC *** with serial numbers, of the relevant OEM Products and corresponding Smart Cards for each OEM Product, as of such date, including information as to the mode of original purchase from ETC (as systems or individual components), the amount of time such OEM Products *** and any other information ETC may reasonably request. Any Price Reduction Credit shall be applied by ETC to the purchase price of Licensee's subsequent orders of OEM Products from ETC in the form of a credit memo issued to Licensee by ETC. If at the time of the price reduction, Licensee has ordered but not yet paid for OEM Products, Licensee shall only be required to pay for such OEM Products at the reduced price. Therefore, no Price Reduction Credit shall accrue to those orders.

(c) ETC shall have the right to audit upon reasonable notice the inventory of Licensee or any Licensee Retailer to verify the accuracy of any request by Licensee for a Price Reduction Credit. Licensee shall also provide, at ETC's request,

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the supporting information described in the preceding paragraph in electronic format to facilitate the verification by ETC that an OEM Product subject to a request for a Price Reduction Credit has not been Activated.

3.8 Payment. All invoices to Licensee hereunder shall be due, in immediately available funds, within *** from the date of invoice, which shall be issued no earlier than the ship date for the OEM Receivers covered by the invoice.

3.9 Shipping Costs. All OEM Receivers shall be shipped F.O.B. point of shipment (a) Huntsville, Alabama USA, (b) Denver, Colorado USA, or (c) Atlanta, Georgia USA, at ETC's option exercisable from time to time in its sole judgment. Title and risk of loss of OEM Receivers purchased under this Agreement shall pass to Licensee upon delivery by ETC or its agent to the carrier for shipment thereof. Licensee shall be responsible for all costs of shipping and insurance of OEM Receivers. Licensee shall have the sole responsibility to file any claims with the carrier for damage, missing items or otherwise, and ETC shall have no liability or responsibility if Licensee is unable to obtain full compensation for any loss from the claim. Licensee shall select the method of shipment and carrier; provided, however, that, in the event that Licensee fails to make the necessary arrangements for shipment within 3 days of the requested ship date, Licensee acknowledges and agrees that ETC shall, without incurring any liability, have the option, in its sole judgment, to select the method of shipment and the carrier on Licensee's behalf and at Licensee's expense.

3.10 Default. If Licensee defaults in any payment due ETC, or Licensee violates any material term or condition of this Agreement or of any credit extended by ETC or any Affiliate to Licensee, ETC reserves the right to: (i) suspend any shipment to Licensee; (ii) require payment for shipments prior to shipment or delivery; and/or (iii) require payment of all unpaid balances prior to any shipment and payment for that shipment. Exercise of any of the above rights by ETC shall not be construed as a limitation of ETC's authority to exercise any other rights which ETC may have at law, in equity or pursuant to this Agreement.

3.11 Schedule. Licensee and ETC will each use reasonable commercial efforts, subject to the other party's support and the criteria described in Sections 3.2 and 3.3 above, to commence shipping the OEM Receivers as soon as reasonably practicable after Licensee exercises its option to purchase OEM Receivers hereunder and provides ETC with its first binding purchase order.

3.12 Orders, Shipment, Forecasts, and Returns.

3.12.1 Commencing with the first full calendar month in the Term and during each calendar month in the Term thereafter, Licensee shall provide ETC with a forecast specifying quantities of each available OEM Receiver model that

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Licensee expects to purchase in each of the six calendar months following the calendar month in which the forecast was provided to Licensee (the "OEM Forecast Month"). With respect to the *** months of the initial forecast and the *** month of each forecast submitted thereafter, the specified quantities for each forecasted model of OEM Receiver may be increased or decreased by Licensee by *** upon issuance of the next forecast. With respect to the *** month of each forecast, the specified quantities for each forecasted model of OEM Receiver may be increased or decreased by Licensee by *** upon issuance of the next forecast. With respect to the *** month of each forecast, the specified quantities for each forecasted model of OEM Receiver may be increased or decreased by Licensee by *** upon issuance of the next forecast. With respect to the *** month of each forecast, the specified quantities for each forecasted model of OEM Receiver may be increased or decreased by Licensee by *** upon issuance of the next forecast. Subject to the above, a new monthly forecast will always supercede completely any previous forecasts. ETC shall order or inventory component parts sufficient to meet the requirements specified in the *** months of each forecast. For components whose purchase lead times exceed *** months, ETC will calculate component quantity requirements corresponding to those components' lead times, and approach Licensee for authorization to purchase those parts. Licensee may then authorize purchase of some or all of the components beyond the *** month time horizon, and will become liable for the cost of these components should Licensee's future purchase orders not consume those authorized quantities. ETC shall approach Licensee for re-authorization monthly for all such long lead time components.

3.12.2 Licensee will use reasonable commercial efforts to translate the *** months of the initial forecast and the ***month of each forecast submitted thereafter into a purchase order, including requested delivery dates, on or before the *** day of the applicable OEM Forecast Month. Purchase orders of Licensee shall state only: (i) identity of goods; (ii) quantity of goods; (iii) purchase price of goods; and (iv) requested ship date of goods. In the event of any conflict or inconsistency between the terms of a purchase order and the terms of this Agreement, the terms of this Agreement shall prevail. ETC will make commercially reasonable efforts to fulfill all valid purchase orders issued by Licensee. Any failure to confirm such a purchase order shall not be deemed acceptance by ETC. ETC will inform Licensee of the acceptance or rejection of a purchase order, in whole or in part, within a reasonable time after receipt of the relevant purchase order. Should ETC reject the applicable purchase order or should ETC's acceptance include different delivery dates or product mix than in the Licensee purchase order, Licensee shall be permitted to modify the purchase order in whole or in part and the process shall be repeated until full agreement is reached. The quantities specified for each model OEM Receiver in a purchase order issued by Licensee under this Section 13.12.2 may be increased or decreased by Licensee by up to 25% without penalty.

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3.12.3 Shipment. Shipments will be made in standard shipping packages that have been approved by Licensee. All shipments will include a packing slip which lists items contained in the shipment by part number, descriptions (including the serial number and corresponding Smart Card number and CA ID number for each OEM Receiver), quantity, and purchase order number. In addition, ETC shall provide Licensee with an electronic file (in a format to be mutually agreed by the parties), which lists the OEM Receivers contained in each shipment by serial number and corresponding Smart Card number. Not later than *** before the scheduled delivery dates, Licensee will notify ETC in writing of the specific shipping destinations and the specific quantity of OEM Receivers to be shipped to each destination, which Licensee agrees will be at least one full truckload per destination or such other minimum quantity as the parties may agree to from time to time in writing.

3.12.4 Shipment Dates; Quantities. ETC will use reasonable commercial efforts to make shipments of OEM Receivers by the dates specified in purchase orders accepted from Licensee; provided however, that ETC shall be permitted to modify shipping dates due to circumstances beyond ETC's reasonable control. All deliveries are contingent on ETC or its third party manufacturer receiving timely shipment of necessary materials for production. Within five (5) days after ETC becomes aware that it will not be able to make shipment of all or a portion of the OEM Receivers by the date specified in a particular purchase order accepted from Licensee, ETC shall give Licensee notice setting forth an estimated delivery date. Licensee shall have the right but not the obligation to reduce the total quantity of OEM Receivers requested in that purchase order by an amount not to exceed the quantity of OEM Receivers for which ETC extends the shipping date by more than thirty (30) days or fails to ship within thirty (30) days of the shipping date specified in that purchase order, by means of a written notice to ETC within five (5) days following written notice by ETC to Licensee of such modification or failure to ship.

3.12.5 Partial Shipments. ETC reserves the right to ship OEM Receivers in a single or by multiple deliveries. Except as expressly provided herein, failure of ETC to ship on or about the date requested in any purchase order shall not entitle Licensee to cancel or amend such order. ETC reserves the right to ship all or a portion of any purchase order, including partial purchase orders. Licensee shall pay for such portion of the shipment as is actually shipped.

3.12.6 Sale of OEM Receivers by ETC.

(a) While, subject to Sections 3.12.2 and 3.12.4, Licensee's obligation to honor purchase orders submitted to ETC is absolute, in the event that Licensee breaches this obligation, then Licensee shall have the option to pay to ETC, in advance, all costs ("OEM Retrofit Costs") anticipated by ETC as reasonable and necessary to remove all Licensee marks from the OEM Receivers covered by the

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relevant purchase order(s) ("OEM Excess Inventory") and otherwise retrofit the OEM Excess Inventory for sale as EchoStar or DISH brand product

(b) In the event that Licensee pays the OEM Retrofit Costs to ETC, in advance and within five (5) business days after receipt of ETC's invoice, ETC agrees to retrofit the units of OEM Excess Inventory, as necessary, and use reasonable commercial efforts to resell the OEM Excess Inventory, at prices determined by ETC, to any person or entity authorized by ESC as a DISH Network distributor or retailer. In the event that ETC is unable, through the exercise of reasonable commercial efforts, to resell any such OEM Excess Inventory, ETC shall be entitled to exercise any other remedies available to ETC under this Agreement, at law, in equity or otherwise for breach of Licensee's obligations regarding the relevant purchase order.

(c) In the event that (i) Licensee does not opt to pay the OEM Retrofit Costs or (ii) Licensee opts to pay the Retrofit Costs but does not actually pay the OEM Retrofit Costs to ETC, in advance and within five (5) business days after receipt of such notice, then in addition to all other remedies available to ETC under this Agreement, at law, in equity or otherwise ETC and/or any of its Affiliates shall have the right, but not the obligation, to sell OEM Excess Inventory without removing the Licensee markings. Licensee hereby grants to ETC and its Affiliates a license to the Licensee markings as necessary for the marketing and sale of such OEM Excess Inventory under this Section 3.12.6(c).

(d) For sales of OEM Excess Inventory by ETC or an Affiliate hereunder, Licensee shall not be entitled to any Incentives under Section 5 below or otherwise.

(e) This Section 3.12.6 shall not be construed as creating an obligation upon ETC to mitigate its damages by removing Licensee marks or otherwise retrofitting OEM Excess Inventory for sale as EchoStar or DISH brand products, and its is hereby expressly agreed by the parties that ETC has no such obligation, it being recognized by the parties that ETC and its Affiliates would incur additional risk and cost in exercising such remedy including but not limited to lost opportunity costs.

3.13 Warranty.

3.13.1. General Warranty.ETC warrants to Licensee that each OEM Receiver will be free from defects in materials and workmanship (labor and parts) for a period of *** from the date of shipment by ETC or its contract manufacturer to Licensee. This warranty shall not apply to: (i) any OEM Receiver that is abused, damaged by external causes, altered or misused; or (ii) any OEM Receiver that is

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damaged due to improper installation or use. OEM Receivers shall be considered free from defects in workmanship if they are manufactured in accordance with ETC's manufacturing workmanship standards (or those of any third party which manufactures the OEM Receiver on ETC's behalf), conform to the product specifications, and successfully complete product acceptance tests for the product. In addition, ETC will provide out-of-warranty service and repair or replacement of OEM Receivers to Licensee or end-users on terms and conditions that are at least equivalent to the terms and conditions ETC utilizes for Receivers returned to ETC generally.

3.13.2 Deadline for Claims; Disclaimer. ALL CLAIMS FOR WARRANTY FULFILLMENT UNDER SECTION 3.13.1 MUST BE RECEIVED BY ETC (OR ITS DESIGNEE) NO LATER THAN *** AFTER THE EXPIRATION OF THE WARRANTY PERIOD FOR THE PRODUCT. THIS WARRANTY IS THE ONLY WARRANTY GIVEN BY ETC FOR OEM RECEIVERS. ETC MAKES, AND LICENSEE RECEIVES, NO OTHER WARRANTY EITHER EXPRESS OR IMPLIED. ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE, ARE EXPRESSLY DISCLAIMED AND EXCLUDED HEREFROM.

3.13.3 Exclusive Remedy.Licensee's exclusive remedy for fulfillment of the warranty set forth in Section 3.13.1 above shall be at, at ETC's option, repair by ETC at an ETC or third party facility of ETC's choice, replacement of the defective OEM Receiver, or return of the purchase price paid by Licensee to ETC for the defective OEM Receiver within *** days after receipt of the OEM Receiver by ETC.

3.13.4 Licensee Warranty. Licensee shall extend ETC's then current standard consumer warranty to the end user of the OEM Receivers purchased from ETC hereunder.

3.14 Smart Cards. ETC shall maintain a supply of Smart Cards to fulfill its warranty obligations under Section 3.13 and 2.6. In addition with respect to Smart Cards that have been lost, stolen or destroyed, ETC (or such other entity as ETC may designate from time to time in writing) will sell replacement Smart Cards to the end user subject to such terms and conditions and at such prices as ETC may determine from time to time in its sole judgment.

4. LICENSEE RETAIL CHANNEL

4.1 Licensee Retailers. "Licensee Retailers" shall mean and be limited to: (a)***; (b)***; (c) certain persons and entities to be mutually agreed upon by *** based upon the retailer list provided to the EchoStar Parties by Licensee on June 6, 2002, which agreed-upon list of persons and entities shall be attached hereto as Exhibit D; and (d) persons or entities that either: (i) are not already members of ESC's and/or any of its Affiliates' then-current independent retailer base and have not already been

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authorized (whether in writing or otherwise) on an incentivized or non-incentivized basis by ESC and/or any of its Affiliates to promote and solicit orders for any of its and/or their programming services; or (ii) are retailers, substantially carrying Licensee consumer electronics products on the date of this Agreement, all of whose business consists of the sale of consumer electronics products (including but not limited to ***), but specifically excluding ***; and in each case described in (a) through (d) above not until such time (and only for so long) as such person or entity has a valid Retailer Incentive Agreement (as defined in Section 4.2 below) in full force and effect with ESC. Except as expressly permitted to the contrary pursuant to Sections 2.2 and 3.1 above, Licensee agrees that it will not sell Licensee Receivers or OEM Receivers to any person or entity who is not a Licensee Retailer without ESC's prior written consent, which consent may be withheld in ESC's sole judgment.

4.2 Incentive Agreements. ESC shall be responsible for negotiating and entering into such agreements ("Retailer Incentive Agreements") as may be desired by ESC, in its sole judgment, from time to time for the payment by ESC of incentives to Licensee Retailers in connection with the sale of Licensee Receivers and OEM Receivers to end-users. Licensee acknowledges and agrees that ESC may refuse to sign any Retailer Incentive Agreement (whether or not it has been signed by a prospective Licensee Retailer) with any prospective Licensee Retailer, as ESC may determine in its sole judgment.

4.3 CAID Numbers, Serial Numbers and Smart Card Numbers. For the purpose of facilitating the payment by ESC of incentives to Licensee Retailers, on the immediately following business day by 8:00 A.M. (mountain time), Licensee shall provide ESC with a list on electronic media (and/or on paper upon ESC's request) in the format requested by ESC, which includes: (i) the CAID number, serial number and corresponding Smart Card number for each Licensee Receiver and OEM Receiver delivered by Licensee to a Licensee Retailer on any given calendar day; (ii) the serial number for each Promotional Certificate delivered by Licensee to a Licensee Retailer on any given calendar day; and (iii) the name, address and such other identifying information as ESC may request in its reasonable judgment and which is not reasonably considered confidential or proprietary by Licensee for the Licensee Retailer to whom such Licensee Receivers, OEM Receivers, corresponding Smart Cards and Promotional Certificates were delivered, unless the parties agree otherwise in writing.

5. INCENTIVES

5.1 Incentives.

5.1.1 General.

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(a) For each Licensee Receiver and OEM Receiver that is (i) sold by Licensee directly to a Licensee Retailer, (ii) resold by such Licensee Retailer directly to an end user, and (iii) results in the Activation of a Primary Receiver with Eligible Programming for a new Subscriber Account, ESC shall pay Licensee *** (a "Primary Incentive").

(b) For each Licensee Receiver and OEM Receiver that is (i) sold by Licensee directly to a Licensee Retailer, (ii) resold by such Licensee Retailer directly to a Subscriber Account, and (iii) Activated on such Subscriber Account as a Secondary Receiver, ESC shall pay Licensee *** (a "Secondary Incentive").

(c) For each Promotional Certificate that is (i) sold by Licensee directly to a Licensee Retailer, (ii) resold by such Licensee Retailer directly to an end user, (iii) results in the Activation of a Primary Receiver with Eligible Programming for a new Subscriber Account, and (iv) meets all necessary criteria set forth the applicable Promotional Program and Business Rules for payment of a primary activation payment (or substantially similar payment), ESC shall pay Licensee *** (a "Certificate Incentive").

(d) For so long as RCA, GE and/or RCA Scenium branded Receivers are the only Receivers being Activated through a particular Licensee Retailer, then for each Receiver that (i) is Activated through such Licensee Retailer pursuant to a Promotional Program; (ii) is not otherwise eligible for an incentive pursuant to Subsections (a), (b) or (c) above; (iii) results in the activation of a Primary Receiver with Eligible Programming for a new Subscriber Account, and (iv) meets all necessary criteria set forth in the applicable Promotional Program and Business Rules for payment of a primary activation payment (or substantially similar payment), ESC shall pay Licensee *** (a "Special Incentive").

(e) In the event that RCA, GE and/or RCA Scenium branded Receivers and other-branded Receivers are being Activated through a particular Licensee Retailer, then the Parties agree to discuss the possibility of ESC paying Licensee non-standard incentives (i.e., incentives other than and instead of the incentives payable under Subsections (a), (b) and (c) and (d) above) for:

(i) each Licensee Receiver and OEM Receiver that is (A) sold by Licensee directly to such Licensee Retailer, (B) resold by such Licensee Retailer directly to an end user, and (C) results in the activation of a Primary Receiver with Eligible Programming for a new Subscriber Account,

(ii) each Licensee Receiver and OEM Receiver that is (A) sold by Licensee directly to such Licensee Retailer, (B) resold by such Licensee Retailer directly to a Subscriber Account, and (C) Activated on such Subscriber Account as a Secondary Receiver, and

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(iii) each Promotional Certificate that is (A) sold by Licensee directly to such Licensee Retailer, (B) resold by such Licensee Retailer directly to an end user, (C) results in the activation of a Primary Receiver with Eligible Programming for a new Subscriber Account, and (D) meets all necessary criteria set forth the applicable Promotional Program and Business Rules for payment of a primary activation payment (or substantially similar payment) (collectively, "Non-Standard Incentives").

For the avoidance of doubt and notwithstanding the foregoing, Licensee hereby acknowledges and agrees that ESC shall have absolutely no obligation whatsoever to make any Non-Standard Incentives available to Licensee.

5.1.2 Additional Terms and Conditions.

(a) Primary Incentives, Secondary Incentives, Certificate Incentives, Special Incentives and Non-Standard Incentives are referred to collectively hereinafter as "Incentives".

(b) Notwithstanding the above and provided that Licensee is not in breach or default of its payment obligations under Section 2.5, the Primary Incentive shall be *** instead of *** and the Secondary Incentive shall be *** instead of *** during such periods as the aggregate Incentives actually paid to Licensee plus offsets of chargebacks against Incentives is less than the then-current aggregate total amount that has actually been paid to ETC by Licensee pursuant to Section 2.5, which shall in no event exceed an aggregate total of ***.

(c) In the event that Licensee sells the underlying OEM Receiver to the relevant Licensee Retailer ***.

(d) Licensee shall only be eligible to receive Incentives under this Section 5.1 in connection with the first Activation of each unit of OEM Receiver and Licensee Receiver by an end-user.

(e) The rates set forth in Sections 5.1.1(a), 5.1.1(b), 5.1.1(c), 5.1.1(d) and 5.1.2(b) for Primary Incentives, Secondary Incentives, Certificate Incentives and Special Incentives are the minimum Incentives to be paid by ESC to Licensee. ESC and Licensee agree to engage in good faith negotiations during the 90 day period following the execution of this Agreement regarding the possible upward adjustment of the Primary Incentive, Secondary Incentive, Certificate Incentive and Special Incentive in consideration for Licensee's contribution to ETC of such technology and know how as designated by Licensee for use with the Receivers.

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(f) In the event that Licensee sells the underlying Licensee Receiver to the relevant Licensee Retailer *** charged to retailers in the Territory by Echosphere for Receivers performing substantially similar functions as the relevant Licensee Receiver, as established prior to the beginning of each calendar quarter, ***. In the event that ESC elects in its sole judgment to offer non-standard retailer economics to a particular Licensee Retailer, then the *** used above with respect to a particular model Licensee Receiver shall be the *** charged to retailers in the Territory receiving substantially same non-standard retailer economics as the applicable Licensee Retailer by Echosphere for Receivers performing substantially similar functions as the relevant Licensee Receiver, as established prior to the beginning of each calendar quarter.

5.2 Payment Terms. Incentive payments shall be made by ESC *** for which Incentives are owed to Licensee ***. Subject to the terms and conditions of this Agreement (including without limitation Sections 5.3 and 5.4), Licensee shall continue to receive all Incentives ***.

5.3 Charge Back. ESC shall have the right to charge back Incentives paid to Licensee hereunder under same the terms and conditions pursuant to which ESC has the right to charge back incentives from its retailers generally under ESC's standard incentivized retailer agreement, attached hereto as Exhibit B, and applicable Business Rules, as such standard incentivized retailer agreement and applicable Business Rules may change at any time and from time to time in ESC's sole judgment; provided that, in the event of any conflict or inconsistency between the applicable charge back terms and conditions set forth in ESC's standard incentivized retailer agreement and the applicable charge back terms and conditions set forth in the applicable Business Rules, then the applicable charge back terms and conditions set forth in the applicable Business Rules shall control. The number of ETC Receivers calculated under Section 2.7.1(b) above shall be reduced on *** for each Licensee Receiver and Specialty OEM Receiver for which Incentives are charged backed by ESC under this Section 5.3 (i.e., for each Licensee Receiver for which Incentives are charged back, the number of ETC Receivers shall be reduced by ***, and for each Specialty OEM Receiver for which Incentives are charged back, the number of ETC Receivers shall be reduced by ***).

5.4 Suspension and Termination of Incentives.

5.4.1 Suspension. In addition to any other rights and remedies available, ESC shall not be required to pay any Incentives to Licensee which would otherwise be due to Licensee during any period in which Licensee is in breach or default of any material provisions of this Agreement, and ESC shall have no liability to Licensee as a result of such suspension of payment. Specifically, and without limitation of the foregoing, Licensee shall have no right at any time to recoup any Incentives not paid

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during a period of breach or default. Upon cure of the applicable default or breach, Incentive payments to Licensee shall be reinstated on a going forward basis.

5.4.2 Termination.

(a) ESC shall have the right to terminate immediately all payments of Incentives due to Licensee under this Agreement, in addition to any other remedies available to ESC, but shall otherwise immediately pay all amounts due and owing to Licensee hereunder and Licensee shall immediately pay all amounts due and owing to the EchoStar Parties hereunder in the event that (i) this Agreement is terminated by ETC and/or ESC for default pursuant to Section 6.2.1 below; (ii) the Trademark Agreement is terminated by ETC and/or ESC for default pursuant to Sections 8(B) or 8(C) thereof; (iii) the Trademark Agreement is terminated automatically because Licensee is in default under Section 8(A) thereof; or (iv) Licensee ceases to sell Licensee Receivers or OEM Receivers to Licensee Retailers as contemplated hereunder.

(b) Following (i) expiration of this Agreement pursuant to Section 6.1 below, (ii) expiration of the Trademark Agreement pursuant to Section 5 thereof, (iii) termination of this Agreement by Licensee for default pursuant to Section 6.2.1 below, (iv) termination of the Trademark Agreement by Licensee for default pursuant to Sections 8(B) or 8(C) thereof, (v) the Trademark Agreement is terminated automatically because either or both of the EchoStar Parties are in default under Section 8(A) thereof; or (vi) termination of this Agreement by ETC and/or ESC pursuant to Section 6.2.2 below, Licensee shall immediately cease shipping Licensee Receivers and OEM Receivers to Licensee Retailers, and ESC shall only have the obligation to make payment of Incentives due to Licensee under this Agreement for Licensee Receivers and OEM Receivers that are Activated within one hundred eighty (180) days after the date of such termination or expiration, and in such case, ESC shall have the right to hold back a sufficient amount (as determined in ESC's reasonable judgment) of such Incentives through expiration of the then-current standard chargeback period set forth in ESC's standard incentivized retailer agreement, attached hereto as Exhibit B, as such standard incentivized retailer agreement may change at any time and from time to time in ESC's sole judgment upon written notice to Licensee to cover any chargebacks occurring after the date of such expiration or termination. During the sixty-day period following expiration of such chargeback period, the parties agree to negotiate in good faith towards agreeing upon the final amount owing from Licensee to the EchoStar Parties for chargebacks hereunder and the final amount owing from the EchoStar Parties to Licensee for Incentives hereunder. The net amount payable from Licensee to the EchoStar Parties or from the EchoStar Parties to Licensee, as the case may be, shall be paid within five (5) business days after the parties agree upon such final amounts.

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(c) The parties acknowledge and agree that the section references made with respect to the Trademark Agreement in Sections 5.4.2(a) and (b) above are based on the current draft of the Trademark Agreement, and further acknowledge and agree that the above references shall be modified to the extent necessary to capture the same intent with the respect to the executed final Trademark Agreement.

5.5 Maintenance of Records and Audit Rights. Licensee agrees to keep accurate books and records relating to (i) the distribution and sale of OEM Receivers, and (ii) the manufacture, distribution and sale of Licensee Receivers, and Licensee agrees to provide such information to the EchoStar Parties upon request. ESC shall be entitled to review and audit, using its own internal auditors or an independent certified public accounting firm, upon reasonable prior notice and at ESC's expense, the books and records of Licensee for the purpose of verifying that the reductions to Incentives contemplated under Section 5.1.2 above are being properly calculated as required hereunder, that the timing of Subsidy payments under Section 2.11 is being properly calculated, and that Licensee is otherwise complying with its obligations under this Agreement. Any audit conducted by ESC shall be conducted by ESC or its representative(s) at Licensee's address set forth above, or such other address as Licensee may designate to ESC from time to time in writing, and shall be conducted during Licensee's normal business hours. Reciprocal audit rights are granted to Licensee for the purpose of verifying information material to Subsidy, Incentives, and other fees, payments, or offsets materially affecting Licensee's business. The Echostar Parties are subject to reciprocal record maintenance obligations.

5.6 Offset. In the event that the Incentives paid by ESC to Licensee exceed the amount to which Licensee was entitled, or if Licensee or any of its Affiliates are indebted to ESC or any of its Affiliates for any other reason, Licensee acknowledges and agrees that ESC shall have the right to offset any such amounts due to ESC or its Affiliates from Licensee for any reason against any Incentives or other money otherwise due to Licensee from ESC or any of its Affiliates.

6. TERM AND TERMINATION

6.1 Term. This Agreement shall commence on the date first written above and shall continue for three (3) years thereafter, unless terminated sooner as provided in this Agreement (the "Term"). This Agreement is not automatically renewable.

6.2 Termination.

6.2.1 This Agreement may be terminated by a party upon the occurrence of any of the following with respect to another party: (i) the other party commits a payment default which is not cured within ten (10) days of receipt of written notice from

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the first party, (ii) the other party defaults on any duty or obligation or breaches any representation, warranty or covenant in this Agreement, and such default or breach is not cured within thirty (30) days of receipt of written notice from the first party, or (iii) the filing of a voluntary or involuntary petition in bankruptcy or the appointment of a referee, trustee, conservator or receiver for a substantial portion of the other party's assets and such petition or appointment is not dismissed or revoked within 60 days.

6.2.2 This may be terminated by EchoStar immediately upon written notice to Licensee in the event that Licensee is in breach or default of Section 2.10.

6.2.3 The agreement shall terminate automatically in the event that the Trademark Agreement expires or is terminated for any reason whatsoever.

7. CONFIDENTIALITY

7.1 General.

7.1.1 The negotiations leading to this Agreement and the negotiations leading to the MOEMMA (as defined in Section 11.7 below), together with all terms and conditions of each, as well as all financial, business, technical and other proprietary information disclosed or provided by any party to this Agreement and any Affiliates thereof, and all information generated therefrom including evaluations thereof ("Confidential Information") shall be kept and treated as strictly confidential and shall only be used by a party (and the persons and entities to whom such party is permitted to disclose such information under this Agreement) as necessary for such party to perform its duties and obligations under this Agreement, in each case for a period of *** after initial disclosure.

7.1.2 The obligations imposed upon the parties herein shall not apply to Confidential Information which is:

(a) or becomes generally available to the public through no wrongful act of the receiving party;

(b) already lawfully in the possession of the receiving party and not subject to an existing agreement of confidentiality between the parties;

(c) received from a third party without restriction and without breach of this Agreement;

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(d) independently developed by the receiving party; or

(e) released pursuant to the binding order of a government agency or a court so long as prior to any such release the releasing party provides the other party with the greatest notice permitted under the circumstances, so that the disclosing party may seek a protective order or other appropriate remedy. In any such event, the releasing party will disclose only such Confidential Information as is legally required and will exercise reasonable efforts to obtain confidential treatment for any Confidential Information being disclosed.

7.1.3 Notwithstanding anything to the contrary set forth herein, the parties shall have the right to disclose the fact of the existence of this Agreement and the MOEMMA, together with the minimum amount of other information deemed necessary by securities counsel to either party if such securities counsel in good faith determines that public disclosure of the information is necessary under federal or state securities laws applicable to such party. Disclosure of such information shall be coordinated in advance with the other party. Any such disclosure shall not permit the disclosing party to issue any press release or otherwise discuss or further disseminate the information contained in the securities filing in any manner.

***

8. REPRESENTATIONS AND WARRANTIES

8.1 Representations, Warranties and Covenants of Licensee. Licensee represents, warrants and covenants, as follows, which representations, warranties and covenants shall survive the execution of this Agreement:

8.1.1 Licensee has the right and authority to enter into this Agreement and the execution, delivery and performance by Licensee of this Agreement have been duly authorized by all requisite corporate action and will not violate any provision of Licensee articles of incorporation or bylaws, or any provision of any agreement by which Licensee is bound or affected.

8.1.2 Licensee has the necessary technical knowledge, practical experience and capacity to manufacture, assemble and test the Licensee Receivers under the License granted hereunder.

8.1.3 Licensee is not, nor at any time will it be, in violation of any applicable Law by entering into and undertaking the performance of this Agreement and in performing its obligations pursuant to this Agreement. Licensee agrees to comply with any and all applicable Laws.

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8.1.4 Licensee shall not take any action, and will refrain from taking any action, intended to have an adverse effect on any of the benefits the EchoStar Parties might reasonably be expected to derive from the transactions contemplated hereby.

8.1.5 Licensee shall provide to ETC such adequate assurances as ETC may require from time to time in order to ensure that the requirements of this Section 8.1 have been met, and will continue to be met on an ongoing basis, by Licensee.

8.1.6 Except as otherwise expressly stated in this Agreement, Licensee makes no other representations or warranties, either express or implied, statutory or otherwise, and all such warranties are hereby excluded except to the extent such exclusion is absolutely prohibited by law.

8.2 Representations, Warranties and Covenants of ETC. The EchoStar Parties (or, ETC or ESC as identified below) represent, warrant and covenant as follows, which representations, warranties and covenants shall survive the execution of this Agreement:

8.2.1 The EchoStar Parties have the right and authority to enter into this Agreement and the execution, delivery and performance by the EchoStar Parties of this Agreement have been duly authorized by all requisite corporate action and will not violate any provision of articles of incorporation or bylaws, or any provision of any agreement by which the EchoStar Parties are bound or affected.

8.2.2 ETC is the beneficial owner of Intellectual Property created independently by it, and such Intellectual Property is not subject to any covenant or other restriction preventing or limiting ETC's right to manufacture the OEM Receivers as contemplated by this Agreement.

8.2.3 The EchoStar Parties are not, nor at any time will it be, in violation of any applicable Law by entering into and undertaking the performance of this Agreement and in performing their obligations pursuant to this Agreement. The EchoStar Parties agree to comply with any and all applicable Laws.

8.2.4 The EchoStar Parties shall not take any action, and will refrain from taking any action, intended to have an adverse effect on any of the benefits Licensee might reasonably be expected to derive from the transactions contemplated hereby.

8.2.5 The EchoStar Parties shall provide to Licensee such adequate assurances as Licensee may require from time to time in order to ensure that the requirements of this Section 8.2 have been met, and will continue to be met on an ongoing basis, by ETC.

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8.2.6 Except as otherwise expressly stated in this Agreement, the EchoStar Parties make no other representations or warranties, either express or implied, statutory or otherwise, and all such warranties are hereby excluded except to the extent such exclusion is absolutely prohibited by law.

9. LIMITATION OF LIABILITY

9.1 Limitation. IN NO EVENT SHALL ANY PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF USE OR LOST BUSINESS, REVENUE, PROFITS OR GOODWILL) ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE LICENSEE GRANTED HEREUNDER, TERMINATION OR ANY OTHER MATTER RELATED HERETO. IN ADDITION TO AND WITHOUT LIMITATION OF THE FOREGOING, NEITHER PARTY SHALL HAVE ANY LIABILITY OR RESPONSIBILITY TO THE OTHER PARTY OR ANYONE CLAIMING THROUGH THE OTHER PARTY FOR ANY LOSS OR DAMAGE (INCLUDING, GENERAL, INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL AND CONSEQUENTIAL DAMAGES) ARISING OUT OF ANY FAILURE OR DELAY IN SHIPMENT, LATE SHIPMENT, OR DELIVERY OF ALL OR ANY PART OF ANY ORDER.

9.2 Risk Allocation. The parties agree that each and every provision of this Agreement which provides for a limitation of liability, disclaimer of warranties or exclusion of damages is expressly intended to be severable and independent of any other provision since they represent separate elements of risk allocation between the parties and shall be separately enforced. This Section 9.2 shall expressly survive the expiration or termination of this Agreement.

10. INDEMNIFICATION

10.1 General Indemnity

10.1.1 By Licensee. In addition to the intellectual property indemnity in Section 10.2.1 below, Licensee shall defend, indemnify and hold ETC and its Affiliates, and any and all of its and their respective officers, directors, shareholders, employees, agents and representatives, and any and all of its and their assigns, successors, heirs and legal representatives (collectively the "ETC Group"), harmless from and against any and all third party claims, demands, litigation, settlements, judgments, damages, liabilities, costs and expenses, including but not limited to reasonable attorney fees ("Claims") incurred by the ETC Group arising directly or indirectly out of: (i) a breach or default of any obligation, representation, warranty or covenant of Licensee hereunder; (ii) except where ETC has an obligation of indemnity

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to Licensee, any claims of third parties otherwise arising out of or in connection with Licensee's activities in the marketing, promotion, sale and distribution of OEM Receivers, (iii) any claim whatsoever of product liability with respect to the ETC Receivers, and Licensee Receivers (excluding design defects as a result of manufacture of the ETC Receivers and Licensee Receivers in strict conformance with the ETC Receiver Specifications); (iv) any claims of third parties otherwise arising out of or in connection with the breach of any express or implied product warranty for which Licensee is responsible pursuant to this Agreement (v) any claims of third parties otherwise arising out of or in connection with Licensee's manufacture, sale or use of the Licensee Receivers or the Licensed Technology, including, without limitation, breach of any express or implied warranty, manufacturing defects, or negligence in the manufacture of the Licensee Receivers to the extent the claim does not arise through the negligence act or failure to act of the EchoStar Parties, or either of them; and (vi) any claims of third parties otherwise arising out of or in connection with Licensee's marketing, promotion, sale and distribution Licensee Receivers. Nothing in this section shall be construed to obligate Licensee to indemnify ETC Group for any liabilities which arise with respect to intellectual property issues such as infringement of a third party patent, trademark, trade secret, or copyright.

10.1.2 By ETC. In addition to the intellectual property indemnity in Section 10.2.2 below, ETC shall defend, indemnify and hold Licensee and its Affiliates, and any and all of its and their respective officers, directors, shareholders, employees, agents and representatives, and any and all of its and their assigns, successors, heirs and legal representatives (collectively the "Licensee Group"), harmless from and against any and all third party Claims incurred by the Licensee Group arising directly or indirectly out of: (i) a breach or default of any obligation, representation, warranty or covenant of ETC hereunder; (ii) any claim whatsoever of product liability with respect to the OEM Receivers; and (iii) any claim whatsoever of product liability with respect to the Licensee Receivers and ETC Receivers arising out of compliance with the ETC Receiver Specifications (provided that Licensee manufactures the Licensee Receivers in strict conformance with the ETC Receiver Specifications), but specifically excluding claims that would not have arisen but for a feature or function added to the Licensee Receiver by Licensee. Nothing in this section shall be construed to obligate ETC to indemnify Licensee Group for any liabilities which arise with respect to intellectual property issues such as infringement of a third party patent, trademark, trade secret, or copyright.

10.1.3 The indemnifying party under Sections 10.1.1 and 10.1.2 above shall be entitled to have the exclusive conduct of and/or settle all negotiations and litigation arising from any claim using counsel of the indemnifying party's choosing.

10.2 Intellectual Property Indemnity

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10.2.1 By Licensee.

(a) Licensee, at its own expense, shall defend any suit brought against ETC Group insofar as it is based upon a claim that an OEM Receiver, Licensee Receiver, ODU, or Accessory directly or indirectly infringes any Third Party Mark, due to any trademark, trade name or service mark, including without limitation Third Party Trademarks, that are affixed to the OEM Receivers, Licensee Receivers, ODUs, or Accessories at Licensee's request and that are not required to be affixed thereto by ETC, and shall indemnify ETC Group against reasonable attorney fees incurred by ETC Group pursuant to clause (e) below for such claim, any settlement approved by Licensee pursuant to clause (e) below for such claim, and any final award of damages or costs for such claim.

(b) The foregoing clause (a) states the entire liability of Licensee in connection with infringement of a Third Party Mark by an OEM Receiver, ODU, or Accessories, and except as stated in that clause, Licensee will not be liable for any loss or damage of whatever kind (including in particular any incidental, indirect, special or consequential damage) suffered by the ETC Group in respect of the infringement of any Third Party Intellectual Property by an OEM Receiver, ODU or Accessory.

(c) Except in the event that ETC has, or would have in the instance that Licensee were named in such action, an obligation of indemnity to Licensee pursuant to the provisions of Section 10.2.2(a), Licensee shall defend at its own expense any suit brought against the ETC Group insofar as it is based upon a claim that any or all of the Licensee Receivers or ETC Receivers directly infringe any third party patent, copyright, trade secret, mask work or other intellectual or industrial property right ("Third Party Intellectual Property") and shall indemnify ETC against reasonable attorney fees incurred by ETC Group pursuant to clause (e) below for such claim, any settlement approved by Licensee pursuant to clause (e) below for such claim, and any final award of damages or costs for such claim.

(d) The foregoing clauses (a) and (c) state the entire liability of Licensee in connection with infringement of Third Party Intellectual Property by any Licensee Receiver and ETC Receiver, and except as stated in those clauses, Licensee will not be liable for any loss or damage of whatever kind (including in particular any incidental, indirect, special or consequential damage) suffered by ETC or any other person in respect of the infringement of any Third Party Intellectual Property by Licensee Receivers and ETC Receivers.

(e) In the event of any claim for indemnification by ETC Group under clauses (a) or (c) above, ETC Group shall be entitled to representation by counsel of its own choosing. ETC Group shall have the right to the exclusive conduct of all negotiations and litigation arising from any claim for which Licensee is obligated to

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defend and indemnify ETC Group under clauses (a) and (c) above, but only as regards ETC Group; provided, however, that ETC Group may not settle any such claim without the prior written approval of Licensee (which approval Licensee may withhold in its sole discretion); provided further, that in the event that Licensee withholds its consent to the settlement of such a claim, then Licensee's indemnification obligations under clauses (a) and (c) above will not be subject to the limitation of liability set forth in clause (g) below and, from that point forward, Licensee will have the right to the exclusive conduct of and/or to settle all negotiations and litigation arising from that claim as regards ETC Group.

(f) No cost or expense shall be incurred on behalf of Licensee without its written consent.

(g) Licensee's liability under this Section 10.2.1 shall be limited to *** in the aggregate.

10.2.2 By ETC.

(a) Except as otherwise expressly set forth herein, ETC, at its own expense, shall defend any suit brought against Licensee Group insofar as it is based upon a claim that an OEM Receiver, ETC Receiver or Licensee Receiver directly or indirectly infringes any Third Party Intellectual Property (including, but not limited to, any claim by ***) and shall indemnify Licensee against reasonable attorney fees incurred by Licensee Group pursuant to clause (d) below for such claim, any settlement approved by ETC pursuant to clause (d) below for such claim, and any final award of damages or costs for such claim; except that ETC shall not be obligated to defend or indemnify Licensee Group for any claim:

(i) which arises from any trademarks, trade names or service marks, including without limitation Third Party Marks, that are affixed to OEM Receivers, Licensee Receivers, ODUs, or Accessories at Licensee's request and that are not required to be affixed thereto by ETC;

(ii) which is based in part upon a feature added by Licensee where such claim could not have been brought but for the added feature;

(iii) alleging infringement of a combination device comprised of a Licensee Receiver, ETC Receiver or OEM Receiver and any other product not supplied or approved by ETC, except that ETC shall be liable for any portion of the infringement which may be apportioned to the accused Licensee Receiver, ETC Receiver or OEM Receiver, as the case may be, as built pursuant to the ETC Receiver Specification if the relevant Receiver alone infringes Third Party Intellectual Property;

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(iv) which could not have been brought absent a deviation by Licensee from the ETC Receiver Specification;

(v) which results from Licensee's design or instruction for a given OEM Receiver where such design or instruction are not in conformance with the ETC Receiver Specification; or

(vi) which arises from Licensee's modification of ETC Software unless expressly approved in writing by ETC.

(b) Except as otherwise expressly set forth herein, in the event that a OEM Receiver, ETC Receiver, or Licensee Receiver (which has been built pursuant to the ETC Receiver Specification), is in such suit held to constitute infringement, ETC at its own election and at its own expense may either procure for Licensee the rights to continue the sale of the infringing Receiver, or modify a such Receiver so that it becomes non-infringing.

(c) The foregoing clause (a) states the entire liability of ETC in connection with infringement of Third Party Intellectual Property by Licensee Receivers, ETC Receivers and OEM Receivers and except as stated in that clause, ETC will not be liable for any loss or damage of whatever kind (including in particular any incidental, indirect, special or consequential damage) suffered by Licensee or any other person in respect of the infringement of any Third Party Intellectual Property.

(d) In the event of any claim for indemnification by Licensee Group under clause (a) above, Licensee Group shall be entitled to representation by counsel of its own choosing. Licensee Group shall have the right to the exclusive conduct of all negotiations and litigation arising from any claim for which ETC is obligated to defend and indemnify Licensee Group under clause (a) above, but only as regards Licensee Group; provided, however, that Licensee Group may not settle any such claim without the prior written approval of ETC (which approval ETC may withhold in its sole discretion); provided further, that in the event that ETC withholds its consent to the settlement of such a claim, then ETC's indemnification obligations under clause (a) above will not be subject to the limitation of liability set forth in clause (g) below and, from that point forward, ETC will have the right to the exclusive conduct of and/or to settle all negotiations and litigation arising from that claim as regards Licensee Group.

(e) Notwithstanding clause (d) above, ETC shall have the right to choose counsel for Licensee Group and shall have the right to the exclusive conduct of all negotiations and litigation arising from any claim for which ETC is obligated to defend and indemnify Licensee Group under clause (a) above and that is based on the electronic programming guide or ETC Software provided to Licensee by ETC (provided

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that such electronic program guide or ETC Software, as the case may be, has been implemented in the relevant Licensee Receiver or ETC Receiver by Licensee without modification).

(f) No cost or expense shall be incurred on behalf of ETC without its written consent.

(g) ETC's liability under this Section 10.2.2 shall be limited to *** in the aggregate, with the sole and limited exception of claims for which ETC is obligated to defend and indemnify Licensee Group under clause (a) above and that are based on the *** or ETC Software provided to Licensee by ETC (*** and ETC Software is implemented in the relevant Licensee Receiver or ETC Receiver by Licensee without modification), in which case ETC's liability under this Section 10.2.2 shall not be subject to such limitation.

10.3 Indemnification Procedure. The party seeking indemnification (the "Indemnified Party") shall promptly notify the party from whom indemnification is being sought (the "Indemnifying Party"). The Indemnified Party shall not make any admission as to liability or agree to any settlement of or compromise any claim without the prior written consent of the Indemnifying Party. The Indemnified Party shall, at the Indemnifying Party's request and expense, give the Indemnifying Party all reasonable assistance in connection with those negotiations and litigation, which assistance shall include, among other things, the retention and (upon the Indemnifying Party's request) the provision to the Indemnifying Party of records and information as reasonably necessary, and making employees available on a mutually convenient basis as reasonably necessary. In the event that the Indemnifying Party has the right under Section 10.1 or 10.2 above to the exclusive conduct of all negotiations and litigation arising from a particular claim, the indemnified party shall have the right to participate in the defense thereof and to employ counsel, at its own expense, separate from the counsel employed by the Indemnifying Party, it being understood, however, that the Indemnifying Party shall control such defense.

11. MISCELLANEOUS

11.1 Taxes.

11.1.1 Withholding Tax Based On Income. Except as otherwise expressly set forth to the contrary herein, any and all payments required to be made by Licensee (payor) to the EchoStar Parties (payee) or the EchoStar Parties (payor) to Licensee (payee) under this Agreement are exclusive of any tax, levy or government charges ("Taxes") that may be assessed against the payor by any jurisdiction other than required withholding taxes based on income. In the event that, under the laws of any jurisdiction, the payor is required to withhold Taxes based on income, then the payor

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shall forthwith pay the amounts deducted or withheld from such payments to the relevant taxing or other authority in accordance with applicable law. The payor will furnish the payee with a copy of a receipt evidencing payment thereof, and the payment remitted by the payor to the payee will be net of this tax.

11.1.2 Gross Receipts, Excise and Other Taxes. In addition to the prices Licensee pays for OEM Receivers, as provided above, Licensee is responsible for gross receipts, excise and other taxes (excluding sales and use tax, which are discussed below) applicable to the sale, use, transportation or addition to value of the OEM Receivers. In addition to the prices ETC pays for ETC Receivers, as provided above, ETC is responsible for gross receipts, excise and other taxes (excluding sales and use tax, which are discussed below) applicable to the sale, use, transportation or addition to value of the ETC Receivers.

11.1.3 Sales and Use Taxes.

(a) Licensee Purchases. Licensee shall pay separately stated sales and/or use taxes billed by ETC on the sale of OEM Receivers to Licensee, unless Licensee provides ETC with a resale certificate, direct pay permit or other exemption documentation acceptable to the appropriate taxing jurisdiction. ETC shall be responsible for remitting the sales and/or use taxes collected from Licensee to the proper taxing jurisdictions. ETC reserves the right to bill sales and/or use taxes at a later date if it is determined that a resale certificate, direct pay permit or other exemption documentation previously accepted by ETC is not honored by the taxing jurisdiction, or if an assessment or adjustment is made under audit.

(b) Licensee Sales. ETC shall pay separately stated sales and/or use taxes billed by Licensee on the sale of ETC Receivers to ETC, unless ETC provides Licensee with a resale certificate, direct pay permit or other exemption documentation acceptable to Licensee and the appropriate taxing jurisdiction. Licensee shall be responsible for remitting the sales and/or use taxes collected from ETC to the proper taxing jurisdictions. Licensee reserves the right to bill sales and/or use taxes at a later date if it is determined that a resale certificate, direct pay permit or other exemption documentation previously accepted by Licensee is not honored by the taxing jurisdiction, or if an assessment or adjustment is made under audit.

11.2 Remedies Cumulative. It is agreed that the rights and remedies herein provided in case of default or breach of this Agreement are cumulative and shall not affect in any manner any other remedies that any party may have by reason of such default or breach. The exercise of any right or remedy herein provided shall be without prejudice to the right to exercise any other right or remedy provided herein, at law, or in equity.

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11.3 Notice. Any notice required or permitted to be given hereunder shall be in writing and shall be sent by facsimile transmission, or by first class certified mail, postage prepaid, or by overnight courier service, charges prepaid, to the party notified, addressed to such party at the address set forth below, or sent by facsimile to the fax number set forth below, or such other address or fax number as such party may have substituted by written notice to the other parties. 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 Licensee:
Thomson multimedia Inc.
10330 North Meridian St. ***
Indianapolis, IN 46290
Attn: David Spomer, Vice President
***

With a copy to:
Thomson multimedia, Inc.
10330-No. Meridian St.
Indianapolis, IN 46290
Attn: Jay Wagner, Associate General Counsel

If to ETC:
EchoStar Technologies Corporation
90 Inverness Circle East
Englewood, Colorado 80112
Attn: Mark Jackson, Senior Vice President
***

With a copy to:
EchoStar Technologies Corporation
90 Inverness Circle East
Englewood, Colorado 80112
Attn: David K. Moskowitz, Senior Vice President and General Counsel
***

If to ESC:
EchoStar Satellite Corporation
5701 S. Santa Fe Drive
Littleton, Colorado 80120
Attn: James DeFranco, Executive Vice President
***

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With a copy to: EchoStar Satellite Corporation
5701 S. Santa Fe Drive
Littleton, Colorado 80120
Attn: David K. Moskowitz, Senior Vice
President and General Counsel
***

11.4 Independent Contractors. This Agreement and the transactions contemplated hereby are not intended to create an agency, partnership or joint venture relationship between the parties, or confer any benefit on any third party. All agents and employees of each party shall be deemed to be that party agents and employees exclusively, and the entire management, direction, and control thereof shall be vested exclusively in such party. Each party, its agents and employees, shall not be entitled to any benefits, privileges or compensation given or extended by the other party to its employees.

11.5 Amendment. Except as expressly provided to the contrary by this Agreement, no waiver or modification of any of the terms or conditions of this Agreement shall be effective unless in writing and signed by both parties.

11.6 No Implied Waiver. Neither the waiver by a Party of a breach of or a default under any of the provisions of this Agreement, nor the failure of a Party, on one or more occasions, to enforce any of the provisions of this Agreement or to exercise any right, remedy or privilege hereunder, shall thereafter be construed as a waiver of any subsequent breach or default of a similar nature, or as a waiver of any such provisions, rights, remedies or privileges hereunder. No failure or delay on the part of a Party in exercising any right, power or privilege hereunder, and no course of dealing between the Parties, shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege. No change, waiver or discharge hereof shall be valid unless in writing and signed by an authorized representative of the Party against whom such change, waiver or discharge is sought to be enforced. A waiver by any Party of any of the covenants, conditions or contracts to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition or contract herein contained.

11.7 Entire Agreement. This Agreement sets forth the entire, final and complete understanding between the parties hereto relevant to the subject matter of this Agreement, and it supersedes and replaces all previous understandings or agreements, written, oral, or implied, relevant to the subject matter of this Agreement made or existing before the date of this Agreement, including without limitation the Memorandum OEM Manufacturing Agreement dated January 9, 2002, by and among ESC, ETC and Licensee (the "MOEMMA"), but excluding any non-disclosure agreements previously

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execute between any or all of the parties hereto, which shall remain in full force and effect. Except as expressly provided by this Agreement, no waiver or modification of any of the terms or conditions of this Agreement shall be effective unless in writing and signed by both parties.

11.8 Force Majeure. Neither party shall be liable to the other party for nonperformance or delay in performance of any of its obligations under this Agreement due to causes reasonably beyond its control or which cause makes performance a commercial impracticability, including act of God, fire, explosion, flood, windstorm, earthquake, trade embargoes, strikes, labor troubles or other industrial disturbances, accidents, governmental regulations, riots, and insurrections ("Force Majeure"). Upon the occurrence of a Force Majeure condition, the affected party shall immediately notify the other party with as much detail as possible and shall promptly inform the other party of any further developments. Immediately after the Force Majeure event is removed or abates, the affected party shall perform such obligations with all due speed. Neither party shall be deemed in default of this Agreement if a delay or other breach is caused by a Force Majeure event. If a Force Majeure event is expected to continue for more than three (3) months, any party may terminate this Agreement by providing thirty (30) days prior written notice to the other parties. Such termination shall be without any continuing liabilities or obligations on the part of one party to the other of any kind except as expressly set forth herein.

11.9 Severability. If any term or provision herein, or the application thereof to any person, entity, or circumstances shall to any extent be invalid or unenforceable in any pertinent jurisdiction, the remainder hereof shall not be affected thereby but shall be valid and enforceable as if the invalid term or provision were not a part hereof.

11.10 Headings. The descriptive headings contained in this Agreement are included for convenience and reference only and shall not be held to expand, modify, amplify or aid in the interpretation, construction or meaning of this Agreement.

11.11 Assignment. ETC and ESC may assign their respective rights and delegate their respective duties under this Agreement in whole or in part at any time; provided that the assignee is at least as creditworthy on such date of assignment as the EchoStar Parties are on the date first set forth above. Except as otherwise set forth to the contrary herein, Licensee may not assign any rights or delegate any duties under this Agreement without the prior written consent of ETC and ESC, which consent may be withheld in their sole judgment. Any attempt to do so without such consent shall be void.

11.12 Compliance with Law. The parties shall comply with, and agree that this Agreement is subject to, all applicable federal, state, and local laws, rules and

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regulations, and all amendments thereto, now enacted or hereafter promulgated in force during the term of this Agreement.

11.13 General Provisions. The terms and conditions attached as exhibits hereto are fully incorporated into this Agreement.

11.14 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original and all of which together shall constitute one and the same agreement.

11.15 Survival. In addition to the provisions of this Agreement that survive by their express terms, the following provisions shall survive expiration or termination of this Agreement for a reasonable period of time under the circumstances: Sections 2.6 (with respect to in-warranty and out-of-warranty service and repair), 2.9, 2.15, 3.13, 3.14, 5.4.2, 7.1, 9, 10, 11.1, and 11.3. In addition, any provision of this Agreement which logically would be expected to survive termination or expiration of the Agreement shall survive for a reasonable period of time under the circumstances.

11.16 Trademark Agreement. The Parties shall mutually agree to a trademark agreement (the "Trademark Agreement") to be attached as Exhibit E hereto on or before July 15, 2002.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers or representatives as of the date first written above.

ECHOSTAR SATELLITE CORPORATION

By:

David K. Moskowitz
Senior Vice President and General Counsel

ECHOSTAR TECHNOLOGIES CORPORATION

By:

David K. Moskowitz
Senior Vice President and General Counsel

THOMSON MULTIMEDIA INC. (LICENSEE)

By:

David Spomer
Vice President

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EXHIBIT LIST

EXHIBIT A	TRADEMARK USAGE GUIDELINES
EXHIBIT B	INCENTIVIZED RETAILER AGREEMENT
EXHIBIT C	NET EFFECTIVE ROYALTY RATES
EXHIBIT D	LICENSEE RETAILERS
EXHIBIT E	TRADEMARK AGREEMENT

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EXHIBIT A

TRADEMARK USAGE GUIDELINES

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EXHIBIT B

INCENTIVIZED RETAILER AGREEMENT

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EXHIBIT C

NET EFFECTIVE ROYALTY RATES

Technology	Net Effective Royalty per Receiver
	***

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EXHIBIT D

LICENSEE RETAILERS

[TO BE ATTACHED PURSUANT TO SECTION 4.1]

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EXHIBIT E

TRADEMARK AGREEMENT

TO BE AGREED TO ON OR BEFORE JULY 15, 2002.

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EXHIBIT 10.2

FIRST AMENDMENT TO LICENSE AND OEM MANUFACTURING AGREEMENT

The License and OEM Manufacturing Agreement ("LOEMMA") with an effective date of July 1, 2002, by and among EchoStar Satellite Corporation, EchoStar Technologies Corporation and Thomson multimedia Inc. is hereby amended as follows:

1. Section 11.16 is amended to read:

   The Parties shall mutually agree to a trademark agreement (the "Trademark Agreement") to be attached as Exhibit E hereto on or before July 19, 2002.

2. Unless specifically defined herein, all defined terms will have the meaning ascribed to such terms in the LOEMMA. The LOEMMA shall remain in all other respects unchanged.

EchoStar Satellite Corporation	EchoStar Technologies Corporation
By: ----------------------------	By: ------------------------------
Title: ----------------------------	Title: ------------------------------
Date: ----------------------------	Date: ------------------------------

Thomson multimedia Inc.

By: ----------------------------

Title: ----------------------------

Date: ----------------------------

EXHIBIT 10.3

SECOND AMENDMENT TO LICENSE AND OEM MANUFACTURING AGREEMENT

The License and OEM Manufacturing Agreement ("LOEMMA") with an effective date of July 1, 2002, by and among EchoStar Satellite Corporation, EchoStar Technologies Corporation and Thomson multimedia Inc. is hereby amended as follows:

1. Section 11.16 is amended to read:

   The Parties shall mutually agree to a trademark agreement (the "Trademark Agreement") to be attached as Exhibit E hereto on or before July 26, 2002.

2. Unless specifically defined herein, all defined terms will have the meaning ascribed to such terms in the LOEMMA. The LOEMMA shall remain in all other respects unchanged.

EchoStar Satellite Corporation	EchoStar Technologies Corporation
By: ------------------------	By: ----------------------------
Title: ------------------------	Title: ----------------------------
Date: ------------------------	Date: ----------------------------

Thomson multimedia Inc.

By: ------------------------

Title: ------------------------

Date: ------------------------

EXHIBIT 10.4

THIRD AMENDMENT TO LICENSE AND OEM MANUFACTURING AGREEMENT

The License and OEM Manufacturing Agreement ("LOEMMA") with an effective date of July 1, 2002, by and among EchoStar Satellite Corporation, EchoStar Technologies Corporation and Thomson multimedia Inc. is hereby amended as follows:

1. Section 11.16 is amended to read:

The Parties shall mutually agree to a trademark agreement (the "Trademark Agreement") to be attached as Exhibit E hereto on or before August 2, 2002.

2. Unless specifically defined herein, all defined terms will have the meaning ascribed to such terms in the LOEMMA. The LOEMMA shall remain in all other respects unchanged.

EchoStar Satellite Corporation

By: -------------------------

Title: -------------------------

Date: -------------------------

EchoStar Technologies Corporation

By: -------------------------

Title: -------------------------

Date: -------------------------

Thomson multimedia Inc.

By: -------------------------

Title: -------------------------

Date: -------------------------

EXHIBIT 10.5

FOURTH AMENDMENT TO LICENSE AND OEM MANUFACTURING AGREEMENT

The License and OEM Manufacturing Agreement ("LOEMMA") with an effective date of July 1, 2002, by and among EchoStar Satellite Corporation, EchoStar Technologies Corporation and Thomson multimedia Inc. is hereby amended as follows:

1. Section 11.16 is amended to read:

   The Parties shall mutually agree to a trademark agreement (the "Trademark Agreement") to be attached as Exhibit E hereto on or before August 7, 2002.

2. Unless specifically defined herein, all defined terms will have the meaning ascribed to such terms in the LOEMMA. The LOEMMA shall remain in all other respects unchanged.

EchoStar Satellite Corporation

By: --------------------------

Title: --------------------------

Date: --------------------------

EchoStar Technologies Corporation

By: ---------------------------

Title: ---------------------------

Date: ---------------------------

Thomson multimedia Inc.

By: --------------------------

Title: --------------------------

Date: --------------------------

EXHIBIT 10.6

FIFTH AMENDMENT TO LICENSE AND OEM MANUFACTURING AGREEMENT

The License and OEM Manufacturing Agreement ("LOEMMA") with an effective date of July 1, 2002, by and among EchoStar Satellite Corporation, EchoStar Technologies Corporation and Thomson multimedia Inc. is hereby amended as follows:

1. Section 11.16 is amended to read:

The Parties shall mutually agree to a trademark agreement (the "Trademark Agreement") to be attached as Exhibit E hereto on or before August 12, 2002.

2. Unless specifically defined herein, all defined terms will have the meaning ascribed to such terms in the LOEMMA. The LOEMMA shall remain in all other respects unchanged.

EchoStar Satellite Corporation

By: --------------------------

Title: --------------------------

Date: --------------------------

EchoStar Technologies Corporation

By: --------------------------

Title: --------------------------

Date: --------------------------

Thomson multimedia Inc.

By: --------------------------

Title: --------------------------

Date: --------------------------

EXHIBIT 10.7

SIXTH AMENDMENT TO LICENSE AND OEM MANUFACTURING AGREEMENT

The License and OEM Manufacturing Agreement ("LOEMMA") with an effective date of July 1, 2002, by and among EchoStar Satellite Corporation, EchoStar Technologies Corporation and Thomson multimedia Inc. is hereby amended as follows:

1. Section 11.16 is amended to read:

   The Parties shall mutually agree to a trademark agreement (the "Trademark Agreement") to be attached as Exhibit E hereto on or before August 19, 2002.

2. Unless specifically defined herein, all defined terms will have the meaning ascribed to such terms in the LOEMMA. The LOEMMA shall remain in all other respects unchanged.

EchoStar Satellite Corporation	EchoStar Technologies Corporation
By: ---------------------------	By: -------------------------
Title: ---------------------------	Title: -------------------------
Date: ---------------------------	Date: -------------------------

Thomson multimedia Inc.

By: ---------------------------

Title: ---------------------------

Date: ---------------------------

EXHIBIT 10.8

SEVENTH AMENDMENT TO LICENSE AND OEM MANUFACTURING AGREEMENT

The License and OEM Manufacturing Agreement ("LOEMMA") with an effective date of July 1, 2002, by and among EchoStar Satellite Corporation, EchoStar Technologies Corporation and Thomson multimedia Inc. is hereby amended as follows:

1. Section 11.16 is amended to read:

   The Parties shall mutually agree to a trademark agreement (the "Trademark Agreement") to be attached as Exhibit E hereto on or before August 26, 2002.

2. Unless specifically defined herein, all defined terms will have the meaning ascribed to such terms in the LOEMMA. The LOEMMA shall remain in all other respects unchanged.

EchoStar Satellite Corporation

By: -------------------------

Title: -------------------------

Date: -------------------------

EchoStar Technologies Corporation

By: --------------------------

Title: --------------------------

Date: --------------------------

Thomson multimedia Inc.

By: -------------------------

Title: -------------------------

Date: -------------------------

EXHIBIT 10.9

EIGHTH AMENDMENT TO LICENSE AND OEM MANUFACTURING AGREEMENT

The License and OEM Manufacturing Agreement ("LOEMMA") with an effective date of July 1, 2002, by and among EchoStar Satellite Corporation, EchoStar Technologies Corporation and Thomson multimedia Inc. is hereby amended as follows:

1. Section 11.16 is amended to read:

The Parties shall mutually agree to a trademark agreement (the "Trademark Agreement") to be attached as Exhibit E hereto on or before September 3, 2002.

2. Unless specifically defined herein, all defined terms will have the meaning ascribed to such terms in the LOEMMA. The LOEMMA shall remain in all other respects unchanged.

EchoStar Satellite Corporation

By: ------------------------

Title: ------------------------

Date: ------------------------

EchoStar Technologies Corporation

By: --------------------------

Title: --------------------------

Date: --------------------------

Thomson multimedia Inc.

By: ------------------------

Title: ------------------------

Date: ------------------------

EXHIBIT 10.10

NINTH AMENDMENT TO LICENSE AND OEM MANUFACTURING AGREEMENT

The License and OEM Manufacturing Agreement ("LOEMMA") with an effective date of July 1, 2002, by and among EchoStar Satellite Corporation, EchoStar Technologies Corporation and Thomson multimedia Inc. is hereby amended as follows:

1. Section 11.16 is amended to read:

   The Parties shall mutually agree to a trademark agreement (the "Trademark Agreement") to be attached as Exhibit E hereto on or before September 10, 2002.

2. Unless specifically defined herein, all defined terms will have the meaning ascribed to such terms in the LOEMMA. The LOEMMA shall remain in all other respects unchanged.

EchoStar Satellite Corporation

By:

Title:

Date:

EchoStar Technologies Corporation

By:

Title:

Date:

Thomson multimedia Inc.

By:

Title:

Date:

EXHIBIT 10.11

TENTH AMENDMENT TO LICENSE AND OEM MANUFACTURING AGREEMENT

The License and OEM Manufacturing Agreement ("LOEMMA") with an effective date of July 1, 2002, by and among EchoStar Satellite Corporation, EchoStar Technologies Corporation and Thomson multimedia Inc. is hereby amended as follows:

1. Section 11.16 is amended to read:

The Parties shall mutually agree to a trademark agreement (the "Trademark Agreement") to be attached as Exhibit E hereto on or before September 17, 2002.

2. Unless specifically defined herein, all defined terms will have the meaning ascribed to such terms in the LOEMMA. The LOEMMA shall remain in all other respects unchanged.

EchoStar Satellite Corporation

By: -------------------------

Title: -------------------------

Date: -------------------------

EchoStar Technologies Corporation

By: -------------------------

Title: -------------------------

Date: -------------------------

Thomson multimedia Inc.

By: -------------------------

Title: -------------------------

Date: -------------------------

EXHIBIT 10.12

ELEVENTH AMENDMENT TO LICENSE AND OEM MANUFACTURING AGREEMENT

The License and OEM Manufacturing Agreement ("LOEMMA") with an effective date of July 1, 2002, by and among EchoStar Satellite Corporation, EchoStar Technologies Corporation and Thomson multimedia Inc. is hereby amended as follows:

1. Section 11.16 is amended to read:

The Parties shall mutually agree to a trademark agreement (the "Trademark Agreement") to be attached as Exhibit E hereto on or before September 24, 2002.

2. Unless specifically defined herein, all defined terms will have the meaning ascribed to such terms in the LOEMMA. The LOEMMA shall remain in all other respects unchanged.

EchoStar Satellite Corporation

By: --------------------------

Title: --------------------------

Date: --------------------------

EchoStar Technologies Corporation

By: -------------------------

Title: -------------------------

Date: -------------------------

Thomson multimedia Inc.

By: --------------------------

Title: --------------------------

Date: --------------------------

EXHIBIT 10.13

TWELFTH AMENDMENT TO LICENSE AND OEM MANUFACTURING AGREEMENT

The License and OEM Manufacturing Agreement ("LOEMMA") with an effective date of July 1, 2002, by and among EchoStar Satellite Corporation, EchoStar Technologies Corporation and Thomson multimedia Inc. is hereby amended as follows:

1. Section 11.16 is amended to read:

The Parties shall mutually agree to a trademark agreement (the "Trademark Agreement") to be attached as Exhibit E hereto on or before October 1, 2002.

2. Unless specifically defined herein, all defined terms will have the meaning ascribed to such terms in the LOEMMA. The LOEMMA shall remain in all other respects unchanged.

EchoStar Satellite Corporation

By: -------------------------

Title: -------------------------

Date: -------------------------

EchoStar Technologies Corporation

By: ------------------------

Title: ------------------------

Date: ------------------------

Thomson multimedia Inc.

By: -------------------------

Title: -------------------------

Date: -------------------------