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

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**Amendment No. 1**

**to**

**Form 10**

GENERAL FORM FOR REGISTRATION OF SECURITIES  
PURSUANT TO SECTION 12(b) OR 12(g)  
OF THE SECURITIES EXCHANGE ACT OF 1934

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**EchoStar Holding Corporation**

*(Exact name of registrant as specified in its charter)*

**Nevada**

*(State or Other Jurisdiction of  
Incorporation or Organization)*

**90 Inverness Circle E.  
Englewood, Colorado**

*(Address of Principal Executive Offices)*

**26-1232727**

*(I.R.S. Employer  
Identification Number)*

**80112**

*(Zip Code)*

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

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Securities to be registered pursuant to Section 12(b) of the Act:

<u>Title of Each Class to be so Registered</u>	<u>Name of Each Exchange on Which Each Class is to be Registered</u>
Class A Common Stock, \$0.001 par value per share	The NASDAQ Stock Market LLC

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Securities to be registered pursuant to Section 12(g) of the Act:  
None

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**EchoStar Holding Corporation**

**Cross-Reference Sheet Between the Information Statement and Items of Form 10**

**Information Included in the Information Statement and Incorporated by Reference  
into the Registration Statement on Form 10**

Our information statement may be found as Exhibit 99.1 to this Form 10. For your convenience, we have provided below a cross-reference sheet identifying where the items required by Form 10 can be found in the information statement.

Item No.	Caption	Location in Information Statement
1.	Business	See "Summary," "Risk Factors," "Cautionary Statement Concerning Forward-Looking Statements," "The Spin-Off," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and "Business"
1A.	Risk Factors	See "Summary," "Risk Factors" and "Cautionary Statement Concerning Forward-Looking Statements"
2.	Financial Information	See "Summary," "Risk Factors," "Selected Historical and Unaudited Pro Forma Combined and Adjusted Financial Data," "Unaudited Pro Forma Combined and Adjusted Financial Information" and "Management's Discussion and Analysis of Financial Condition and Results of Operations"
3.	Properties	See "Properties"
4.	Security Ownership of Certain Beneficial Owners and Management	See "Security Ownership of Certain Beneficial Owners and Management"
5.	Directors and Executive Officers	See "Management"
6.	Executive Compensation	See "Management"
7.	Certain Relationships and Related Transactions, and Director Independence	See "Risk Factors," "Management," "Certain Relationships and Related Party Transactions" and "Certain Intercompany Agreements"
8.	Legal Proceedings	See "Business — Legal Proceedings"
9.	Market Price of and Dividends on the Registrant's Common Equity and Related Stockholder Matters	See "Summary," "The Spin-Off" and "Description of Our Capital Stock"
10.	Recent Sales of Unregistered Securities	None
11.	Description of Registrant's Securities to be Registered	See "Description of Our Capital Stock"
12.	Indemnification of Directors and Officers	See "Management" and "Limitation of Liability and Indemnification Matters"
13.	Financial Statements and Supplementary Data	See "Selected Historical and Unaudited Pro Forma Combined and Adjusted Financial Data," "Unaudited Pro Forma Combined and Adjusted Financial Information," and "Index to Financial Tables of EchoStar Holding Corporation," "Index to Statement of Net Assets to be Contributed by EchoStar Communications Corporation," and "Index to Financial Tables of Sling Media, Inc." and the financial statements referenced therein
14.	Changes in and Disagreements with Accountants on Accounting and Financial Disclosure	None
15.	Financial Statements and Exhibits	See "Index to Financial Tables of EchoStar Holding Corporation," "Index to Statement of Net Assets to be Contributed by EchoStar Communications Corporation," and "Index to Financial Tables of Sling Media, Inc." and the financial statements referenced therein

(a) List of Financial Statements and Schedules.

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The following financial statements are included in the information statement and filed as part of this Registration Statement on Form 10:

- (1) Combined Financial Statements of EchoStar Holding Corporation, including Report of Independent Registered Public Accounting Firm;
- (2) Statement of Net Assets to be Contributed by EchoStar Communications Corporation, including Report of Independent Registered Public Accounting Firm; and
- (3) Consolidated Financial Statements of Sling Media, Inc., including Report of Independent Registered Public Accounting Firm.

The following financial statement schedule for the fiscal years ended December 31, 2006, 2005 and 2004 is included in the information statement and filed as part of this Registration Statement:

None. All schedules have been included in the Combined Financial Statements of EchoStar Holding Corporation or Notes thereto.

(b) Exhibits. The following documents are filed as exhibits hereto:

<u>Exhibit Number</u>	<u>Exhibit Description</u>
2.1	Form of Separation Agreement between EchoStar Holding Corporation and EchoStar Communications Corporation
3.1	Articles of Incorporation of EchoStar Holding Corporation
3.2	Bylaws of EchoStar Holding Corporation
4.1	Specimen Class A Common Stock Certificate of EchoStar Holding Corporation
10.1	Form of Transition Services Agreement between EchoStar Holding Corporation and EchoStar Communications Corporation
10.2	Form of Tax Sharing Agreement between EchoStar Holding Corporation and EchoStar Communications Corporation
10.3	Form of Employee Matters Agreement between EchoStar Holding Corporation and EchoStar Communications Corporation
10.4	Form of Intellectual Property Matters Agreement between EchoStar Holding Corporation, EchoStar Acquisition L.L.C., Echosphere L.L.C., EchoStar DBS Corporation, EIC Spain SL, EchoStar Technologies Corporation and EchoStar Communications Corporation
10.5	Form of Management Services Agreement between EchoStar Holding Corporation and EchoStar Communications Corporation
10.6	Manufacturing Agreement, dated as of March 22, 1995, between HTS and SCI Technology, Inc. (incorporated by reference to Exhibit 10.12 to the Registration Statement on Form S-1 of Dish Ltd., Commission File No. 33-81234)
10.7	Agreement between HTS, EchoStar Satellite L.L.C., and ExpressVu Inc., dated January 8, 1997, as amended (incorporated by reference to Exhibit 10.18 to the Annual Report on Form 10-K of EchoStar Communications Corporation for the year ended December 31, 1996, as amended, Commission File No. 0-26176)
10.8	Agreement to Form NagraStar L.L.C., dated as of June 23, 1998, by and between Kudelski S.A., EchoStar Communications Corporation and EchoStar Satellite L.L.C. (incorporated by reference to Exhibit 10.28 to the Annual Report on Form 10-K of EchoStar Communications Corporation for the year ended December 31, 1998, Commission File No. 0-26176)
10.9	Satellite Service Agreement, dated as of March 21, 2003, between SES Americom, Inc., EchoStar Satellite L.L.C. and EchoStar Communications Corporation (incorporated by reference to Exhibit 10.1 to the Quarterly Report on Form 10-Q of EchoStar Communications Corporation for the quarter ended March 31, 2003, Commission File No. 0-26176)
10.10	Amendment No. 1 to Satellite Service Agreement dated March 31, 2003 between SES Americom Inc., EchoStar Satellite L.L.C. and EchoStar Communications Corporation (incorporated by reference to Exhibit 10.1 to the Quarterly Report on Form 10-Q of EchoStar Communications Corporation for the quarter ended September 30, 2003, Commission File No. 0-26176)

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Exhibit Number	Exhibit Description
10.11	Satellite Service Agreement dated as of August 13, 2003 between SES Americom Inc., EchoStar Satellite L.L.C. and EchoStar Communications Corporation (incorporated by reference to Exhibit 10.2 to the Quarterly Report on Form 10-Q of EchoStar Communications Corporation for the quarter ended September 30, 2003, Commission File No. 0-26176)
10.12	Satellite Service Agreement, dated February 19, 2004, between SES Americom, Inc., EchoStar Satellite L.L.C. and EchoStar Communications Corporation (incorporated by reference to Exhibit 10.1 to the Quarterly Report on Form 10-Q of EchoStar Communications Corporation for the quarter ended March 31, 2004, Commission File No. 0-26176)
10.13	Amendment No. 1 to Satellite Service Agreement, dated March 10, 2004, between SES Americom, Inc., EchoStar Satellite L.L.C. and EchoStar Communications Corporation (incorporated by reference to Exhibit 10.2 to the Quarterly Report on Form 10-Q of EchoStar Communications Corporation for the quarter ended March 31, 2004, Commission File No. 0-26176)
10.14	Amendment No. 3 to Satellite Service Agreement, dated February 19, 2004, between SES Americom, Inc., EchoStar Satellite L.L.C. and EchoStar Communications Corporation (incorporated by reference to Exhibit 10.3 to the Quarterly Report on Form 10-Q of EchoStar Communications Corporation for the quarter ended March 31, 2004, Commission File No. 0-26176)
10.15	Amendment No. 2 to Satellite Service Agreement, dated April 30, 2004, between SES Americom, Inc., EchoStar Satellite L.L.C. and EchoStar Communications Corporation (incorporated by reference to Exhibit 10.1 to the Quarterly Report on Form 10-Q of EchoStar Communications Corporation for the quarter ended June 30, 2004, Commission File No. 0-26176)
10.16	Amendment No. 4 to Satellite Service Agreement, dated October 21, 2004, between SES Americom, Inc., EchoStar Satellite L.L.C. and EchoStar Communications Corporation (incorporated by reference to Exhibit 10.23 to the Annual Report on Form 10-K of EchoStar Communications Corporation for the year ended December 31, 2004, Commission File No. 0-26176)
10.17	Amendment No. 3 to Satellite Service Agreement, dated November 19, 2004 between SES Americom, Inc., EchoStar Satellite L.L.C. and EchoStar Communications Corporation (incorporated by reference to Exhibit 10.24 to the Annual Report on Form 10-K of EchoStar Communications Corporation for the year ended December 31, 2004, Commission File No. 0-26176)
10.18	Amendment No. 5 to Satellite Service Agreement, dated November 19, 2004, between SES Americom, Inc., EchoStar Satellite L.L.C. and EchoStar Communications Corporation (incorporated by reference to Exhibit 10.25 to the Annual Report on Form 10-K of EchoStar Communications Corporation for the year ended December 31, 2004, Commission File No. 0-26176)
10.19	Amendment No. 6 to Satellite Service Agreement, dated December 20, 2004, between SES Americom, Inc., EchoStar Satellite L.L.C. and EchoStar Communications Corporation (incorporated by reference to Exhibit 10.26 to the Annual Report on Form 10-K of EchoStar Communications Corporation for the year ended December 31, 2004, Commission File No. 0-26176)
10.20	Amendment No. 4 to Satellite Service Agreement, dated April 6, 2005, between SES Americom, Inc., EchoStar Satellite L.L.C. and EchoStar Communications Corporation (incorporated by reference to Exhibit 10.1 to the Quarterly Report on Form 10-Q of EchoStar Communications Corporation for the quarter ended June 30, 2005, Commission File No. 0-26176)
10.21	Amendment No. 5 to Satellite Service Agreement, dated June 20, 2005, between SES Americom, Inc., EchoStar Satellite L.L.C. and EchoStar Communications Corporation (incorporated by reference to Exhibit 10.2 to the Quarterly Report on Form 10-Q of EchoStar Communications Corporation for the quarter ended June 30, 2005, Commission File No. 0-26176)
10.22	Form of EchoStar Holding Corporation 2008 Stock Incentive Plan†
10.23	Form of EchoStar Holding Corporation 2008 Employee Stock Purchase Plan†
10.24	Form of EchoStar Holding Corporation 2008 Nonemployee Director Stock Option Plan†
10.25	Form of EchoStar Holding Corporation 2008 Class B CEO Stock Option Plan
21	List of Subsidiaries of EchoStar Holding Corporation
99.1	Preliminary Information Statement of EchoStar Holding Corporation, subject to completion, dated December 12, 2007

† Management contract or compensatory plan or arrangement

**SIGNATURE**

Pursuant to the requirements of Section 12 of the Securities Exchange Act of 1934, the registrant has duly caused this Amendment No. 1 to Registration Statement on Form 10 to be signed on its behalf by the undersigned, thereunto duly authorized.

ECHOSTAR HOLDING CORPORATION

By: /s/ Charles W. Ergen  
Charles W. Ergen  
*Chairman and Chief Executive Officer*

Dated: December 12, 2007

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## EXHIBIT INDEX

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† Management contract or compensatory plan or arrangement



**FORM OF  
SEPARATION AGREEMENT**

**between**

**ECHOSTAR COMMUNICATIONS CORPORATION**

**and**

**ECHOSTAR HOLDING CORPORATION**

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TABLE OF CONTENTS

	<u>Page</u>	
ARTICLE I	DEFINITIONS	2
ARTICLE II	BUSINESS SEPARATION	14
Section 2.1	Separation	14
Section 2.2	Implementation	14
Section 2.3	Transfer of Separated Assets; Assumption of Assumed Liabilities	15
Section 2.4	Separated Assets	15
Section 2.5	Liabilities	17
Section 2.6	Excluded Assumed Liabilities	18
Section 2.7	Deferred Separation Transactions	18
Section 2.8	Termination of Agreements	19
Section 2.9	Consents and Governmental Approvals	20
Section 2.10	Novation of the Assumed Liabilities	20
Section 2.11	Documents Relating to Transfer of Real Property Interests and Tangible Property Located Thereon	21
Section 2.12	Documents Relating to Transfers of the Separated Assets and Assumption of the Assumed Liabilities	22
Section 2.13	Release of Security Interest	23
Section 2.14	No Representation or Warranty	23
Section 2.15	Use of Cash	23
Section 2.16	Plan of Reorganization	24
ARTICLE III	THE DISTRIBUTION AND ACTIONS PENDING THE DISTRIBUTION	24
Section 3.1	Transactions Prior to the Distribution	24
Section 3.2	Conditions Precedent to Consummation of the Distribution	25
Section 3.3	Documents to be Delivered by ECC	26
Section 3.4	Documents to be Delivered by the Company	27
Section 3.5	Distribution	27
ARTICLE IV	ADDITIONAL COVENANTS, FURTHER ASSURANCES AND OTHER MATTERS	29
Section 4.1	Provision of Corporate Records	29
Section 4.2	Further Assurance	30
Section 4.3	Agreement For Exchange Of Information	31
Section 4.4	Production of Witnesses; Records; Cooperation	32
Section 4.5	Confidentiality	33
Section 4.6	Privileged Matters	34
Section 4.7	Tax Sharing Agreement	36
ARTICLE V	SURVIVAL AND INDEMNIFICATION	36
Section 5.1	Mutual Release	36

**Table of Contents**  
**(con't)**

	<u>Page</u>
Section 5.2	38
Section 5.3	39
Section 5.4	39
Section 5.5	39
Section 5.6	40
Section 5.7	42
Section 5.8	42
Section 5.9	43
Section 5.10	43
Section 5.11	43
ARTICLE VI	43
Section 6.1	43
Section 6.2	44
Section 6.3	44
Section 6.4	45
Section 6.5	45
Section 6.6	46
ARTICLE VII	46
Section 7.1	46
ARTICLE VIII	47
Section 8.1	47
Section 8.2	48
Section 8.3	49
Section 8.4	49
ARTICLE IX	50
Section 9.1	50
Section 9.2	50
Section 9.3	50
Section 9.4	50
Section 9.5	51
Section 9.6	51
Section 9.7	51
Section 9.8	52
Section 9.9	52
Section 9.10	53
Section 9.11	53
Section 9.12	54
Section 9.13	54

**Table of Contents**  
**(con't)**

	<u>Page</u>
Section 9.14	Survival of Covenants
Section 9.15	Waiver of Default; Conflicts
Section 9.16	Amendments
Section 9.17	Controlling Documents
Section 9.18	Specific Performance

Annex A	Company Group Balance Sheet
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**SCHEDULES**

Schedule 1.1	Company Contracts
Schedule 1.2	Exclusive ECC Contingent Gain
Schedule 1.3	Exclusive ECC Contingent Liability
Schedule 1.4	Exclusive Company Contingent Gain
Schedule 1.5	Exclusive Company Contingent Liability
Schedule 1.6	Separation Transactions
Schedule 1.7	Shared Contingent Gain
Schedule 1.8	Shared Contingent Liability
Schedule 2.4(a)	Outstanding Capital Stock, Units or Other Equity Interests of the Entities
Schedule 2.4(b)(i)	Excluded Assets
Schedule 2.5(b)(ii)	Excluded Assumed Liabilities
Schedule 2.11(b)	Transfer of Tangible Property
Schedule 3.2(j)	Consents and Approvals
Schedule 3.3(b)	Director and Officer Resignations-ECC Group
Schedule 3.4(b)	Director and Officer Resignations-Company
Schedule 5.1	Mutual Release
Schedule 6.5	Contingent Liability; Contingent Gain

**EXHIBITS**

Exhibit A	Broadcast Agreement
Exhibit B	Employee Matters Agreement
Exhibit C	Installation Services Agreement
Exhibit D	Intellectual Property Matters Agreement
Exhibit E-1	Inverness Lease Agreement
Exhibit E-2	Meridian Lease Agreement
Exhibit E-3	Santa Fe Lease Agreement
Exhibit F	Management Services Agreement
Exhibit G	Packout Services Agreement
Exhibit H	Product Support Agreement
Exhibit I	Receiver Agreement
Exhibit J	Remanufactured Receiver Agreement
Exhibit K-1	Satellite Transponder Service Agreement (Echo III)
Exhibit K-2	Satellite Transponder Service Agreement (Echo VI)
Exhibit K-3	Satellite Transponder Service Agreement (Echo VIII)
Exhibit K-4	Satellite Transponder Service Agreement (Echo XII)

**Table of Contents**  
**(con't)**

Exhibit L	Satellite Procurement Agreement
Exhibit M	Services Agreement
Exhibit N	Tax Sharing Agreement
Exhibit O	Telemetry Tracking and Control Agreement
Exhibit P	Transition Services Agreement

**FORM OF  
SEPARATION AGREEMENT**

This Separation Agreement (this "Agreement") is entered into as of \_\_\_\_\_, 2007, by and between EchoStar Communications Corporation, a Nevada corporation ("ECC"), and EchoStar Holding Corporation, a Nevada corporation (the "Company").

**RECITALS**

WHEREAS, the Board of Directors of ECC (the "ECC Board") has determined it is appropriate and desirable to separate ECC and the Company into two publicly-traded companies by separating from ECC and transferring to the Company ECC's non-Consumer Business (as defined below), and related assets and liabilities, in a series of transactions on the terms and conditions set forth herein.

WHEREAS, the ECC Board has determined that it would be advisable and in the best interests of ECC and its stockholders for ECC to distribute, on a pro rata basis, (i) to the holders as of the Record Date (as defined below) of the issued and outstanding shares of ECC's Class A common stock, par value \$0.01 per share (the "ECC Class A Common Stock"), all of the issued and outstanding shares of the Company's Class A common stock, par value \$0.001 per share (the "Company Class A Common Stock"), owned by ECC as of the Distribution Date (as defined below) and (ii) to the holders as of the Record Date of the issued and outstanding shares of ECC's Class B common stock, par value \$0.001 per share (the "ECC Class B Common Stock"), together with the ECC Class A Common Stock, the "ECC Common Stock"), all of the issued and outstanding shares of the Company's Class B common stock, par value \$0.001 per share (the "Company Class B Common Stock"), together with the Company Class A Common Stock, the "Company Common Stock"), owned by ECC as of the Distribution Date, in each case, as further described herein (collectively, the "Distribution");

WHEREAS, ECC and the Company intend that the Separation (as defined below) and the Distribution will qualify for United States federal income tax purposes as transactions that are generally tax free under, among other provisions, Sections 355 and 368(a)(1)(D) of the Internal Revenue Code of 1986, as amended (the "Code") and hereby adopt this Agreement as a "plan of reorganization"; and

WHEREAS, the parties hereto intend in this Agreement to set forth the principal arrangements between them regarding the Separation and the Distribution and certain other agreements that will govern the relationship of ECC and the Company following the Distribution.

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

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**ARTICLE I**  
**DEFINITIONS**

For purposes of this Agreement, the following terms shall have the following meanings:

“AAA” shall have the meaning set forth in Section 8.3(a) of this Agreement.

“Action” means any demand, action, suit, counter suit, arbitration, inquiry, proceeding or investigation by or before any federal, state, local, foreign or international Governmental Authority or any arbitration or mediation tribunal.

“Affiliate” of any Person means any other Person that, directly or indirectly, controls, is controlled by, or is under common control with such first Person as of the date on which or at any time during the period for when such determination is being made. For purposes of this definition, “Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or other interests, by contract or otherwise, and the terms “Controlling” and “Controlled” have meanings correlative to the foregoing.

“Agent” means the distribution agent to be appointed by ECC to distribute to the stockholders of ECC pursuant to the Distribution all of the shares of the Company Common Stock.

“Agreement” shall have the meaning set forth in the preamble of this Agreement.

“Ancillary Agreements” means the (i) Broadcast Agreement, (ii) Employee Matters Agreement, (iii) Installation Services Agreement, (iv) Intellectual Property Matters Agreement, (v) Lease Agreements, (vi) Management Services Agreement, (vii) Packout Services Agreement, (viii) Product Support Services Agreement, (ix) Receiver Agreement, (x) Remanufactured Receiver Agreement, (xi) Satellite Transponder Service Agreements, (xii) Satellite Procurement Agreement, (xiii) Services Agreement, (xiv) Tax Sharing Agreement, (xv) Telemetry Tracking and Control Agreement, and (xvi) Transition Services Agreement, and, in the singular, means any one of them.

“Applicable Law” means any applicable law, statute, rule or regulation of any Governmental Authority or any outstanding order, judgment, injunction, ruling or decree by any Governmental Authority.

“Appurtenances” means, in respect of any Land, all privileges, rights, easements, servitudes, hereditaments and appurtenances and similar interests belonging to or for the benefit of such Land, including all easements and servitudes appurtenant to and for the benefit of such Land (a “Dominant Parcel”) for, and as the primary means of, access between, the Dominant Parcel and a public way, or for any other use upon which lawful use of the Dominant Parcel for the purposes for which it is presently being used is dependent, and all rights existing in and to any streets, alleys, passages and other rights-of-way included therein or adjacent thereto.

“Assets” means assets, properties and rights (including goodwill), wherever located (including in the possession of vendors or other third parties or elsewhere), whether real, personal or mixed, tangible, intangible or contingent, in each case whether or not recorded or reflected or required to be recorded or reflected on the books and records or financial statements of any Person, including the following:

- (i) all accounting and other books, records and files whether in paper, microfilm, microfiche, computer tape or disc, magnetic tape or any other form;
- (ii) all computers and other electronic data processing equipment, fixtures, machinery, equipment, furniture, office equipment, motor vehicles and other transportation equipment, special and general tools, prototypes and models and other tangible personal property, wherever located that are owned or leased by the Person, together with any express or implied warranty by the manufacturers, sellers or lessors of any item or component part thereof;
- (iii) all inventories, wherever located, including all finished goods, (whether or not held at any location or facility or in transit), work in process, raw materials, spare parts and all other materials and supplies to be used or consumed in the production of finished goods;
- (iv) all interests in any Land and Improvements and all Appurtenances thereto;
- (v) all interests in any capital stock or other equity interests of any Subsidiary or any other Person; all bonds, notes, debentures or other securities issued by any Subsidiary or any other Person; all loans, advances or other extensions of credit or capital contributions to any Subsidiary or any other Person; and all other investments in securities of any Person;
- (vi) all license agreements, leases of personal property, including satellites, open purchase orders for raw materials, supplies, parts or services, unfilled orders for the manufacture and sale of products and other contracts, agreements or commitments;
- (vii) all deposits and prepaid expenses, letters of credit and performance and surety bonds, claims for refunds and rights of set-off in respect thereof;
- (viii) all written technical information, data, specifications, research and development information, engineering drawings, operating and maintenance manuals, and materials and analyses whether prepared by Affiliates, by consultants or other third parties;
- (ix) all Intellectual Property and licenses from third Persons granting the right to use any Intellectual Property;
- (x) all computer applications, programs and other software, including operating software, network software, firmware, middleware, design software, design tools, systems documentation and instructions;
- (xi) all cost information, sales and pricing data, customer prospect lists, supplier records, customer and supplier lists, customer and vendor data, correspondence and lists, product literature, artwork, design, development and manufacturing files, vendor and customer drawings,



formulations and specifications, quality records and reports and other books, records, studies, surveys, reports, plans and documents;

(xii) all trade accounts and notes receivable and other rights to payment from customers and all security for such accounts or rights to payment, including all trade accounts receivable representing amounts receivable in respect of goods shipped or products sold or otherwise disposed of or services rendered to customers, (b) all other accounts and notes receivable and all security for such accounts or notes, and (c) any claim, remedy or other right relating to any of the foregoing;

(xiii) all rights under contracts or agreements, all claims or rights against any Person arising from the ownership of any Asset, all rights in connection with any bids or offers and all claims, choses in action or similar rights, whether accrued or contingent;

(xiv) all rights under insurance policies and all rights in the nature of insurance, indemnification or contribution, including Insurance Proceeds;

(xv) all licenses (including radio and similar licenses), permits, approvals and authorizations which have been issued by any Governmental Authority, including the FCC; and

(xvi) cash or cash equivalents, bank accounts, lock boxes and other deposit arrangements.

"Assumed Liabilities" shall have the meaning set forth in Section 2.5(a) of this Agreement.

"Class A Distribution Ratio" shall have the meaning set forth in Section 3.5(c)(ii) of this Agreement.

"Class B Distribution Ratio" shall have the meaning set forth in Section 3.5(c)(ii) of this Agreement.

"Code" shall have the meaning set forth in the recital of this Agreement.

"Commission" means the Securities and Exchange Commission.

"Company" shall have the meaning set forth in the preamble of this Agreement.

"Company Business" means the Receiver Business, the fixed satellite transmission services business, the satellite leasing business and the international businesses operated by the Company Group.

"Company Class A Common Stock" shall have the meaning set forth in the recital of this Agreement.

"Company Class B Common Stock" shall have the meaning set forth in the recital of this Agreement.

"Company Common Stock" shall have the meaning set forth in the recital of this Agreement.

"Company Contracts" means the following Contracts to which ECC or any member of the ECC Group is a party or by which it or any of its Assets is bound, whether or not in writing, except for any such Contract that is explicitly retained by ECC or any member of the ECC Group pursuant to any provision of this Agreement or any Ancillary Agreement: (i) any Contract entered into in the name of, or expressly on behalf of, the Company Business; (ii) any Contract that relates substantially or exclusively to the Company Business; (iii) any Contract that is otherwise expressly contemplated pursuant to this Agreement or any of the Ancillary Agreements to be assigned to the Company or any member of the Company Group; (iv) any guarantee, indemnity, representation, warranty or other Liability of any member of the ECC Group or the Company Group in respect of any Company Contract, any Assumed Liability or the Company Business (including guarantees of financing incurred by customers or other third parties in connection with purchases of products or services from the Company Business); and (v) any other Contract identified on Schedule 1.1.

"Company Group" means the Company, each Subsidiary of the Company and each other Person that is controlled directly or indirectly by the Company immediately after the Distribution.

"Company Group Balance Sheet" means (i) the audited combined balance sheet of the Company Group for the year ended December 31, 2006, (ii) the unaudited combined balance sheet of the Company Group for the nine months ended September 30, 2007 and (iii) the unaudited pro forma combined and adjusted balance sheet of the Company Group for the nine months ended September 30, 2007, in each case, including the notes thereto, substantially in the form attached as Annex A.

"Company Indemnified Parties" shall have the meaning set forth in Section 5.2 of this Agreement.

"Company Information" shall have the meaning set forth in Section 4.6(a) of this Agreement.

"Confidential Information" shall mean all proprietary, design or operational information, data or material including, without limitation, (a) specifications, ideas and concepts for products and services, (b) manufacturing specifications and procedures, (c) design drawings and models, (d) materials and material specifications, (e) quality assurance policies, procedures and specifications, (f) customer information, (g) computer software and derivatives thereof relating to design development or manufacture of products, (h) training materials and information, (i) all other know-how, methodology, procedures, techniques and trade secrets related to design, development and manufacturing, (j) proprietary earnings reports and forecasts, (k) proprietary macro-economic reports and forecasts, (l) proprietary business plans, (m) proprietary general market evaluations and surveys and (o) proprietary financing and credit-related information of one party hereto which, prior to or following the Distribution Date, has been disclosed by ECC or members of its Group on the one hand, or the Company or members of its Group, on the other hand, in written, oral (including by recording), electronic, or visual form to, or otherwise has come into the possession of, the other Group, including pursuant to the access provisions of Section 4.3 hereof or any other provision of this Agreement (except to the extent that such Information can be shown to have been (x) in the public domain through no fault of such party

(or such party's Group) or (y) later lawfully acquired from other sources by the party (or such party's Group) to which it was furnished; provided, however, in the case of (y) that such sources did not provide such Information in breach of any confidentiality obligations.

“Consents” means any consents, waivers or approvals, or notification requirements.

“Consumer Business” means the United States subscriber television services business, which consists of numerous video, audio and data channels, interactive television channels, digital video recording, high definition television, international programming, professional installation and 24 hour customer service called “DISH” and known as the “DISH Network”.

“Contingent Claim Committee” shall mean a committee composed of one representative designated from time to time by each of ECC and the Company that shall be established in accordance with Section 6.5.

“Contingent Gain” means any claim or right of a member of the ECC Group or the Company Group, whenever arising, against any Person (other than a member of the ECC Group or the Company Group); provided, that (i) such claim or right has accrued as of the Distribution Date, and (ii) the existence or scope of the claim or right against such other Person was not acknowledged, fixed or determined in any material respect as of the Distribution Date as a result of a dispute or other uncertainty due to the failure of such claim or right to have been discovered or asserted as of the Distribution Date. For purposes of the foregoing, a claim or right shall be deemed to have accrued as of the Distribution Date if all the elements of the claim necessary for its assertion shall have occurred on or prior to the Distribution Date such that the claim or right, where it is asserted in an Action on or prior to the Distribution Date would not be dismissed by a court on ripeness or similar grounds, regardless of whether there was any Action pending, threatened or contemplated as of the Distribution Date with respect thereto.

“Contingent Liability,” means any Liability of a member of the ECC Group or the Company Group, whenever arising, against any Person (other than a member of the ECC Group or the Company Group); provided, that (i) such Liability has accrued as of the Distribution Date and (ii) the existence or scope of such Liability was not acknowledged, fixed or determined in any material respect as of the Distribution Date as a result of a dispute or other uncertainty due to the failure of such Liability to have been discovered or asserted as of the Distribution Date. For purposes of the foregoing, a Liability shall be deemed to have accrued as of the Distribution Date if all the elements necessary for the assertion of a claim with respect to such Liability shall have occurred on or prior to the Distribution Date such that the claim, where it is asserted in an Action on or prior to the Distribution Date would not be dismissed by a court on ripeness or similar grounds.

“Contract” means any contract, agreement, lease, purchase and/or commitment, license, consensual obligation, promise or undertaking (whether written or oral and whether express or implied) that is legally binding on any Person or any part of its property under Applicable Law, including all claims or rights against any Person, choses in action and similar rights, whether accrued or contingent with respect to any such contract, agreement, lease, purchase and/or commitment, license, consensual obligation, promise or undertaking, but excluding this

Agreement and any Ancillary Agreement save as otherwise expressly provided in this Agreement or in any Ancillary Agreement.

“Contributions” means the Contribution, the First Contribution and the Second Contribution.

“Determination Request” means a written request made to the Contingent Claim Committee, pursuant to Section 6.5(b), for a determination as to whether a Third Party Claim specified in such request constitutes a Shared Contingent Liability.

“Distribution” shall have the meaning set forth in the recital of this Agreement.

“Distributions” means the Distribution, the First Internal Distribution and the Second Internal Distribution.

“Distribution Date” means the date determined by the ECC Board as the date on which the Distribution shall be effected.

“Dispute” shall have the meaning set forth in Section 8.2(a) of this Agreement.

“Dispute Notice” shall have the meaning set forth in Section 8.2(a) of this Agreement.

“ECC” shall have the meaning set forth in the preamble of this Agreement.

“ECC Board” shall have the meaning set forth in the recital of this Agreement.

“ECC Class A Common Stock” shall have the meaning set forth in the recital of this Agreement.

“ECC Class B Common Stock” shall have the meaning set forth in the recital of this Agreement.

“ECC Common Stock” shall have the meaning set forth in the recital of this Agreement.

“ECC Group” means ECC and each Subsidiary of ECC and each other Person that is controlled directly or indirectly by ECC immediately after the Distribution (other than any member of the Company Group).

“ECC Indemnified Parties” shall have the meaning set forth in Section 5.3 of this Agreement.

“Effective Time” shall have the meaning set forth in Section 3.5(b) of this Agreement.

“Employee Matters Agreement” means the Employee Matters Agreement substantially in the form attached hereto as Exhibit A. From and after the Distribution Date, the Employee Matters Agreement shall refer to the agreement executed and delivered pursuant to such section, as amended and/or modified from time to time in accordance with its terms.

“Encumbrance” means, with respect to any Asset, mortgages, liens, hypothecations, pledges, chares, security interests or encumbrances of any kind in respect of such Asset, whether or not filed, recorded or otherwise perfected under Applicable Law.

“Environmental Law” means any federal, state, local, foreign or international statute, ordinance, rule, regulation, code, license, permit, authorization, approval, consent, common law (including tort and environmental nuisance law), legal doctrine, order, judgment, decree, injunction, requirement or agreement with any Governmental Authority, now or hereafter in effect relating to health, safety, pollution or the environment (including ambient air, surface water, groundwater, land surface or subsurface strata) or to emissions, discharges, releases or threatened releases of any substance currently or at any time hereafter listed, defined designated or classified as hazardous, toxic, waste, radioactive or dangerous, or otherwise regulated, under any of the foregoing, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of any such substances, including the Comprehensive Environmental Response, Compensation and Liability Act, the Superfund Amendments and Reauthorization Act and the Resource Conservation and Recovery Act and comparable provisions in state, local, foreign or international law.

“Environmental Liabilities” means all Liabilities relating to, arising out of or resulting from any Environmental Law or Contract relating to environmental, health or safety matters (including all removal, remediation or cleanup costs, investigatory costs, governmental response costs, natural resources damages, property damages, personal injury damages, costs of compliance with any product take back requirements or with any settlement, judgment or other determination of Liability and indemnity, contribution or similar obligations) and all costs and expenses, interest, fines, penalties or other monetary sanctions in connection therewith.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, together with the rules and regulations promulgated thereunder.

“Excluded Assets” shall have the meaning set forth in Section 2.4(b) of this Agreement.

“Excluded Assumed Liabilities” shall have the meaning set forth in Section 2.5(b) of this Agreement.

“Exclusive ECC Contingent Gain” means any Contingent Gain if such Contingent Gain relates exclusively to the Consumer Business, including the matters listed or described on Schedule 1.2 hereto, or if such Contingent Gain is expressly assigned to any member of the ECC Group pursuant to this Agreement or any Ancillary Agreement.

“Exclusive ECC Contingent Liability” means any Contingent Liability if such Contingent Liability relates exclusively to the Consumer Business, including the matters listed or described on Schedule 1.3 hereto, or if such Contingent Liability is expressly assigned to any member of the ECC Group pursuant to this Agreement or any Ancillary Agreement.

“Exclusive Company Contingent Gain” means any Contingent Gain if such Contingent Gain relates exclusively to the Company Business, including the matters listed or described on Schedule 1.4 hereto, or if such Contingent Gain is expressly assigned to any member of the Company Group pursuant to this Agreement or any Ancillary Agreement.

“Exclusive Company Contingent Liability” means any Contingent Liability if such Contingent Liability relates exclusively to the Company Business, including the matters listed or described on Schedule 1.5 hereto, or if such Contingent Liability is expressly assigned to any member of the Company Group pursuant to this Agreement or any Ancillary Agreement.

“FCC” means the Federal Communications Commission.

“GAAP” shall have the meaning set forth in Section 2.4(a)(v) of this Agreement.

“Governmental Approvals” means any notices, reports or other filings to be made, or any Consents, registrations, approvals, permits or authorizations to be obtained from, any Governmental Authority.

“Governmental Authority” shall mean any federal, state, local, foreign or international court, government, department, commission, board, bureau, agency, official or other regulatory, administrative or governmental authority.

“Group” means the ECC Group or the Company Group, as the context requires.

“Improvements” means, in respect of any Land, all buildings, structures, plants, fixtures and improvements located on such Land, including those under construction.

“Indemnified Party” shall have the meaning set forth in Section 5.5(a) of this Agreement.

“Indemnifying Party” shall have the meaning set forth in Section 5.5(a) of this Agreement.

“Indemnity Payment” shall have the meaning set forth in Section 5.5(a) of this Agreement.

“Information” means information, whether or not patentable or copyrightable, in written, oral, electronic or other tangible or intangible forms, stored in any medium, including studies, reports, records, books, contracts, instruments, surveys, discoveries, ideas, concepts, know-how, techniques, designs, specifications, drawings, blueprints, diagrams, models, prototypes, samples, flow charts, data, computer data, disks, diskettes, tapes, computer programs or other software, marketing plans, customer names, communications by or to attorneys (including attorney-client privileged communications), memos and other materials prepared by attorneys or under their direction (including attorney work product), and other technical, financial, employee or business information or data, but in any case excluding back-up tapes.

“Information Statement” means the information statement forming a part of the Form 10 Registration Statement.

“Installation Services Agreement” means the Installation Services Agreement substantially in the form attached hereto as Exhibit B. From and after the Distribution Date, the Installation Services Agreement shall refer to the agreement executed and delivered substantially in the form attached hereto as Exhibit B, as amended and/or modified from time to time in accordance with its terms.

“Insurance Proceeds” means those monies (in each case net of any costs or expenses incurred in the collection thereof and net of any applicable premium adjustments (including reserves and retrospectively rated premium adjustments)): (a) received by an insured from an insurance carrier; or (b) paid by an insurance carrier on behalf of the insured.

“Intellectual Property” means all domestic and foreign patents and patent applications, together with any continuations, continuations-in-part or divisional applications thereof, and all patents issuing thereon (including reissues, renewals and re-examinations of the foregoing); design patents, invention disclosures; mask works; copyrights, and copyright applications and registrations; Web addresses, all domestic and foreign trademarks, service marks, trade names, and trade dress, in each case together with any applications and registrations therefor and all appurtenant goodwill relating thereto; trade secrets, commercial and technical information, know-how, proprietary or confidential information, including engineering, production and other designs, notebooks, processes, drawings, specifications, formulae, and technology; computer and electronic data processing programs and software (object and source code), data bases and documentation thereof; inventions (whether patented or not); utility models; registered designs, certificates of invention and all other intellectual property under the laws of any country throughout the world.

“Intellectual Property Matters Agreement” means the Intellectual Property Matters Agreement substantially in the form attached hereto as Exhibit C. From and after the Distribution Date, the Intellectual Property Matters Agreement shall refer to the agreement executed and delivered substantially in the form attached hereto as Exhibit C, as amended and/or modified from time to time in accordance with its terms.

“IRS” means the Internal Revenue Service.

“Land” means, in respect of any Person, all parcels and tracts of land in which the Person has an ownership interest.

“Lease Agreements” means the Inverness Lease Agreement, the Meridian Lease Agreement and the Santa Fe Lease Agreement, each substantially in the forms attached hereto as Exhibit D-1, Exhibit D-2 and Exhibit D-3, respectively. From and after the Distribution Date, the Lease Agreements shall refer to the agreements executed and delivered substantially in the form attached hereto as Exhibit D-1, Exhibit D-2 and Exhibit D-3, respectively, as amended and/or modified from time to time in accordance with its terms.

“Liability” means, with respect to any Person, any and all losses, claims, charges, debts, demands, actions, causes of action, suits, damages, obligations, payments, costs and expenses, sums of money, accounts, reckonings, bonds, specialties, indemnities and similar obligations, exoneration covenants, Contracts, controversies, doings, omissions, variances, guarantees, make whole agreements and similar obligations, and other liabilities and requirements, including all contractual obligations, whether absolute or contingent, matured or unmatured, liquidated or unliquidated, accrued or unaccrued, known or unknown, joint or several, whenever arising, and including those arising under any Applicable Law, Action, threatened or contemplated Action (including the costs and expenses of demands, assessments, judgments, settlements and compromises relating thereto and attorneys’ fees and any and all costs and expenses, whatsoever

reasonably incurred in investigating, preparing or defending against any such Actions or threatened or contemplated Actions) or order of any Governmental Authority or any award of any arbitrator or mediator of any kind, and those arising under any Contract, in each case, whether or not recorded or reflected or otherwise disclosed or required to be recorded or reflected or otherwise disclosed, on the books and records or financial statements of any Person, including any Liability for Taxes.

“Management Services Agreement” means the Management Services Agreement substantially in the form attached hereto as Exhibit E. From and after the Distribution Date, the Management Agreement shall refer to the agreement executed and delivered substantially in the form attached hereto as Exhibit E, as amended and/or modified from time to time in accordance with its terms.

“NASDAQ” shall have the meaning set forth in Section 3.1(e) of this Agreement.

“Packout Services Agreement” means the Packout Services Agreement substantially in the form attached hereto as Exhibit E. From and after the Distribution Date, the Packout Services Agreement shall refer to the agreement executed and delivered substantially in the form attached hereto as Exhibit E, as amended and/or modified from time to time in accordance with its terms.

“Person” means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization or a Governmental Authority.

“Prime Rate” means the rate which Bank of America (or any successor thereto or other major money center commercial bank agreed to by the Parties hereto) announces from time to time as its prime lending rate, as in effect from time to time.

“Private Letter Ruling” means the private letter ruling from the IRS, in which the IRS rules that, among other things: (i) no gain or loss will be recognized by, and no amount will be included in the income of, (A) ECC or the Company upon the contribution of certain assets by ECC to the Company (the “Contribution”) and (B) ECC or stockholders of ECC upon the distribution of the all of the Company Common Stock held by ECC to the stockholders of ECC in the Distribution; (ii) no gain or loss will be recognized by, and no amount will be included in the income of, (A) EchoStar Orbital Corporation (“Orbital”) or the Company upon the contribution of certain assets by Orbital to the Company (the “Second Contribution”) and (B) Orbital or ECC upon the distribution of the all of the Company Common Stock held by Orbital to ECC (the “Second Internal Distribution”); and (iii) no gain or loss will be recognized by, and



no amount will be included in the income of, (A) EchoStar DBS Corporation (“EDBS”) or EchoStar Technologies Corporation (“ETC”) upon the contribution of certain assets by EDDBS to ETC (the “First Contribution”) and (B) EDDBS or Orbital upon the distribution of the all of the common stock of ETC held by EDDBS to Orbital (the “First Internal Distribution”).

“Privileged Information” shall have the meaning set forth in Section 4.6(a) of this Agreement.

“Privileges” shall have the meaning set forth in Section 4.6(a) of this Agreement.

“Product Support Agreement” means the Product Support Agreement substantially in the form attached hereto as Exhibit G. From and after the Distribution Date, the Product Support Agreement shall refer to the agreement executed and delivered substantially in the form attached hereto as Exhibit G, as amended and/or modified from time to time in accordance with its terms.

“Record Date” means the close of business on the date to be determined by ECC’s Board in its sole and absolute discretion as the record date for determining the stockholders of ECC entitled to receive shares of the Company Common Stock in the Distribution.

“Record Holders” mean the holders of record of ECC Common Stock as of the close of business on the Record Date.

“Receiver Agreement” means the Receiver Agreement substantially in the form attached hereto as Exhibit H. From and after the Distribution Date, the Receiver Agreement shall refer to the agreement executed and delivered substantially in the form attached hereto as Exhibit H, as amended and/or modified from time to time in accordance with its terms.

“Receiver Business” means the business engaged in the design, development and distribution of direct broadcast satellite receivers, antennae and other digital equipment for the “direct to home” satellite television industry.

“Registration Statement” means the registration statement on Form 10 (including any and all exhibits filed thereto) to be filed under the Exchange Act, pursuant to which the shares of Company Common Stock to be issued in the Company Distribution will be registered, together with all amendments thereto.

“Response” shall have the meaning set forth in Section 8.2(a) of this Agreement.

“Satellite Capacity Agreement” means the Satellite Capacity Agreement substantially in the form attached hereto as Exhibit I. From and after the Distribution Date, the Satellite Capacity Agreement shall refer to the agreement executed and delivered substantially in the form attached hereto as Exhibit I, as amended and/or modified from time to time in accordance with its terms.

“Security Interest” means any mortgage, security interest, pledge, lien, charge, claim, option, right to acquire, voting or other restriction, right-of-way, covenant, condition, easement, encroachment, restriction on transfer, or other encumbrance of any nature whatsoever.

“Senior Party Representative” shall have the meaning set forth in Section 8.2(a) of this Agreement.

“Separated Assets” shall have the meaning set forth in Section 2.4(a) of this Agreement.

“Separation” means the multi-step process described in Article II, including the Separation Transactions, by which the Company Business shall be transferred, directly or indirectly, from ECC and members of the ECC Group to the Company and members of the Company Group.

“Separation Transactions” means the transactions described on Schedule 1.6 of this Agreement and, in the singular, means any one of them.

“Services Agreement” means the Services Agreement substantially in the form attached hereto as Exhibit J. From and after the Distribution Date, the Services Agreement shall refer to the agreement executed and delivered substantially in the form attached hereto as Exhibit J, as amended and/or modified from time to time in accordance with its terms.

“Shared ECC Percentage” means the proportion of the Shared Contingent Gain or the Shared Contingent Liability, as applicable, that relates to the Consumer Business.

“Shared Company Percentage” means the proportion of the Shared Contingent Gain or the Shared Contingent Liability, as applicable, that relates to the Company Business.

“Shared Contingent Gain” means, without duplication, any Contingent Gain that is not an Exclusive ECC Contingent Gain or an Exclusive Company Contingent Gain and shared between the Groups, including the matters listed or described on Schedule 1.7.

“Shared Contingent Liability” means, without duplication, any Contingent Liability that is not an Exclusive ECC Contingent Liability or an Exclusive Company Contingent Liability and shared between the Groups, including the matters listed or described on Schedule 1.8.

“Shared Percentage” means the Shared ECC Percentage or the Shared Company Percentage, as the case may be.

“Subsidiary” of any Person means a corporation or other organization whether incorporated or unincorporated of which at least a majority of the securities or interests having by the terms thereof ordinary voting power to elect at least a majority of the board of directors or others performing similar functions with respect to such corporation or other organization is directly or indirectly owned or controlled by such Person or by any one or more of its Subsidiaries, or by such Person and one or more of its Subsidiaries; provided, however, that no Person that is not directly or indirectly wholly-owned by any other Person shall be a Subsidiary of such other Person unless such other Person controls, or has the right, power or ability to control, that Person.

“Taxes” has the meaning set forth in the Tax Sharing Agreement.

“Tax Sharing Agreement” means the Tax Sharing Agreement substantially in the form attached hereto as Exhibit K. From and after the Distribution Date, the Tax Sharing Agreement shall refer to the agreement executed and delivered substantially in the form attached hereto as Exhibit K, as amended and/or modified from time to time in accordance with its terms.

“Telemetry, Tracking and Control Agreement” means the Telemetry, Tracking and Control Agreement substantially in the form attached hereto as Exhibit O. From and after the Distribution Date, the Telemetry, Tracking and Control Agreement shall refer to the agreement executed and delivered substantially in the form attached hereto as Exhibit O, as amended and/or modified from time to time in accordance with its terms.

“Third-Party Claim” shall have the meaning set forth in Section 5.6 of this Agreement.

“Transition Services Agreement” means the Transition Services Agreement substantially in the form attached hereto as Exhibit L. From and after the Distribution Date, the Transition Services Agreement shall refer to the agreement executed and delivered substantially in the form attached hereto as Exhibit L, as amended and/or modified from time to time in accordance with its terms.

“Uplink Agreement” means the Uplink Agreement substantially in the form attached hereto as Exhibit M. From and after the Distribution Date, the Uplink Agreement shall refer to the agreement executed and delivered substantially in the form attached hereto as Exhibit M, as amended and/or modified from time to time in accordance with its terms.

“Used Receiver Agreement” means the Used Receiver Agreement substantially in the form attached hereto as Exhibit N. From and after the Distribution Date, the Used Receiver Agreement shall refer to the agreement executed and delivered substantially in the form attached hereto as Exhibit N, as amended and/or modified from time to time in accordance with its terms.

## ARTICLE II

### BUSINESS SEPARATION

Section 2.1 Separation. Prior to the Distribution, ECC and the Company shall implement the Separation on the terms and subject to the conditions set forth in this Agreement. The parties hereto acknowledge that the Separation is intended to result in the Company, directly or indirectly, operating the Company Business, owning the Separated Assets and assuming the Assumed Liabilities as set forth in this Article II. As promptly as practicable after the Separation is complete and subject to the conditions set forth in Section 3.2, the parties hereto shall take, or cause to be taken, all actions that are necessary or appropriate to effectuate the Distribution.

Section 2.2 Implementation. The Separation shall be completed in accordance with the agreed general principles, objectives and other provisions set forth in this Article II and shall be implemented in the following manner:

- (a) through the completion of the Separation Transactions described on Schedule 1.6;
- (b) through the allocation from time to time following the Effective Time of the Assets and Liabilities as set forth in Article II;
- (c) through the completion from time to time following the Effective Time of the transactions, as described in Section 4.2; and
- (d) through the performance by the parties hereto of all other provisions of this Agreement.

Section 2.3 Transfer of Separated Assets; Assumption of Assumed Liabilities. On the terms and subject to the conditions set forth in this Agreement, and in furtherance of the Separation, on or prior to the Distribution Date and in any event prior to the Distribution:

(a) ECC shall, and shall cause its applicable Subsidiaries to, cause the Separated Assets to be contributed, assigned, transferred, conveyed and delivered, directly or indirectly, to the Company and the Company shall, and shall cause its applicable Subsidiaries to, accept from ECC and its Subsidiaries, all of ECC's and its Subsidiaries' rights, title and interest in and to all the Separated Assets, which will result in the Company owning, directly or indirectly, the Company Business.

(b) The Company shall accept, assume and agree to faithfully perform, discharge and fulfill all of the Assumed Liabilities in accordance with their respective terms. The Company shall be responsible for all of the Assumed Liabilities, regardless of when or where such Assumed Liabilities arose or arise, or whether the facts on which they are based occurred prior to or subsequent to the Distribution Date, regardless of where or against whom such Assumed Liabilities are asserted or determined or whether asserted or determined prior to the Distribution Date.

Section 2.4 Separated Assets. (a) For purposes of this Agreement, "Separated Assets" shall mean, without duplication, those Assets used or contemplated to be used or held for use exclusively or primarily in the ownership, operation or conduct of the Company Business or relating exclusively or primarily to the Company Business, including the following:

- (i) all Assets (including Company Contracts) expressly identified in this Agreement, in any Ancillary Agreement or in any Schedule hereto or thereto, including those listed on Schedule 1.6, as Assets to be transferred to, or retained by, the Company or any other member of the Company Group;
- (ii) any Exclusive Company Contingent Gain or any Shared Company Percentage of a Shared Contingent Gain;
- (iii) the outstanding capital stock, units or other equity interests of the entities listed on Schedule 2.4(a) and the Assets owned by such entities;

(iv) all Assets properly reflected on the Company Group Balance Sheet, excluding Assets disposed of by ECC or any other Subsidiary or entity controlled by ECC subsequent to the date of the Company Group Balance Sheet;

(v) all Assets that have been written off, expensed or fully depreciated by ECC or any Subsidiary or entity controlled by ECC that, had they not been written off, expensed or fully depreciated, would have been reflected on the Company Group Balance Sheet in accordance with accounting principles generally accepted in the United States (“GAAP”);

(vi) all Assets acquired by ECC or any Subsidiary or entity controlled by ECC after the date of the Company Group Balance Sheet and that would be reflected on the balance sheet of Company as of the Distribution Date, if such balance sheet were prepared in accordance with GAAP;

(vii) all Assets transferred to Company or any member of the Company Group pursuant to Section 4.2; provided, however, that any such transfer shall take effect under Section 4.2 and not under this Section 2.4; and

(viii) any and all Assets owned or held immediately prior to the Distribution Date by ECC or any other member of the ECC Group that are used in the Company Business. The intention of this clause (i) is only to rectify any inadvertent omission of transfer or conveyance of any Assets that, had the parties hereto given specific consideration to such Asset as of the date hereof, would have otherwise been classified as a Separated Asset. No Asset shall be deemed to be a Separated Asset solely as a result of this clause (i) if such Asset is within the category or type of Asset expressly covered by the subject matter of an Ancillary Agreement. In addition, no Asset shall be deemed a Separated Asset solely as a result of this clause (i) unless a claim with respect thereto is made by the Company on or prior to the second anniversary of the Distribution Date.

Notwithstanding anything to the contrary contained in this Section 2.4 or elsewhere in this Agreement, the Separated Assets shall not in any event include the Excluded Assets referred to in Section 2.4(b) below.

(b) The following Assets shall not form part of the Separated Assets and shall remain the exclusive property of ECC or the relevant member of the ECC Group on and after the Separation (the “Excluded Assets”):

(i) any Asset expressly identified on Schedule 2.4(b)(i);

(ii) any Asset transferred to ECC or to any other relevant member of the ECC Group pursuant to Section 4.2; provided, however, that any such transfers shall take effect under Section 4.2 and not under this Section 2.4;

(iii) any Exclusive ECC Contingent Gain or any Shared ECC Percentage of a Shared Contingent Gain; and

(iv) any and all Assets that are expressly contemplated by this Agreement or any Ancillary Agreement (or the Schedules hereto or thereto) as Assets to be retained by ECC or any other member of the ECC Group.

Section 2.5 Liabilities.

(a) For the purposes of this Agreement, "Assumed Liabilities" shall mean (without duplication):

(i) any and all Liabilities that are expressly contemplated by this Agreement or any Ancillary Agreement (or the Schedules hereto or thereto) as Liabilities to be assumed by the Company or any member of the Company Group, and all agreements, obligations and Liabilities of any member of the Company Group under this Agreement or any of the Ancillary Agreements;

(ii) all Liabilities (other than Taxes, which are allocated as set forth in the Tax Sharing Agreement), including any employee-related Liabilities and Environmental Liabilities (other than the Environmental Liabilities under Section 2.5(b)(v)), in each case to the extent relating to, arising out of or resulting from:

(A) the operation of the Company Business, as conducted at any time prior to, on or after the Distribution Date (including any Liability relating to, arising out of or resulting from any act or failure to act by any director, officer, employee, agent or representative (whether or not such act or failure to act is or was within such Person's authority)); or

(B) any Separated Assets;

in any such case whether arising prior to, on or after the Distribution Date;

(iii) subject to the terms of Article VI, all Exclusive Company Contingent Liabilities and the Shared Company Percentage of any Shared Contingent Liabilities;

(iv) all Liabilities to the extent relating to, arising out of or resulting from any of the terminated, divested or discontinued businesses and operations of the Company Business;

(v) all Liabilities reflected as liabilities or obligations of the Company or its Subsidiaries in the Company Group Balance Sheet, subject to any discharge of such Liabilities subsequent to the date of the Company Group Balance Sheet;

(vi) all Liabilities arising out of claims made by the Company's respective directors, officers, employees, agents, Subsidiaries or Affiliates against any member of the Company Group; and

(vii) any inadvertent omission of transfer or assumption of Liability that, had the parties given specific consideration to such Liability as of the date hereof, would have otherwise been classified as an Assumed Liability.

Notwithstanding the foregoing, the Assumed Liabilities shall not include the Excluded Assumed Liabilities referred to in Section 2.5(b) below.

(b) For the purposes of this Agreement, "Excluded Assumed Liabilities" shall mean:

(i) any and all Liabilities that are expressly contemplated by this Agreement or any Ancillary Agreement (or the Schedules hereto or thereto) as Liabilities to be retained or assumed by ECC or any other member of the ECC Group, and all agreements and obligations of any member of the ECC Group under this Agreement or any of the Ancillary Agreements;

(ii) any Liability which is expressly identified on Schedule 2.5(b)(ii);

(iii) any and all liabilities relating to, arising out of or resulting from any Excluded Assets;

(iv) subject to the terms of Article VI, all Exclusive ECC Contingent Liabilities and the Shared ECC Percentage of any Shared Contingent Liabilities;

(v) all Environmental Liabilities accrued as of the date hereof relating to, arising out of or resulting from the Consumer Business; and

(vi) any inadvertent transfer, conveyance or assumption of any Liability that, had the parties given specific consideration to such Liability as of the date hereof, would have otherwise been classified as an Excluded Assumed Liability.

Section 2.6 Excluded Assumed Liabilities. ECC shall, or shall cause, as applicable, its Subsidiaries, to be responsible for the Excluded Assumed Liabilities regardless of when or where such Liabilities arose or arise, regardless of where such Liabilities are asserted or determined or regardless of whether asserted or determined prior to the Distribution Date.

Section 2.7 Deferred Separation Transactions.

(a) Misallocated Assets. In the event that at any time or from time to time (whether prior to, on or after the Distribution Date), any member of the ECC Group or any member of the Company Group shall receive or otherwise possess any Asset that is allocated to a member of the other Group pursuant to this Agreement, any Ancillary Agreement or the Separation (including any remittances from account debtors), ECC shall or shall cause such member of the ECC Group or the Company shall or shall cause such member of the Company Group, as the case may be, to promptly transfer, or cause to be transferred, such Asset to the Person so entitled thereto. Prior to any such transfer,

the Person receiving or possessing such Asset shall hold such Asset in trust for any such other Person. Each party hereto shall cooperate with the other party hereto and use its commercially reasonable efforts to set up procedures and notifications as are reasonably necessary or advisable to effectuate the transfers contemplated by this Section 2.7.

(b) Mistaken Assignments and Assumptions. If at anytime there exists (i) Assets that either party hereto discovers were, contrary to the agreements between the parties, by mistake or unintentional omission, transferred to the Company or retained by ECC or (ii) Liabilities that either party hereto discovers were, contrary to the agreements between the parties, by mistake or unintentional omission, assumed by the Company or not assumed by the Company or retained by the ECC Group, then the parties hereto shall cooperate in good faith to effect the transfer or retransfer of misallocated Assets, and/or the assumption or reassumption of misallocated Liabilities, to or by the appropriate Person and shall not use the determination that remedial actions need to be taken to alter the original intent of the parties hereto with respect to the Assets to be transferred to or Liabilities to be assumed by the Company or retained by ECC. Each party hereto shall reimburse the other or make other financial adjustments or other adjustments to remedy any mistakes or omissions relating to any of the Assets transferred hereby or any of the Liabilities assumed or retained hereby.

(c) No Additional Consideration. For the avoidance of doubt, the transfer or assumption of any Assets or Liabilities under this Section 2.7 shall be effected without any additional consideration by either party hereto.

Section 2.8 Termination of Agreements.

(a) Except as set forth in Section 2.8(b), in furtherance of the releases and other provisions of Section 5.1, the Company and each member of the Company Group, on the one hand, and ECC and each member of the ECC Group, on the other hand, effective as of the Distribution Date, shall terminate, any and all Contracts (including any intercompany accounts payable or accounts receivable accrued as of the Distribution Date that are reflected in the books and records of the parties or otherwise documented in writing in accordance with past practices), whether or not in writing, between or among the Company and/or any member of the Company Group, on the one hand, and ECC and/or any member of the ECC Group, on the other hand, effective as of the Distribution Date. No such terminated Contracts (including any provision thereof which purports to survive termination) shall be of any further force or effect after the Distribution Date. Each party hereto shall, at the reasonable request of any other party, take, or cause to be taken, such other actions as may be necessary to effect the foregoing.

(b) The provisions of Section 2.8(a) shall not apply to any of the following Contracts (or to any of the provisions thereof) in: (i) this Agreement or the Ancillary Agreements (and each other agreement or instrument expressly contemplated by this Agreement or any Ancillary Agreement to be entered into by any of the parties hereto or any of the members of their respective Groups); (ii) any Contracts to which any Person other than the parties hereto and their respective Affiliates is a party (it being understood that to the extent that the rights and obligations of the



parties and the members of their respective Groups under any such Contracts constitute Separated Assets or Assumed Liabilities, they shall be assigned pursuant to Section 2.3); (iii) any Contracts to which any non-wholly owned Subsidiary of ECC or the Company, as the case may be, is a party (it being understood that directors' qualifying shares or similar interests will be disregarded for purposes of determining whether a Subsidiary is wholly owned); or (iv) any other Contracts that this Agreement or any Ancillary Agreement expressly contemplates will survive the Distribution Date.

Section 2.9 Consents and Governmental Approvals.

(a) Transfers not Consummated Prior to Separation Date. If the transfer or assignment of any Asset intended to be transferred or assigned hereunder is not consummated prior to or on the Distribution Date, whether as a result of a requisite Consent or Governmental Approvals or for any other reason, then the Person retaining such Asset shall thereafter hold such Asset for the use and benefit, insofar as reasonably possible, of the Person entitled thereto until the consummation of the transfer or assignment thereof (or as otherwise determined by ECC and the Company, as applicable). In addition, the Person retaining such Asset shall take such other actions as may be reasonably requested by the Person to whom such Asset is to be transferred in order to place such Person, insofar as reasonably possible, in the same position as if such Asset had been transferred as contemplated hereby and so that all the benefits and burdens relating to such Asset, including possession, use, risk of loss, potential for gain, and dominion, control and command over such Asset, are to inure from and after the Distribution Date to the Person to whom such Asset is to be transferred. Notwithstanding the foregoing, any such Asset shall still be considered a Separated Asset or Excluded Asset, as applicable.

(b) Expenses. The Person retaining an Asset due to the deferral of the transfer and assignment of such Asset shall not be obligated, in connection with the foregoing, to expend any money in connection with the maintenance of the Asset or otherwise unless the necessary funds are advanced by the Person to whom such Asset is to be transferred, other than reasonable out-of-pocket expenses, attorneys' fees and recording or similar fees, all of which shall be promptly reimbursed by the Person to whom such Asset is to be transferred; provided, however, that the Person retaining such Asset shall provide prompt notice to the Person to whom such Asset is to be transferred of the amount of all such expenses and fees.

(c) No Additional Consideration. For the avoidance of doubt, the transfer of any Assets under this Section 2.9 shall be effected without any additional consideration by either party hereto.

Section 2.10 Novation of the Assumed Liabilities.

(a) Reasonable Best Efforts. The Company, at the request of ECC, shall use its reasonable best efforts to obtain, or to cause to be obtained, any agreement, instrument, Consent, substitution or amendment required to novate or assign all rights

and obligations under Contracts and other obligations or Liabilities of any nature whatsoever that constitute the Assumed Liabilities or to obtain in writing the unconditional release of all parties to such arrangements other than any member of the Company Group, so that, in any such case, the Company and the other members of the Company Group will be solely responsible for such Liabilities; provided, however, that neither the ECC Group nor the Company Group shall be obligated to pay any consideration or assume any additional obligation therefore to any third party from whom any such Consent, substitution or amendment is requested.

(b) Inability to Obtain Novation. If ECC or the Company is unable to obtain, or to cause to be obtained, any such required agreement, instrument, Consent, release, substitution or amendment with respect to any such Assumed Liability, the applicable member of the ECC Group shall continue to be bound by such Contracts and other obligations and Liabilities and, unless not permitted by Applicable Law or the terms thereof (except to the extent expressly set forth in this Agreement or any Ancillary Agreement), the Company shall, as agent or subcontractor for ECC or such other Person, as the case may be, pay, perform and discharge fully, or cause to be paid, transferred or discharged all the obligations or other Liabilities of any member of the ECC Group thereunder from and after the Distribution Date. Notwithstanding the foregoing, any such Liability shall still be considered an Assumed Liability; provided, however, that ECC shall not (and shall not permit any member of the ECC Group to) and the Company shall not (and shall not permit any member of the Company Group to) amend, renew, change the term of, modify the obligations under, or transfer to a third Person, any such Contract or other obligation or other Liability without the written consent of the Company (in the case of any such action by the ECC Group) or ECC (in the case of any such action by the Company Group). ECC and the Company shall each use reasonable best efforts to provide prompt notice to the other of any request they receive from the counterparty to any Contract for any such amendment, renewal, change, modification or transfer. ECC shall, without further consideration, pay and remit, or cause to be paid or remitted, to the Company or its appropriate Subsidiary promptly all money, rights and other consideration received by it or any member of the Company Group in respect of such performance (unless any such consideration is an Excluded Asset). If and when any such agreement, instrument, Consent, release, substitution or amendment shall be obtained or such Contract or other obligations and Liabilities shall otherwise become assignable or able to be novated, ECC shall thereafter assign, or cause to be assigned, all its rights, obligations and other Liabilities thereunder or any rights or obligations of any member of the Company Group to the Company without payment of further consideration and the Company shall, without the payment of any further consideration, assume such rights, obligations and Liabilities.

Section 2.11 Documents Relating to Transfer of Real Property Interests and Tangible Property Located Thereon.

(a) In furtherance of the contribution, assignment, transfer and conveyance of the Separated Assets and the acceptance and assumption of Assumed Liabilities set forth in this Article II, simultaneously with the execution of the Separation, ECC and the Company shall, or the applicable member of their respective Groups shall, execute and

deliver deeds, lease assignments and assumptions, leases, subleases and sub-subleases as agreed to among the parties hereto (which in certain cases may include different forms for real property and leasehold interests located outside of the United States, if any).

(b) Except as otherwise expressly provided in this Agreement or any Ancillary Agreement, all tenant improvements, fixtures, furniture, office equipment, servers, private branch exchanges, artwork and other tangible property (other than equipment subject to capital or operating equipment leases, which will be transferred or retained based on whether the associated capital or operating equipment lease is or is not a Separated Asset) located as of the Separation on any real property that is covered by any Ancillary Agreement, shall, except to the extent expressly set forth on Schedule 2.11(b), be transferred or retained as follows:

(i) In the case of any real property or leasehold interests that is a deed or lease assignment and assumption, all such tangible property will be transferred to the transferee or assignee of the applicable real property or leasehold interest.

(ii) In the case of any real property or leasehold interests that is a lease, all such tangible property will be retained by the lessor under the applicable lease, except that any such tangible property (other than tenant improvements, fixtures, furniture and artwork) used exclusively by the lessee shall be transferred to, or retained by, the lessee.

(iii) In the case of any real property or leasehold interests that is a sublease or sub-sublease, all such tangible property will be retained by the sublessor or sub-sublessor, respectively, under the applicable sublease or sub-sublease, except that any such tangible property (other than tenant improvements, fixtures and artwork) used exclusively by the sublessee or sub-sublessee, respectively, shall be transferred to, or retained by, such sublessee or sub-sublessee.

In the case of this Section 2.11(b), all determinations as to exclusive use by any member of a Group shall be made without regard to infrequent and immaterial use by the members of any other Group, if the transfer of such Asset to, or the retention of such Asset by, such first Group would not interfere in any material respect with either the business or operations of any such other Group.

(c) In the case of any real property or leasehold interest that is covered by Section 2.11(b)(i) and either Section 2.11(b)(ii) or (iii), all such tangible property shall first be allocated pursuant to the provisions of Section 2.11(b)(i) and thereafter pursuant to whichever of such other clauses is applicable.

Section 2.12 Documents Relating to Transfers of the Separated Assets and Assumption of the Assumed Liabilities. In furtherance of the Separation and the Distribution, (i) ECC shall execute and deliver, and shall cause its Subsidiaries to execute and deliver, such bills of sale, stock powers, certificates of title, assignments of contracts and other instruments of transfer,

conveyance and assignment as and to the extent necessary to evidence the transfer, conveyance and assignment of all of ECC's and its Subsidiaries' right, title and interest in and to the Separated Assets to the Company or its Subsidiaries and (ii) the Company shall execute and deliver, and shall cause its Subsidiaries to execute and deliver, to ECC and its Subsidiaries such assumptions of contracts and other instruments of assumption as and to the extent necessary to evidence the valid and effective assumption of the Assumed Liabilities by the Company. All conveyance and assumption documents and instruments used to effectuate the Separation and the Distribution shall be in form mutually satisfactory to ECC and the Company.

Section 2.13 Release of Security Interest. Upon the Company's reasonable request, ECC shall use its reasonable best efforts to obtain from third parties the release of any Security Interest granted by ECC (or any member of its Group) on any Separated Asset.

Section 2.14 No Representation or Warranty.

(a) No party to this Agreement, any Ancillary Agreement, or any other agreement or document contemplated by this Agreement, any Ancillary Agreement or otherwise, is making any representation as to, warranty of or covenant, express or implied, with respect to: (a) any of the Separated Assets, the Company Business, the Excluded Assets or the Assumed Liabilities, including any warranty of merchantability or fitness for a particular purpose, or any representation or warranty regarding any Consents or Governmental Approvals required in connection therewith or their transfer, (b) the value or freedom from Encumbrances of, or any other matter concerning, any Separated Asset or Excluded Asset, or regarding the absence of any defense or right of setoff or freedom from counterclaim with respect to any claim or other Separated Asset or Excluded Asset, including any account receivable of either party hereto, or (c) the legal sufficiency of any assignment, document or instrument delivered hereunder to convey title to any Separated Asset or Excluded Asset upon the execution, delivery and filing hereof or thereof.

(b) EXCEPT AS MAY EXPRESSLY BE SET FORTH HEREIN OR IN ANY ANCILLARY AGREEMENT, ALL ASSETS TO BE TRANSFERRED AS SET FORTH HEREIN OR IN ANY ANCILLARY AGREEMENT OR ANY OTHER AGREEMENT OR DOCUMENT CONTEMPLATED BY THIS AGREEMENT SHALL BE TRANSFERRED "AS IS, WHERE IS" (AND, IN THE CASE OF ANY REAL PROPERTY, BY MEANS OF A QUITCLAIM OR SIMILAR FORM DEED OR CONVEYANCE) AND THE TRANSFEREE SHALL BEAR THE ECONOMIC AND LEGAL RISK THAT ANY CONVEYANCE SHALL PROVE TO BE INSUFFICIENT TO VEST IN THE TRANSFEREE GOOD AND MARKETABLE TITLE, AND CLEAR OF ANY SECURITY INTEREST OR ANY NECESSARY CONSENTS OR GOVERNMENTAL APPROVALS ARE NOT OBTAINED OR THAT ANY REQUIREMENTS OF LAWS OR JUDGMENTS ARE NOT COMPLIED WITH.

Section 2.15 Use of Cash. From the date hereof until the Distribution Date, ECC shall be entitled to use, retain or otherwise dispose of all cash generated by the Company Business and the Separated Assets in accordance with the ordinary course of operation of ECC.

Section 2.16 Plan of Reorganization. In respect of each of the Contribution and Distribution, the Second Contribution and Second Internal Distribution, and the First Contribution and First Internal Distribution, this Agreement shall constitute a plan of reorganization for purposes of Section 368 of the Code.

### ARTICLE III

#### THE DISTRIBUTION AND ACTIONS PENDING THE DISTRIBUTION

Section 3.1 Transactions Prior to the Distribution. Subject to the conditions specified in Section 3.2, ECC and the Company shall use their reasonable best efforts to consummate the Distribution. Such efforts shall include, without limitation, those specified in this Section 3.1.

(a) Registration Statements.

(i) ECC and the Company shall cooperate in preparing and filing the Registration Statement on Form 10 with the Commission. Subsequent to filing such Registration Statement ECC and the Company shall cooperate in the preparation and filing of any amendments as may be necessary in order to cause the same to become and remain effective as required by Applicable Law, including, without limitation, filing such amendments or supplements to the Registration Statement as may be required by the Commission or federal, state or foreign securities laws.

(ii) ECC and the Company shall cooperate in preparing, filing with the Commission and causing to become effective any registration statements or amendments thereof which are required to reflect the establishment of, or amendments or supplements to, any employee benefit and other plans necessary or appropriate in connection with the Separation, the Distribution, or the other transactions contemplated by this Agreement and the Ancillary Agreements.

(b) Other Securities Laws Matters. ECC and the Company shall take all such actions as may be necessary or appropriate under the securities or blue sky laws of any state of the United States (and any comparable laws under any foreign jurisdiction) in connection with the Distribution, including ECC filing a Schedule 14C information statement in connection with amending its articles of incorporation to (i) effectuate a name change, (ii) amend its treatment of the doctrine of "corporate opportunities to clarify the duties of directors and officers" and (iii) adopt provisions clarifying the conversion procedures with respect to uncertificated shares.

(c) Information Statement. ECC shall, as soon as practicable after the Registration Statement on Form 10 is declared effective under the Exchange Act (or, after consultation with counsel, prior to such effectiveness) and the ECC Board has approved the Distribution, cause the Information Statement to be mailed to the Record Holders.

(d) Other Materials. ECC and the Company shall prepare and mail, on or prior to the Distribution Date, to the holders of ECC Common Stock, such other information concerning the Company, its business, operations and management, the

Separation, the Distribution and such other matters as ECC in its sole and absolute discretion determines are necessary or desirable and as may be required by Applicable Law. ECC and the Company will prepare, and ECC or the Company (as applicable) will, to the extent required under Applicable Law, file with the Commission any such documentation which ECC in its sole and absolute discretion determines are necessary or desirable to effectuate the Distribution and ECC and the Company shall each use its reasonable best efforts to obtain all necessary approvals from the Commission with respect thereto as soon as practicable.

(e) NASDAQ Listing. The Company shall prepare, file and use its reasonable best efforts to seek to make effective, an application for listing of the Company Class A Common Stock on The Nasdaq Global Select Market ("NASDAQ"), subject to official notice of distribution.

Section 3.2 Conditions Precedent to Consummation of the Distribution. The obligation of ECC to effect the Distribution is subject to the satisfaction or the waiver by ECC, in its sole and absolute discretion, of each of the following conditions:

(a) Approval by ECC's Board. This Agreement and the transactions contemplated hereby, including establishing the Record Date and the declaration of the Distribution, shall have been duly taken and approved by the ECC Board in accordance with Applicable Law and the certificate of incorporation and bylaws of ECC.

(b) Registration Statements. The Registration Statement on Form 10 shall have been declared effective by the Commission, and there shall be no stop-order in effect with respect thereto, and no proceeding for that purpose shall have been instituted by the Commission and a registration statement on Form S-8 shall have been declared effective by the Commission, and there shall be no stop-order in effect with respect thereto, and no proceeding for that purpose shall have been instituted by the Commission.

(c) Dissemination of Information to ECC's Stockholders. Prior to the Distribution, ECC and the Company shall have prepared and mailed to the holders of record of ECC Common Stock the Information Statement and such other Information concerning the Company, its business, operations and management, the Distribution as ECC shall determine in its sole and absolute discretion and as may otherwise be required by Applicable Law.

(d) NASDAQ Listing. The Company Class A Common Stock to be distributed pursuant to the Distribution shall have been accepted for listing on NASDAQ, subject to official notice of the Distribution.

(e) No Legal Restraints. No Governmental Authority of competent jurisdiction shall have, after the date of this Agreement, enacted, issued, promulgated, enforced or entered any statute, rule, regulation, judgment, decree, injunction or other order (whether temporary, preliminary or permanent), which is in effect and prohibits or materially restricts or materially adversely affects the consummation of the Separation or

the Distribution or any of the other transactions contemplated by this Agreement and the Ancillary Agreements.

(f) Separation. The Separation shall have become effective in accordance with the terms of this Agreement and the Separation Transactions.

(g) Tax Opinion of Counsel. An opinion of White & Case LLP shall have been obtained in form and substance satisfactory to ECC in its sole and absolute discretion to the effect that, among other things, the Contribution and Distribution, the Second Contribution and Second Internal Distribution, and the First Contribution and First Internal Distribution will each qualify as tax-free reorganizations for United States federal income tax purposes under Section 368(a)(1)(D) of the Code and distributions under Section 355 of the Code.

(h) Consents and Approvals. Any Consent and Governmental Approval necessary to consummate the Separation and the Distribution shall have been obtained and be in full force and effect, including the Consents and Governmental Approvals set forth on Schedule 3.2(h).

(i) No Other Events. No other events or developments shall have occurred that, in the judgment of the ECC Board, in its sole and absolute discretion, would result in the Separation or the Distribution having a material adverse effect on ECC, its stockholders, the Consumer Business or the Company Business.

The foregoing conditions are for the sole benefit of ECC and shall not give rise to or create any duty on the part of ECC or the ECC Board to waive or not to waive any such conditions or in any way limit ECC's right to terminate this Agreement as set forth in Section 3.5(d) or alter the consequences of any such termination from those specified in Section 3.5(d). Any determination made by ECC prior to the Distribution concerning the satisfaction or waiver of any or all of the conditions set forth in this Section 3.2 shall be conclusive.

Section 3.3 Documents to be Delivered by ECC. On or prior to the Distribution Date, ECC will deliver, or will cause its appropriate Subsidiaries to deliver, to the Company all of the following:

(a) In each case where ECC or any other member of the ECC Group is a party to any Ancillary Agreement, a duly executed counterpart of such Ancillary Agreement;

- (b) Resignations of each individual listed on Schedule 3.3(b), who is a director and/or officer of any member of the Company Group;
- (c) The agreements, documents and instruments necessary to effectuate the Separation; and
- (d) Such other agreements, documents or instruments as the parties may agree are necessary or desirable in order to achieve the purposes hereof.

Section 3.4 Documents to be Delivered by the Company. On or prior to the Distribution Date, the Company will deliver, or will cause its appropriate Subsidiaries to deliver, to ECC all of the following:

- (a) In each case where the Company or any other member of the Company Group is a party to any Ancillary Agreement, a duly executed counterpart of such Ancillary Agreement;
- (b) Resignations of each individual listed on Schedule 3.4(b) who is a director and/or officer of any member of the ECC Group; and
- (c) The agreements, documents and instruments necessary to effectuate the Separation; and
- (d) Such other agreements, documents or instruments as the parties may agree are necessary or desirable in order to achieve the purposes hereof.

Section 3.5 Distribution.

(a) Sole Discretion. ECC shall, in its sole and absolute discretion, determine whether or not to proceed with all or part of the Distribution, determine the Distribution Date and determine all terms of the Distribution, including, without limitation, the form, structure and terms of any transaction(s) to effect the Distribution (including the Separation) and the timing of and conditions to the consummation of the Distribution. In addition, ECC may at any time and from time to time until the completion of the Distribution, modify or change the terms of the Distribution, including, without limitation, by accelerating or delaying the timing of the consummation of all or part of the Distribution. The Company shall cooperate with ECC in all respects to accomplish the Distribution and shall, at ECC's direction, promptly take any and all actions reasonably necessary or desirable in ECC's sole and absolute discretion to effect the Distribution.

(b) Effective Time. The Distribution shall be effective at 12:01 a.m., Mountain Time, on the Distribution Date (the "Effective Time").

(c) Actions in Connection with Distribution.



(i) Subject to Section 3.2, on or prior to the Distribution Date, (i) ECC will deliver to the Agent for the benefit of the Record Holders of ECC Class A Common Stock, a single stock certificate, endorsed by ECC in blank, representing all of the outstanding shares of the Company Class A Common Stock then owned by ECC, and shall cause the transfer agent for the shares of ECC Common Stock to instruct the Agent to distribute on the Distribution Date the appropriate number of such shares of the Company Class A Common Stock to each such Record Holder, and (ii) ECC will deliver to the Agent for the benefit of the Record Holders of ECC Class B Common Stock, a single stock certificate, endorsed by ECC in blank, representing all of the outstanding shares of the Company Class B Common Stock then owned by ECC, and shall cause the transfer agent for the shares of ECC Common Stock to instruct the Agent to distribute on the Distribution Date the appropriate number of such shares of the Company Class B Common Stock to each such Record Holder.

(ii) Subject to Section 3.2, (i) each Record Holder of ECC Class A Common Stock will be entitled to receive in the Distribution a number of shares of the Company Class A Common Stock equal to the number of shares of ECC Class A Common Stock held by such Record Holder on the Record Date multiplied by the distribution ratio to be determined by the ECC Board when it declares the Distribution (the "Class A Distribution Ratio"), and (ii) each Record Holder of ECC Class B Common Stock will be entitled to receive in the Distribution a number of shares of the Company Class B Common Stock equal to the number of shares of ECC Class B Common Stock held by such Record Holder on the Record Date multiplied by the distribution ratio to be determined by the ECC Board when it declares the Distribution (the "Class B Distribution Ratio"). The ECC Board shall have the right to adjust the Class A Distribution Ratio and/or the Class B Distribution Ratio at any time prior to the Distribution.

(iii) ECC and the Company, as the case may be, will provide to the Agent all share certificates and any information required in order to complete the Distribution on the basis set forth in this Section 3.5. No action will be necessary for any Record Holder of ECC to receive Company Class A Common Stock and/or Company Class B Common Stock, as applicable, in the Distribution.

(d) Termination. Without limiting the generality of Section 3.5(a), (i) this Agreement and the Ancillary Agreements may be terminated, (ii) the Separation may be abandoned and (iii) the Distribution may be abandoned, in each case at any time prior to the Effective Time by and in the sole and absolute discretion of ECC without the approval of the Company. In the event of such termination, neither party hereto shall have any Liability of any kind to the other party.

(e) Fractional Shares.

(i) ECC shall direct the Agent to (i) determine the number of whole shares and fractional shares of the Company Class A Common Stock allocable to each Record Holder of ECC Class A Common Stock, (ii) aggregate all such

fractional shares and sell the whole shares obtained thereby in open market transactions as soon as practicable on or after the Distribution Date at then prevailing trading prices and (iii) cause to be distributed to each such Record Holder or for the benefit of each such beneficial owner, in lieu of any fractional share, such Record Holder's or owner's ratable share of the proceeds of such sale. Solely for purposes of computing fractional share interests pursuant to this [Section 3.5\(e\)](#), the beneficial owner of ECC Class A Common Stock held of record in the name of a nominee in any nominee account shall be treated as the Record Holder with respect to such shares.

(ii) ECC shall not be required to issue certificates representing fractions of shares of Company Class B Common Stock, nor shall it be required to issue scrip or pay cash in lieu of fractional interests, it being the intent of the parties hereto that all fractional interests with respect to Company Class B Common Stock as a result of the Distribution shall be eliminated by rounding any fraction down to the nearest whole number of shares of Company Class B Common Stock allocable to each Record Holder of ECC Class B Common Stock.

(f) Unclaimed Shares or Cash. Any Company Class A Common Stock or cash in lieu of fractional shares with respect to Company Class A Common Stock that remain unclaimed by any Record Holder of Class A Common Stock one hundred eighty (180) days after the Distribution Date shall be delivered to the Company. The Company shall hold all such Company Class A Common Stock and cash for the account of such Record Holder and any such Record Holder shall look only to the Company for such Company Class A Common Stock and cash, if any, in lieu of fractional share interests, subject in each case to applicable escheat or other abandoned property laws.

#### ARTICLE IV

##### ADDITIONAL COVENANTS, FURTHER ASSURANCES AND OTHER MATTERS

Section 4.1 Provision of Corporate Records. Prior to or as promptly as practicable after the Distribution Date, ECC shall deliver or make available to the Company all corporate books and records of the Company Group in its possession and complete and accurate copies of all relevant portions of all corporate books and records of the ECC Group relating directly and primarily to the Separated Assets, the Company Business, or the Assumed Liabilities, including, in each case, all active agreements, active litigation files, government filings and returns or reports relating to Taxes for all open periods. Subject to [Section 4.5](#) and [Section 4.6](#), ECC may retain complete and accurate copies of such books and records. From and after the Distribution Date, all such books, records and copies shall be the property of the Company. Prior to or as promptly as practicable after the Distribution Date, the Company shall deliver or make available to ECC, all corporate books and records of the Company Group in its possession and complete and accurate copies of all relevant portions of all corporate books and records of the Company Group relating directly and primarily to the Consumer Business, including, in each case, all

active agreements, active litigation files, government filings and returns or reports relating to Taxes for all open periods. Subject to [Section 4.5](#) and [Section 4.6](#), the Company may retain complete and accurate copies of such books and records. From and after the Distribution Date, all such books, records and copies shall be the property of ECC. The costs and expenses incurred in the provision of records or other information to a party shall be paid for by the receiving party.

Section 4.2 Further Assurance.

(a) In addition to the actions specifically provided for elsewhere in this Agreement (such as [Section 2.7](#), [Section 2.9\(a\)](#), and [Section 2.11\(b\)](#)), ECC and the Company agree to execute or cause to be executed by the appropriate parties and deliver, as appropriate, such other agreements, instruments and other documents as may be necessary or desirable in order to effect the purposes of this Agreement and the Ancillary Agreements.

(b) Without limiting the generality of the foregoing, at the request of the Company, and without further consideration, ECC will execute and deliver, and will cause the applicable members of the ECC Group to execute and deliver, to the Company and the applicable members of the Company Group such other instruments of transfer, conveyance, assignment, substitution, confirmation or other documents and take such action as the Company may reasonably deem necessary or desirable in order to more effectively transfer, convey and assign to the Company and the applicable members of the Company Group and confirm the Company's and the applicable members' of the Company Group title to all of the assets, rights and other things of value contemplated to be transferred to the Company and the applicable members of the Company Group pursuant to this Agreement, the Ancillary Agreements, and any documents referred to therein, to put the Company and the applicable members of the Company Group in actual possession and operating control thereof and to permit the Company and the applicable members of the Company Group to exercise all rights with respect thereto (including, without limitation, rights under Contracts and other arrangements as to which the consent of any third party to the transfer thereof shall not have previously been obtained). Without limiting the generality of the foregoing, at the request of ECC and without further consideration, the Company will execute and deliver, and will cause the applicable members of the Company Group to execute and deliver, to ECC and the applicable members of the ECC Group all instruments, assumptions, novations, undertakings, substitutions or other documents and take such other action as ECC may reasonably deem necessary or desirable in order to have the Company and the applicable members of the Company Group fully and unconditionally assume and discharge the liabilities contemplated to be assumed by the Company and the applicable members of the Company Group under this Agreement or any document in connection herewith and to relieve the ECC and the applicable members of the ECC Group of any liability or obligation with respect thereto and evidence the same to third parties.

(c) Neither ECC nor the Company shall be obligated, in connection with this [Section 4.2](#), to expend money other than reasonable out-of-pocket expenses, attorneys' fees and recording or similar fees, unless reimbursed by the other party hereto.

(d) Furthermore, each party hereto, at the request of the other party, shall execute and deliver such other instruments and do and perform such other acts and things as may be necessary or desirable for effecting completely the consummation of the transactions contemplated hereby.

**Section 4.3 Agreement For Exchange Of Information.**

(a) **Generally.** Except as provided in the Transition Services Agreement or the Tax Sharing Agreement, in which event such agreement shall control, each of ECC and the Company, on behalf of its respective Group, agrees to provide, or cause to be provided, to the other party's Group and their authorized accountants, counsel and other designated representatives, at any time after the Distribution Date, reasonable access during normal business hours and as soon as reasonably practicable after written request therefor, (i) all Information regularly provided by such respective Group to the other Group prior to the Distribution Date, and (ii) any Information in the possession or under the control of such respective Group that the requesting party reasonably needs (A) to comply with reporting, disclosure, filing or other requirements imposed on the requesting party (including under applicable securities and tax laws) by a Governmental Authority having jurisdiction over the requesting party, (B) for use in any other judicial, regulatory, administrative or other proceeding or in order to satisfy audit, accounting, claims, regulatory, litigation or other similar requirements, in each case, other than claims or allegations that one party to this Agreement has against the other, (C) subject to the foregoing clause (B) above, to comply with its obligations under this Agreement or any Ancillary Agreement, (D) to the extent such Information and cooperation is necessary to comply with such reporting, filing and disclosure obligations, for the preparation of financial statements or completing an audit, and as reasonably necessary to conduct the ongoing businesses of ECC or the Company, as the case may be or (E) for use in compensation, benefit or welfare plan administration or other bona fide business purposes; provided, however, that in the event that either ECC or the Company determines that any such provision of or access to Information would be commercially detrimental in any material respect, violate any Applicable Law or agreement or waive any Privilege, the parties hereto shall take all reasonable measures to permit the compliance with such obligations in a manner that avoids any such harm or consequence and shall comply with the applicable provisions of this Agreement. Each of ECC and the Company agree to make their respective personnel available during normal business hours to discuss the Information exchanged pursuant to this Section 4.3 provided, that such access does not interfere with the day-to-day operations of the applicable party.

(b) **Financial Information.** Without limiting the generality of Section 4.3(a), until the end of the first full Company fiscal year occurring after the Distribution Date (and for a reasonable period of time afterwards as required for each party hereto to prepare consolidated financial statements or complete a financial statement audits for the fiscal year during which the Distribution Date occurs), each party hereto shall use its commercially reasonable efforts, to cooperate with the other party's Information requests to enable the other party hereto to meet its timetable for dissemination (in accordance with applicable securities laws) of its earnings releases, financial statements and enable such

other party's auditors to timely complete their audit of the annual financial statements and review of the quarterly financial statements of such party.

(c) Ownership of Information. Any Information owned by a party hereto that is provided to the other party pursuant to this Section 4.3 shall be deemed to remain the property of the party that owned and provided such Information. Unless specifically set forth herein, nothing contained in this Agreement shall be construed as granting or conferring rights of license or ownership in any Information owned by one party hereunder to the other party hereunder.

(d) Record Retention. Except with respect to Information for which a different retention policy is specified in an Ancillary Agreement, to facilitate the possible exchange of Information pursuant to this Section 4.3 and other provisions of this Agreement after the Distribution Date, each party hereto agrees to use its reasonable best efforts to retain and cause the members of its Group to retain all Information in their respective possession or control on the Distribution Date in accordance with the record retention and destruction policies of ECC as in effect on the Distribution Date or such other policies and procedures as may reasonably be adopted by the applicable party hereto after the Distribution Date as provided herein. No party hereto will destroy, or permit any member of its Group to destroy, any Information which the other party may have the right to obtain pursuant to this Agreement without first notifying the other party of the proposed destruction and giving the other party the opportunity to take possession of such Information prior to such destruction; provided, however, that no party hereto will destroy, or permit any member of its Group to destroy, any Information required to be retained by Applicable Law.

(e) Limitation of Liability. Each party hereto will use its reasonable best efforts to ensure that Information provided to the other party hereto is accurate and complete; provided, however, except as otherwise provided in any Ancillary Agreement, no party hereto shall have any liability to any other party in the event that any Information exchanged or provided pursuant to this Section 4.3 is found to be inaccurate, in the absence of gross negligence or willful misconduct by the party providing such Information. No party hereto shall have any liability to the other party if any Information is destroyed after commercially reasonable efforts by such party to comply with the provision of this Section 4.3.

(f) Other Agreements Providing for Exchange of Information. The rights and obligations granted under this Section 4.3 are subject to any specific limitations, qualifications or additional provisions on the sharing, exchange or confidential treatment of Information set forth in this Agreement and any Ancillary Agreement.

(g) Compensation for Providing Information. The party hereto requesting Information agrees to reimburse the other party for the reasonable out-of-pocket costs, if any, of creating, gathering and copying such Information, to the extent that such costs are incurred for the benefit of the requesting party.

Section 4.4 Production of Witnesses; Records; Cooperation.

(a) Subject to Section 4.6, after the Distribution Date, except in the case of any Action by one or more members of one Group against one or more members of the other Group, each party hereto shall use its reasonable best efforts to make available to the other party, upon written request, the former, current and future directors, officers, employees, other personnel and agents of the members of its respective Group as witnesses and any books, records or other documents within its control or which it otherwise has the ability to make available, to the extent that any such person (giving consideration to business demands of such directors, officers, employees, other personnel and agents) or books, records or other documents may reasonably be required in connection with any Action in which the requesting party may from time to time be involved, regardless of whether such Action is a matter with respect to which indemnification may be sought hereunder. Notwithstanding Section 4.3(g), the requesting party shall reimburse the other party for its reasonable out-of-pocket cost and expenses in connection with requests made under this Section 4.4.

(b) Without limiting the forgoing but subject to Section 4.6, the parties hereto shall cooperate and consult to the extent reasonably necessary with respect to any Action, except in the case of an adversarial Action by one or more members of one Group against one or more members of the other Group.

Section 4.5 Confidentiality.

(a) Subject to Section 4.6, which shall govern Privileged Information, from and after the Distribution Date, ECC and the Company shall hold and shall cause each member of their respective Groups to hold, and shall each cause their respective directors, officers, employees, agents, consultants, advisors and other representatives to hold, in strict confidence and not to disclose or release without the prior written consent of the other party, any and all Confidential Information of the other party's Group; provided, that each party hereto may disclose, or may permit disclosure of, Confidential Information (w) to its respective auditors, attorneys, financial advisors, bankers and other appropriate consultants and advisors who have a need to know such Confidential Information and are informed of such party's obligation to hold such information confidential to the same extent as is applicable to the parties hereto and in respect of whose failure to comply with such obligations, the Company or ECC, as the case may be, will be responsible, (x) if such party or any of the members of such party's respective Group is compelled to disclose any such information by judicial or administrative process or, in the opinion of independent legal counsel, by other requirements of Applicable Law, (y) if any such information is or becomes generally available to the public other than as a result of a disclosure in violation of this Agreement or (z) if such information was or becomes available to either the Company or ECC or any member of their respective Group on a non-confidential basis and from a source (other than a party to this Agreement or any Affiliate, director, officer, employee, agent, consultant, advisor and other representative of such party hereto) that is not known after actual inquiry to be bound by a confidentiality obligation. Notwithstanding the foregoing, in the event that any demand or request for disclosure of Confidential Information is made pursuant to clause (x) above, ECC or the Company, as the case may be, shall promptly notify the other of the existence of such request or demand and shall provide the other a reasonable

opportunity to seek an appropriate confidentiality agreement, protective order or other remedy at the reasonable cost and expense of the disclosing party and which both parties hereto will cooperate in obtaining. In the event that such appropriate protective order or other remedy is not obtained, the party whose Confidential Information is required to be disclosed shall or shall cause the other party to furnish, or cause to be furnished, only that portion of the Confidential Information that is legally required to be disclosed.

(b) Notwithstanding anything herein to the contrary, ECC and the members of its Group, on the one hand, and the Company and the members of its Group, on the other hand, shall be deemed to have satisfied their obligations hereunder with respect to Confidential Information if they exercise the same degree of care (but no less than a reasonable degree of care) as they take to preserve confidentiality for their own similar Information.

Section 4.6 Privileged Matters.

(a) ECC and the Company agree that their respective rights and obligations to maintain, preserve, assert or waive any or all privileges belonging to either party hereto or the respective members of their respective Group with respect to the Consumer Business or the Company Business, including but not limited to the attorney-client, work product privileges or any other applicable privileges (collectively, "Privileges"), shall be governed by the provisions of this Section 4.6. With respect to Privileged Information of ECC, ECC shall have sole authority in perpetuity to determine whether to assert or waive any or all Privileges, and the Company shall take no action (nor permit any member of its Group to take action) without the prior written consent of ECC that could result in any waiver of any Privilege that could be asserted by ECC or any member of its Group under Applicable Law and this Agreement. With respect to Privileged Information of the Company arising after the Distribution Date, the Company shall have sole authority in perpetuity to determine whether to assert or waive any or all Privileges, and ECC shall take no action (nor permit any member of its Group to take action) without the prior written consent of the Company that could result in any waiver of any Privilege that could be asserted by the Company or any member of its Group under Applicable Law and this Agreement. The rights and obligations created by this Section 4.6 shall apply to all Information as to which ECC or the Company or their respective Groups would be entitled to assert or have asserted a Privilege without regard to the effect, if any, of the Separation and the Distribution ("Privileged Information"). Privileged Information of ECC and its Group includes but is not limited to (i) any and all Information regarding the Consumer Business and its Group (other than Information relating to the Company Business ("Company Information")), whether or not such Information (other than Company Information) is in the possession of the Company or any member of its Group; (ii) all communications subject to a Privilege between counsel for ECC (including any person who, at the time of the communication, was an employee of ECC or its Group in the capacity of in-house counsel, regardless of whether such employee is or becomes an employee of the Company or any member of its Group) and any person who, at the time of the communication, was an employee of ECC, regardless of whether such employee is or becomes an employee of the Company or any member of its Group and (iii) all Information generated, received or arising after the Distribution Date that refers or relates

to Privileged Information of ECC or its Group generated, received or arising prior to the Distribution Date. Privileged Information of the Company and its Group includes but is not limited to (x) any and all Company Information, whether or not it is in the possession of ECC or any member of its Group; (y) all communications subject to a Privilege occurring after the Distribution between counsel for the Company Business (including in-house counsel and former in-house counsel who are employees of ECC) and any person who, at the time of the communication, was an employee of the Company, any member of its Group or the Company Business regardless of whether such employee was, is or becomes an employee of ECC or any member of its Group and (z) all Information generated, received or arising after the Distribution Date that refers or relates to Privileged Information of the Company or its Group generated, received or arising after the Distribution Date.

(b) Upon receipt by ECC or the Company, or any of the members of the respective Groups, as the case may be, of any subpoena, discovery or other request from any third party that actually or arguably calls for the production or disclosure of Privileged Information of the other or if ECC or the Company, or any of members of their respective Groups, as the case may be, obtains knowledge that any current or former employee of ECC or the Company, as the case may be, receives any subpoena, discovery or other request from any third party that actually or arguably calls for the production or disclosure of Privileged Information of the other, ECC or the Company, as the case may be, shall promptly notify the other of the existence of the request and shall provide the other a reasonable opportunity to review the Information and to assert any rights it may have under this Section 4.6 or otherwise to prevent the production or disclosure of Privileged Information. ECC or the Company, as the case may be, will not, and will cause the members of their respective Groups to not, produce or disclose to any third party any of the other's Privileged Information under this Section 4.6 unless (i) the non-disclosing party has provided its express written consent to such production or disclosure or (ii) a court of competent jurisdiction has entered an order not subject to interlocutory appeal or review finding that the Information is not entitled to protection from disclosure under any applicable privilege, doctrine or rule, in which case, such Information shall be subject to Section 4.5.

(c) ECC's transfer of books and records pertaining to the Company Business and other Information to the Company, ECC's agreement to permit the Company to obtain Information existing prior to the Distribution, the Company's transfer of books and records pertaining to the Consumer Business, if any, and other Information to ECC and the Company's agreement to permit ECC to obtain Information existing prior to the Distribution are made in reliance on ECC's and the Company's respective agreements, as set forth in Section 4.5 and this Section 4.6, to maintain the confidentiality of such Information and to take the steps provided herein for the preservation of all Privileges that may belong to or be asserted by ECC or the Company, as the case may be. The access to Information, witnesses and individuals being granted pursuant to Sections 4.3 and the disclosure to the Company and ECC of Privileged Information relating to the Company Business or the Consumer Business pursuant to this Agreement in connection with the Separation and Distribution shall not be asserted by ECC or the Company to constitute, or otherwise deemed, a waiver of any Privilege that has been or may be asserted under this Section 4.6



or otherwise. Nothing in this Agreement shall operate to reduce, minimize or condition the rights granted to ECC and the Company in, or the obligations imposed upon ECC and the Company by, this Section 4.6.

Section 4.7 Tax Sharing Agreement. None of the provisions of this Article IV are intended to supersede any provision in the Tax Sharing Agreement with respect to matters related to Taxes. In the event of any conflict between this Agreement and the Tax Sharing Agreement, the Tax Sharing Agreement shall control with respect to matters related to Taxes.

## ARTICLE V

### SURVIVAL AND INDEMNIFICATION

#### Section 5.1 Mutual Release.

(a) Effective as of the Distribution Date and except as otherwise specifically set forth in the Ancillary Agreements or on Schedule 5.1, each of ECC, on behalf of itself and each member of the ECC Group, on the one hand, and the Company, on behalf of itself and each member of the Company Group, on the other hand, hereby unequivocally, unconditionally and irrevocably releases and forever discharges the other party and the members of such party's Group, and its and their respective directors, officers, managers or other persons acting in a similar capacity, agents, record and beneficial security holders (including trustees and beneficiaries of trusts holding such securities), advisors, accountants, attorneys and other representatives (in each case, in their respective capacities as such) and their respective heirs, executors, administrators, successors and assigns, of and from, all Liabilities whatsoever of every name and nature, whether at law or in equity (including any right of contribution), whether arising under any Contract, by operation of law or otherwise, existing or arising from any acts or events occurring or failing to occur or alleged to have occurred or to have failed to occur or any conditions existing or alleged to have existed on or before the Distribution Date, whether or not known on the Distribution Date, whether fixed or contingent, and whether or not concealed or hidden, including in connection with the transactions and all other activities to implement the Separation and the Distributions.

(b) Nothing contained in Section 5.1(a) shall impair any right of any party hereto (or any of the respective members of such party's Group) to enforce this Agreement, any Ancillary Agreement or any other Contracts that are contemplated by Section 2.8(b) or the applicable Schedules thereto, nor shall anything contained in those sections be interpreted as terminating as of the Distribution Date any rights under any such Contracts. For purposes of clarification, nothing contained in Section 5.1(a) shall release any Person from:

(i) any Liability provided in or resulting from any agreement among any member of the ECC Group or the Company Group that is specified in Section 2.8(b) or the applicable Schedules thereto as not to terminate as of the Distribution Date, or any other Liability specified in such Section 2.8(b) as not to terminate as of the Distribution Date;

(ii) any Liability, contingent or otherwise, assumed, transferred, assigned or allocated to the Group of which such Person is a member in accordance with, or any other Liability of any member of any Group under, this Agreement or any Ancillary Agreement;

(iii) any Liability for the sale, lease, construction or receipt of goods, property or services purchased, obtained or used in the ordinary course of business by a member of one Group from a member of any other Group prior to the Distribution Date;

(iv) any Liability for unpaid amounts for products or services or refunds owing on products or services due on a value-received basis for work done by a member of one Group at the request or on behalf of a member of another Group;

(v) any Liability that the parties may have with respect to indemnification or contribution pursuant to this Agreement for claims brought against the parties by third Persons, which Liability shall be governed by the provisions of this Article V and Article VI and, if applicable, the appropriate provisions of the Ancillary Agreements; or

(vi) any Liability the release of which would result in the release of any Person other than a Person released pursuant to this Section 5.1.

In addition, nothing contained in Section 5.1(a) shall release any party hereto from honoring its existing obligations to indemnify any director, officer or employee of either Group who was a director, officer or employee of such party on or prior to the Distribution Date, to the extent that such director, officer or employee becomes a named defendant in any litigation involving such party and was entitled to such indemnification pursuant to then existing obligations.

(c) ECC shall not make, and shall not permit any other member of the ECC Group to make, any claim or demand, or commence any Action asserting any claim or demand, including any claim of contribution or any indemnification, against the Company or any member of the Company Group or any other Person released pursuant to Section 5.1(a), with respect to any Liabilities released pursuant to Section 5.1(a). The Company shall not make, and shall not permit any other member of the Company Group to make, any claim or demand, or commence any Action asserting any claim or demand, including any claim of contribution or any indemnification, against Company or any other member of Company Group or any other Person released pursuant to Section 5.1(a), with respect to any Liabilities released pursuant to Section 5.1(a).

(d) It is the intent of ECC and the Company by virtue of the provisions of this Section 5.1 to provide for a full and complete release and discharge of all Liabilities existing or arising from all acts and events occurring or failing to occur or alleged to have occurred or to have failed to occur and all conditions existing or alleged to have existed on or before the Distribution Date, between or among ECC or any member of the ECC Group, on the one hand, and the Company or any member of the Company Group, on the other hand (including any contractual agreements or arrangements existing or alleged to exist between or among any such members on or before the Distribution Date), except as expressly set forth in Section 5.1(b). At any time, at the request of any other party, each party shall cause each member of its respective Group to execute and deliver releases reflecting the provisions hereof.

Section 5.2 Indemnification by ECC. Except as provided in Section 5.6 and Section 5.7 and subject to Section 9.1, ECC shall indemnify, defend and hold harmless the Company, each member of the Company Group and each of their respective current and former directors, officers and employees, and each of the heirs, executors, successors and assigns of any of the foregoing (collectively, the "Company Indemnified Parties"), from and against any and all Liabilities of the Company Indemnified Parties relating to, arising out of or resulting from any of the following items (without duplication):

- (a) the failure of ECC or any other member of the ECC Group or any other Person to pay, perform or otherwise promptly discharge any Liabilities of the ECC Group other than the Assumed Liabilities whether prior to or after the date hereof;
- (b) the Consumer Business or any Liability of the ECC Group (including the Excluded Assumed Liabilities) other than the Assumed Liabilities, except as set forth in clause (c) below;
- (c) any Assumed Liability that relates to, arises out of or results from Intellectual Property Liabilities, existing or arising from acts or events occurring or failing to occur or alleged to have occurred or to have failed to occur or any conditions existing or alleged to have existed on or before the Distribution Date or after the Distribution Date if relating to, arising out of or resulting from acts or omissions by ECC or any member of the ECC Group;
- (d) any breach of, or failure to perform or comply with, any covenant, undertaking or obligation of, this Agreement or any Ancillary Agreements, by ECC or any member of the ECC Group; and
- (e) any untrue statement or alleged untrue statement of material fact or omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, in each case to the extent relating to ECC Group contained in the Registration Statement, the Information Statement, the Schedule 14C information statement or any other registration statements filed by the Company or ECC in connection with the Distribution.

Section 5.3 Indemnification by the Company. Except as provided in Section 5.6 and Section 5.7 and subject to Section 9.1, the Company shall indemnify defend and hold harmless ECC, each member of the ECC Group and each of their respective current and former directors, officers and employees, and each of the heirs, executors, successors and assigns of any of the foregoing (collectively, the "ECC Indemnified Parties") from and against any and all Liabilities of the ECC Indemnified Parties relating to, arising out of or resulting from any of the following items (without duplication):

- (a) the failure of the Company or any other member of the Company Group or any other Person to pay, perform or otherwise promptly discharge any Assumed Liabilities in accordance with their respective terms, whether prior to or after the date hereof;
- (b) the Company Business or any Assumed Liability, except as set forth in clause (c) below;
- (c) any Assumed Liability that relates to, arises out of or results from Intellectual Property Liabilities, existing or arising from acts or events occurring or failing to occur or alleged to have occurred or to have failed to occur or any conditions existing or alleged to have existed after the Distribution Date if relating to, arising out of or resulting from acts or omissions by the Company or any member of the Company Group;
- (d) any breach of, or failure to perform or comply with, any covenant, undertaking or obligation of, this Agreement or any Ancillary Agreements, by the Company or any member of the Company Group;
- (e) any untrue statement or alleged untrue statement of a material fact or omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, in each case to the extent relating to the Company Group contained in the Registration Statement, the Information Statement or any other registration statements filed by the Company in connection with the Distribution.

Section 5.4 Tax Indemnification. Notwithstanding anything herein to the contrary, indemnification for matters subject to the Tax Sharing Agreement is governed by the terms, provisions and procedures of the Tax Sharing Agreement and not by this Article V.

Section 5.5 Indemnification Obligations Net of Insurance Proceeds and Other Amounts.

- (a) The parties hereto intend that any Liability subject to indemnification or reimbursement pursuant to this Article V or Article VI will be net of Insurance Proceeds that actually reduce the amount of the Liability. Accordingly, the amount which any party hereto (an "Indemnifying Party") is required to pay to any Person entitled to indemnification hereunder (an "Indemnified Party") will be reduced by any Insurance Proceeds theretofore actually received, realized or recovered by or on behalf of the Indemnified Party in reduction of the related Liability. If an Indemnified Party receives a

payment (an “Indemnity Payment”) required by this Agreement from an Indemnifying Party in respect of any Liability and subsequently receives Insurance Proceeds that actually reduce the amount of the Liability, then the Indemnified Party will pay to the Indemnifying Party an amount equal to the excess of the Indemnity Payment received over the amount of the Indemnity Payment that would have been due if the Insurance Proceeds had been received, realized or recovered before the Indemnity Payment was made.

(b) In the case of any Shared Contingent Liability, any Insurance Proceeds actually received, realized or recovered by any party hereto in respect of the Shared Contingent Liability will be shared among the parties hereto in such manner as may be necessary so that the obligations of the parties hereto for such Shared Contingent Liability, net of such Insurance Proceeds, will remain in proportion to their respective Shared Percentages, regardless of which party or parties hereto may actually receive, realize or recover such Insurance Proceeds.

(c) An insurer who would otherwise be obligated to pay any claim shall not be relieved of the responsibility with respect thereto or, solely by virtue of the indemnification provisions hereof, have any subrogation rights with respect thereto, it being expressly understood and agreed that no insurer or any other third party shall be entitled to a “wind-fall” (i.e., a benefit they would not be entitled to receive in the absence of the indemnification provisions) by virtue of the indemnification provisions hereof. Nothing contained in this Agreement or in any Ancillary Agreement shall obligate any member of any Group to seek to collect or recover any Insurance Proceeds; provided, that such member is capable of fulfilling and meeting any of its obligations as an Indemnifying Party under this Agreement (including, but not limited to the ability to make a full payment on any indemnification obligation).

Section 5.6 Procedures for Indemnification of Third Party Claims.

(a) If an Indemnified Party shall receive notice or otherwise learn of the assertion by a Person (including any Governmental Authority) who is not a member of the ECC Group or the Company Group of any claim or of the commencement by any such Person of any Action (collectively, a “Third Party Claim”) with respect to which an Indemnifying Party may be obligated to provide indemnification to such Indemnified Party pursuant to Section 5.2 or Section 5.3 or any other section of this Agreement or any Ancillary Agreement, such Indemnified Party shall give such Indemnifying Party written notice thereof within twenty (20) days after becoming aware of such Third Party Claim. Any such notice shall describe the Third Party Claim in reasonable detail. If any Person shall receive notice or otherwise learn of the assertion of a Third Party Claim which may reasonably be determined to be a Shared Contingent Liability, such Person shall give the other party to this Agreement written notice thereof within twenty (20) days after becoming aware of such Third Party Claim. Any such notice shall describe the Third Party Claim in reasonable detail. Notwithstanding the foregoing, the failure of any Indemnified Party or other Person to give notice as provided in this Section 5.6(a) shall not relieve the related Indemnifying Party of its obligations under this Article V, except

to the extent that such Indemnifying Party is actually prejudiced by such failure to give notice.

(b) If the Indemnifying Party receiving any notice pursuant to Section 5.6(a) or the Indemnified Party believes that the Third Party Claim is or may be a Shared Contingent Liability, such Indemnified Party or other party may make a Determination Request at any time following any notice given by the Indemnified Party to the Indemnifying Party. ECC shall be entitled (but not obligated) to assume the defense of such Third Party Claim as if it were the Indemnifying Party hereunder until a determination on whether such Third Party Claim is a Shared Contingent Liability. In any such event, ECC shall be entitled to reimbursement of all the costs and expenses of such defense once a final determination or acknowledgment is made as to the status of the Third Party Claim; provided, that, if such Third Party Claim is determined to be a Shared Contingent Liability, such costs and expenses shall be shared as provided in Section 5.6(c). If it is determined by the parties hereto or the Contingent Claim Committee that the Third Party Claim is a Shared Contingent Liability, the Indemnifying Party determined to have a majority of the Shared Percentage of such Shared Contingent Liability shall assume the defense of such Third Party Claim; provided, that such Indemnifying Party is solvent. If the Indemnifying Party with a majority of the Shared Contingent Liability is insolvent, the Indemnifying Party with less than a majority of the Shared Contingent Liability shall be entitled (but not obligated) to assume the defense of such Third Party Claim.

(c) The costs and expenses of assuming the defense of any Third Party Claim that is a Shared Contingent Liability (subject to Section 5.6(b)), and/or seeking to settle or compromise (subject to Section 5.6(g)) shall be included in the calculation of the amount of the applicable Shared Contingent Liability in determining the reimbursement obligations of the other parties with respect thereto pursuant to Section 6.3. Any Indemnified Party in respect of a Shared Contingent Liability shall have the right to employ separate counsel and to participate in (but not control) the defense, compromise, or settlement thereof, but all fees and expenses of such counsel shall be the expense of such Indemnified Party.

(d) Other than in the case of a Shared Contingent Liability, an Indemnifying Party may elect to defend (and, unless the Indemnifying Party has specified any reservations or exceptions, to seek to settle or compromise), at such Indemnifying Party's own expense and by such Indemnifying Party's own counsel, any Third Party Claim. Within thirty (30) days after the receipt of notice from an Indemnified Party in accordance with Section 5.6(a) (or sooner, if the nature of such Third Party Claim so requires), the Indemnifying Party shall notify the Indemnified Party of its election whether the Indemnifying Party will assume responsibility for defending such Third Party Claim, which election shall specify any reservations or exceptions. After notice from an Indemnifying Party to an Indemnified Party of its election to assume the defense of a Third Party Claim, such Indemnified Party shall have the right to employ separate counsel and to participate in (but not control) the defense, compromise, or settlement thereof, but the fees and expenses of such counsel shall be the expense of such Indemnified Party.

(e) Other than in the case of a Shared Contingent Liability, if an Indemnifying Party elects not to assume responsibility for defending a Third Party Claim, or fails to notify an Indemnified Party of its election as provided in [Section 5.6\(d\)](#), such Indemnified Party may defend such Third Party Claim at the cost and expense of the Indemnifying Party.

(f) Unless the Indemnifying Party has failed to assume the defense of the Third Party Claim in accordance with the terms of this Agreement, no Indemnified Party may settle or compromise any Third Party Claim that is not a Shared Contingent Liability without the consent of the Indemnifying Party. No Indemnified Party may settle or compromise any Third Party Claim that is a Shared Contingent Liability without the consent of the Indemnifying Party that is entitled to or has assumed the defense of such Third Party Claim.

(g) In the case of a Third Party Claim that is not a Shared Contingent Liability, no Indemnifying Party shall consent to entry of any judgment or enter into any settlement of the Third Party Claim without the consent of the Indemnified Party if the effect thereof is to permit any injunction, declaratory judgment, other order or other nonmonetary relief to be entered, directly or indirectly against any Indemnified Party. In the case of a Third Party Claim that is a Shared Contingent Liability, the Indemnifying Party that has assumed the defense of such Third Party Claim shall not consent to entry of any judgment or enter into any settlement of the Third Party Claim without the consent of the Indemnified Party if the effect thereof is to permit any injunction, declaratory judgment, other order or other nonmonetary relief to be entered, directly or indirectly, against any Indemnified Party; provided, however, the Indemnifying Party shall not need to obtain the consent of the Indemnified Party if the Indemnified Party is insolvent.

[Section 5.7 Procedures for Indemnification of Direct Claims](#). Any claim for indemnification made directly by the Indemnified Party against the Indemnifying Party that does not result from a Third Party Claim shall be asserted by written notice from the Indemnified Party to the Indemnifying Party specifically claiming indemnification hereunder. Such Indemnifying Party shall have a period of forty five (45) days after the receipt of such notice within which to respond thereto. If such Indemnifying Party does not respond within such forty-five (45)-day period, such Indemnifying Party shall be deemed to have accepted responsibility to make payment and shall have no further right to contest the validity of such claim. If such Indemnifying Party does respond within such forty (45)-day period and rejects such claim in whole or in part, such Indemnified Party shall be free to pursue resolution as provided in [Article VIII](#).

[Section 5.8 Payments](#). The Indemnifying Party shall pay all amounts payable pursuant to this [Article V](#) by wire transfer of immediately available funds, promptly following receipt from an Indemnified Party of a bill, together with all accompanying reasonably detailed backup documentation, for a Liability that is the subject of indemnification hereunder, unless the Indemnifying Party in good faith disputes the Liability, in which event it shall so notify the Indemnified Party. In any event, the Indemnifying Party shall pay to the Indemnified Party, by wire transfer of immediately available funds, the amount of any Liability for which it is liable hereunder no later than three (3) days following any final determination of such Liability and the

Indemnifying Party's liability therefor. A "final determination" shall exist when (a) the parties to the dispute have reached an agreement in writing, (b) a court of competent jurisdiction shall have entered a final and non-appealable order or judgment or (c) an arbitration or like panel shall have rendered a final non-appealable determination with respect to disputes the parties have agreed to submit thereto.

Section 5.9 Contribution. If the indemnification provided for in this Article V shall, for any reason, be unavailable or insufficient to hold harmless the Indemnified Party hereunder in respect of any Liability, then each Indemnifying Party shall, in lieu of indemnifying such Indemnified Party, contribute to the amount paid or payable by such Indemnified Party as a result of such Liability, in such proportion as shall be sufficient to place the Indemnified Party in the same position as if such Indemnified Party were indemnified hereunder, the parties hereto intending that their respective contributions hereunder be as close as possible to the indemnification under Section 5.2 and Section 5.3. If the contribution provided for in the previous sentence shall, for any reason, be unavailable or insufficient to put the Indemnified Party in the same position as if it were indemnified under Section 5.2 or Section 5.3, as the case may be, then the Indemnifying Party shall contribute to the amount paid or payable by such Indemnified Party as a result of such Liability, in such proportion as shall be appropriate to reflect the relative benefits received by and the relative fault of the Indemnifying Party on the one hand and the Indemnified Party on the other hand with respect to the matter giving rise to the Liability.

Section 5.10 Remedies Cumulative. The remedies provided in this Article V shall be cumulative and, subject to the provisions of Article VIII, shall not preclude assertion by any Indemnified Party of any other rights or the seeking of any and all other remedies against any Indemnifying Party.

Section 5.11 Survival of Indemnities. The rights and obligations of each of ECC and the Company and their respective Indemnified Parties under this Article V shall survive the distribution, sale or other transfer by any party hereto of any Assets or the delegation or assignment by it of any Liabilities.

## ARTICLE VI

### CONTINGENT GAINS AND CONTINGENT LIABILITIES

#### Section 6.1 Contingent Gains.

(a) ECC shall have the sole and exclusive right to any benefit received with respect to any Exclusive ECC Contingent Gain. ECC shall have the sole and exclusive authority to commence, prosecute, settle, manage, control, conduct, waive, forego, release, discharge, forgive and otherwise determine all matters whatsoever with respect to any Exclusive ECC Contingent Gain.

(b) The Company shall have the sole and exclusive right to any benefit received with respect to any Exclusive Company Contingent Gain. The Company shall have the sole and exclusive authority to commence, prosecute, settle, manage, control,



conduct, waive, forego, release, discharge, forgive and otherwise determine all matters whatsoever with respect to any Exclusive Company Contingent Gain.

(c) Any benefit that may be received from any Shared Contingent Gain shall be shared between ECC and the Company in proportion to the Shared ECC Percentage and the Shared Company Percentage, respectively, and shall be paid in accordance with Section 6.4. If it is determined by the parties hereto or the Contingent Claim Committee that a Contingent Gain is a Shared Contingent Gain, the party hereto determined to have a majority of the Shared Percentage of such Shared Contingent Gain shall have the sole and exclusive authority to commence, prosecute, settle, manage, control, conduct, waive, forego, release, discharge, forgive and otherwise determine all matters whatsoever with respect to such Shared Contingent Gain. The party hereto with a minority interest in such Shared Contingent Gain shall not take, or permit any member of its Group to take, any action (including commencing any claim) that would interfere with such rights and powers of the other party. The party with a majority of the Shared Percentage of such Shared Contingent Gain shall use its reasonable best efforts to notify the other party in the event that it commences an Action with respect to a Shared Contingent Gain; provided, that the failure to provide such notice shall not give rise to any rights on the part of the other party against such party or affect any other provision of this Section 6.1. The party with a majority of the Shared Percentage of such Shared Contingent Gain may elect not to pursue any Shared Contingent Gain for any reason whatsoever (including a different assessment of the merits of any Action, claim or right than the other party or any business reasons that are in the best interests of such party or a member of such party's Group, without regard to the best interests of any member of the other Group) and no member of the Group with a majority interest in such Shared Contingent Gain shall have any liability to any Person (including any member of the other Group) as a result of any such determination.

(d) In the event of any dispute as to whether any claim or right is a Contingent Gain or whether any Contingent Gain is a Shared Contingent Gain, an Exclusive ECC Contingent Gain or an Exclusive Company Contingent Gain, ECC may, but shall not be obligated to, commence prosecution or other assertion of such claim or right pending resolution of such dispute. In the event that ECC commences any such prosecution or assertion and, upon resolution of the dispute, it is determined hereunder that the Company has the exclusive right to such claim or right, ECC shall, promptly upon the request of the Company, discontinue the prosecution or assertion of such right or claim and transfer the control thereof to the Company. In such event, the Company will reimburse ECC for all costs and expenses, reasonably incurred prior to resolution of such dispute in the prosecution or assertion of such claim or right.

Section 6.2 Exclusive Contingent Liabilities. Each Exclusive Contingent Liability shall constitute a Liability for which indemnification is provided by ECC or the Company, as the case may be, pursuant to Article V and shall be subject to the procedures set forth in Article V with respect thereto.

Section 6.3 Shared Contingent Liabilities.

(a) As set forth in Section 5.6(c) and subject to Section 5.6(g), any Third Party Claim that is a Shared Contingent Liability, and the costs and expenses thereof, shall be included in the calculation of the amount of the applicable Shared Contingent Liability in determining the reimbursement obligations of the other parties with respect thereto pursuant to this Section 6.3.

(b) Each of ECC and the Company shall be responsible for its Shared Percentage of any Shared Contingent Liability. It shall not be a defense to any obligation by any party to pay any amount in respect of any Shared Contingent Liability that such party was not consulted in the defense thereof, that such party's views or opinions as to the conduct of such defense were not accepted or adopted, that such party does not approve of the quality or manner of the defense thereof or that such Shared Contingent Liability was incurred by reason of a settlement rather than by a judgment or other determination of liability (even if, subject to Section 5.6(g), such settlement was effected without the consent or over the objection of such party).

Section 6.4 Payments. Any amount owed in respect of (i) any Shared Contingent Liabilities (including reimbursement for the cost or expense of defense of any Third Party Claim that is a Shared Contingent Liability), or (ii) any Shared Contingent Gains (including reimbursement for the costs or expenses to commence, prosecute or settle matters with respect to a Shared Contingent Gain), pursuant to this Article VI shall be remitted promptly after the party entitled to such amount provides an invoice (including reasonable supporting information with respect thereto) to the party owing such amount.

Section 6.5 Procedures to Determine Status of Contingent Liability or Contingent Gain.

(a) With respect to the Actions set forth on Schedule 6.5, and with respect to any other matters not set forth on Schedules 1.2, 1.3, 1.4, 1.5, 1.7 or 1.8 (regardless of whether such matters are currently pending but not set forth on such Schedules or are asserted or filed hereafter), ECC and the Company will form the Contingent Claim Committee for (x) the purpose of resolving whether:

- (i) any claim or right is a Contingent Gain;
- (ii) any Contingent Gain is a Shared Contingent Gain, an Exclusive ECC Contingent Gain or an Exclusive Company Contingent Gain;
- (iii) any Liability is a Contingent Liability; or
- (iv) any Contingent Liability is a Shared Contingent Liability, an Exclusive ECC Contingent Liability or an Exclusive Company Contingent Liability.

and (y) for the purpose of determining the Shared Company Percentage and the Shared ECC Percentage in connection with Shared Contingent Gains and Shared Contingent Liabilities.

(b) (i) the parties hereto shall refer any Shared Contingent Gain or Shared Contingent Liability to the Contingent Claim Committee to determine the Shared Company Percentage and the Shared ECC Percentage in connection with such Shared Contingent Gain or Shared Contingent Liability and (ii) any of the parties hereto may refer any potential Contingent Gains or Contingent Liabilities to the Contingent Claim Committee for resolution as described in Section 6.5(a). If the Contingent Claim Committee reaches a determination (which shall be made within thirty (30) days of such referral on a matter submitted to the Contingent Claim Committee by any of the parties hereto), then that determination shall be binding on all of the parties hereto and their respective successors and assigns. In the event that the Contingent Claim Committee cannot reach a determination as to (i) the appropriate allocation of Contingent Gains or Contingent Liabilities between the parties hereto in connection with Shared Contingent Gains or Shared Contingent Liabilities, respectively, or (ii) as to the nature or status of any such Contingent Liabilities or Contingent Gains, within thirty (30) days after such referral, then the issue will be submitted to the respective Senior Party Representative of ECC and the Company for determination. If the Senior Party Representatives cannot reach a determination, then the procedures set forth in Article VIII of this Agreement shall govern.

Section 6.6 Certain Case Allocation Matters. The parties hereto agree that if any Action not set forth on Schedules 1.2, 1.3, 1.4, 1.5, 1.7 or 1.8 involves separate and distinct claims that, if not joined in a single Action, would constitute separate Exclusive Contingent Liabilities of two or more parties, they will use their reasonable best efforts to segregate such separate and distinct claims so that the Liabilities associated with each such claim (including all costs and expenses) shall be treated as Exclusive Contingent Liabilities of the appropriate party and so that each party shall have the rights and obligations with respect to each such claim (including pursuant to Article V) as would have been applicable had such claims been commenced as separate Actions. Notwithstanding the foregoing provisions, this Section 6.6 shall not apply to any separate and distinct claim that is de minimis or frivolous in nature.

Section 6.7 Termination of Certain Article VI Provisions. The provisions set forth in this Article VI related to the sharing of Contingent Gains and Contingent Liabilities shall terminate on the second anniversary of the Distribution Date except for (i) any claim or action pending or asserted by either party hereto on or prior to such termination, or (ii) any claim or action related to any matter that has a statute of limitations that extends beyond such termination date. Any claim or action referred to in (i) and (ii) above shall survive until the later of the final determination applicable to any such claim or action or for the applicable statute of limitations covering such claim or action as applicable.

## ARTICLE VII

### INSURANCE

#### Section 7.1 Insurance Matters.

(a) The Company does hereby, for itself and each other member of the Company Group, agree that no member of the ECC Group or any ECC Indemnified Party

shall have any liability whatsoever as a result of the insurance policies and practices of ECC and its Affiliates as in effect at any time prior to the Effective Time, including as a result of the level or scope of any such insurance, the creditworthiness of any insurance carrier, the terms and conditions of any policy, the adequacy or timeliness of any notice to any insurance carrier with respect to any claim or potential claim or otherwise.

(b) ECC agrees to use its reasonable best efforts to cause the interest and rights of the Company and the other members of the Company Group as of the Effective Time as insureds, additional named insureds or beneficiaries or in any other capacity under occurrence-based insurance policies and programs (and under claims-made policies and programs to the extent a claim has been submitted prior to the Effective Time) of ECC or any other member of the ECC Group in respect of periods prior to the Effective Time to survive the Effective Time for the period for which such interests and rights would have survived without regard to the transactions contemplated hereby to the extent permitted by such policies, and ECC shall continue to administer such policies and programs on behalf of the Company and the other members of the Company Group, subject to the Company's reimbursement to ECC and the other relevant members of the ECC Group for the actual out-of-pocket costs of such ongoing administration and the internal costs (based on the proportion of the amount of time actually spent on such matter to such employee's normal working time) of any employee or agent of ECC of any other relevant member of the ECC Group who will be required to spend at least [ten percent (10%) of his or her normal working time over any ten (10) Business Days working with respect to any such matter]. Any proceeds received by ECC or any other member of the ECC Group after the Effective Time under such policies and programs in respect of the Company and the other members of the Company Group shall be for the benefit of the Company and the other members of the Company Group.

(c) This Agreement is not intended as an attempted assignment of any policy of insurance or as a contract of insurance and shall not be construed to waive any right or remedy of any member of the ECC Group in respect of any insurance policy or any other contract or policy of insurance.

(d) Nothing in this Agreement shall be deemed to restrict any member of the Company Group from acquiring at its own expense any other insurance policy in respect of any Liabilities or covering any period.

#### **ARTICLE VIII DISPUTE RESOLUTION**

Section 8.1 Agreement to Resolve Disputes. Except as otherwise specifically provided in any Ancillary Agreement, the procedures for discussion, negotiation and dispute resolution set forth in this Article VIII shall apply to all disputes, controversies or claims (whether sounding in contract, tort or otherwise) that may arise out of or relate to, or arise under or in connection with this Agreement or any Ancillary Agreement, or the transactions contemplated hereby or thereby (including all actions taken in furtherance of the transactions contemplated hereby or thereby on or prior to the date hereof), or the commercial or

economic relationship of the parties hereto relating hereto or thereto, between or among any member of the ECC Group on the one hand and the Company Group on the other hand. Each party hereto agrees on behalf of itself and each member of its respective Group that the procedures set forth in this Article VIII shall be the sole and exclusive remedy in connection with any dispute, controversy or claim relating to any of the foregoing matters and irrevocably waives any right to commence any Action in or before any Governmental Authority, except as otherwise required by Applicable Law.

Section 8.2 Dispute Resolution: Mediation.

(a) Either party hereto may commence the dispute resolution process of this Section 8.2 by giving the other party hereto written notice (a "Dispute Notice") of any controversy, claim or dispute of whatever nature arising out of or relating to this Agreement or the breach, termination, enforceability or validity thereof (a "Dispute") which has not been resolved in the normal course of business. The parties hereto shall attempt in good faith to resolve any Dispute by negotiation between executives of each party hereto ("Senior Party Representatives") who have authority to settle the Dispute and who are at a higher level of management than the persons who have direct responsibility for the administration of this Agreement. Within fifteen (15) days after delivery of the Dispute Notice, the receiving party shall submit to the other a written response (the "Response"). The Dispute Notice and the Response shall include (i) a statement setting forth the position of the party giving such notice and a summary of arguments supporting such position and (ii) the name and title of such party's Senior Party Representative and any other persons who will accompany the Senior Party Representative at the meeting at which the parties hereto will attempt to settle the Dispute. Within thirty (30) days after the delivery of the Dispute Notice, the Senior Party Representatives of both parties hereto shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the Dispute. The parties hereto shall cooperate in good faith with respect to any reasonable requests for exchanges of information regarding the Dispute or a Response thereto.

(b) If the Dispute has not been resolved within sixty (60) days after delivery of the Dispute Notice, or if the parties hereto fail to meet within thirty (30) days after delivery of the Dispute Notice as hereinabove provided, the parties hereto shall make a good faith attempt to settle the Dispute by mediation pursuant to the provisions of this Section 8.2 before resorting to arbitration contemplated by Section 8.3 or any other dispute resolution procedure that may be agreed by the parties hereto.

(c) All negotiations, conferences and discussions pursuant to this Section 8.2 shall be confidential and shall be treated as compromise and settlement negotiations. Nothing said or disclosed, nor any document produced, in the course of such negotiations, conferences and discussions that is not otherwise independently discoverable shall be offered or received as evidence or used for impeachment or for any other purpose in any current or future arbitration.

(d) Unless the parties hereto agree otherwise, the mediation shall be conducted in accordance with the CPR Institute for Dispute Resolution Model Procedure

for Mediation of Business Disputes in effect on the date of this Agreement by a mediator mutually selected by the parties hereto.

(e) Within thirty (30) days after the mediator has been selected as provided above, both parties hereto and their respective attorneys shall meet with the mediator for one (1) mediation session, it being agreed that each party representative attending such mediation session shall be a Senior Party Representative with authority to settle the Dispute. If the Dispute cannot be settled at such mediation session or at any mutually agreed continuation thereof, either party hereto may give the other and the mediator a written notice declaring the mediation process at an end.

(f) Costs of the mediation shall be borne equally by the parties involved in the matter, except that each party hereto shall be responsible for its own expenses.

Section 8.3 Arbitration.

(a) Subject to Section 8.3(b), if the Dispute has not been resolved by the dispute resolution process described in Section 8.2, the parties hereto agree that any such Dispute shall be settled by binding arbitration before the American Arbitration Association ("AAA") in Denver, Colorado pursuant to the Commercial Rules of the AAA. Any arbitrator(s) selected to resolve the Dispute shall be bound exclusively by the laws of the State of New York without regard to its choice of law rules. Any decisions of award of the arbitrator(s) will be final and binding upon the parties hereto and may be entered as a judgment by the parties hereto. Any rights to appeal or review such award by any court or tribunal are hereby waived to the extent permitted by Applicable Law.

(b) Any Dispute regarding the following is not required to be negotiated or mediated prior to seeking relief from an arbitrator: (i) breach of any obligation of confidentiality; and (ii) any other claim where interim relief from the arbitrator is sought to prevent serious and irreparable injury to one of the parties hereto. However, the parties hereto to the Dispute shall make a good faith effort to negotiate and mediate such Dispute, according to the above procedures, while such arbitration is pending.

(c) Costs of the arbitration shall be borne equally by the parties involved in the matter, except that each party hereto shall be responsible for its own expenses.

Section 8.4 Continuity of Service and Performance. Unless otherwise agreed in writing, the parties hereto will continue to provide service and honor all other commitments under this Agreement and each Ancillary Agreement during the course of dispute resolution pursuant to the provisions of this Article VIII with respect to all matters not subject to such Dispute.

**ARTICLE IX**  
**MISCELLANEOUS**

Section 9.1 Limitation of Liability. In no event shall any member of the ECC Group or the Company Group be liable to any member of the other Group for any special, consequential, indirect, collateral, incidental or punitive damages or lost profits or failure to realize expected savings or other commercial or economic loss of any kind, however caused and on any theory of liability (including negligence) arising in any way out of this Agreement, whether or not such Person has been advised of the possibility of any such damages; provided, however, that the foregoing limitations shall not limit either party's hereto indemnification obligations for Liabilities with respect to Third Party Claims as set forth in Article V. The provisions of Article V and Article VIII shall be the parties' hereto sole recourse for any breach hereof or any breach of the Ancillary Agreements.

Section 9.2 Counterparts. This Agreement and each Ancillary Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the parties thereto and delivered to the other party or parties.

Section 9.3 Entire Agreement. This Agreement, the Ancillary Agreements, and the Schedules and Exhibits hereto and thereto constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and thereof and supersede all previous agreements, negotiations, discussions, understandings, writings, commitments and conversations between the parties hereto with respect to such subject matter. No agreements or understandings exist between the parties hereto other than those set forth or referred to herein or therein.

Section 9.4 Construction. In this Agreement and each of the Ancillary Agreements, unless a clear contrary intention appears:

- (a) the singular number includes the plural number and vice versa;
- (b) reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are not prohibited by this Agreement or the relevant Ancillary Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;
- (c) reference to any gender includes each other gender;
- (d) reference to any agreement, document or instrument means such agreement, document or instrument as amended, modified, supplemented or restated, and in effect from time to time in accordance with the terms thereof subject to compliance with the requirements set forth herein or in the relevant Ancillary Agreement;

(e) reference to any Applicable Law means such Applicable Law as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder, and reference to any section or other provision of any Applicable Law means that provision of such Applicable Law from time to time in effect and constituting the substantive amendment, modification, codification, replacement or reenactment of such section or other provision;

(f) "herein," "hereby," "hereunder," "hereof," "hereto" and words of similar import shall be deemed references to this Agreement or to the relevant Ancillary Agreement as a whole and not to any particular article, section or other provision hereof or thereof;

(g) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term;

(h) the Table of Contents and headings are for convenience of reference only and shall not affect the construction or interpretation hereof or thereof;

(i) with respect to the determination of any period of time, "from" means "from and including" and "to" means "to but excluding;" and

(j) references to documents, instruments or agreements shall be deemed to refer as well to all addenda, exhibits, schedules or amendments thereto.

Section 9.5 Signatures. Each party hereto acknowledges that it and the other party hereto (and the other members of their respective Groups) may execute this Agreement and each of the Ancillary Agreements by facsimile, stamp or pdf signature. Each party hereto expressly adopts and confirms each such facsimile, stamp or pdf signature made in its respective name (or that of the applicable member of its Group) as if it were a manual signature, agrees that it will not assert that any such signature is not adequate to bind such party to the same extent as if it were signed manually and agrees that at the reasonable request of the other party hereto at any time it will as promptly as reasonably practicable cause each such Agreement and Ancillary Agreement to be manually executed (any such execution to be as of the date of the initial date thereof).

Section 9.6 Assignability. Except as set forth in any Ancillary Agreement, this Agreement and each Ancillary Agreement shall be binding upon and inure to the benefit of the parties hereto and thereto, respectively, and their respective successors and permitted assigns; provided, however, that except as specifically provided in any Ancillary Agreement, no party hereto or thereto may assign (by merger, operation of law or otherwise) its respective rights or delegate its respective obligations under this Agreement or any Ancillary Agreement without the express prior written consent of the other parties hereto or thereto.

Section 9.7 Third Party Beneficiaries. Except for the indemnification rights under this Agreement of any ECC Indemnified Party or any Company Indemnified Party in their respective capacities as such and for the release under Section 5.2 of any Person provided therein and except as specifically provided in any Ancillary Agreement, (a) the provisions of this Agreement



and each Ancillary Agreement are solely for the benefit of the parties hereto and thereto and their respective successors and permitted assigns and are not intended to confer upon any Person, except the parties hereto and thereto and their respective successors and permitted assigns, any rights or remedies hereunder and (b) there are no third party beneficiaries of this Agreement or any Ancillary Agreement; and neither this Agreement nor any Ancillary Agreement shall provide any third party with any remedy, claim, liability, reimbursement, claim of action or other right in excess of those existing without reference to this Agreement or any Ancillary Agreement.

**Section 9.8 Payment Terms.**

(a) Other than with respect to amounts payable pursuant to Article V (which are covered by Section 5.9), any amount to be paid or reimbursed by one party to the other under this Agreement shall be paid or reimbursed hereunder within sixty (60) days after presentation of an invoice or a written demand therefor and setting forth, or accompanied by, reasonable documentation or other reasonable explanation supporting such amount.

(b) Except as expressly provided to the contrary in this Agreement or in any Ancillary Agreement, any amount not paid when due pursuant to this Agreement (and any amount billed or otherwise invoiced or demanded and properly payable that is not paid within thirty (30) days of such bill, invoice or other demand) shall bear interest at a rate per annum equal to the Prime Rate plus 2% (or the maximum legal rate, whichever is lower), calculated for the actual number of days elapsed, accrued from the date on which such payment was due up to the date of the actual receipt of payment.

**Section 9.9 Governing Law.** This Agreement and each Ancillary Agreement and the legal relations between the parties hereto shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflict of laws rules thereof to the extent such rules would require the application of the law of another jurisdiction.

Section 9.10 Notices. All notices or other communications required or permitted to be given hereunder shall be in writing, shall be delivered by hand or sent by facsimile or sent, postage prepaid, by registered, certified or express mail or overnight courier service and shall be deemed given when so delivered by hand or facsimile (upon receipt of confirmation), or if mailed, one day after mailing, as follows:

If to ECC, to:

EchoStar Communications Corporation  
9601 S. Meridian Blvd., Englewood, CO 80112  
Attention: General Counsel  
Fax: (303) 723-1699

with a copy to:

White & Case LLP  
1155 Avenues of the Americas  
New York, NY 10036  
Attention: Daniel G. Dufner  
Fax: (212) 403-2000

If to Company, to:

EchoStar Holding Corporation  
90 Inverness Circle East, Englewood, CO 80112  
Attention: General Counsel  
Fax: (303) 723-1699

with a copy to:

White & Case LLP  
1155 Avenues of the Americas  
New York, NY 10036  
Attention: Daniel G. Dufner  
Fax: (212) 403-2000

Section 9.11 Severability. If any provision of this Agreement or any Ancillary Agreement or the application thereof to any Person or circumstance is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions hereof or thereof, or the application of such provision to Persons or circumstances or in jurisdictions other than those as to which it has been held invalid or unenforceable, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby, so long as the economic or legal substance of the transactions contemplated hereby or thereby, as the case may be, is not affected in any manner adverse to any party hereto or thereto. Upon such determination, the parties hereto shall negotiate in good faith in an effort to agree upon such a suitable and equitable provision to effect the original intent of the parties hereto.

Section 9.12 Nonrecurring Costs and Expenses. Notwithstanding anything herein to the contrary, any nonrecurring costs and expenses incurred by the parties hereto to effect the transactions contemplated hereby which are not allocated pursuant to the terms of this Agreement or any Ancillary Agreement shall be the responsibility of the party which incurs such costs and expenses.

Section 9.13 Publicity. Prior to the Distribution Date, ECC shall be responsible for issuing any press releases or otherwise making public statements with respect to this Agreement, the Separation, the Distribution or any of the other transactions contemplated hereby and thereby, and the Company shall not make such statements without the prior written consent of ECC. Prior to the Distribution Date, ECC and the Company shall each consult with the other prior to making any filings with any Governmental Authority with respect thereto.

Section 9.14 Survival of Covenants. Except as expressly set forth in this Agreement or any Ancillary Agreement, any covenants, representations or warranties contained in this Agreement or any Ancillary Agreement shall survive the Separation and Distribution and shall remain in full force and effect.

Section 9.15 Waiver of Default; Conflicts.

(a) Any term or provision of this Agreement may be waived, or the time for its performance may be extended, by the party or the parties hereto entitled to the benefit thereof. Any such waiver shall be validly and sufficiently given for the purposes of this Agreement if, as to any party hereto, it is in writing signed by an authorized representative of such party.

(b) Waiver by any party hereto of any default by the other party hereto of any provision of this Agreement or any Ancillary Agreement shall not be construed to be a waiver by the waiving party of any subsequent or other default, nor shall it in any way affect the validity of this Agreement or any party hereof or prejudice the rights of the other party thereafter to enforce each and ever such provision. No failure or delay by any party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

(c) Each party hereto acknowledges that each of the parties hereto and each member of their respective Group are all currently represented by members of ECC's legal department and ECC's outside counsel. Each of ECC (on behalf of itself and every member of its Group), on the one hand, and Company (on behalf of itself and every member of its Group), on the other hand, waives any conflict with respect to such common representation that may arise before, at or after the Distribution Date.

Section 9.16 Amendments. This Agreement may be amended, supplemented, modified or abandoned at any time prior to the Distribution Date by and in the sole and absolute discretion of ECC without the approval of Company or of the stockholders of ECC. After the Effective Time, no provisions of this Agreement or any Ancillary Agreement shall be deemed amended, modified or supplemented by any party hereto, unless such amendment,

supplement or modification is in writing and signed by the authorized representative of the party against whom it is sought to enforce such amendment, supplement or modification.

Section 9.19 Controlling Documents. To the extent that the provisions of the Employee Matters Agreement, the Intellectual Property Matters Agreement, the Management Services Agreement, the Tax Sharing Agreement or the Transition Services Agreement conflict with the provisions of this Agreement, the provisions of such other agreement or agreements shall govern.

Section 9.20 Specific Performance. The parties hereto agree that the remedy at law for any breach of this Agreement may be inadequate, and that, as between ECC and the Company, any party hereto by whom this Agreement is enforceable shall be entitled to specific performance in addition to any other appropriate relief or remedy. Such party may, in its sole discretion, apply to a court of competent jurisdiction for specific performance or injunctive or such other relief as such court may deem just and proper in order to enforce this Agreement as between ECC and the Company, or prevent any violation hereof, and, to the extent permitted by Applicable Law, as between ECC and the Company, each party hereto waives any objection to the imposition of such relief.

**[SIGNATURE PAGE FOLLOWS]**

WHEREFORE, the parties have signed this Separation Agreement effective as of the date first set forth above.

ECHOSTAR COMMUNICATIONS CORPORATION

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Name:  
Title:

ECHOSTAR HOLDING CORPORATION

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Name:  
Title:

ARTICLES OF INCORPORATION OF  
ECHOSTAR HOLDING CORPORATION

ARTICLE I

Name

The name of the corporation shall be ECHOSTAR HOLDING CORPORATION (the "Corporation").

ARTICLE II

Period of Duration

The Corporation shall exist in perpetuity, from and after the date of filing of its original Articles of Incorporation with the Secretary of State of the State of Nevada unless dissolved according to law.

ARTICLE III

Purposes

The purpose for which this Corporation is organized is to engage in any lawful acts and activities for which corporations may be organized under the laws of the State of Nevada and to exercise any powers permitted to corporations under the laws of the State of Nevada.

ARTICLE IV

Capital

1. Authorized Capital Stock. The total number of shares of capital stock which the Corporation is authorized to issue shall be 4,020,000,000 shares, consisting of 4,000,000,000 shares of common stock, par value \$0.001 per share ("Common Stock"), and 20,000,000 shares of preferred stock, par value \$0.001 per share ("Preferred Stock").
2. Common Stock. Of the 4,000,000,000 shares of authorized Common Stock, 1,600,000,000 shares shall be designated Class A Common Stock ("Class A Common Stock"), 800,000,000 shares shall be designated Class B Common Stock ("Class B Common Stock"), 800,000,000 shares shall be designated Class C Common Stock ("Class C Common Stock") and 800,000,000 shares shall be designated Class D Common Stock ("Class D Common Stock").

3. Preferred Stock. The Board of Directors of the Corporation is hereby authorized to provide, by resolution or resolutions adopted by such Board, for the issuance of Preferred Stock from time to time in one or more classes and/or series, to establish the number of shares of each such class or series, and to fix the powers, designations, preferences and relative, participating, optional or other rights, if any, and the qualifications, limitations or restrictions thereof, of any of the shares of each such class or series, all to the full extent permitted by the Nevada Revised Statutes (the "NRS"), or any successor law(s) of the State of Nevada. Without limiting the generality of the foregoing, the Board of Directors is authorized to provide that shares of a class or series of Preferred Stock:

- (1) are entitled to cumulative, partially cumulative or noncumulative dividends or other distributions payable in cash, capital stock or indebtedness of the Corporation or other property, at such times and in such amounts as are set forth in the Board resolutions establishing such class or series or as are determined in a manner specified in such resolutions;
- (2) are entitled to a preference with respect to payment of dividends over one or more other classes and/or series of capital stock of the Corporation;
- (3) are entitled to a preference with respect to any distribution of assets of the Corporation its liquidation, dissolution or winding up over one or more other classes and/or series of capital stock of the Corporation in such amount as is set forth in the Board resolutions establishing such class or series or as is determined in a manner specified in such resolutions;
- (4) are redeemable or exchangeable at the option of the Corporation and/or on a mandatory basis for cash, capital stock or indebtedness of the Corporation or other property, at such times or upon the occurrence of such events, and at such prices, as are set forth in the Board resolutions establishing such class or series or as are determined in a manner specified in such resolutions;
- (5) are entitled to the benefits of such sinking fund, if any, as is required to be established by the Corporation for the redemption and/or purchase of such shares by the Board resolutions establishing such class or series;
- (6) are convertible at the option of the holders thereof into shares of any other class or series of capital stock of the Corporation, at such times or upon the occurrence of such events, and upon such terms, as are set forth in the Board resolutions establishing such class or series or as are determined in a manner specified in such resolutions;
- (7) are exchangeable at the option of the holders thereof for cash, capital stock or indebtedness of the Corporation or other property, at such times or upon the occurrence of such events, and at such prices, as are set forth in the Board resolutions establishing such class or series or as are determined in a manner specified in such resolutions;
- (8) are entitled to such voting rights, if any, as are specified in the Board resolutions establishing such class or series (including, without limiting the generality of

the foregoing, the right to elect one or more directors voting alone as a single class or series or together with one or more other classes and/or series of Preferred Stock, if so specified by such Board resolutions) at all times or upon the occurrence of specified events; and

(9) are subject to restrictions on the issuance of additional shares of Preferred Stock of such class or series or of any other class or series, or on the reissuance of shares of Preferred Stock of such class or series or of any other class or series, or on increases or decreases in the number of authorized shares of Preferred Stock of such class or series or of any other class or series.

Without limiting the generality of the foregoing authorizations, any of the voting powers, designations, preferences, rights and qualifications, limitations or restrictions of a class or series of Preferred Stock may be made dependent upon facts ascertainable outside the Board resolutions establishing such class or series, all to the full extent permitted by the NRS. Unless otherwise specified in the Board resolutions establishing a class or series of Preferred Stock, holders of a class or series of Preferred Stock shall not be entitled to cumulate their votes in any election of directors in which they are entitled to vote and shall not be entitled to any preemptive rights to acquire shares of any class or series of capital stock of the Corporation.

## ARTICLE V

### Voting and Conversion Rights

#### 1. Voting Rights.

(a) Except as otherwise required by law or, in any Preferred Stock Statement and Certificate of Designations, Preferences and Rights ("Certificate of Designations"), with respect to all matters upon which stockholders are entitled to vote or to which stockholders are entitled to give consent, the holders of any outstanding shares of Class A Common Stock, Class B Common Stock, Class C Common Stock and Preferred Stock shall vote together without regard to class, and every holder of any outstanding shares of the Class A Common Stock and Class C Common Stock shall be entitled to cast one vote in person or by proxy for each share of the Class A Common Stock and Class C Common Stock held by such holder; every holder of any outstanding shares of Class B Common Stock shall be entitled to cast ten votes in person or by proxy for each share of Class B Common Stock held by such holder; and every holder of any outstanding shares of Preferred Stock shall be entitled to cast, in person or by proxy for each share of Preferred Stock held by such holder, the number of votes specified in the applicable Certificate of Designations; provided however, in the event of a "Change in Control" of the Corporation, the holders of any outstanding shares of Class C Common Stock shall be entitled to cast ten votes in person or by proxy for each share of Class C Common Stock held by such holder. The Class D Common Stock shall be non-voting stock. As used herein, a "Change of Control" of the Corporation means: (i) any transaction or series of transactions, the result of which is that the Principals and their Related Parties (as such terms are hereinafter defined), or an entity controlled by the Principals and their Related Parties, cease to be the "beneficial owners" (as defined in Rule 13(d) (3) under the Securities Exchange Act of 1934) of at least 30% of the total equity interests of the Corporation and to have the voting power to elect at least a



majority of the Board of Directors of the Corporation; or (ii) the first day on which a majority of the members of the Board of Directors of the Corporation are not continuing directors. "Principals" means Charles W. Ergen, James DeFranco, and David K. Moskowitz. "Related Parties" means, with respect to any Principal: (y) the spouse and each immediate family member of such Principal; and (z) each trust, corporation, partnership or other entity of which such Principal beneficially holds an 80% or more controlling interest.

(b) A quorum for the purpose of shareholder meeting shall consist of a majority of the voting power of the Corporation. If a quorum is present, the effective vote of a majority of the voting power represented at the meeting and entitled to vote on the subject matter shall be the act of the shareholders, unless the vote of a greater proportion or number is required by any provisions contained in the NRS. Notwithstanding any provisions contained in the NRS requiring the vote of shares possessing two-thirds of the voting power of the Corporation to take action, absent a provision herein to the contrary, in the case of such provisions the affirmative vote of a majority of the voting power shall be the act of the shareholders.

(c) Holders of Common Stock shall not be entitled to cumulate their votes in the election of directors and shall not be entitled to any preemptive rights to acquire shares of any class or series of capital stock of the Corporation. Subject to any preferential rights of holders of Preferred Stock, holders of Common Stock shall be entitled to receive their pro rata shares, based upon the number of shares of Common Stock held by them, of such dividends or other distributions as may be declared by the Board of Directors from time to time and of any distribution of the assets of the Corporation upon its liquidation, dissolution or winding up, whether voluntary or involuntary.

## 2. Conversion Rights.

(a) Each share of Class B Common Stock and Class C Common Stock shall be convertible at the option of the holder thereof into Class A Common Stock of the Corporation in accordance with this Article V. In order to exercise the conversion privilege, a holder of Class B Common Stock or Class C Common Stock shall surrender the certificate evidencing such Class B Common Stock or Class C Common Stock to the Corporation at its principal office, duly endorsed to the Corporation or, in the case of uncertificated shares, instruct the Corporation's transfer agent to surrender such shares to the Corporation and, in either case, accompanied by written notice to the Corporation that the holder thereof elects to convert a specified portion or all of such shares. Class B Common Stock or Class C Common Stock converted at the option of the holder shall be deemed to have been converted on the day of surrender of the certificate representing such shares for conversion in accordance with the foregoing provisions or, in the case of uncertificated shares, on the day in which the Corporation's transfer agent receives instruction to effect a book entry transfer to the Corporation, and at such time the rights of the holder of such Class B Common Stock or Class C Common Stock, as such holder, shall cease and such holder shall be treated for all purposes as the record holder of Class A Common Stock issuable upon conversion. As promptly as practicable on or after the conversion date, the Corporation shall issue and mail or deliver to such holder a certificate or certificates for the number of Class A Common Stock issuable upon conversion or shall instruct the Corporation's transfer agent to effect a book entry transfer to reflect such Class A Common Stock issuable upon conversion, computed to the nearest one hundredth of a full share, and a certificate or

certificates or book entry transfer for the balance of Class B Common Stock or Class C Common Stock surrendered, if any, not so converted into Class A Common Stock.

(b) The Class B Common Stock and Class C Common Stock shall be convertible into one share of Class A Common Stock for each share of Class B Common Stock or Class C Common Stock so converted (the "Conversion Rate"). In the event the Corporation shall at any time subdivide or split its outstanding Class A Common Stock, into a greater number of shares or declare any dividend payable in Class A Common Stock, the Conversion Rate in effect immediately prior to such subdivision, split or dividend shall be proportionately increased, and conversely, in case the outstanding Class A Common Stock of the Corporation shall be combined into a smaller number of shares, the Conversion Rate in effect immediately prior to such combination shall be proportionately decreased.

(c) Upon any adjustment of the Conversion Rate then and in each such case the Corporation shall give written notice thereof, by first-class mail, postage prepaid, addressed to the registered holders of Class B Common Stock and Class C Common Stock at the addresses of such holders as shown on the books of the Corporation, which notice shall state the Conversion Rate resulting from such adjustment and the increase or decrease, if any, in the number of shares receivable at such price upon the conversion of Class B Common Stock or Class C Common Stock, setting forth in reasonable detail the method of calculation and the facts upon which such calculation is based.

(d) The holders of Class B Common Stock and Class C Common Stock shall have the following rights to certain properties received by the holders of Class A Common Stock:

(i) In case the Corporation shall declare a dividend or distribution upon Class A Common Stock payable other than in cash out of earnings or surplus or other than in Class A Common Stock, then thereafter each holder of Class B Common Stock or Class C Common Stock upon the conversion thereof will be entitled to receive the number of shares of Class A Common Stock into which such Class B Common Stock or Class C Common Stock shall be converted, and, in addition and without payment therefor, the property which such holder would have received as a dividend if continuously since the record date for any such dividend or distribution such holder: (A) had been the record holder of the number of Class A Common Stock then received; and (B) had retained all dividends or distributions originating directly or indirectly from such Class A Common Stock.

(ii) If any capital reorganization or reclassification of the capital stock of the Corporation, or consolidation or merger of the Corporation with another corporation, or the sale of all or substantially all of its assets to another corporation shall be effected in such a way that holders of Class A Common Stock shall be entitled to receive stock, securities or assets with respect to or in exchange for a Class A Common, then, as a condition of such reorganization, reclassification, consolidation, merger or sale, lawful and adequate provision shall be made whereby the holders of Class B Common Stock and Class C Common

Stock shall thereafter have the right to receive, in lieu of Class A Common Stock of the Corporation immediately theretofore receivable upon the conversion of such Class B Common Stock and Class C Common Stock, such shares of stock, securities or assets as may be issued or payable with respect to or in exchange for a number of outstanding Class A Common Stock equal to the number of Class A Common Stock immediately theretofore receivable upon the conversion or such Class B Common Stock and Class C Common Stock had such reorganization, reclassification, consolidation, merger or sale not taken place, and in any such case appropriate provision shall be made with respect to the rights and interests of the holders of the Class B Common Stock and Class C Common Stock to the end that the provisions hereof (including without limitation provisions for adjustments of the Conversion Rate and of the number of shares receivable upon the conversion of such Class B Common Stock and Class C Common Stock) shall thereafter be applicable, as nearly as may be, in relation to any shares of stock, securities or assets thereafter receivable upon the conversion of such Class B Common Stock and Class C Common Stock. The Corporation shall not effect any such reorganization, reclassification, consolidation, merger or sale, unless prior to the consummation thereof the surviving corporation (if other than the Corporation), the corporation resulting from such consolidation or the corporation purchasing such assets shall assume by written instrument executed and mailed to the registered holders of the Class B Common Stock and Class C Common Stock at the last address of such holders appearing on the books of the Corporation, the obligation to deliver to such holders such shares of stock, securities or assets as, in accordance with the foregoing provisions, such holders may be entitled to receive.

(e) In case at any time:

- (iii) the Corporation shall pay any dividend payable in stock upon Class A Common Stock or make any distribution (other than regular cash dividends to the holders of Class A Common Stock); or
- (iv) the Corporation shall offer for subscription pro rata to the holders of Class A Common Stock any additional shares of stock of any class or other rights; or
- (v) there shall be any capital reorganization, reclassification of the capital stock of the Corporation, or consolidation or merger of the Corporation with, or sale of all or substantially all of its assets, to another corporation (provided however, that this provision shall not be applicable to the merger or consolidation of the Corporation with or into another corporation if, following such merger or consolidation, the shareholders of the Corporation immediately prior to such merger or consolidation own at least 80% of the equity of the combined entity); or
- (vi) there shall be a voluntary or involuntary dissolution, liquidation or winding up of the Corporation;

then, in any one or more of the aforesaid cases, the Corporation shall give written notice, by first-class mail, postage prepaid, addressed to the holders of Class B Common Stock and Class C Common Stock at the addresses of such holders as shown on the books of the Corporation, of the date on which: (A) the books of the Corporation shall close or a record shall be taken for such dividend, distribution or subscription rights; or (B) such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding up shall take place, as the case may be. Such notice shall also specify the date as of which the holders of Class A Common Stock of record shall participate in such dividend, distribution, or subscription rights, or shall be entitled to exchange their Class A Common Stock for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding up, as the case may be. Such written notice shall be given at least 20 days prior to the action in question and not less than 20 days prior to the record date or the date on which the Corporation's transfer books are closed in respect thereto.

ARTICLE VI

Board of Directors

The name and addresses of the first board of directors, which shall be seven (7) in number, are as follows:

<u>NAME</u>	<u>ADDRESS</u>
Charles W. Ergen	90 Inverness Circle East, Englewood, CO 80112
Michael T. Dugan	90 Inverness Circle East, Englewood, CO 80112
David K. Moskowitz	90 Inverness Circle East, Englewood, CO 80112
Carl E. Vogel	90 Inverness Circle East, Englewood, CO 80112
Stephen R. Goodbarn	90 Inverness Circle East, Englewood, CO 80112
Tom A. Ortolf	90 Inverness Circle East, Englewood, CO 80112
C. Michael Schroeder	90 Inverness Circle East, Englewood, CO 80112

The number of directors shall be increased or decreased as prescribed by the Bylaws of the Corporation.

ARTICLE VII

Right of Directors to Contract with Corporation

The following provisions are inserted for the management of the business and for the conduct of the affairs of the Corporation, and the same are in furtherance of and not in limitation of the powers conferred by law.

1. No contract or other transaction between this Corporation and one or more of its directors or any other corporation, firm, association, or entity in which one or more of its directors are directors or officers or are financially interested shall be either void or voidable solely because of such relationship or interest or solely because such directors are present at the meeting of the Board of Directors or a committee thereof which authorizes, approves or ratifies such contract or transaction or solely because their votes are counted for such purpose if:

(a) The material facts as to such relationship or interest and as to the contract or transaction are disclosed or are otherwise known to the Board of Directors or committee and the Board or committee authorizes, approves, or ratifies such contract or transaction by the affirmative vote of a majority of the disinterested directors, even though such directors are less than a quorum; or

(b) The material facts of such relationship or interest and as to the contract or transaction are disclosed or are otherwise known to the shareholders entitled to vote thereon and they authorize, approve or ratify such contract or transaction by vote or written consent; or

(c) The contract or transaction is fair and reasonable to the Corporation.

2. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or a committee thereof which authorizes, approves or ratifies such contract or transaction.

ARTICLE VIII

Corporate Opportunity

1. Certain Acknowledgements; Definitions. The provisions of this Article VIII shall, to the fullest extent permitted by law, delineate the doctrine of "corporate opportunities," as it applies to the Corporation, define the conduct of certain affairs of the Corporation and its Subsidiaries and the Corporation's and its Subsidiaries' directors and officers as they may involve EchoStar Communications Corporation ("EchoStar") and its Subsidiaries, and the powers, rights, duties and liabilities of the Corporation and its Subsidiaries and the Corporation's and its Subsidiaries' directors, officers and employees in connection therewith. In recognition and anticipation that (a) directors and officers of the Corporation and its Subsidiaries may serve as directors, officers and employees of EchoStar and its Subsidiaries, (b) the Corporation and its Subsidiaries, directly or indirectly, may engage and are expected to continue to engage in the same, similar or related lines of business as those engaged in by EchoStar and its Subsidiaries

and other business activities that overlap with or compete with those in which EchoStar and its Subsidiaries may engage, (c) the Corporation and its Subsidiaries may have an interest in the same areas of business opportunity as EchoStar and its Subsidiaries, (d) the Corporation and its Subsidiaries may engage in material business transactions with EchoStar and its Subsidiaries, including, without limitation, receiving services from, providing services to or being a significant customer or supplier to EchoStar and its Subsidiaries, and that the Corporation, EchoStar and/or one or more of their respective Subsidiaries may benefit from such transactions, and (e) as a consequence of the foregoing, it is in the best interests of the Corporation that the rights of the Corporation and its Subsidiaries, and the duties of any directors or officers of the Corporation or any of its Subsidiaries, be determined and delineated in respect of (x) any transactions between the Corporation and its Subsidiaries, on the one hand, and EchoStar and its Subsidiaries, on the other hand, and (y) any potential transactions or matters that may be presented to officers and directors or the Corporation and its Subsidiaries, or of which such officers or directors may otherwise become aware, which potential transactions or matters may constitute business opportunities of the Corporation or any of its Subsidiaries, and in recognition of the benefits to be derived by the Corporation and its Subsidiaries through its continued contractual, corporate and business relations with EchoStar and its Subsidiaries and of the benefits to be derived by the Corporation and its Subsidiaries by the possible service as directors or officers of the Corporation and its Subsidiaries of persons who may also serve from time to time as directors, officers and employees of EchoStar or any of its Subsidiaries, the provisions of this Article VIII shall, to the fullest extent permitted by law, regulate and define the conduct of the business and affairs of the Corporation and its Subsidiaries in relation to EchoStar and its Subsidiaries, and as such conduct and affairs may involve EchoStar's and its Subsidiaries directors, officers and employees, and the powers, rights, duties and liabilities of the Corporation and its Subsidiaries and their respective officers and directors in connection therewith and in connection with any potential business opportunities of the Corporation and its Subsidiaries. Any person purchasing or otherwise acquiring any shares of capital stock of the Corporation, or any interest therein, shall be deemed to have notice of and to have consented to the provisions of this Article VIII. For purposes of this Article VIII, "Control" and derivative terms means the possession of the power to direct or cause the direction of the management and policies of a person, whether through the possession of voting securities, by contract or otherwise; and "Subsidiary" means, with respect to any person, any other person that such first person directly or indirectly Controls. References in this Article VIII to "directors," "officers" or "employees" of any person shall be deemed to include those persons who hold similar positions or exercise similar powers and authority with respect to any such person that is a limited liability company, partnership, joint venture or other non-corporate entity or any close corporation governed directly by its stockholders.

2. Certain Agreements and Transactions Permitted. No contract, agreement, arrangement or transaction (or any amendment, modification or termination thereof) entered into between the Corporation and/or any of its Subsidiaries, on the one hand, and EchoStar and/or any of its Subsidiaries, on the other hand, before the Corporation ceased to be a wholly-owned subsidiary of EchoStar shall be void or voidable or be considered unfair to the Corporation or any of its Subsidiaries for the reason that EchoStar or any of its Subsidiaries is a party thereto, or because any directors, officers or employees of EchoStar or a Subsidiary of EchoStar are a party thereto, or because any directors, officers or employees of EchoStar or a Subsidiary of EchoStar were present at or participated in any meeting of the board of directors, or committee thereof, of

the Corporation, or the board of directors, or committee thereof, of any Subsidiary of the Corporation, that authorized the contract, agreement, arrangement or transaction (or any amendment, modification or termination thereof), or because his, her or their votes were counted for such purpose. The Corporation may from time to time enter into and perform, and cause or permit any of its Subsidiaries to enter into and perform, one or more contracts, agreements, arrangements or transactions (or amendments, modifications or supplements thereto) with EchoStar or any Subsidiary thereof pursuant to which the Corporation or a Subsidiary thereof, on the one hand, and EchoStar or a Subsidiary thereof, on the other hand, agree to engage in contracts, agreements, arrangements or transactions of any kind or nature with each other, or agree to compete, or to refrain from competing or to limit or restrict their competition, with each other, including to allocate and cause their respective directors, officers and employees (including any such persons who are directors, officers or employees of both) to allocate opportunities between, or to refer opportunities to, each other. To the fullest extent permitted by law, no such contract, agreement, arrangement or transaction (nor any such amendments, modifications or supplements), nor the performance thereof by the Corporation, EchoStar or any Subsidiary of the Corporation or EchoStar, shall be considered contrary to any fiduciary duty owed to the Corporation (or to any Subsidiary of the Corporation, or to any stockholder of the Corporation or any of its Subsidiaries) by any director or officer of the Corporation (or by any director or officer of any Subsidiary of the Corporation) who is also a director, officer or employee of EchoStar or any Subsidiary thereof. To the fullest extent permitted by law, no director or officer of the Corporation or any Subsidiary of the Corporation who is also a director, officer or employee of EchoStar or any Subsidiary thereof shall have or be under any fiduciary duty to the Corporation (or to any Subsidiary of the Corporation, or to any stockholder of the Corporation or any of its Subsidiaries) to refrain from acting on behalf of the Corporation or EchoStar, or any of their respective Subsidiaries, in respect of any such contract, agreement, arrangement or transaction or performing any such contract, agreement, arrangement or transaction in accordance with its terms and each such director or officer of the Corporation or any Subsidiary of the Corporation who is also a director, officer or employee of EchoStar or any Subsidiary thereof shall be deemed to have acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, and shall be deemed not to have breached his or her duties of loyalty to the Corporation and their respective stockholders, and not to have derived an improper personal benefit therefrom.

3. Duties of Directors and Officers Regarding Potential Business Opportunities; No Liability for Certain Acts or Omissions. If a director or officer of the Corporation or any Subsidiary of the Corporation is offered, or otherwise acquires knowledge of, a potential transaction or matter that may constitute or present a business opportunity for the Corporation or any of its Subsidiaries (any such transaction or matter, and any such actual or potential business opportunity, a "Potential Business Opportunity"), such director or officer shall, to the fullest extent permitted by law, have no duty or obligation to refer such Potential Business Opportunity to the Corporation or any of its Subsidiaries, or to refrain from referring such Potential Business Opportunity to any other person, or to give any notice to the Corporation or any of its Subsidiaries regarding such Potential Business Opportunity (or any matter relating thereto), and such director or officer will not be liable to the Corporation or any of its Subsidiaries, as a director, officer, stockholder or otherwise, for any failure to refer such Potential Business Opportunity to the Corporation or any of its Subsidiaries, or for referring such Potential Business Opportunity to any other person, or for any failure to give any notice to the

Corporation or any of its Subsidiaries regarding such Potential Business Opportunity or any matter relating thereto, unless all of the following conditions are satisfied: (A) the Corporation has expressed an interest in such business opportunity as determined from time to time by the Corporation's Board of Directors as evidenced by resolutions appearing in the Corporation's minutes; (B) such Potential Business Opportunity was expressly offered to such director or officer solely in his or her capacity as a director or officer of the Corporation or as a director or officer of any Subsidiary of the Corporation; and (C) such opportunity relates to a line of business in which the Corporation or any Subsidiary of the Corporation is then directly engaged. In the event the preceding conditions are satisfied with respect to a particular Potential Business Opportunity, then such Potential Business Opportunity shall be offered first to the Corporation. In the event the preceding conditions are satisfied and the Corporation declines to pursue such Potential Business Opportunity, the directors, officers and other members of management of the Corporation shall be free to engage in such Potential Business Opportunity on their own and this paragraph shall not limit the right of any director, officer or other member of management of the Corporation to continue a business existing prior to the time that such area of interest is designated by the Corporation. This paragraph shall not be construed to release any employee of this Corporation (other than a director, officer or member of management) from any duties which may be owed to this Corporation.

4. Amendment of Article VIII. No alteration, amendment or repeal, or adoption of any provision inconsistent with, any provision of this Article VIII shall have any effect upon (a) any agreement between the Corporation or a Subsidiary thereof and EchoStar or a Subsidiary thereof that was entered into before such time or any transaction entered into in connection with the performance of any such agreement, whether such transaction is entered into before or after such time, (b) any transaction entered into between the Corporation or a Subsidiary thereof and EchoStar or a Subsidiary thereof before such time, (c) the allocation of any business opportunity between the Corporation or a Subsidiary thereof and EchoStar or a Subsidiary thereof before such time, or (d) any duty or obligation owed by any director or officer of the Corporation or any Subsidiary of the Corporation (or the absence of any such duty or obligation) with respect to any potential business opportunities of the Corporation or any Subsidiary of the Corporation which such director or officer was offered, or of which such director or officer otherwise became aware, before such time.

5. Renunciation. In addition to, and notwithstanding the foregoing provisions of this Article VIII, a potential transaction or business opportunity (1) that the Corporation or its Subsidiaries is not financially able, contractually permitted or legally able to undertake, or (2) that is, from its nature, not in the line of the Corporation's or its Subsidiaries' business, is of no practical advantage to the Corporation or its Subsidiaries or that is one in which the Corporation or its Subsidiaries has no interest or reasonable expectancy, shall not, in any such case, be deemed to constitute a corporate opportunity belonging to the Corporation, or any of its Subsidiaries, and the Corporation, on behalf of itself and each Subsidiary, to the fullest extent permitted by law, hereby renounces any interest therein.

6. Termination. Notwithstanding anything in these Articles of Incorporation to the contrary, the provisions of Sections 2 and 4(a)-(c) of this Article VIII shall automatically terminate, expire and have no further force and effect from and after the date on which no the Corporation director or officer is also an EchoStar director, officer or employee.



7. Deemed Notice. Any person or entity purchasing or otherwise acquiring or obtaining any interest in any capital stock of the Corporation shall be deemed to have notice and to have consented to the provisions of this Article VIII.

8. Severability. The invalidity or unenforceability of any particular provision, or part of any provision, of this Article VIII shall not affect the other provisions or parts hereof, and this Article VIII shall be enforced to the maximum extent permissible, and the remaining provisions of this Article VIII shall be unaffected thereby and will remain in full force and effect.

#### ARTICLE IX

##### Indemnification of Officers, Directors and Others

1. To the full extent permitted by the NRS, the Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit in proceeding, whether civil, criminal, administrative or investigative and whether formal or informal (other than an action by or in the right of the Corporation) by reason of the fact that he is or was a director, officer, employee, fiduciary or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee, fiduciary or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding, if he conducted himself in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, or conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his conduct was unlawful.

2. The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee, fiduciary or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise against expenses (including attorneys fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the Corporation unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

3. To the extent that a director, officer, employee, fiduciary or agent of a corporation has been wholly successful on the merits or otherwise in defense of any action, suit or proceeding referred to in paragraphs 1 and 2 of this Article, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys fees) actually and reasonably incurred by him in connection therewith.
4. Any indemnification under paragraphs 1 and 2 of this Article IX (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee, fiduciary or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in paragraphs 1 and 2. Such determination shall be made: (1) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding; or (2) if such quorum is not obtainable, or, even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion; or (3) by the shareholders.
5. Expenses (including attorneys fees) incurred in defending a civil or criminal action, suit or proceeding may be paid by the Corporation as they are incurred and in advance of the final disposition of such action, suit or proceeding as authorized in the manner provided in paragraph 4 of this Article IX upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount if it shall ultimately be determined by a final order of a court of competent jurisdiction that he or she is not entitled to be indemnified by the Corporation.
6. The Corporation shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, fiduciary or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under the provisions of this Article IX.
7. In addition to the forgoing, the Corporation shall have the power to indemnify current or former directors, officer, employees and agents to the fullest extent provided by law.

#### ARTICLE X

##### Director Liability.

To the fullest extent permitted by the NRS, as the same exists or may hereafter be amended, a director of this Corporation shall not be liable to the Corporation or its shareholders for monetary damages for breach of fiduciary duty as a director.

ARTICLE XI

Incorporator

The name and address of the sole incorporator of the Corporation is as follows: EchoStar Satellite Operating Corporation (By: R. Stanton Dodge, Executive Vice President, General Counsel and Secretary), 9601 S. Meridian Blvd., Englewood, CO 80112.

ARTICLE XII

Registered Office and Registered Agent

The address of the registered office of the Corporation is 502 East John Street, Carson City, Nevada 89706. The name of the Corporation's resident agent at that address is CSC Services of Nevada, Inc. Either the registered office or the registered agent may be changed in the manner permitted by law.

BYLAWS  
OF  
ECHOSTAR HOLDING CORPORATION  
*(effective October 16, 2007)*

ARTICLE I

Principal Office and Corporate Seal

Section 1.1. Principal Office. The principal office and place of business of EchoStar Holding Corporation (the "Corporation") is presently at 90 Inverness Circle East, Englewood, Colorado 80112.

Section 1.2. Other Offices. Other offices and places of business either within or outside Nevada or Colorado may be established from time to time by resolution of the Board of Directors or as the business of the Corporation may require. The registered office of the Corporation required by Title 7, Chapter 78 of the Nevada Revised Statutes to be maintained in Nevada may be changed from time to time by the Board of Directors.

Section 1.3. Seal. The seal of the Corporation shall have inscribed thereon the name of the Corporation and the word "Seal", and shall be in such form as may be approved by the Board of Directors or Secretary, which shall have the power to alter the same at its or his pleasure. The Corporation may use the seal by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.

ARTICLE II

Shares and Transfer Thereof

Section 2.1. Stock Certificates and Uncertificated Shares. Every holder of stock in the Corporation shall be entitled to have a certificate signed by or in the name of the Corporation by the Chief Executive Officer, the President or a Vice President, and by the Secretary or an Assistant Secretary, or their designee of the Corporation, certifying the number of shares of stock owned by him in the Corporation; provided, however, that the Corporation may authorize the issuance of uncertificated shares of some or all of any or all classes or series of the Corporation's stock. Any such issuance of uncertificated shares shall have no effect on existing certificates for shares until such certificates are surrendered to the Corporation, or on the respective rights and obligations of the Stockholders. Whenever any such certificate is

countersigned or otherwise authenticated by a transfer agent or a transfer clerk and by a registrar (other than the Corporation), then a facsimile of the signatures of any corporate officers or agents, the transfer agent or transfer clerk or the registrar of the Corporation may be printed or lithographed upon the certificate in lieu of the actual signatures. In the event that any officer or officers who have signed, or whose facsimile signatures have been used on any certificate or certificates for stock cease to be an officer or officers because of death, resignation or other reason, before the certificate or certificates for stock have been delivered by the Corporation, the certificate or certificates may nevertheless be adopted by the Corporation and be issued and delivered as though the person or persons who signed the certificate or certificates, or whose facsimile signature or signatures have been used thereon, had not ceased to be an officer or officers of the Corporation.

If the Corporation is authorized to issue more than one class of stock or more than one series of any class, the certificate shall contain a statement setting forth the office or agency of the Corporation from which Stockholders may obtain a copy of a statement or summary of the powers, designations, preferences, participating, optional, or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Except as otherwise expressly provided by law, the rights and obligations of the Stockholders shall be identical whether or not their shares of stock are represented by certificates.

Each certificate representing shares shall state the following upon the face thereof: the name of the state of the Corporation's organization, the name of the person to whom issued; the number and class of shares and the designation of the series, if any, which such certificate represents; the par value of each share, if any, represented by such certificate or a statement that the shares are without par value. Certificates of stock shall be in such form consistent with law as shall be prescribed by the Board of Directors. No certificate shall be issued until the shares represented thereby are fully paid.

Section 2.2. Record. A record shall be kept of the name of each person or other entity holding the stock of the Corporation issued, the number of shares held by each such person, the date thereof and, in the case of cancellation, the date of cancellation. The Corporation shall be entitled to treat the person or other entity in whose name shares of stock of the Corporation stand on the books of the Corporation as the absolute owner thereof, and thus a holder of record of such shares of stock, for all purposes as regards the Corporation, and the Corporation shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Nevada.

Section 2.3. Lost, Stolen or Destroyed Stock Certificates; Issuance of New Certificates. The Corporation may issue a new certificate of stock or uncertificated shares in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to give the Corporation a bond or other security sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

Section 2.4. Closing of Transfer Books — Record Date. For the purpose of determining Stockholders entitled to notice of or to vote at any meeting of Stockholders, or any adjournment thereof, or entitled to receive payment of any dividend, or in order to make a determination of Stockholders for any other proper purpose, the Board of Directors may provide that the stock transfer books shall be closed for a stated period, but not to exceed in any case sixty (60) days. If the stock transfer books shall be closed for the purpose of determining Stockholders entitled to notice of, or to vote at a meeting of Stockholders, such books shall be closed for at least ten (10) days immediately preceding such meeting. In lieu of closing the stock transfer books, the Board of Directors may fix in advance a date as the record date for any such determination of Stockholders, such date in any case to be not more than sixty (60) or less than ten (10) days prior to the date on which the particular action requiring such determination of Stockholders is to be taken. If the Board of Directors does not order the stock transfer books closed, or fix in advance a record date, as above provided, then the record date for the determination of Stockholders entitled to notice of, or to vote at any meeting of Stockholders, or any adjournment thereof, or entitled to receive payment of any dividend or for the determination of Stockholders for any proper purpose shall at the close of business on the day before the day on which notice is given or, if notice is waived, at the close of business on the day prior to the date on which the particular action requiring such determination of Stockholders is to be taken.

Section 2.5. Transfer of Shares. Upon surrender to the Corporation or to a transfer agent of the Corporation of a certificate of stock duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, and such documentary stamps as may be required by law, it shall be the duty of the Corporation to issue a new certificate to the person entitled thereto, and cancel the old certificate. Upon written notice to the Corporation or to a transfer agent of the Corporation from the holder of record of any uncertificated shares of stock requesting a registration of transfer of such uncertificated shares to another person, accompanied by proper evidence of succession, assignment or authority to transfer, and such documentary stamps as may be required by law, it shall be the duty of the Corporation to register such uncertificated shares of stock in the name of such other person on the books of the Corporation as the successor holder of record of such uncertificated shares of stock. Every such transfer of stock shall be entered on the stock book of the Corporation which shall be kept at its principal office or by its registrar duly appointed.

Section 2.6. Transfer Agents, Registrars and Paying Agents. The Board of Directors may, at its discretion, appoint one or more transfer agents, registrars and agents for making payment upon any class of stock, bond, debenture or other security of the Corporation. Such agents and registrars may be located either within or outside Nevada. They shall have such rights and duties and shall be entitled to such compensation as may be agreed.

### ARTICLE III

#### Stockholders and Meetings Thereof

Section 3.1. Place of Meeting. Meetings of Stockholders shall be held at the principal office of the Corporation or at such other place, either within or without Nevada, as shall be determined by the Board of Directors.

Section 3.2. Annual Meeting. The annual meeting of Stockholders of the Corporation for the election of directors, and for the transaction of such other business as may properly come before the meeting, shall be held as determined by resolution of the Board of Directors. If a quorum be not present, the meeting may be adjourned from time to time, but no single adjournment shall exceed sixty (60) days. If the election of directors shall not be held at the annual meeting of Stockholders, or at any adjournment thereof, the Board of Directors shall cause the election to be held at a special meeting of Stockholders as soon thereafter as convenient.

Section 3.3. Special Meetings. Special meetings of Stockholders, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the Chairman of the Board of Directors, the Chief Executive Officer, the Board of Directors, or the holders of not less than one-third (1/3) of the voting power of the Corporation. Any holder or holders of not less than one-third (1/3) of the voting power of the Corporation who desire to call a special meeting pursuant to this Article III, Section 3.3 shall notify the Chairman of the Board of Directors in writing that a special meeting of the Stockholders shall be called and shall state the purpose of the meeting and include any information required by applicable law or these Bylaws. Within thirty (30) days after notice to the Chairman of the Board of Directors, the Chairman of the Board of Directors, the Chief Executive Officer, or the Secretary shall set the date, time and location of the Stockholders meeting. Business transacted at any special meeting shall be confined to the purposes stated in the notice thereof.

Section 3.4. Notice of Meeting. Written notice stating the place, day and hour of any annual or special meeting of Stockholders, and the purpose or purposes for which the meeting is called, shall be given not less than ten (10) days nor more than sixty (60) days before the date of the meeting, either personally by mail, or by a form of electronic transmission permitted for such purpose by applicable law and each national securities exchange upon which the Corporation's voting stock is then listed, by or at the direction of the Chairman of the Board of Directors, the Chief Executive Officer, the President (or in his absence by a Vice President), the Secretary, the Board of Directors, or the officer or persons calling the meeting, to each Stockholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be given when deposited in the United States mail postage prepaid, directed to the Stockholder at such Stockholder's address as it appears on the records of the Corporation. If sent by electronic transmission, such notice shall be deemed to be given when sent to the Stockholder at such Stockholder's electronic address as it appears on the records of the Corporation. Failure to deliver such notice or obtain a waiver thereof shall not cause the meeting to be lost, but it shall be adjourned by the Stockholders present for a period not to exceed sixty (60) days until any deficiency to notice or waiver shall be supplied.

Section 3.5. Adjournment. When a meeting is for any reason adjourned to another time, notice will not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting any business may be transacted which might have been transacted at the original meeting.

Section 3.6. Organization. Meetings of Stockholders shall be presided over by the Chairman of the Board of Directors, or in the absence of the Chairman of the Board of Directors, by the Vice Chairman of the Board of Directors, or in his absence by the Chief Executive Officer, or in his absence by the President, or in his absence by a Vice President, or in the absence of the foregoing persons by a chairman designated by the Board of Directors, or in the absence of such designation by a chairman elected at the meeting by a majority of the votes which all Stockholders present in person or by proxy are entitled to cast. The Secretary, or in the absence of the Secretary an Assistant Secretary, shall act as secretary of the meeting, but in the absence of the Secretary and any Assistant Secretary the chairman of the meeting may appoint any person to act as secretary of the meeting.

The order of business at each such meeting shall be as determined by the chairman of the meeting. The chairman of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts and things as are necessary or desirable for the proper conduct of the meeting, including, without limitation, the establishment of procedures for the maintenance of order and safety, limitations on the time allotted to questions or comments on the affairs of the Corporation, restrictions on entry to such meeting after the time prescribed for the commencement thereof and the opening and closing of the voting polls.

Section 3.7. Voting Records. The officer or agent having charge of the stock transfer books for shares of the Corporation shall make, at least ten (10) days, before each meeting of Stockholders, a complete record of the Stockholders entitled to vote at such meeting or any adjournment thereof, arranged in alphabetical order, with the address of and the number of shares held by each, which record, for a period of ten (10) days prior to such meeting, shall be kept on file at the principal office of the Corporation, whether within or without Nevada, and shall be subject to inspection by any Stockholder for any purpose germane to the meeting at any time during the whole time of the meeting. The original stock transfer books shall be prima facie evidence as to who are the Stockholders entitled to examine such record or transfer books or to vote at any meeting of Stockholders.

Section 3.8. Quorum. At each meeting of Stockholders, except where otherwise provided by Title 7, Chapter 78 of the Nevada Revised Statutes or the Articles of Incorporation or these Bylaws, the holders of a majority of the voting power of stock entitled to vote on a matter at the meeting, present in person or represented by proxy, shall constitute a quorum. For purposes of the foregoing, where a separate vote by class or series is required for any matter, the holders of a majority of the voting power of such class or series, present in person or represented by proxy, shall constitute a quorum to take action with respect to that vote on that matter. Two or more classes or series of stock shall be considered a single class if the holders thereof are entitled to vote together as a single class at the meeting. In the absence of a quorum of the holders of a majority of the voting power of any class of stock entitled to vote on a matter, the holders of a majority of the voting power of such class so present or represented may adjourn the meeting of such class from time to time in the manner provided by Section 3.5 of these Bylaws until a quorum of such class shall be so present or represented for a period not to exceed sixty (60) days at any one adjournment. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally notified. The Stockholders present at a duly organized meeting may



continue to transact business until adjourned, notwithstanding the withdrawal of Stockholders so that less than a quorum remains.

Section 3.9. Proxies. A Shareholder may vote either in person or by proxy executed in writing by the Shareholder or by his duly authorized attorney in fact. No proxy shall be valid after six (6) months from the date of its execution, unless otherwise provided in the proxy.

Section 3.10. Action by Written Consent. Unless the Articles of Incorporation or these Bylaws specifically provide otherwise, any action required or permitted to be taken at a meeting of shareholders may be taken without a meeting if, before or after the action, a written consent thereto is signed by shareholders holding at least a majority of the voting power, except that if any greater proportion of voting power is required for such action at a meeting, then such greater proportion of written consents shall be required. In no instance where action is authorized by written consent need a meeting of shareholders be called or noticed.

Section 3.11. Voting. Each outstanding share, regardless of class, shall be entitled to one vote, and each fractional share shall be entitled to a corresponding fractional vote on each matter submitted to a vote at a meeting of Stockholders, except as may be otherwise provided in the Articles of Incorporation. If the Articles of Incorporation provide for more or less than one vote for any class or series of shares on any matter, every reference in these Bylaws to a majority or other proportion of stock shall refer to such a majority or other proportion of the voting power of all of the shares of those classes or series of shares. In the election of directors, each record holder of stock entitled to vote at such election shall have the right to vote in person or by proxy the number of shares owned by him, for as many persons as there are directors to be elected, and for whose election he has the right to vote unless the Articles of Incorporation otherwise provide. Cumulative voting shall not be allowed.

Section 3.12. Advance Notice of Stockholder Proposals. At any annual meeting of Stockholders, proposals by Stockholders and persons nominated for election as directors by Stockholders shall be considered only if advance notice thereof has been timely given as provided herein and such proposals or nominations are otherwise proper for consideration under applicable law and the Articles of Incorporation and Bylaws of the Corporation. To be timely, a Stockholder's notice must be delivered to, or mailed and received by, the Secretary of the Corporation at the principle office of the Corporation not less than ninety (90) nor more than one hundred twenty (120) days prior to the anniversary date of the immediately preceding annual meeting of Stockholders; provided, however that in the event the annual meeting of Stockholders is not within thirty (30) days before or after such anniversary date then notice by the Stockholder must be received not later than the tenth (10th) day following the day on which such notice of the date of the annual meeting was mailed or first publicly announced or disclosed (in a public filing or otherwise), whichever occurs first. Any Stockholder who gives notice of any such proposal shall deliver therewith the text of the proposal to be presented and a brief written statement of the reasons why such Stockholder favors the proposal and setting forth such Stockholder's name and address, the number and class of all shares of each

class of stock of the Corporation beneficially owned by such Stockholder and any material interest of such Stockholder in the proposal (other than as a stockholder). Any Stockholder desiring to nominate any person for election as a director of the Corporation shall deliver with such notice a statement in writing setting forth the name of the person to be nominated, the number and class of all shares of each class of stock of the Corporation beneficially owned by such person, the information regarding such person required by paragraphs (a), (e) and (f) of Item 401 of Regulation S-K adopted by the Securities and Exchange Commission (or the corresponding provisions of any regulation subsequently adopted by the Securities and Exchange Commission applicable to the Corporation), such person's signed consent to serve as a director of the Corporation if elected, such Stockholder's name and address and the number and class of all shares of each class of stock of the Corporation beneficially owned by such Stockholder. The chairman presiding at the meeting, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall determine whether such notice has been duly given and shall direct that proposals and nominees not be considered if such notice has not been given.

#### ARTICLE IV

##### Directors: Powers and Meetings

Section 4.1. General Powers. The business and affairs of the Corporation shall be managed by its Board of Directors, except as otherwise provided in Title 7, Chapter 78 of the Nevada Revised Statutes or the Articles of Incorporation.

Section 4.2. Performance of Duties. A director of the Corporation shall perform his duties as a director, including his duties as a member of any committee of the Board of Directors upon which he may serve, in good faith, in a manner he reasonably believes to be in the best interests of the Corporation, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. In performing his duties, a director shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by persons and groups listed in paragraphs (a), (b), and (c) of this Section 4.2; but he shall not be considered to be acting in good faith if he has knowledge concerning the matter in question that would cause such reliance to be unwarranted. A person who so performs his duties shall not have any liability by reason of being or having been a director of the Corporation. Those persons and groups upon whose information, opinions, reports, and statements a director is entitled to rely are:

- (a) One or more officers or employees of the Corporation whom the director reasonably believes to be reliable and competent in the matters presented;
- (b) Counsel, public accountants, or other persons as to matters which the director reasonably believes to be within such person's professional or expert competence; or
- (c) A committee of the Board of Directors upon which he does not serve, duly

designated in accordance with the provisions of the Articles of incorporation or the Bylaws, as to matters within its designated authority, which committee the director reasonably believes to merit confidence.

Section 4.3. Number; Tenure; Qualification; Chairman. The number of directors which shall constitute the whole Board of Directors of the Corporation shall be fixed from time to time by resolution of the Board of Directors or Stockholders (any such resolution of the Board of Directors or Stockholders being subject to any later resolution of either of them). The number of directors of the Corporation shall be not less than three (3) nor more than ten (10) who need not be Stockholders of the Corporation or residents of the State of Nevada and who shall be elected at the annual meeting of Stockholders or some adjournment thereof, except that there need be only as many directors as there are Stockholders in the event that the outstanding shares are held of record by fewer than three (3) persons. Directors shall hold office until the next succeeding annual meeting of Stockholders or until their successors shall have been elected and shall qualify or until his earlier resignation or removal. No provision of this section shall be restrictive upon the right of the Board of Directors to fill vacancies or upon the right of Stockholders to remove Directors as is hereinafter provided. The Board of Directors may designate one director as the Chairman of the Board of Directors.

Section 4.4. Resignation. Any Director of the Corporation may resign at any time by giving written notice of his resignation to the Board of Directors, the Chief Executive Officer, the President, or the Secretary of the Corporation. Such resignation shall take effect at the date of receipt of such notice or at any later time specified therein and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. When one or more directors shall resign from the Board of Directors, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, each director so appointed to hold office during the remainder of the term of office of the resigning director or directors.

Section 4.5. Annual Meeting. The annual meeting of the Board of Directors shall be held at the same place and on the same day as the annual meeting of Stockholders, and no notice shall be required in connection therewith. The annual meeting of the Board of Directors shall be for the purpose of electing the elective officers of the Corporation and the transaction of such other business as may come before the meeting.

Section 4.6. Regular Meetings. Regular meetings of the Board of Directors may be held at such places within or without Nevada and at such times as the Board of Directors may from time to time determine, and if so determined notice thereof need not be given.

Section 4.7. Special Meetings. Special meetings of the Board of Directors may be called at any time by the Chairman of the Board of Directors, the Vice Chairman of the Board of Directors, the Chief Executive Officer, or by any two (2) directors, and may be held within or outside the State of Nevada at such time and place as the notice or waiver thereof may specify. Notice of such meetings shall be mailed to the last known address of each director at least five (5) days, or shall be given to a director in person or by telephone, facsimile or email at

least forty-eight (48) hours prior to the date or time fixed for the meeting. Special meetings of the Board of Directors may be held at any time that all directors are present in person, and presence of any director at a meeting shall constitute waiver of notice of such meeting, except as otherwise provided by law. Unless specifically required by law, the Articles of Incorporation or these Bylaws, neither the business to be transacted at, nor the purpose of, any meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

Section 4.8. Meetings by Telephone. Members of the Board of Directors or any committee designated by the Board of Directors may participate in a meeting of the Board of Directors or committee by means of telephone conference or similar communications equipment by which all persons participating in the meeting can hear each other at the same time. Such participation shall constitute presence in person at the meeting.

Section 4.9. Quorum. A quorum at all meetings of the Board of Directors shall consist of a majority of the number of directors then holding office, but a smaller number may adjourn from time to time without further notice, until a quorum be secured. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless the act of a greater number is required by Title 7, Chapter 78 of the Nevada Revised Statutes, the Articles of Incorporation or these Bylaws.

Section 4.10. Manner of Acting. If a quorum is present, the affirmative vote of a majority of the directors present at the meeting and entitled to vote on that particular matter shall be the act of the Board of Directors, unless the vote of a greater number is required by law or the Articles of Incorporation.

Section 4.11. Action by Written Consent. Unless the Articles of Incorporation or these Bylaws specifically provide otherwise, any action required or permitted to be taken at a meeting of the Board of Directors, or any committee designated by such board may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, signed by each director or committee member, and delivered to the Secretary for inclusion in the minutes or for filing with the corporate records. Action taken under this section is effective when all directors or committee members have signed the consent, unless the consent specifies a different effective date. Such consents shall have the same force and effect as a unanimous vote of the directors or committee members and may be stated as such in any document.

Section 4.12. Vacancies. Any vacancy occurring in the Board of Directors may be filled by the affirmative vote of a majority of the remaining directors, though less than a quorum of the Board of Directors. A director elected or appointed to fill a vacancy shall be elected or appointed for the unexpired term of his predecessor in office, and shall hold such office until his successor is fully elected and shall qualify or until his earlier resignation or removal. Any directorship to be filled by reason of an increase in the number of directors shall be filled by the affirmative vote of a majority of the directors then in office, which may be less than a quorum, or by an election at an annual meeting, or at a special meeting, of Stockholders called for that purpose. Any director elected or appointed to fill a vacancy shall hold office until the next annual meeting of Stockholders and until his successor shall have been elected and shall qualify or until his earlier resignation or removal.

Section 4.13. Compensation. Unless otherwise restricted by the Articles of Incorporation or these Bylaws, directors may receive fees, compensation, and expense reimbursement as may be established by appropriate resolution of the Board of Directors for service on the Board of Directors and its committees, including without limitation attendance at and travel to meetings of the Board of Directors and its committees.

Section 4.14. Committees. The Board of Directors may by resolution designate one or more directors to constitute one or more committees which each shall have and may exercise all authority in the management of the Corporation as the Board of Directors to the extent provided in such resolution for such committee; but no such committee shall have the authority of the Board of Directors in reference to amending the Articles of Incorporation, adopting a plan of merger or consolidation, recommending to the Stockholders the sale, lease, exchange, or other disposition of all or substantially all of the property and assets of the Corporation otherwise than in the usual and regular course of its business, recommending to the Stockholders a voluntary dissolution of the Corporation or a revocation thereof, or amending the Bylaws of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. Unless the Board of Directors appoints alternative members pursuant to this bylaw, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any absent or disqualified member of the committee. The designation of such committees and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any member thereof, of any responsibility imposed by law. Each member of the Board of Directors, whether or not such director is a member of such committees, shall be entitled to receive notice of each meeting of each committee of the Board of Directors and each member of the Board of Directors shall be entitled to attend each meeting of any such committee, whether or not such director is a member of such committee.

Section 4.15. Committee Rules. Unless the Board of Directors otherwise provides and subject to Section 4.1 of these Bylaws, a majority of the entire authorized number of members of such committee shall constitute a quorum for the transaction of business, the vote of a majority of the members present at a meeting at the time of such vote if a quorum is then present shall be the act of such committee, and in other respects each committee shall conduct its business in the same manner as the Board of Directors conducts its business pursuant to this Article IV of these Bylaws.

Section 4.16. Removal. The Stockholders may, at a meeting called for the express purpose of removing directors, by the vote of Stockholders representing not less than two-thirds of the voting power of the issued and outstanding stock entitled to voting power, remove the entire Board of Directors or any lesser number, with or without cause.

Section 4.17. Organization. Meetings of the Board of Directors shall be presided over by the Chairman of the Board of Directors, or in his absence by the Vice Chairman of the Board of Directors, or in his absence by Chief Executive Officer, or in his absence by a chairman chosen at the meeting by a majority of the directors present at the meeting.

ARTICLE V

Officers

Section 5.1. Officers; Election; Term of Office. The elective officers of the Corporation shall be a Chief Executive Officer, a President, any number of Vice Presidents, a Secretary, any number of Assistant Secretaries, a Treasurer and any number of Assistant Treasurers, who shall be elected annually by the Board of Directors at its annual meeting. Unless removed in accordance with the procedures established by law and these Bylaws or unless provided in the resolution of the Board of Directors electing any officer, the said officers shall serve until the next succeeding annual meeting of the Board of Directors and until their respective successors are elected and shall qualify or until their earlier resignation or removal. Any two or more offices may be held by the same person at the same time. The officers of the Corporation shall be natural persons of the age of eighteen (18) years or older. The Board of Directors may elect or appoint such other officers and agents as it may deem advisable, who shall hold office during the pleasure of the Board of Directors, and shall be paid such compensation as may be directed by the Board of Directors.

Section 5.2. Powers and Duties. The officers of the Corporation shall respectively exercise and perform the respective powers, duties and functions as are stated below, and as may be assigned to them by the Board of Directors, not inconsistent with these Bylaws.

(a) Chief Executive Officer. The Chief Executive Officer shall, subject to the control of the Board of Directors, have the ultimate responsibility for the management and control of the affairs and business of the Corporation, and shall perform all duties and have all powers which are commonly incident to the office of Chief Executive Officer or which are delegated to him by the Board of Directors or as may be provided by law. In the absence of the Chairman of the Board of Directors and the Vice Chairman of the Board of Directors, he shall preside at all meetings of Stockholders and of the Board of Directors at which he shall be present.

(b) President. The President shall, subject to the control of the Board of Directors and the Chief Executive Officer, have general supervision, direction and control of the business and officers of the Corporation. In the absence of the Chairman of the Board of Directors, the Vice Chairman of the Board of Directors and the Chief Executive Officer, he shall preside at all meetings of the Stockholders and of the Board of Directors at which he shall be present. The Chief Executive Officer, the President, a Vice President, the Secretary or an Assistant Secretary, unless some other person is specifically authorized by the Board of Directors, shall sign all bonds, deeds, mortgages, leases and contracts of the Corporation. The President shall perform all the duties commonly incident to his office and such other duties as the Board of Directors, the Chairman of the Board of Directors or the Chief Executive Officer shall designate or as may be provided by law.

(c) Vice President. In the absence or disability of the President, or at the Chief Executive Officer's or President's request, the Vice President or Vice Presidents, in order of their rank as fixed by the Board of Directors, and if not ranked, the Vice

Presidents in the order designated by the Board of Directors, or, in the absence of such designation, in the order designated by the Chief Executive Officer or the President, shall perform all the duties of the President, and when so acting, shall have all the powers of, and be subject to all the restrictions on the President. Each Vice President shall have such other powers and perform such other duties as may from time to time be assigned to him by the Board of Directors, the Chairman of the Board of Directors, the Chief Executive Officer or the President or as may be provided by law.

(d) Secretary. The Secretary shall keep accurate minutes of all meetings of the Stockholders, the Board of Directors and any committees. He shall keep, or cause to be kept, a register of the Stockholders of the Corporation and shall be responsible for the giving of notice of meetings of the Stockholders, the Board of Directors and any committees, and shall see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law. The Secretary shall be custodian of the records and of the seal of the Corporation and shall attest the affixing of the seal of the Corporation when so authorized. The Secretary shall perform all duties commonly incident to his office and such other duties as may from time to time be assigned to him by the Board of Directors, the Chairman of the Board of Directors, the Chief Executive Officer or the President or as may be provided by law.

(e) Assistant Secretary. An Assistant Secretary may, at the request of the Secretary, or in the absence or disability of the Secretary, perform all the duties of the Secretary. He shall perform such other duties as may assigned to him by the Board of Directors, the Chairman of the Board of Directors, the Chief Executive Officer, the President or the Secretary or as may be provided by law.

(f) Treasurer. The Treasurer, subject to the order of the Board of Directors, shall have the care and custody of the money, funds, securities, receipts, valuable papers and documents of the Corporation. The Treasurer shall keep accurate books of accounts of the Corporation's transactions, which shall be the property of the Corporation, and shall render financial reports and statements of condition of the Corporation when so requested by the Board of Directors, the Chairman of the Board of Directors, the Chief Executive Officer or the President. The Treasurer shall perform all duties commonly incident to his office and such other duties as may, from time to time, be assigned to him by the Board of Directors, the Chairman of the Board of Directors, the Chief Executive Officer or the President or as may be provided by law.

(g) Assistant Treasurer. An Assistant Treasurer may, at the request of the Treasurer, or in the absence or disability of the Treasurer, perform all of the duties of the Treasurer. He shall perform such other duties as may be assigned to him by the Board of Directors, the Chairman of the Board of Directors, the Chief Executive Officer, the President or the Treasurer or as may be provided by law.

(h) Other Officers. The other officers, if any, of the Corporation shall have such powers and duties in the management of the Corporation as shall be stated in a resolution of the Board of Directors which is not inconsistent with these Bylaws and, to the extent not so stated, as generally pertain to their respective offices, subject to the

control of the Board of Directors. The Board of Directors may require any officer, agent or employee to give security for the faithful performance of his duties.

Section 5.3. Salaries. All officers of the Corporation may receive salaries or other compensation if so ordered and fixed by the Board of Directors. The Board of Directors shall have the authority to fix salaries in advance for stated periods or render the same retroactive as the Board of Directors may deem advisable.

Section 5.4. Inability to Act. In the event of absence or inability of any officer to act, the Board of Directors may delegate the power or duties of such officer to any other officer, director or person whom it may select.

Section 5.5. Resignation; Removal; Vacancies. Any officer or agent may resign at any time upon written notice to the Board of Directors, the Chief Executive Officer, the President or the Secretary of the Corporation. Such resignation shall take effect at the time specified therein, and unless otherwise specified therein no acceptance of such resignation shall be necessary to make it effective. Any officer or agent may be removed by the Board of Directors whenever, in its judgment, the best interest of the Corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not, of itself, create contract rights. Any vacancy occurring in any office of the Corporation by death, resignation, removal or otherwise may be filled by the Board or Directors at any regular or special meeting.

## ARTICLE VI

### Finance

Section 6.1. Reserve Fund. The Board of Directors, in its uncontrolled discretion, may set aside from time to time, out of the net profits or earned surplus of the Corporation, such sum or sums as it deems expedient as a reserve fund to meet contingencies, for equalizing dividends, for maintaining any property of the Corporation, and for any other purposes.

Section 6.2. Checks and Deposits. The monies of the Corporation shall be deposited in the name of the Corporation in such bank or banks or trust companies, as the Board of Directors shall designate, and may be drawn out only on checks signed in the name of the Corporation by such person or persons as the Board of Directors by appropriate resolution may direct. Notes and commercial paper, when authorized by the Board of Directors, shall be signed in the name of the Corporation by such officer or officers or agent or agents as shall thereto be authorized from time to time.

Section 6.3. Fiscal Year. The fiscal year of the Corporation shall end on December 31 of each year or shall be as otherwise determined by resolution of the Board of Directors.



ARTICLE VII

Bankruptcy/Insolvency

The Corporation shall not, without the affirmative vote of the whole Board of Directors of the Corporation, institute any proceedings to adjudicate the Corporation a bankrupt or insolvent, consent to the institution of bankruptcy or insolvency proceedings against the Corporation, file a petition seeking or consenting to reorganization or relief under any applicable federal or state law relating to bankruptcy, consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Corporation or a substantial part of its property or admit its inability to pay its debts generally as they become due or authorize any of the foregoing to be done or taken on behalf of the Corporation.

ARTICLE VIII

Waiver of Notice

With any notices required by law or under the Articles of Incorporation or these Bylaws to be given to any Stockholder or director of the Corporation, a waiver thereof in writing signed by the person entitled to such notice, whether before, at, or after the time stated therein, shall be the equivalent to the giving of such notice.

ARTICLE IX

Indemnification of Directors, Officers and Others

Section 9.1. To the full extent permitted by Title 7, Chapter 78 of the Nevada Revised Statutes, Section 7502, as the same may be amended from time to time, the Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal (other than an action by or in the right of the Corporation) by reason of the fact that he is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorney's fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he conducted himself in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal action or proceedings, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, or conviction, or upon a plea of nolo contendere or its equivalent, shall not of itself create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the

best interests of the Corporation and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

Section 9.2. The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as director, officer, employee or agent of another corporation, partnership, joint venture, trust, or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interest of the Corporation, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the Corporation unless and only to the extent that the Court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

Section 9.3. To the extent that a director, officer, or employee or agent of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Sections 9.1 and 9.2 of this Article IX, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

Section 9.4. Any indemnification under Section 9.1 and 9.2 of this Article IX (unless ordered by a Court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the officer, director and employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in Section 9.1 and 9.2 of this Article IX. Such determination shall be made (a) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (b) if a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (c) by the affirmative vote of the holders of a majority of the shares entitled to vote and represented at a meeting called for such purpose.

Section 9.5. Expenses (including attorneys fees) incurred in defending a civil or criminal action, suit or proceeding may be paid by the Corporation as they are incurred and in advance of the final disposition of such action, suit or proceeding as authorized by the Board of Directors as provided in Section 9.4 of this Article IX upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount if it shall ultimately be determined by a final order of a court of competent jurisdiction that he or she is not entitled to be indemnified by the Corporation as authorized in this Article IX.

Section 9.6. The Board of Directors may exercise the Corporation's power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or

other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability hereunder or otherwise.

Section 9.7. The indemnification provided by this Article IX shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under the Articles of Incorporation, these Bylaws, agreement, vote or shareholders or disinterested directors, Title 7, Chapter 78 of the Nevada Revised Statutes, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and representatives of such person.

Section 9.8. The Corporation shall have the power to indemnify current or former directors, officers, employees and agents to the fullest extent provided by the laws of the State of Nevada.

#### ARTICLE X

##### Amendments

These Bylaws may be amended or repealed, and new Bylaws may be adopted, at the annual meeting of the Board of Directors or at any regular or special meeting of the Board of Directors.

#### ARTICLE XI

##### Miscellaneous

Section 11.1. Loans. The Corporation may loan money to, guarantee the obligations of and otherwise assist directors, officers and employees of the Corporation, or directors of another corporation of which the Corporation owns a majority of the voting stock, only upon compliance with the requirements of Title 7, Chapter 78 of the Nevada Revised Statutes.

No loans shall be contracted on behalf of the Corporation and no evidence of indebtedness shall be issued in its name unless authorized by resolution of the Board of Directors. Such activity may be general or confined to specific instances.

Section 11.2. Contracts. The Board of Directors may authorize any officer or officers, agent or agents to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation. Such authority may be general or confined to specific instances.

/s/ R. Stanton Dodge

R. Stanton Dodge  
Secretary

**CLASS A COMMON STOCK**  
PAR VALUE \$001

**CLASS A COMMON STOCK**  
THIS CERTIFICATE IS TRANSFERABLE IN  
CANTON, MA AND JERSEY CITY, NJ

Certificate Number  
**ZQ 000000**

Shares  
\*\*\*\*\*600620\*\*\*\*\*  
\*\*\*\*\*600620\*\*\*\*\*  
\*\*\*\*\*600620\*\*\*\*\*  
\*\*\*\*\*600620\*\*\*\*\*  
\*\*\*\*\*600620\*\*\*\*\*

**ECHOSTAR HOLDING CORPORATION**  
INCORPORATED UNDER THE LAWS OF THE STATE OF NEVADA

THIS CERTIFIES THAT  
**MIR SAMPLE & MRS SAMPLE & MRS SAMPLE & MRS SAMPLE**  
CUSIP 278768 10 6  
SEE REVERSE FOR CERTAIN DEFINITIONS

is the owner of  
**SIX HUNDRED THOUSAND SIX HUNDRED AND TWENTY**

FULLY-PAID AND NON-ASSESSABLE SHARES OF THE CLASS A COMMON STOCK OF  
**EchoStar Holding Corporation (hereinafter called the "Company")**, transferable on the books of the Company in person or by duly authorized attorney, upon surrender of this Certificate properly endorsed. This Certificate and the shares represented hereby, are issued and shall be held subject to all of the provisions of the Articles of Incorporation, as amended, and the By-Laws, as amended, of the Company (copies of which are on file with the Company and with the Transfer Agent), to all of which each holder, by acceptance hereof, assents. This Certificate is not valid unless countersigned and registered by the Transfer Agent and Registrar.

Witness the facsimile seal of the Company and the facsimile signatures of its duly authorized officers.

*[Signature]*  
Chief Executive Officer

*[Signature]*  
Secretary

**ECHOSTAR HOLDING CORPORATION**  
CORPORATE SEAL  
2007  
NEVADA

DATED <<Month Day, Year>>  
COUNTERSIGNED AND REGISTERED:  
**COMPUTERSHARE TRUST COMPANY, N.A.**  
TRANSFER AGENT AND REGISTRAR.

By \_\_\_\_\_ AUTHORIZED SIGNATURE

SECURITY INSTRUCTIONS ON REVERSE

1234567

ECHOSTAR HOLDING CORPORATION

THE COMPANY WILL FURNISH WITHOUT CHARGE TO EACH SHAREHOLDER WHO SO REQUESTS, A SUMMARY OF THE POWERS, DESIGNATIONS, PREFERENCES AND RELATIVE, PARTICIPATING, OPTIONAL OR OTHER SPECIAL RIGHTS OF EACH CLASS OF STOCK OF THE COMPANY AND THE QUALIFICATIONS, LIMITATIONS OR RESTRICTIONS OF SUCH PREFERENCES AND RIGHTS, AND THE VARIATIONS IN RIGHTS, PREFERENCES AND LIMITATIONS DETERMINED FOR EACH SERIES, WHICH ARE FIXED BY THE ARTICLES OF INCORPORATION OF THE COMPANY, AS AMENDED, AND THE RESOLUTIONS OF THE BOARD OF DIRECTORS OF THE COMPANY, AND THE AUTHORITY OF THE BOARD OF DIRECTORS TO DETERMINE VARIATIONS FOR FUTURE SERIES. SUCH REQUEST MAY BE MADE TO THE OFFICE OF THE SECRETARY OF THE COMPANY OR TO THE TRANSFER AGENT. THE BOARD OF DIRECTORS MAY REQUIRE THE OWNER OF A LOST OR DESTROYED STOCK CERTIFICATE, OR HIS LEGAL REPRESENTATIVES, TO GIVE THE COMPANY A BOND TO INDEMNIFY IT AND ITS TRANSFER AGENTS AND REGISTRARS AGAINST ANY CLAIM THAT MAY BE MADE AGAINST THEM ON ACCOUNT OF THE ALLEGED LOSS OR DESTRUCTION OF ANY SUCH CERTIFICATE.

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM	- as tenants in common	UNIF GIFT MIN ACT- . . . . . Custodian . . . . .	(Cust)	(Minor)
TEN ENT	- as tenants by the entireties	under Uniform Gifts to Minors Act. . . . .		(State)
JT TEN	- as joint tenants with right of survivorship and not as tenants in common	UNIF TRF MIN ACT . . . . . Custodian (until age. . . ). . . . .	(Cust)	(Minor)
		under Uniform Transfers to Minors Act . . . . .		(State)

Additional abbreviations may also be used though not in the above list

For value received, \_\_\_\_\_ hereby sell, assign and transfer unto

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

(PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS, INCLUDING POSTAL ZIP CODE, OF ASSIGNEE)

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\_\_\_\_\_ Shares  
of the Class A Common Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint

\_\_\_\_\_ Attorney  
to transfer the said stock on the books of the within-named Corporation with full power of substitution in the premises.

Dated: \_\_\_\_\_ 20 \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Notice: The signature to this assignment must correspond with the name as written upon the face of the certificate, in every particular, without alteration or enlargement, or any change whatever.

Signature(s) Guaranteed: Medallion Guarantee Stamp

THE SIGNATURE(S) SHOULD BE GUARANTEED BY AN ELIGIBLE GUARANTOR INSTITUTION (Banks, Stockbrokers, Savings and Loan Associations and Credit Unions) WITH MEMBERSHIP IN AN APPROVED SIGNATURE GUARANTEE MEDALLION PROGRAM, PURSUANT TO S.E.C. RULE 17Ad-15

FORM OF  
TRANSITION SERVICES AGREEMENT

THIS TRANSITION SERVICES AGREEMENT is entered into as of [•], 2007, by and between EchoStar Communications Corporation, a Nevada corporation (“DISH”), and EchoStar Holding Corporation, a Nevada corporation (the “Company”).

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

WHEREAS, DISH and the Company have entered into that certain Separation Agreement, dated as of [•] (the “Separation Agreement”), in order to carry out, effect and consummate the Separation; and

WHEREAS, to facilitate the Separation, DISH and the Company deem it to be appropriate and in the best interests of DISH and the Company that DISH provide certain services to the Company pursuant to the terms and conditions set forth herein.

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

ARTICLE I

Definitions

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

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

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

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

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

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

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

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

(h) "Systems" means the DISH Systems or the Company Systems, individually, or the DISH Systems and the Company Systems, collectively, as the context may indicate.

(i) "Third Party" means a Person that is not an Affiliate of any party hereto.

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

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

(ii) references to any Person include such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement, and a reference to such Person's "Affiliates" shall be deemed to mean such Person's Affiliates following the Distribution;

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



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

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

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

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

(viii) references to any Applicable Law (including statutes and ordinances) means such law (including all rules and regulations promulgated thereunder) as amended, modified, codified or reenacted, in whole or in part, and in effect at the time of determining compliance or applicability;

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

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

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

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

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

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

ARTICLE II

Performance of Services

Section 2.1 Description of the Services. Following the Distribution Date, DISH shall provide, or cause to be provided, the following services (collectively, the “Services”) to the Company in support of the Separated Businesses:

- (a) Financial Services. DISH or its designee shall provide each of the financial services specified in Schedule 2.1.1 (the “Financial Services”) to the Company or its Subsidiaries, in accordance with the terms and conditions for such Financial Services listed on Schedule 2.1.1.
- (b) IT Services. DISH or its designee shall provide each of the IT services specified in Schedule 2.1.2 (the “IT Services”) to the Company or its Subsidiaries, in accordance with the terms and conditions for such IT Services listed on Schedule 2.1.2.
- (c) Travel and Event Coordination Services. DISH or its designee shall provide each of the travel and events coordination services specified in Schedule 2.1.3 (the “Travel and Event Coordination Services”) to the Company or its Subsidiaries, in accordance with the terms and conditions for such Travel and Event Coordination Services listed on Schedule 2.1.3.
- (d) Human Resources Services. DISH or its designee shall provide each of the human resources services (including human resources development (training)) specified in Schedule 2.1.4 (the “Human Resources Services”) to the Company or its Subsidiaries, in accordance with the terms and conditions for such Human Resources Services listed on Schedule 2.1.4.
- (e) Program Management Services. DISH or its designee shall provide each of the program management services specified in Schedule 2.1.5 (the “Program Management Services”) to the Company or its Subsidiaries, in accordance with the terms and conditions for such Program Management Services listed on Schedule 2.1.5.
- (f) Internal Audit Services. DISH or its designee shall provide each of the internal audit and corporate quality services specified in Schedule 2.1.6 (the “Internal Audit Services”) to the Company or its Subsidiaries, in accordance with the terms and conditions for such Internal Audit Services listed on Schedule 2.1.6.
- (g) Legal Services. DISH or its designee shall provide each of the legal services specified in Schedule 2.1.7 (the “Legal Services”) to the Company or its Subsidiaries, in accordance with the terms and conditions for such Legal Services listed on Schedule 2.1.7.
- (h) Accounting and Tax Services. DISH or its designee shall provide each of the accounting and tax services specified in Schedule 2.1.8 (the “Accounting and Tax Services”) to the Company or its Subsidiaries, in accordance with the terms and conditions for such Accounting and Tax Services listed on Schedule 2.1.8.
- (i) Other Services: To the extent fees for a specific Service are not provided in Schedule 2.1.1 through Schedule 2.1.8, then DISH or its designee shall provide such Service in accordance with the terms and conditions listed on Schedule 2.1.9.

Section 2.2 Schedules Update. To the extent any Services are mischaracterized in any of Schedule 2.1.1 through Schedule 2.1.9 (collectively, the “Service Schedules”), DISH and the Company shall negotiate in good faith to amend such Service Schedules as appropriate.

Section 2.3 Service Levels. With respect to Services that DISH provided, or caused to be provided, to the Separated Businesses prior to the Distribution Date, DISH shall at all times perform such Services (i) with at least the same degree of care, skill and diligence with which DISH performs similar services for itself, consistent with past practices, including, with respect to the type, quality and timeliness of such Services, subject to variation in the provision of such Services agreed to by the parties hereto, but, in no case may such degree of care, skill and diligence be less than the degree of care, skill and diligence with which DISH historically has performed such Services for the benefit of the Separated Businesses prior to the Distribution Date, (ii) with the use of reasonable care, (iii) in material compliance with Applicable Laws and (iv) with substantially the same priority under comparable circumstances as it provides such services to itself and its Subsidiaries.

Section 2.4 Additional Services. If the Company reasonably determines that additional transition services of the type previously provided by the DISH or its designee to the Separated Businesses are necessary to conduct the Separated Businesses and the Company or its Affiliates are not able to provide such services to the Separated Businesses (each such service an “Additional Service”), then the Company may provide written notice thereof to DISH. Upon receipt of such notice by DISH, if DISH is willing, in its sole discretion, to provide such Additional Service, the parties hereto will negotiate in good faith an amendment to the Services Schedules setting forth the Additional Service, the terms and conditions for the provision of such Additional Service and the Fees (as defined below) payable by the Company for such Additional Service, such Fees to be determined on an arm’s-length basis and at fair market value.

Section 2.5 Third Party Services. Each party hereto acknowledges and agrees that certain of the Services to be provided under this Agreement have been, and will continue to be, provided (in accordance with this Agreement) to the Company, as applicable, by Third Parties designated by DISH responsible for providing such Services. To the extent so provided, DISH shall use commercially reasonable efforts to (a) cause such Third Parties to provide such Services under this Agreement and/or (b) enable the Company and its Affiliates to avail itself of such Services; provided, however, that if any such Third Party is unable or unwilling to provide any such Services, DISH shall use its commercially reasonable efforts to determine the manner in which such Services can best be provided.

Section 2.6 Cost of Providing the Services. Unless otherwise expressly set forth in this Agreement, DISH shall bear all costs of providing the Services (including all out-of-pocket and third-party expenses incurred by DISH in order to provide the Services).

### ARTICLE III

#### Service Disruptions

Section 3.1 Contingency Plans. DISH agrees to use commercially reasonable efforts, consistent with its practices for itself and its divisions and Affiliates, to avoid any inability to provide the Services. In the event of a disaster, DISH agrees to use the same degree of care to restore the Services as DISH would use to restore similar services for itself and as provided in Section 3.3, but in any event

no less than commercially reasonable efforts. In the event of scheduled downtime, DISH shall provide notice to the Company Contract Manager (as defined below) with as much notice as is reasonably possible under the circumstances.

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

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

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

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

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

#### ARTICLE IV

##### Cooperation

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

Section 4.2 Consents. (a) DISH shall, and shall cause its Affiliates to, cooperate to obtain (i) all Consents for any Third Party software or other Third Party intellectual property related to the provision of the Services sufficient to enable DISH or its designee to perform the Services in accordance with this Agreement and (ii) all other Consents to allow DISH to provide the Services and to allow the Company to access and use the Services (collectively, the "Required Consents"); provided, however, that DISH shall not be obligated under this Agreement to pay any consideration, grant any concession or incur any Liability to any third Person to obtain any such Required Consent. Schedule 4.2 sets forth a list of all Required Consents and whether such Consents have been obtained as of the date hereof.

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

Section 4.3 Primary Points of Contact for Agreement.

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

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

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

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

#### Section 4.4 Steering Committee.

(a) Size and Composition. DISH shall appoint two (2) members of its management staff and the Company shall appoint two (2) members of its management staff to serve on a steering committee (the "Steering Committee"). Either party hereto may change its Steering Committee members from time to time upon written notice to the other party; provided, however, that the DISH Contract Manager and the Company Contract Manager shall at all times remain as members of the Steering Committee. In addition, the parties hereto may mutually agree to increase or decrease the size, purpose or composition of the Steering Committee in an effort for DISH to better provide, and for the Company to better utilize, the Services.

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

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

Section 4.6 Dispute Resolution. The procedures for discussion and negotiation set forth in this Section 4.6 shall apply to all disputes, controversies or claims (whether arising in contract, tort or

otherwise) that may arise out of or relate to, or arise under or in connection with this Agreement or the transactions contemplated hereby.

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

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

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

## ARTICLE V

### Fees

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

Section 5.2 Taxes. To the extent required or permitted by Applicable Law, there shall be added to any Fees due under this Agreement, and the Company agrees to pay to DISH, amounts equal to any taxes, however designated or levied, based upon such Fees, or upon this Agreement or the Systems,

Services or materials provided under this Agreement, or their use, including state and local privilege or excise taxes based on gross revenue and any taxes or amounts in lieu thereof paid or payable by the Company. In the event taxes are not added to an invoice from DISH, the Company shall be responsible to remit to the appropriate tax jurisdiction any additional amounts due including tax, interest and penalty. If additional amounts are determined to be due on the Services provided hereunder as a result of an audit by a tax jurisdiction, the Company agrees to reimburse DISH for the additional amounts due including tax, interest and penalty. DISH will be responsible for penalty or interest associated with its failure to remit invoiced taxes. The parties hereto further agree that no party hereto shall be required to pay any franchise taxes, taxes based on the net income of the other party hereto or personal property taxes on property owned or leased by a party hereto.

## ARTICLE VI

### Invoice and Payment; Audit

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

Section 6.2 Timing of Payment; No Offsets. The Company will pay all undisputed amounts due pursuant to this Agreement within 60 days after the date upon which each such statement that is required to be provided hereunder is received by the Company. The Company shall not offset any amounts owing to it by DISH or any of its Affiliates against amounts payable by the Company hereunder or any other agreement or arrangement.

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

(a) In the event that the parties hereto are unable to agree after reasonable negotiation, in accordance with Sections 4.6(a) and 4.6(b), upon the Disputed Fee, the parties hereto shall jointly select a qualified unaffiliated independent third party to determine the fair value (the "Arbitrator"). If the parties hereto are unable to agree on an Arbitrator within 10 days of the receipt of a Fee Dispute Notice by DISH, then there shall be an arbitral tribunal consisting of 3 neutral arbitrators of (the "Tribunal") whom each party hereto shall select one within 10 days of the receipt of a Fee Dispute Notice by DISH. The two party-appointed arbitrators shall select the third arbitrator within 10 days of the nomination of the second arbitrator. The determination of the Arbitrator or Tribunal, as applicable, with respect to such disagreement shall be completed within 30 days after the appointment of the



Arbitrator or Tribunal, as applicable, and such determination shall be final and binding upon the parties hereto. The Arbitrator or Tribunal, as applicable, shall adopt the position of either the Company or DISH with respect to the Disputed Fees. The fees, costs and expenses of the Arbitrator or Tribunal, as applicable, selected in the event of a dispute shall be paid by the party hereto who the Arbitrator or Tribunal, as applicable, did not side with in its decision.

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

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

## ARTICLE VII

### Independence; Ownership of Assets

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

### Section 7.2 Ownership of Assets.

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

interest that the Company or such contractor, Affiliate or Third Party may have in such DISH Systems or enhancements thereof or improvements thereto.

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

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

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

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

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

ARTICLE VIII

Confidentiality

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

ARTICLE IX

No Agency Relationship

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

ARTICLE X

Term and Termination

Section 10.1 Term.

(a) Term of Agreement. This Agreement shall commence on the Distribution Date and shall end on the earliest of: (i) the date all Services have expired in accordance with the terms of this Agreement; (ii) the date all Services have been terminated in accordance with the terms of this Agreement; or (iii) the secondary anniversary of the Distribution Date.

(b) Term of Services. DISH shall provide each Service beginning on the Distribution Date, or as otherwise set forth in the Service Schedules or agreed to by the parties hereto in writing and continuing for a period equal to the service term set forth in the "Service Term" column of the Service Schedules, or as otherwise agreed to by the parties hereto in writing, unless renewed or sooner terminated in accordance with the provisions of the Agreement. To the extent the term for a specific Service is not provided in this Agreement or the Service Schedules, the term for such Service shall be no longer than 2 years following the Distribution Date.

Section 10.2 Termination.

(a) Termination of Services. The Company may terminate its right to receive any particular Service for any or no reason by providing DISH not less than 30 days prior written notice (the "Termination Notice") setting forth in reasonable detail the Services to be terminated (the "Terminated Services") and the termination date (the "Termination Date") for each Terminated Service that shall not be less than 30 days from the receipt of the Termination Notice by DISH. Beginning on such Termination Date, the Company shall not be obligated to pay any Fees in connection with such

Terminated Services other than Fees owed by the Company to DISH for such Terminated Services prior to the Termination Date. The Company shall, as soon as practicable but no later than 10 Business Days after the Company realizes that a Service is no longer required by the Company and to be provided pursuant to the Agreement, deliver a Termination Notice with respect to such Service in accordance with [Section 10.2\(a\)](#).

(b) [Termination for Convenience](#). The Company may terminate this Agreement for any or no reason by providing DISH not less than 60 days prior written notice setting forth the termination date for this Agreement.

(c) [Termination for Breach](#). If a party hereto materially breaches any of its obligations under this Agreement, and does not cure such default within 30 days after receiving written notice thereof from the non-breaching party, then the non-breaching party may, at its option, terminate any Service affected by such breach or this Agreement in its entirety by providing written notice of termination to the breaching party, which termination shall be effective immediately upon receipt of such termination notice.

(d) [Bankruptcy Termination](#). This Agreement may be terminated by either party hereto upon at least 30 days prior written notice if the other party hereto is declared insolvent or bankrupt, or makes an assignment for the benefit of creditors, or a receiver is appointed or any proceeding is demanded by, for or against the other under any provision of the Federal Bankruptcy Act. Any termination of this Agreement shall be without prejudice to any rights or obligations of the parties hereto accruing prior to such termination including the right to payment of unpaid amounts owing for services performed prior to termination.

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

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

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

## ARTICLE XI

### [Indemnification](#)

Section 11.1 [Indemnification by the Company](#). The Company shall indemnify, defend and hold harmless the DISH Indemnified Parties for any Losses and Expenses incurred by them in

connection with or arising out of any (i) breach of this Agreement by the Company, its Affiliates or employees and (ii) Third Party claims arising out of the provision of the DISH Services, except to the extent that such third Person claims for Losses and Expenses are finally determined by a final non-appealable decision of a court having jurisdiction over the Company and DISH to have arisen out of the material breach of this Agreement, gross negligence, bad faith or willful misconduct of DISH, its Affiliates, employees, suppliers or contractors in providing the DISH Services.

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

Section 11.3 Limitations and Liability. Each party hereto shall have a duty to mitigate the Losses and Expenses for which the other is responsible hereunder. EXCEPT FOR CLAIMS ARISING OUT OF OR RELATING TO ARTICLE VIII, IN NO EVENT SHALL ANY PARTY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL (INCLUDING LOSS OF REVENUES OR PROFITS), EXEMPLARY OR PUNITIVE DAMAGES OR THE LIKE ARISING UNDER ANY LEGAL OR EQUITABLE THEORY OR ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT (OR THE PROVISION OF SERVICES HEREUNDER), ALL OF WHICH ARE HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES REGARDLESS OF WHETHER OR NOT ANY PARTY TO THIS AGREEMENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

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

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

Section 11.6 Indemnification Procedures. All claims for indemnification pursuant to this Article XI shall be made in accordance with the provisions set forth in Sections 5.3 and 5.4 of the Separation Agreement.

## ARTICLE XII

### Miscellaneous

Section 12.1 Entire Agreement. This Agreement, including the Schedules hereto and the sections of the Separation Agreement referenced herein, constitutes the entire agreement between the parties hereto with respect to the subject matter contained herein, and supersedes all prior agreements, negotiations, discussions, understandings, writings and commitments between the parties hereto with respect to such subject matter.

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

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

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

Section 12.5 Waiver. Any term or provision of this Agreement may be waived, or the time for its performance may be extended, by the party or the parties hereto entitled to the benefit thereof. Any such waiver shall be validly and sufficiently given for the purposes of this Agreement if, as to any party hereto, it is in writing signed by an authorized representative of such party. The failure of any party hereto to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, or in any way to affect the validity of this Agreement or any part hereof or the right of any party hereto thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

Section 12.6 Severability. If any provision of this Agreement or the application thereof to any Person or circumstance is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions hereof or thereof, or the application of such provision to Persons or circumstances or in jurisdictions other than those as to which it has been held invalid or unenforceable, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby, so long as the economic or legal substance of the transactions contemplated hereby or thereby, as the case may be, is not affected in any manner adverse to any party hereto or thereto. Upon such determination, the parties hereto shall negotiate in good faith in an effort to agree upon such a suitable and equitable provision to effect the original intent of the parties hereto.

Section 12.7 Execution in Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original instrument, but all of which shall be considered one and the same agreement, and shall become binding when one or more counterparts have been signed by and delivered to each of the parties hereto.

Section 12.8 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and permitted assigns; provided, however, that the rights and obligations of either party hereto under this Agreement shall not be assignable by such party without the prior written consent of the other party. The successors and permitted assigns hereunder shall include any permitted assignee as well as the successors in interest to such permitted assignee (whether by merger, liquidation (including successive mergers or liquidations) or otherwise).

Section 12.9 Third Party Beneficiaries. Except to the extent otherwise provided in Article XI, the provisions of this Agreement are solely for the benefit of the parties hereto and their respective Affiliates, successors and permitted assigns and shall not confer upon any third Person any remedy, claim, liability, reimbursement or other right in excess of those existing without reference to this Agreement.

Section 12.10 Notices. All notices or other communications under this Agreement shall be in writing and shall be deemed to be duly given when delivered or mailed in accordance with the terms of Section 9.12 of the Separation Agreement.

Section 12.11 No Public Announcement. Neither DISH nor the Company shall, without the approval of the other, make any press release or other public announcement concerning the transactions contemplated by this Agreement, except as and to the extent that either party hereto shall be so obligated by Applicable Law or the rules of any regulatory body, stock exchange or quotation system, in which case the other party hereto shall be advised and the parties hereto shall use commercially reasonable efforts to cause a mutually agreeable release or announcement to be issued; provided,

however, that the foregoing shall not preclude communications or disclosures necessary to implement the provisions of this Agreement or to comply with Applicable Law, accounting and SEC disclosure obligations or the rules of any stock exchange.

Section 12.12 Limited Liability. Notwithstanding any other provision of this Agreement, no individual who is a stockholder, director, employee, officer, agent or representative of the Company or DISH, in its capacity as such, shall have any liability in respect of or relating to the covenants or obligations of such party under this Agreement and, to the fullest extent legally permissible, each of the Company and DISH, for itself and its respective stockholders, directors, employees, officers and Affiliates, waives and agrees not to seek to assert or enforce any such liability that any such Person otherwise might have pursuant to Applicable Law.

Section 12.13 Divestiture. If the Company divests or sells all or a part of the company during the term of this Agreement, DISH shall continue to provide the Services to the divested or sold entity or part thereof until the termination or expiration of the provision of Services hereunder, as long as the Seller's obligations hereunder are not materially increased thereby.

Section 12.14 Mutual Drafting. This Agreement shall be deemed to be the joint work product of DISH and the Company and any rule of construction that a document shall be interpreted or construed against a drafter of such document shall not be applicable.



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

EchoStar Communications Corporation

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

Echostar Holding Corporation

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

Signature Page to Transition Services Agreement

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[Form of]

TAX SHARING AGREEMENT

BY AND AMONG

ECHOSTAR COMMUNICATION CORPORATION

AND

ECHOSTAR HOLDING CORPORATION

DATED AS OF [\_\_\_\_\_, 2007]

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**FORM OF  
TAX SHARING AGREEMENT**

This Tax Sharing Agreement (the "Agreement") is entered into as of the \_\_\_ day of [ ], 2007, between EchoStar Communications Corporation ("ECC"), a Nevada corporation, and EchoStar Holding Corporation (the "Company"), a Nevada corporation.

**R E C I T A L S**

WHEREAS, ECC and the Company have entered into a Separation Agreement dated [ ] (the "Separation Agreement"); and

WHEREAS, pursuant to the Separation Agreement the issued and outstanding common stock of the Company owned by ECC will be distributed by ECC (pro rata) to the holders of its common stock with respect to such stock in the Distribution; and

WHEREAS, the parties hereto desire to provide for the payment of tax liabilities and entitlement to tax refunds for the taxable periods ending before, on or after the date of the Distribution, to allocate responsibility and provide for cooperation in the preparation and filing of tax returns with respect to such taxable periods, and to provide for certain other related matters;

NOW, THEREFORE, ECC, on behalf of itself and the ECC Group (as hereinafter defined), and the Company, on behalf of itself and the Company Group (as hereinafter defined), in consideration of the mutual covenants contained herein, agree as follows:

**ARTICLE I**

**CERTAIN DEFINITIONS**

Section 1.1 General. Capitalized terms used but not otherwise defined herein shall have the respective meanings assigned to them in the Separation Agreement or, to the extent the context requires, have the meaning assigned to them in the Code or the applicable Treasury Regulations promulgated thereunder (as interpreted in administrative pronouncements and judicial decisions) or in comparable provisions of applicable law. As used in this Agreement, the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and the plural forms of the terms defined):

"Affiliate" shall mean any entity that is directly or indirectly under the control of the Person or entity in question, where "control" means the possession, directly or indirectly, of the power to direct or cause the direction of management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

"Ancillary Agreement" shall have the meaning set forth in the Separation Agreement.

"Big Four Public Accounting Firms" shall mean each of Deloitte & Touche LLP, Ernst & Young LLP, KPMG LLP, and PricewaterhouseCoopers LLP.

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“Code” shall mean the Internal Revenue Code of 1986, as amended.

“Combined Tax Return” shall mean a consolidated, combined or unitary Income Tax Return that actually includes, by election or otherwise, one or more members of the ECC Group and one or more members of the Company Group.

“Company Group” shall mean the Company and all direct and indirect Subsidiaries or Affiliates of the Company at the time of the Distribution.

“Contribution” shall have the meaning set forth in the Separation Agreement.

“Contributions” shall have the meaning set forth in the Separation Agreement.

“Distribution” shall have the meaning set forth in the Separation Agreement.

“Distribution Liability” shall mean any liability for which the Company has provided an indemnity pursuant to Sections 3.1(b)(ii) or (iii) of this Agreement.

“Distribution Date” shall mean the date on which the Distribution is effected.

“Distributions” shall have the meaning set forth in the Separation Agreement.

“ECC Consolidated Group” shall mean ECC and each direct and indirect Subsidiary, including a member of the Company Group, that is eligible to join with ECC in the filing of a consolidated federal income tax return.

“ECC Group” shall mean ECC and all direct and indirect Subsidiaries or Affiliates of ECC other than a member of the Company Group.

“Effective Date” shall have the meaning set forth in Section 10.3.

“Estimated Tax Return” shall mean any Tax Return filed in respect of any estimated Tax payment that is due on or before the Distribution Date.

“First Contribution” shall have the meaning set forth in the Separation Agreement.

“First Internal Distribution” shall have the meaning set forth in the Separation Agreement.

“Income Tax” shall mean federal income tax and any other tax imposed on or measured by net income.

“Income Tax Return” shall mean any Tax Return in respect of Income Taxes.

“IRS” shall mean the Internal Revenue Service.

“Out-of-Pocket Expenses” shall include, but not be limited to, reasonable attorneys’ fees, accountant fees and other related professional fees and disbursements.

“Party” shall mean each of ECC and the Company.

“Person” shall mean any individual, partnership, joint venture, limited liability company, corporation, association, joint stock company, trust, unincorporated organization or similar entity or a governmental authority or any department or agency or other unit thereof.

“Post-Distribution Taxes” shall mean all Taxes incurred by, imposed on or asserted against any member of the ECC Group or the Company Group that is attributable to income or operations in a Post-Distribution Tax Period and shall include any Taxes (including Taxes related to a Straddle Period) incurred by any member of the Company Group as a result of any transaction undertaken by such member that is not specifically set forth in the Separation Agreements and that is outside of the ordinary course of business on the Distribution Date after the Distribution.

“Post-Distribution Tax Period” shall mean (i) any tax year or period beginning after the Distribution Date, and (ii) with respect to a Straddle Period, the portion of the Straddle Period that commences on the day immediately after the Distribution Date.

“Pre-Distribution Taxes” shall mean all Taxes incurred by, imposed on or asserted against any member of the ECC Group or the Company Group that is attributable to income or operations in a Pre-Distribution Tax Period (including any Taxes arising as a result of the Contributions, Distributions or Separation Transactions failing to qualify for Tax-Free Status) but shall not include any Taxes (including Taxes related to a Straddle Period) incurred by any member of the Company Group as a result of any transaction undertaken by such member that is not specifically set forth in the Separation Agreements and that is outside of the ordinary course of business on the Distribution Date after the Distribution.

“Pre-Distribution Tax Period” shall mean (i) any tax year or period ending on or before the Distribution Date, and (ii) with respect to a Straddle Period, the portion of the Straddle Period ending on and including the Distribution Date.

“Pre-Distribution Tax Return” shall mean any Tax Return that includes Taxes allocable to the Pre-Distribution Tax Period but excluding any Tax Return related to a Straddle Period.

“Prepaid Taxes” shall mean all payments of Taxes made in respect of the Tax liability of the Company or any member of the Company Group (whether by reason of an estimated Tax payment or otherwise) on or prior to the Distribution Date, including any refunds or credits attributable to a Pre-Distribution Tax Period, and which is in respect of the Straddle Period.

“Prime” shall mean, the rate announced from time to time as “prime” as reported in the Wall Street Journal’s Money Rates table as the prime rate with respect to the applicable currency.

“Private Letter Ruling” shall have the meaning set forth in the Separation Agreement.

“Ruling Request” shall mean the request submitted to the IRS on September 14, 2007, for the Private Letter Ruling (including the exhibits attached thereto and all related supplements) and any other ruling in connection with the Contributions and Distributions that ECC deems to be appropriate.

“Second Contribution” shall have the meaning set forth in the Separation Agreement.

“Second Internal Distribution” shall have the meaning set forth in the Separation Agreement.

“Separation Agreement” shall have the meaning set forth in the recitals.

“Separation Transactions” shall have the meaning set forth in the Separation Agreement.

“Short Year” shall mean the short taxable year beginning on the first day of the Company’s first taxable period in the year of the Distribution and ending on and including the Distribution Date.

“Straddle Period” shall mean any taxable year or period that begins on or before the Distribution Date and ends after the Distribution Date.

“Straddle Period Tax Return” shall mean any Tax Return that includes Taxes allocable to the Straddle Period other than a Combined Tax Return.

“Subsidiary” shall mean any entity in which a Party, directly or indirectly, possesses fifty percent (50%) or more of the total (i) combined voting power of all classes of its stock or (ii) interests in the capital or profits.

“Taxes” shall mean all taxes, assessments, charges, duties, fees, levies or other governmental charges, including, without limitation, all Federal, state, local, foreign and other income, franchise, profits, capital gains, capital stock, transfer, sales, use, occupation, property, excise, severance, windfall profits, stamp, license, payroll, withholding and other taxes, assessments, charges, duties, fees, levies or other governmental charges of any kind whatsoever (whether payable directly or by withholding and whether or not requiring the filing of a return), all estimated taxes, deficiency assessments, additions to tax, penalties and interest and shall include any liability for such amounts as a result of being a member of a combined, consolidated, unitary or affiliated group.

“Tax Attribute” shall mean any net operating loss, net capital loss, investment tax credit, foreign tax credit, deduction or any loss, credit or tax attribute that could be carried forward or back to reduce taxes (including without limitation deductions and credits related to alternative minimum taxes).

“Tax-Free Status” shall mean the qualification of each of the Contribution and Distribution, the Second Contribution and Second Internal Distribution, and the First Contribution and First Internal Distribution, respectively, as a reorganization described in Section 368(a)(1)(D) of the Code and a distribution under Section 355 of the Code.

“Tax Materials” shall mean all Pre-Distribution Tax Returns involving another Party (or its Subsidiaries) and all Straddle Period Tax Returns involving another Party (or its Subsidiaries), or other books, records and files relating to such Tax Returns

“Tax Matter” shall mean any inquiry, claim, assessment, audit or similar event with respect to Taxes.

“Tax Refund” shall mean any refund of Taxes (and any interest attributable thereto), including any reduction in Taxes otherwise payable by means of a credit, offset or otherwise.

“Tax Return” shall mean any tax return, statement, report or form (including estimated tax returns and reports, extension requests and forms, and information returns and reports) required to be filed with any taxing authority and any amended return (including any claims for refunds) with respect to the foregoing.

## ARTICLE II

### PREPARATION AND FILING OF RETURNS AND PAYMENT OF TAXES

#### Section 2.1 Tax Returns.

ECC shall have the exclusive authority to prepare and file or cause to be prepared and filed (i) all Tax Returns for all members of the Company Group for all taxable years or periods ending on or before the Distribution Date, including any Estimated Tax Returns due on or prior to the Distribution Date, (ii) all consolidated federal Income Tax Returns of the ECC Consolidated Group, (iii) any other Combined Tax Return, and (iv) any Tax Return of any member of the ECC Group.

#### Section 2.2 Straddle Period Tax Returns.

(a) (i) The Company shall prepare (in accordance with past practices of ECC) the initial draft of all Straddle Period Tax Returns (other than Estimated Tax Returns due on or prior to the Distribution Date) and shall submit such Tax Returns, along with a calculation of ECC’s portion of any Pre-Distribution Taxes (reduced by any Prepaid Taxes) set forth on such Tax Returns, to ECC for approval no later than thirty (30) days prior to the due date thereof. No later than fifteen (15) days after the receipt of such Tax Return from the Company, ECC shall notify the Company of any reasonable objections ECC may have to items set forth in such draft Tax Returns and/or the calculation of such Taxes for which ECC is responsible. The Company and ECC agree to consult and resolve in good faith any such objection, it being understood and agreed that in the absence of any such resolution, any and all such objections shall be resolved in a manner consistent with the past practices with respect to such items unless otherwise required by law. If ECC and the Company cannot resolve such matter, then the Parties shall submit the disagreement to an independent public accounting firm following the procedure set forth in Section 8.3. The Company shall not file such Tax Returns without the prior written consent of ECC, such consent not to be unreasonably withheld or delayed.

(ii) For purposes of this Agreement, Taxes related to a Straddle Period shall be apportioned between the Pre-Distribution Tax Period and the Post-Distribution Tax Period as

follows: (A) in the case of Taxes other than income, sales and use and withholding Taxes, on a per-diem basis, and (B) in the case of income, sales and use and withholding Taxes, as determined from the books and records of ECC, the Company and/or the relevant Subsidiary as though the taxable year of ECC, the Company and/or the relevant Subsidiary terminated at the close of business on the Distribution Date.

(b) ECC will pay to the Company ECC's portion of the Pre-Distribution Taxes related to a Straddle Period Tax Return (as determined pursuant to Section 2.2(a)) no later than the later of: one (1) day prior to the due date of the Tax Return for which such Taxes relate to the extent ECC and the Company have reached an agreement on the amount of such Taxes by that date or the only dispute relates solely to the total amount of Tax shown on the Tax Return, and in the case of a dispute between ECC and the Company that solely relates to the percentage of the total amount of Tax shown on the Straddle Period Tax Return allocated to ECC, ECC shall pay (i) the amount it believes, in good faith, is its allocable portion of such Taxes within one (1) day prior to the due date of the Tax Return for which such Taxes relate, and (ii) the remainder, if any, determined to be owed by ECC by the independent accounting firm described in paragraph (a) above within two (2) days after such accounting firm has determined ECC's liability with respect to such amounts. In the event a payment is made pursuant to this paragraph (b) with respect to amounts that are in dispute, such payment will be adjusted following the resolution of the dispute.

(c) To the extent the Prepaid Taxes exceed the Taxes owed by ECC for such Straddle Period (as determined pursuant to Section 2.2(a)), the Company shall pay ECC such excess.

Section 2.3 Other Tax Returns.

The Company shall have the exclusive authority to prepare and file or cause to be prepared and filed all Tax Returns for all members of the Company Group for Taxable years or periods beginning after the Distribution Date.

Section 2.4 Distribution.

(a) Except as required by applicable law, the Company shall not, and shall cause the members of the Company Group not to, take any position that is inconsistent with the treatment of the Contributions or Distributions as having Tax-Free Status (or analogous status under state, local or foreign law).

Section 2.5 Allocation.

Immediately after the Distribution, the Company Group will close its books utilizing a "cut off" method, and the provisions of Treasury Regulations Section 1.1502-76(b)(1)(ii)(A), End of Day Rule, shall be applied to the Short Year.

Section 2.6 Short Year State, Local and Foreign Returns.

ECC and the Company agree that Combined Tax Returns and Income Tax Returns filed for tax periods that begin prior to the Distribution Date will reflect a short taxable year for the Company ending on the Distribution Date in any state, local or foreign taxing jurisdiction in which such tax year is allowed by administrative practice, whether or not required by law.



Section 2.7 Tax Return Preparation Costs.

Each Party shall bear all costs incurred by it in preparing and filing the Tax Returns it is responsible for under this Agreement.

**ARTICLE III**

**ALLOCATION OF TAXES**

Section 3.1 Taxes.

(a) ECC shall be liable for and shall indemnify, defend and hold harmless the Company and members of the Company Group on an after-tax basis against (i) all Pre-Distribution Taxes, (ii) all Income Taxes incurred by or imposed on the Company or the Company Group solely as a result of the provisions of Treasury Regulations Section 1.1502-6 or the similar or analogous provisions of any state, local or foreign law with respect to any period during which ECC and the Company filed a Combined Tax Return, and (iii) all Post-Distribution Taxes of the ECC Group; provided, however, that ECC shall not be liable for, and shall not indemnify, defend and hold harmless the Company and members of the Company Group against any Taxes under this Section 3.1(a) that are a Distribution Liability.

(b) The Company shall be liable for and shall indemnify, defend and hold harmless ECC and members of the ECC Group on an after-tax basis against (i) all Post-Distribution Taxes that are attributable to the business or operations of, or incurred by or imposed on, the Company or the Company Group, (ii) any Taxes, losses, claims and expenses (including losses, claims and expenses arising out of claims by ECC's stockholders against ECC and ECC's Affiliates (and any successors to the foregoing)) resulting from the Contributions and/or Distributions failing to qualify as tax-free transactions pursuant to any provision of Section 355, Section 361, or Section 368(a)(1)(D) of the Code (A) to the extent that such Taxes, losses, claims and expenses are caused by any action that the Company takes or fails to take, or (B) as a result of (in whole or in part) the direct or indirect acquisition (including a transfer of assets) by one or more persons of any of the capital stock, stock options or assets of the Company, and (iii) any Taxes, losses, claims and expenses (including losses, claims and expenses arising out of claims by ECC's stockholders against ECC and ECC's Affiliates (and any successors to the foregoing)) resulting from a breach by the Company or any member of the Company Group of the covenants made by the Company in Section 9.1 hereof.

Section 3.2 Carrybacks.

No member of the Company Group shall carry back losses, credits or other Tax Attributes attributable to a Post-Distribution Tax Period to offset Taxes attributable to any Pre-Distribution Tax Period.

**ARTICLE IV**

**TAX ATTRIBUTES AND REFUNDS OF PRE-DISTRIBUTION TAXES**

Section 4.1 Tax Refunds.

(a) Any Tax Refund attributable to (i) any member of the Company Group for any tax period that ends on or prior to the Distribution Date and (ii) any member of the ECC Group for any taxable period shall be, in each case, for the account of ECC. Therefore, ECC shall retain any such Tax Refund received by ECC or a member of the ECC Group and the Company shall pay to ECC any such Tax Refund received by a member of the Company Group within ten (10) days after receipt thereof or entitlement thereto.

(b) Any Tax Refund attributable to any member of the Company Group for any Straddle Period shall be allocated between ECC and the Company in the same manner as the Tax to which such refund relates was allocated between ECC and the Company. The recipient of any such Tax Refund shall pay such refund over to the other party to the extent such refund is allocated to such other party pursuant to the preceding sentence within ten (10) days after receipt thereof or entitlement thereto.

Section 4.2 Tax Attributes.

ECC shall in good faith determine the apportionment of Tax Attributes between the ECC Group and the Company Group in accordance with applicable laws.

Section 4.3 Third Party Indemnities.

(a) If a member of the Company Group has the right to receive (or actually receives) a payment from a Person that is not a member of the Company Group (whether by reason of indemnity, reimbursement agreement or otherwise) with respect to (or items related to) (i) Pre-Distribution Taxes of a member of the Company Group or (ii) Taxes of a member of the ECC Group in each case, other than such Taxes for which the Company is liable under this Agreement, such payment shall be for the account of ECC and the Company shall pay to ECC the amount of any such payment within ten (10) days after a member of the Company group receives such payment. The Company shall use all reasonable efforts to obtain any payment described in the preceding sentence; provided, however, that ECC shall pay or promptly reimburse the Company for all Out-of-Pocket Expenses incurred in such attempt. To the extent it is legally permitted to do so, the Company shall assign (or caused to be assigned) to ECC all rights to receive such payment, including any rights to enforce such payment (and shall take all actions to facilitate such assignment, such as providing any required notice to any Person and executing any documents) so long as ECC pays or promptly reimburses the Company for all Out-of-Pocket Expenses related thereto. If the Company is unable to assign all of its rights to such payment, the Company shall permit ECC to control all aspects of the enforcement of such rights and shall cooperate with ECC consistent with the principles set forth in Section 7.1 hereof so long as ECC pays or promptly reimburses the Company for all Out-of-Pocket Expenses related thereto.

(b) If a member of the ECC Group has the right to receive (or actually receives) a payment from a Person that is not a member of the ECC Group (whether by reason of indemnity, reimbursement agreement or otherwise) with respect to (or items related to) Taxes of a member of the Company Group for any Post-Distribution Tax Period other than such Taxes for which ECC is liable under this Agreement, such payment shall be for the account of the Company and

ECC shall pay to the Company the amount of any such payment within ten (10) days after a member of the ECC Group receives such payment. ECC shall use all reasonable efforts to obtain any payment described in the preceding sentence; provided, however, that the Company shall pay or promptly reimburse ECC for all Out-of-Pocket Expenses incurred in such attempt. To the extent it is legally permitted to do so, ECC shall assign (or caused to be assigned) to the Company all rights to receive such payment, including any rights to enforce such payment (and shall take all actions to facilitate such assignment, such as providing any required notice to any Person and executing any documents) so long as the Company pays or promptly reimburses ECC for all Out-of-Pocket Expenses related thereto. If ECC is unable to assign all of its rights to such payment, ECC shall permit the Company to control all aspects of the enforcement of such rights and shall cooperate with the Company consistent with the principles set forth in Section 7.1 hereof so long as the Company pays or promptly reimburses ECC for all Out-of-Pocket Expenses related thereto.

## ARTICLE V

### PAYMENTS BETWEEN PARTIES

#### Section 5.1 Notice and Time of Payment.

To the extent that one Party (the "Paying Party") owes an amount to another Party (the "Recipient Party") pursuant to this Agreement, the Recipient Party shall notify the Paying Party and shall provide the Paying Party with its calculations of such amounts owed. The Paying Party shall pay the amount shown in such notice no later than ten (10) days after receiving the notice, unless the Paying Party disagrees with such amount, in which case the Parties agree to negotiate in good faith to resolve any difference. If such difference cannot be resolved within thirty (30) days after the Recipient Party indicates its disagreement, then the Parties shall submit the disagreement to an independent public accounting firm following the procedure set forth in Section 8.3. Any amount owing to another Party pursuant to this Agreement shall be deemed made when received by such other party. Any payment that is not made when due shall bear interest at a rate equal to Prime for each day until paid. Where there is a provision in this Agreement that provides for a different and specific payment schedule than the payment schedule provided in this Section 5.1, the more specific payment schedule shall apply.

#### Section 5.2 Netting of Payments.

If, on the day payment is due under this Agreement, each of the Company and ECC owes an amount to the other Party pursuant to this Agreement and any other agreement between the Parties, including, without limitation, the Separation Agreement and any Ancillary Agreement, the Parties shall satisfy their respective obligations to each other by netting the aggregate amounts due to one Party against the aggregate amounts due to the other Party, with the Party, if any, owing the greater aggregate amount paying the other Party the difference between the amounts owed. Such net payment shall be made pursuant to the provision of Section 5.1.

#### Section 5.3 Treatment of Payments.

To the extent permitted by law, all amounts payable under this Agreement, shall be deemed to be made immediately before the Distribution, and shall be treated as a distribution or contribution to capital, as appropriate.

## ARTICLE VI

### AUDITS AND CONTESTS

#### Section 6.1 Notification.

The Company shall promptly notify ECC in writing upon receipt by the Company or any member of the Company Group of any communication with respect to any Tax Matter (or pending or threatened Tax Matter) relating to any Tax period beginning on or before the Distribution Date. The Company shall include with such notification a complete copy of any written communication received by the Company or any member of the Company Group in respect of such Tax Matter. The failure of the Company to promptly forward such notification in accordance with the immediately preceding sentence shall not relieve ECC of any obligation under this Agreement, except to the extent that the failure to promptly forward such notification actually prejudices the ability of ECC to contest such Tax Matter.

#### Section 6.2 Representation with Respect to Tax Disputes.

(a) ECC (or such member of the ECC Group as ECC shall designate) shall have the sole right to represent the interests of the members of the ECC Group and the members of the Company Group, to employ counsel of its choice at its expense and to make decisions with respect to settlements in any Tax Matter relating to (A) any consolidated federal Income Tax Returns of the ECC Consolidated Group, (B) any Combined Tax Return, (C) any Tax Return of any member of the ECC Group, and (D) any Tax Returns for all members of the Company Group for all taxable years or periods ending on or before the Distribution Date; provided, however, that, to the extent that such Tax Matter involves any issue that could materially affect the amount of Taxes for which any member of the Company Group is liable in a Post-Distribution Tax Period, ECC shall (i) keep the Company informed of all material developments relating to such Tax Matter; (ii) act in a reasonable manner and in good faith in discussing such issue with the relevant tax authority and contesting such Tax Matter; and (iii) contest, and shall not settle or compromise such Tax Matter unless ECC reasonably determines in good faith that (x) based on discussions with tax counsel, such settlement or compromise is an appropriate resolution of such Tax Matter taking into account only the applicable facts, applicable law and hazards and costs of controversy in respect of such Tax Matter standing alone, and (y) ECC would find such settlement acceptable if ECC (and not any member of the Company Group) were required to bear the tax consequences of the settlement of such Tax Matter for all relevant Tax periods.

(b) The Company (or such member of the Company Group as the Company shall designate) shall have the sole right to represent the interests of the members of the Company Group, to employ counsel of its choice at its expense and to make decisions with respect to settlements in any Tax Matter relating to any Tax Returns in respect of Post-Distribution Taxable Periods; provided, however, that, to the extent that such Tax Matter involves any issue that could materially affect the amount of Taxes for which any member of the ECC Group is liable in a

Pre-Distribution Tax Period (or for other Taxes with respect to which ECC is required to indemnify the members of the Company Group pursuant to Section 3.1(a)), the Company shall (i) keep ECC informed of all material developments relating to such Tax Matter; (ii) act in a reasonable manner and in good faith in discussing such issue with the relevant tax authority and contesting such Tax Matter; and (iii) contest, and shall not settle or compromise such Tax Matter unless the Company reasonably determines in good faith that (x) based on discussions with tax counsel, such settlement or compromise is an appropriate resolution of such Tax Matter taking into account only the applicable facts, applicable law and hazards and costs of controversy in respect of such Tax Matter standing alone and (y) the Company would find such settlement acceptable if the Company (and not any member of the ECC Group) were required to bear the tax consequences of the settlement of such Tax Matter for all relevant Tax periods.

Section 6.3 Straddle Period Taxes.

ECC (or such member of the ECC Group as ECC shall designate) shall have the sole right to represent the interests of the members of the ECC Group and the members of the Company Group and to employ counsel of its choice in any Tax Matter related to any Straddle Period Tax Return. ECC shall have absolute discretion with respect to any decisions to be made, or the nature of any action to be taken, with respect to any Tax Matter related to a Straddle Period Tax Return described in the preceding sentence; provided, however, with respect to Tax Matters that affect the Company's Tax liability, (i) ECC shall keep the Company informed of all material developments and events relating to such matters to the extent they affect the Company's Tax liability, (ii) at its own cost and expense, the Company shall have the right to participate in the defense of any such tax claim, and (iii) neither ECC nor the Company shall take any action in respect of such claim without the consent of the other Party, such consent not to be unreasonably withheld, conditioned or delayed.

**ARTICLE VII**

**COMMUNICATION AND COOPERATION**

Section 7.1 Cooperation.

(a) Beginning on the Distribution Date, each of ECC and the Company, on behalf of itself and each member of the ECC Group and the Company Group, respectively, agrees to use good faith efforts to provide the other Party with such cooperation or information as such other Party reasonably shall request in connection with the determination of any payment or any calculations described in this Agreement, the preparation or filing of any Pre-Distribution Tax Return, Straddle Period Tax Return, Tax Return related to any Tax period beginning after the Distribution Date or claim for refund, or the conduct of any Tax Matter. Such cooperation and information shall include, without limitation:

(i) promptly forwarding copies of appropriate notices and forms or other communications (including, without limitation, information document requests, revenue agent's reports and similar reports, notices of proposed adjustments and notices of deficiency) received from or sent to any Tax authority or any other administrative, judicial or governmental authority,

(ii) providing copies of all relevant Tax Returns or portions thereof, together with accompanying schedules and related workpapers, documents relating to rulings or other determinations by any Tax authority, and such other records concerning the ownership and Tax basis of property, or other relevant information,

(iii) the provision of such additional information and explanations of documents and information provided under this Agreement (including statements, certificates, forms, returns and schedules delivered by either Party) as shall be reasonably requested by ECC or the Company, as the case may be,

(iv) the execution of any document that may be necessary or appropriate in connection with the filing of a Tax Return, a claim for a refund, or in connection with any Tax Matter, including such waivers, consents or powers of attorney as may be necessary for ECC or the Company, as the case may be, to exercise its rights under this Agreement,

(v) the use of ECC's or the Company's, as the case may be, reasonable efforts to obtain any documentation from a governmental authority or a third party that may be necessary or reasonably helpful in connection with any of the foregoing, and

(vi) preparing and submitting to ECC (in a time frame consistent with past practice), at the Company's expense, all information within the Company's possession and not otherwise reasonably available to ECC that ECC shall reasonably request, in such form as ECC shall reasonably request, to enable ECC to prepare any Tax Returns required to be filed by ECC pursuant to Section 2.1.

(b) Any request for information or documents pursuant to Section 7.1 shall be made by the requesting Party in writing. The other Party shall promptly (and in no event later than thirty (30) days after receipt of the request) provide the requested information. Except as otherwise provided in (a)(vi), the requesting party shall indemnify the other party for any Out-of-Pocket Expenses incurred by such party in connection with providing any information or documentation pursuant to Section 7.1. Upon reasonable notice, each of ECC and the Company shall make its, or shall cause the members of the ECC Group or the Company Group, as applicable, to make their, employees and facilities available on a mutually convenient basis to provide explanation of any documents or information provided hereunder. Any information obtained under Section 7.1 shall be kept confidential, except as otherwise reasonably may be necessary in connection with the filing of Tax Returns or claims for refund or in conducting any Tax Matter.

Section 7.2 Retention of Records and Returns.

(a) For at least seven (7) years following the Distribution, each Party will retain such records, documents, accounting data and other information (including computer data) in its possession in the ordinary course of business reasonably necessary for (i) the preparation and filing of all Pre-Distribution Tax Returns and Straddle Period Tax Returns required to be filed by, on behalf of, or with respect to another Party, and (ii) any Tax Matters relating to such Pre-Distribution Tax Returns, Straddle Period Tax Returns, or to any Pre-Distribution Taxes payable by, on behalf of, or with respect to, another Party.

(b) The Parties shall, from and after the Distribution Date, preserve all Tax Materials for such seven (7) year period, and, thereafter, not destroy or dispose of or allow the destruction or disposition of such Tax Materials without first having offered in writing to deliver such Tax Materials to the other Party at such other Party's expense. If such Party fails to request such Tax Materials within ninety (90) days after receipt of the notice described in the preceding sentence, the other Party may dispose of such Tax Materials.

## ARTICLE VIII

### ADMINISTRATIVE AND COMPLIANCE MATTERS

#### Section 8.1 Sole Tax Sharing Agreement.

Any and all existing tax sharing agreements or arrangements, written or unwritten, between any member of the ECC Group and any member of the Company Group shall be terminated as of the Effective Date or shall be amended so as to exclude all members of the Company Group from continuing as a party to such agreements or arrangements. As of the Effective Date, this Agreement shall be the sole tax sharing agreement, and there shall be no further rights, obligation or liabilities under any preexisting tax sharing agreement, between the members of the Company Group and the members of the ECC Group.

#### Section 8.2 Designation of Agent.

The Company and each member of the Company Group hereby irrevocably authorizes and designates ECC as its agent, coordinator, and administrator, for the purpose of taking any and all actions (including the execution of waivers of applicable statutes of limitation) necessary or incidental to the filing of any Tax Return, and for the purpose of making payments to, or collecting Tax Refunds from, any taxing authority, in each case if such Tax Return relates only to any Pre-Distribution Tax Period.

#### Section 8.3 Disputes.

If ECC or the Company fails to give its agreement, approval or consent in a situation described in Section 2.2, or the Parties cannot agree on an amount owed under Section 5.1, or any other dispute or disagreement arises under this Agreement that cannot be resolved among the Parties, the issue involved shall be submitted to an independent public accounting firm acceptable to both ECC and the Company; provided, however, that if the dispute or disagreement involves a matter of legal interpretation, then upon the written consent of both Parties such dispute shall be resolved by such independent public accounting firm, otherwise such independent accounting firm shall select an outside attorney (1) experienced in federal income tax law and (2) mutually acceptable to ECC and the Company (which acceptance shall not be unreasonably withheld) to resolve such dispute or disagreement. If ECC and the Company cannot agree on an independent public accounting firm, the first Big Four Public Accounting Firm (on an alphabetical basis) that is not currently serving as the auditor of either Party shall be selected to resolve the dispute. The decision of the independent public accounting firm (and any outside attorney selected by such accounting firm) in resolving the dispute shall be final and binding. The fees and expenses incurred with respect to the independent public accounting firm resolving the dispute shall be allocated fifty percent (50%) to ECC and fifty percent (50%) to the

Company. All other fees and expenses incurred in resolving the dispute shall be borne by the Party that incurs such fees and expenses.

## ARTICLE IX

### CERTAIN COVENANTS

#### Section 9.1 Company Covenants.

(a) The Company will not, nor will it permit any member of the Company Group to, take any action inconsistent with the information and representations furnished to the IRS in connection with the Ruling Request, or to counsel in connection with any opinion being delivered by counsel with respect to the Contributions or Distributions, regardless of whether such information and representations were included in the ruling issued by the IRS or in the opinion of counsel.

## ARTICLE X

### MISCELLANEOUS

#### Section 10.1 Notices.

(a) Any notice, demand, claim, or other communication under this Agreement shall be in writing and shall be deemed to have been given upon the delivery or mailing thereof, as the case may be, if delivered personally or sent by certified mail, return receipt requested, postage prepaid or sent by facsimile, to the parties at the following addresses (or at such other address as a party may specify by notice to the other):

If to ECC, to:

EchoStar Communications Corporation  
9601 S. Meridian Blvd., Englewood, CO 80112  
Attention: General Counsel  
Fax: 303-723-1699

If to Company, to:

EchoStar Holding Corporation  
90 Inverness Circle East, Englewood, CO 80112  
Attention: General Counsel  
Fax: 303-723-1699

#### Section 10.2 Costs and Expenses.

(a) Except as expressly set forth in this Agreement, each party shall bear its own costs and expenses incurred pursuant to this Agreement.

#### Section 10.3 Effectiveness; Termination and Survival.



This Agreement shall become effective upon the consummation of the Distribution (the "Effective Date"). All rights and obligations arising hereunder shall survive until the later of (i) the full period of all applicable statutes of limitation (giving effect to any extension, waiver or mitigation thereof), or (ii) all rights and obligations are fully effectuated or performed.

Section 10.4 Subsidiaries.

ECC agrees and acknowledges that ECC shall be responsible for the performance by each member of the ECC Group of the obligations hereunder applicable to such member. The Company agrees and acknowledges that the Company shall be responsible for the performance by each member of the Company Group of the obligations hereunder applicable to such member.

Section 10.5 Headings.

The headings contained in this Agreement are inserted for convenience only and shall not constitute a part hereof or in any way affect the meaning or interpretation of this Agreement.

Section 10.6 Entire Agreement; Amendments and Waivers; Severability.

(a) Entire Agreement. This Agreement contains the entire understanding of the Parties hereto with respect to the subject matter contained herein. No alteration, amendment, modification, or waiver of any of the terms of this Agreement shall be valid unless made by an instrument signed by an authorized officer of each of ECC and the Company, or in the case of a waiver, by the Party against whom the waiver is to be effective.

(b) Amendments and Waivers. No failure or delay by any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof, or the exercise of any right, power or privilege. This Agreement shall not be waived, amended or otherwise modified except as in writing, duly executed by all of the Parties.

(c) Severability. If any provision of this Agreement or the application of any such provision to any Party or circumstances shall be determined by any court of competent jurisdiction to be invalid, illegal or unenforceable to any extent, the remainder of this Agreement or such provision or the application of such provision to such Party or circumstances, other than those determined to be so invalid, illegal or unenforceable, shall remain in full force and effect to the fullest extent permitted by law and shall not be affected by such determination, unless such a construction would be unreasonable.

Section 10.7 Governing Law and Interpretation.

This Agreement has been made in, and shall be construed and enforced in accordance with the laws of, the State of New York without giving effect to laws and principles relating to conflicts of law.

Section 10.8 Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

Section 10.9 Assignments; Third Party Beneficiaries.

Except as provided below, this Agreement shall be binding upon and shall inure only to the benefit of the Parties hereto and their respective successors and assigns, by merger, acquisition of assets or otherwise (including but not limited to any successor of a party hereto succeeding to the Tax Attributes of such Party under applicable law). This Agreement is not intended to benefit any Person other than the Parties hereto and such successors and assigns, and no other Person shall be a third party beneficiary hereof.

Section 10.10 Further Assurances.

ECC and the Company shall execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such instruments and take such other action as may be necessary or advisable to carry out their obligations under this Agreement and under any exhibit, document or other instrument delivered pursuant hereto.

Section 10.11 Authorization.

Each of the Parties hereby represents and warrants that it has the power and authority to execute, deliver and perform this Agreement, that this Agreement has been duly authorized by all necessary corporate action on the part of such party, that this Agreement constitutes a legal, valid and binding obligation of each such party and that the execution, delivery and performance of this Agreement by such party does not contravene or conflict with any provision or law or of its charter or bylaws or any agreement, instrument or order binding on such Party.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the day and year first written above.

ECC on its own behalf and on behalf of each member of  
ECC Group.

By: \_\_\_\_\_

Name:

Title:

Company on its own behalf and on  
behalf of each member of the Company  
Group.

By: \_\_\_\_\_

Name:

Title:

**FORM OF  
EMPLOYEE MATTERS AGREEMENT**

THIS EMPLOYEE MATTERS AGREEMENT (this "Agreement") is entered into as of [• ], 2007, by and between EchoStar Communications Corporation, a Nevada corporation ("ECC"), and EchoStar Holding Corporation, a Nevada corporation (the "Company").

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

WHEREAS, ECC and the Company have entered into that certain Separation Agreement, dated as of [• ], 2007 (the "Separation Agreement"), in order to carry out, effect and consummate the Separation; and

WHEREAS, in connection with the Separation, ECC and the Company desire to enter into this Employee Matters Agreement to allocate between them assets, liabilities and responsibilities with respect to certain employee compensation, benefit plans, programs and arrangements, and certain employment matters.

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

ARTICLE I

Definitions

Section 1.01 Unless otherwise defined herein, each capitalized term shall have the meaning specified for such term in the Separation Agreement. As used in this Agreement:

"Agreement" means this Employee Matters Agreement together with those parts of the Separation Agreement referenced herein and all Schedules hereto and all amendments, modifications and changes hereto and thereto.

"Business Employee" means a Transferred Employee or any other individual employed at any time on or prior to the Distribution Date by the Company or any of its Subsidiaries or Affiliates who has, as of the Distribution Date, or who, immediately prior to his or her termination of employment with all of ECC, its Subsidiaries and their respective Affiliates, had employment duties primarily related to the Company Business.

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“COBRA” means the Consolidated Omnibus Budget Reconciliation Act of 1985, as codified at Part 6 of Subtitle B of Title I of ERISA and at Section 4980B of the Code, as amended.

“Code” means the U.S. Internal Revenue Code of 1986, as amended.

“Domestic Business Employee” means a Business Employee who is located in the United States or who is an expatriate Business Employee employed by a U.S. entity but who is performing services outside of the United States for a temporary period of time at the request of his employer.

“ERISA” means the U.S. Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §1001, et. seq.

“ECC Non-ERISA Benefit Arrangement” means any Non-ERISA Benefit Arrangement sponsored or maintained by ECC or its Subsidiaries.

“ECC Plan” means any Pension Plan or Welfare Plan sponsored or maintained by ECC or its Subsidiaries.

“IRS” means the U.S. Internal Revenue Service.

“Non-Domestic Business Employee” means a Business Employee who is located outside the United States or who is an inpatriate Business Employee in the U.S. employed by a Non-U.S. entity but who is performing services in the United States for a temporary period of time at the request of his employer.

“Non-ERISA Benefit Arrangement” means any contract, agreement, policy, practice, program, plan, trust or arrangement, other than a Pension Plan or Welfare Plan, providing for benefits, perquisites or compensation of any nature to any Business Employee, or to any family member, dependent or beneficiary of any such Business Employee, including, without limitation, disability, severance, health, dental, life, accidental death and dismemberment, travel and accident, tuition reimbursement, supplemental unemployment, vacation, sick, personal or bereavement days, holidays, retirement, deferred compensation, profit sharing, bonus, stock-based compensation or other forms of incentive compensation.

“Pension Plan” means any pension plan as defined in Section 3(2) of ERISA.

“Transferred Employee” means an employee of ECC or any of its Subsidiaries (other than the Company or any of its Subsidiaries) whose employment is transferred to the Company Group on or immediately prior to the Distribution Date.

“Welfare Plan” means any employee welfare plan as defined in Section 3(1) of ERISA.

ARTICLE II

Assignment of Employees

Effective on or immediately prior to the Distribution Date, the employment of the Transferred Employees by ECC and its Subsidiaries shall be terminated and thereupon shall commence with and shall be assigned and transferred to the Company or one of its Subsidiaries. Notwithstanding anything set forth below or herein to the contrary, nothing in this Agreement shall create any obligation on the part of the Company or any of its Subsidiaries to continue the employment of any employee for any definite period following the Distribution Date or to change the employment status of any employee from "at will." Notwithstanding the foregoing, to the extent necessary to preserve payroll, benefits, or other legal entitlements with respect to employees outside the United States, the Company and ECC may enter into one or more agreements whereby either party may lease employees from the other party for a limited period of time following the Distribution Date. Any such agreement(s) shall require the party receiving the services of such leased employees to fully reimburse the leasing company for the full cost of the employee(s) remuneration and shall contain other terms and conditions consistent with an arm's length commercial relationship between the leasing entity and the service recipient.

ARTICLE III

Pension Plans

Section 3.01 U.S. Defined Contribution Plans.

(a) Establishment of the Company 401(k) Plan. On or as soon as administratively practicable following the Distribution Date, the Company shall adopt, establish and maintain a 401(k) profit sharing Pension Plan and trust intended to be qualified under Section 401(a) of the Code and exempt from federal income tax under Section 501(a) of the Code (the "Company 401(k) Plan").

(b) Transfer of Account Balances and Forfeitures. As soon as administratively practicable after the Distribution Date, there shall be transferred from the EchoStar Communications Corporation 401(k) Employee Savings Plan Trust ("ECC 401(k) Plan Trust") to the trust established by the Company for the Company 401(k) Plan assets having a value as of the applicable valuation date that are equal to the value of the account balances of, and liabilities with respect to, all Business Employees (other than Business Employees whose employment has terminated prior to the Distribution Date) with an account balance under the EchoStar Communications Corporation 401(k) Employee Savings Plan ("ECC 401(k) Plan") as of such valuation date. In addition, as soon as administratively practicable after the Distribution Date, there shall be transferred from the ECC 401(k) Plan Trust to the trust established by the Company to hold the Company 401(k) Plan assets a pro rata share of all amounts held as unallocated forfeitures in the ECC 401(k) Plan Trust, determined based upon the ratio of the sum of the account balances of the Business Employees described in the immediately preceding sentence as of the applicable valuation date to the sum of all account balances held in the ECC

401(k) Plan Trust as of such valuation date. Such transferred assets shall be in cash, shares of securities, promissory notes evidencing outstanding plan loans of such Business Employees, and shares of ECC Class A Common Stock and Company Class A Common Stock, and such transfer shall be made in accordance with Section 414(l) of the Code. Liabilities under any qualified domestic relations orders (as defined in Section 414(p) of the Code) received with respect to any accounts transferred to the Company 401(k) Plan shall be transferred to and assumed by the Company 401(k) Plan at the time such assets attributable to such accounts are transferred. The Company shall assume and thereafter be solely responsible for all then existing and future employer liabilities related to such Business Employees under the Company 401(k) Plan and the administration thereof, and ECC shall have no liability therefore.

(c) In consideration for the continued participation of Business Employees in the ECC 401(k) Plan for any period following the Distribution Date, the Company shall pay to ECC, or reimburse it for, such amounts as are set forth in the Benefits Administration Services Schedule to the Transition Services Agreement.

Section 3.02 Non-U.S. Retirement Plans. Following the Distribution Date, the Company shall cause its Non-U.S. Subsidiaries to continue to maintain in full force and effect retirement plans as were sponsored and maintained by such Subsidiaries immediately prior to the Distribution Date, and neither ECC nor any of its Subsidiaries shall have any liability or obligation with respect to such plans or any participants or former participants in such plans with respect to their participation therein. In addition, effective either prior to or as of the Distribution Date, the Company shall cause its Non-U.S. Subsidiaries in the United Kingdom, Spain, Holland, Hong Kong, Ukraine, Korea, China, Taiwan and Dubai, to adopt retirement plans with appropriate eligibility and benefits terms to ensure that Non-Domestic Business Employees in such countries are either (1) eligible to participate in the same type of plan and enjoy the same level of benefits for which such Non-Domestic Business Employees were eligible immediately prior to the Distribution Date (or date of plan adoption, if earlier), or (2) eligible to participate in a plan intended to provide a substantially comparable level of benefits for which such Non-Domestic Business Employees were eligible immediately prior to the Distribution Date (or date of plan adoption, if earlier).

#### ARTICLE IV

##### Welfare Plans

###### Section 4.01 Company Welfare Plans.

(a) On or as soon as administratively practicable following the Distribution Date, the Company shall have adopted for the benefit of eligible Domestic Business Employees and their respective eligible dependents, health (including medical, vision and dental), life, accidental death and dismemberment, disability and other Welfare Plans as determined by the Company (the "Company Welfare Plans") that are substantially similar to the terms of the corresponding Welfare Plans maintained by ECC. Domestic Business Employees shall be eligible to participate in the Company Welfare Plans on the terms established by the Company. In consideration for the continued participation of Business Employees in the Welfare Plans maintained by ECC for any period following the Distribution Date, the Company shall pay to ECC, or reimburse it for,

such amounts as are set forth in the Benefits Administration Services Schedule to the Transition Services Agreement.

(b) Following the Distribution Date, the Company shall cause its Non-U.S. Subsidiaries to continue to maintain in full force and effect Welfare Plans as were sponsored and maintained at such Subsidiaries immediately prior to the Distribution Date, and neither ECC nor any of its Subsidiaries shall have any liability or obligation with respect to such plans or any participants or former participants in such plans with respect to their participation therein. ECC and the Company shall have separate provider contracts established for employees of ECC and Non-U.S. Subsidiaries of the Company effective on or prior to the Distribution Date. In addition, effective either prior to or as of the Distribution Date, the Company shall cause its Non-U.S. Subsidiaries in the United Kingdom, Spain, Holland, Hong Kong, Ukraine, Korea, China, Taiwan and Dubai, to adopt Welfare Plans with appropriate eligibility and benefits terms, to ensure that Non-Domestic Business Employees in such countries are either (1) eligible to participate in the same type of plan and enjoy the same level of benefits for which such Non-Domestic Business Employees were eligible immediately prior to the Distribution Date (or date of plan adoption, if earlier), or (2) eligible to participate in a plan intended to provide a substantially comparable level of benefits for which such Non-Domestic Business Employees were eligible immediately prior to the Distribution Date (or date of plan adoption, if earlier), and neither ECC nor any of its Subsidiaries shall have any liability or obligation with respect to such plans or any participants in such plans.

Section 4.02 Welfare Plan Liabilities.

(a) Company Liabilities. Except as otherwise provided in this Agreement, the Company shall assume, and be solely responsible for all ECC and Company Welfare Plan liabilities incurred by any Business Employee before, on, or after the Distribution Date.

(b) ECC Liabilities. ECC shall continue to be responsible after the Distribution Date for employer liabilities under the EchoStar Communications Corporation Employee Benefits Health & Welfare Plan and any Non-U.S. Welfare Plan incurred with respect to Business Employees and their eligible dependents only with respect to the following (except as otherwise provided in this Agreement):

(1) Continuation Coverage for Terminated Domestic Business Employees and their Dependents. Any Domestic Business Employee whose employment terminates prior to the Distribution Date for any reason, including a Domestic Business Employee currently receiving EchoStar Communications Corporation Employee Benefits Health & Welfare Plan benefits pursuant to a termination agreement or an "Agreement and Release" under the applicable ECC severance policy, and any dependent of such Domestic Business Employee, who elected or is eligible to elect, pursuant to the rights under COBRA or any comparable state law, to continue to participate in the EchoStar Communications Corporation Employee Benefits Health & Welfare Plan on the applicable date of termination.

(2) Disabled Persons. ECC shall continue to be responsible after the Distribution Date for all claims for long-term disability incurred prior to the Distribution Date by any Domestic Business Employee who is absent from active employment due to a total



disability, as defined in the EchoStar Satellite L.L.C. Employee Life Insurance and Disability Plans, on or prior to the Distribution Date to the extent that such long-term disability benefits are provided under an insurance contract. ECC shall also be responsible for long-term disability benefits for any Domestic Business Employee who is receiving weekly short-term disability benefits as of the Distribution Date and who becomes eligible for long-term disability benefits thereafter, provided that the total disability relates to the same condition for which weekly short-term disability benefits were paid and, provided further, that such long-term disability benefits are payable under an insurance contract.

Section 4.03 Flexible Spending Accounts. Effective as of the Distribution Date, the Company shall adopt and maintain a flexible spending account plan (the "Company FSA") with terms that are substantially identical in all material respects to those of the EchoStar Communications Corporation Flexible Benefit Plan (the "ECC FSA"). As soon as practicable following the Distribution Date, ECC shall cause to be transferred to the Company an amount in cash equal to the excess of the aggregate accumulated contributions to the flexible spending reimbursement accounts under the ECC FSA made during the year in which the Distribution Date occurs by the Business Employees over the aggregate reimbursement payouts made for such year from such accounts to such Business Employees. The Company shall cause such amounts to be credited to each such employee's corresponding accounts under the Company FSA following the Distribution Date. On and after the Distribution Date, the Company shall assume and be solely responsible for all claims for reimbursement by Business Employees, whether incurred prior to, on or after the Distribution Date, that have not been paid in full as of the Distribution Date, which claims shall be paid pursuant to and under the terms of the Company FSA, and the Company shall indemnify and hold harmless ECC from any and all claims by or with respect to Business Employees for reimbursement under the ECC FSA that have not been paid in full as of the Distribution Date. The Company agrees to cause the Company FSA to honor and continue through the end of the calendar year in which the Distribution Date occurs the elections made by each Business Employee under the Company FSA in respect of the flexible spending reimbursement accounts that are in effect immediately prior to the Distribution Date.

#### ARTICLE V

##### Equity Compensation Plans

Section 5.01 Stock Options. ECC and the Company shall take any and all action as shall be necessary or appropriate so that outstanding options issued under the Amended and Restated EchoStar Communications Corporation 1995 Stock Incentive Plan, the EchoStar Communications Corporation 1999 Stock Incentive Plan, the EchoStar Communications Corporation 2001 Nonemployee Director Stock Option Plan and the ECC 1995 Nonemployee Director Stock Option Plan (collectively, the "ECC SIPs") to purchase ECC Class A Common Stock ("ECC Stock Options") held at the close of business on the Distribution Date by current and former employees and directors of ECC and its Subsidiaries and Affiliates (or their respective transferees) shall be replaced pursuant to the terms of the ECC SIPs with an adjusted ECC Stock Option with an adjusted exercise price and a substitute option under the EchoStar Holding Corporation Transition Stock Incentive Plan (the "Company SIP") to purchase Company Class A Common Stock (a "Company Stock Option"). Such replacement will be

implemented in a manner such that immediately following the Distribution (i) the number of shares relating to the adjusted ECC Stock Option will be equal to the number of shares of ECC Class A Common Stock subject to such option immediately prior to the Distribution, (ii) the number of shares subject to the substitute Company Stock Option will be equal to the number of shares of Company Class A Common Stock that the option holder would have received in the Distribution had the ECC Class A Common Stock subject to the option represented outstanding shares of ECC Class A Common Stock, and (iii) the per share option exercise price of the original ECC Stock Option will be proportionally allocated between such separate stock options based upon the relative per share trading prices of ECC Class A Common Stock and the Company Class A Common Stock immediately following the Distribution, with the intention that such adjustment and substitution satisfy the requirements of Section 424 of the Code and avoid treatment as non-qualified deferred compensation subject to Section 409A of the Code. Each adjusted ECC Stock Option and substituted Company Stock Option adjusted from or substituted for an original ECC Stock Option described in this [Section 5.01 \(a\)](#), when combined, will in the exclusive and sole discretion of the administrative committee established pursuant to the applicable ECC SIP (the "ECC SIP Committee") preserve the intrinsic value of such original ECC Option, and each will preserve the ratio from the original option of the exercise price to the fair market value of the stock subject to the option. Fractional shares shall be adjusted or compensated by ECC as appropriate in the sole discretion of the ECC SIP Committee. All employment with both ECC and the Company shall be taken into account for purposes of determining the vesting and exercisability provisions of such awards.

Section 5.02 [Restricted Stock](#). ECC and the Company shall take any and all action as shall be necessary or appropriate, so that current and former employees and directors of ECC and its Subsidiaries and Affiliates (or their respective transferees) who on the Distribution Date hold shares of ECC Class A Common Stock issued under one or more ECC SIP that are subject to restrictions on sale and transfer ("[ECC Restricted Stock](#)") shall, in addition to the ECC Restricted Stock, receive shares of the Company Class A Common Stock that are subject to restrictions on sale and transfer ("[Company Restricted Stock](#)") in connection with the Distribution under the applicable Company SIP based upon the number of shares of ECC Restricted Stock they hold. All employment with both ECC and the Company shall be taken into account for purposes of determining when the restrictions on the sale and transfer of such shares lapse. Fractional shares shall be adjusted or compensated by ECC as appropriate in the sole discretion of the ECC SIP Committee.

Section 5.03 [Restricted Stock Units](#). ECC and the Company shall take any and all action as shall be necessary or appropriate, so that current and former employees and directors of ECC and its Subsidiaries and Affiliates (or their respective transferees) will have each of their restricted stock units granted under one or more ECC SIP with respect to ECC Class A Common Stock ("[ECC Restricted Stock Unit](#)") replaced with a ECC Restricted Stock Unit and a substitute Company restricted stock unit issued under the Company SIP ("[Company Restricted Stock Unit](#)"). The number of the Company Restricted Stock Units issued in replacement for such ECC Restricted Stock Units shall be calculated so that immediately following the Distribution (i) the number of ECC Restricted Stock Units will be equal to the number of ECC Restricted Stock Units held by the participant immediately prior to the Distribution, and (ii) the number of the Company Restricted Stock Units will be equal to the number of shares of the Company Class A Common Stock that the holder of the restricted stock

unit would have received in the Distribution had the ECC Restricted Stock Unit represented outstanding shares of ECC Class A Common Stock. The ECC Restricted Stock Units and the Company Restricted Stock Units will each take into account all employment with both ECC and the Company, and their respective Subsidiaries and Affiliates, for purposes of determining when such awards vest and terminate. Fractional shares shall be adjusted or compensated by ECC as appropriate in the sole discretion of the ECC SIP Committee.

Section 5.04 Approval and Terms of Equity and Equity-Based Awards. By its approval of this Article V, the Board of Directors of the Company, as issuer of Company substitute and replacement equity and equity-based awards provided hereunder, and the Board of Directors of ECC, as issuer of ECC substitute and replacement equity and equity-based awards provided hereunder and as sole shareholder of the Company, hereby adopt and approve, respectively, the issuance of the substitute and replacement options and equity and equity-based awards provided for herein. Except as set forth above, the terms of the Company SIP, and the Company substitute and replacement equity and equity-based awards hereunder, shall be substantially identical in all material respects to the terms of the ECC SIPs, and the corresponding awards under the ECC SIPs, as applicable, except that references in the substitute and replacement equity and equity-based awards in respect of Company Class A Common Stock to "Board" and "Committee" shall mean the Board and committee designed by the Board of the Company, respectively. Notwithstanding the foregoing, awards made under the Company SIP, or adjusted under the ECC SIPs, pursuant to the Company's or ECC's obligations under this Agreement shall take into account all employment with both ECC and the Company, and their respective Subsidiaries and Affiliates, for purposes of determining the vesting and exercisability provisions of such awards. In exercising power and authority hereunder with respect to replacement and substitute awards provided hereunder, ECC and the Company shall each (i) act in good faith and (ii) cooperate with, and give due regard to any information provided by, the other party. In addition, with respect to such replacement and substitute equity and equity-based awards, neither the Company nor ECC shall, without the prior written consent of the ECC SIP Committee or the applicable committee designated by the Company's Board of Directors, as applicable, take any discretionary action to accelerate vesting of any such awards.

Section 5.05 Responsibility for Tax Withholding, Reporting, and Social Insurance Contributions. ECC and the Company agree that, unless prohibited by applicable law, (a) ECC shall be responsible for all tax withholding and reporting obligations and shall pay the employer's share of any social insurance tax obligations that arise in connection with the grant, vesting, exercise, transfer or other settlement of the substitute and replacement awards held by current and former employees and directors of ECC and its Subsidiaries and Affiliates who are not Business Employees (or their respective transferees), (b) the Company shall be responsible for all tax withholding and reporting obligations and shall pay the employer's share of any social insurance tax obligations that arise in connection with the grant, vesting, exercise, transfer or other settlement of the substitute and replacement awards held by Business Employees (or their transferees). ECC and the Company agree to enter into any necessary agreements regarding the subject matter of this Section 5.05 to enable ECC and the Company to fulfill their respective obligations hereunder, including but not limited to compliance with all applicable laws and regulations regarding the reporting, withholding or remitting of income and social insurance taxes.

Section 5.06 No Change of Control. The Distribution will not constitute a “change of control” for purposes of ECC equity and equity-based awards which are outstanding as of the Distribution Date.

Section 5.07 Employee Stock Purchase Plan. On or prior to the Distribution Date, the Company shall establish an employee stock purchase plan (the “Company ESPP”) with terms that are substantially identical in all material respects to the terms of the Amended and Restated ECC 1997 Employee Stock Purchase Plan (the “ECC ESPP”). Business Employees will be eligible to participate in the Company ESPP on the Distribution Date. Prior to the Distribution Date, ECC shall take whatever action is necessary under the ECC ESPP to provide that the “Purchase Period” (as defined in the ECC ESPP) ending on December 31, 2007 shall instead end on or about December 19, 2007.

Section 5.08 Establishment of the Company Stock Incentive Plans. Effective as of the Distribution Date, the Company shall establish a stock incentive plan to provide for awards which may include the following: (i) stock options (both qualified and non-qualified), (ii) stock appreciation rights, (iii) restricted stock awards, (iv) restricted stock unit awards, (v) phantom stock units, (vi) performance grants and (vii) bonus awards, including, without limitation, the awards provided for herein.

#### ARTICLE VI

##### Compensation Matters and General Benefit Matters

Section 6.01 Cessation of Participation in ECC Plans and Non-ERISA U.S. Benefit Arrangements. Except as otherwise provided in this Agreement or as required by the terms of any ECC Plan or ECC Non-ERISA Benefit Arrangement, or by applicable law, ECC and the Company shall take any and all action as shall be necessary or appropriate so that participation in ECC Plans and ECC Non-ERISA Benefit Arrangements by all Business Employees shall terminate as soon as administratively practicable following the Distribution Date and the Company and/or its Subsidiaries, as applicable, shall cease to be participating employers under the terms of such ECC Plans and ECC Non-ERISA Benefit Arrangements as soon as administratively practicable following the Distribution Date.

Section 6.02 Assumption of Certain Employee Related Obligations. Except as otherwise provided in this Agreement, effective as of the close of business on the Distribution Date, the Company shall assume, and none of ECC or any of its Subsidiaries or Affiliates shall have any further liability for, the following agreements, obligations and liabilities and the Company shall indemnify ECC and its Subsidiaries and Affiliates, and the officers, directors, and employees of each, and hold them harmless with respect to such agreements, obligations or liabilities:

- (a) Agreements entered into between ECC, its Subsidiaries or Affiliates and Business Employees.
- (b) Agreements entered into between ECC, its Subsidiaries or Affiliates and independent contractors providing services solely to the Company Business.

(c) All collective bargaining agreements, collective agreements, trade union, or works council agreements entered into between ECC, its Subsidiaries or Affiliates and any union, works council, or other body representing only Business Employees.

(d) All wages, salary, incentive compensation, commissions and bonuses payable to Business Employees on or after the Distribution Date, without regard to when such wages, salary, incentive compensation, commissions and bonuses are or may have been earned.

(e) All moving expenses and obligations related to relocation, repatriation, transfers, or similar items incurred by or owed to Business Employees.

(f) All immigration-related, visa, work application, or similar rights, obligations and liabilities related to Business Employees.

(g) All liabilities and obligations whatsoever of the Company Business with respect to claims made by or with respect to Business Employees or any other persons who at any time prior to the Distribution Date had employment duties primarily related to the Company Business relating to any employee benefit plan, program or policy not otherwise retained or assumed by ECC pursuant to this Agreement, including such liabilities relating to actions or omissions of or by the Company or any officer, director, employee or agent thereof prior to the Distribution Date.

Section 6.03 Restrictive Covenants in Employment and Other Agreements. To the extent permitted under applicable law, following the Distribution, the Company and its Subsidiaries and Affiliates shall be considered to be successors to ECC and its Subsidiaries and Affiliates for purposes of all agreements containing restrictive covenants (including but not limited to confidentiality and non-competition provisions) between ECC (or any of its Subsidiaries or Affiliates) and Business Employees, employees of ECC (or any of its Subsidiaries or Affiliates) as of the Distribution Date that the Company reasonably determines have substantial knowledge of the Company Business, former employees and independent contractors executed prior to the Distribution Date such that each of ECC, the Company and their respective Subsidiaries and Affiliates shall all enjoy the rights and benefits under such agreements, with respect to such party's and their respective Subsidiaries' and Affiliates' business operations; provided, however, that (a) in no event shall ECC be permitted to enforce the restrictive covenant agreements against Business Employees in their capacity as employees of the Company or its Subsidiaries, and (b) in no event shall the Company be permitted to enforce the restrictive covenants agreements of ECC employees in their capacity as employees of ECC or its Subsidiaries.

Section 6.04 Severance. Effective as of the Distribution Date, the Company may establish one or more severance plans and policies with respect to Business Employees as the Company deems appropriate in its discretion. ECC shall have no liability or obligation under any ECC severance plan or policy with respect to Business Employees whose employment terminates on or after the Distribution Date. It is not intended that any Business Employee will be eligible for termination or severance payments or benefits from ECC or its Subsidiaries or Affiliates as a result of the transfer or change of employment from ECC to the Company or their respective Subsidiaries or Affiliates. Notwithstanding the preceding sentence, in the event that

any such termination or severance payments or benefits become payable on account of such transfer, change or the refusal of a Business Employee to accept employment with the Company, the Company shall indemnify ECC, and its Subsidiaries and Affiliates, for the amount of such termination or severance payments or benefits.

Section 6.05 Past Service Credit. With respect to all Domestic Business Employees, the Company shall recognize all service recognized under the comparable ECC Plans and ECC Non-ERISA Benefit Arrangements for purposes of determining eligibility, participation, vesting, and calculation of benefits under the Company's comparable plans and programs, provided that there shall be no duplication of benefits for Business Employees under the Company's plans and programs. ECC will provide to the Company copies of any records available to ECC to document such service, plan participation and membership and cooperate with the Company to resolve any discrepancies or obtain any missing data for purposes of determining benefit eligibility, participation, vesting and calculation of benefits with respect to such Domestic Business Employees. With respect to retaining, destroying, transferring, sharing, copying and permitting access to all such information, ECC and the Company shall each comply with all applicable laws, regulations and internal policies and each party shall indemnify and hold harmless the other party from and against any and all liability, claims, actions, and damages that arise from a failure (by the indemnifying party) to so comply with all applicable laws, regulations and internal policies applicable to such information.

Section 6.06 Accrued Vacation Days Off. The Company shall recognize and assume all liability for all vacation, holiday, sick leave, flex days and personal days off, including banked vacation, accrued by Business Employees as of the Distribution Date and the Company shall credit each Business Employee with such days off accrual.

Section 6.07 Leaves of Absence. The Company will continue to apply the leave of absence policies maintained by ECC to inactive Business Employees who are on an approved leave of absence as of the Distribution Date. Leaves of absence taken by Business Employees prior to the Distribution Date shall be deemed to have been taken as employees of the Company.

Section 6.08 ECC Assets. Except as otherwise set forth herein, ECC shall retain all reserves, bank accounts, trust funds or other balances maintained with respect to ECC's Non-ERISA Benefit Arrangements.

Section 6.09 Further Cooperation/Personnel Records/Data Sharing. The parties shall provide each other such records and information only as necessary or appropriate to carry out their obligations under law, this Agreement, or for the purposes of administering the Company plans and policies. The parties shall take commercially reasonable actions so that after the Separation, all ministerial matters relating to (i) the Company awards issued to individuals other than Business Employees can be administered by ECC and (ii) ECC equity and equity-based awards issued to Business Employees can be administered by the Company. Each of the parties shall provide information requested by the other party relating to employee status changes (such as terminations, retirements, etc.) and exercised options during the ten-year period beginning on the Distribution Date. Subject to applicable law, all information and records regarding employment and personnel matters of Business Employees shall be accessed, retained,

held, used, copied and transmitted after the Distribution Date by the Company in accordance with all laws and policies relating to the collection, storage, retention, use, transmittal, disclosure and destruction of such records. Access to such records after the Distribution Date will be provided to ECC in accordance with Article IV of the Separation Agreement. Notwithstanding the foregoing, ECC shall retain reasonable access to those records necessary for ECC's continued administration of any plans or programs on behalf of Business Employees after the Distribution Date, provided that such access shall be limited to individuals who have a job-related need to access such records. ECC shall also retain copies of all confidentiality and non-compete agreements with any Business Employee in which ECC has a valid business interest. With respect to retaining, destroying, transferring, sharing, copying and permitting access to all such information, ECC and the Company shall each comply with all applicable laws, regulations and internal policies, and each party shall indemnify and hold harmless the other party from and against any and all liability, claims, actions, and damages that arise from a failure (by the indemnifying party) to so comply with all applicable laws, regulations and internal policies applicable to such information.

## ARTICLE VII

### General Provisions

Section 7.01 Preservation of Rights to Amend. The rights of ECC or the Company to amend or terminate any plan, program, or policy referred to herein shall not be limited in any way by this Agreement.

Section 7.02 Confidentiality. Each party hereto agrees that the specific terms and conditions of this Agreement and any information conveyed or otherwise received by or on behalf of a party hereto in conjunction herewith are confidential and are subject to the terms of the confidentiality provisions set forth in Section 4.5 of the Separation Agreement.

Section 7.03 Administrative Complaints/Litigation. Except as otherwise provided in this Agreement, as of and after the Distribution Date, the Company shall assume, and be solely liable for, the handling, administration, investigation, and defense of actions, including, without limitation, ERISA, occupational safety and health, employment standards, union grievances, wrongful dismissal, discrimination or human rights and unemployment compensation claims, asserted at any time against ECC or the Company by any Business Employee (including any dependent or beneficiary of a Business Employee), or any other person to the extent such actions or claims arise out of or relate to employment or the provision of services (whether as an employee, contractor, consultant, or otherwise) to or with the Company Business. Any Liabilities arising from such actions shall be deemed Assumed Liabilities under the Separation Agreement.

Section 7.04 Reimbursement and Indemnification. The parties hereto agree to reimburse each other, within 30 days of receipt from the other party of appropriate verification, for all costs and expenses which each may incur on behalf of the other as a result of any of the Welfare Plans, Pension Plans and Non-ERISA Benefit Arrangements and, as contemplated by Section 6.04, any termination or severance payments or benefits. All liabilities retained, assumed or indemnified against by the Company pursuant to this Agreement, and all

liabilities retained, assumed or indemnified against by ECC pursuant to this Agreement, shall in each case shall be subject to the indemnification provisions of Article V of the Separation Agreement.

Section 7.05 Entire Agreement. This Agreement, including the Schedules hereto and the sections of the Separation Agreement referenced herein, constitutes the entire agreement between the parties hereto with respect to the subject matter contained herein, and supersedes all prior agreements, negotiations, discussions, understandings, writings and commitments between the parties hereto with respect to such subject matter.

Section 7.06 Governing Law; Service of Process; Jurisdiction. This Agreement and the legal relations between the parties hereto shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflict of laws rules thereof to the extent such rules would require the application of the law of another jurisdiction. The state or federal courts located within the City of New York shall have exclusive jurisdiction over any and all disputes between the parties hereto, whether in law or equity, arising out of or relating to this Agreement and the agreements, instruments and documents contemplated hereby and the parties hereto consent to and agree to submit to the exclusive jurisdiction of such courts. Each of the parties hereto hereby waives and agrees not to assert in any such dispute, to the fullest extent permitted by Applicable Law, any claim that (i) such party is not personally subject to the jurisdiction of such courts, (ii) such party and such party's property is immune from any legal process issued by such courts or (iii) any litigation or other proceeding commenced in such courts is brought in an inconvenient forum.

Section 7.07 Amendment. This Agreement shall not be amended, modified or supplemented except by a written instrument signed by an authorized representative of each of ECC and the Company.

Section 7.08 Waiver. Any term or provision of this Agreement may be waived, or the time for its performance may be extended, by the party or the parties hereto entitled to the benefit thereof. Any such waiver shall be validly and sufficiently given for the purposes of this Agreement if, as to any party hereto, it is in writing signed by an authorized representative of such party. The failure of any party hereto to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, or in any way to affect the validity of this Agreement or any part hereof or the right of any party hereto thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

Section 7.09 Severability. If any provision of this Agreement or the application thereof to any Person or circumstance is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions hereof or thereof, or the application of such provision to Persons or circumstances or in jurisdictions other than those as to which it has been held invalid or unenforceable, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby, so long as the economic or legal substance of the transactions contemplated hereby or thereby, as the case may be, is not affected in any manner adverse to any party hereto or thereto. Upon such determination, the parties hereto shall negotiate



in good faith in an effort to agree upon such a suitable and equitable provision to effect the original intent of the parties hereto.

Section 7.10 Execution in Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original instrument, but all of which shall be considered one and the same agreement, and shall become binding when one or more counterparts have been signed by and delivered to each of the parties hereto.

Section 7.11 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and permitted assigns; provided, however, that the rights and obligations of either party hereto under this Agreement shall not be assignable by such party without the prior written consent of the other party. The successors and permitted assigns hereunder shall include any permitted assignee as well as the successors in interest to such permitted assignee (whether by merger, liquidation (including successive mergers or liquidations) or otherwise).

Section 7.12 Notices. All notices or other communications under this Agreement shall be in writing and shall be deemed to be duly given when delivered or mailed in accordance with the terms of Section 9.12 of the Separation Agreement.

Section 7.13 Performance. Each party hereto shall cause to be performed, and hereby guarantees the performance of, all actions, agreements and obligations set forth herein to be performed by any Affiliate of such party.

Section 7.14 No Public Announcement. Neither ECC nor the Company shall, without the approval of the other, make any press release or other public announcement concerning the transactions contemplated by this Agreement, except as and to the extent that either party hereto shall be so obligated by Applicable Law or the rules of any regulatory body, stock exchange or quotation system, in which case the other party hereto shall be advised and the parties hereto shall use commercially reasonable efforts to cause a mutually agreeable release or announcement to be issued; provided, however, that the foregoing shall not preclude communications or disclosures necessary to implement the provisions of this Agreement or to comply with Applicable Law, accounting and SEC disclosure obligations or the rules of any stock exchange.

Section 7.15 Limited Liability. Notwithstanding any other provision of this Agreement, no individual who is a stockholder, director, employee, officer, agent or representative of the Company or ECC, in its capacity as such, shall have any liability in respect of or relating to the covenants or obligations of such party under this Agreement and, to the fullest extent legally permissible, each of the Company and ECC, for itself and its respective stockholders, directors, employees, officers and Affiliates, waives and agrees not to seek to assert or enforce any such liability that any such Person otherwise might have pursuant to Applicable Law.

Section 7.16 Mutual Drafting. This Agreement shall be deemed to be the joint work product of ECC and the Company and any rule of construction that a document shall be interpreted or construed against a drafter of such document shall not be applicable.

Section 7.17 Dispute Resolution. The parties hereto agree that any dispute, controversy or claim between them with respect to the matters covered hereby shall be governed by and resolved in accordance with the procedures set forth in Article VIII of the Separation Agreement.

Section 7.18 No Third Party Beneficiaries. No Business Employee or other current or former employee of ECC or the Company or any Subsidiary or Affiliate of either (or his/her spouse, dependent or beneficiary), or any other person not a party to this Agreement, shall be entitled to assert any claim hereunder. The provisions of this Agreement are solely for the benefit of the parties hereto and their respective Affiliates, successors and permitted assigns and shall not confer upon any third Person any remedy, claim, liability, reimbursement or other right in excess of those existing without reference to this Agreement.

Section 7.19 Effect if Separation Does Not Occur. Notwithstanding anything in this Agreement to the contrary, if the Separation Agreement is terminated prior to the Distribution Date, this Agreement shall be of no further force and effect

Section 7.20 Waiver of Jury Trial. EACH PARTY TO THIS AGREEMENT HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED IN THIS AGREEMENT (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT.

Section 7.21 Corporate Authorization. The officers of ECC and the Company are hereby authorized, empowered and directed, in the name and on behalf of each of ECC and the Company, respectively, to take or cause to be taken all such further action, to execute and deliver or cause to be executed and delivered all such further agreements, certificates, instruments and documents, to make or cause to be made all such filings with governmental or regulatory authorities, and to pay or cause to be paid all such fees and expenses, in each case which shall in such officers' judgment be deemed necessary, proper or advisable to effect and carry out the intent of this Agreement, such determination to be evidenced conclusively by such officers' execution and delivery thereof or taking of action in respect thereto.

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

EchoStar Communications Corporation

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

EchoStar Holding Corporation

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

FORM OF  
INTELLECTUAL PROPERTY MATTERS AGREEMENT  
BY AND AMONG

EHOSTAR COMMUNICATIONS CORPORATION  
EHOSTAR ACQUISITION L.L.C.  
ECHOSPHERE L.L.C.  
EHOSTAR DBS CORPORATION  
EHOSTAR SATELLITE L.L.C.  
EHOSTAR INTERNATIONAL CORPORATION  
EIC SPAIN SL  
EHOSTAR TECHNOLOGIES CORPORATION  
EHOSTAR ORBITAL CORPORATION

AND

EHOSTAR HOLDING CORPORATION  
DATED AS OF \_\_\_\_\_, 2007

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**FORM OF**  
**INTELLECTUAL PROPERTY MATTERS AGREEMENT**

THIS INTELLECTUAL PROPERTY MATTERS AGREEMENT (this "Agreement"), dated as of \_\_\_\_\_, 2007 (the "Effective Date"), is entered into by and among EchoStar Communications Corporation ("ECC"), a Nevada corporation with its principal place of business located at 9601 South Meridian Boulevard, Englewood, CO 80112; EchoStar Acquisition L.L.C. ("Acquisition LLC"), a Colorado limited liability company with its principal place of business located at 9601 South Meridian Boulevard, Englewood, CO 80112; Echosphere L.L.C. ("Echosphere"), a Colorado limited liability company with its principal place of business located at 9601 South Meridian Boulevard, Englewood, CO 80112; EchoStar DBS Corporation ("EDBS"), a Colorado corporation with its principal place of business located at 9601 South Meridian Boulevard, Englewood, CO 80112; EchoStar Satellite L.L.C. ("Satellite LLC"), a Colorado limited liability company with its principal place of business located at 9601 South Meridian Boulevard, Englewood, CO 80112; EchoStar International Corporation ("EIC"), a Colorado corporation with its principal place of business located at 9601 South Meridian Boulevard, Englewood, CO 80112; EIC Spain SL ("EIC Spain"), a Spanish corporation with its principal place of business located at Avenida de los Pirineos 23, 28700 San Sebastián de los Reyes, Madrid, Spain; EchoStar Technologies Corporation ("ETC"), a Texas corporation with its principal place of business located at 90 Inverness Circle East, Englewood, CO 80112; EchoStar Orbital Corporation ("Orbital"), a Colorado corporation with its principal place of business located at 9601 South Meridian Boulevard, Englewood, CO 80112; and EchoStar Holding Corporation ("Company"), a Nevada corporation with its principal place of business located at 90 Inverness Circle East, Englewood, CO 80112 (collectively, the "Parties" and individually, a "Party").

**W I T N E S S E T H:**

WHEREAS, ECC is the common parent company of an affiliated group of corporations and other legal entities through which ECC operates the DISH Network, which is a leading provider of satellite delivered digital television to customers across the United States of America;

WHEREAS, ECC, through its Affiliates, also operates a technology business, which designs and develops satellite receivers or set-top-boxes, antennae and other digital equipment for the DISH Network segment of its business and designs, develops and distributes similar equipment for international satellite service providers and other third party customers;

WHEREAS, the Company is currently an indirectly wholly-owned subsidiary of ECC;

WHEREAS, ECC has determined that it is in the company's best interests to separate the Consumer Business from the Receiver Business (as such terms are defined below) through various internal corporate transactions and an external distribution of shares of the Company such that the Company would cease being a subsidiary of ECC and would be separately owned by current ECC shareholders;

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WHEREAS, after the aforementioned distribution of shares, the Company and its Affiliates would continue to conduct the Receiver Business under the brand ECHOSTAR or such other marks as the Company and its Affiliates may choose, but would exist as separate legal entities no longer controlled by ECC;

WHEREAS, after the aforementioned distribution of shares, ECC and its remaining Affiliates would continue to conduct the Consumer Business under the brand DISH NETWORK or such other marks as ECC and its Affiliates may choose;

WHEREAS, in furtherance of the foregoing, ECC and the Company have entered into that certain Separation and Distribution Agreement, dated as of \_\_\_\_\_, 2007 (the "Separation Agreement"), wherein it was agreed that certain Intellectual Property would be assigned to the Company in connection with the ECC Contribution, EDBS Contribution and the Satellite LLC Contribution (as such terms are defined in the Separation Agreement);

WHEREAS, members of the ECC Group are currently the owners of certain right, title and interest in and to certain Intellectual Property related to the Receiver Business as described herein;

WHEREAS, the Company desires to obtain an assignment of all right, title and interest in and to such Intellectual Property from such members of the ECC Group to the Company and ETC, which will become a subsidiary of the Company, in accordance with the terms of this Agreement;

WHEREAS, members of the Company Group are currently the owners of certain right, title and interest in and to certain Intellectual Property related to the Consumer Business as described herein;

WHEREAS, ECC desires to obtain an assignment of all right, title and interest in and to such Intellectual Property from such members of the Company Group to ECC in accordance with the terms of this Agreement; and

WHEREAS, ECC and the Company wish to address other Intellectual Property issues necessary for the conduct of the Receiver Business and the Consumer Business after the Distribution Date.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree as follows:

1. **Definitions.** All capitalized terms used herein, but not otherwise defined herein, shall have the meaning ascribed to them in the Separation Agreement. Words in the singular shall be held to include the plural and vice versa and words of one gender shall be held to include the other genders as the context requires. The terms "hereof," "herein," and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole (including all of the Exhibits hereto) and not to any particular provision of this Agreement. Article, Section, and Exhibit references are to the Articles, Sections and Exhibits to this Agreement unless otherwise specified. The word

“including” and words of similar import when used in this Agreement shall mean “including, without limitation,” unless the context otherwise requires or unless otherwise specified. The word “or” shall not be exclusive. Unless expressly stated to the contrary in this Agreement, all references to “the date hereof,” “the date of this Agreement,” “hereby” and “hereupon” and words of similar import shall all be references to the Effective Date, regardless of any amendment or restatement hereof. For the purposes of this Agreement, the following terms shall have the meanings ascribed to them as follows:

- 1.1. “Acquisition LLC Intellectual Property” shall mean those patents, patent applications, trademarks, trademark registrations and applications for trademark registration listed on Exhibit A hereto.
- 1.2. “Affiliate” shall have the meaning set forth in the Separation Agreement.
- 1.3. “Applicable Law” shall have the meaning set forth in the Separation Agreement.
- 1.4. “Business Day” shall have the meaning set forth in the Separation Agreement.
- 1.5. “Company Group” shall mean the Company, each Subsidiary of the Company and each other Person that is controlled directly or indirectly by the Company immediately after the Distribution Date.
- 1.6. “Consumer Business” shall have the meaning set forth in the Separation Agreement.
- 1.7. “Distribution Date” shall have the meaning set forth in the Separation Agreement.
- 1.8. “ECC Contribution Date” shall mean the date the ECC Contribution is consummated.
- 1.9. “ECC Group” shall mean ECC and each Person (other than any member of the Company Group) that is an Affiliate of ECC immediately after the Distribution Date.
- 1.10. “ECC Intellectual Property” shall mean those patents, patent applications, trademarks, trademark registrations and applications for trademark registration listed on Exhibit B hereto.
- 1.11. “Echosphere Intellectual Property” shall mean those trademarks, trademark registrations and applications for trademark registration listed on Exhibit C hereto.
- 1.12. “EDBS Contribution Date” shall mean the date the EDBS Contribution is consummated.

- 1.13. "EIC Trademarks" shall mean those trademarks, trademark registrations and applications for trademark registration listed on Exhibit D hereto.
- 1.14. "ETC Trademarks" shall mean those trademarks, trademark registrations and applications for trademark registration listed on Exhibit E hereto.
- 1.15. "External Use" shall mean any use that is not an Internal Use.
- 1.16. "Intellectual Property" means (a) all U.S. and foreign patents, including all reissues, divisions, continuations, continuations-in-part, reissues, renewals, registrations, reexaminations and extensions thereof arising from and/or claiming priority to any patent and all rights under the International Convention for the Protection of Industrial Property, patent applications, patent rights, trademarks, trademark applications and registrations, trade names, brand names, d/b/a's, domain names, logos, trade dress, other indicia of origin, copyrights, copyright registrations and applications, database rights, confidential information, trade secrets, proprietary technology, know-how, inventions, discoveries, and improvements, (b) all information and data, whether in printed or electronic form and whether contained in a database or otherwise, including customer lists, (c) all other forms of intellectual property or proprietary rights, (d) claims or causes of action arising out of or related to any infringement, misappropriation or other violation of any of the foregoing, including rights to recover for past, present and future violations thereof, and (e) all goodwill embodied in or related to any of the foregoing.
- 1.17. "Internal Use" shall mean any use solely within ECC Group without any communication (written or oral) with any third party that is not a member or employee of the ECC Group.
- 1.18. "Person" shall have the meaning set forth in the Separation Agreement.
- 1.19. "Receiver Business" shall have the meaning set forth in the Separation Agreement.
- 1.20. "Satellite LLC Contribution Date" shall mean the date the Satellite Contribution is consummated.
- 1.21. "Satellite LLC Intellectual Property" shall mean those patents, patent applications, trademarks, trademark registrations and applications for trademark registration listed on Exhibit F hereto.
- 1.22. "Subsidiary" shall have the meaning set forth in the Separation Agreement.
- 1.23. "Third Party" shall mean a Person that is not an Affiliate of any Party hereto.



**2. Assignment of Acquisition LLC Intellectual Property.**

- 2.1. Prior to the Satellite LLC Contribution Date, Acquisition LLC shall assign to Satellite LLC, all right, title and interest in and to the Acquisition LLC Intellectual Property, including all rights to sue for past, present and future infringements or misappropriations of any of the foregoing and for all damages arising therefrom and all goodwill associated with, relating to or embodied in any of the foregoing.
- 2.2. No later than the Satellite LLC Contribution Date, Acquisition LLC and Satellite LLC shall, at their sole cost and expense, execute and deliver to the Company and ECC the assignment agreements attached hereto as Exhibit G and Exhibit H for the assignment of the Acquisition LLC Intellectual Property to Satellite LLC. Acquisition LLC and Satellite LLC shall take such other actions as are necessary to transfer to, and perfect in, Satellite LLC all right, title and interest in and to the Acquisition LLC Intellectual Property.
- 2.3. After the assignment contemplated by Sections 2.1 and 2.2 above has been completed and effective as of the Satellite LLC Contribution Date, Satellite LLC hereby assigns to the Company, all right, title and interest in and to the Acquisition LLC Intellectual Property and the Satellite LLC Intellectual Property, including all rights to sue for past, present and future infringements or misappropriations of any of the foregoing and for all damages arising therefrom and all goodwill associated with, relating to or embodied in any of the foregoing. Such assignment shall be considered part of the Satellite LLC Contribution.
- 2.4. No later than the Satellite LLC Contribution Date, Satellite LLC shall, at its sole cost and expense, execute and deliver to the Company the assignment agreements attached hereto as Exhibit I and Exhibit J for the assignment of the Acquisition LLC Intellectual Property and the Satellite LLC Intellectual Property to the Company. The Company shall then execute and deliver copies of the assignment agreements to ECC. Satellite LLC and the Company shall take such other actions as are necessary to transfer to, and perfect in, the Company all right, title and interest in and to the Acquisition LLC Intellectual Property and the Satellite LLC Intellectual Property.
- 2.5. Acquisition LLC and Satellite LLC shall cooperate with the Company in taking such steps as are reasonably requested by the Company in connection with the prosecution and maintenance of any of the Acquisition LLC Intellectual Property and the Satellite LLC Intellectual Property and the enforcement of the Acquisition LLC Intellectual Property and the Satellite LLC Intellectual Property, including signing appropriate documents, providing truthful evidence and sworn testimony and joining as a party to any related lawsuit, all at the Company's expense for out-of-pocket expenses incurred by Acquisition LLC or Satellite LLC.

**3. Assignment of Echosphere Intellectual Property.**

- 3.1. Prior to the EDBS Contribution Date, Echosphere shall assign to EDBS, all right, title and interest in and to the Echosphere Intellectual Property, including all rights to sue for past, present and future infringements or misappropriations of any of the foregoing and all goodwill associated with, relating to or embodied in any of the foregoing.
- 3.2. No later than the EDBS Contribution Date, Echosphere and EDBS shall, at their sole cost and expense, execute and deliver to the Company and ECC the assignment agreement attached hereto as Exhibit K for the assignment of the Echosphere Intellectual Property to EDBS. Echosphere and EDBS shall take such other actions as are necessary to transfer to, and perfect in, EDBS all right, title and interest in and to the Echosphere Intellectual Property.
- 3.3. After the assignment contemplated by Sections 3.1 and 3.2 above has been completed and effective as of the EDBS Contribution Date, EDBS hereby assigns to ETC, all right, title and interest in and to the Echosphere Intellectual Property, including all rights to sue for past, present and future infringements or misappropriations of any of the foregoing and for all damages arising therefrom and all goodwill associated with, relating to or embodied in any of the foregoing. Such assignment shall be considered part of the EDBS Contribution.
- 3.4. No later than the EDBS Contribution Date, EDBS and ETC shall, at their sole cost and expense, execute and deliver to the Company and ECC the assignment agreement attached hereto as Exhibit L for the assignment of the Echosphere Intellectual Property to ETC. EDBS and ETC shall take such other actions as are necessary to transfer to, and perfect in, ETC all right, title and interest in and to the Echosphere Intellectual Property.
- 3.5. It is contemplated that ETC will become a subsidiary of the Company. As such, Echosphere LLC and EDBS shall cooperate with the Company and ETC in taking such steps as are reasonably requested by the Company and ETC in connection with the prosecution and maintenance of any of the Echosphere Intellectual Property and the enforcement of the Echosphere Intellectual Property, including signing appropriate documents, providing truthful evidence and sworn testimony and joining as a party to any related lawsuit, all at Company's expense for out-of-pocket expenses incurred by the Echosphere LLC and EDBS.

**4. Assignment of ECC Intellectual Property and Assigned ECC IP.**

- 4.1. Effective as of the ECC Contribution Date, ECC hereby assigns (or, in the case of certain domain names, shall cause members of the ECC Group to assign) to the Company all right, title and interest in and to: (a) the name "ECHOSTAR" and all related trademarks and trademark rights, (b) the ECC Intellectual Property, and (c) the domain names "echostar.com," "echostarfixedsatellite.com," "echostar-gov.com," "meridianaviation.net," and "satelliteranch.com" and all related

website content used exclusively in connection with the Receiver Business, including all rights to sue for past, present and future infringements or misappropriations of any of the foregoing and all goodwill associated with, relating to or embodied in any of the foregoing (collectively, the “Assigned ECC IP”). Such assignment shall be considered part of the ECC Contribution.

- 4.2. No later than the ECC Contribution Date, ECC shall, at its sole cost and expense, execute and deliver to the Company the assignment agreements attached hereto as Exhibit M and Exhibit N for the assignment of the ECC Intellectual Property to the Company. The Company shall then execute and deliver copies of the assignment agreements to ECC. ECC and the Company shall take such other actions as are necessary to transfer to, and perfect in, the Company all right, title and interest in and to the Assigned ECC IP, including the ECC Intellectual Property. ECC and the relevant members of the ECC Group shall provide all necessary assistance and consents required by the applicable domain name registrar to affect the assignment of the domain names included with the Assigned ECC IP to the Company.
- 4.3. ECC shall cooperate with the Company in taking such steps as are reasonably requested by the Company, in connection with the prosecution and maintenance of any of the Assigned ECC IP and the enforcement of the Assigned ECC IP, including signing appropriate documents, providing truthful evidence and sworn testimony and joining as a party to any related lawsuit, all at the Company’s expense for out-of-pocket expenses incurred by ECC.
- 4.4. No Intellectual Property of ECC or any member of the ECC Group, other than that which is expressly assigned by this Agreement and exclusively used in the Receiver Business, is assigned by this Agreement. All rights, including Intellectual Property rights, not expressly assigned by ECC or any member of the ECC Group herein are specifically reserved.

**5. Assignment of ETC Trademarks.**

- 5.1. It is contemplated that in connection with the reorganization and eventual spin-off of the Company and the Company Group that ETC will be converted from a corporation into a limited liability company. The date on which such conversion in the legal entity status of ETC occurs shall be referred to as the “ETC Conversion Date”. For the avoidance of doubt, the term “ETC” as used herein shall refer to ETC as it currently exists as a corporation and as it may exist as a limited liability company after the ETC Conversion Date.
- 5.2. No later than the ETC Conversion Date, ETC shall execute and deliver to ECC all documents required to be filed with the United States Patent and Trademark Office (“USPTO”) to record the change in ETC’s corporate name and status, including copies of all related corporate filings made in ETC’s state of formation. Such filings shall be made with the USPTO by ETC no later than the ETC Conversion Date at its sole cost and expense.

- 5.3. Effective as of the ETC Conversion Date, ETC hereby assigns to Orbital, all right, title and interest in and to the ETC Trademarks, including all rights to sue for past, present and future infringements or misappropriations of any of the foregoing and all goodwill associated with, relating to or embodied in any of the foregoing.
- 5.4. No later than the ETC Conversion Date, ETC shall, at its sole cost and expense, execute and deliver to Orbital and ECC the assignment agreement attached hereto as Exhibit O for the assignment of the ETC Trademarks to Orbital. ETC and Orbital shall take such other actions as are necessary to transfer to, and perfect in, Orbital all right, title and interest in and to the ETC Trademarks.
- 5.5. It is contemplated that ETC will become a subsidiary of the Company. As such, ETC shall cooperate with ECC and Orbital in taking such steps as are reasonably requested by ECC and Orbital in connection with the prosecution and maintenance of any of the ETC Trademarks and the enforcement of the ETC Trademarks, including signing appropriate documents, providing truthful evidence and sworn testimony and joining as a party to any related lawsuit, all at ECC's and Orbital's expense for out-of-pocket expenses incurred by ETC.

**6. Assignment of EIC Trademarks.**

- 6.1. Effective as of the Effective Date, EIC hereby assigns to ECC, all right, title and interest in and to the EIC Trademarks, including all rights to sue for past, present and future infringements or misappropriations of any of the foregoing and all goodwill associated with, relating to or embodied in any of the foregoing.
- 6.2. No later than the Effective Date, EIC shall, at its sole cost and expense, execute and deliver to ECC the assignment agreement attached hereto as Exhibit O for the assignment of the EIC Trademarks to ECC. EIC and ECC shall take such other actions as are necessary to transfer to, and perfect in, ECC all right, title and interest in and to the EIC Trademarks.
- 6.3. It is contemplated that EIC will become a subsidiary of the Company. As such, EIC shall cooperate with ECC in taking such steps as are reasonably requested by ECC in connection with the prosecution and maintenance of any of the EIC Trademarks and the enforcement of the EIC Trademarks, including signing appropriate documents, providing truthful evidence and sworn testimony and joining as a party to any related lawsuit, all at ECC's expense for out-of-pocket expenses incurred by EIC.

**7. Assignment of EIC Spain Domain Names.**

- 7.1. Effective as of the Effective Date, EIC Spain hereby assigns to ECC, all right, title and interest in and to the domain names "dish.eu" and "dishnetwork.eu" and all related website content used exclusively in connection with the Consumer Business, including all rights to sue for past, present and future infringements or misappropriations of any of the foregoing and all goodwill associated with,

relating to or embodied in any of the foregoing (collectively, the “EIC Spain Domain Names”). EIC Spain and ECC shall take such other actions as are necessary to transfer to, and perfect in, ECC all right, title and interest in and to the EIC Spain Domain Names. EIC Spain shall provide all necessary assistance and consents required by the applicable domain name registrar to affect the assignment of the EIC Domain Names to ECC.

- 7.2. It is contemplated that EIC Spain will become a subsidiary of the Company. As such, EIC Spain shall cooperate with ECC in taking such steps as are reasonably requested by ECC in connection with the maintenance of any of the EIC Spain Domain Names and the enforcement of the EIC Spain Domain Names, including signing appropriate documents, providing truthful evidence and sworn testimony and joining as a party to any related lawsuit, all at ECC’s expense for out-of-pocket expenses incurred by EIC Spain.

**8. Assignment of DISH CO Inventions.**

- 8.1. ECC, through its Affiliate Satellite LLC, currently maintains a docket for its patent, patent applications and related invention disclosures. On such docket are the following entries: (a) “Multiplatform Voting System” (File No. ES-1207), (b) “User Search and Skip of DVR Events Using Closed Captioning” (File No. ES-1210), (c) “Methods of Operating a Multi-Platform Voting System” (File No. ES-1215), and (d) “System and Method for Concurrently Presenting User Selectable and Business Programming” (File No. ES-1216) (collectively, the “DISH CO Inventions”). The inventors of the DISH CO Inventions have yet to execute assignments to their inventions to ECC or an Affiliate of ECC, however, all such assignments shall be made by such inventors to ECC or its designated Affiliate regardless of whether such inventors remain employees of a member of the ECC Group. To the extent such inventors become employees of a member of the Company Group, the Company and the members of the Company Group shall cause such inventors to assign all rights in and to the DISH CO Inventions to ECC or its designated Affiliate and shall take such other actions as are necessary to transfer to, and perfect in, ECC or its designated Affiliate all right, title and interest in and to the DISH CO Inventions. The Company and the members of the Company Group, including their employees, shall cooperate with ECC and its designated Affiliates in taking such steps as are reasonably requested by ECC or its designated Affiliate, in connection with the prosecution and maintenance of any of the DISH CO Inventions and the enforcement of the DISH CO Inventions, including signing appropriate documents, providing truthful evidence and sworn testimony and joining as a party to any related lawsuit, all at ECC’s expense for out-of-pocket expenses incurred by Company or a member of the Company Group.

**9. IBM Cross License.**

- 9.1. On or about October 2, 2006, ECC and International Business Machines Corporation (“IBM”) entered into a Patent Cross License (the “IBM Cross

License"). The Parties acknowledge and agree that all assignments of rights herein are subject to the rights granted in the IBM Cross License. Therefore, the Company and the Company Group acknowledge and agree that all assignments of Intellectual Property rights to them hereunder are taken subject to the rights and obligations of IBM and ECC respectively under the IBM Cross License.

- 9.2. The Company acknowledges that it has received and reviewed the IBM Cross License on its behalf and on behalf of the Company Group. The Company and the Company Group shall abide by the terms of the IBM Cross License so as not to create grounds for IBM to reasonably declare that ECC is in breach of the IBM Cross License.
- 9.3. Pursuant to Section 2.8 of the IBM Cross License, ECC and the Company (or a member of the Company Group if appropriate) shall request in writing that IBM grant the royalty-free patent cross license referenced in Section 2.8 of the IBM Cross License to the Company (or a member of the Company Group if appropriate). ECC and the ECC Group shall have no liability should IBM fail to grant the aforementioned license to the Company or another member of the Company Group. The Parties shall exercise commercially reasonable efforts to secure the aforementioned license from IBM in favor of the Company and the Company Group.

**10. Licensing of Certain Intellectual Property.**

- 10.1. To the extent that there is unregistered Intellectual Property owned by the Company or a member of the Company Group that is (a) not otherwise the subject of an issued patent, pending patent application, or existing invention disclosure which is owned by the Company or a member of the Company Group (or is being assigned to the Company or a member of the Company Group hereunder) and (b) which relates exclusively to or is necessary for the continued conduct of the Consumer Business ("Consumer Business IP"), the Company and the members of the Company Group hereby grant to ECC and the members of the ECC Group a perpetual, royalty-free, worldwide license and right to use, practice, license, and sublicense the Consumer Business IP, but only in connection with the Consumer Business. Such rights may not be used by ECC or the members of the ECC Group to compete or to enable other Persons to compete with the Company or the members of the Company Group in the Receiver Business. This license shall not grant, or entitle ECC or any member of the ECC group to, any rights to any improvements, modifications or derivative works of the Consumer Business IP made by the Company or the members of the Company Group after the Distribution Date.
- 10.2. To the extent that there is unregistered Intellectual Property owned by ECC or a member of the ECC Group that is (a) not otherwise the subject of an issued patent, pending patent application, or issued invention disclosure which is owned by ECC or a member of the ECC Group (or is being assigned to the Company or a member of the Company Group hereunder) and (b) which relates exclusively to or

is necessary for the continued conduct of the Receiver Business ("Receiver Business IP"), ECC and the members of the ECC Group hereby grant to the Company and the members of the Company Group a perpetual, royalty-free, worldwide license and right to use, practice, license, and sublicense the Receiver Business IP, but only in connection with the Receiver Business. Such rights may not be used by the Company or the members of the Company Group to compete or to enable other Persons to compete with ECC or the members of the ECC Group in the Consumer Business. This license shall not grant or entitle the Company or any member of the Company group to any rights to any improvements, modifications or derivative works of the Receiver Business IP made by ECC or the members of the ECC Group after the Distribution Date.

**11. Transitional Trademark License and Name Change.**

- 11.1. Effective as of the ECC Contribution Date, Company grants to ECC and the ECC Group a non-exclusive, non-transferable, non-sublicensable, worldwide, limited license ("EchoStar Name License") to use the name "ECHOSTAR" and the Assigned ECC IP and any similar derivations thereof (collectively, the "EchoStar Names") as trade names and trademarks in connection with the Consumer Business and in the same manner as the EchoStar Names are used by ECC, the ECC Group and the Company as of the ECC Contribution Date for: (a) External Use for a term beginning on the ECC Contribution Date and ending one (1) year from the Distribution Date and (b) Internal Use for a term beginning on the ECC Contribution Date and ending two (2) years from the Distribution Date.
- 11.2. ECC and the ECC Group shall use the EchoStar Names: (a) solely in connection with the types of goods and services offered by ECC, the ECC Group or the Company Group as of the ECC Contribution Date; (b) in accordance with the terms of this Agreement; and (c) in a manner that is consistent with industry standards for quality, but in no event shall the EchoStar Names be used in connection with goods or services that are of a lesser quality than the quality of those goods and services offered as of the ECC Contribution Date by ECC, the ECC Group or the Company Group.
- 11.3. ECC and the ECC Group may use the EchoStar Names for External Use for a term beginning on the ECC Contribution Date and ending one (1) year from the Distribution Date for the purpose of eliminating confusion on the part of customers and others and thereafter ECC acknowledges and agrees not to use, and to cause any member of the ECC Group not to use, for External Use, the EchoStar Names as trademarks. ECC acknowledges and agrees that nothing contained in this Agreement shall otherwise restrict the Company from using any name or mark that incorporates the term "ECHOSTAR" or any terms similar thereto or any combinations thereof.
- 11.4. The Company acknowledges and agrees not to (and to cause all members of the Company Group not to) make any public or private use of the name or trademark "DISH NETWORK" or any terms confusingly similar thereto or any

combinations thereof with other words or phrases and not to use the name "DISH NETWORK" or any other trademark owned by ECC or any member of the ECC Group, in any manner as to be likely to cause confusion, deception or mistake or to suggest that the Company or any members of the Company Group or any product or service offered by any of them are approved, recommended, endorsed, licensed or sponsored by ECC or any member of the ECC Group.

- 11.5. Within two (2) years from the Distribution Date, ECC shall (and shall cause any and all members of the Company Group with the term "ECHOSTAR" in their respective names to) change their names so that the new names of ECC and the members of the ECC Group do not contain the term "ECHOSTAR". ECC and the members of the ECC Group shall make all filings and submissions, at their sole cost and expense, to effectuate the aforementioned name changes.

**12. Consents and Approvals.**

- 12.1. ECC and the members of the ECC Group who are parties to this Agreement shall use their commercially reasonable efforts to obtain any and all consents and approvals necessary to allow such parties to assign the Acquisition LLC Intellectual Property, the Satellite LLC Intellectual Property, the Echosphere Intellectual Property, and the Assigned ECC IP, including the ECC Intellectual Property, to the Company, or to otherwise grant rights to the Company, as contemplated by this Agreement (the "ECC Required Consents"). The Company shall cooperate with ECC's and the members of the ECC Group's reasonable requests to effectuate the transactions contemplated herein, and shall execute any documents requested by ECC or the members of the ECC Group in connection with their efforts to obtain the ECC Required Consents.
- 12.2. If an ECC Required Consent is not obtained with respect to certain of the Acquisition LLC Intellectual Property, the Satellite LLC Intellectual Property, the Echosphere Intellectual Property, the Assigned ECC IP, including the ECC Intellectual Property, or any other Intellectual Property rights that are to be granted to the Company Group hereunder after the use of commercially reasonable efforts, then the Acquisition LLC Intellectual Property, the Satellite LLC Intellectual Property, the Echosphere Intellectual Property, the Assigned ECC IP, including the ECC Intellectual Property, or any other such Intellectual Property rights as applicable, shall only be assigned to the extent permitted in the absence of the missing ECC Required Consents. The Parties shall have no further obligations if such ECC Required Consents are withheld.
- 12.3. The Company and the members of the Company Group who are parties to this Agreement shall use their commercially reasonable efforts to obtain any and all consents and approvals necessary to allow such parties to assign the ETC Trademarks, EIC Trademarks, EIC Domain Names and the DISH CO Inventions to ECC, or to otherwise grant rights to ECC, as contemplated by this Agreement (the "Company Required Consents"). ECC shall cooperate with the Company's and the members of the Company Group's reasonable requests to effectuate the



transactions contemplated herein, and shall execute any documents requested by the Company or the members of the Company Group in connection with their efforts to obtain the Company Required Consents.

- 12.4. If a Company Required Consent is not obtained with respect to certain of the ETC Trademarks, EIC Trademarks, EIC Domain Names, the DISH CO Inventions or any other Intellectual Property rights that are to be granted to the ECC Group hereunder after the use of commercially reasonable efforts, then the ETC Trademarks, EIC Trademarks, EIC Domain Names, the DISH CO Inventions or any other such Intellectual Property rights as applicable, shall only be assigned to the extent permitted in the absence of the missing Company Required Consents. The Parties shall have no further obligations if such Company Required Consents are withheld.

**13. Provision and Destruction of Certain Materials.**

- 13.1. Within thirty (30) days from the Distribution Date, the Company and the members of the Company Group shall destroy all copies of marketing materials and documentation in their possession, custody or control, including any envelopes, letterheads, business cards, presentations, advertising, fliers, sales circulars and direct mail packages that contain a trademark owned by ECC or any member of the ECC Group, including the mark "DISH NETWORK" and any other marks confusingly similar thereto.
- 13.2. Within one (1) year from the Distribution Date, ECC and the members of the ECC Group shall destroy all copies of marketing materials and documentation in their possession, custody or control, including any envelopes, letterheads, business cards, presentations, advertising, fliers, sales circulars and direct mail packages that contain a trademark owned after the Distribution Date by the Company, including any EchoStar Names.
- 13.3. Within thirty (30) days after the Distribution Date, each Party shall destroy all copies of documents or files in its respective possession, custody or control that contain any of the other Parties' proprietary information or Intellectual Property that has not been assigned to such Party under this Agreement; provided, that for any given document or file any Party at its option may instead indelibly and completely redact any of said proprietary information of the other Parties so long as such Party notifies the other Parties of such actions and retention of the aforementioned types of documents and files.
- 13.4. As of the Distribution Date, except as otherwise provided in the Transition Services Agreement, the Company and the members of the Company Group shall no longer receive any licenses or rights to use any hardware, software or other Intellectual Property based on ECC's or any member of the ECC Group's agreements or licenses with Third Parties.

**14. Representations and Warranties.**

- 14.1. THE ACQUISITION LLC INTELLECTUAL PROPERTY, THE SATELLITE LLC INTELLECTUAL PROPERTY, THE ECHOSPHERE INTELLECTUAL PROPERTY, THE ASSIGNED ECC IP, INCLUDING THE ECC INTELLECTUAL PROPERTY, THE ETC TRADEMARKS, THE EIC TRADEMARKS, THE EIC SPAIN DOMAIN NAMES AND THE DISH CO INVENTIONS, ARE PROVIDED "AS IS" PURSUANT TO THIS AGREEMENT. EXCEPT AS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, NO PARTY MAKES ANY WARRANTIES ON ANY KIND AND THIS AGREEMENT EXPRESSLY EXCLUDES, AND THE PARTIES HEREBY RESPECTIVELY DISCLAIM, ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, STATUTORY OR OTHERWISE, INCLUDING: (A) ANY WARRANTY THAT THE ACQUISITION LLC INTELLECTUAL PROPERTY, THE SATELLITE LLC INTELLECTUAL PROPERTY, THE ECHOSPHERE INTELLECTUAL PROPERTY, THE ASSIGNED ECC IP, INCLUDING THE ECC INTELLECTUAL PROPERTY, THE ETC TRADEMARKS, THE EIC TRADEMARKS, THE EIC SPAIN DOMAIN NAMES AND THE DISH CO INVENTIONS, ARE ERROR FREE OR SECURE, WILL OPERATE WITHOUT INTERRUPTION, OR ARE COMPATIBLE WITH ALL EQUIPMENT AND SOFTWARE CONFIGURATIONS; (B) ANY WARRANTY OF MERCHANTABILITY OR WARRANTY ARISING OUT OF CUSTOM OR USAGE IN TRADE; (C) ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; AND (D) ANY WARRANTY OF NON-INFRINGEMENT OR VALIDITY.
- 14.2. EXCEPT AS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, NO PARTY OR ITS RESPECTIVE REPRESENTATIVES SHALL BE LIABLE TO THE OTHER PARTIES, OR ANY THIRD PARTY, FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE ACQUISITION LLC INTELLECTUAL PROPERTY, THE SATELLITE LLC INTELLECTUAL PROPERTY, THE ECHOSPHERE INTELLECTUAL PROPERTY, THE ASSIGNED ECC IP, INCLUDING THE ECC INTELLECTUAL PROPERTY, THE ETC TRADEMARKS, THE EIC TRADEMARKS, THE EIC SPAIN DOMAIN NAMES AND THE DISH CO INVENTIONS, OR ANY ELEMENTS OF ANY OF THE FOREGOING, OR OTHERWISE, INCLUDING DAMAGES FOR LOSS OF PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES OR FOR ANY CLAIM OR DEMAND AGAINST SUCH PARTY BY ANY OTHER PARTY, OR OTHER PECUNIARY LOSS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF OR KNOWS OF THE POSSIBILITY OF SUCH DAMAGES.

**15. Term and Termination.**

- 15.1. This Agreement is effective as of the Effective Date and will continue in perpetuity, unless sooner terminated as set forth below.
- 15.2. Any Party may, in addition, and without prejudice to any other rights or remedies it may have, terminate this Agreement as follows:
- (a) Except as otherwise provided herein, by a Party for any material breach of this Agreement by any other Party that is not cured within thirty (30) days of receipt by the Party in default of a notice specifying the breach and requiring its cure; or
  - (b) By a Party, immediately upon written notice, if (i) all or a substantial portion of the assets of any other Party are transferred to an assignee for the benefit of creditors, to a receiver, or to a trustee in bankruptcy; (ii) a proceeding is commenced by or against the other Party for relief under bankruptcy or similar laws; or (iii) any other Party is adjudged bankrupt.
- 15.3. Sections 9.2, 11.3, 11.4, and 15.3 and Articles 14, 16, 17, and 18 of this Agreement shall survive the termination of this Agreement as shall all assignments of Intellectual Property that have occurred prior to the effective date of termination.
- 16. Confidentiality.**
- 16.1. Each Party hereto agrees that the specific terms and conditions of this Agreement and any information conveyed or otherwise received by or on behalf of a Party hereto in conjunction herewith are confidential and are subject to the terms of the confidentiality provisions set forth in Section 4.5 of the Separation Agreement.
- 17. No Agency Relationship.**
- 17.1. Each of the Parties, in performance of this Agreement, is acting as an independent contractor to the other Parties, and not as a partner, joint venturer or agent, nor do the Parties intend to create by this Agreement an employer-employee relationship. Each Party retains control over its personnel, and the employees of one Party shall not be considered employees of the other Parties. No Party will be bound by any representation, act or omission of the other Parties. No Party has any right, power or authority to create any obligation, express or implied, on behalf of the other Parties.
- 18. Miscellaneous.**
- 18.1. This Agreement, including the Exhibits hereto and the sections of the Separation Agreement referenced herein, constitutes the entire agreement between the Parties hereto with respect to the subject matter contained herein, and supersedes all prior agreements, negotiations, discussions, understandings, writings and commitments between the Parties hereto with respect to such subject matter.

- 18.2. This Agreement and the legal relations between the Parties hereto shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflict of laws rules thereof to the extent such rules would require the application of the law of another jurisdiction. The state or federal courts located within the State of New York, County of New York shall have exclusive jurisdiction over any and all disputes between the Parties hereto, whether in law or equity, arising out of or relating to this Agreement or the agreements, instruments and documents contemplated hereby, or the Acquisition LLC Intellectual Property, the Echosphere Intellectual Property, or the Assigned ECC IP, including the ECC Intellectual Property, and the Parties hereto consent to and agree to submit to the exclusive jurisdiction of such courts. Each of the Parties hereto hereby waives and agrees not to assert in any such dispute, to the fullest extent permitted by Applicable Law, any claim that (a) such Party is not personally subject to the jurisdiction of such courts, (b) such Party and such Party's property is immune from any legal process issued by such courts or (iii) any litigation or other proceeding commenced in such courts is brought in an inconvenient forum. The Parties hereto hereby agree that mailing of process or other papers in connection with any such action or proceeding in the manner provided in Section 18.10, or in such other manner as may be permitted by Applicable Law, shall be valid and sufficient service thereof and hereby waive any objections to service accomplished in the manner herein provided.
- 18.3. EACH PARTY TO THIS AGREEMENT HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED IN THIS AGREEMENT (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) OR THE ACQUISITION LLC INTELLECTUAL PROPERTY, THE ECHOSPHERE INTELLECTUAL PROPERTY, OR THE ASSIGNED ECC IP, INCLUDING THE ECC INTELLECTUAL PROPERTY. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 18.3.
- 18.4. This Agreement shall not be amended, modified or supplemented except by a written instrument signed by an authorized representative of each of the Parties hereto.
- 18.5. Any term or provision of this Agreement may be waived, or the time for its performance may be extended, by the Party or the Parties hereto entitled to the benefit thereof. Any such waiver shall be validly and sufficiently given for the

purposes of this Agreement if, as to any Party hereto, it is in writing signed by an authorized representative of such Party. The failure of any Party hereto to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, or in any way to affect the validity of this Agreement or any part hereof or the right of any Party hereto thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

- 18.6. Wherever possible, each provision hereof shall be interpreted in such a manner as to be effective and valid under Applicable Law, but in case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such provision or provisions shall be ineffective to the extent, but only to the extent, of such invalidity, illegality or unenforceability without invalidating the remainder of such provision or provisions or any other provisions hereof, unless such a construction would be unreasonable.
- 18.7. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original instrument, but all of which shall be considered one and the same agreement, and shall become binding when one or more counterparts have been signed by and delivered to each of the Parties hereto.
- 18.8. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their successors and permitted assigns; provided, however, that the rights and obligations of each of the Parties hereto under this Agreement shall not be assignable by such Parties without the prior written consent of the other Parties. The successors and permitted assigns hereunder shall include any permitted assignee as well as the successors in interest to such permitted assignee (whether by merger, liquidation (including successive mergers or liquidations) or otherwise).
- 18.9. Except to the extent otherwise provided in this Agreement, the provisions of this Agreement are solely for the benefit of the Parties hereto and their respective Affiliates, successors and permitted assigns and shall not confer upon any Third Party any remedy, claim, liability, reimbursement or other right in excess of those existing without reference to this Agreement.
- 18.10. All notices, demands, requests, consents, approvals or other communications required or permitted to be given hereunder or which are given with respect to this Agreement shall be in writing and shall be personally served, delivered by reputable courier service with charges prepaid, or transmitted by hand delivery, telegram, telex or facsimile, addressed as set forth below, or to such other address as such Party shall have specified most recently by written notice. Notice shall be deemed given on the date of service or transmission if personally served or transmitted by telegram, telex or facsimile. Notice otherwise sent as provided herein shall be deemed given on the next Business Day following delivery of such notice to a reputable air courier service.

If to the Company, ETC, EIC, or EIC Spain to:

Attention:

Telephone: ( )

Fax: ( )

If to ECC, Acquisition LLC, Echosphere, EDDBS, Satellite LLC or Orbital to:

Attention:

Telephone: ( )

Fax: ( )

- 18.11. Neither ECC nor the Company (nor any member of the ECC Group or the Company Group) shall, without the approval of the other, make any press release or other public announcement concerning the transactions contemplated by this Agreement, except as and to the extent that either party hereto shall be so obligated by Applicable Law or the rules of any regulatory body, stock exchange or quotation system, in which case the other Parties hereto shall be advised and the Parties hereto shall use commercially reasonable efforts to cause a mutually agreeable release or announcement to be issued; provided, however, that the foregoing shall not preclude communications or disclosures necessary to implement the provisions of this Agreement or to comply with Applicable Law, accounting and SEC disclosure obligations or the rules of any stock exchange.
- 18.12. Notwithstanding any other provision of this Agreement, no individual who is a stockholder, director, employee, officer, agent, member or representative of the Company, ECC, or a member of the ECC Group who is a Party, in its capacity as such, shall have any liability in respect of or relating to the covenants or obligations of such Party under this Agreement and, to the fullest extent legally permissible, each of the Company, ECC, and the members of the ECC Group who are Parties, for itself and its respective stockholders, directors, employees, officers and Affiliates, waives and agrees not to seek to assert or enforce any such liability that any such Person otherwise might have pursuant to Applicable Law.
- 18.13. This Agreement shall be deemed to be the joint work product of the Parties and any rule of construction that a document shall be interpreted or construed against a drafter of such document shall not be applicable.
- 18.14. Each Party acknowledges that a material breach of its obligations under this Agreement would cause irreparable damage to the other Parties, as applicable, the exact amount of which would be difficult to ascertain, and that the remedies at law and monetary damages for any such breach would be inadequate. Accordingly, in the event of any action taken or threatened by any Party hereunder that, if taken, would constitute a material breach of its obligations under this Agreement, the other Parties and their respective successors and assigns, as applicable, are entitled to injunctive or other relief and/or a decree for

specific performance, without the posting of any bond or other security, in addition to any other remedies it may have for damages or otherwise.

18.15. The article, section and paragraph headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

*Signatures on the Following Page.*

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

**ECHOSTAR COMMUNICATIONS CORPORATION**

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

**ECHOSTAR ACQUISITION L.L.C.**

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

**ECHOSTAR DBS CORPORATION**

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

**ECHOSTAR INTERNATIONAL CORPORATION**

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

**EIC SPAIN SL**

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

**ECHOSTAR HOLDING CORPORATION**

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

**ECHOSPHERE L.L.C.**

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

**ECHOSTAR SATELLITE L.L.C.**

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

**ECHOSTAR TECHNOLOGIES CORPORATION**

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

**ECHOSTAR ORBITAL CORPORATION**

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

Signature Page to Intellectual Property Matters Agreement



**FORM OF  
MANAGEMENT SERVICES AGREEMENT**

THIS MANAGEMENT SERVICES AGREEMENT (this "Agreement") is entered into as of [•], 2007, by and between EchoStar Communications Corporation, a Nevada corporation ("ECC"), and EchoStar Holding Corporation, a Nevada corporation (the "Company").

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

WHEREAS, ECC and the Company have entered into that certain Separation Agreement, dated as of [•], 2007 (the "Separation Agreement"), in order to carry out, effect and consummate the Separation; and

WHEREAS, the Company and ECC believe that it is in their mutual interests for the Company to obtain management services from ECC in connection with the operation of its business after the Separation and for the Company to compensate ECC for the performance of such management services; and

WHEREAS, the parties desire to set forth in this Agreement the management services to be provided by ECC to the Company and the basis upon which ECC shall be compensated by the Company.

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

ARTICLE I

Definitions

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

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

(b) "Allocated Employee Expenses" has the meaning set forth in Section 3.1 hereof.

(c) "Bankruptcy Event" will be deemed to have occurred with respect to the Company or ECC, as the case may be, upon the Company's or ECC's (as applicable) insolvency, general assignment for the benefit of creditors, the voluntary commencement by the Company or ECC (as applicable) of any case, proceeding, or other action seeking reorganization, arrangement, adjustment, liquidation, dissolution, or consolidation of the Company's or ECC's (as applicable) debts under any law relating to bankruptcy, insolvency, or reorganization, or relief of debtors, or seeking appointment of a receiver, trustee, custodian, or other similar official for the Company or ECC

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(as applicable) or for all or any substantial part of the Company's or ECC's (as applicable) assets (each, a "Bankruptcy Proceeding"), or the involuntary filing against the Company or ECC (as applicable) of any Bankruptcy Proceeding that is not stayed within 60 days after such filing.

(d) "Change in Control" will be deemed to have occurred, with respect to the Company or ECC, as the case may be, if a merger, consolidation, binding share exchange, acquisition, or similar transaction (each, a "Transaction"), or series of related Transactions, involving the Company or ECC (as applicable) occurs as a result of which the voting power of all voting securities of the Company or ECC (as applicable) outstanding immediately prior thereto represent (either by remaining outstanding or being converted into voting securities of the surviving entity) less than 50% of the voting power of the Company or ECC (as applicable) or the surviving entity outstanding immediately after such Transaction (or if the Company or ECC (as applicable) or the surviving entity after giving effect to such Transaction is a subsidiary of the issuer of securities in such Transaction, then the voting power of all voting securities of the Company or ECC (as applicable) outstanding immediately prior to such Transaction represent (by being converted into voting securities of such issuer) less than 50% of the voting power of the issuer outstanding immediately after such Transaction.

(e) "Company Indemnified Parties" means the Company and its Subsidiaries and each of their Affiliates, directors, officers, employees and agents, and each of the heirs, executors, successors and assigns of any of the foregoing.

(f) "ECC Indemnified Parties" means ECC and its Subsidiaries and each of their Affiliates, directors, officers, employees and agents, and each of the heirs, executors, successors and assigns of any of the foregoing.

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

(h) "Initial Term" has the meaning set forth in Section 4.1 hereof.

(i) "Look Back Period" has the meaning set forth in Section 5.3 hereof.

(j) "Management Employees" means the employees of ECC listed on Schedule 2.1 hereto.

(k) "Management Services" has the meaning set forth in Section 2.1 hereof.

(l) "Renewal Term" has the meaning set forth in Section 4.1 hereof.

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

ARTICLE II

Performance of Services

Section 2.1 Description of the Services. Following the Distribution Date, ECC shall provide, with respect to each of the Management Employees, the management services specified in Schedule 2.1 (the "Management Services") to the Company or its Subsidiaries, in accordance with the terms and conditions for such Management Services listed in Schedule 2.1.

Section 2.2 Schedules Update. To the extent any Management Services are mischaracterized in any Schedule 2.1, ECC and the Company shall negotiate in good faith to amend Schedule 2.1 as appropriate.

ARTICLE III

Compensation For Providing Services

Section 3.1 Allocated Employee Expenses.

The Company shall pay ECC for the Management Services based on an allocated portion of the personnel costs and related expenses that are incurred by ECC in connection with the Management Services performed by it under this Agreement (collectively, the "Allocated Employee Expenses"). The Allocated Employee Expenses shall be set forth in, or determined from time to time in the manner set forth in Schedule 3.1 attached hereto, as such Schedule 3.1 may be periodically amended and revised by the parties.

Section 3.2 Adjustment To Allocated Employee Expenses. The Allocated Employee Expenses shall be estimated at the beginning of each calendar year based on the anticipated Management Services to be provided to the Company during the upcoming calendar year. ECC and the Company shall review and evaluate the Allocated Employee Expenses for reasonableness annually and shall negotiate in good faith to reach agreement on any appropriate adjustment to the Allocated Employee Expenses based on such review and evaluation, including updating the aggregate salaries and benefits of Management Employees (and any other costs or expenses included in Allocated Employee Expenses), revising the allocated percentages of time spent providing Management Services to the Company and agreeing on the appropriate effective date (which may be retroactive) of any such adjustment to the Allocated Employee Expenses. The initial review of and adjustment to the Allocated Employee Expenses shall be effective as of [January 1], 2009. Notwithstanding the foregoing, ECC and the Company may mutually agree to review, evaluate and/or make adjustments to the Allocated Employee Expenses at any time.

Section 3.3 Cost Reimbursement. In addition to the Allocated Employee Expenses payable pursuant to Section 3.1, the Company also shall reimburse ECC for all direct out-of-pocket costs (with no markup) incurred by ECC, unless such costs are paid directly by the Company, for postage and out-of-town courier service charges, for any applicable software license fees attributable to desktop or laptop computers utilized by Management Employees, and for expenses incurred by Management Employees related to Management Services performed on behalf of the Company, including travel and meals and entertainment related to such Management Services, and for any other miscellaneous expenses that may be incurred by ECC on behalf of the Company.

Section 3.4 Payment Procedures.

(a) The Company shall pay ECC, by wire or intrabank transfer of funds or in such other manner specified by ECC to the Company, in arrears on or before the last day of each calendar month beginning [•], 2008, the Allocated Employee Expenses then in effect.

(b) Any reimbursement to be made by the Company to ECC pursuant to Section 3.3 shall be paid by the Company to ECC within 60 days after receipt by the Company of any invoice therefor, by wire or intrabank transfer of funds or in such other manner as specified by ECC to the Company. ECC shall invoice the Company monthly for reimbursable expenses incurred by ECC on behalf of the Company during the preceding calendar month. Any invoice or statement pursuant to this Section 3.4(b) shall be accompanied by supporting documentation in reasonable detail with respect to the actual costs or expenses incurred by ECC for which ECC is entitled to reimbursement.

(c) For the avoidance of doubt, Allocated Employee Expenses, and reimbursements pursuant to Section 3.3 or Section 3.5, as applicable, shall be paid to ECC as specified in this Article III, but in no event later than March 15 of the calendar year following the calendar year in which such Allocated Employee Expenses were incurred.

Section 3.5 Allocation by Agreement. Notwithstanding the preceding provisions of this Article III, ECC and the Company may agree that the Company's payment to ECC of a fixed amount shall be full reimbursement as to any item for which ECC may be entitled to reimbursement under this Agreement. As to any item that is the subject of such agreement, the amount of the reimbursement fixed by such agreement shall control, it being agreed, however, that as to any item that is not the subject of an agreement, the preceding provisions of Article III shall apply.

ARTICLE IV

Term

Section 4.1 Term Generally. The term of this Agreement shall commence on the Distribution Date and shall continue until the first anniversary of the Distribution Date (the "Initial Term") and shall be renewed automatically for successive one-year periods thereafter (each a "Renewal Term"), unless earlier terminated in accordance with Section 4.3.

Section 4.2 Certain Services Discontinued. At any time during the Initial Term or any Renewal Term, upon at least 180 days' prior notice by ECC to the Company or 30 days' prior notice by the Company to ECC, either ECC or the Company may elect to discontinue providing to the Company or obtaining from ECC some or all of the Management Services described in Section 2.1. In such event, ECC's obligation to provide any Management Services that have been discontinued pursuant to this Section 4.2, and the Company's obligation to compensate ECC for any such Management Services, shall cease as of the end of such 180-day period or 30-day period, as the case may be, or such later date as may be specified in the notice, and this Agreement shall remain in effect with respect to any Management Services that have not been so discontinued. Each party shall remain liable to the other for any required payment or performance accrued prior to the effective date of discontinuance of any Management Service or termination of this Agreement in its entirety.

Section 4.3 Termination. This Agreement shall be terminated upon the occurrence of the following events:

- (a) at any time upon at least 30 days' prior written notice by the Company to ECC;
- (b) at the end of any Renewal Term upon at least 180 days' prior written notice by ECC to the Company;
- (c) immediately upon notice (or at any time specified in such notice) by ECC to the Company if a Change in Control or Bankruptcy Event occurs with respect to the Company; or
- (d) immediately upon notice (or at any time specified in such notice) by the Company to ECC if a Change in Control or Bankruptcy Event occurs with respect to ECC.

Upon any termination of this Agreement in accordance with this Section 4.3, the Initial Term or Renewal Term then in effect shall also terminate.

#### ARTICLE V

##### Management Employees

Section 5.1 Supervision. ECC shall be responsible for hiring, supervising, instructing, discharging, and otherwise managing the Management Employees, and administering any employee benefit plans applicable to such employees. The Company acknowledges that the Management Employees also shall be performing services for ECC and may be performing services for certain Subsidiaries and Affiliates of ECC.

Section 5.2 Employer. Notwithstanding the Management Services provided by Management Employees to the Company, the parties acknowledge that ECC is and shall remain the employer of all Management Employees and shall be responsible for the employment and training of all Management Employees and for the payment of salaries, wages, benefits (including health insurance, retirement, and other similar benefits, if any) and other compensation applicable to all Management Employees. All Management Employees shall be subject to the personnel policies of ECC and shall be entitled to participate in ECC's employee benefit plans to the same extent as similarly situated employees of ECC performing services in connection with ECC's business. ECC shall be responsible for the payment of all federal, state, and local withholding taxes on the compensation of all Management Employees and other such employment related taxes as are required by law. The Company shall cooperate with ECC to facilitate ECC's compliance with applicable federal, state, and local laws, rules, regulations, and ordinances applicable to the employment of all Management Employees by ECC and their provision of Management Services to the Company under this Agreement.

Section 5.3 Additional Employee Provisions. ECC shall have the right to terminate the employment of any Management Employee at any time. A portion of any severance payments payable to any Management Employee spending 50% or more of such person's time over the Look-Back Period (as defined below) in connection with providing Management Services to the Company at the Company's request who separates from service with ECC during the Initial Term or any Renewal Term shall be allocated to the Company, as an additional Allocated Employee Expense with respect to the month of such separation from service, based on the percentage determined by dividing the total number

of months that such person was a Management Employee providing Management Services to the Company on a 50% or greater basis by the total number of months that such person was employed by ECC or its predecessors, in each case to the extent taken into account for purposes of determining any severance payments payable to such person, or such other basis upon which the amount of the severance payments payable to such person may be determined, multiplied by the percentage of such person's time devoted to providing Management Services to the Company, in each case with the percentage of such person's time devoted to providing Management Services to the Company determined for the one-year period (or such applicable shorter period of time if such Management Employee was a Management Employee for less than one year) immediately preceding the date of separation of service (the "Look Back Period"). The Company shall not solicit any Management Employee to become an employee of the Company without the prior consent of ECC, unless and until ECC terminates the employment of such Management Employee.

#### ARTICLE VI

##### No Agency Relationship

Section 6.1 No Agency Relationship. ECC, in performance of this Agreement, is acting as an independent contractor to the Company, and not as a partner, joint venturer or agent, nor do the parties hereto intend to create by this Agreement an employer-employee relationship. Neither party hereto shall be bound by any representation, act or omission of the other party hereto. Neither party hereto has any right, power or authority to create any obligation, express or implied, on behalf of the other party hereto.

#### ARTICLE VII

##### Indemnification

Section 7.1 Indemnification by the Company. The Company shall indemnify, defend, and hold harmless the ECC Indemnified Parties, from and against any and all Liabilities that any ECC Indemnified Party may suffer arising from or out of, or relating to (a) any breach by the Company of its obligations under this Agreement or (b) any acts of ECC in providing the employees and Management Services to be provided by ECC pursuant to this Agreement, except to the extent such Liabilities (i) arise from or relate to any breach by ECC of its obligations under this Agreement, (ii) are attributable to the negligence, willful misconduct, fraud, or bad faith of ECC or such other ECC Indemnified Party seeking indemnification under this Section 7.1, or (iii) are covered by insurance maintained by ECC or such other ECC Indemnified Party.

Section 7.2 Indemnification by ECC. ECC shall indemnify, defend, and hold harmless the Company Indemnified Parties, from and against any Liabilities any Company Indemnified Employee may suffer arising from or out of, or relating to, (a) any breach by ECC of its obligations under this Agreement or (b) the negligence, willful misconduct, fraud, or bad faith of ECC in performing its obligations under this Agreement.

Section 7.3 Limitations and Liability. Each party hereto shall have a duty to mitigate the Liabilities for which the other is responsible hereunder. IN NO EVENT SHALL ANY PARTY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL (INCLUDING LOSS OF

REVENUES OR PROFITS), EXEMPLARY OR PUNITIVE DAMAGES OR THE LIKE ARISING UNDER ANY LEGAL OR EQUITABLE THEORY OR ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT (OR THE PROVISION OF SERVICES HEREUNDER), ALL OF WHICH ARE HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES REGARDLESS OF WHETHER OR NOT ANY PARTY TO THIS AGREEMENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

Section 7.4 Indemnification is Exclusive Remedy. The indemnification provisions of this Article VII shall be the exclusive remedy for breach of this Agreement.

Section 7.5 Indemnification Procedures. All claims for indemnification pursuant to this Article VII shall be made in accordance with the provisions set forth in Article V of the Separation Agreement.

#### ARTICLE VIII

##### Miscellaneous

Section 8.1 Entire Agreement. This Agreement, including the Schedules hereto and the sections of the Separation Agreement referenced herein, constitutes the entire agreement between the parties hereto with respect to the subject matter contained herein, and supersedes all prior agreements, negotiations, discussions, understandings, writings and commitments between the parties hereto with respect to such subject matter.

Section 8.2 Governing Law; Service of Process; Jurisdiction. This Agreement and the legal relations between the parties hereto shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflict of laws rules thereof to the extent such rules would require the application of the law of another jurisdiction. The state or federal courts located within the City of New York shall have exclusive jurisdiction over any and all disputes between the parties hereto, whether in law or equity, arising out of or relating to this Agreement and the agreements, instruments and documents contemplated hereby and the parties hereto consent to and agree to submit to the exclusive jurisdiction of such courts. Each of the parties hereto hereby waives and agrees not to assert in any such dispute, to the fullest extent permitted by Applicable Law, any claim that (i) such party is not personally subject to the jurisdiction of such courts, (ii) such party and such party's property is immune from any legal process issued by such courts or (iii) any litigation or other proceeding commenced in such courts is brought in an inconvenient forum.

Section 8.3 Waiver of Jury Trial. EACH PARTY TO THIS AGREEMENT HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED IN THIS AGREEMENT (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B)

ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT.

Section 8.4 Amendment. This Agreement shall not be amended, modified or supplemented except by a written instrument signed by an authorized representative of each of ECC and the Company.

Section 8.5 Waiver. Any term or provision of this Agreement may be waived, or the time for its performance may be extended, by the party or the parties hereto entitled to the benefit thereof. Any such waiver shall be validly and sufficiently given for the purposes of this Agreement if, as to any party hereto, it is in writing signed by an authorized representative of such party. The failure of any party hereto to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, or in any way to affect the validity of this Agreement or any part hereof or the right of any party hereto thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

Section 8.6 Severability. If any provision of this Agreement or the application thereof to any Person or circumstance is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions hereof or thereof, or the application of such provision to Persons or circumstances or in jurisdictions other than those as to which it has been held invalid or unenforceable, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby, so long as the economic or legal substance of the transactions contemplated hereby or thereby, as the case may be, is not affected in any manner adverse to any party hereto or thereto. Upon such determination, the parties hereto shall negotiate in good faith in an effort to agree upon such a suitable and equitable provision to effect the original intent of the parties hereto.

Section 8.7 Execution in Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original instrument, but all of which shall be considered one and the same agreement, and shall become binding when one or more counterparts have been signed by and delivered to each of the parties hereto.

Section 8.8 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and permitted assigns; provided, however, that the rights and obligations of either party hereto under this Agreement shall not be assignable by such party without the prior written consent of the other party. The successors and permitted assigns hereunder shall include any permitted assignee as well as the successors in interest to such permitted assignee (whether by merger, liquidation (including successive mergers or liquidations) or otherwise).

Section 8.9 Third Party Beneficiaries. Except to the extent otherwise provided in Article VII, the provisions of this Agreement are solely for the benefit of the parties hereto and their respective Affiliates, successors and permitted assigns and shall not confer upon any third Person any remedy, claim, liability, reimbursement or other right in excess of those existing without reference to this Agreement.

Section 8.10 Notices. All notices or other communications under this Agreement shall be in writing and shall be deemed to be duly given when delivered or mailed in accordance with the terms of Section 9.12 of the Separation Agreement.



Section 8.11 No Public Announcement. Neither ECC nor the Company shall, without the approval of the other, make any press release or other public announcement concerning the transactions contemplated by this Agreement, except as and to the extent that either party hereto shall be so obligated by Applicable Law or the rules of any regulatory body, stock exchange or quotation system, in which case the other party hereto shall be advised and the parties hereto shall use commercially reasonable efforts to cause a mutually agreeable release or announcement to be issued; provided, however, that the foregoing shall not preclude communications or disclosures necessary to implement the provisions of this Agreement or to comply with Applicable Law, accounting and SEC disclosure obligations or the rules of any stock exchange.

Section 8.12 Limited Liability. Notwithstanding any other provision of this Agreement, no individual who is a stockholder, director, employee, officer, agent or representative of the Company or ECC, in its capacity as such, shall have any liability in respect of or relating to the covenants or obligations of such party under this Agreement and, to the fullest extent legally permissible, each of the Company and ECC, for itself and its respective stockholders, directors, employees, officers and Affiliates, waives and agrees not to seek to assert or enforce any such liability that any such Person otherwise might have pursuant to Applicable Law.

Section 8.13 Mutual Drafting. This Agreement shall be deemed to be the joint work product of ECC and the Company and any rule of construction that a document shall be interpreted or construed against a drafter of such document shall not be applicable.

Section 8.14 Effect if Separation Does Not Occur. Notwithstanding anything in this Agreement to the contrary, if the Separation Agreement is terminated prior to the Distribution Date, this Agreement shall be of no further force and effect.

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

EchoStar Communications Corporation

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

EchoStar Holding Corporation

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

Signature Page to Management Services Agreement

FORM OF  
ECHOSTAR HOLDING CORPORATION  
2008 STOCK INCENTIVE PLAN

Section 1. Purpose

The purpose of this Stock Incentive Plan (the "Plan") is to promote the interests of EchoStar Holding Corporation (the "Company") and its Subsidiaries by aiding the Company in attracting and retaining Participants capable of assuring the future success of the Company, to offer such personnel incentives to put forth maximum efforts for the success of the Company's business and to afford such personnel an opportunity to acquire a proprietary interest in the Company.

Section 2. Definitions

As used in the Plan, the following terms shall have the meanings set forth below:

- (a) "Award" shall mean an award granted to a Participant in accordance with the terms of this Plan in the form of Options, Stock Appreciation Rights, Restricted Stock, Restricted Stock Units, Performance Awards, Dividend Equivalents or Other Stock-Based Awards granted under the Plan, or any combination of the foregoing.
  - (b) "Award Agreement" shall mean any written agreement, contract or other instrument or document evidencing any Award granted under the Plan.
  - (c) "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time, and any regulations promulgated thereunder.
  - (d) "Committee" shall mean the committee described in Section 3 of the Plan.
  - (e) "Company" shall mean EchoStar Holding Corporation, a Nevada corporation, and any successor corporation.
  - (f) "Dividend Equivalent" shall mean any right granted under Section 6(e) of the Plan.
  - (g) "EchoStar" shall mean EchoStar Communications Corporation, a Nevada corporation, and any successor corporation.
  - (h) "Employee Matters Agreement" shall mean the agreement entered into by the Company and EchoStar as of [\_\_\_\_\_].
  - (i) "Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.
  - (j) "Key Employee" shall mean any person, including officers and directors, in the regular full-time employment of the Company or a Subsidiary who, in the opinion of the Committee, is,
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or is expected to be, primarily responsible for the management, growth or protection of some part or all of the business of the Company and its Subsidiaries or otherwise to contribute substantially to the success of the Company and its Subsidiaries.

(k) "Fair Market Value" shall mean, with respect to Shares, the final closing price, as quoted by the National Association of Securities Dealers Automated Quotation System ("NASDAQ") or any other exchange on which the Shares are traded, for the date in question. If Fair Market Value is in reference to property other than Shares, the Fair Market Value of such other property shall be determined by such methods or procedures as shall be established from time to time by the Committee.

(l) "Incentive Stock Option" shall mean an option granted under Section 6(a) of the Plan that is intended to meet the requirements of Section 422 of the Code or any successor provision.

(m) "Non-employee Director" shall mean a director of the Company who is a "non-employee director" within the meaning of Rule 16b-3.

(n) "Non-Qualified Stock Option" shall mean an option granted under Section 6(a) of the Plan that is not intended to be an Incentive Stock Option.

(o) "Option" shall mean an Incentive Stock Option or a Non-Qualified Stock Option, and shall include Restoration Options.

(p) "Other Stock-Based Award" shall mean any right granted under Section 6(f) of the Plan.

(q) "Outside Director" shall mean a director of the Company who is an "outside director" within the meaning of Section 162(m) of the Code.

(r) "Participant" shall mean (1) any Key Employee designated to be granted an Award under the Plan by the Committee, (2) a consultant or advisor currently providing services to the Company or Subsidiary (by contract or otherwise) designated to be granted an Award under the Plan by the Committee, or (3) any employee of the Company or Subsidiary designated to be granted an Award under the Plan by the Committee if such grant is part of a broad-based performance incentive program. In addition, in connection with the spin-off of the Company, certain current and former employees and consultants and advisors of Echostar will be considered Participants in connection with their receipt of Replacement and Substitute Awards.

(s) "Performance Award" shall mean any right granted under Section 6(d) of the Plan.

(t) "Person" shall mean any individual, corporation, partnership, association or trust.

(u) "Plan" shall mean this 2008 Stock Incentive Plan, as amended from time to time.

(v) "Replacement and Substitute Award" shall mean an Option or Restricted Stock Unit granted in connection with the spin-off of the Company to certain current and former employees and consultants and advisors of Echostar pursuant to the terms of the Employee Matters Agreement.

(w) "Restoration Option" shall mean any Option granted under Section 6(a)(iv) of the Plan which confers upon the Participant the right to receive a new Option upon the payment of the exercise price of a previously held Option by delivery of previously owned Shares.

(x) "Restricted Stock" shall mean any Share granted under Section 6(c) of the Plan, subject to such restrictions as the Committee deems appropriate or desirable.

(y) "Restricted Stock Unit" shall mean any unit granted under Section 6(c) of the Plan evidencing the right to receive a Share (or a cash payment equal to the Fair Market Value of a Share) at some future date.

(z) "Retirement" shall mean becoming eligible to receive immediate retirement benefits under a retirement or pension plan of the Company or any Subsidiary.

(aa) "Rule 16b-3" shall mean Rule 16b-3 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended, or any successor rule or regulation.

(bb) "Shares" shall mean shares of Class A Common Stock, \$0.001 par value, of the Company or such other securities or property as may become subject to Awards pursuant to an adjustment made under Section 4(c) of the Plan.

(cc) "Stock Appreciation Right" shall mean any right granted under Section 6(b) of the Plan.

(dd) "Subsidiary" shall mean any corporation (other than the Company) in an unbroken chain of corporations beginning with the Company if each of the corporations other than the last corporation in the unbroken chain owns 50% or more of the voting stock or other equity interests in one of the other corporations in such chain.

(ee) "Ten-Percent Stockholder" shall mean an individual who owns (within the meaning of Section 422(b)(6) of the Code) stock possessing more than 10% of the total combined voting power of all classes of stock of the Company or of a Subsidiary.

(ff) "Total Disability" shall mean the complete and permanent inability of an employee Participant to perform such Participant's duties under the terms of the Participant's employment with the Company or any Subsidiary, as determined by the Committee upon the basis of such evidence, including independent medical reports and data, as the Committee deems appropriate or necessary.

Section 3. Administration.

(a) Power and Authority of the Committee.

(i) *The Committee.* The Committee shall consist of at least two directors of the Company and may consist of the entire Board of Directors; *provided, however,* that (i) if the Committee consists of less than the entire Board of Directors, each member shall be a Non-employee Director and (ii) to the extent necessary for any Award intended to qualify as performance-based compensation under Section 162(m) of the Code, to so qualify, each member of the Committee, whether or not it consists of the entire Board of Directors, shall be an Outside Director. The Committee may determine the extent to which any Stock Option under the Plan is required to comply, or not comply, with Section 409A of the Code.

(ii) *Power and Authority.* Subject to the express provisions of the Plan and to applicable law, the Committee shall have full power and authority to: (i) designate Participants; (ii) determine the type or types of Awards to be granted to each Participant under the Plan; (iii) determine the number of Shares to be covered by (or with respect to which payments, rights or other matters are to be calculated in connection with) each Award; (iv) determine the terms and conditions of any Award or Award Agreement which may be based on various factors such as length of employment and/or performance of the Participant or the Company (such performance criteria may include but are not limited to Company's achievement of specified financial or other performance metrics, such as subscriber growth); (v) amend the terms and conditions of any Award or Award Agreement and accelerate the exercisability of Options or the lapse of restrictions relating to Restricted Stock, Restricted Stock Units or other Awards; (vi) determine whether, to what extent and under what circumstances Awards may be exercised in cash, Shares, other securities, other Awards or other property, or canceled, forfeited or suspended; (vii) determine whether, to what extent and under what circumstances cash, Shares, other securities, other Awards, other property and other amounts payable with respect to an Award under the Plan shall be deferred either automatically or at the election of the holder thereof or the Committee; (viii) interpret and administer the Plan and any instrument or agreement relating to, or Award made under, the Plan; (ix) establish, amend, suspend or waive such rules and regulations and appoint such agents as it shall deem appropriate for the proper administration of the Plan; and (x) make any other determination and take any other action that the Committee deems necessary or desirable for the administration of the Plan. The Committee's selection of a person to participate in this Plan at any time shall not require the Committee to select such person to participate in this Plan at any other time. Unless otherwise expressly provided in the Plan, all designations, determinations, interpretations and other decisions under or with respect to the Plan or any Award shall be within the sole discretion of the Committee, may be made at any time and shall be final, conclusive and binding upon any Participant, any holder or beneficiary of any Award and any employee of the Company or any Subsidiary. The Committee's decisions and determinations under the Plan need not be uniform and may be made selectively among Participants, whether or not such Participants are similarly situated.

(b) Delegation. The Committee may, in its sole discretion, delegate such powers and duties under the Plan as it deems appropriate; *provided, however,* that the Committee shall not delegate its powers and duties under the Plan with regard to executive officers or directors of the Company or any Subsidiary who are subject to Section 16 of the Exchange Act.

(c) Replacement and Substitute Awards. In exercising its power and authority hereunder with respect to Replacement and Substitute Awards held by current and former employees and directors of EchoStar (and their respective transferees), the Committee shall (i) act in good faith and (ii) cooperate with and give due regard to any information provided by EchoStar. In addition, with respect to such Replacement and Substitute Awards, the Company shall not, without the prior written consent of the EchoStar Compensation Committee, take any discretionary action to accelerate vesting of any such awards.

Section 4. Shares Available for Awards.

(a) Shares Available. Subject to adjustment as provided in Section 4(c), the number of Shares that may be issued subject to Awards under the Plan shall not exceed 16,000,000; *provided, however*, that during the term of the Plan (i) no Participant may be granted Awards (other than Awards described in clause (ii) below) in the aggregate in respect of more than 800,000 Shares in any one calendar year and (ii) the maximum amount that any Participant may receive in any one calendar year in respect of Performance Awards granted pursuant to Section 6(d) may not exceed the Fair Market Value of 400,000 Shares. Shares to be issued under the Plan may be either Shares reacquired and held in the treasury or authorized but unissued Shares. If any Shares covered by an Award or to which an Award relates are not purchased or are forfeited, or if an Award otherwise terminates without delivery of any Shares, then the number of Shares counted against the aggregate number of Shares available under the Plan with respect to such Award, to the extent of any such forfeiture or termination, shall again be available for granting Awards under the Plan. The Company shall at all times keep available out of authorized but unissued and/or reacquired Shares the number of Shares to satisfy Awards granted under the Plan.

(b) Accounting for Awards. For purposes of this Section 4, if an Award entitles the holder thereof to receive or purchase Shares, the number of Shares covered by such Award or to which such Award relates shall be counted on the date of grant of such Award against the aggregate number of Shares available under Section 4(a) above for granting Awards under the Plan.

(c) Adjustments. In the event that the Committee shall determine that any dividend or other distribution (whether in the form of cash, Shares, other securities or other property), recapitalization, stock split, reverse stock split, reorganization, merger, consolidation, split-up, spin-off, combination, repurchase or exchange of Shares or other securities of the Company, issuance of warrants or other rights to purchase Shares or other securities of the Company or other similar corporate transaction or event affects the Shares such that an adjustment is determined by the Committee to be appropriate in order to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan, then the Committee shall, in such manner as it may deem equitable, adjust any or all of (i) the number and type of Shares (or other securities or other property) which thereafter may be made the subject of Awards, (ii) the number and type of Shares (or other securities or other property) subject to outstanding Awards and (iii) the purchase or exercise price with respect to any Award; *provided*,

however, that the number of Shares covered by any Award or to which such Award relates shall always be a whole number.

#### Section 5. Eligibility of Key Employees.

Any Key Employee, including any Key Employee who is an officer or director of the Company or any Subsidiary, shall be eligible to be designated a Participant; *provided, however*, a director of the Company who is not also an employee of the Company or a Subsidiary shall not be designated as a Participant. In determining which Key Employees shall receive an Award and the terms of any Award, the Committee may take into account the nature of the services rendered by the respective Key Employees, their present and potential contributions to the success of the Company or such other factors as the Committee, in its sole discretion, shall deem relevant. Notwithstanding the foregoing, an Incentive Stock Option may only be granted to full or part-time employees (which term as used herein includes, without limitation, officers and directors who are also employees) of the Company and its Subsidiaries.

#### Section 6. Awards.

(a) Options. The Committee is hereby authorized to grant Options to Participants with the following terms and conditions and with such additional terms and conditions not inconsistent with the provisions of the Plan as the Committee shall determine, which terms and conditions shall be set forth in a form approved by the Committee.

(i) *Exercise Price*. The exercise price per Share purchasable under an Option shall be determined by the Committee; *provided, however*, that, the exercise price of an Option shall not be less than 100% of the Fair Market Value of a Share on the date of grant of such Option (110% in the case of an Incentive Stock Option granted to a Ten-Percent Stockholder); *provided, further*, that the aggregate Fair Market Value, determined at the time an Incentive Stock Option is granted, of the Shares with respect to which Incentive Stock Options may be exercisable for the first time by an employee Participant in any calendar year under all plans of the Company and any parent corporation of the Company and any Subsidiary shall not exceed \$100,000.

(ii) *Option Term*. The term of each Option shall be for a period of ten years from the date of grant of any Incentive Stock Option (5 years in the case of an Incentive Stock Option granted to a Ten-Percent Stockholder) and ten years and three months from the date of grant of a Non-Qualified Stock Option, unless an earlier expiration date shall be stated in the Option or the Option shall cease to be exercisable pursuant to this Section 6. If an employee Participant's employment with the Company and all Subsidiaries terminates other than by reason of such Participant's death, Total Disability or Retirement, the Participant's Option shall terminate and cease to be exercisable upon termination of employment, unless the Committee shall determine otherwise.

(iii) *Time and Method of Exercise*. The Committee shall determine the time or times at which an Option may be exercised in whole or in part and the method or methods by which, and the form or forms (including, without limitation, cash, Shares, promissory notes, other securities, other Awards or other property, or any combination thereof, having a Fair Market Value on the



exercise date equal to the relevant exercise price) in which, payment of the exercise price with respect thereto may be made or deemed to have been made. The Committee may also permit the holders of Options, in accordance with such procedures as the Committee may in its sole discretion establish, including those set forth in Section 6(g) hereof, to exercise Options and sell Shares acquired pursuant to a brokerage or similar arrangement approved in advance by the Committee, and to use the proceeds from such sale as payment of the exercise price of such Options.

(iv) *Restoration Options.* The Committee may grant Restoration Options, separately or together with another Option, pursuant to which, subject to the terms and conditions established by the Committee and any applicable requirements of Rule 16b-3 or any other applicable law, the Participant would be granted a new Option when the payment of the exercise price of the Option to which such Restoration Option relates is made by the delivery of Shares owned by the Participant pursuant to the relevant provisions of the Plan or agreement relating to such Option, which new Option would be an Option to purchase the number of Shares not exceeding the sum of (A) the number of Shares so provided as consideration upon the exercise of the previously granted Option to which such Restoration Option relates and (B) the number of Shares, if any, tendered or withheld as payment of the amount to be withheld under applicable tax laws in connection with the exercise of the Option to which such Restoration Option relates pursuant to the relevant provisions of the Plan or agreement relating to such Option. Restoration Options may be granted with respect to Options previously granted under the Plan or any other stock option plan of the Company, and may be granted in connection with any Option granted under the Plan or any other stock option plan of the Company at the time of such grant; *provided, however*, that Restoration Options may not be granted with respect to any Option granted to a Non-employee Director under any other stock option plan of the Company.

(v) *Incentive and Non-Qualified Stock Options.* Each Option granted pursuant to the Plan shall specify whether it is an Incentive Stock Option or a Non-Qualified Stock Option, provided that the Committee may in the case of the grant of an Incentive Stock Option give the Participant the right to receive in its place a Non-Qualified Stock Option.

(b) *Stock Appreciation Rights.* The Committee is hereby authorized to grant Stock Appreciation Rights to Participants subject to the terms of the Plan and any applicable Award Agreement. A Stock Appreciation Right granted under the Plan shall confer on the holder thereof a right to receive upon exercise thereof the excess of (i) the Fair Market Value of one Share on the date of exercise (or, if the Committee shall so determine, at any time during a specified period before or after the date of exercise) over (ii) the grant price of the Stock Appreciation Right as specified by the Committee, which price shall not be less than 100% of the Fair Market Value of one Share on the date of grant of the Stock Appreciation Right. Subject to the terms of the Plan and any applicable Award Agreement, the grant price, term, methods of exercise, dates of exercise, methods of settlement and any other terms and conditions of any Stock Appreciation Right shall be as determined by the Committee. The Committee may impose such conditions or restrictions on the exercise of any Stock Appreciation Right as it may deem appropriate.

(c) **Restricted Stock and Restricted Stock Units.** The Committee is hereby authorized to grant Awards of Restricted Stock and Restricted Stock Units to Participants with the following terms and conditions and with such additional terms and conditions not inconsistent with the provisions of the Plan as the Committee shall determine:

(i) **Restrictions.** Shares of Restricted Stock and Restricted Stock Units shall be subject to such restrictions as the Committee may impose (including, without limitation, any limitation on the right to vote a Share of Restricted Stock or the right to receive any dividend or other right or property with respect thereto), which restrictions may lapse separately or in combination at such time or times, in such installments or otherwise as the Committee may deem appropriate (the "Restricted Period").

(ii) **Stock Certificates.** Any Restricted Stock granted under the Plan shall be evidenced by issuance of a stock certificate or certificates, which certificate or certificates shall be held by the Company. Such certificate or certificates shall be registered in the name of the Participant and shall bear an appropriate legend referring to the terms, conditions and restrictions applicable to such Restricted Stock. Except as otherwise provided in this Section 6(c), no Shares of Restricted Stock received by a Participant shall be sold, exchanged, transferred, pledged, hypothecated or otherwise disposed of during the Restricted Period. In the case of Restricted Stock Units, no Shares shall be issued at the time such Awards are granted.

(iii) **Forfeiture; Delivery of Shares.** Except as otherwise determined by the Committee, upon termination of a Participant's employment (as determined under criteria established by the Committee) during the applicable Restricted Period, all Shares of Restricted Stock and all Restricted Stock Units held by such Participant at such time subject to restriction shall be forfeited and reacquired by the Company; *provided, however*, that in the cases of death, Total Disability or Retirement, or in circumstances where the Committee finds that a waiver would be in the best interest of the Company, the Committee may waive in whole or in part any or all remaining restrictions with respect to Shares of Restricted Stock or Restricted Stock Units. Any Share representing Restricted Stock that is no longer subject to restrictions shall be delivered to the holder thereof promptly after the applicable restrictions lapse or are waived. Upon the lapse or waiver of restrictions and the restricted period relating to Restricted Stock Units evidencing the right to receive Shares, such Shares shall be issued and delivered to the holders of the Restricted Stock Units.

(d) **Performance Awards.** The Committee is hereby authorized to grant Performance Awards to Participants subject to the terms of the Plan and any applicable Award Agreement. A Performance Award granted under the Plan (i) may be denominated or payable in cash, Shares (including, without limitation, Restricted Stock), other securities, other Awards or other property and (ii) shall confer on the holder thereof the right to receive payments, in whole or in part, upon the achievement of such performance goals during such performance periods as the Committee shall establish. Subject to the terms of the Plan and any applicable Award Agreement, the performance goals to be achieved during any performance period, the length of any performance period, the amount of any Performance Award granted, the amount of any payment or transfer to be made pursuant to any Performance Award and any other terms and conditions of any Performance Award shall be determined by the Committee.

(e) Dividend Equivalents. The Committee is hereby authorized to grant to Participants Dividend Equivalents under which such Participants shall be entitled to receive payments (in cash, Shares, other securities, other Awards or other property as determined in the discretion of the Committee) equivalent to the amount of cash dividends paid by the Company to holders of Shares with respect to a number of Shares determined by the Committee. Subject to the terms of the Plan and any applicable Award Agreement, such Dividend Equivalents may have such terms and conditions as the Committee shall determine.

(f) Other Stock-Based Awards. The Committee is hereby authorized to grant to Participants such other Awards that are denominated or payable in, valued in whole or in part by reference to, or otherwise based on or related to, Shares (including, without limitation, securities convertible into Shares), as are deemed by the Committee to be consistent with the purpose of the Plan; *provided, however*, that such grants must comply with applicable law and, in the case of executive officers and directors of the Company, Rule 16b-3. Subject to the terms of the Plan and any applicable Award Agreement, the Committee shall determine the terms and conditions of such Awards. Shares or other securities delivered pursuant to a purchase right granted under this Section 6(f) shall be purchased for such consideration, which may be paid by such method or methods and in such form or forms (including without limitation, cash, Shares, promissory notes, other securities, other Awards or other property or any combination thereof), as the Committee shall determine, the value of which consideration, as established by the Committee, shall not be less than 100% of the Fair Market Value of such Shares or other securities as of the date such purchase right is granted.

(g) General.

(i) *No Cash Consideration for Awards*. Awards shall be granted for no cash consideration or for such minimal cash consideration as may be required by applicable law.

(ii) *Awards May Be Granted Separately or Together*. Awards may, in the discretion of the Committee, be granted either alone or in addition to, in tandem with, or in substitution for, any other Award or any award granted under any plan of the Company or any Subsidiary other than the Plan. Awards granted in addition to or in tandem with other Awards or in addition to or in tandem with awards granted under any such other plan of the Company or any Subsidiary may be granted either at the same time as, or at a different time from, the grant of such other Awards or awards.

(iii) *Forms of Payment under Awards*. Subject to the terms of the Plan and of any applicable Award Agreement, payments or transfers to be made by the Company or a Subsidiary upon the grant, exercise or payment of an Award may be made in such form or forms as the Committee shall determine (including, without limitation, cash, Shares, promissory notes, other securities, other Awards or other property or any combination thereof), and may be made in a single payment or transfer, in installments or on a deferred basis, in each case in accordance with rules and procedures established by the Committee. Such rules and procedures may include, without limitation, provisions for the payment or crediting of reasonable interest on installment or deferred payments or the grant or crediting of Dividend Equivalents with respect to installment or deferred payments.

(iv) *Cashless Exercise.* Options may be exercised in whole or in part upon delivery to the Secretary of the Company of an irrevocable written notice of exercise. The date on which such notice is received by the Secretary shall be the date of exercise of the Option, provided that within three business days of the delivery of such notice the funds to pay for exercise of the Option are delivered to the Company by a broker acting on behalf of the optionee either in connection with the sale of the Shares underlying the Option or in connection with the making of a margin loan to the optionee to enable payment of the exercise price of the Option. In connection with the foregoing, the Company will provide a copy of the notice of exercise of the Option to the aforesaid broker upon receipt by the Secretary of such notice and will deliver to such broker, within three business days of the delivery of such notice to the Company, a certificate or certificates (as requested by the broker) representing the number of Shares underlying the Option that have been sold by such broker for the optionee.

(v) *Limits on Transfer of Awards.* No Award and no right under any such Award shall be transferable by a Participant otherwise than by will, the laws of descent and distribution or pursuant to a qualified domestic relations order as defined by the Code; *provided, however,* that, if so determined by the Committee, a Participant may, in the manner established by the Committee, designate a beneficiary or beneficiaries to exercise the rights of the Participant and receive any property distributable with respect to any Award upon the death of the Participant. Each Award or right under any Award shall be exercisable during the Participant's lifetime only by the Participant or, if permissible under applicable law, by the Participant's guardian or legal representative. No Award or right under any such Award may be pledged, alienated, attached or otherwise encumbered, and any purported pledge, alienation, attachment or encumbrance thereof shall be void and unenforceable against the Company or any Subsidiary.

(vi) *Term of Awards.* Unless otherwise expressly set forth in the Plan, the term of each Award shall be for such period as may be determined by the Committee.

(vii) *Restrictions; Securities Listing.* All certificates for Shares or other securities delivered under the Plan pursuant to any Award or the exercise thereof shall be subject to such stop transfer orders and other restrictions as the Committee may deem advisable under the Plan or the rules, regulations and other requirements of the Securities and Exchange Commission and any applicable federal or state securities laws, and the Committee may cause a legend or legends to be placed on any such certificates to make appropriate reference to such restrictions. If the Shares or other securities are traded on NASDAQ or a securities exchange, the Company shall not be required to deliver any Shares or other securities covered by an Award unless and until such Shares or other securities have been admitted for trading on NASDAQ or such securities exchange.

#### Section 7. Amendment and Termination; Adjustments.

Except to the extent prohibited by applicable law and unless otherwise expressly provided in an Award Agreement or in the Plan:

(a) Amendments to the Plan. The Board of Directors of the Company may amend, alter, suspend, discontinue or terminate the Plan; *provided, however,* that, notwithstanding any other

provision of the Plan or any Award Agreement, without the approval of the stockholders of the Company, no such amendment, alteration, suspension, discontinuation or termination shall be made that, absent such approval;

(i) would violate the rules or regulations of NASDAQ or any securities exchange that are applicable to the Company; or

(ii) would cause the Company to be unable, under the Code, to grant Incentive Stock Options under the Plan.

(b) Amendments to Awards. The Committee may waive any conditions of or rights of the Company under any outstanding Award, prospectively or retroactively. The Committee may not amend, alter, suspend, discontinue or terminate any outstanding Award, prospectively or retroactively, without the consent of the Participant or holder or beneficiary thereof, except as otherwise herein provided (for clarification purposes, in no event shall the consent of the participant or holder or beneficiary be required in order for the Committee to effectuate a "lock-up").

(c) Correction of Defects, Omissions and Inconsistencies. The Committee may correct any defect, supply any omission or reconcile any inconsistency in the Plan or any Award in the manner and to the extent it shall deem desirable to carry the Plan into effect.

#### Section 8. Income Tax Withholding; Tax Bonuses.

(a) Withholding. In order to comply with all applicable federal or state income tax laws or regulations, the Company may take such action as it deems appropriate to ensure that all applicable federal or state payroll, withholding, income or other taxes, which are the sole and absolute responsibility of a Participant, are withheld or collected from such Participant. In order to assist a Participant in paying all or a portion of the federal and state taxes to be withheld or collected upon exercise or receipt of (or the lapse of restrictions relating to) an Award, the Committee, in its discretion and subject to such additional terms and conditions as it may adopt, may permit the Participant to satisfy such tax obligation by (i) electing to have the Company withhold a portion of the Shares otherwise to be delivered upon exercise or receipt of (or the lapse of restrictions relating to) such Award with a Fair Market Value equal to the amount of such taxes or (ii) delivering to the Company shares other than Shares issuable upon exercise or receipt of (or the lapse of restrictions relating to) such Award with a Fair Market Value equal to the amount of such taxes.

(b) Tax Bonuses. The Committee, in its discretion, shall have the authority, at the time of grant of any Award under this Plan or at any time thereafter, to approve cash bonuses to designated Participants to be paid upon their exercise or receipt of (or the lapse of restrictions relating to) Awards in order to provide funds to pay all or a portion of federal and state taxes due as a result of such exercise or receipt (or the lapse of such restrictions). The Committee shall have full authority in its discretion to determine the amount of any such tax bonus.

Section 9. General Provisions

- (a) No Rights to Awards. No Key Employee, Participant or other Person shall have any claim to be granted any Award under the Plan, and there is no obligation for uniformity of treatment of Key Employees, Participants or holders or beneficiaries of Awards under the Plan. The terms and conditions of Awards need not be the same with respect to any Participant or with respect to different Participants.
- (b) Award Agreements. No Participant will have rights under an Award granted to such Participant unless and until an Award Agreement shall have been duly executed on behalf of the Company.
- (c) No Limit on Other Compensation Arrangements. Nothing contained in the Plan shall prevent the Company or any Subsidiary from adopting or continuing in effect other or additional compensation arrangements, and such arrangements may be either generally applicable or applicable only in specific cases.
- (d) No Right to Employment. The grant of an Award shall not be construed as giving a Participant the right to be retained in the employ of the Company or any Subsidiary, nor will it affect in any way the right of the Company or a Subsidiary to terminate such employment at any time, with or without cause. In addition, the Company or a Subsidiary may at any time dismiss a Participant from employment free from any liability or any claim under the Plan, unless otherwise expressly provided in the Plan or in any Award Agreement.
- (e) Assignability. No Award granted under this Plan, nor any other rights acquired by a Participant under this Plan, shall be assignable or transferable by a Participant, other than by will or the laws of descent and distribution or pursuant to a qualified domestic relations order as defined by the Code, Title I of the Employee Retirement Income Security Act, or the rules promulgated thereunder.
- (f) Governing Law. The validity, construction and effect of the Plan or any Award, and any rules and regulations relating to the Plan or any Award, shall be determined in accordance with the laws of the State of Colorado.
- (g) Severability. If any provision of the Plan or any Award is or becomes or is deemed to be invalid, illegal or unenforceable in any jurisdiction or would disqualify the Plan or any Award under any law deemed applicable by the Committee, such provision shall be construed or deemed amended to conform to applicable laws, or if it cannot be so construed or deemed amended without, in the determination of the Committee, materially altering the purpose or intent of the Plan or the Award, such provision shall be stricken as to such jurisdiction or Award, and the remainder of the Plan or any such Award shall remain in full force and effect.
- (h) No Trust or Fund Created. Neither the Plan nor any Award shall create or be construed to create a trust or separate fund of any kind or a fiduciary relationship between the Company or any Subsidiary and a Participant or any other Person. To the extent that any Person acquires a right to receive payments from the Company or any Subsidiary pursuant to an Award, such right shall be no greater than the right of any unsecured general creditor of the Company or any Subsidiary.

(i) No Fractional Shares. No fractional Shares shall be issued or delivered pursuant to the Plan or any Award, and the Committee shall determine whether cash shall be paid in lieu of any fractional Shares or whether such fractional Shares or any rights thereto shall be canceled, terminated or otherwise eliminated.

(j) Transfers and Leaves of Absence. Solely for the purposes of the Plan: (a) a transfer of an employee Participant's employment without an intervening period from the Company to a Subsidiary or vice versa, or from one Subsidiary to another, shall not be deemed a termination of employment, and (b) an employee Participant who is granted in writing a leave of absence shall be deemed to have remained in the employ of the Company or a Subsidiary, as the case may be, during such leave of absence.

(k) Headings. Headings are given to the Sections and subsections of the Plan solely as a convenience to facilitate reference. Such headings shall not be deemed in any way material or relevant to the construction or interpretation of the Plan or any provision thereof.

(l) Replacement and Substitute Awards. Notwithstanding anything in this Plan to the contrary, any Option or Award that is intended to be a Replacement or Substitute Award granted in connection with the spin-off of the Company shall be subject to the same terms and conditions as the original EchoStar award to which it relates; provided, however that such awards shall be administered by the Committee. In this regard, all employment with EchoStar shall be taken into account for purposes of determining the vesting and exercisability provisions of such Options and/or Awards.

#### Section 10. Effective Date of the Plan.

The Plan shall be effective as of [\_\_\_\_\_], subject to approval by the stockholders of the Company on or before that date or within one year thereafter.

#### Section 11. Term of the Plan.

Unless the Plan shall have been discontinued or terminated as provided in Section 7(a), the Plan shall terminate on [\_\_\_\_\_]. No Award shall be granted after the termination of the Plan. However, unless otherwise expressly provided in the Plan or in an applicable Award Agreement, any Award theretofore granted may extend beyond the termination of the Plan, and the authority of the Committee provided for hereunder with respect to the Plan and any Awards, and the authority of the Board of Directors of the Company to amend the Plan, shall extend beyond the termination of the Plan.

FORM OF  
ECHOSTAR HOLDING CORPORATION  
2008 EMPLOYEE STOCK PURCHASE PLAN

1. **PURPOSE.** The EchoStar Holding Corporation 2008 Employee Stock Purchase Plan (the "Plan") is established to provide eligible employees of EchoStar Holding Corporation, a Nevada Corporation, and any successor corporation thereto (collectively, "EHC"), and any current or future parent corporation or subsidiary corporations of EHC which the Board of Directors of EHC (the "Board") determines should be included in the Plan (collectively referred to as the "Company"), with an opportunity to acquire a proprietary interest in the Company by the purchase of common stock of EHC (NASDAQ trading symbol "\_\_\_\_"). EHC and any parent or subsidiary corporation designated by the Board as a corporation included in the Plan shall be individually referred to herein as a "Participating Company." The Board shall have the sole and absolute discretion to determine from time to time what parent corporations and/or subsidiary corporations shall be Participating Companies. For purposes of the Plan, a parent corporation and a subsidiary corporation shall be as defined in sections 424(e) and 424(f), respectively, of the Internal Revenue Code of 1986, as amended (the "Code"). The Company intends that the Plan shall qualify as an "employee stock purchase plan" under section 423 of the Code (including any amendments or replacements of such section), and the Plan shall be so construed. Any term not expressly defined in the Plan but defined for purposes of section 423 of the Code shall have the same definition herein.
2. **ADMINISTRATION.** The Plan shall be administered by the Board and/or by a duly appointed committee or representative of the Board having such powers as shall be specified by the Board. Any subsequent references to the Board shall also mean the committee or representative if a committee or representative has been appointed. All questions of interpretation of the Plan shall be determined by the Board and shall be final and binding upon all persons having an interest in the Plan. Subject to the provisions of the Plan, the Board shall determine all of the relevant terms and conditions of the Plan; provided, however, that all Participants shall have the same rights and privileges within the meaning of section 423(b)(5) of the Code. All expenses incurred in connection with administration of the Plan shall be paid by the Company.
3. **SHARE RESERVE.** The maximum number of shares which may be issued under the Plan shall be 360,000 shares of EHC's authorized but unissued Class A Common Stock or Class A Common Stock which are treasury shares (the "Shares").
4. **ELIGIBILITY.** Any full-time employee of a Participating Company is eligible to participate in the Plan after completion of one entire calendar quarter of employment, except employees who own or hold options to purchase or who, as a result of participation in the Plan, would own or hold options to purchase, stock of the Company possessing five percent (5%) or more of the total combined voting power or value of all classes of stock of the Company within the meaning of Section 423(b)(3) of the Code. A full-time employee is defined as one who is regularly scheduled to work more than 20 hours per week. Notwithstanding anything herein to the



contrary, any individual performing services for a Participating Company solely through a leasing agency or employment agency shall not be deemed an "employee" of such Participating Company. In certain circumstances, eligibility may be restricted pursuant to a withdrawal under Section 10(d) of the Plan.

**5. OFFERING DATES.**

- (a) **OFFERING PERIODS.** Except as otherwise set forth below, the Plan shall initially be implemented by offerings (individually, an "Offering") of two (2) years duration (an "Offering Period"). The first Offering will commence on [\_\_\_\_, 2008] and subsequent Offerings would commence every two years thereafter until the Plan terminates, unless earlier modified in the Board's discretion. The first day of an Offering Period shall be the "Offering Date" for such Offering Period. In the event the Offering Date would fall on a holiday or weekend, the Offering Date shall instead be the first business day after such day. Notwithstanding the foregoing, the Board may establish a different term for one or more Offerings and/or different commencing and/or ending dates for such Offerings. Eligible employees may not participate in more than one Offering at a time.
- (b) **PURCHASE PERIODS.** Each Offering Period shall initially consist of eight (8) purchase periods of three (3) months duration (individually, a "Purchase Period"). The last day of the Purchase Period shall be the "Purchase Date" for such Purchase Period. A Purchase Period commencing on January 1 shall end on March 31. A Purchase Period commencing on April 1 shall end on June 30. A Purchase Period commencing on July 1 shall end on September 30. A Purchase Period commencing on October 1 shall end on December 31. In the event the Purchase Date would fall on a holiday or weekend, the Purchase Date shall instead be the last business day prior to such day. Notwithstanding the foregoing, the Board may establish a different term for one or more Purchase Periods and/or different commencement dates and/or Purchase Dates for such Purchase Periods. An employee who becomes eligible to participate in an Offering after the initial Purchase Period has commenced shall not be eligible to participate in such Purchase Period but may participate in any subsequent Purchase Period during that Offering Period provided such employee is still eligible to participate in the Plan as of the commencement of any such subsequent Purchase Period.
- (c) **GOVERNMENTAL APPROVAL; STOCKHOLDER APPROVAL.** Notwithstanding any other provision of this Plan to the contrary, all transactions pursuant to the Plan shall be subject to (i) obtaining all necessary governmental approvals and/or qualifications for the sale and/or issuance of the Shares (including compliance with the Securities Act of 1933 and any applicable state securities laws), and (ii) obtaining stockholder approval of the Plan. Notwithstanding the foregoing, stockholder approval shall not be necessary in order to commence the Plan's initial Offering Period; provided, however, that the purchase of Shares at the end of such Offering Period shall be subject to obtaining stockholder approval of the Plan.

**6. PARTICIPATION IN THE PLAN.**

- (a) **INITIAL PARTICIPATION.** An eligible employee shall become a Participant on the first Offering Date after satisfying the eligibility requirements and delivering to the Company's payroll office (at Company headquarters) not later than the close of business for such payroll office on the last business day before such Offering Date (the "Subscription Date") a subscription agreement indicating the employee's election to participate in the Plan and authorizing payroll deductions. An eligible employee who does not deliver a subscription agreement to the Company's payroll office on or before the Subscription Date shall not participate in the Plan for the initial Purchase Period or for any subsequent Purchase Period unless such employee subsequently enrolls in the Plan by filing a subscription agreement with the Company by the last business day before the commencement of a subsequent Purchase Period or Offering Date. EHC may, from time to time, change the Subscription Date as deemed advisable by EHC in its sole discretion for proper administration of the Plan.
- (b) **CONTINUED PARTICIPATION.** A Participant shall automatically participate in the Purchase Period commencing immediately after the first Purchase Date of the initial Offering Period in which the Participant participates, and all subsequent Purchase Periods within that Offering, until such time as such Participant (i) ceases to be eligible as provided in paragraph 4, (ii) withdraws from the Offering or Plan pursuant to paragraphs 10(a) or 10(b) or (iii) terminates employment as provided in paragraph 11. Similarly, except as provided in the preceding sentence, a Participant shall automatically participate in the Offering Period commencing immediately after the last Purchase Date of the prior Offering Period in which the Participant participates, and all subsequent Offering Periods pursuant to this Plan. However, a Participant may deliver a subscription agreement with respect to a subsequent Purchase or Offering Period if the Participant desires to change any of the Participant's elections contained in the Participant's then effective subscription agreement.
7. **PURCHASE PRICE.** The purchase price at which Shares may be acquired in a given Purchase Period pursuant to the Plan (the "Offering Exercise Price") shall be set by the Board; provided, however, that the per share Offering Exercise Price shall not be less than eighty-five percent (85%) of the lesser of (a) the per share fair market value of the Shares on the Offering Date of the Offering Period of which the Purchase Period is a part, or (b) the per share fair market value of the Shares on the Purchase Date for such Purchase Period. Unless otherwise provided by the Board prior to the commencement of an Offering Period, the Offering Exercise Price for each Purchase Period in that Offering Period shall be eighty-five percent (85%) of the fair market value of the Shares on the given Purchase Date. The fair market value of the Shares on the applicable dates shall be the closing price quoted on the National Association of Securities Dealers Automated Quotation System for the Purchase Date (or the average of the closing bid and asked prices), or as reported on such other stock exchange or market system if the Shares are traded on such other exchange or system instead, or as determined by the Board if the Shares are not so reported.
8. **PAYMENT OF PURCHASE PRICE.** Shares which are acquired pursuant to the Plan may be paid for only by means of payroll deductions from the Participant's Compensation accumulated during the Offering Period. For purposes of the Plan, a Participant's "Compensation" with respect to an Offering (a) shall include all wages, salaries, commissions and bonuses after deduction for any contributions to any plan maintained by a Participating Company and described in Section 401(k) or Section 125 of the Code, and (b) shall not include occasional awards such as EHC Launch Bonus awards, stock option exercise compensation or any other payments not specifically referenced in (a). Except as set forth below, the deduction amount to

be withheld from a Participant's Compensation during each pay period shall be determined by the Participant's subscription agreement, and the amount of such payroll deductions shall be given the lowest priority so that all other required and voluntary payroll deductions from a Participant's Compensation are withheld prior to subscription agreement amounts.

- (a) **LIMITATIONS ON PAYROLL WITHHOLDING.** The amount of payroll withholding with respect to the Plan for any Participant during any Offering Period shall be elected by the Participant and shall be stated as a dollar amount. Amounts withheld shall be reduced by any amounts contributed by the Participant and applied to the purchase of Company stock pursuant to any other employee stock purchase plan qualifying under section 423 of the Code.
- (b) **PAYROLL WITHHOLDING.** Payroll deductions shall commence on the first pay date beginning after the Offering Date, as designated by EHC, and shall continue to the last pay date before the end of the Offering Period, as designated by EHC, unless sooner altered or terminated as provided in the Plan.
- (c) **PARTICIPANT ACCOUNTS.** Individual accounts shall be maintained for each Participant. All payroll deductions from a Participant's Compensation shall be credited to such account and shall be deposited with the general funds of the Company. All payroll deductions received or held by the Company may be used by the Company for any corporate purpose.
- (d) **NO INTEREST PAID.** Interest shall not be paid on sums withheld from a Participant's Compensation.
- (e) **PURCHASE OF SHARES.** On each Purchase Date of an Offering Period, each Participant whose participation in the Offering has not terminated on or before such Purchase Date shall automatically acquire the number of Shares arrived at by dividing the total amount of the Participant's accumulated payroll deductions for the Purchase Period by the Offering Exercise Price. No shares shall be purchased on a Purchase Date on behalf of a Participant whose participation in the Offering or the Plan has terminated on or before such Purchase Date.
- (f) **RETURN OF CASH BALANCE.** Any cash balance remaining in the Participant's account shall be refunded to the Participant as soon as practicable after the Purchase Date. Any cash balance remaining upon a Participant's termination of participation in the Plan or termination of the Plan itself shall be refunded as soon as practicable after such event.
- (g) **TAX WITHHOLDING.** At the time the Shares are purchased, in whole or in part, or at the time some or all of the Shares are disposed of, the Participant shall make adequate provision for the foreign, federal and state tax withholding obligations of the Company, if any, which arise upon the purchase of Shares and/or upon disposition of Shares, respectively. The Company may, but shall not be obligated to, withhold from the Participant's Compensation the amount necessary to meet such withholding obligations.

- (h) **COMPANY ESTABLISHED PROCEDURES.** The Board may, from time to time, establish (i) a minimum required withholding amount for participation in an Offering, (ii) limitations on the frequency and/or number of changes in the amount withheld during an Offering; (iii) an exchange ratio applicable to amounts withheld in a currency other than U.S. dollars, (iv) payroll withholding in excess of or less than the amount designated by a Participant in order to adjust for delays or mistakes in the Company's processing of subscription agreements, and/or (v) such other limitations or procedures as deemed advisable by the Company in the Company's sole discretion which are consistent with the Plan and in accordance with the requirements of Section 423 of the Code. Notice of new or amended procedures pursuant to this section shall be communicated to all eligible participants in a manner reasonably determined by the Board to reach all participants in a cost efficient manner.

**9. LIMITATIONS ON PURCHASE OF SHARES: RIGHTS AS A STOCKHOLDER.**

- (a) **FAIR MARKET VALUE LIMITATION.** Notwithstanding any other provision of the Plan, no Participant shall be entitled to purchase Shares under the Plan (or any other employee stock purchase plan which is intended to meet the requirements of section 423 of the Code sponsored by EHC or a parent or subsidiary corporation of EHC) in an amount which exceeds \$25,000 in fair market value, which fair market value is determined for Shares purchased during a given Offering Period as of the Offering Date for such Offering Period (or such other limit as may be imposed by the Code), for any calendar year in which the Participant participates in the Plan (or any other employee stock purchase plan described in this sentence).
- (b) **PRO RATA ALLOCATION.** In the event the number of Shares which might be purchased by all Participants in the Plan exceeds the number of Shares available in the Plan, the Company shall make a pro rata allocation of the remaining Shares in as uniform a manner as shall be practicable and as the Company shall determine to be equitable. Any cash balance remaining after such allocation shall be refunded to Participants as soon as practicable.
- (c) **RIGHTS AS A STOCKHOLDER AND EMPLOYEE.** A Participant shall have no rights as a stockholder by virtue of the Participant's participation in the Plan until the date of issuance of stock for the Shares being purchased pursuant to the Plan. Moreover, Shares shall not be issued and a Participant shall not be permitted to purchase Shares unless and until such Shares have been registered under the Securities Act of 1933 on an effective S-8 registration and any applicable registration requirements under the National Association of Securities Dealers rules are satisfied. No adjustment shall be made for cash dividends or distributions or other rights for which the record date is prior to the date such stock is issued. Nothing herein shall confer upon a Participant any right to continue in the employ of the Company or interfere in any way with any right of the Company to terminate the Participant's employment at any time.
- (d) **USE OF A CAPTIVE STOCK BROKER.** In order to reduce paperwork and properly track and report Participant's acquisition and disposition of Shares purchased pursuant to the Plan, the Company may, in its discretion, designate one or more stock brokers as a "captive" broker ("Broker") for receiving Participants' shares and maintaining individual accounts for each Participant. The Company and the Broker may establish such account procedures and restrictions as are necessary to carry out their respective functions and properly administer the Plan (see, for example, Section 19).

- (e) **RIGHT TO ISSUANCE OF SHARE CERTIFICATES.** Initially, Participants will not receive share certificates from EHC representing the Shares purchased pursuant to the Plan. Instead, the Company shall issue one or share certificate to the Broker for all Shares purchased on a Purchase Date, followed by an electronic allocation by the Broker among all Participants according to their respective contributions. A Participant may obtain a share certificate for his or her actual share amount only from the Broker according to such Broker's procedures. This limitation may be modified by the Board in its discretion at any time.

**10. WITHDRAWAL.**

- (a) **WITHDRAWAL FROM AN OFFERING.** A Participant may not withdraw from an Offering and stop payroll deductions during a Purchase Period. Any notice of withdrawal submitted by a Participant (on a form provided by the Company for such purpose) to EHC's payroll office after the commencement of a Purchase Period but prior to a Purchase Date shall only be effective for the next subsequent Purchase Period. No cash refunds of payroll deduction amounts from a Participant's account shall be made prior to the next scheduled Purchase Period. After the next scheduled Purchase Period, refund of any excess dollar amount(s) in a Participant's account will be made in accordance with section 8(f) of this Plan. Withdrawals made after a Purchase Date for a Purchase Period shall not affect Shares acquired by the Participant on such Purchase Date. A Participant who withdraws from an Offering for one or more Purchase Periods may not resume participation in the Plan during the same Purchase Period, but may participate in any subsequent Offering, or in any subsequent Purchase Period within the same Offering, by again satisfying the requirements of paragraphs 4 and 6(a) above.
- (b) **WITHDRAWAL FROM THE PLAN.** A Participant may voluntarily withdraw from the Plan by signing a written notice of withdrawal on a form provided by the Company for such purpose and delivering such notice to the Company's payroll office. The effect of withdrawal from the Plan shall be in accordance with Section 10(a) above.
- (c) **RETURN OF PAYROLL DEDUCTIONS.** Upon withdrawal from an Offering or the Plan pursuant to paragraphs 10(a) or 10(b), respectively, the withdrawn Participant's accumulated payroll deductions will first be applied toward the purchase of Shares at the Purchase Date and any balance remaining shall be returned as soon as practicable after the withdrawal, in accordance with Section 8(f) of this Plan. The Participant's interest in the Offering and/or the Plan, as applicable, shall terminate.
- (d) **PARTICIPATION FOLLOWING WITHDRAWAL.** An employee who is also an officer or director of the Company subject to Section 16 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and who is deemed to "cease participation" in the Plan within the meaning of Rule 16b-3 promulgated under the Exchange Act and amended from time to time or any successor rule or regulation ("Rule 16b-3") as a consequence of his or her withdrawal from an Offering pursuant to paragraph 10(a) above or withdrawal from the Plan pursuant to paragraph 10(b) above shall not again participate in the Plan for at least six months after the date of such withdrawal.

(e) **MODIFICATION OF WITHDRAWAL RIGHTS.** The Company may, from time to time, establish a procedure pursuant to which a Participant may elect (i) to withdraw from the Offering or the Plan during a Purchase or Offering Period pursuant to this paragraph 10, and (ii) to increase, decrease, or cease payroll deductions from his or her Compensation for such Offering during the time such election is in effect. If established, any such election shall be made in writing on a form provided by the Company for such purpose and must be delivered to the Company within a reasonable period of time prior to the effective date thereof.

11. **TERMINATION OF EMPLOYMENT.** Termination of a Participant's employment with the Company for any reason, including retirement, disability or death or the failure of a Participant to remain an employee eligible to participate in the Plan, shall terminate the Participant's participation in the Plan immediately. In such event, the payroll deductions credited to the Participant's account since the last Purchase Date shall, as soon as practicable, be returned to the Participant or, in the case of the Participant's death, to the Participant's legal representative, and all of the Participant's rights under the Plan shall terminate. Interest shall not be paid on sums returned to a Participant pursuant to this paragraph 11. EHC may establish a date which is a reasonable number of days prior to the Purchase Date as a cutoff for return of a Participant's payroll deductions in the form of cash. After the cutoff date, Shares will be purchased for the terminated employee in accordance with paragraph 10(c), above. A Participant whose participation has been so terminated may again become eligible to participate in the Plan by again satisfying the requirements of paragraphs 4 and 6(a) above.

12. **TRANSFER OF CONTROL.** A "Transfer of Control" shall be deemed to have occurred in the event any of the following occurs with respect to EHC:

- (a) a merger or consolidation in which EHC is not the surviving corporation;
- (b) a reverse triangular merger or consolidation in which EHC is the surviving corporation where the stockholders of EHC before such merger or consolidation do not retain, directly or indirectly, at least a majority of the beneficial interest in the voting stock of EHC;
- (c) the sale, exchange, or transfer of all or substantially all of EHC's assets (other than a sale, exchange, or transfer to one (1) or more corporations where the stockholders of EHC before the sale, exchange, or transfer retain, directly or indirectly, at least a majority of the beneficial interest in the voting stock of the corporation(s) to which the assets were transferred).

In the event of a Transfer of Control, the Board, in its sole discretion, may arrange with the surviving, continuing, successor, or purchasing corporation, as the case may be, that such corporation assume the Company's rights and obligations under the Plan. All Purchase Rights shall terminate effective as of the date of the Transfer of Control to the extent that the Purchase Right is neither exercised as of the date of the Transfer of Control nor assumed by the surviving, continuing, successor, or purchasing corporation, as the case may be.

13. **CAPITAL CHANGES.** In the event that the Board determines that any dividend or other distribution (whether in the form of cash, shares, other securities or other property), recapitalization, stock split, reverse stock split, reorganization, merger, consolidation, split-up, spin-off, combination, repurchase or exchange of shares or other securities of the Company, issuance of warrants or other rights to purchase shares or other securities of the Company or other similar corporate transaction or event affects the Shares such that an adjustment is determined by the Committee to be appropriate in order to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan, then the Committee shall, in such manner as it may deem equitable, adjust any or all of (a) the Offering Exercise Price, (b) the number of shares subject to purchase by Participants, and (c) the Plan's share reserve amount.
14. **NON-TRANSFERABILITY.** Prior to a Purchase Date, a Participant's rights under the Plan may not be transferred in any manner otherwise than by will or the laws of descent and distribution and shall be exercisable during the lifetime of the Participant only by the Participant. Subsequent to a Purchase Date, a Participant shall be allowed to sell or otherwise dispose of the Shares in any manner that he or she deems fit. However, the Company, in its absolute discretion, may impose such restrictions on the transferability of Shares purchased by a Participant pursuant to the Plan as it deems appropriate and any such restriction may be placed on the certificates evidencing such Shares (see also Sections 9(d) and 19).
15. **REPORTS.** Each Participant shall receive, within a reasonable period after the Purchase Date, a report of such Participant's account setting forth the total payroll deductions accumulated, the number of Shares purchased, the fair market value of such Shares, the date of purchase and the remaining cash balance to be refunded or retained in the Participant's account pursuant to paragraph 8(f) above, if any. Each Participant who acquires shares pursuant to the Plan shall be provided information concerning the Company equivalent to that information generally made available to the Company's common stockholders.
16. **PLAN TERM.** This Plan shall continue until terminated by the Board or until all of the Shares reserved for issuance under the Plan have been issued, whichever shall first occur.
17. **RESTRICTIONS ON ISSUANCE OF SHARES.** The issuance of shares under the Plan shall be subject to compliance with all applicable requirements of federal or state law with respect to such securities. A Purchase Right may not be exercised if the issuance of shares upon such exercise would constitute a violation of any applicable federal or state securities laws or other law or regulations. In addition, no Purchase Right may be exercised unless (i) a registration statement under the Securities Act of 1933, as amended, shall at the time of exercise of the Purchase Right be in effect with respect to the shares issuable upon exercise of the Purchase Right, or (ii) in the opinion of legal counsel to the Company, the shares issuable upon exercise of the Purchase Right may be issued in accordance with the terms of an applicable exemption from the registration requirements of said Act. As a condition to the exercise of a Purchase Right, the Company may require the Participant to satisfy any qualifications that may be necessary or appropriate to evidence compliance with any applicable law or regulation, and to make any representation or warranty with respect thereto as may be requested by the Company.

18. **LEGENDS.** The Company may at any time place legends or other identifying symbols referencing any applicable federal and/or state securities restrictions or any provision(s) convenient in the administration of the Plan on some or all of the certificates representing shares of stock issued under the Plan. The Participant shall, at the request of the Company, promptly present to the Company any and all certificates representing shares acquired pursuant to a Purchase Right in the possession of the Participant in order to carry out the provisions of this paragraph. Unless otherwise specified by the Company, legends placed on such certificates may include but shall not be limited to any legend required to be placed thereon by the Colorado Secretary of State.
19. **NOTIFICATION OF SALE OF SHARES.** The Company may require the Participant to give the Company prompt notice of any disposition of Shares acquired under the Plan within two years from the date of commencement of an Offering Period or one year from the Purchase Date. The Company may direct that the certificates evidencing Shares acquired by the Participant refer to such requirement to give prompt notice of disposition. Additionally, the Company and the Broker may impose such restrictions or procedures related to transfer of shares acquired under the Plan as are necessary for the Company to obtain sufficient notice of disposition, in order to comply with governmental requirements related to Form W-2 reporting, payroll tax withholding, employment tax liability and corporate income taxes.
20. **AMENDMENT OR TERMINATION OF THE PLAN.** The Board may at any time amend or terminate the Plan, except that such amendment or termination shall not affect Shares purchased under the Plan (except as may be necessary to qualify the Plan as an employee stock purchase plan pursuant to section 423 of the Code or to obtain qualification or registration of the Shares under applicable federal or state securities laws). In addition, an amendment to the Plan must be approved by the stockholders of the Company within twelve (12) months of the adoption of such amendment if such amendment would authorize the sale of more shares than are authorized for issuance under the Plan or would change the definition of the corporations that may be designated by the Board as Participating Companies. Furthermore, the approval of the Company's stockholders shall be sought for any amendment to the Plan for which the Board deems stockholder approval necessary in order to comply with Rule 16b-3 promulgated under Section 16 of the Exchange Act.



FORM OF  
ECHOSTAR HOLDING CORPORATION  
2008 NON-EMPLOYEE DIRECTOR STOCK OPTION PLAN

I. Purpose

The EchoStar Holding Corporation Non-employee Director Stock Option Plan (the "Plan") provides for the grant of Stock Options to Non-employee Directors of EchoStar Holding Corporation (the "Company") in order to advance the interests of the Company through the motivation, attraction and retention of its Non-employee Directors.

II. Non-Incentive Stock Options

The Stock Options granted under the Plan shall be non-statutory stock options ("NSOs") which are intended to be options that do not qualify as "incentive stock options" under Section 422 of the Internal Revenue Code of 1986, as amended (the "Code").

III. Administration

A. Committee. The Plan shall be administered by the Board of Directors of the Company (the "Board") or by a committee of two or more directors (the "Committee"). The Committee or the Board, as the case may be, shall have full authority to administer the Plan, including authority to interpret and construe any provision of the Plan and any Stock Option granted thereunder, and to adopt such rules and regulations for administering the Plan as it may deem necessary in order to comply with the requirements of the Code or in order to conform to any regulations or to any change in any law or regulation applicable thereto. The Board may reserve to itself any of the authority granted to the Committee as set forth herein, and it may perform and discharge all of the functions and responsibilities of the Committee at any time that a duly constituted Committee is not appointed and serving. All references in this Plan to the "Committee" shall be deemed to refer to the Board of Directors whenever the Board is discharging the powers and responsibilities of the Committee. The Committee may determine the extent to which any Stock Option under the Plan is required to comply, or not comply, with Section 409A of the Code.

B. Actions of Committee. All actions taken and all interpretations and determinations made by the Committee in good faith (including determinations of Fair Market Value) shall be final and binding upon all Participants, the Company and all other interested persons. No member of the Committee shall be personally liable for any action, determination or interpretation made in good faith with respect to the Plan, and all members of the Committee shall, in addition to their rights as directors, be fully protected by the Company with respect to any such action, determination or interpretation.

C. In exercising its power and authority hereunder with respect to Replacement and Substitute Awards, as defined in Section IV below, held by certain current and former directors of EchoStar Communications Corporation, including any subsidiary or affiliate (collectively, "EchoStar") (and their respective transferees), the Company shall (i) act in good faith and

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(ii) cooperate with and give due regard to any information provided by EchoStar. In addition, with respect to such Replacement and Substitute Awards, the Company shall not, without the prior written consent of the EchoStar Compensation Committee, take any discretionary action to accelerate vesting of any such awards.

#### IV. Definitions

A. "Stock Option." A Stock Option is the right granted under the Plan to a Non-employee Director to purchase, at such time or times determined by the Committee pursuant to the plan and at such price or prices ("Option Price") as are determined pursuant to the Plan, the number of shares of Common Stock determined by the Committee pursuant to the plan.

B. "Common Stock." A share of Common Stock means a share of authorized but unissued or reacquired Class A Common Stock (par value \$0.001 per share) of the Company.

C. "Fair Market Value." If the Common Stock is not traded publicly, the Fair Market Value of a share of Common Stock on any date shall be determined, in good faith, by the Board or the Committee after such consultation with outside legal, accounting and other experts as the Board or the Committee may deem advisable, and the Board or the Committee shall maintain a written record of its method of determining such value. If the Common Stock is traded publicly, the Fair Market Value of a share of Common Stock on any date shall be the average of the representative closing bid and asked prices, as quoted by the National Association of Securities Dealers through NASDAQ (its automated system for reporting quotes), for the date in question or, if the Common Stock is listed on the NASDAQ National Market System or is listed on a national stock exchange, the officially quoted closing price on NASDAQ or such exchange, as the case may be, on the date in question.

D. "Non-employee Director." A Non-employee Director is a director of the Company who is not also an employee of the Company.

E. "Participant." A participant is a Non-employee Director to whom a Stock Option is granted. In addition, in connection with the spin-off of the Company, certain current and former non-employee directors of EchoStar will be considered Participants in connection with their receipt of Replacement and Substitute Awards.

F. "Replacement and Substitute Award" shall mean a Stock Option granted in connection with the spin-off of the Company to certain current and former non-employee directors of EchoStar pursuant to the terms of the employee matters agreement entered into between the Company and EchoStar, effective [\_\_\_\_\_].

#### V. Option Grants

A. Number of Shares. Upon the initial election or appointment of a Non-employee Director to the Board, the Non-employee Director shall be granted Stock Options to purchase an amount of shares of Common Stock to be determined by the Committee (subject to adjustment pursuant to Section VI.B. hereof) effective as of the last day of the calendar quarter in which

such person is elected or appointed to the Board of Directors. The Committee in its discretion shall have the ability to make further grants to Participants.

B. Price. The purchase price per share of Common Stock for the shares to be purchased pursuant to the exercise of any Stock Option shall be 100% of the Fair Market Value of a share of Common Stock as of the last day of the calendar quarter in which the Non-employee Director receiving the Stock Option is granted the Stock Option.

C. Terms. Each Stock Option shall be evidence by a written agreement ("Option Agreement") containing such terms and provisions as the Committee may determine, subject to the provisions of the Plan.

#### VI. Shares of Common Stock Subject to the Plan

A. Maximum Number. The maximum aggregate number of shares of Common Stock that may be made subject to Stock Options shall be 250,000 authorized but unissued or reacquired shares. If any shares of Common Stock subject to Stock Options are not purchased or otherwise paid for before such Stock Options expire, such shares may again be made subject to Stock Options.

B. Capital Changes. In the event any changes are made to the shares of Common Stock (whether by reason of merger, consolidation, reorganization, recapitalization, stock dividend in excess of ten percent (10%) at any single time, stock split, combination of shares, exchange of shares, change in corporate structure or otherwise), appropriate adjustments shall be made in: (i) the number of shares of Common Stock theretofore made subject to Stock Options, and in the purchase price of such shares; and (ii) the aggregate number of shares which may be made subject to Stock Options. If any of the foregoing adjustments shall result in a fractional share, the fraction shall be disregarded, and the Company shall have no obligation to make any cash or other payment with respect to such a fractional share.

#### VII. Exercise of Stock Options

A. Time of Exercise. Subject to the provisions of the Plan, the Committee, in its discretion, shall determine the time when a Stock Option, or a portion of a Stock Option, shall become exercisable, and the time when a Stock Option, or a portion of a Stock Option, shall expire. Such time or times shall be set forth in the Option Agreement evidencing such Stock Option. A Stock Option shall expire, to the extent not exercised, no later than five years after the date on which it was granted. The Committee may accelerate the vesting of any Participant's Stock Option by giving written notice to the Participant. Upon receipt of such notice, the Participant and the Company shall amend the Option Agreement to reflect the new vesting schedule. The acceleration of the exercise period of a Stock Option shall not affect the expiration date of that Stock Option.

B. Six-Month Holding Period. The shares of Common Stock issued upon the exercise of a Stock Option may not be sold or otherwise disposed of within six months after the date of the grant of the Stock Option.

C. Exchange of Outstanding Stock. The Committee, in its sole discretion, may permit a Participant to surrender to the Company shares of Common Stock previously acquired by the Participant as part or full payment for the exercise of a Stock Option. Such surrendered shares shall be valued at their Fair Market Value on the date of exercise.

D. Use of Promissory Note. The Committee may, in its sole discretion, impose terms and conditions, including conditions relating to the manner and timing of payments, on the exercise of Stock Options. Such terms and conditions may include, but are not limited to, permitting a Participant to deliver to the Company his promissory note as full or partial payment for the exercise of a Stock Option.

E. Stock Restriction Agreement. The Committee may provide that shares of Common Stock issuable upon the exercise of a Stock Option shall, under certain conditions, be subject to restrictions whereby the Company has a right of first refusal with respect to such shares or a right or obligation to repurchase all or a portion of such shares, which restrictions may survive a Participant's term as a director of the Company. The acceleration of time or times at which a Stock Option becomes exercisable may be conditioned upon the Participant's agreement to such restrictions.

F. Termination of Director Status Before Exercise. If a Participant's term as a director of the Company shall terminate for any reason other than the Participant's disability, any Stock Option then held by the Participant, to the extent then exercisable under the applicable Option Agreement(s), shall remain exercisable after the termination of his director status for a period of three months (but in no event beyond five years from the date of grant of the Stock Option). If the Participant's director status is terminated because the Participant is disabled within the meaning of Section 22(e)(3) of the Code, any Stock Option then held by the Participant, to the extent then exercisable under the applicable Option Agreement(s), shall remain exercisable after the termination of his employment for a period of twelve months (but in no event beyond five years from the date of grant of the Stock Option). If the Stock Option is not exercised during the applicable period, it shall be deemed to have been forfeited and of no further force or effect.

G. Disposition of Forfeited Stock Options. Any shares of Common Stock subject to Stock Options forfeited by a Participant shall not thereafter be eligible for purchase by Participant but may be made subject to Stock Options granted to other Participants.

#### VIII. No Effect Upon Stockholder Rights

Nothing in this Plan shall interfere in any way with the right of the stockholders of the Company to remove the Participant from the Board pursuant to the Nevada General Corporation Law and the Company's Certificate of Incorporation and Bylaws.

#### IX. No Rights as a Stockholder

A Participant shall have no rights as a stockholder with respect to any shares of Common Stock subject to a Stock Option. Except as provided in Section VI.B., no adjustment shall be made in the number of shares of Common Stock issued to a Participant, or in any other rights of

the Participant upon exercise of a Stock Option by reason of any dividend, distribution or other right granted to stockholders for which the record date is prior to the date of exercise of the Participant's Stock Option.

#### X. Assignability

No Stock Option granted under this Plan, nor any other rights acquired by a Participant under this Plan, shall be assignable or transferable by a Participant, other than by will or the laws of descent and distribution or pursuant to a qualified domestic relations order as defined by the Code, Title I of the Employee Retirement Income Security Act ("ERISA"), or the rules thereunder. In the event of the Participant's death, the Stock Option may be exercised by the personal representative of the Participant's estate or, if no personal representative has been appointed, by the successor or successors in interest determined under the Participant's will or under the applicable laws of descent and distribution.

#### XI. Merger or Liquidation of the Company

If the Company or its stockholders enter into an agreement to dispose of all, or substantially all, of the assets or outstanding capital stock of the Company by means of a sale or liquidation, or a merger or reorganization in which the Company is not the surviving corporation, all Stock Options outstanding under the Plan as of the day before the consummation of such sale, liquidation, merger or reorganization, to the extent not exercised, shall for all purposes under this Plan become exercisable in full as of such date even though the dates of exercise established pursuant to Section VII.A. have not yet occurred, unless the Board shall have prescribed other terms and conditions to the exercise of the Stock Options, or otherwise modified the Stock Options.

#### XII. Amendment

The Board may, from time to time, alter, amend, suspend or discontinue the Plan, including where applicable, any modifications or amendments as it shall deem advisable in order to conform to any regulation or to any change in any law or regulation applicable thereto; provided, however, that no such action shall adversely affect the rights and obligations with respect to Stock Options at any time outstanding under the Plan (for clarification purposes, in no event shall a "lock-up" be deemed to adversely affect any rights or obligations with respect to any stock options); and provided further that no such action shall, without the approval for the stockholders of the Company, (i) materially increase the maximum number of shares of Common Stock that may be made subject to Stock Options (unless necessary to effect the adjustments required by Section VI.B.), or (ii) materially modify the requirements as to eligibility for participation in the Plan. Subject to the foregoing, the provisions of Article V of the Plan which set forth the number of shares of Common Stock for which Stock Options shall be granted, the timing of Stock Option grants and the Stock Option exercise price shall not be amended more than once every six (6) months other than to comport with changes in the Code, ERISA, or the rules thereunder.

XIII. Registration of Optioned Shares

The Stock Options shall not be exercisable unless the purchase of such optioned shares is pursuant to an applicable effective registration statement under the Securities Act of 1933, as amended (the "Act"), or unless, in the opinion of counsel to the Company, the proposed purchase of such optioned shares would be exempt from the registration requirements of the Act and from the registration or qualification requirements of applicable state securities laws.

XIV. Brokerage Arrangements

The Committee, in its discretion, may enter into arrangements with one or more banks, brokers or other financial institutions to facilitate the disposition of shares acquired upon exercise of Stock Options including, without limitation, arrangements for the simultaneous exercise of Stock Options and sale of the shares acquired upon such exercise.

XV. Nonexclusivity of the Plan

Neither the adoption of the Plan by the Board nor the submission of the Plan to stockholders of the Company for approval shall be construed as creating any limitations on the power of authority of the Board to adopt such other or additional compensation arrangements of whatever nature as the Board may deem necessary or desirable or preclude or limit the continuation of any other plan, practice or arrangement for the payment of compensation or fringe benefits to Non-employee Directors, which the Company now has lawfully put into effect.

XVI. Replacement and Substitute Awards.

Notwithstanding anything in this Plan to the contrary, any Stock Option that is intended to be a Replacement or Substitute Award granted in connection with the spin-off of the Company shall be subject to the same terms and conditions as the original EchoStar award to which it relates; provided, however that such awards shall be administered by the Committee. In this regard, all service with EchoStar shall be taken into account for purposes of determining the vesting and exercisability provisions of such Stock Options.

XVII. Effective Date

This Plan was originally adopted by the Board of Directors and became effective on [\_\_\_\_\_].

FORM OF  
ECHOSTAR HOLDING CORPORATION  
2008 CLASS B CEO STOCK OPTION PLAN

Section 1. Purpose.

The purpose of this Stock Option Plan (the "Plan") is to promote the interests of EchoStar Holding Corporation (the "Corporation") and its Subsidiaries by aiding the Corporation in retaining and incentivizing Charles W. Ergen, who the Board of Directors believes is capable of assuring the future success of the Corporation; to permit the Board of Directors to reward Mr. Ergen for his extraordinary efforts on behalf of the Corporation in the past to offer Mr. Ergen incentives to put forth maximum efforts for the future success of the Corporation's business and to afford Mr. Ergen an opportunity to acquire additional proprietary interest in the Corporation.

Section 2. Definitions.

As used in the Plan, the following terms shall have the meanings set forth below:

- (a) "Award" shall mean an award granted to Mr. Ergen in accordance with the terms of this Plan in the form of Options or Dividend Equivalents granted under the Plan.
  - (b) "Award Agreement" shall mean any written agreement, contract or other instrument or document evidencing any Award granted under the Plan.
  - (c) "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time, and any regulations promulgated thereunder.
  - (d) "Committee" shall mean the committee described in Section 3 of the Plan.
  - (e) "Company" shall mean EchoStar Holding Corporation, a Nevada corporation, and any successor corporation.
  - (f) "Dividend Equivalent" shall mean any right granted under Section 6(b) of the Plan.
  - (g) "Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.
  - (h) "Fair Market Value" shall mean, with respect to Shares, the last sale price of the Class A Common Stock, \$0.001 par value, of the Corporation, as reported on the consolidated tape for securities listed on the Nasdaq Stock Market ("NASDAQ") or any national securities exchange on which the Shares are then traded, for the date in question (with any adjustments that the Committee, in its sole discretion, determines are necessary or appropriate to take into account the difference in voting rights between the Class A Common Stock and the Shares). If Fair Market Value is in reference to property other than Shares, the Fair Market Value of such other property shall be determined by such methods or procedures as shall be established from time to time by the Committee.
  - (i) "Incentive Stock Option" shall mean an option granted under Section 6(a) of the Plan that is intended to meet the requirements of Section 422 of the Code or any successor provision.
  - (j) "Non-employee Director" shall mean a director of the Corporation who is a "non-employee director" within the meaning of Rule 16b-3.
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- (k) "Non-Qualified Stock Option" shall mean an option granted under Section 6(a) of the Plan that is not intended to be an Incentive Stock Option.
- (l) "Option" shall mean an Incentive Stock Option or a Non-Qualified Stock Option, and shall include Restoration Options.
- (m) "Outside Director" shall mean a director of the Corporation who is an "outside director" within the meaning of Section 162(m) of the Code.
- (n) "Person" shall mean any individual, corporation, partnership, association or trust.
- (o) "Plan" shall mean this 2008 Class B CEO Stock Option Plan, as amended from time to time.
- (p) "Restoration Option" shall mean any Option granted under Section 6(a)(iv) of the Plan which confers upon Mr. Ergen the right to receive a new Option upon the payment of the exercise price of a previously held Option by delivery of previously owned Shares or previously owned shares of Class A Common Stock of the Corporation.
- (q) "Retirement" shall mean becoming eligible to receive immediate retirement benefits under a retirement or pension plan of the Corporation or any Subsidiary.
- (r) "Rule 16b-3" shall mean Rule 16b-3 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended, or any successor rule or regulation.
- (s) "Shares" shall mean shares of Class B Common Stock, \$0.001 par value, of the Corporation or such other securities or property as may become subject to Awards pursuant to an adjustment made under Section 4(c) of the Plan.
- (t) "Subsidiary" shall mean any corporation (other than the Corporation) in an unbroken chain of corporations beginning with the Corporation if each of the corporations other than the last corporation in the unbroken chain owns more than 50% of the voting stock in one of the other corporations in such chain.
- (u) "Ten-Percent Stockholder" shall mean an individual who owns (within the meaning of Section 422(b)(6) of the Code) stock possessing more than 10% of the total combined voting power of all classes of stock of the Corporation or of a Subsidiary.
- (v) "Total Disability" shall mean the complete and permanent inability of Mr. Ergen to perform his duties under the terms of his employment with the Corporation or any Subsidiary, as determined by the Committee upon the basis of such evidence, including independent medical reports and data, as the Committee deems appropriate or necessary.

### Section 3. Administration.

#### (a) Power and Authority of the Committee.

(i) The Committee. The Committee shall consist of at least two directors of the Corporation and may consist of the entire Board of Directors; provided, however, that (i) if the Committee consists of less than the entire Board of Directors, each member shall be a Non-employee Director and (ii) to the extent necessary for any Award intended to qualify as performance-based compensation under Section 162(m) of the Code, to so qualify, each member of the Committee, whether or not it consists of the entire Board of Directors, shall be an Outside Director.



(ii) Power and Authority. Subject to the express provisions of the Plan and to applicable law, the Committee or the Board of Directors, as the case may be, shall have full power and authority to: (i) determine the type or types of Awards to be granted to Mr. Ergen under the Plan; (ii) determine the number of Shares to be covered by (or with respect to which payments, rights or other matters are to be calculated in connection with) each Award; (iii) determine the terms and conditions of any Award or Award Agreement; (iv) amend the terms and conditions of any Award or Award Agreement and accelerate the exercisability of Options; (v) determine whether, to what extent and under what circumstances Awards may be exercised in cash, Shares, other securities, other Awards or other property, or canceled, forfeited or suspended; (vi) determine whether, to what extent and under what circumstances cash, Shares, other securities, other Awards, other property and other amounts payable with respect to an Award under the Plan shall be deferred either automatically or at the election of the holder thereof or the Committee; (vii) interpret and administer the Plan and any instrument or agreement relating to, or Award made under, the Plan; (viii) establish, amend, suspend or waive such rules and regulations and appoint such agents as it shall deem appropriate for the proper administration of the Plan; and (ix) make any other determination and take any other action that the Committee deems necessary or desirable for the administration of the Plan.

#### Section 4. Shares Available for Awards.

(a) Shares Available. Subject to adjustment as provided in Section 4(c), the number of Shares that may be issued subject to Awards under the Plan shall not exceed 4,000,000; provided, however, that (i) Mr. Ergen may not be granted Awards in the aggregate in respect of more than 1,000,000 Shares in any one calendar year. Shares to be issued under the Plan may be either Shares reacquired and held in the treasury or authorized but unissued Shares. If any Shares covered by an Award or to which an Award relates are not purchased or are forfeited, or if an Award otherwise terminates without delivery of any Shares, or if Shares are surrendered or withheld from any Award to satisfy Mr. Ergen's income tax or other withholding obligations, or Shares owned by Mr. Ergen are tendered to pay the exercise price of any Award granted under the Plan, then the number of Shares counted against the aggregate number of Shares available under the Plan with respect to such Award, to the extent of any such forfeiture, termination, surrender, withholding or tender shall again be available for granting Awards under the Plan. The Corporation shall at all times keep available out of authorized but unissued and/or reacquired Shares the number of Shares to satisfy Awards granted under the Plan.

(b) Adjustments. In the event that the Committee shall determine that any dividend or other distribution (whether in the form of cash, Shares, other securities or other property), recapitalization, stock split, reverse stock split, reorganization, merger, consolidation, split-up, spin-off, combination, repurchase or exchange of Shares or other securities of the Corporation, issuance of warrants or other rights to purchase Shares or other securities of the Corporation or other similar corporate transaction or event affects the Shares such that an adjustment is determined by the Committee to be appropriate in order to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan, then the Committee shall, in such manner as it may deem equitable, adjust any or all of (i) the number and type of Shares (or other securities or other property) which thereafter may be made the subject of Awards, (ii) the number and type of Shares (or other securities or other property) subject to outstanding Awards and (iii) the purchase or exercise price with respect to any Award; provided,

however, that the number of Shares covered by any Award or to which such Award relates shall always be a whole number.

Section 5. Eligibility.

Only Mr. Ergen shall be eligible to participate in the Plan. Notwithstanding the foregoing, an Incentive Stock Option may only be granted to full or part-time employees (which term as used herein includes, without limitation, officers and directors who are also employees) of the Corporation and its Subsidiaries.

Section 6. Awards.

(a) Options. The Committee is hereby authorized to grant Options to Mr. Ergen with the following terms and conditions and with such additional terms and conditions not inconsistent with the provisions of the Plan as the Committee shall determine, which terms and conditions shall be set forth in a form approved by the Committee.

(i) Exercise Price. The exercise price per Share purchasable under an Option shall be determined by the Committee; provided, however, that, in the case of an Incentive Stock Option, such exercise price shall not be less than 100% of the Fair Market Value of a Share on the date of grant of such Option (110% in the case of an Incentive Stock Option granted to a Ten-Percent Stockholder); provided, further, that to the extent that the aggregate Fair Market Value, determined at the time an Incentive Stock Option is granted, of the Shares with respect to which Incentive Stock Options may be exercisable for the first time by Mr. Ergen in any calendar year under all plans of the Corporation and any parent corporation of the Corporation and any Subsidiary shall exceed \$100,000, such Incentive Stock Options shall be treated as Non-Qualified Stock Options.

(ii) Option Term. The term of each Option shall be set forth in the applicable Award Agreement; provided, however that no Incentive Stock Option shall be exercisable more than ten years after the date of grant (5 years in the case of an Incentive Stock Option granted to a Ten-Percent Stockholder), unless the Option shall cease to be exercisable pursuant to this Section 6. If Mr. Ergen's employment with the Corporation and all Subsidiaries terminates other than by reason of his death, Total Disability or Retirement, his Option shall terminate and cease to be exercisable upon termination of employment, unless (A) the Committee shall determine otherwise or (B) otherwise specified in the applicable Award Agreement or in his employment agreement.

(iii) Time and Method of Exercise. The Committee shall determine the time or times at which an Option may be exercised in whole or in part and the method or methods by which, and the form or forms (including, without limitation, cash, Shares or shares of Class A Common Stock of the Corporation (that, in either case, have been held by Mr. Ergen for at least six months), promissory notes, other securities, other Awards or other property, or any combination thereof, having a Fair Market Value on the exercise date equal to the relevant exercise price) in which, payment of the exercise price with respect thereto may be made or deemed to have been made. The Committee may also permit Mr. Ergen, in accordance with such procedures as the Committee may in its sole discretion establish, including those set forth in Section 6(c) hereof, to exercise Options and sell Shares acquired pursuant to a brokerage or similar arrangement approved in advance by the Committee, and to use the proceeds from such sale as payment of the exercise price of such Options.

(iv) Restoration Options. The Committee may grant Restoration Options, separately or together with another Option, pursuant to which, subject to the terms and conditions established by the Committee and any applicable requirements of Rule 16b-3 or any other applicable law, Mr. Ergen would be granted a new Option when the payment of the exercise price of the Option to which such Restoration Option relates is made by the delivery of Shares or shares of Class A Common Stock of the Corporation owned by Mr. Ergen pursuant to the relevant provisions of the Plan or agreement relating to such Options, which new Option would be an Option to purchase the number of Shares not exceeding the sum of (A) the number of Shares or shares of Class A Common Stock of the Corporation so provided as consideration upon the exercise of the previously granted Option to which such Restoration Option relates and (B) the number of Shares, if any, tendered or withheld as payment of the amount to be withheld under applicable tax laws in connection with the exercise of the Option to which such Restoration Option relates pursuant to the relevant provisions of the Plan or agreement relating to such Option. Restoration Options may be granted with respect to Options previously granted under the Plan or any other stock option plan of the Corporation, and may be granted in connection with any Option granted under the Plan or any other stock option plan of the Corporation at the time of such grant.

(v) Incentive and Non-Qualified Stock Options. Each Option granted pursuant to the Plan shall specify whether it is intended to be an Incentive Stock Option or a Non-Qualified Stock Option, provided that the Committee may in the case of the grant of an Incentive Stock Option give Mr. Ergen the right to receive in its place a Non-Qualified Stock Option.

(b) Dividend Equivalents. The Committee is hereby authorized to grant to Mr. Ergen Dividend Equivalents under which he shall be entitled to receive payments (in cash, Shares, other securities, other Awards or other property as determined in the discretion of the Committee) equivalent to the amount of cash dividends paid by the Corporation to holders of Shares with respect to a number of Shares determined by the Committee. Subject to the terms of the Plan and any applicable Award Agreement, such Dividend Equivalents may have such terms and conditions as the Committee shall determine.

(c) General. (i) No Cash Consideration for Awards. Awards shall be granted for no cash consideration or for such minimal cash consideration as may be required by applicable law. (ii) Awards May Be Granted Separately or Together. Awards may, in the discretion of the Committee, be granted either alone or in addition to, in tandem with, or in substitution for, any other Award or any award granted under any plan of the Corporation or any Subsidiary other than the Plan. Awards granted in addition to or in tandem with other Awards or in addition to or in tandem with awards granted under any such other plan of the Corporation or any Subsidiary may be granted either at the same time as, or at a different time from, the grant of such other Awards or awards. (iii) Forms of Payment Under Awards. Subject to the terms of the Plan and of any applicable Award Agreement, payments or transfers to be made by the Corporation or a Subsidiary upon the grant, exercise or payment of an Award may be made in such form or forms as the Committee shall determine (including, without limitation, cash, Shares, promissory notes, other securities, other Awards or other property or any combination thereof), and may be made in a single payment or transfer, in installments or on a deferred basis, in each case in accordance with rules and procedures established by the Committee. Such rules and procedures may include, without limitation, provisions for the payment or crediting of reasonable interest on installment or deferred payments or the grant or crediting of Dividend Equivalents with respect to installment or deferred payments. (iv) Cashless Exercise. Options may be exercised in whole or

in part upon delivery to the Secretary of the Corporation of an irrevocable written notice of exercise. The date on which such notice is received by the Secretary shall be the date of exercise of the Option, provided that within three business days of the delivery of such notice the funds to pay for exercise of the Option are delivered to the Corporation by a broker acting on behalf of the optionee either in connection with the sale of the Shares underlying the Option or in connection with the making of a margin loan to the optionee to enable payment of the exercise price of the Option. In connection with the foregoing, the Corporation will provide a copy of the notice of exercise of the Option to the aforesaid broker upon receipt by the Secretary of such notice and will deliver to such broker, within three business days of the delivery of such notice to the Corporation, a certificate or certificates (as requested by the broker) representing the number of Shares underlying the Option that have been sold by such broker for the optionee. (v) Limits on Transfer of Awards. No Award and no right under any such Award shall be transferable by Mr. Ergen otherwise than by will, the laws of descent and distribution; provided, however, that, if so determined by the Committee, Mr. Ergen may, in the manner established by the Committee, designate a beneficiary or beneficiaries to exercise his rights and receive any property distributable with respect to any Award upon his death. Each Award or right under any Award shall be exercisable during Mr. Ergen's lifetime only by Mr. Ergen or, if permissible under applicable law, by his guardian or legal representative. No Award or right under any such Award may be pledged, alienated, attached or otherwise encumbered, and any purported pledge, alienation, attachment or encumbrance thereof shall be void and unenforceable against the Corporation or any Subsidiary. (vi) Term of Awards. Unless otherwise expressly set forth in the Plan, the term of each Award shall be for such period as may be determined by the Committee. (vii) Restrictions; Securities Listing. All certificates for Shares or other securities delivered under the Plan pursuant to any Award or the exercise thereof shall be subject to such stop transfer orders, obtaining any consents (as defined below) and other restrictions as the Committee may deem advisable under the Plan or the rules, regulations and other requirements of the Securities and Exchange Commission and any applicable federal or state securities laws, and the Committee may cause a legend or legends to be placed on any such certificates to make appropriate reference to such restrictions. The term "consent" as used herein with respect to any plan action includes (A) any and all listings, registrations or qualifications in respect thereof upon any securities exchange, or law, rule or regulation of a jurisdiction outside the United States, (B) any and all written agreements and representations by Mr. Ergen with respect to the disposition of Shares, or with respect to any other matter, which the Committee may deem necessary or desirable to comply with the terms of any such listing, registration or qualification or to obtain an exemption from the requirement that any such listing, qualification or registration be made, (C) any and all other consents, clearances and approvals in respect of a plan action by any governmental or other regulatory body or any stock exchange or self-regulatory agency and (D) any and all consents or authorizations required to comply with, or required to be obtained under, applicable local law or otherwise required by the Committee.

#### Section 7. Amendment and Termination; Adjustments.

Except to the extent prohibited by applicable law and unless otherwise expressly provided in an Award Agreement or in the Plan: (a) Amendments to the Plan. The Board of Directors of the Corporation may amend, alter, suspend, discontinue or terminate the Plan; provided, however, that, notwithstanding any other provision of the Plan or any Award Agreement, without the approval of the stockholders of the Corporation, no such amendment, alteration, suspension, discontinuation or termination shall be made that, absent such approval:

(i) would violate the rules or regulations of NASDAQ or any securities exchange that are applicable to the Corporation; or (ii) would cause the Corporation to be unable, under the Code, to grant Incentive Stock Options under the Plan. (b) Amendments to Awards. The Committee may waive any conditions of or rights of the Corporation under any outstanding Award, prospectively or retroactively. Neither the Committee nor the Board of Directors may amend, alter, suspend, discontinue or terminate any outstanding Award, prospectively or retroactively, in a manner that is adverse to Mr. Ergen without his consent or the consent of the beneficiary thereof, except as otherwise herein provided. (c) Correction of Defects, Omissions and Inconsistencies. The Committee may correct any defect, supply any omission or reconcile any inconsistency in the Plan or any Award in the manner and to the extent it shall deem desirable to carry the Plan into effect.

Section 8. Income Tax Withholding; Tax Bonuses. (a) Withholding. In order to comply with all applicable federal or state income tax laws or regulations, the Corporation may take such action as it deems appropriate to ensure that all applicable federal or state payroll, withholding, income or other taxes, which are the sole and absolute responsibility of Mr. Ergen, are withheld or collected from him. In order to assist Mr. Ergen in paying all or a portion of the federal and state taxes to be withheld or collected upon exercise or receipt of (or the lapse of restrictions relating to) an Award, the Committee, in its discretion and subject to such additional terms and conditions as it may adopt, may permit him to satisfy such minimum tax obligation by (i) electing to have the Corporation withhold a portion of the Shares otherwise to be delivered upon exercise of such Award with a Fair Market Value equal to the amount of such taxes or (ii) delivering to the Corporation Shares or shares of Class A Common Stock of the Corporation (other than Shares issuable upon exercise of such Award) with a Fair Market Value equal to the amount of such taxes.

(b) Tax Bonuses. The Committee, in its discretion, shall have the authority, at the time of grant of any Award under this Plan or at any time thereafter, to approve cash bonuses to Mr. Ergen to be paid upon their exercise of Awards in order to provide funds to pay all or a portion of federal and state taxes due as a result of such exercise. The Committee shall have full authority in its discretion to determine the amount of any such tax bonus.

Section 9. General Provisions. (a) No Rights to Awards. Mr. Ergen shall not have any claim to be granted any Award under the Plan. The terms and conditions of Awards need not be the same with respect to separate grants to Mr. Ergen.

(b) Award Agreements. Mr. Ergen will not have rights under an Award granted to him unless and until an Award Agreement shall have been duly executed on behalf of the Corporation.

(c) No Limit On Other Compensation Arrangements. Nothing contained in the Plan shall prevent the Corporation or any Subsidiary from adopting or continuing in effect other or additional compensation arrangements, and such arrangements may be either generally applicable or applicable only in specific cases.

(d) No Right to Employment. The grant of an Award shall not be construed as giving Mr. Ergen the right to be retained in the employ of the Corporation or any Subsidiary, nor will it affect in any way the right of the Corporation or a Subsidiary to terminate such employment at any time, with or without cause. In addition, the Corporation or a Subsidiary may at any time

dismiss Mr. Ergen from employment free from any liability or any claim under the Plan, unless otherwise expressly provided in the Plan or in any Award Agreement.

(e) Assignability. No Award granted under this Plan, nor any other rights acquired by Mr. Ergen under this Plan, shall be assignable or transferable by him, other than by will or the laws of descent and distribution, Title I of the Employee Retirement Income Security Act, or the rules promulgated thereunder.

(f) Governing Law. The validity, construction and effect of the Plan or any Award, and any rules and regulations relating to the Plan or any Award, shall be determined in accordance with the laws of the State of Colorado.

(g) Severability. If any provision of the Plan or any Award is or becomes or is deemed to be invalid, illegal or unenforceable in any jurisdiction or would disqualify the Plan or any Award under any law deemed applicable by the Committee, such provision shall be construed or deemed amended to conform to applicable laws, or if it cannot be so construed or deemed amended without, in the determination of the Committee, materially altering the purpose or intent of the Plan or the Award, such provision shall be stricken as to such jurisdiction or Award, and the remainder of the Plan or any such Award shall remain in full force and effect.

(h) No Trust Or Fund Created. Neither the Plan nor any Award shall create or be construed to create a trust or separate fund of any kind or a fiduciary relationship between the Corporation or any Subsidiary and Mr. Ergen or any other Person. To the extent that any Person acquires a right to receive payments from the Corporation or any Subsidiary pursuant to an Award, such right shall be no greater than the right of any unsecured general creditor of the Corporation or any Subsidiary.

(i) No Fractional Shares. No fractional Shares shall be issued or delivered pursuant to the Plan or any Award, and the Committee shall determine whether cash shall be paid in lieu of any fractional Shares or whether such fractional Shares or any rights thereto shall be canceled, terminated or otherwise eliminated.

(j) Transfers and Leaves of Absence. Solely for the purposes of the Plan: (a) a transfer of Mr. Ergen's employment without an intervening period from the Corporation to a Subsidiary or vice versa, or from one Subsidiary to another, shall not be deemed a termination of employment, and (b) if Mr. Ergen is granted in writing a leave of absence he shall be deemed to have remained in the employ of the Corporation or a Subsidiary, as the case may be, during such leave of absence.

(k) Headings. Headings are given to the Sections and subsections of the Plan solely as a convenience to facilitate reference. Such headings shall not be deemed in any way material or relevant to the construction or interpretation of the Plan or any provision thereof.

Section 10. Effective Date of the Plan. The Board of Directors adopted the Plan on [\_\_\_] to become effective on [\_\_\_], subject to approval by the stockholders of the Corporation at [\_\_\_].

Section 11. Term of the Plan. The Plan shall continue until the Plan shall have been discontinued or terminated as provided in Section 7(a), provided that no Incentive Stock Options shall be granted after the tenth anniversary of the date the stockholders of the Corporation approve the Plan. However, unless otherwise expressly provided in the Plan or in an applicable Award Agreement, any Award theretofore granted may extend beyond the termination of the

Plan, and the authority of the Committee provided for hereunder with respect to the Plan and any Awards, and the authority of the Board of Directors of the Corporation to amend the Plan, shall extend beyond the termination of the Plan.

**ECHOSTAR HOLDING CORPORATION AND SUBSIDIARIES**  
**LIST OF SUBSIDIARIES**  
**Effective as of the Date of the Spin-off**

<u>Subsidiary</u>	<u>State or Country of Incorporation</u>	<u>% of Ownership</u>	<u>Name Doing Business As</u>
EchoStar Asia Holdings Corporation	Colorado	100%	EAH
EchoStar Asia Satellite Corporation	Colorado	100%	EAS
EchoStar Data Networks Corporation	Colorado	100%	EDN
EchoStar FSS Corporation	Colorado	100%	FSS
Echostar Global B.V.	Netherlands	100%	Global BV
EchoStar International Corporation	Colorado	100%	EIC
Echostar Real Estate Corporation IV	Colorado	100%	ERIV
EchoStar Technologies LLC	Texas	100%	ETLLC
China Mobile Broadcasting Satellite Limited	Hong Kong	100%	CMB Sat
EIC Spain, SL	Spain	100%	EchoStar Spain
Eldon Technology Ltd.	England	100%	EchoStar Eldon
Port L.L.C.	Colorado	100%	Port L.L.C.





Dear EchoStar Communications Corporation Shareholder:

We are pleased to inform you that on December 11, 2007, the Board of Directors of EchoStar Communications Corporation approved the spin-off of EchoStar Holding Corporation, a wholly-owned subsidiary of EchoStar Communications Corporation. EchoStar Holding Corporation will hold the technology and certain infrastructure assets of EchoStar Communications Corporation. EchoStar Communications Corporation will retain its consumer pay-TV business, DISH Network. We believe that our separation into two independent publicly-traded companies is in the best interests of each of the businesses. Immediately following the completion of the spin-off, EchoStar Communications Corporation intends to change its name to "DISH Network Corporation."

The spin-off of EchoStar Holding Corporation is anticipated to occur on or about January 1, 2008 by way of a pro rata dividend to EchoStar Communications Corporation shareholders. For each share of EchoStar Communications Corporation Class A common stock or Class B common stock you hold as of 5:00 p.m., New York City time, on December 27, 2007, which is the record date of the spin-off, you will be entitled to receive a dividend of 0.20 of a share of the same class of EchoStar Holding Corporation common stock. Please note that if you sell your shares of Class A common stock of EchoStar Communications Corporation after the record date but before the distribution date, the buyer of those shares will be entitled to receive the shares of our Class A common stock issuable in respect of the shares sold. The distribution of shares of our Class A common stock will be made in book-entry form, which means that no physical Class A stock certificates will be issued in the distribution. No fractional shares of EchoStar Holding Corporation Class A or Class B common stock will be issued. If you would have been entitled to a fractional share of EchoStar Holding Corporation Class A common stock in the distribution, you will receive cash in lieu of a fractional share interest.

Shareholder approval of the spin-off is not required, and you are not required to take any action to receive shares of EchoStar Holding Corporation common stock.

Immediately following the spin-off, you will own shares of common stock of both EchoStar Communications Corporation and EchoStar Holding Corporation. EchoStar Communications Corporation Class A common stock will continue to trade on the Nasdaq Global Select Market under the symbol "DISH." We have applied to list our Class A common stock on the Nasdaq Global Select Market under the symbol "[ ]."

We expect the spin-off to be tax-free for all shareholders of EchoStar Communications Corporation, except for any cash received in lieu of fractional shares. To that end, we have requested a ruling from the Internal Revenue Service confirming that the spin-off will be tax free to shareholders of EchoStar Communications Corporation for U.S. federal income tax purposes. The spin-off is subject to certain customary conditions, including the receipt of any necessary regulatory approvals.

The enclosed information statement, which is being mailed to all EchoStar Communications Corporation shareholders, describes the spin-off and contains important information about EchoStar Holding Corporation, including its historical and pro forma combined financial statements.

We look forward to your continued support as a shareholder in both EchoStar Communications Corporation and EchoStar Holding Corporation.

Sincerely,

Charles W. Ergen  
*Chairman and Chief Executive Officer*

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**ECHOSTAR HOLDING CORPORATION**  
**90 Inverness Circle East**  
**Englewood, Colorado 80112**

Dear EchoStar Holding Corporation Shareholder:

It is my pleasure to welcome you as a shareholder of our new company, EchoStar Holding Corporation. As an independent, publicly-traded company, we believe we can more effectively focus on our objectives and satisfy the strategic needs of our company. In addition, we will have the opportunity to offer our employees incentive opportunities linked to our performance as an independent, publicly-traded company, which we believe will enhance employee performance.

EchoStar Holding Corporation intends to operate two primary businesses, a digital set-top box business and a fixed satellite services business:

- *Digital Set-Top Boxes.* Our set-top box business designs, develops and distributes award-winning digital set-top boxes and related products for direct-to-home satellite service providers. In 2006, our set-top box business shipped over nine million set-top boxes. Most of these set-top boxes were sold to EchoStar Communications Corporation, but we also sold set-top boxes to Bell ExpressVu and other international customers.
- *Fixed Satellite Services.* Our fixed satellite services business will be developed using the nine owned or leased in-orbit satellites and related FCC licenses, a network of seven full service digital broadcast centers, and leased fiber optic capacity with points of presence in approximately 150 cities that will be contributed to us by EchoStar Communications Corporation. We expect that our primary customer will initially be EchoStar Communications Corporation. However, we will also lease capacity in the spot market and to government and enterprise customers.

We have applied to list our Class A common stock on the Nasdaq Global Select Market under the symbol “[ ]”. We currently expect that our Class A common stock will begin trading on January 2, 2008.

I invite you to learn more about EchoStar Holding Corporation by reviewing the enclosed information statement. We thank you in advance for your support as a shareholder in EchoStar Holding Corporation.

Sincerely,

Charles W. Ergen  
*Chairman and Chief Executive Officer*

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Information contained herein is subject to completion or amendment. A registration statement on Form 10 relating to these securities has been filed with the Securities and Exchange Commission.

SUBJECT TO COMPLETION, DATED DECEMBER 12, 2007

INFORMATION STATEMENT

**ECHOSTAR HOLDING CORPORATION**

90 Inverness Circle E.  
Englewood, Colorado 80112

**Class A Common Stock**  
**Class B Common Stock**  
(par value \$0.001 per share)

We are sending this information statement to you to describe the spin-off of EchoStar Holding Corporation. Prior to the spin-off described in this information statement, we were a wholly-owned subsidiary of EchoStar Communications Corporation, which we refer to as ECC. We are engaged in the design, development and distribution of set-top boxes, antennae and other equipment for the "direct to home" satellite television industry. Following the spin-off, we will also be engaged in the provision of fixed satellite transmission services. We expect that the spin-off will be tax-free to ECC shareholders for U.S. federal income tax purposes, except for any cash received in lieu of fractional shares. We have requested a ruling from the Internal Revenue Service confirming that the spin-off will be tax free to shareholders of EchoStar Communications Corporation for U.S. federal income tax purposes. Immediately following the spin-off, ECC intends to change its name to "DISH Network Corporation."

For each share of ECC Class A common stock or ECC Class B common stock held by you as of 5:00 p.m., New York City time, on December 27, 2007, the record date for the spin-off, you will receive 0.20 of a share of the same class of our common stock. The distribution of shares of our Class A common stock will be made in book-entry form, which means that no physical Class A stock certificates will be issued in the distribution. No fractional shares of EchoStar Holding Corporation Class A or Class B common stock will be issued. If as a result of the foregoing ratio you would be entitled to receive a fraction of a share of our Class A common stock, you will receive cash in lieu of such fractional share interest. We expect the shares of our Class A common stock and Class B common stock to be distributed by ECC to you on or about January 1, 2008, which we refer to as the distribution date.

No vote of ECC's shareholders is required in connection with the spin-off. We are not asking you for a proxy and you are requested not to send us a proxy. No action is required of you to receive shares of our common stock, which means that:

- you will not be required to pay for the shares of any class of our common stock that you receive in the spin-off, and
- you do not need to surrender or exchange shares of any class of ECC common stock in order to receive shares of our common stock, or to take any other action in connection with the spin-off.

There is no current trading market for any class of our common stock. We expect, however, that a limited trading market for our Class A common stock, commonly known as a "when issued" trading market, will develop shortly after the record date for the spin-off, and we expect "regular way" trading of our Class A common stock will begin the first trading day after the distribution date. We have applied to list our Class A common stock on the Nasdaq Global Select Market under the symbol "[ ]". We expect that our Class A common stock will begin trading on January 2, 2008. Charles W. Ergen, our Chairman and Chief Executive Officer, will immediately after the distribution date beneficially own approximately 50.0% of our outstanding equity and possess approximately 80.0% of the total voting power represented by all of our common stock, which is equivalent to his ownership and voting interests in ECC.

**In reviewing this information statement, you should carefully consider the matters described under the caption "Risk Factors" beginning on page 16.**

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved these securities or determined if this information statement is truthful or complete. Any representation to the contrary is a criminal offense.**

**This information statement is not an offer to sell, or a solicitation of an offer to buy, any securities.**

The date of this information statement is December [ ], 2007.

## TABLE OF CONTENTS

	<u>Page</u>
<a href="#">SUMMARY</a>	1
<a href="#">RISK FACTORS</a>	16
<a href="#">CAUTIONARY STATEMENT CONCERNING FORWARD-LOOKING STATEMENTS</a>	32
<a href="#">THE SPIN-OFF</a>	33
<a href="#">SELECTED HISTORICAL AND UNAUDITED PRO FORMA COMBINED AND ADJUSTED FINANCIAL DATA</a>	43
<a href="#">UNAUDITED PRO FORMA COMBINED AND ADJUSTED FINANCIAL INFORMATION</a>	45
<a href="#">MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS</a>	54
<a href="#">PROPERTIES</a>	74
<a href="#">BUSINESS</a>	75
<a href="#">MANAGEMENT</a>	89
<a href="#">SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT</a>	104
<a href="#">CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS</a>	108
<a href="#">CERTAIN INTERCOMPANY AGREEMENTS</a>	109
<a href="#">DESCRIPTION OF OUR CAPITAL STOCK</a>	116
<a href="#">LIMITATION OF LIABILITY AND INDEMNIFICATION MATTERS</a>	118
<a href="#">WHERE YOU CAN FIND MORE INFORMATION</a>	119
<a href="#">INDEX TO FINANCIAL TABLES OF ECHOSTAR HOLDING CORPORATION</a>	F-1
<a href="#">INDEX TO STATEMENT OF NET ASSETS TO BE CONTRIBUTED BY ECHOSTAR COMMUNICATIONS CORPORATION</a>	F-30
<a href="#">INDEX TO FINANCIAL TABLES OF SLING MEDIA, INC.</a>	F-41

## SUMMARY

*This summary highlights information contained elsewhere in this information statement and provides an overview of our company and the material aspects of our spin-off from ECC. It is intended for convenience only and should not be considered complete. You should read the entire information statement carefully, particularly the risk factors discussed beginning on page 16, and our combined audited and unaudited historical and unaudited pro forma financial statements and notes to those statements appearing elsewhere in this information statement. References in this information statement to (i) "EHC," "Spinco," "we," "our" and "us" refer to EchoStar Holding Corporation and its consolidated subsidiaries, after giving effect to the spin-off and (ii) "EchoStar Communications Corporation," "ECC" and "DISH Network" refer to EchoStar Communications Corporation and its consolidated subsidiaries, other than us, unless the context otherwise requires. The transaction in which we will be separated from ECC is sometimes referred to in this information statement as the "separation," the "distribution" or the "spin-off."*

*We describe in this information statement the businesses to be transferred to us by ECC in connection with the spin-off as if the transferred businesses were our businesses. However, we are a newly formed entity and we have not conducted any operations prior to the spin-off. Our historical and pro forma financial data included in this information statement may not be indicative of our future performance and does not necessarily reflect what our financial condition and results of operations would have been had we operated as a separate, stand-alone entity during the periods presented, particularly since changes will occur in our operations and capitalization as a result of our spin-off from ECC.*

*Our historical combined financial statements reflect the historical financial position and results of operations of entities included in the consolidated financial statements of ECC, representing almost exclusively ECC's set-top box business, using the historical results of operations and historical bases of assets and liabilities of this business. Our historical combined financial statements included herein reflect sales to ECC at cost and do not include certain satellites, uplink and satellite transmission assets, real estate and other assets and related liabilities that will be contributed to us by ECC in the spin-off. These assets and liabilities, which will primarily comprise our fixed satellite services business, have been separately audited and are included in the Statement of Net Assets to be Contributed by ECC and Unaudited Pro Forma Combined and Adjusted Financial Information included herein. The financial condition and results of operations of our fixed satellite services business have not been included in our historical combined financial statements because our fixed satellite services business was operated as an integral part of ECC's subscription television business and did not constitute a "business" in the historical financial statements of ECC. Our historical financial data also does not include financial information of Sling Media, Inc., which was recently acquired by ECC and will be contributed to us in the spin-off. Sling Media's audited consolidated financial statements are included elsewhere in this information statement, and its historical financial information also has been included in our Unaudited Pro Forma Combined and Adjusted Financial Information.*

## ECHOSTAR HOLDING CORPORATION

### **Our Business**

We intend to operate two primary businesses, a digital set-top box business and a fixed satellite services business. We expect that the primary customer for each of these businesses initially will be ECC.

#### ***Digital Set-Top Boxes***

Our set-top box business designs, develops and distributes award-winning digital set-top boxes and related products for direct-to-home satellite service providers. In 2006, our set-top box business shipped over nine million set-top boxes. Most of these set-top boxes were sold to ECC, but we also sold set-top boxes to Bell ExpressVu and other international customers. We currently employ over 700 engineers in our set-top box business.

#### ***Fixed Satellite Services***

Our fixed satellite services business will be developed using nine owned or leased in-orbit satellites and related FCC licenses, a network of seven full service digital broadcast centers, and leased fiber optic capacity

with points of presence in approximately 150 cities. All of these assets and related contracted liabilities will be contributed to us in the spin-off. We expect that our primary customer initially will be ECC. However, we will also lease capacity in the spot market and to government and enterprise customers.

#### **Other Business Opportunities**

ECC has entered into agreements to construct and launch an S-band satellite and to lease its transponder capacity to a Hong Kong joint venture, which in turn will sublease a portion of the transponder capacity to an affiliate of a Chinese governmental entity to support the development of satellite-delivered mobile video services in China. ECC has also recently completed several strategic investments and we intend to evaluate strategic development and investment opportunities both in the United States and in international markets. These investments of ECC will be transferred to us as part of the spin-off, and are part of our strategy to expand our business and support the development of new satellite-delivered services, such as mobile video services. The expertise we develop through these investments may also help us to improve and expand the services that we provide to our existing customers. However, these investments involve a high degree of risk and are concentrated in a few companies. The risks of these investments include, among other things, the risks that required regulatory approvals and other conditions may not be obtained or satisfied, that these companies may not be able to enter into distribution and other relationships, and that the companies in which we invest or with whom we partner may not be able to compete effectively in their markets or that there may be insufficient demand for the new services planned by these companies.

#### **Sling Media, Inc.**

Sling Media, Inc. was acquired in October 2007 by ECC and will be transferred to us as part of the spin-off. Sling Media is the maker of the Slingbox, which allows consumers to watch and control their television programming at any time, from any location, using personal computers, personal digital assistants, smartphones and other digital media devices. This information statement includes historical financial statements and other information regarding Sling Media.

#### **Our Strategy**

We intend to pursue the following key strategies:

- *Expand set-top box business to additional customers.* We believe our separation from ECC may enhance our opportunities to sell set-top boxes to a broader group of multi-channel video distributors. Historically, certain multi-channel video distributors have perceived us as a competitor due to our affiliation with ECC. After the spin-off, we believe we could have opportunities to enter into commercial relationships with these multi-channel video distributors. There can be no assurance, however, that we will be successful in entering into any of these commercial relationships, particularly if we continue to be perceived as affiliated with ECC as a result of common ownership and related management.
- *Leverage satellite capacity and related infrastructure.* Our fixed satellite services business has excess satellite and leased fiber capacity that we believe was in large part created through innovation and operational efficiencies at ECC. While we expect that ECC will initially be our primary customer for fixed satellite services, we believe market opportunities exist to utilize our capacity to provide digital video distribution, satellite-delivered IP, corporate communications and government services to a broader customer base.
- *Offer comprehensive network infrastructure solutions.* We intend to leverage our over 700 engineers to customize infrastructure solutions for a broader base of customers. For example, we could offer a customer the ability to deliver a fully integrated video programming delivery solution, incorporating our satellite and backhaul capacity, customized set-top boxes and network design and management services.
- *Capitalize on change in regulations.* Changes in federal law and regulations applicable to the set-box industry may create opportunities for us to expand our business.
  - *Digital transition.* Congress has mandated that by February 2009 all network broadcasts be transmitted digitally, which will require households that receive over-the-air broadcast signals with an analog television to obtain a digital converter device. This digital converter device is a new product

and we believe that we are in a position to develop and market devices that could allow us to effectively compete in this new market.

- *Removable security systems.* The Federal Communications Commission, or FCC, mandated that by July 2007 cable providers use removable security modules to provide conditional access security for television content. The FCC intends for this regulation to spur competition in the retail cable set-top box market, providing an even playing field between leased cable set-top boxes and retail-bought, cable-ready TVs and cable set-top box equipment. We believe this new regulation may create an opportunity for us to compete on a more level field in the domestic market for cable set-top boxes.
- *Exploit international opportunities.* We believe that direct-to-home satellite service is particularly well-suited for countries without extensive cable infrastructure, and we intend to continue to try to secure new customer relationships from international direct-to-home satellite service providers.
- *Pursue strategic partnerships, joint ventures and acquisitions.* We intend to selectively pursue partnerships, joint ventures and strategic acquisition opportunities that we believe may allow us to expand into new markets, broaden our portfolio of products or intellectual property, and strengthen our relationships with our customers.
- *Act on the set-top box replacement cycle.* The broader adoption of high definition television by consumers will require more advanced compression and security technologies within set-top boxes. This may launch a replacement cycle, particularly among subscription television providers with substantial bases of legacy equipment, which may create additional market opportunities for us.

#### **Summary Risk Factors**

*An investment in our common stock involves risks associated with our business, the spin-off and ownership of our common stock. The following list of risk factors is not exhaustive. Please review and consider carefully the risks relating to these and other matters summarized below and described in greater detail under the section entitled "Risk Factors" beginning on page 16 of this information statement.*

#### **General Risks Affecting Our Business**

- We may not realize the potential benefits that we expect from the spin-off. Certain of these benefits depend upon market acceptance of our separation from ECC which we cannot predict and which may be affected by significant common stock ownership by our Chairman and Chief Executive Officer as well as interlocks between our management and board of directors. In addition, we will incur significant costs as a separate company, which may exceed our estimates. We will also incur some negative effects from our separation from ECC, including loss of access to ECC's financial resources.
- We currently depend on ECC and Bell Express Vu for substantially all of our revenue, and the loss of, or a significant reduction in orders from, either of these two customers would significantly reduce our revenue and adversely impact our operating results. ECC accounted for over 80% of our revenue in each of the last three years and the nine months ended September 30, 2007 and it is under no obligation to remain our customer in the future.
- We currently have substantial unused satellite capacity. Future costs associated with this excess capacity will negatively impact our margins if we do not generate revenue to offset these costs. In addition, because a substantial portion of the capacity of each of our AMC-15, AMC-16 and EchoStar IX satellites remains unused, there is a significant risk that in the future, in addition to reporting lower than expected revenues and profitability, we will be required to record a substantial impairment charge relating to one or more of these satellites. We currently estimate that these potential charges could aggregate up to \$250 million, which, if incurred would have a material adverse effect on our reported operating results and financial position. Furthermore, it is possible that in 2008 ECC will discontinue the use of some or all of the capacity on one or more other satellites that it will initially lease from us. To the extent that this occurs and we are unable to find other customers to lease this additional anticipated excess capacity, we may be required to record substantial impairment charges that we currently estimate could aggregate up to \$100 million.

- Our historical combined and pro forma financial information included in this information statement are not indicative of our future financial position, future results of operations or future cash flows, nor do they reflect what our financial position, results of operations or cash flows would have been as a stand-alone company during the periods presented. We were not profitable in the nine months ended September 30, 2007 and each of 2006, 2005 and 2004, as our operations have historically been dedicated primarily to support ECC and we provided our products and services to ECC at cost.
- Our ability to decrease our losses or to generate revenues will depend in part on our ability to grow our business. This may require significant additional capital that may not be available to us. We may also use a significant portion of our existing cash and marketable securities to fund stock buyback programs. Our board of directors has approved a program in which we may repurchase up to \$1.0 billion of our Class A common stock during 2008.
- If ECC enters into a business combination transaction, or Mr. Ergen no longer controls a majority of the voting power of ECC or of us, our relationship with ECC could be terminated or substantially curtailed with little or no advance notice. Any material reduction in our sales to ECC as a result of a change in control of ECC would have a significant material adverse effect on our business and financial position.
- Our future success may depend on our ability to identify and successfully exploit opportunities to acquire other businesses or technologies to complement, enhance or expand our current business or products or otherwise offer us growth opportunities. We may not be able to pursue these growth opportunities successfully.
- We have entered into certain strategic transactions and investments in Asia and elsewhere, and we may increase our strategic investment activity in the United States and in international markets. These investments, which we believe could become substantial over time, involve a high degree of risk, are concentrated in a few companies and could expose us to significant financial losses if the underlying ventures are not successful. These investments may also cause us to defer or suspend share repurchases.
- Our business relies on intellectual property, some of which is owned by third parties, and we may inadvertently infringe their patents and proprietary rights. We may be required to cease developing or marketing infringing products, to obtain licenses from the holders of the intellectual property at a material cost, or to redesign those products in such a way as to avoid infringing the patent claims of others.
- Our businesses change rapidly as new technologies are developed. These new technologies may cause our services and products to become obsolete. Changes in existing technologies could also cause demand for our products and services to decline.

**Risks Affecting Our Set-Top Box Business**

- We depend on sales of set-top boxes for nearly all of our revenue, and if sales of our set-top boxes decline, our business and financial position will suffer. The set-top box business is highly competitive and our ability to compete in this industry will depend substantially on our ability to develop and manufacture products and services at competitive costs, successfully bring new technologies to market and penetrate new markets for set-top boxes, including among customers such as cable television operators that are competitors of DISH Network and have historically been and may continue to be reluctant to deal with us. These potential customers also have well established relationships with other set-top box providers, such as Motorola and Cisco Systems, which acquired Scientific Atlanta in 2006.
- Our commercial success in selling our set-top boxes to cable television operators depends significantly on our ability to obtain licenses to use the conditional access systems deployed by these operators in our set-top boxes. The owners of these conditional access systems are also in many cases competitors of ours. There can be no assurance we will be able to obtain such licenses on acceptable terms or at all.
- In order to grow our revenue and business and to build a large customer base, we believe we will be required to increase our sales of set-top boxes in international markets. We have limited experience selling our set-top boxes internationally. To succeed in expanding these sales efforts, we believe we must hire additional sales personnel and develop and manage new relationships with cable operators and other providers of digital television in international markets.



- Our set-top boxes are extremely complex and can have defects in design, manufacture or associated software. We could incur significant expenses, lost revenue, and reputational harm if we fail to detect or effectively address such issues through design, testing or warranty repairs.
- We obtain many components for our set-top boxes from a single supplier or a limited group of suppliers. Our reliance on a single or limited group of suppliers, particularly foreign suppliers, and our increasing reliance on subcontractors, involves several risks. These risks include a potential inability to obtain an adequate supply of required components, and reduced control over pricing, quality, and timely delivery of these components.
- Future demand for our set-top boxes will depend significantly on the growing market acceptance of high definition television, or HDTV. The effective delivery of HDTV will depend on digital television operators developing and building infrastructure to provide wide-spread HDTV programming.
- During April 2006, a jury concluded that certain of our digital video recorders, or DVRs, infringed a patent held by Tivo. If the Tivo jury verdict is upheld on appeal, to the extent that ECC does not indemnify us, we will be required to pay substantial damages and/or license fees, and if we were not able to successfully implement alternative technology (including the successful defense of any challenge that such technology infringes Tivo's patent), we could also be prohibited from distributing DVRs, or be required to modify or eliminate certain user-friendly DVR features that we currently offer to consumers.

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

- The fixed satellite services industry is highly competitive and is characterized by long-term leases and high switching costs. Therefore, it will be difficult to displace customers from their current relationships with our well-established competitors and we may face competition from others in the future.
- Satellites are subject to significant operational risks while in orbit. While we believe that our satellite fleet is generally in good condition, certain satellites in our fleet have experienced malfunctions or anomalies, some of which have had a significant adverse impact on their commercial operation. There can be no assurance that we can recover critical transmission capacity in the event one or more of our in-orbit satellites were to fail. Therefore, the loss of a satellite or other satellite malfunctions or anomalies could have a material adverse effect on us.
- We are subject to comprehensive governmental regulation by the FCC for our domestic satellite operations. We are also regulated by other federal agencies, state and local authorities and the International Telecommunication Union. Domestic and international regulations regarding the licensing, authorization and operations of satellite communications providers may restrict our fixed satellite services operations.
- ECC has not historically carried and we do not anticipate carrying insurance for any of the in-orbit satellites that we will own.

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

- The allocation of assets, liabilities, rights, indemnifications and other obligations between ECC and us under the separation agreement and the related commercial and other agreements we will enter into with ECC may not reflect what two unaffiliated parties might have agreed to.
- ECC has requested a private letter ruling from the Internal Revenue Service, or IRS, to the effect that, among other things, the spin-off, together with certain related transactions, will qualify for tax-free treatment under Sections 355 and 368(a)(1)(D) of the Code. Although a private letter ruling relating to the qualification of the spin-off under Sections 355 and 368(a)(1)(D) of the Internal Revenue Code of 1986, as amended, generally will be binding on the IRS, the validity of such ruling, if obtained, will be subject to the accuracy of factual representations and assumptions made in the ruling request. If the spin-off does not qualify for tax-free treatment for U.S. federal income tax purposes, then, in general, ECC would be subject to tax as if it had sold the common stock of our company in a taxable sale for its fair market value. ECC's shareholders would be subject to tax as if they had received a distribution equal to the fair market value of our common stock that was distributed to them, which would be treated as a taxable dividend to the extent of ECC's earnings and profits. It is expected that the amount of any such taxes to ECC and its shareholders would be substantial.

- Actual or perceived conflicts of interest may arise between ECC and us in a number of areas relating to our past and ongoing relationships, including: (i) cross officerships, directorships and stock ownership, (ii) intercompany transactions, (iii) intercompany agreements and (iv) business opportunities. In particular, Charles W. Ergen will be the Chief Executive Officer and Chairman of the Board and will beneficially own approximately 50.0% of the total equity and control 80.0% of the total voting power, of each of ECC and us. Thus, Mr. Ergen will have the ability to elect a majority of ECC's and our directors and to control all other matters requiring the approval of ECC's and our shareholders.

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

- An active trading market may not develop or be sustained for our Class A common stock after the spin-off. In addition, the prices at which our Class A common stock may trade after the spin-off may decline or be subject to volatility.
- We expect that some of our shareholders, including possibly some of our larger shareholders, will sell the Class A common stock that they receive in the spin-off because, among other reasons, our business profile or market capitalization as an independent, publicly-traded company do not fit their investment objectives. These sales may adversely affect the market price for our Class A common stock as well as the market perception of our business.
- We have never declared or paid any dividends on our common stock. We intend to retain any earnings to finance the operation and expansion of our business, and we do not anticipate paying any cash dividends in the future.

**Other Information**

We are a Nevada corporation. Our principal executive offices are located at 90 Inverness Circle E., Englewood, Colorado 80112. Our telephone number is (303) 723-1000. Our web site is "[ ]". Information contained on our web site does not and will not constitute a part of this information statement or the registration statement on Form 10 of which it is a part.

**Summary Historical and Unaudited Pro Forma Combined and Adjusted Financial Data**

The following tables set forth our summary historical and unaudited pro forma combined and adjusted financial data. The summary historical combined financial data relating to our combined financial condition and results of operations for each of the fiscal years in the three-year period ended December 31, 2006 and the nine months ended September 30, 2007 and 2006 are derived from our historical combined financial statements for the corresponding periods included elsewhere in this information statement. The historical combined financial data for the nine months ended September 30, 2007 and 2006 reflects, in our opinion, all adjustments, consisting only of normal recurring adjustments, necessary to fairly present the data for such interim periods. The data should be read in conjunction with our historical combined financial statements and "Management's Discussion and Analysis of Financial Condition and Results of Operations" included elsewhere in this information statement.

Our historical combined financial data included in this information statement may not be indicative of our future performance and does not necessarily reflect what our financial condition and results of operations would have been had we operated as a separate, stand-alone entity during the periods presented, particularly since changes will occur in our operations and capitalization as a result of our spin-off from ECC.

Our historical combined financial statements reflect the historical financial position and results of operations of entities included in the consolidated financial statements of ECC, representing almost exclusively ECC's set-top box business, using the historical results of operations and historical bases of assets and liabilities of this business. Our historical combined financial statements included herein reflect sales to ECC at cost and do not include certain satellites, uplink and satellite transmission assets, real estate and other assets and related liabilities that will be contributed to us by ECC in the spin-off. These assets and liabilities, which will primarily comprise our fixed satellite services business, have been separately audited and are included in the "Statement of Net Assets to be Contributed by ECC" and "Unaudited Pro Forma Combined and Adjusted Financial Information" included herein. The financial condition and results of operations of our fixed satellite services business have not been included in our historical combined financial statements because our fixed satellite services business was operated as an integral part of ECC's subscription television business and did not constitute a "business" in the historical financial statements of ECC. Our historical financial data also does not include financial information of Sling Media, Inc., which was recently acquired by ECC and will be contributed to us in the spin-off. Sling Media's audited consolidated financial statements are included elsewhere in this information statement, and its historical financial information also has been included in our "Unaudited Pro Forma Combined and Adjusted Financial Information."

The unaudited pro forma combined financial data included herein has been adjusted to give effect to, among other things, the contribution of certain net assets to us, the distribution of our common stock by ECC to its shareholders and the contribution to us of Sling Media. The assumptions used and pro forma adjustments derived from such assumptions are based on currently available information and we believe such assumptions are reasonable under the circumstances. Further information regarding the pro forma adjustments can be found under the caption "Unaudited Pro Forma Combined and Adjusted Financial Information" in this information statement.

The unaudited pro forma combined financial data presented for the year ended December 31, 2006 and as of and for the nine months ended September 30, 2007 are derived from our unaudited pro forma combined and adjusted financial information. The data should be read in conjunction with our "Selected Combined Financial Data," "Unaudited Pro Forma Combined and Adjusted Financial Information," and "Management's Discussion and Analysis of Financial Condition and Results of Operations" included elsewhere in this information statement. The unaudited pro forma combined financial statements are not indicative of our future performance and do not necessarily reflect what our financial condition and results of operations would have been had the spin-off been completed on the dates assumed. Also, they may not reflect the results of operations or financial condition which would have resulted had we operated as a separate, stand-alone entity during the periods presented.

Statements of Operations Data:	For the Nine Months Ended September 30,			For the Years Ended December 31,			
	2007 Pro Forma	2007 (Unaudited)	2006	2006 Pro Forma (Unaudited)	2006	2005	2004
	(In thousands, except per share data)						
Revenue	\$ 1,592,381	\$ 1,182,768	\$ 1,132,899	\$ 2,080,259	\$ 1,525,320	\$ 1,513,691	\$ 1,720,091
Operating expenses	1,606,709	1,222,936	1,152,875	2,058,924	1,562,767	1,546,755	1,760,714
Operating income (loss)	\$ (14,328)	\$ (40,168)	\$ (19,976)	\$ 21,335	\$ (37,447)	\$ (33,064)	\$ (40,623)
Net income (loss)	\$ (9,296)	\$ (39,943)	\$ (20,486)	\$ 104,835	\$ (34,162)	\$ (44,940)	\$ (43,237)
<b>Pro forma earnings per share:</b>							
Basic	\$ (0.10)			\$ 1.17			
Diluted	\$ (0.10)			\$ 1.16			
<b>Pro forma shares outstanding:</b>							
Basic	89,699			89,699			
Diluted	90,056			90,056			
<b>Cash Flow Data:</b>							
		For the Nine Months Ended September 30,		For the Years Ended December 31,			
		2007	2006	2006	2005	2004	
		(Unaudited)		(In thousands)			
<b>Net cash flows from:</b>							
Operating activities		\$ (34,276)	\$ (3,780)	\$ (36,374)	\$ (14,193)	\$ (78,916)	
Investing activities		\$ (160,236)	\$ (75,953)	\$ (54,781)	\$ (16,700)	\$ (5,619)	
Financing activities		\$ 198,625	\$ 91,176	\$ 104,534	\$ 39,782	\$ 69,715	
<b>Balance Sheet Data:</b>							
		As of September 30,		As of December 31,			
		2007	2007	2006	2005	2004	
		Pro Forma	(Unaudited)	(In thousands)			(Unaudited)
Cash, cash equivalents and marketable securities		\$ 1,538,516	\$ 530,753	\$ 323,576	\$ 106,109	\$ 143,437	
Total assets		\$ 3,837,454	\$ 919,624	\$ 517,821	\$ 229,392	\$ 277,843	
Long-term debt (including current portion)		\$ 389,137	\$ —	\$ —	\$ 495	\$ 647	
Net investment in EHC		\$ 3,242,225	\$ 863,768	\$ 502,283	\$ 217,132	\$ 258,452	

### Summary of the Spin-Off

The following is a brief summary of the terms of the spin-off.

Distributing Company

EchoStar Communications Corporation, a Nevada corporation. After the distribution, EchoStar Communications Corporation will not own any shares of common stock of EchoStar Holding Corporation.

Separated Company

EchoStar Holding Corporation, a Nevada corporation and a wholly-owned subsidiary of ECC. After the distribution, EchoStar Holding Corporation will be an independent, publicly-traded company. However, all of ECC's directors after the distribution, except James DeFranco, Cantey Ergen and Gary S. Howard, will also be directors of EHC. Charles W. Ergen, our Chairman and Chief Executive Officer, will continue to be the Chairman and Chief Executive Officer of ECC. In addition, certain executive officers of ECC will also serve as our executive officers. Based on Mr. Ergen's ownership as of November 30, 2007, Mr. Ergen will beneficially own approximately 50.0% of the total equity and approximately 80.0% of the total voting power of each of ECC and us.

Primary purposes of the spin-off

The board of directors of ECC believes that creating independent, focused companies is the best way to realize the full value of ECC's businesses. The board of directors of ECC considered the following potential benefits, among others, in making its determination to consummate the spin-off:

- creating effective management incentives tied to each of EHC and ECC's performance and increasing the ability to attract and retain personnel;
- creating opportunities to effectively develop and finance expansion plans;
- creating separate companies that have different financial characteristics, which may appeal to different investor bases; and
- allowing each company to separately pursue the business strategies that best suit its long-term interest.

The board of directors of ECC also considered the costs and risks associated with the spin-off. The board of directors of ECC considered, among other factors:

- the potential negative impact on ECC's credit ratings as a result of the divestiture of assets that will be contributed to us;
- the possibility that either we or ECC may experience disruptions in our respective businesses as a result of the spin-off;
- the risk that the combined trading prices of our Class A common stock and ECC's Class A common stock after the spin-off may be lower than the trading price of ECC's Class A common stock before the spin-off;
- actual or perceived conflicts of interest that may arise between ECC and us in a number of areas relating to our past and ongoing relationships, including: (i) cross officerships, directorships and stock ownership, (ii) intercompany transactions, (iii) intercompany agreements and (iv) business opportunities;
- the loss of synergies from operating as one company; and
- the additional legal, accounting, administrative and other costs that we would incur as a separate, publicly-traded company.

Conditions to the spin-off	<p>In view of the variety of factors considered by the ECC board of directors in connection with the evaluation of the spin-off and the complexity of these matters, the ECC board of directors did not find it useful to, and did not attempt to, quantify, rank or otherwise assign relative weights to the factors considered. The board of directors of ECC concluded that considered in the aggregate the potential benefits of the spin-off outweigh the potential negative factors, and that separating the non-core business of ECC from ECC in the form of a tax-free distribution to ECC shareholders is appropriate, advisable and in the best interests of ECC and its shareholders.</p> <p>The spin-off is subject to the satisfaction or waiver by ECC under the separation agreement of the following conditions:</p> <ul style="list-style-type: none"><li>• the Securities and Exchange Commission shall have declared effective our registration statement on Form 10 and no stop order shall be in effect;</li><li>• all permits, registrations and consents required under the securities or blue sky laws in connection with the spin-off shall have been received;</li><li>• ECC shall have received the opinion of White &amp; Case LLP confirming the tax-free status of the spin-off and certain related transactions for U.S. federal income tax purposes on the distribution date;</li><li>• the listing of our Class A common stock on the Nasdaq Global Select Market shall have been approved;</li><li>• all material governmental approvals and other consents necessary to consummate the distribution shall have been received; and</li><li>• no order, injunction or decree issued by any court of competent jurisdiction or other legal restraint or prohibition preventing consummation of the distribution or any of the transactions related thereto shall be in effect.</li></ul> <p>The fulfillment of the foregoing conditions will not create any obligation on ECC's part to effect the spin-off. ECC has the right not to complete the spin-off if, at any time, ECC's board of directors determines, in its sole discretion, that the spin-off is not in the best interests of ECC or its shareholders, or that market conditions are such that it is not advisable to separate EHC from ECC.</p>
Securities to be Distributed	<p>Shares of EHC Class A common stock and Class B common stock will constitute all of the outstanding shares of our common stock immediately after the distribution. We expect the shares of our Class A common stock and Class B common stock to be distributed by ECC to you, based on the same class of ECC common stock that you own, on or about January 1, 2008, which we refer to as the distribution date. Charles Ergen, our Chairman and Chief Executive Officer, will, immediately after the distribution date, beneficially own approximately 50.0% of our equity and possess approximately 80.0% of the total voting power represented by our common stock.</p>
Distribution Ratio	<p>For each share of ECC Class A common stock or ECC Class B common stock held by you as of 5:00 p.m., New York City time, on December 27, 2007, the record date for the spin-off, you will</p>

Record Date	receive 0.20 of a share of the same class of our common stock. Please note that if you sell your shares of Class A common stock of ECC after the record date but before the distribution date, the buyer of those shares will be entitled to receive the shares of our Class A common stock issuable in respect of the shares sold. If as a result of the foregoing ratio you would be entitled to receive a fraction of a share of our Class A common stock, you will receive cash in lieu of such fractional share interest. The distribution of shares will be made in book-entry form. The record date is December 27, 2007.
Distribution Date	The distribution date is expected to be January 1, 2008.
Trading Market and Symbol	We have applied to list our Class A common stock on the Nasdaq Global Select Market under the ticker symbol “[ ].” We anticipate that, on or prior to the distribution date, a limited market for our Class A common stock, commonly known as a “when issued” trading market, will develop, and we expect “regular way” trading of our Class A common stock will begin the first trading day after the distribution date.
Tax Consequences to Shareholders	ECC shareholders are not expected to recognize any gain or loss for U.S. federal income tax purposes as a result of the spin-off, except for any gain or loss attributable to the receipt of cash in lieu of a fractional share of our Class A common stock. See “The Spin-Off — Material U.S. Federal Income Tax Consequences of the Spin-Off” for a more detailed description of the U.S. federal income tax consequences of the spin-off. <b>Each shareholder is urged to consult his, her or its tax advisor as to the specific tax consequences of the spin-off to that shareholder, including the effect of any state, local or U.S. tax laws and of changes in applicable tax laws.</b>
Relationship with ECC after the Separation	We will enter into a separation agreement and other agreements with ECC to effect the spin-off and provide a framework for our relationship with ECC after the distribution. These agreements generally expire after two years and will govern our relationship with ECC subsequent to the completion of the spin-off and provide for the allocation between us and ECC of certain of ECC’s assets, liabilities and obligations attributable to the period prior to our separation from ECC. The separation agreement, in particular, establishes the amount of cash and indebtedness that each company initially will retain and incur. For a discussion of these arrangements, see “Certain Intercompany Agreements — Agreements with ECC,” included elsewhere in this information statement.
Dividend Policy	We presently intend to retain future earnings, if any, to finance the expansion of our businesses and to conduct a possible stock-buyback of up to \$1.0 billion. As a result, we do not expect to pay any cash dividends for the foreseeable future. All decisions regarding the payment of dividends by our company will be made by our board of directors from time to time in accordance with applicable law.

#### Questions and Answers about the Spin-Off

The following is a brief summary of the terms of the spin-off. Please see “The Spin-Off” for a more detailed description of the matters described below.

**Q: *What is the spin-off?***

A: The spin-off is the method by which ECC will separate its existing business segments into two independent, publicly-traded companies. In the spin-off, ECC will distribute to its shareholders as of the distribution date all of the shares of our Class A common stock and Class B common stock that it owns. Following the spin-off, we will be a separate company from ECC, and ECC will not retain any ownership interest in us. The number of shares of ECC common stock you own will not change as a result of the spin-off.

**Q: *What is being distributed in the spin-off?***

A: Approximately 42.0 million shares of our Class A common stock and 47.7 million shares of our Class B common stock will be distributed in the spin-off, based upon the number of shares of ECC Class A common stock and ECC Class B common stock outstanding on the record date. The shares of our Class A common stock and Class B common stock to be distributed by ECC will constitute all of the issued and outstanding shares of our Class A common stock and Class B common stock immediately after the distribution. For more information on the shares being distributed in the spin-off, see “Description of Our Capital Stock — Our Class A Common Stock” and “Description of Our Capital Stock — Our Class B Common Stock” beginning on page 116 of this information statement.

**Q: *What will I receive in the spin-off?***

A: Holders of ECC Class A common stock will receive a dividend of 0.20 of a share of our Class A common stock for each share of ECC Class A common stock held by them on the record date, and holders of ECC Class B common stock will receive a dividend of 0.20 of a share of our Class B common stock for every share of ECC Class B common stock held by them on the record date. As a result of the spin-off, your proportionate interest in ECC will not change and you will own the same percentage of equity securities and voting power in EHC as you previously did in ECC. For a more detailed description, see “The Spin-Off.”

**Q: *What is the record date for the distribution?***

A: Record ownership will be determined as of 5:00 p.m., New York City time on December 27, 2007 which we refer to as the record date.

**Q: *When will the distribution occur?***

A: We expect that shares of our Class A common stock and Class B common stock will be distributed by the distribution agent, on behalf of ECC, on or about January 1, 2008, which we refer to as the distribution date.

**Q: *What will the relationship between EchoStar Communications Corporation and EchoStar Holding Corporation be following the spin-off?***

A: After the spin-off, ECC will not own any shares of our common stock and we will not own any shares of ECC common stock. Five of our directors after the distribution will also be directors of ECC, and our Chairman and Chief Executive Officer will continue to serve as the Chairman and Chief Executive Officer of ECC. In addition, in connection with the spin-off, we and ECC are entering into a number of agreements that will govern our spin-off from ECC and our future relationship. We cannot assure you that these agreements will be on terms as favorable to us as agreements with unaffiliated parties. See “Certain Intercompany Agreements.” In addition, if we acquire knowledge of a potential transaction or matter which may be a corporate opportunity for both us and ECC, our mutual officers and directors are only required to first present the opportunity to us if (A) we have expressed an interest in such corporate opportunity as evidenced by resolutions appearing in the minutes of our board of directors; (B) such



potential corporate opportunity was expressly offered to one of our directors or officers solely in his or her capacity as a director or officer of us or as a director or officer of any subsidiary of us; and (C) such opportunity relates to a line of business in which we or any subsidiary of us is then directly engaged. See “Description of Our Capital Stock — Provisions of Our Articles of Incorporation Relating to Related-Party Transactions and Corporate Opportunities.”

**Q: *What do I have to do to participate in the spin-off?***

A: No action is required on your part. Shareholders of ECC on the record date for the distribution are not required to pay any cash or deliver any other consideration, including any shares of ECC common stock, for the shares of our common stock distributable to them in the spin-off.

**Q: *If I sell, on or before the distribution date, shares of ECC Class A common stock that I held on the record date, am I still entitled to receive shares of EHC Class A common stock distributable with respect to the shares of ECC Class A common stock I sold?***

A: No. No ex-dividend market will be established for our Class A common stock until the first trading day following the distribution date. Therefore, if you own shares of ECC Class A common stock on the record date and thereafter sell those shares on or prior to the distribution date, you will also be selling the shares of our Class A common stock that would have been distributed to you in the spin-off with respect to the shares of ECC Class A common stock you sell.

**Q: *How will fractional shares be treated in the spin-off?***

A: If you would be entitled to receive a fractional share of Class A common stock in the spin-off, you will instead receive a cash payment. See “The Spin-Off — Treatment of Fractional Shares” for an explanation of how the cash payments will be determined.

**Q: *How will ECC distribute shares of EHC common stock to me?***

A: Holders of shares of ECC’s Class A or Class B common stock on the record date will receive shares of the same class of our common stock, in book-entry form. See “The Spin-Off — Manner of Effecting the Spin-Off” for a more detailed explanation.

**Q: *What is the reason for the spin-off?***

A: The potential benefits considered by ECC’s board of directors in making the determination to consummate the spin-off included the following:

- The spin-off is expected to allow the creation of effective management incentives tied to each of EHC’s and ECC’s respective performance, increasing the ability to attract and retain personnel.
- The spin-off is expected to create opportunities to effectively develop and finance expansion plans of each independent company.
- The spin-off is expected to allow the creation of separate companies that have different financial characteristics, which may appeal to different investor bases, which could enhance the ability of each company to raise capital to fund its growth plans and initiatives.
- The spin-off is expected to allow each company to separately pursue the business strategies that best suit its long-term interests.

The board of directors of ECC also considered the costs and risks associated with the spin-off. The board of directors of ECC considered, among other factors, the following:

- The potential negative impact on ECC’s credit ratings as a result of the divestiture of assets that will be contributed to us.
- The possibility that either we or ECC may experience disruptions in our respective businesses as a result of the spin-off.

- The risk that the combined trading prices of our Class A common stock and ECC's Class A common stock after the spin-off may be lower than the trading price of ECC's Class A common stock before the spin-off.
- Actual or perceived conflicts of interest that may arise between ECC and us in a number of areas relating to our past and ongoing relationships, including: (i) cross officerships, directorships and stock ownership, (ii) intercompany transactions, (iii) intercompany agreements and (iv) business opportunities.
- The loss of synergies from operating as one company.
- The additional legal, accounting, administrative and other costs that would be incurred by us as a separate, publicly-traded company.

In view of the variety of factors considered by the ECC board of directors in connection with the evaluation of the spin-off and the complexity of these matters, the ECC board of directors did not find it useful to, and did not attempt to, quantify, rank or otherwise assign relative weights to the factors considered. The board of directors of ECC concluded that considered in the aggregate, the potential benefits of the spin-off outweigh the potential negative factors, and that separating the non-core business of ECC from ECC in the form of a tax-free distribution to ECC shareholders is appropriate, advisable and in the best interests of ECC and its shareholders.

**Q: *What are the federal income tax consequences to me of the spin-off?***

A: ECC has requested a private letter ruling from the IRS, and the spin-off is conditioned upon the receipt by ECC of the opinion of White & Case LLP on the distribution date (which condition ECC may waive), in each case, substantially to the effect that the spin-off, together with certain related transactions, will qualify as reorganizations under Sections 355 and 368(a)(1)(D) of the Code and that, accordingly, for U.S. federal income tax purposes, no gain or loss will be recognized by, and no amount will be included in the income of, a holder of ECC common stock upon the receipt of shares of our common stock pursuant to the spin-off. A holder of ECC common stock will generally recognize gain or loss with respect to cash received in lieu of a fractional share of our common stock.

Please see "The Spin-Off — Material U.S. Federal Income Tax Consequences of the Spin-Off" and "Risk Factors — Risks Relating to the Spin-Off — The spin-off could result in significant tax liability" for more information regarding the private letter ruling and the tax opinion and the potential tax consequences to you of the spin-off.

**Q: *Does EHC intend to pay cash dividends?***

A: No. We currently intend to retain future earnings, if any, to finance the expansion of our businesses. As a result, we do not expect to pay any cash dividends for the foreseeable future. All decisions regarding the payment of dividends by our company will be made by our board of directors from time to time in accordance with applicable law.

**Q: *How will EHC common stock trade?***

A: Currently, there is no public market for our common stock. We have applied to list our Class A common stock on the Nasdaq Global Select Market under the symbol "\_\_\_\_\_".

We anticipate that trading will commence on a when-issued basis shortly before the record date. When-issued trading in the context of a spin-off refers to a transaction effected on or before the distribution date and made conditionally because the securities of the spun off entity have not yet been distributed. When-issued trades generally settle within three days after the distribution date. On the first trading day following the distribution date, any when-issued trading in respect of our Class A common stock will end and regular way trading will begin. Regular way trading refers to trading after the security has been distributed and typically involves a trade that settles on the third full trading day following the date of the sale transaction. We cannot predict the trading prices for our common stock before or after the distribution date.

**Q: *Will the spin-off and distribution affect the trading price of my ECC Class A common stock?***

**A:** Yes. After the distribution of EHC Class A common stock, the trading price of ECC Class A common stock may be lower than the trading price of the ECC Class A common stock immediately prior to the distribution. Moreover, until the market has evaluated the operations of ECC without the operations of EHC, the trading price of ECC Class A common stock may fluctuate significantly. ECC believes the separation of EHC from ECC offers its shareholders the greatest long-term value. However, the combined trading prices of ECC Class A common stock and EHC Class A common stock after the spin-off may be lower than the trading price of ECC Class A common stock prior to the spin-off. See “Risk Factors” beginning on page 16.

**Q:** *Do I have appraisal rights?*

**A:** No. Holders of ECC common stock are not entitled to appraisal rights in connection with the spin-off.

**Q:** *Who is the transfer agent for your common stock?*

**A:** Computershare Trust Company, N.A.  
250 Royall Street  
Canton, MA 02021

**Q:** *Where can I get more information?*

**A:** If you have questions relating to the mechanics of the distribution of shares of EHC common stock, you should contact the distribution agent:

Computershare Trust Company, N.A.  
250 Royall Street  
Canton, MA 02021  
Tel: 781-575-2879

Before the spin-off, if you have questions relating to the spin-off, you should contact:

EchoStar Communications Corporation  
Attn: Corporate Communications  
9601 S. Meridian Boulevard  
Englewood, Colorado 80112  
Tel: 720-514-5351

After the spin-off, if you have questions relating to EHC, you should contact:

EchoStar Holding Corporation  
Attn: Corporate Communications  
90 Inverness Circle E.  
Englewood, Colorado 80112  
Tel: 303-723-1000

## RISK FACTORS

*The risks and uncertainties described below are not the only ones facing us. Additional risks and uncertainties that we are unaware of or that we currently believe to be immaterial also may become important factors that affect us. This information statement also contains forward-looking statements that involve risks and uncertainties. See "Cautionary Statement Concerning Forward-Looking Statements."*

*If any of the following events occur, our business, financial condition or results of operation could be materially and adversely affected.*

### General Risks Affecting Our Business

#### *We may not realize the potential benefits from the spin-off.*

We may not realize the potential benefits that we expect from the spin-off which are described elsewhere in this information statement. Certain of these benefits depend upon market acceptance of our separation from ECC which we cannot predict and which may be affected by the significant common stock ownership by our Chairman and Chief Executive Officer, as well as interlocks between our management and board of directors. In addition, we will incur significant costs, including those described elsewhere in this information statement, which may exceed our estimates. We will also incur some negative effects from our separation from ECC, including loss of access to ECC's financial resources.

#### *We currently depend on ECC and Bell ExpressVu for substantially all of our revenue and ECC accounted for over 80% of our revenue in the nine months ended September 30, 2007 and each of 2006, 2005 and 2004; the loss of, or a significant reduction in orders from, either of ECC or Bell ExpressVu would significantly reduce our revenue and adversely impact our operating results.*

ECC accounted for approximately 86.2%, 84.5%, 85.6% and 89.7% of our revenue in the nine months ended September 30, 2007 and in 2006, 2005 and 2004, respectively. In addition, Bell ExpressVu accounted for approximately 10.0%, 12.2%, 11.4% and 7.3% of our revenue in the nine months ended September 30, 2007 and in 2006, 2005 and 2004, respectively. Any reduction in sales to ECC or Bell ExpressVu would have a significant negative impact on our business. Moreover, because our sales to these customers are made pursuant to standard purchase orders, these customers have no future obligation to purchase set-top boxes from us and existing orders may be cancelled or reduced on short notice. Cancellations or reductions may be more frequent once we are separated from ECC. Cancellations or reductions of customer orders could result in the loss of anticipated sales without allowing us sufficient time to reduce our inventory and operating expenses. In addition, the timing of orders from these two customers could vary significantly depending on equipment promotions these customers offer to their subscribers, changes in technology, and their use of remanufactured set-top boxes, which may cause our revenue to vary significantly quarter over quarter and could expose us to the risks of inventory shortages or excess inventory. These inventory risks are particularly acute during end product transitions in which a new generation of set-top boxes is being deployed and inventory of older generation set-top boxes is at a higher risk of obsolescence. This in turn could cause our operating results to fluctuate significantly.

In addition, because substantially all of our revenue is tied to ECC and Bell ExpressVu, our success also depends to a significant degree on the continued success of ECC and Bell ExpressVu in attracting new subscribers or in marketing programming packages to subscribers that will require the purchase of new set-top boxes.

There is a relatively small number of potential new customers for our set-top boxes and fixed satellite services, and we expect this customer concentration to continue for the foreseeable future. Therefore, our operating results will likely continue to depend on sales to a relatively small number of customers, as well as the continued success of these customers. In addition, we may from time to time enter into customer agreements providing for exclusivity periods during which we may sell a specified product only to that customer. If we do not develop relationships with new customers, we may not be able to expand our customer base or maintain or increase our revenue.

*We currently have substantial unused satellite capacity; our results of operations could be materially adversely affected if we are not able to utilize all of this capacity.*

While we are currently evaluating various opportunities to make profitable use of our satellite capacity (including, but not limited to, supplying satellite capacity for new international ventures), we do not have firm plans to utilize all of our satellite capacity. In addition, there can be no assurance that we can successfully develop the business opportunities we currently plan to pursue with this capacity. Future costs associated with our excess satellite capacity will negatively impact our margins if we do not generate revenue to offset the costs of this capacity.

In addition, we currently have leased minimal capacity on our two leased satellites, AMC-15 and AMC-16, and have substantial unleased capacity on one of our owned satellites, EchoStar IX. Each of our satellites, must be reviewed for possible impairment whenever events or changes in circumstances indicate that their carrying value may not be recoverable. In the event that we are unsuccessful in marketing capacity on these satellite assets and do not achieve sufficient utilization and prices, in addition to reporting lower than expected revenues and profitability, we will be required to record a substantial impairment charge relating to one or more of these satellites. We currently estimate that these potential charges could aggregate up to \$250 million, which, if incurred would have a material adverse effect on our reported operating results and financial position. Furthermore, it is possible that in 2008 ECC will discontinue the use of some or all of the capacity on one or more other satellites that it will initially lease from us. To the extent that this occurs and we are unable to lease this additional anticipated excess capacity, we may be required to record additional substantial impairment charges that we currently estimate could aggregate up to \$100 million.

*Our historical combined and pro forma financial information included in this information statement are not necessarily indicative of our future financial position, future results of operations or future cash flows nor do they reflect what our financial position, results of operations or cash flows would have been as a stand-alone company during the periods presented.*

The historical and pro forma combined financial information included in this information statement do not reflect the financial condition, results of operations or cash flows we would have achieved as an independent publicly-traded company during the periods presented or those results we will achieve in the future. This is primarily a result of the following factors:

- We have never been profitable as the majority of our operations have historically been in support of ECC and we provided our products and services to ECC at cost. We cannot assure you that we can achieve or sustain profitability, or that we can grow our business profitably or at all.
- The financial condition and results of operations of our fixed satellite services business are reflected only in our pro forma combined financial information included herein, and not in our historical combined financial information included herein, because our fixed satellite services business was operated as an integral part of ECC's subscription television business and did not constitute a "business" in the historical financial statements of ECC.
- Our plans with respect to the fixed satellite services business are being developed.
- Sling Media is a recent acquisition and we have never operated that business.
- Our historical and pro forma combined financial results reflect allocations of corporate expenses from ECC. Those allocations may be different from the comparable expenses we would have incurred had we operated as an independent publicly-traded company.
- Our working capital requirements and capital required for our general corporate purposes historically have been satisfied as part of the corporate-wide cash management policies of ECC. Subsequent to the spin-off, ECC will not be required to provide us with funds to finance our working capital or other cash requirements. Without the opportunity to obtain financing from ECC, we may in the future need to obtain additional financing from banks, or through public offerings or private placements of debt or equity securities, strategic relationships or other arrangements. Such financing may not be available to us on

acceptable terms, or at all. We may have a credit rating that is lower than ECC's credit rating and may incur debt on terms and at interest rates that will not be as favorable as those historically enjoyed by ECC.

- Significant changes may occur in our cost structure, management, financing and business operations as a result of our operating as an independent public company.

***The acquisition of EchoStar Communication Corporation by a third party could have a material adverse effect on our business and financial position.***

Our sales to ECC accounted for approximately 86.2%, 84.5%, 85.6% and 89.7% of our revenue in the nine months ended September 30, 2007 and in 2006, 2005 and 2004, respectively. Because sales to ECC following the spin-off will primarily be made pursuant to short-term contracts, ECC will have no obligation to continue to purchase our principal products and services following the spin-off. Therefore, if ECC enters into a business combination transaction, or Mr. Ergen no longer controls a majority of the voting power of ECC or of us, our relationship with ECC could be terminated or substantially curtailed with little or no advance notice. Any material reduction in our sales to ECC would have a significant adverse effect on our business, results of operations and financial position.

Furthermore, because there are a relatively small number of potential customers for our products and services, if we lose ECC as a customer, it will be difficult for us to obtain alternative customer relationships that would replace our historical revenues from ECC.

***We may not be able to obtain additional capital on acceptable terms or at all in order to grow and to increase earnings.***

Our ability to increase earnings will depend in part on our ability to grow our business. While we expect to satisfy our need for funds to meet our growth plans to be satisfied from cash and marketable investment securities to be contributed to us in connection with the spin-off, cash we generate from operations and future financings, we cannot assure you that we will generate sufficient cash from operations or that additional financing will be available on acceptable terms, or at all, if needed in the future.

In addition, we currently have contracts to construct, and conditional licenses and pending FCC applications for, a number of Ku-band, Ka-band and extended Ku-band satellites. We may need to raise additional capital to construct, launch, and insure these satellites. Depending on market conditions and our results of operations and financial condition we may not be able to raise such additional capital on acceptable terms or at all. We also periodically evaluate various strategic initiatives, the pursuit of which also could require us to raise significant additional capital. We may also use a significant portion of our existing cash to fund a potential stock buyback program during 2008 of up to \$1 billion of our Class A common stock.

We also have substantial satellite-related payment obligations under our various satellite service agreements.

***We could be exposed to significant financial losses if our investments are unsuccessful.***

We have entered into certain strategic transactions and investments in Asia and elsewhere, and we may increase our strategic investment activity in the United States and in international markets. These investments, which we expect could become substantial over time, involve a high degree of risk and could expose us to significant financial losses if the underlying ventures are not successful. In particular, the laws, regulations and practices of certain countries may make it harder for our investments to be successful.

In addition, the companies in which we invest or with whom we partner may not be able to compete effectively or there may be insufficient demand for the services and products offered by these companies.

***We may pursue new acquisitions, joint ventures and other transactions to complement or expand our business which may not be successful.***

We may not be able to complete such transactions and such transactions, if executed, pose significant risks and could have a negative effect on our operations. Our future success may depend on opportunities to buy

other businesses or technologies that could complement, enhance or expand our current business or products or that might otherwise offer us growth opportunities. Any transactions that we are able to identify and complete may involve a number of risks, including:

- the diversion of our management's attention from our existing business to integrate the operations and personnel of the acquired or combined business or joint venture;
- possible adverse effects on our operating results during the integration process; and
- our possible inability to achieve the intended objectives of the transaction.

In addition, we may not be able to successfully or profitably integrate, operate, maintain and manage our newly acquired operations or employees. We may not be able to maintain uniform standards, controls, procedures and policies, and this may lead to operational inefficiencies.

New acquisitions, joint ventures and other transactions may require the commitment of significant capital that would otherwise be directed to investments in our existing businesses or be distributed to shareholders. Commitment of this capital may cause us to defer or suspend any share repurchases that we otherwise may have made.

***Our business relies on intellectual property, some of which is owned by third parties, and we may inadvertently infringe their patents and proprietary rights.***

Many entities, including some of our competitors, have or may in the future obtain patents and other intellectual property rights that cover or affect products or services related to those that we offer. In general, if a court determines that one or more of our products infringes on intellectual property held by others, we may be required to cease developing or marketing those products, to obtain licenses from the holders of intellectual property or to redesign those products in such a way as to avoid infringing the patent claims, each of which may require material expenditures by us. If those intellectual property rights are held by a competitor, we may be unable to obtain the intellectual property at any price, which could adversely affect our competitive position.

***If we fail to protect our intellectual property rights, it could harm our business and competitive position.***

Our business relies on intellectual property rights to stay competitive in the market place. We rely on a combination of patent, trademark and copyright laws, trade secrets, confidentiality procedures and contractual provisions to protect our intellectual property rights and the obligations we have to third parties from whom we license intellectual property rights. Nevertheless, these afford only limited protection and policing unauthorized use of proprietary technology can be difficult and expensive. We may not be able to take appropriate steps to enforce our intellectual property rights and this could have a material adverse effect on our business, operating results and financial condition.

***Our accounting and other management systems and resources may not be adequately prepared to meet the financial reporting and other requirements to which we will be subject following the spin-off. If we are unable to achieve and maintain effective internal controls, our business, financial position and results of operations could be adversely affected.***

Our financial results previously were included within the consolidated results of ECC, and our reporting and control systems were appropriate for those of subsidiaries of a public company. However, we were not directly subject to reporting and other requirements of the Securities Exchange Act of 1934, as amended, which we refer to as the Exchange Act. As a result of the spin-off, we will be directly subject to these requirements, including the requirements of Section 404 of the Sarbanes-Oxley Act of 2002, which will require annual management assessments of the effectiveness of our internal controls over financial reporting and a report by our independent registered public accounting firm addressing these controls. These reporting and other obligations will place significant demands on our management and administrative and operational resources, including accounting resources. To comply with these requirements, we anticipate that we will need to upgrade our systems, including information technology, implement additional financial and management controls, reporting systems and procedures and hire additional accounting and finance staff. If we are unable

to upgrade our financial and management controls, reporting systems, information technology and procedures in a timely and effective fashion, our ability to comply with our financial reporting requirements and other rules that apply to reporting companies could be impaired.

***Prior to the spin-off, we will not have been an independent company and we may be unable to make, on a timely or cost-effective basis, the changes necessary to operate as an independent company.***

Prior to the spin-off, our business was operated by ECC as part of its broader corporate organization, rather than as an independent company. ECC's senior management oversaw the strategic direction of our businesses and ECC performed various corporate functions for us, including, but not limited to:

- selected human resources related functions;
- accounting;
- tax administration;
- selected legal functions, as well as external reporting;
- treasury administration, investor relations, internal audit and insurance functions; and
- selected information technology and telecommunications services.

Following the spin-off, neither ECC nor any of its affiliates will have any obligation to provide these functions to us other than those services that will be provided for a limited period of time by ECC pursuant to the services agreement between us and ECC. See "Certain Intercompany Arrangements — Services Agreement." If, once this services agreement terminates, we do not have in place our own systems and business functions, we do not have agreements with other providers of these services or we are not able to make these changes cost effectively, we may not be able to operate our business effectively and our profitability may decline. If ECC does not continue to perform effectively the services that are called for under the services agreement, we may not be able to operate our business effectively after the spin-off.

***Changes in existing technologies or the emergence of new products or technologies could significantly harm our business.***

Our businesses change rapidly as new technologies are developed. These new technologies may cause our services and products to become obsolete. Changes in existing technologies could also cause demand for our products and services to decline. For example, if changes in technology allow digital television subscribers to use devices such as personal computers, cable ready televisions and network based digital video recording services in place of set-top boxes, our customers may not need to purchase our set-top boxes to provide their digital television subscribers with digital video recording and other set-top box features. One or more new technologies also could be introduced that compete favorably with our set-top boxes or that cause our set-top boxes to no longer be of significant benefit to our customers.

We and our suppliers also may not be able to keep pace with technological developments. Alternatively, if the new technologies on which we intend to focus our research and development investments fail to achieve acceptance in the marketplace, we could suffer a material adverse effect on our future competitive position that could cause a reduction in our revenues and earnings. Our competitors could also obtain or develop proprietary technologies that are perceived by the market as being superior to ours. Further, after we have incurred substantial research and development costs, one or more of the technologies under our development, or under development by one or more of our strategic partners, could become obsolete prior to its introduction. Finally, delays in the delivery of components or other unforeseen problems may occur that could materially and adversely affect our ability to generate revenue, offer new services and remain competitive.

Technological innovation is important to our success and depends, to a significant degree, on the work of technically skilled employees. Competition for the services of these types of employees is intense. We may not be able to attract and retain these employees. If we are unable to attract and maintain technically skilled employees, our competitive position could be materially and adversely affected.



***We intend to make significant investments in new products and services that may not be profitable.***

We have made and will continue to make significant investments in research, development, and marketing for new products, services, and technologies, including new set-top box designs and entry into new business areas. Investments in new technology are inherently speculative and commercial success depends on many factors including novelty, service and support, and effective sales and marketing. We may not achieve significant revenue from new product and service investments for a number of years, if at all. Moreover, new products and services may not be profitable, and even if they are profitable, operating margins for new products and businesses may be minimal.

***We rely on key personnel.***

We believe that our future success will depend to a significant extent upon the performance of Charles W. Ergen, our Chairman and Chief Executive Officer and certain other executives. Mr. Ergen and certain of these executives will also continue to devote significant time to their employment at ECC. The loss of Mr. Ergen or of certain other key executives or their ability to devote sufficient time and effort to our business could have a material adverse effect on our business, financial condition and results of operations. Although all of our executives will execute agreements limiting their ability to work for or consult with competitors if they leave us, we do not have employment agreements with any of them.

**Risks Affecting Our Set-Top Business**

***We depend on sales of set-top boxes for nearly all of our revenue, and if sales of our set-top boxes decline, our business and financial position will suffer.***

Our historical revenues consist primarily of sales of our set-top boxes. In addition, we currently derive, and expect to continue to derive in the near term, nearly all of our revenue from sales of our set-top boxes to ECC and Bell ExpressVu. Continued market acceptance of our set-top boxes is critical to our future success. If we are not able to expand sales of our set-top boxes to other providers of digital television, including cable operators, our growth prospects will be limited, and our revenues will be substantially impacted if sales of our set-top boxes to providers of satellite-delivered digital television decline.

***Our business may suffer if direct-to-home satellite service providers, who currently comprise our customer base, do not compete successfully with existing and emerging alternative platforms for delivering digital television, including terrestrial networks, Internet protocol television and cable television operators.***

Our existing customers are direct-to-home satellite video providers, which compete with cable television operators and terrestrial broadcasters for the same pool of viewers. As technologies develop, other means of delivering information and entertainment to television viewers are evolving. For example, some telecommunications companies, such as AT&T Inc. and Verizon Communications, are seeking to compete with terrestrial broadcasters, cable television network operators and direct-to-home satellite services by offering IPTV, which allows telecommunications companies to stream television programs through telephone lines or fiber optic lines. To the extent that the terrestrial television networks, telecommunications companies and cable television network operators compete successfully against direct-to-home satellite services for viewers, the ability of our existing customer base to attract and retain subscribers may be adversely affected. As a result, demand for our satellite television set-top boxes could decline and we may not be able to sustain our current revenue levels.

***Our future financial performance depends on our ability to penetrate new markets for set-top boxes.***

Our products were initially designed for, and have been deployed mostly by, providers of satellite-delivered digital television. To date, we have not made any sales of our set-top boxes to cable operators. In addition, the cable set-top box market is highly competitive and we expect competition to intensify in the future. This competition may make it more difficult for us to sell cable set-top boxes, and may result in pricing pressure,

small profit margins, high sales and marketing expenses and failure to obtain market share, any of which would likely seriously harm our business, operating results and financial condition.

***Our ability to sell our set-top boxes to cable television operators depends on our ability to obtain licenses to use the conditional access systems utilized by these cable television operators.***

Our commercial success in selling our set-top boxes to cable television operators depends significantly on our ability to obtain licenses to use the conditional access systems deployed by these operators in our set-top boxes. In many cases, the intellectual property rights to these conditional access systems are owned by the set-top box manufacturer that currently provides the cable television operator with its set-top boxes. We cannot assure you that we will be able to obtain any required license on commercially favorable terms, if at all. If we do not obtain the necessary licenses, we may be delayed or prevented from pursuing the development of some potential products with cable television operators. Our failure to obtain a license to any technology that we may require to develop or commercialize our set-top boxes with cable television operators will significantly and negatively affect our business.

***Growth in our set-top box business likely requires expansion of our sales to international customers; we may be unsuccessful in expanding international sales.***

We believe that in order to grow our set-top box revenue and business and to build a large customer base, we must increase sales of our set-top boxes in international markets. We have limited experience selling our set-top boxes internationally. To succeed in these sales efforts, we believe we must hire additional sales personnel and develop and manage new relationships with cable operators and other providers of digital television in international markets. If we do not succeed in our efforts to sell to these target markets and customers, the size of our total addressable market may be limited. This, in turn, would harm our ability to grow our customer base and revenue.

***The set-top box business is extremely competitive.***

Currently, there are many significant competitors in the set-top box business including several established companies who have sold set-top boxes to major cable operators in the United States for many years. These competitors include companies such as Motorola, Cisco Systems, which acquired Scientific Atlanta in 2006, and Pace. In addition, a number of rapidly growing companies have recently entered the market, many of them with set-top box offerings similar to our existing satellite set-top box products. We also expect additional competition in the future from new and existing companies who do not currently compete in the market for set-top boxes. As the set-top box business evolves, our current and potential competitors may establish cooperative relationships among themselves or with third parties, including software and hardware companies that could acquire significant market share, which could adversely affect our business. We also face competition from set-top boxes that have been internally developed by digital video providers. Any of these competitive threats, alone or in combination with others, could seriously harm our business, operating results and financial condition.

***Our set-top boxes are highly complex and may experience quality or supply problems.***

Our set-top boxes are extremely complex and can have defects in design, manufacture or associated software. Set-top boxes often contain “bugs” that can unexpectedly interfere with their operation. Defects may also occur in components and products that we purchase from third-parties. There can be no assurance that we will be able to detect and fix all defects in the set-top boxes that we sell. We could incur significant expenses, lost revenue, and harm to our reputation if we fail to detect or effectively address such issues through design, testing or warranty repairs.

***The average selling price of our set-top boxes may decrease, which could negatively impact our operating results.***

As a part of ECC, we have historically sold set-top boxes to ECC at our cost. In order to operate a profitable business we will be required to sell our set-top boxes at higher prices. It is possible that our ability to increase the average selling prices of our set-top boxes will be limited and that prices may decrease in the future in response to competitive pricing pressures, new product introductions by us or our competitors or other factors. If we are unable to increase the average selling prices of our set-top boxes, or if such selling prices decline, and we are unable to respond in a timely manner by developing and introducing new products and continually reducing our product costs, our revenues and gross margin may be negatively affected, which will harm our business and results of operations.

***If significant numbers of television viewers are unwilling to pay for premium programming packages that utilize set-top boxes, we may not be able to sustain our current revenue level.***

Our revenues are derived entirely from direct-to-home satellite service providers who purchase our set-top boxes for their subscribers. Therefore, we are substantially dependent upon the ability of these providers to promote the delivery of premium programming packages that utilize technology incorporated into our set-top boxes, such as DVR technology and IPTV, to generate future revenues.

However, direct-to-home satellite service providers may be unsuccessful in promoting value-added services. Subscribers of direct-to-home satellite services have historically purchased stand-alone satellite receivers without the advanced set-top box functionality that we offer. If direct-to-home satellite service providers are unable to develop compelling reasons for their subscribers to purchase our more advanced set-top boxes, it will be difficult for us to sustain our historical revenues.

***Our reliance on several key components used in our set-top boxes could restrict production and result in higher set-top box costs.***

We obtain many components for our set-top boxes from a single supplier or a limited group of suppliers. Our reliance on a single or limited group of suppliers, particularly foreign suppliers, and our increasing reliance on subcontractors, involves several risks. These risks include a potential inability to obtain an adequate supply of required components, and reduced control over pricing, quality, and timely delivery of these components. We do not generally maintain long-term agreements with any of our suppliers or subcontractors. An inability to obtain adequate deliveries or any other circumstances requiring us to seek alternative sources of supply could affect our ability to ship our set-top boxes on a timely basis, which could damage our relationships with current and prospective customers and harm our business, resulting in a loss of market share, and reduce revenues and income.

We generally maintain low inventory levels and do not make binding long-term commitments to suppliers. As a result, it may be difficult in the future to obtain components required for our products or to increase the volume of components if demand for our products increases.

***Our future growth depends on market acceptance of HDTV.***

Future demand for our set-top boxes will depend significantly on the growing market acceptance of high definition television, or HDTV. The effective delivery of HDTV will depend on digital television operators developing and building infrastructure to provide wide-spread HDTV programming. If the introduction or adoption of HDTV or the deployment of HDTV is not as widespread or as rapid as we or our customers expect, our revenue growth will be limited.

*During April 2006, a jury concluded that certain of our digital video recorders, or DVRs, infringed a patent held by Tivo. If the verdict is upheld on appeal and we are not able to successfully implement alternative technology, we could be prohibited from distributing DVRs, or be required to modify or eliminate certain user-friendly DVR features that we currently offer to consumers.*

If the Tivo jury verdict is upheld on appeal, to the extent that ECC does not indemnify us, we will be required to pay substantial damages and/or license fees, and if we were not able to successfully implement alternative technology (including the successful defense of any challenge that such technology infringes Tivo's patent), we could also be prohibited from distributing DVRs, or be required to modify or eliminate certain user-friendly DVR features that we currently offer to consumers. In that event we would be at a significant disadvantage to our competitors who could offer this functionality and, while we would attempt to provide that functionality through other manufacturers, the adverse affect on our business could be material.

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

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

In our fixed satellite services business, we will compete against larger, well-established fixed satellite service companies, such as Intelsat, SES Americom and Telesat Canada. Because the satellite services industry is relatively mature, our growth strategy depends largely on our ability to displace current incumbent providers, which often have the benefit of long-term contracts with customers. These long-term contracts and other factors result in relatively high switching costs for customers, making it more difficult for us to displace customers from their current relationships with our competitors. In addition, the supply of satellite capacity has increased in recent years, which will make it more difficult for us to sell our services in certain markets and to price our capacity at acceptable levels. Competition may cause downward pressure on prices and further reduce the utilization of our fleet capacity, both of which would have an adverse effect on our financial performance. Our fixed satellite services business also competes with fiber optic cable and other terrestrial delivery systems, which may have a cost advantage, particularly in point-to-point applications where such delivery systems have been installed.

*Our satellites are subject to significant operational risks.*

Satellites are subject to significant operational risks while in orbit. These risks include malfunctions, commonly referred to as anomalies, that have occurred in our satellites and the satellites of other operators as a result of various factors, such as satellite manufacturers' errors, problems with the power systems or control systems of the satellites and general failures resulting from operating satellites in the harsh environment of space.

Although we work closely with the satellite manufacturers to determine and eliminate the cause of anomalies in new satellites and provide for redundancies of many critical components in the satellites, we may experience anomalies in the future, whether of the types described above or arising from the failure of other systems or components.

Any single anomaly or series of anomalies could materially and adversely affect our operations and revenues and our relationship with current customers, as well as our ability to attract new customers for our satellite services. In particular, future anomalies may result in the loss of individual transponders on a satellite, a group of transponders on that satellite or the entire satellite, depending on the nature of the anomaly. Anomalies may also reduce the expected useful life of a satellite, thereby reducing the revenue that could be generated by that satellite, or create additional expenses due to the need to provide replacement or back-up satellites.

Meteoroid events pose a potential threat to all in-orbit satellites. The probability that meteoroids will damage those satellites increases significantly when the Earth passes through the particulate stream left behind by comets. Occasionally, increased solar activity also poses a potential threat to all in-orbit satellites.

Some decommissioned spacecraft are in uncontrolled orbits which pass through the geostationary belt at various points, and present hazards to operational spacecraft, including our satellites. We may be required to

perform maneuvers to avoid collisions and these maneuvers may prove unsuccessful or could reduce the useful life of the satellite through the expenditure of fuel to perform these maneuvers. The loss, damage or destruction of any of our satellites as a result of an electrostatic storm, collision with space debris, malfunction or other event could have a material adverse effect on our business, financial condition and results of operations.

***Our satellites have minimum design lives of 12 years, but could fail or suffer reduced capacity before then.***

Our ability to earn revenue depends on the usefulness of our satellites. Each satellite has a limited useful life. A number of factors affect the useful lives of the satellites, including, among other things, the quality of their construction, the durability of their component parts, the ability to continue to maintain proper orbit and control over the satellite's functions, the efficiency of the launch vehicle used, and the remaining on-board fuel following orbit insertion. Generally, the minimum design life of each of our satellites is 12 years. We can provide no assurance, however, as to the actual useful lives of the satellites.

In the event of a failure or loss of any of our satellites, we may relocate another satellite and use it as a replacement for the failed or lost satellite, which could have a material adverse effect on our business, financial condition and results of operations. Such a relocation would require FCC approval and, among other things, a showing to the FCC that the replacement satellite would not cause additional interference compared to the failed or lost satellite. We cannot be certain that we could obtain such FCC approval.

***Our satellites are subject to risks related to launch.***

Satellite launches are subject to significant risks, including launch failure, incorrect orbital placement or improper commercial operation. Certain launch vehicles that may be used by us have either unproven track records or have experienced launch failures in the past. The risks of launch delay and failure are usually greater when the launch vehicle does not have a track record of previous successful flights. Launch failures result in significant delays in the deployment of satellites because of the need both to construct replacement satellites, which can take more than two years, and to obtain other launch opportunities. Such significant delays could materially and adversely affect our ability to generate revenues. If we were unable to obtain launch insurance, or obtain launch insurance at rates we deem commercially reasonable, and a significant launch failure were to occur, it could have a material adverse effect on our ability to generate revenues and fund future satellite procurement and launch opportunities. In addition, the occurrence of launch failures whether on our satellites or those of others may significantly reduce the availability of launch insurance on our satellites or make launch insurance premiums uneconomical.

***Our fixed satellite services business is subject to risks of adverse government regulation.***

Our satellite services business is subject to varying degrees of regulation in the United States by the FCC, and other entities, and in foreign countries by similar entities. These regulations are subject to the political process and have been in constant flux over the past decade. Moreover, a substantial number of foreign countries in which we have, or may in the future make, an investment, regulate, in varying degrees, the ownership of satellites and the distribution and ownership of programming services and foreign investment in programming companies. Further material changes in law and regulatory requirements must be anticipated, and there can be no assurance that our business and the business of our affiliates will not be adversely affected by future legislation, new regulation or deregulation.

***Our business depends substantially on FCC licenses that can expire or be revoked or modified and applications that may not be granted.***

If the FCC were to cancel, revoke, suspend or fail to renew any of our licenses or authorizations, it could have a material adverse effect on our business, financial condition and results of operations. Specifically, loss of a frequency authorization would reduce the amount of spectrum available to us, potentially reducing the amount of services available to our customers. The materiality of such a loss of authorizations would vary based upon,

among other things, the location of the frequency used or the availability of replacement spectrum. In addition, Congress often considers and enacts legislation that could affect us, and FCC proceedings to implement the Communications Act and enforce its regulations are ongoing. We cannot predict the outcomes of these legislative or regulatory proceedings or their effect on our business.

***We may not be aware of certain foreign government regulations.***

Because regulatory schemes vary by country, we may be subject to regulations in foreign countries of which we are not presently aware. If that were to be the case, we could be subject to sanctions by a foreign government that could materially and adversely affect our ability to operate in that country. We cannot assure you that any current regulatory approvals held by us are, or will remain, sufficient in the view of foreign regulatory authorities, or that any additional necessary approvals will be granted on a timely basis or at all, in all jurisdictions in which we wish to operate new satellites, or that applicable restrictions in those jurisdictions will not be unduly burdensome. The failure to obtain the authorizations necessary to operate satellites internationally could have a material adverse effect on our ability to generate revenue and our overall competitive position.

We, our customers and companies with which we do business may be required to have authority from each country in which we or they provide services or provide our customers use of our satellites. Because regulations in each country are different, we may not be aware if some of our customers and/or companies with which we do business do not hold the requisite licenses and approvals.

***Our dependence on outside contractors could result in delays related to the design, manufacture and launch of our new satellites, which could in turn adversely affect our operating results.***

There are a limited number of manufacturers that are able to design and build satellites according to the technical specifications and standards of quality we require, including Astrium Satellites, Boeing Satellite Systems, Lockheed Martin, Loral and Thales Alenia Space. There are also a limited number of agencies able to launch such satellites, including International Launch Services, Arianespace, Lockheed Martin Launch Systems and Sea Launch Company. The loss of any of our manufacturers or launch agencies could result in the delay of the design, building or launch of our satellites. Even if alternate suppliers for such services are available, we may have difficulty identifying them in a timely manner, we may incur significant additional expense in changing suppliers, and this could result in difficulties or delays in the design, manufacturing or launch of our satellites. Any delays in the design, building or launch of our satellites could have a material adverse effect on our business, financial condition and results of operations.

***We currently have no commercial insurance coverage on the satellites we own.***

We do not insure our owned satellites against in-orbit or other failures. The loss of a satellite or other satellite malfunctions or anomalies could have a material adverse effect on our financial performance which we may not be able to mitigate by using available capacity on other satellites. In addition, the loss of a satellite or other satellite malfunctions or anomalies could affect our ability to comply with FCC regulatory obligations and our ability to fund the construction or acquisition of replacement satellites for our in-orbit fleet in a timely fashion, or at all.

**Risks Relating to the Spin-Off**

***Our agreements with ECC may not reflect what two unaffiliated parties might have agreed to.***

The allocation of assets, liabilities, rights, indemnifications and other obligations between ECC and us under the separation and ancillary agreements we will enter into with ECC do not necessarily reflect what two unaffiliated parties might have agreed to. Had these agreements been negotiated with unaffiliated third parties, their terms may have been more favorable, or less favorable, to us.

***The spin-off could result in significant tax liability.***

ECC has requested a private letter ruling from the IRS to the effect that, among other things, the spin-off, together with certain related transactions, will qualify for tax-free treatment under Sections 355 and 368(a)(1)(D) of the Code. In addition, the spin-off is conditioned upon the receipt by ECC of the opinion of White & Case LLP on the distribution date (which condition ECC may waive) substantially to the effect that, among other things, the spin-off, together with certain related transactions, will qualify as reorganizations for U.S. federal income tax purposes under Sections 355 and 368(a)(1)(D) of the Code, and that, accordingly for U.S. federal income tax purposes, no gain or loss will be recognized by, and no amount will be included in the income of, a holder of ECC common stock upon the receipt of shares of our common stock pursuant to the spin-off, except to the extent such holder receives cash in lieu of fractional shares of our common stock. See “The Spin-Off — Material U.S. Federal Income Tax Consequences of the Spin-Off.”

Although a private letter ruling from the IRS generally is binding on the IRS, if the factual representations or assumptions made in the letter ruling request are untrue or incomplete in any material respect, we will not be able to rely on the ruling. Furthermore, the IRS will not rule on whether a distribution satisfies certain requirements necessary to obtain tax-free treatment under Section 355 of the Code. Rather, the ruling is based upon representations by ECC that these conditions have been satisfied, and any inaccuracy in such representations could invalidate the ruling. ECC has made it a condition to the spin-off that ECC obtain the opinion of counsel described above. The opinion will be based on, among other things, certain assumptions and representations made by ECC and us, which if incorrect or inaccurate in any material respect would jeopardize the conclusions reached by counsel in its opinion. The opinion will not be binding on the IRS or the courts. See “The Spin-Off — Material U.S. Federal Income Tax Consequences of the Spin-Off” for more information regarding the private letter ruling and the tax opinion.

If the spin-off does not qualify for tax-free treatment for U.S. federal income tax purposes, then, in general, ECC would be subject to tax as if it had sold the common stock of our company in a taxable sale for its fair market value. ECC’s shareholders would be subject to tax as if they had received a distribution equal to the fair market value of our common stock that was distributed to them, which would be treated as a taxable dividend to the extent of ECC’s earnings and profits. It is expected that the amount of any such taxes to ECC’s shareholders and ECC would be substantial. See “The Spin-Off — Material U.S. Federal Income Tax Consequences of the Spin-Off.”

***A potential indemnity liability to ECC if the spin-off is treated as a taxable transaction could materially adversely affect our company.***

In the tax sharing agreement with ECC, we have agreed to indemnify ECC for any losses, claims, and expenses (including any resulting taxes) resulting from the spin-off or certain related transactions failing to qualify as tax-free transactions pursuant to any provision of Section 355 or Section 361 of the Code because of (i) a direct or indirect acquisition of any of our stock, stock options or assets, (ii) any action that we take or fail to take or (iii) any action that we take that is inconsistent with the information and representations furnished to the IRS in connection with the request for the private letter ruling, or to counsel in connection with any opinion being delivered by counsel with respect to the spin-off or certain related transactions. For a more detailed discussion, see “Certain Intercompany Agreements — Agreements with ECC — Tax Sharing Agreement.” Our indemnification obligations to ECC and its subsidiaries are not limited in amount or subject to any cap. If we are required to indemnify ECC and its subsidiaries under the circumstances set forth in the tax sharing agreement, we may be subject to substantial liabilities.

***We will have potential conflicts of interest with ECC after the spin-off.***

Questions relating to conflicts of interest may arise between ECC and us in a number of areas relating to our past and ongoing relationships. Areas in which conflicts of interest between ECC and us could arise include, but are not limited to, the following:

- *Cross officerships, directorships and stock ownership.* We will continue to have significant overlap in directors and executive officers with ECC, which may lead to conflicting interests. At the time of the spin-

off, certain of our executive officers, including Charles W. Ergen, our Chairman and Chief Executive Officer, will continue to serve as executive officers of ECC. Three of these individuals will provide us services pursuant to a management services agreement we will enter into with ECC. Our board of directors will include persons who are members of the board of directors of ECC, including Mr. Ergen, who will serve as the Chairman of ECC and us. The executive officers and the members of our board of directors who overlap with ECC will have fiduciary duties to ECC's shareholders. Pursuant to the management services agreement, three of these officers will be paid by ECC even if their duties include work for EHC. Therefore, these individuals may have actual or apparent conflicts of interest with respect to matters involving or affecting each company. For example, there will be the potential for a conflict of interest when we or ECC look at acquisitions and other corporate opportunities that may be suitable for both companies. In addition, after the spin-off, many of our directors and officers will continue to own ECC stock and options to purchase ECC stock, which they acquired or were granted prior to the spin-off, including Mr. Ergen, who will immediately following the spin-off beneficially own approximately 50.0% of the total equity and control approximately 80.0% of the voting power of ECC and us. These ownership interests could create actual, apparent or potential conflicts of interest when these individuals are faced with decisions that could have different implications for our company and ECC.

- *Intercompany agreements related to the spin-off.* We will enter into certain agreements with ECC pursuant to which it will provide us certain management, administrative, accounting, tax, legal and other services, for which we will reimburse ECC for cost plus an agreed upon margin. In addition, we will enter into a number of intercompany agreements covering matters such as tax sharing and our responsibility for certain liabilities previously undertaken by ECC for certain of our businesses. We will also enter into certain commercial agreements with ECC pursuant to which we will, among other things, be obligated to sell at specified prices, set-top boxes and related equipment to ECC. The terms of these agreements were established while we were a wholly-owned subsidiary of ECC and were not the result of arm's length negotiations. In addition, conflicts could arise in the interpretation or any extension or renegotiation of these existing agreements after the completion of the spin-off.
- *Future intercompany transactions.* In the future, ECC or its affiliates may enter into transactions with us or our subsidiaries or other affiliates. Although the terms of any such transactions will be established based upon negotiations between ECC and us and, when appropriate, subject to the approval of the independent directors on our board or a committee of disinterested directors, there can be no assurance that the terms of any such transactions will be as favorable to us or our subsidiaries or affiliates as may otherwise be obtained in arm's length negotiations.
- *Business Opportunities.* ECC will retain its interests in various U.S. and international companies that have subsidiaries or controlled affiliates that own or operate domestic or foreign services that may compete with services offered by our businesses. We may also compete with ECC when we participate in auctions for spectrum or orbital slots for our satellites.

We may not be able to resolve any potential conflicts, and, even if we do so, the resolution may be less favorable to us than if we were dealing with an unaffiliated party.

We do not have any agreements with ECC that restrict us from selling our products to competitors of ECC. We also do not have any agreements with ECC that would prevent us from competing with each other.

In addition, the corporate opportunity policy set forth in our articles of incorporation addresses potential conflicts of interest for officers and directors of ECC who are also officers or directors of us. This policy could restrict our ability to take advantage of certain corporate opportunities. The principles for resolving such potential conflicts of interest are described under "Description of Our Capital Stock — Provisions of Our Articles of Incorporation Relating to Related-Party Transactions and Corporate Opportunities."

***We may incur material costs and expenses as a result of our separation from ECC.***

We may incur costs and expenses greater than those we currently incur as a result of our separation from ECC. These increased costs and expenses may arise from various factors, including financial reporting, costs



associated with complying with federal securities laws (including compliance with the Sarbanes-Oxley Act of 2002), tax administration and human resources related functions. Although ECC will continue to provide many of these services to us under the services agreement, such services are for a limited period of time. We cannot assure you that these costs will not be material to our business.

***Substantial sales of our common stock may occur in connection with or following the spin-off, which could cause our share price to decline.***

The EHC Class A common stock that is distributed in the spin-off generally may be sold immediately in the public market. We expect that some of our shareholders, including possibly some of our larger shareholders, will sell the Class A common stock that they receive in the spin-off because, among other reasons, our business profile or market capitalization as an independent, publicly-traded company do not fit their investment objectives. Moreover, index funds hold ECC Class A common stock. Unless we are included in these indices from the date of the spin-off, these index funds will be required to sell our Class A common stock that they receive in the distribution. The sales of significant amounts of our Class A common stock or the perception in the market that these sales will occur could adversely affect the market price of our Class A common stock.

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

***We cannot be certain that an active trading market will develop or be sustained after the spin-off, and following the spin-off our stock price may fluctuate significantly.***

We cannot assure you that an active trading market will develop or be sustained for our common stock after the spin-off. Nor can we predict the prices at which classes of our common stock may trade after the spin-off. Similarly, we cannot predict the effect of the spin-off on the trading prices of ECC's common stock or whether the market value of the shares of a class of our common stock and the shares of the same class of ECC's common stock held by a shareholder after the spin-off will be less than, equal to or greater than the market value of the shares of that class of ECC's common stock held by such shareholder prior to the spin-off.

The market price of our common stock may fluctuate significantly due to a number of factors, some of which may be beyond our control, including:

- actual or anticipated fluctuations in our operating results;
- changes in earnings estimated by securities analysts or our ability to meet those estimates;
- the operating and stock price performance of comparable companies; and
- domestic and foreign economic conditions.

***If, following the spin-off, we are unable to satisfy the requirements of Section 404 of the Sarbanes-Oxley Act of 2002, or our internal control over financial reporting is not effective, the reliability of our financial statements may be questioned and our stock price may suffer.***

Section 404 of the Sarbanes-Oxley Act of 2002 requires any company subject to the reporting requirements of the U.S. securities laws to do a comprehensive evaluation of its and its consolidated subsidiaries' internal control over financial reporting. To comply with this statute, we will eventually be required to document and test our internal control procedures, our management will be required to assess and issue a report concerning our internal control over financial reporting, and our independent auditors will be required to issue an opinion on management's assessment of those matters. The rules governing the standards that must be met for management to assess our internal control over financial reporting are complex and require significant documentation, testing and possible remediation to meet the detailed standards under the rules. During the course of its testing, our management may identify material weaknesses or deficiencies which may not be remedied in time to meet the deadline imposed by the Sarbanes-Oxley Act. If our management cannot favorably assess the effectiveness of our internal control over financial reporting or our auditors identify

material weaknesses in our internal controls, investor confidence in our financial results may weaken, and our stock price may suffer.

***It may be difficult for a third party to acquire us, even if doing so may be beneficial to our shareholders.***

Certain provisions of our certificate of incorporation and bylaws may discourage, delay or prevent a change in control of our company that a shareholder may consider favorable. These provisions include the following:

- authorizing a capital structure with multiple classes of common stock: a Class A that entitles the holders to one vote per share, a Class B that entitles the holders to ten votes per share, a Class C that entitles the holders to one vote per share, except upon a change in control of our company in which case the holders of Class C are entitled to ten votes per share and a non-voting Class D;
- authorizing the issuance of “blank check” preferred stock, which could be issued by our board of directors to increase the number of outstanding shares and thwart a takeover attempt;
- limiting who may call special meetings of shareholders;
- establishing advance notice requirements for nominations of candidates for election to our board of directors or for proposing matters that can be acted upon by shareholders at shareholder meetings;
- the existence of authorized and unissued stock which would allow our board of directors to issue shares to persons friendly to current management, thereby protecting the continuity of its management, or which could be used to dilute the stock ownership of persons seeking to obtain control of us.

***After the spin-off, we will be controlled by one principal shareholder.***

Immediately after the spin-off, Charles W. Ergen, our Chairman and Chief Executive Officer, will beneficially own approximately 80.0% of our total equity securities and possess approximately 50.0% of the total voting power. Thus, Mr. Ergen will have the ability to elect a majority of our directors and to control all other matters requiring the approval of our shareholders. As a result of Mr. Ergen’s voting power, we will be a “controlled company” as defined in the Nasdaq listing rules and, therefore, will not be subject to Nasdaq requirements that would otherwise require us to have (i) a majority of independent directors; (ii) a nominating committee composed solely of independent directors; (iii) compensation of our executive officers determined by a majority of the independent directors or a compensation committee composed solely of independent directors; and (iv) director nominees selected, or recommended for the Board’s selection, either by a majority of the independent directors or a nominating committee composed solely of independent directors. Mr. Ergen will also beneficially own approximately 50.0% of the total equity and 80.0% of the total voting power of ECC and will continue to be the Chairman and Chief Executive Officer of ECC, which will directly and through its subsidiaries continue to be our largest customer, accounting for a substantial majority of our revenues.

***Holders of any single class of our common stock may not have any remedies if any action by our directors or officers has an adverse effect on only that series of our common stock.***

Principles of Nevada law and the provisions of our certificate of incorporation may protect decisions of our board of directors that have a disparate impact upon holders of any single class of our common stock. Under Nevada law, the board of directors has a duty to act with due care and in the best interests of all of our shareholders, including the holders of all classes of our common stock. Principles of Nevada law established in cases involving differing treatment of multiple classes or series of stock provide that a board of directors owes an equal duty to all common shareholders regardless of class or series and does not have separate or additional duties to any group of shareholders. As a result, in some circumstances, our directors may be required to make a decision that is adverse to the holders of one class of our common stock. Under the principles of Nevada law referred to above, you may not be able to challenge these decisions if our board of directors is disinterested and adequately informed with respect to these decisions and acts in good faith and in the honest belief that it is acting in the best interests of all of our shareholders.

***We do not intend to pay dividends for the foreseeable future.***

We have never declared or paid any dividends on our common stock. We intend to retain any earnings to finance the operation and expansion of our business, and we do not anticipate paying any cash dividends in the future. As a result, you may only receive a return on your investment in our common stock if the market price of our common stock increases.

***If securities or industry analysts do not publish research or publish unfavorable research about our business, our stock price and trading volume could decline.***

The trading market for our common stock will depend in part on any research reports that securities or industry analysts publish about us or our business. After our separation from ECC, if no securities or industry analysts initiate coverage of us, the trading price for our stock may be negatively impacted. In the event securities or industry analysts cover us and one or more of these analysts downgrade our stock or publish unfavorable reports about our business, our stock price would likely decline. In addition, if any securities or industry analysts cease coverage of our company or fail to publish reports on us regularly, demand for our stock could decrease, which could cause our stock price and trading volume to decline.

**CAUTIONARY STATEMENT CONCERNING FORWARD-LOOKING STATEMENTS**

This information statement contains certain forward-looking statements regarding business strategies, market potential, future financial performance and other matters. In particular, information included under the headings “The Spin-Off,” “Risk Factors,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and “Business” contain forward-looking statements. Forward-looking statements inherently involve many risks and uncertainties that could cause actual results to differ materially from those projected in these statements. Where, in any forward-looking statement, we express an expectation or belief as to future results or events, such expectation or belief is expressed in good faith and believed to have a reasonable basis, but there can be no assurance that the expectation or belief will result or be achieved or accomplished. Please refer to “Risk Factors” for some but not all of the factors that could cause actual results or events to differ materially from those anticipated.

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.

These forward-looking statements and such risks, uncertainties and other factors speak only as of the date of this information statement, and we expressly disclaim any obligation or undertaking to disseminate any updates or revisions to any forward-looking statement contained herein, or to reflect any change in our expectations with regard thereto or any other change in events, conditions or circumstances on which any such statement is based.

## THE SPIN-OFF

### Background

The board of directors of ECC has approved the spin-off of EchoStar Holding Corporation, a wholly owned subsidiary of ECC. EHC will hold the technology and certain infrastructure assets of ECC. ECC will retain its consumer business, including DISH Network, its U.S. consumer pay-TV business. In making its determination, the ECC board of directors met numerous times and considered, among other things, the continuation of ECC's current operating strategy, and concluded that we and ECC would be able to compete more effectively and have the opportunity to achieve better revenue growth and profitability as a result of the spin-off.

Prior to the spin-off, we were a wholly-owned subsidiary of ECC. Following a series of distributions and contributions from ECC and its subsidiaries to us, we and the companies that will be our subsidiaries after the spin-off, which we refer to as EchoStar Holding Corporation, or EHC, will be engaged in the digital set-top box business and the fixed satellite services business.

To accomplish the spin-off, ECC will distribute all of its equity interest in us, consisting of shares of our Class A common stock and our Class B common stock, to ECC's shareholders on a pro rata basis based on the class of ECC common stock held by each such shareholder. Following the spin-off, ECC will cease to own any equity interest in us, and we will operate independently from ECC. No vote of ECC's shareholders is required or being sought in connection with the spin-off, and ECC's shareholders will not have any appraisal rights in connection with the spin-off.

The distribution of our common stock as described in this information statement is subject to the satisfaction or waiver of certain conditions. For a more detailed description of these conditions, see "— Conditions to the Spin-Off."

### Reasons for the Spin-off

The ECC board of directors regularly reviews the operations that ECC conducts to ensure that ECC's resources are being put to use in a manner that is in the best interests of ECC and its shareholders. As a result of this ongoing evaluation, ECC concluded that some of its existing non-core businesses were being undervalued by analysts and the market generally, and that these businesses would be in a better competitive position if they were operated as a separate entity from DISH Network. Neither we nor ECC can assure you that, following the spin-off, any benefits will be realized to the extent we anticipate or at all. The board of directors of ECC considered the following potential benefits in making its determination to consummate the spin-off:

- *Creating effective management incentives tied to each of EHC's and ECC's performance and increasing the ability to attract and retain personnel.* The separation will permit the creation of equity securities, including options and restricted share units, for each of ECC and our company with a value that is expected to reflect more closely the efforts and performance of each company's management. These equity securities will enable each separate, publicly-traded company to provide incentive compensation arrangements for its specific employee base that is directly related to the market performance of each company's respective Class A common stock. ECC believes these equity-based compensation arrangements will provide enhanced incentives for performance and improve the ability for each of EHC and ECC to attract, retain and motivate qualified employees. Equity based compensation is believed to be particularly important in the case of emerging opportunities in our fixed satellite services and international opportunities divisions, which are young businesses in dynamic markets with high potential, the achievements of which we believe can be enhanced greatly through incentive compensation arrangements.
- *Creating opportunities to effectively develop and finance expansion plans.* The spin-off will allow each of ECC and our company to develop financing strategies and capital structures designed to correspond better to the underlying fundamentals of its businesses and the industry in which it operates. As a separate, publicly-traded company, our capital structure is expected to facilitate selective acquisitions, joint ventures, investments and financings, possibly using our common stock as currency, as well as to facilitate strategic alliances and internal expansion that are important for us to remain competitive in our industry. Moreover,

the spin-off may provide both ECC and EHC with greater flexibility in raising capital and responding to strategic opportunities and to avoid competing demands for capital.

- *Increasing the market value of the companies.* Although there can be no assurance, ECC believes that, over time, following the separation, the common stock of the separate, publicly-traded companies should have a higher aggregate market value, on a fully distributed basis and assuming the same market conditions, than if ECC were not to complete the separation. The ECC board of directors believes that this increase in the market value of the common stock, if achieved, should permit each separate, publicly-traded company to effect acquisitions, joint ventures and investments with common stock in a manner that preserves capital with less dilution of the existing shareholders' interests than would occur by issuing pre-distribution ECC common stock.
- *Allowing each company to separately pursue the business strategies that best suit its long-term interest.* Each of ECC and EHC will be able to focus its efforts on its strategic priorities, its businesses and growth opportunities, which will allow each company to respond more quickly and efficiently to developments in the industry or industries in which it operates and which may facilitate the potential expansion and growth of each company. As a separate, publicly-traded company, the separation will permit us to focus on, among other things, our set-top box business, our international opportunities and investments, and particularly our fixed satellite services business, without the need to consider the strategic direction of ECC.
- *Creating separate companies that have different financial characteristics, which may appeal to different investor bases.* Establishing separate, publicly-traded companies will allow investors to make independent investment decisions with respect to ECC and us. Investment in one or the other company may appeal to investors with different goals, interests and concerns.

The board of directors of ECC also considered the costs and risks associated with the spin-off. The board of directors of ECC considered, among other factors, any potential negative impact on ECC's credit ratings as a result of the divestiture of assets that will be contributed to us; the possibility that either we or ECC may experience disruptions in our respective businesses as a result of the spin-off; actual or perceived conflicts of interest that may arise between ECC and us in a number of areas relating to our past and ongoing relationships, including: (i) cross officerships, directorships and stock ownership, (ii) intercompany transactions, (iii) intercompany agreements and (iv) business opportunities; the risk that the combined trading prices of our common stock and ECC's common stock after the spin-off may be lower than the trading price of ECC's common stock before the spin-off; the loss of synergies from operating as one company; and the additional legal, accounting and administrative costs associated with our becoming a separate, publicly-traded company. In view of the wide variety of factors considered in connection with the evaluation of the spin-off and the complexity of these matters, the ECC board of directors did not find it useful to, and did not attempt to quantify, rank or otherwise assign relative weights to the factors considered. The board of directors of ECC concluded, however, that the potential benefits of the spin-off outweigh the potential negative factors, and that separating the non-core business of ECC from ECC in the form of a tax-free distribution to ECC shareholders is appropriate and advisable for ECC and its shareholders.

#### **Manner of Effecting the Spin-Off**

ECC will effect the spin-off by distributing to its shareholders as a dividend:

- One share of our Class A common stock for every five shares of ECC Class A common stock,
- and
- One share of our Class B common stock for every five shares of ECC Class B common stock,

in each case, owned of record by each shareholder on the record date.

Prior to the spin-off, ECC will deliver all of the issued and outstanding shares of our Class A common stock and Class B common stock to the distribution agent. On or about January 1, 2008, which we refer to as the distribution date, the distribution agent will effect delivery of the shares of our common stock issuable in the spin-off electronically, as of the distribution date, to you or to your bank or brokerage firm on your behalf by

way of direct registration in book-entry form. Registration in book-entry form refers to a method of recording share ownership when no physical share certificates are issued to shareholders, as is the case in this distribution.

Commencing on or shortly after the distribution date, if you hold physical share certificates that represent your common stock of ECC and you are the registered holder of the ECC shares represented by those certificates, the distribution agent will mail to you an account statement that indicates the number of shares of our common stock that have been registered in book-entry form in your name.

Please note that if any shareholder of ECC on the record date sells shares of ECC common stock after the record date but on or before the distribution date, the buyer of those shares, and not the seller, will become entitled to receive the shares of our common stock issuable in respect of the shares sold. See “ — Trading Between the Record Date and the Distribution Date” below for more information.

Most ECC shareholders hold their common stock of ECC through a bank or brokerage firm. In such cases, the bank or brokerage firm would be said to hold the shares in “street name” and ownership would be recorded on the bank or brokerage firm’s books. If you hold your ECC common stock through a bank or brokerage firm, your bank or brokerage firm will credit your account for the common stock of our company that you are entitled to receive in the spin-off. If you have any questions concerning the mechanics of having shares held in “street name,” we encourage you to contact your bank or brokerage firm.

Shareholders of ECC are not being asked to take any action in connection with the spin-off. No shareholder approval of the spin-off is required or being sought. We are not asking you for a proxy, and you are requested not to send us a proxy. You are also not being asked to surrender any of your shares of ECC common stock for shares of our common stock. The number of outstanding shares of ECC common stock will not change as a result of the spin-off.

#### **Interests of EHC directors and officers in the spin-off**

In connection with the spin-off, EHC directors and executive officers have interests in the spin-off that are different from, or in addition to, your interests as a shareholder, and that may present actual or potential conflicts of interest. These interests include:

- vesting of EHC stock options and restricted stock unit awards held by EHC directors and executive officers;
- payment of base compensation and annual bonuses to EHC executive officers;
- indemnification of EHC directors and executive officers pursuant to EHC’s articles of incorporation and bylaws;
- Charles W. Ergen, the Chairman and Chief Executive Officer of ECC, will also be the Chairman and Chief Executive Officer of EHC following the spin-off; and
- five directors from ECC’s board of directors after the distribution, currently expected to be Charles W. Ergen, Steven R. Goodbarn, David K. Moskowitz, Tom A. Orloff and Carl Vogel, will be designated by EHC to serve on its board of directors. In addition, two EHC directors, Michael T. Dugan and C. Michael Schroeder, will resign from the board of directors of ECC on or prior to the distribution date.

#### **Treatment of Fractional Shares**

The distribution agent will not distribute any fractional shares in connection with the spin-off. Instead, any shareholder who would be entitled to receive a fractional share of our Class A common stock will instead receive a cash payment in lieu of such fractional share. The distribution agent will aggregate all fractional shares into whole shares and sell the whole shares in the open market at prevailing market prices. The distribution agent will then distribute the aggregate net cash proceeds of the sales pro rata to each holder who otherwise would have been entitled to receive a fractional share. The distribution agent, in its sole discretion, without any influence by ECC or us, will determine when, how, through which broker-dealer and at what price to sell the whole shares. We will reimburse the distribution agent for the cost of any brokerage fees incurred

by the distribution agent in connection with these sales, which we expect to be reasonable and customary for transactions of this type. The distribution agent and any broker-dealer used by the distribution agent will not be an affiliate of either ECC or us. Any shareholder who would be entitled to receive a fractional share of our Class B common stock will have such fractional share rounded off and will instead receive the number of whole shares they are entitled to receive without regard to any fractional share. The elimination of fractional shares of our Class B common stock is due the limited number of Class B shareholders and the small number of fractional shares that would therefore result from the spin-off, making an aggregation and public sale of such fractional shares impractical.

The distribution agent will distribute a check to each record holder of Class A shares representing the cash amount deliverable in lieu of the record holder's fractional share interest as soon as practicable following the calculation of these cash amounts. If you hold your shares through a bank or brokerage firm, your bank or brokerage firm will receive, on your behalf, your pro rata share of the aggregate net cash proceeds of the sales and will electronically credit your account for your share of such proceeds. No interest will be paid on any cash distributed in lieu of fractional shares. The receipt of cash in lieu of fractional shares will generally be taxable to the recipient shareholders. See "— Material U.S. Federal Income Tax Consequences of the Spin-Off" below for more information.

#### **Treatment of ECC Stock Incentive Awards**

Options to purchase shares of ECC Class A common stock, which we refer to as ECC Options, and restricted stock units with respect to shares of ECC Class A common stock, which we refer to as ECC RSUs have been granted to various directors, officers and employees of ECC and certain of its subsidiaries pursuant to the EchoStar Communications Corporation 1995 Stock Incentive Plan, the Amended and Restated EchoStar Communications Corporation 1999 Stock Incentive Plan, the Amended and Restated EchoStar Communications 2001 Nonemployee Director Stock Option Plan and the EchoStar Communications Corporation 1995 Nonemployee Director Stock Option Plan and various other stock incentive plans administered by the compensation committee of ECC's board of directors. Under the anti-dilution provisions of the applicable plans, the ECC compensation committee has the authority to make equitable adjustments to outstanding ECC Options and ECC RSUs in the event of certain transactions, including the distribution of our common stock in connection with the spin-off. The ECC compensation committee has determined to make various adjustments to outstanding ECC Options and ECC RSUs, as described below, to preserve the economic benefits of the original award following the spin-off. These adjustments will be made in the same manner for all holders of ECC options and other stock-based awards of ECC, including ECC's executive officers and directors. Any options to purchase, or awards relating to, shares of our common stock issued in connection with such adjustments will be obligations of our company. All options exercisable for, and all awards relating to, shares of ECC Class A common stock, regardless of any adjustment, will remain obligations of ECC.

We intend to file a registration statement with respect to shares of our common stock issuable upon exercise, or vesting, of the equity awards that we issue, as soon as practicable following the effective date of this registration statement.

#### ***Option Awards***

As of the distribution date, each ECC Option will be divided into two options as follows:

- an option (which we refer to as an EHC Option) to purchase shares of our Class A common stock, exercisable for the number of shares of our Class A common stock that would have been issued in the spin-off in respect of the shares of ECC Class A common stock subject to the applicable ECC Option, if such ECC Option had been exercised in full immediately prior to the record date, rounded down to the nearest whole-share; and
- an option (which we refer to as an Adjusted ECC option) to purchase shares of ECC Class A common stock, exercisable for the same number of shares of ECC Class A common stock that are exercisable with respect to the outstanding ECC Option, rounded down to the nearest whole-share.



The aggregate exercise price of each outstanding ECC option will be allocated between the EHC Option and the Adjusted ECC Option as follows:

- each EHC Option will have an exercise price equal to (A) the exercise price of the ECC option prior to the distribution date multiplied by (B) (i) the closing trading price of EHC Class A common stock on the first regular trading day after the distribution date divided by (ii) the sum of (a) the closing trading price of ECC Class A common stock on the first regular trading day after the distribution date and (b) the closing trading price of EHC Class A common stock on the first regular trading day after the distribution date multiplied by 0.20, which we refer to as the dividend ratio for EHC Class A common stock distributed in the spin-off, rounded up to the nearest whole-cent.
- each Adjusted ECC Option will have an exercise price equal to (A) the exercise price of the ECC option prior to the distribution date multiplied by (B) (i) the closing trading price of ECC Class A common stock on the first regular trading day after to the distribution date divided by (ii) the sum of (a) the closing trading price of ECC Class A common stock on the first regular trading day after to the distribution date and (b) the closing trading price of EHC Class A common stock on the first regular trading day after the distribution date multiplied by the dividend ratio, rounded up to the nearest whole-cent.

Set forth below is an example of how the allocation would work.

Assume that a current employee, executive officer or director of ECC holds an option to purchase 100 shares of ECC Class A common stock with an exercise price of \$10.00 per share. Also assume that the closing trading price of ECC common stock on the first regular trading day after the distribution date is \$35.00, the closing trading price of EHC common stock on the first regular trading day after the distribution date is \$25.00 and 0.20 of a share of EHC Class A common stock has been issued for every share of ECC Class A common stock held by a shareholder of ECC. The EHC Option would be an option to purchase 20 shares of EHC Class A common stock (i.e.,  $100 \times 0.20$ ) with an exercise price of \$6.25 per share (i.e.,  $\$10 \times (\$25 / (\$35 + \$5))$ ). The Adjusted ECC Option would be an option to purchase 100 shares of ECC Class A common stock with an exercise price of \$8.75 per share (i.e.,  $\$10 \times (\$35 / (\$35 + \$5))$ ). Assuming that the value of ECC immediately prior to the allocation was \$3,000 (i.e.,  $(\$40 - \$10) \times 100$ ), and after the allocation, the intrinsic value of the EHC Option and Adjusted ECC Option, taken together, would still be \$3,000 (i.e.,  $(\$25 - \$6.25) \times 20$ , or \$375) plus (i.e.,  $(\$35 - \$8.75) \times 100$ , or \$2,625).

Each Adjusted ECC Option and EHC Option will take into account all employment with both ECC and EHC for purposes of determining when the option vests and terminates. Fractional shares will be adjusted or compensated by ECC as appropriate in the sole discretion of the ECC compensation committee. All other terms and conditions of the EHC Option and the Adjusted ECC Option will generally be the same as the outstanding ECC Option, in all material respects.

As a result of these adjustments, certain persons who are employed by or associated with ECC immediately following the distribution date will hold EHC Options, and certain persons who will be employed by or associated with our company immediately following the distribution date may hold Adjusted ECC Options. Regardless of these employment or other relationships, ECC will not be responsible for the exercise or settlement of any EHC Option, and we will not be responsible for the exercise or settlement of any option to purchase ECC common stock (including an Adjusted ECC Option). Any exercising holder of an EHC Option must exercise the security directly with us. Similarly, any exercising holder of an option to purchase ECC common stock must exercise the security directly with ECC. In this regard, we will enter into an option agreement with each holder of an EHC Option, and, if necessary, ECC will amend its existing option agreement with each holder of an outstanding ECC Option, in each case to reflect the provisions described above.

#### **Restricted Stock Unit Awards**

For each ECC RSU outstanding as of the distribution date, the holder of such ECC RSU will be entitled to receive, for each share of ECC Class A common stock subject thereto, an EHC RSU with respect to the

number of shares our Class A common stock that would have been issued in the spin-off in respect of the shares of ECC Class A common stock subject to the applicable ECC RSU.

The distribution will not have any other effect on the outstanding ECC RSUs, and the RSUs relating to our common stock will be subject to the same terms and conditions as apply to the ECC awards with respect to which the adjustment, or distribution, as applicable, is made. Each such award will take into account all employment with both ECC and EHC for purposes of determining when the award vests or the restrictions on the award lapse, as applicable. Fractional shares will be adjusted or compensated by ECC as appropriate in the sole discretion of the ECC compensation committee.

**Material U.S. Federal Income Tax Consequences of the Spin-Off**

The following is a summary of certain material U.S. federal income tax consequences to the holders of ECC common stock in connection with the spin-off. The summary is based on the Code, the Treasury Regulations promulgated thereunder and judicial and administrative interpretations thereof, in each case as in effect and available as of the date of this document and all of which are subject to change at any time, possibly with retroactive effect. Any such change could affect the tax consequences described below.

This summary does not discuss all tax considerations that may be relevant to shareholders in light of their particular circumstances, nor does it address the consequences to shareholders subject to special treatment under the U.S. federal income tax laws, such as:

- dealers or traders in securities or currencies;
- tax-exempt entities;
- banks, financial institutions or insurance companies;
- real estate investment trusts, regulated investment companies or grantor trusts;
- persons who acquired ECC common stock pursuant to the exercise of employee stock options or otherwise as compensation;
- shareholders who own, or are deemed to own, at least 10% or more, by voting power or value, of ECC's equity;
- holders owning ECC common stock as part of a position in a straddle or as part of a hedging, conversion or other risk reduction transaction for U.S. federal income tax purposes;
- certain former citizens or long-term residents of the United States;
- holders who are subject to the alternative minimum tax;
- persons that own ECC common stock through partnerships or other pass through entities; or
- holders of ECC common stock who are neither citizens nor residents of the United States, or that are foreign corporations, foreign partnerships or foreign estates or trusts for U.S. federal income tax purposes.

This summary does not address the U.S. federal income tax consequences to ECC shareholders who do not hold ECC common stock as a capital asset. Moreover, this summary does not address any state, local or foreign tax consequences.

If a partnership (or any other entity treated as a partnership for U.S. federal income tax purposes) holds ECC common stock, the tax treatment of a partner in such partnership will generally depend on the status of the partner and the activities of the partnership. Such a partner or partnership should consult its own tax advisor as to its tax consequences.

**You should consult your own tax advisor with respect to the U.S. federal, state, local and foreign tax consequences of the distribution.**

The spin-off is conditioned upon ECC's receipt of an opinion of White & Case LLP to be delivered on the distribution date (which condition ECC may waive), substantially to the effect that the spin-off, together with certain related transactions, will qualify as reorganizations under Sections 355 and 368(a)(1)(D) of the Code. In addition, ECC has applied for a private letter ruling from the IRS that the distribution will so qualify. Assuming the spin-off so qualifies for U.S. federal income tax purposes:

- except with respect to gain or loss recognized under the applicable Treasury Regulations governing consolidated tax returns, the spin-off will not result in any taxable income, gain or loss to ECC;
- no gain or loss will be recognized by, or be includible in the income of, a shareholder of ECC common stock solely as the result of the receipt of our common stock in the spin-off, except, as described below, in connection with cash received in lieu of fractional shares of our Class A common stock;
- the basis of the ECC common stock and our common stock in the hands of ECC's shareholders immediately after the spin-off will be the same as the basis of the ECC common stock immediately before the spin-off, allocated between the common stock of ECC and us in proportion to their relative fair market values on the date of the distribution; and
- the holding period of our common stock received by ECC shareholders will include the holding period of their ECC common stock, provided that such ECC common stock is held as a capital asset on the date of the spin-off.

ECC shareholders that have acquired different blocks of ECC common stock at different times or at different prices should consult their tax advisors regarding the allocation of their aggregate adjusted basis among, and their holding period of, shares of our common stock distributed with respect to such blocks of ECC common stock.

If you receive cash in lieu of a fractional share of Class A common stock as part of the spin-off, you will be treated as though you first received a distribution of the fractional share in the spin-off and then sold it for the amount of such cash. You will generally recognize capital gain or loss, provided that the fractional share is considered to be held as a capital asset, measured by the difference between the cash you receive for such fractional share and your tax basis in that fractional share, as determined above. Such capital gain or loss will be a long-term capital gain or loss if your holding period for your ECC common stock is more than one year on the distribution date.

Although a private letter ruling relating to the qualification of the spin-off and certain related transactions under Sections 355 and 368(a)(1)(D) of the Code will generally be binding on the IRS, the continuing validity of such ruling, if obtained, will be subject to the accuracy of factual representations and assumptions made in the ruling request. Also, as part of the IRS's general policy with respect to rulings on spin-off transactions under Section 355 of the Code, any private letter ruling obtained by ECC will not be based upon a determination by the IRS that certain conditions which are necessary to obtain tax-free treatment under Section 355 of the Code have been satisfied. Rather, such private letter ruling will be based upon representations by ECC that these conditions have been satisfied, and any inaccuracy in such representations could invalidate the private letter ruling. As a result of this IRS policy, ECC has made it a condition to the spin-off that ECC obtain an opinion of White & Case LLP on the distribution date substantially to the effect that the spin-off, together with certain related transactions, will qualify as reorganizations under Sections 355 and 368(a)(1)(D) of the Code (which condition ECC may waive). The opinion will be based upon various factual representations and assumptions, as well as certain undertakings made by ECC and us. If any of those factual representations or assumptions were untrue or incomplete in any material respect, any undertaking was not complied with, or the facts upon which the opinion is based were materially different from the facts at the time of the spin-off, the spin-off may not qualify for tax-free treatment. Opinions of counsel are not binding on the IRS. As a result, the conclusions expressed in the opinion of counsel could be challenged by the IRS, and if the IRS prevails in such challenge, the tax consequences to you could be materially less favorable.

### *The Spin-off*

If the spin-off were not to qualify as a tax-free transaction, ECC would recognize taxable gain equal to the excess of the fair market value of our common stock distributed to ECC shareholders over ECC's tax basis in our common stock. In addition, each shareholder who receives our common stock in the spin-off would generally be treated as receiving a distribution in an amount equal to the fair market value of our common stock received, which would generally result in:

- a taxable dividend to the extent of such shareholders' pro rata share of ECC's current and accumulated earnings and profits;
- a reduction in such shareholder's basis (but not below zero) in ECC common stock to the extent the amount received exceeds such shareholder's share of ECC's earnings and profits; and
- a taxable gain from the exchange of ECC common stock to the extent the amount received exceeds both such shareholder's share of ECC's earnings and profits and such shareholder's basis in ECC common stock.

Even if the spin-off otherwise qualifies for tax-free treatment under Section 355 of the Code, it may be disqualified as tax-free to ECC under Section 355(e) of the Code if 50% or more of the stock of either ECC or us is acquired as part of a plan or series of related transactions that include the distribution. For this purpose, any acquisitions of our stock or ECC's stock within two years before or after the distribution are presumed to be part of such a plan, although ECC or we may be able to rebut that presumption. If such an acquisition of our stock or ECC's stock triggers the application of Section 355(e) of the Code, ECC would recognize taxable gain as described above with respect to the spin-off, but the spin-off would generally be tax-free to each ECC shareholder. Under the tax sharing agreement between ECC and us, we would be required to indemnify ECC against that taxable gain if it were triggered by an acquisition of our stock, stock options or assets. Additionally, pursuant to the tax sharing agreement between ECC and us, we would be required to indemnify ECC against any taxes, losses, claims and expenses resulting from the spin-off and certain related transactions failing to qualify as tax-free distributions pursuant to any provision of Section 355 or Section 361 of the Code in certain other circumstances.

ECC may incur some tax cost in connection with the spin-off (as a result of certain intercompany transactions or as a result of certain differences between federal, on the one hand, and foreign or state tax rules, on the other), whether or not the spin-off qualifies for tax-free treatment under Sections 355 and 368(a)(1)(D) of the Code.

### *Information Statement*

U.S. Treasury Regulations require each ECC shareholder that (i) receives shares of our stock in the spin-off and (ii) immediately before the spin-off owned five percent or more (by vote or value) of the total outstanding stock of ECC, to attach to such shareholder's U.S. federal income tax return for the year in which such stock is received a statement setting forth certain information related to the spin-off.

**THE ABOVE DESCRIPTION IS NOT INTENDED TO CONSTITUTE A COMPLETE ANALYSIS OF ALL TAX CONSEQUENCES RELATING TO THE SPIN-OFF. YOU SHOULD CONSULT YOUR OWN TAX ADVISOR CONCERNING THE TAX CONSEQUENCES OF YOUR PARTICULAR SITUATION.**

### *Results of the Spin-Off*

After the spin-off, we will be an independent, publicly-traded company. Immediately following the spin-off, we expect to have outstanding approximately 42.0 million shares of our Class A common stock and approximately 47.7 million shares of our Class B common stock, based upon the number of shares of ECC Class A common stock and ECC Class B common stock outstanding as of November 30, 2007. The actual number of shares of our Class A common stock and Class B common stock to be distributed in the spin-off will depend upon the actual number of shares of ECC Class A common stock and ECC Class B common stock outstanding on the record date and will reflect any exercise of ECC options between the date the ECC

board of directors declares the dividend for the spin-off and the record date of the spin-off. In addition, no shares of our Class C common stock or Class D common stock will be outstanding immediately following the spin-off. The spin-off will not affect the number of outstanding shares of ECC common stock or any rights of ECC shareholders, although it will affect the market value of each outstanding share of ECC common stock.

Immediately following the spin-off, we expect to have approximately 11,500 holders of record of shares of our Class A common stock. Mr. Ergen and entities related to Mr. Ergen will be the only holders of record of our Class B common stock following the spin-off.

Before the spin-off, we will enter into a Separation Agreement and other agreements with ECC to effect the spin-off and provide a framework for our relationship with ECC after the spin-off. These agreements will govern the relationships among ECC and us subsequent to the completion of the spin-off and provide for the allocation among ECC and us of ECC's assets, liabilities and obligations attributable to periods prior to our separation from ECC. The Separation Agreement, in particular, requires ECC to assume certain of ECC's contingent corporate liabilities and debt.

#### **Listing and Trading of our Common Stock**

On the date of this information statement, we are a wholly-owned subsidiary of ECC. Accordingly, there is currently no public market for our common stock; although a "when-issued" market in our Class A common stock may develop. See "— Trading Between the Record Date and Distribution Date" below for an explanation of a "when-issued" market. We have applied to list our shares of Class A common stock on the Nasdaq Global Select Market under the symbol "[ ]". Following the spin-off, ECC Class A common stock will continue to trade on the Nasdaq Global Select Market under the symbol "DISH."

Neither we nor ECC can assure you as to the trading price of ECC Class A common stock or our Class A common stock after the spin-off or as to whether the combined trading prices of our Class A common stock and the ECC Class A common stock after the spin-off will be less than, equal to or greater than the trading prices of ECC Class A common stock prior to the spin-off. The trading price of our Class A common stock may fluctuate significantly following the spin-off. See "Risk Factors — Risks Relating to Our Common Stock and the Securities Market."

The shares of our common stock distributed to ECC's shareholders will be freely transferable, except for shares received by individuals who are our affiliates and any shares distributed in respect of any ECC RSUs. Individuals who may be considered our affiliates after the spin-off include individuals who control, are controlled by or are under common control with us, as those terms generally are interpreted for federal securities law purposes. This may include some or all of our executive officers and directors. Individuals who are our affiliates will be permitted to sell their shares of our common stock only pursuant to an effective registration statement under the Securities Act of 1933, as amended, or an exemption from the registration requirements of the Securities Act, such as the exemptions afforded by Section 4(1) of the Securities Act or Rule 144 thereunder. Our affiliates will not be permitted to sell shares of our common stock under Rule 144 until 90 days after the date on which the registration statement of which this information statement forms a part is declared effective.

#### **Trading Between the Record Date and Distribution Date**

Between the record date and the distribution date, ECC Class A common stock will continue to trade on the Nasdaq Global Select Market in the regular way market. During this time, shares of ECC Class A common stock that trade on the regular way market will trade with an entitlement to receive shares of our Class A common stock distributable in the spin-off. No ex-dividend market will be established for any class of our common stock until the first trading day following the distribution date. Therefore, if you own shares of ECC common stock on the record date and thereafter sell those shares on or prior to the distribution date, you will also be selling the shares of our common stock that would have been distributed to you in the spin-off with respect to the shares of ECC common stock you sell. On the first trading day following the distribution date, shares of ECC Class A common stock will begin trading without any entitlement to receive shares of our common stock. Shares of ECC Class A common stock trade under the symbol "DISH."

Between the record date and the distribution date, a when-issued trading market in our Class A common stock may develop. Our Class A common stock is expected to be listed for trading on the Nasdaq Global Select Market. The when-issued trading market would be a market for the shares of our Class A common stock that will be distributed in the spin-off. If you own shares of ECC common stock on the record date (and do not sell those shares of ECC common stock on or before the distribution date), then you are entitled to a number of shares of the same class of our common stock based upon the number of shares of such class of ECC common stock you held at that time. If you own ECC Class A common stock, you may trade this entitlement to receive shares of our common stock, without the shares of ECC Class A common stock you own, on the when-issued trading market. We expect when-issued trades of our Class A common stock to settle within three trading days after the distribution date. On the first trading day following the distribution date, any when-issued trading with respect to our Class A common stock will end and regular way trading will begin. If when-issued trading occurs, the listing for our Class A common stock is expected to be under trading symbols different from our regular way trading symbols. Following the distribution date, shares of our Class A common stock are expected to be listed on the Nasdaq Global Select Market under the trading symbol “[ ].” If the spin-off does not occur, all when-issued trading will be null and void.

#### **Conditions to the Spin-Off**

We expect that the spin-off will be effective on the distribution date, provided, that among other conditions described in this information statement, the following conditions shall have been satisfied or waived by ECC under the Separation Agreement:

- the Securities and Exchange Commission shall have declared effective our registration statement on Form 10, of which this information statement is a part, under the Securities Exchange Act of 1934, no stop order relating to the registration statement shall be in effect and this information statement shall have been mailed to holders of ECC common stock;
- all permits, registrations and consents required under the securities or blue sky laws in connection with the spin-off shall have been received;
- ECC shall have received the opinion of White & Case LLP confirming the tax-free status of the spin-off and certain related transactions for U.S. federal income tax purposes on the distribution date;
- the listing of our common shares on the Nasdaq Global Select Market shall have been approved;
- all material governmental approvals and other consents necessary to consummate the distribution, including without limitation FCC approvals, shall have been received; and
- no order, injunction or decree issued by any court of competent jurisdiction or other legal restraint or prohibition preventing consummation of the distribution or any of the transactions related thereto shall be in effect.

The fulfillment of the foregoing conditions will not create any obligation on ECC’s part to effect the spin-off. ECC has the right not to complete the spin-off if, at any time, ECC’s board of directors determines, in its sole discretion, that the distribution is not in the best interests of ECC or its stockholders or that market conditions are such that it is not advisable to separate EHC from ECC.

#### **Reasons for Furnishing this Information Statement**

This information statement is being furnished solely to provide information to ECC shareholders who will receive shares of our common stock in the spin-off. It is not to be construed as an inducement or encouragement to buy or sell any of our securities or any securities of ECC. We believe that the information contained in this information statement is accurate as of the date set forth on the cover. Changes to the information contained in this information statement may occur after that date, and neither our company nor ECC undertakes any obligation to update the information except in the normal course of our respective public disclosure obligations and practices.

**SELECTED HISTORICAL AND UNAUDITED PRO FORMA COMBINED  
AND ADJUSTED FINANCIAL DATA**

The following tables present selected historical information relating to our combined financial condition and results of operations for the nine months ended September 30, 2007 and 2006 and the past five years. The financial data for the three years ended December 31, 2006 has been derived from our audited combined financial statements for the corresponding periods. Data for the other periods presented has been derived from unaudited information. The data should be read in conjunction with our combined financial statements and "Management's Discussion and Analysis of Financial Condition and Results of Operations" included elsewhere herein. Our historical and pro forma financial data included in this information statement may not be indicative of our future performance and does not necessarily reflect what our financial condition and results of operations would have been had we operated as a separate, stand-alone entity during the periods presented, particularly since changes will occur in our operations and capitalization as a result of our spin-off from ECC. Our audited combined financial statements reflect the historical financial position and results of operations of entities included in consolidated financial statements of ECC, representing almost exclusively ECC's set-top box business, using the historical results of operations and historical bases of assets and liabilities of this business. Our historical combined financial statements reflect sales to ECC at cost and do not include certain satellites, uplink and satellite transmission assets, real estate and other assets and related liabilities that will be contributed to us by ECC in the spin-off. These assets and liabilities, which will primarily comprise our fixed satellite services business, have been separately audited and are included in the Statement of Net Assets to be Contributed by ECC and Unaudited Pro Forma Combined and Adjusted Financial Information included herein. The financial condition and results of operations of our fixed satellite services business have not been included in our historical combined financial statements because our fixed satellite services business was operated as an integral part of ECC's subscription television business and did not constitute a "business" in the historical financial statements of ECC. Our historical financial data also does not include financial information of Sling Media, Inc., which was recently acquired by ECC and will be contributed to us in the spin-off. Sling Media's audited consolidated financial statements are included elsewhere in this information statement, and its historical financial information also has been included in our "Unaudited Pro Forma Combined and Adjusted Financial Information."

Statements of Operations Data:	For the Nine Months Ended September 30,			For the Years Ended December 31,					
	2007	2007	2006	2006	2006	2005	2004	2003	2002
	Pro Forma	(Unaudited)		Pro Forma	(In thousands)			(Unaudited)	(Unaudited)
Revenue	\$ 1,592,381	\$ 1,182,768	\$ 1,132,899	\$ 2,080,259	\$ 1,525,320	\$ 1,513,691	\$ 1,720,091	\$ 976,636	\$ 1,037,862
Costs and Expenses:									
Cost of sales (exclusive of depreciation and amortization)	1,247,536	1,121,067	1,065,216	1,609,571	1,440,178	1,438,629	1,650,775	886,665	934,997
Research and development	53,712	40,634	39,093	62,966	56,451	45,928	39,809	32,361	32,966
General and administrative, including sales and marketing	93,962	56,844	43,973	100,400	60,106	56,366	65,059	50,472	72,366
Depreciation and amortization	211,499	4,391	4,593	285,987	6,032	5,832	5,071	5,511	6,655
Total costs and expenses	1,606,709	1,222,936	1,152,875	2,058,924	1,562,767	1,546,755	1,760,714	975,009	1,046,984
Operating income (loss)	\$ (14,328)	\$ (40,168)	\$ (19,976)	\$ 21,335	\$ (37,447)	\$ (33,064)	\$ (40,623)	\$ 1,627	\$ (9,122)
Net income (loss)	\$ (9,296)	\$ (39,943)	\$ (20,486)	\$ 104,835	\$ (34,162)	\$ (44,940)	\$ (43,237)	\$ 4,329	\$ (97,368)
<b>Pro forma earnings per share:</b>									
Basic	\$ (0.10)			\$ 1.17					
Diluted	\$ (0.10)			\$ 1.16					
<b>Pro forma shares outstanding:</b>									
Basic	89,699			89,699					
Diluted	90,056			90,056					

Balance Sheet Data:	As of September 30,		As of December 31,									
	2007		2006		2005		2004		2003		2002	
	Pro Forma	(Unaudited)					(Unaudited)	(Unaudited)	(Unaudited)	(Unaudited)	(Unaudited)	
	(In thousands)											
Cash, cash equivalents and marketable securities	\$ 1,538,516	\$ 530,753	\$ 323,576	\$ 106,109	\$ 143,437	\$ 156,814	\$ 52,148					
Restricted cash	\$ 3,550	\$ —	\$ —	\$ 1,581	\$ 1,699	\$ 1,523	\$ —					
Total assets	\$ 3,837,454	\$ 919,624	\$ 517,821	\$ 229,392	\$ 277,843	\$ 248,811	\$ 228,191					
Long-term debt (including current portion)	\$ 389,137	\$ —	\$ —	\$ 495	\$ 647	\$ 2,214	\$ 756					
Net investment in EHC	\$ 3,242,225	\$ 863,768	\$ 502,283	\$ 217,132	\$ 258,452	\$ 230,023	\$ 68,300					
	(In thousands)											
Cash Flow Data:	For the Nine Months Ended September 30,		For the Years Ended December 31,									
	2007	2006	2006	2005	2004	2003	2002					
	(Unaudited)		(In thousands)						(Unaudited)		(Unaudited)	
Net cash flows from:												
Operating activities	\$ (34,276)	\$ (3,780)	\$ (36,374)	\$ (14,193)	\$ (78,916)	\$ (49,463)	\$ (2,796)					
Investing activities	\$ (160,236)	\$ (75,953)	\$ (54,781)	\$ (16,700)	\$ (5,619)	\$ (12,244)	\$ (30,814)					
Financing activities	\$ 198,625	\$ 91,176	\$ 104,534	\$ 39,782	\$ 69,715	\$ 74,899	\$ 35,390					



## UNAUDITED PRO FORMA COMBINED AND ADJUSTED FINANCIAL INFORMATION

Our audited historical combined financial statements reflect the historical financial position and results of operations of entities included in the consolidated financial statements of ECC, principally representing only the digital set-top box business, using the historical results of operations and historical bases of assets and liabilities of this business. Our historical combined financial statements reflect sales to ECC at cost and do not include certain satellites, uplink and satellite transmission assets, real estate and other assets and related liabilities that will be contributed to us by ECC in the spin-off. These assets and liabilities, which will primarily comprise our fixed satellite services business, have been separately audited and are included in the Statement of Net Assets to be Contributed by ECC and Unaudited Pro Forma Combined and Adjusted Financial Information included herein. Our historical financial data also does not include financial information of Sling Media, Inc., which was recently acquired by ECC and will be contributed to us in the spin-off. Sling Media's audited consolidated financial statements are included elsewhere in this information statement, and its historical financial information also has been included in our Unaudited Pro Forma Combined and Adjusted Financial Information included herein.

The Unaudited Pro Forma Combined and Adjusted Financial Information give effect to:

- the contribution by ECC to us of the net assets to primarily be used in our fixed satellite services business, including \$1 billion in cash;
- the results of operations and other expenses, including depreciation expenses, related to the assets contributed to us by ECC to be used in our fixed satellite services business;
- the impact of the transition services and commercial agreements between us and ECC;
- the distribution of approximately 89.7 million shares of our common stock to holders of ECC stock; and
- the contribution of Sling Media to us.

The share numbers are based on ECC share numbers as of September 30, 2007, and the settlement amount is based on our balances as of September 30, 2007.

The unaudited pro forma combined financial statements of EHC presented below have been derived in part from our audited combined financial statements for the year ended December 31, 2006 and from our unaudited combined financial statements as of and for the nine months ended September 30, 2007.

These unaudited pro forma combined financial statements should be read in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our combined financial statements and the notes to those statements included elsewhere in this information statement.

The unaudited pro forma combined statements of operations for the nine months ended September 30, 2007 and for the year ended December 31, 2006 have been prepared as if the transactions described above occurred as of January 1, 2006. The unaudited pro forma combined balance sheet as of September 30, 2007 has been prepared as if these transactions occurred as of September 30, 2007. The pro forma adjustments are based upon available information and assumptions that management believes are reasonable based on our current plans and expectations. However, such adjustments are subject to change based on the final valuation of Sling Media and the final terms of the spin-off and the transaction agreements. Our historical financial, pro forma and other data included in this information statement are not necessarily indicative of our future financial position, future results of operations or future cash flows, nor do they reflect what our financial position, results of operations or cash flows would have been as a stand-alone company during the periods presented.

The preliminary allocation of the purchase price for Sling Media used in the unaudited pro forma combined financial information is based on preliminary estimates and currently available information. These assumptions and estimates will be revised as additional information becomes available upon final valuation of Sling Media's assets and liabilities. The final determination of the allocation of the purchase price will be based on the actual intangible assets, and net tangible assets of Sling Media existing as of the date of the acquisition.

Our unaudited pro forma combined statements of operations do not give effect to initial expenses directly attributable to the spin-off because of their non-recurring nature. A significant portion of these non-recurring charges to effect the separation will be incurred by ECC, such as investment banker fees, outside legal and accounting fees relating to the spin-off, office move costs, costs to separate information systems and temporary consulting costs. We will incur separation costs that have a future benefit to our company such as employee compensation expenses and temporary labor used to develop ongoing processes. See "Certain Intercompany Agreements."

**ECHOSTAR HOLDING CORPORATION**  
**UNAUDITED PRO FORMA COMBINED AND ADJUSTED STATEMENTS OF OPERATIONS**

	For the Year Ended December 31, 2006					
	EHC Historical	Pro Forma Spin Adjustments	EHC Pro Forma Adjusted	Sling Media Historical	Pro Forma Acquisition Adjustments	Pro Forma Combined and Adjusted
	(In thousands)					
<b>Revenue:</b>						
Equipment and other sales — ECC	\$ 1,288,691	\$ 172,418(a)	\$ 1,461,109	\$ —	\$ —	\$ 1,461,109
Equipment sales	236,629	—	236,629	29,055	—	265,684
FSS — ECC	—	331,434(b)	331,434	—	—	331,434
FSS — other	—	8,557(c)	8,557	—	—	8,557
Other — ECC	—	13,475(d)	13,475	—	—	13,475
<b>Total revenue</b>	<b>1,525,320</b>	<b>525,884</b>	<b>2,051,204</b>	<b>29,055</b>	<b>—</b>	<b>2,080,259</b>
<b>Costs and Expenses:</b>						
Cost of equipment and other sales	1,440,178	2,876(e)	1,443,054	20,191	—	1,463,245
FSS cost of sales (exclusive of depreciation and amortization(f))	—	146,326(f)	146,326	—	—	146,326
Research and development	56,451	—	56,451	6,515	—	62,966
General and administrative	60,106	16,166(g)	76,272	5,573	—	81,845
Sales and marketing	—	—	—	18,555	—	18,555
Depreciation and amortization	6,032	231,823(h)	237,855	—	48,132(q)	285,987
<b>Total costs and expenses</b>	<b>1,562,767</b>	<b>397,191</b>	<b>1,959,958</b>	<b>50,834</b>	<b>48,132</b>	<b>2,058,924</b>
Operating income (loss)	(37,447)	128,693	91,246	(21,779)	(48,132)	21,335
<b>Other Income (Expense):</b>						
Interest income	831	52,259(i)	53,090	1,478	—	54,568
Interest expense, net of amounts capitalized	(1,059)	(36,677)(j)	(37,736)	(512)	—	(38,248)
Other	6,588	(2,160)	4,428	(45)	—	4,383
<b>Total other income (expense)</b>	<b>6,360</b>	<b>13,422</b>	<b>19,782</b>	<b>921</b>	<b>—</b>	<b>20,703</b>
Income (loss) before income taxes	(31,087)	142,115	111,028	(20,858)	(48,132)	42,038
Income tax (provision) benefit, net	(3,075)	53,616(k)	50,541	(74)	12,330(l)	62,797
<b>Net income (loss)</b>	<b>\$ (34,162)</b>	<b>\$ 195,731</b>	<b>\$ 161,569</b>	<b>\$ (20,932)</b>	<b>\$ (35,802)</b>	<b>\$ 104,835</b>
<b>Pro forma earnings per share:</b>						
Basic(m)						\$ 1.17
Diluted(m)						\$ 1.16
<b>Pro forma shares outstanding:</b>						
Basic(m)						89,699
Diluted(m)						90,056

See accompanying notes.

**ECHOSTAR HOLDING CORPORATION**  
**UNAUDITED PRO FORMA COMBINED AND ADJUSTED STATEMENTS OF OPERATIONS**

	For the Nine Months Ended September 30, 2007					
	EHC Historical	Pro Forma Spin Adjustments	EHC Pro Forma	Sling Media Historical	Pro Forma Acquisition Adjustments	Pro Forma Combined and Adjusted
	(In thousands)					
<b>Revenue:</b>						
Equipment and other sales — ECC	\$ 1,019,729	\$ 135,720(a)	\$ 1,155,449	\$ —	\$ —	\$ 1,155,449
Equipment sales	163,039	—	163,039	21,233	—	184,272
FSS — ECC	—	227,619(b)	227,619	—	—	227,619
FSS — other	—	14,871(c)	14,871	—	—	14,871
Other — ECC	—	10,170(d)	10,170	—	—	10,170
<b>Total revenue</b>	<b>1,182,768</b>	<b>388,380</b>	<b>1,571,148</b>	<b>21,233</b>	<b>—</b>	<b>1,592,381</b>
<b>Costs and Expenses:</b>						
Cost of equipment and other sales	1,121,067	2,010(e)	1,123,077	15,408	—	1,138,485
FSS cost of sales (exclusive of depreciation and amortization(f))	—	109,051(f)	109,051	—	—	109,051
Research and development	40,634	—	40,634	13,078	—	53,712
General and administrative	56,844	13,491(g)	70,335	3,932	—	74,267
Sales and marketing	—	—	—	19,695	—	19,695
Depreciation and amortization	4,391	171,009(h)	175,400	—	36,099(q)	211,499
<b>Total costs and expenses</b>	<b>1,222,936</b>	<b>295,561</b>	<b>1,518,497</b>	<b>52,113</b>	<b>36,099</b>	<b>1,606,709</b>
Operating income (loss)	(40,168)	92,819	52,651	(30,880)	(36,099)	(14,328)
<b>Other Income (Expense):</b>						
Interest income	2,861	42,981(i)	45,842	378	—	46,220
Interest expense, net of amounts capitalized	(785)	(25,557)(j)	(26,342)	—	—	(26,342)
Other	782	(38)	744	(493)	—	251
<b>Total other income (expense)</b>	<b>2,858</b>	<b>17,386</b>	<b>20,244</b>	<b>(115)</b>	<b>—</b>	<b>20,129</b>
Income (loss) before income taxes	(37,310)	110,205	72,895	(30,995)	(36,099)	5,801
Income tax (provision) benefit, net	(2,633)	(26,294)(k)	(28,927)	(103)	13,933(l)	(15,097)
Net income (loss)	<u>\$ (39,943)</u>	<u>\$ 83,911</u>	<u>\$ 43,968</u>	<u>\$ (31,098)</u>	<u>\$ (22,166)</u>	<u>\$ (9,296)</u>
<b>Pro forma earnings per share:</b>						
Basic(m)						\$ (0.10)
Diluted(m)						\$ (0.10)
<b>Pro forma shares outstanding:</b>						
Basic(m)						89,699
Diluted(m)						90,056

See accompanying notes.

**ECHOSTAR HOLDING CORPORATION**  
**UNAUDITED PRO FORMA COMBINED AND ADJUSTED BALANCE SHEET**

As of September 30, 2007

	EHC Historical	Net Assets to be Contributed	EHC Historical Combined	Pro Forma Spin Adjustments	EHC Pro Forma Adjusted	Sling Media Historical	Pro Forma Acquisition Adjustments	EHC Pro Forma Combined and Adjusted
(In thousands, except for per share amounts)								
<b>ASSETS</b>								
<i>Current Assets:</i>								
Cash and cash equivalents	\$ 33,734	\$ 1,000,000	\$ 1,033,734	\$ —	\$ 1,033,734	\$ 7,763	\$ —	\$ 1,041,497
Marketable investment securities	497,019	—	497,019	—	497,019	—	—	497,019
Trade accounts receivable, net of allowance for doubtful accounts	38,511	2,692	41,203	—	41,203	7,276	—	48,479
Inventories, net	13,055	—	13,055	—	13,055	6,446	—	19,501
Current deferred tax assets	—	4,816	4,816	1,146(n)	5,962	—	7,202(l)	13,164
Other current assets	10,215	6,025	16,240	—	16,240	2,107	—	18,347
<b>Total current assets</b>	<b>592,534</b>	<b>1,013,533</b>	<b>1,606,067</b>	<b>1,146</b>	<b>1,607,213</b>	<b>23,592</b>	<b>7,202</b>	<b>1,638,007</b>
Restricted cash and marketable investment securities	—	3,150	3,150	—	3,150	400	—	3,550
Property and equipment, net	187,217	1,281,682	1,468,899	—	1,468,899	3,877	—	1,472,776
FCC authorizations	42,873	83,121	125,994	—	125,994	—	—	125,994
Intangible assets, net	11,037	147,374	158,411	—	158,411	2,597	328,174(q)	489,182
Investments in affiliates	81,391	—	81,391	—	81,391	—	—	81,391
Other noncurrent assets, net	4,572	21,254	25,826	—	25,826	728	—	26,554
<b>Total assets</b>	<b>\$ 919,624</b>	<b>\$ 2,550,114</b>	<b>\$ 3,469,738</b>	<b>\$ 1,146</b>	<b>\$ 3,470,884</b>	<b>\$ 31,194</b>	<b>\$ 335,376</b>	<b>\$ 3,837,454</b>
<b>LIABILITIES AND OWNER'S EQUITY (DEFICIT)</b>								
<i>Current Liabilities:</i>								
Trade accounts payable	\$ 31,384	\$ —	\$ 31,384	\$ (28,566)	\$ 2,818	\$ 3,643	\$ —	\$ 6,461
Accrued expenses	24,171	14,535	38,706	(10,932)	27,774	5,304	—	33,078
Current portion of long-term debt	—	38,167	38,167	—	38,167	1,380	—	39,547
<b>Total current liabilities</b>	<b>55,555</b>	<b>52,702</b>	<b>108,257</b>	<b>(39,498)</b>	<b>68,759</b>	<b>10,327</b>	<b>—</b>	<b>79,086</b>
<i>Long-term obligations, net of current portion:</i>								
Long-term debt	—	349,590	349,590	—	349,590	—	—	349,590
Deferred tax liabilities	301	237,079	237,380	(58,467)(n)	178,913	—	(19,061)(l)	159,852
Other long-term liabilities	—	—	—	—	—	6,701	—	6,701
<b>Total long-term obligations, net of current portion</b>	<b>301</b>	<b>586,669</b>	<b>586,970</b>	<b>(58,467)</b>	<b>528,503</b>	<b>6,701</b>	<b>(19,061)</b>	<b>516,143</b>
<b>Total liabilities</b>	<b>55,856</b>	<b>639,371</b>	<b>695,227</b>	<b>(97,965)</b>	<b>597,262</b>	<b>17,028</b>	<b>(19,061)</b>	<b>595,229</b>

**ECHOSTAR HOLDING CORPORATION**  
**UNAUDITED PRO FORMA COMBINED AND ADJUSTED BALANCE SHEET — (Continued)**

	As of September 30, 2007							
	EHC Historical	Net Assets to be Contributed	EHC Historical Combined	Pro Forma Spin Adjustments	EHC Pro Forma Adjusted	Sling Media Historical	Pro Forma Acquisition Adjustments	EHC Pro Forma Combined and Adjusted
	(In thousands, except for per share amounts)							
<i>Net investment in EHC (Owner's Equity (Deficit)):</i>								
Convertible Series A Preferred Stock of Sling Media \$.0001 par value, 8,400,000 shares authorized, 7,759,082 shares issued and outstanding	—	—	—	—	—	1	(1)(c)	—
Convertible Series B Preferred Stock of Sling Media \$.0001 par value, 7,930,000 shares authorized, 7,694,271 shares issued and outstanding	—	—	—	—	—	1	(1)(c)	—
Sling Media common stock, warrants and additional paid-in capital	—	—	—	—	—	70,832	(70,832)(c)	—
Preferred Stock of EHC, \$.001 par value, 20,000,000 shares authorized	—	—	—	—	—	—	—	—
EHC Class A common stock, \$.001 par value, 1,600,000,000 shares authorized	—	—	—	42(o)	42	—	—	42
EHC Class B common stock, \$.001 par value, 800,000,000 shares authorized	—	—	—	48(o)	48	—	—	48
Accumulated other comprehensive income (loss)	103,863	—	103,863	—	103,863	95	(95)(c)	103,863
Owner's net investment	759,905	—	759,905	2,009,764(p)	2,769,669	(56,763)	56,763(c)	3,138,272
							342,340(q)	
							26,263(0)	
Net assets to be contributed	—	1,910,743	1,910,743	(1,910,743)(p)	—	—	—	—
<b>Total net investment in EHC (Owner's equity)</b>	<b>863,768</b>	<b>1,910,743</b>	<b>2,774,511</b>	<b>99,111</b>	<b>2,873,622</b>	<b>14,166</b>	<b>354,437</b>	<b>3,242,225</b>
<b>Total liabilities and net investment in EHC (Owner's equity)</b>	<b>\$ 919,624</b>	<b>\$ 2,550,114</b>	<b>\$ 3,469,738</b>	<b>\$ 1,146</b>	<b>\$ 3,470,884</b>	<b>\$ 31,194</b>	<b>\$ 335,376</b>	<b>\$ 3,837,454</b>

See accompanying notes.

**ECHOSTAR HOLDING CORPORATION**  
**NOTES TO UNAUDITED PRO FORMA COMBINED FINANCIAL DATA**

**Adjustments to Pro Forma Combined Statements of Operations:**

The pro forma adjustments for the spin-off represent the estimated incremental revenue and expenses of EHC associated with operating as a stand-alone company, primarily consisting of the results of operations and other expenses, including depreciation expenses, associated with the net assets contributed to us by ECC to primarily be used in our fixed satellite services business and our commercial agreements with ECC (see "Certain Intercompany Agreements").

- (a) Represents incremental revenue on equipment sales to ECC at cost plus an agreed upon margin, which we believe to be fair market value pricing.
- (b) Represents revenue for sales of services to ECC related to the satellites, uplink and satellite transmission assets to be contributed to us by ECC, including uplink, telemetry, tracking and control, and professional engineering services, which we believe to be fair market value pricing.
- (c) Represents revenue for sales of services to third-parties related to the satellites, uplink and satellite transmission assets to be contributed to us by ECC.
- (d) Primarily represents rental revenue related to buildings contributed to us by ECC, and leased back to ECC.
- (e) Represents incremental cost of sales related to the purchase of remanufactured receivers from ECC, which are resold to third parties, pursuant to our receiver agreement with ECC.
- (f) Represents cost of sales related to services sold to ECC and other third-parties related to the satellites, uplink and satellite transmission assets to be contributed to us by ECC, including satellite leasing, uplink, telemetry, tracking and control services. These amounts are exclusive of depreciation and amortization expense.

Depreciation and amortization expense consists of the following:

	For the Nine Months Ended September 30, 2007	For the Year Ended December 31, 2006
	(In thousands)	
Satellites	\$ 104,451	\$ 139,427
Furniture, fixtures, equipment and other	52,818	75,240
Identifiable intangible assets subject to amortization	14,311	18,781
Buildings and improvements	3,820	4,407
<b>Total depreciation and amortization</b>	<b>\$ 175,400</b>	<b>\$ 237,855</b>

- (g) Represents additional general and administrative expenses primarily related to corporate overhead expenses and related employee benefits charged to us by ECC.
- (h) Represents additional depreciation and amortization expense primarily associated with the satellites, uplink and satellite transmission assets and certain other real estate assets to be contributed to us by ECC.
- (i) Represents interest income primarily related to the \$1.0 billion of cash to be contributed to us by ECC.
- (j) Primarily represents the reversal of interest expense for a note payable to ECC that will be contributed to us as capital by ECC.
- (k) Represents the tax effect of pro forma adjustments using our blended Federal, state and international statutory tax rate adjusted for permanent differences and the release of our valuation

**ECHOSTAR HOLDING CORPORATION**  
**NOTES TO UNAUDITED PRO FORMA COMBINED FINANCIAL DATA — (Continued)**

allowance of \$93.8 million in 2006. The release of the valuation allowance based on our commercial agreements with ECC, which, together with existing third-party contracts, are expected to result in EHC having taxable income for the foreseeable future. As a result, we expect to use all of our federal net operating losses before they expire. Additionally, we expect sufficient capital gains to offset any realized capital losses within the statutory period as related to the impairments included in the deferred tax assets.

The pro forma adjustments for the acquisition of Sling Media are as follows:

(l) Represents the reversal of Sling Media's deferred tax asset valuation allowance. The release of the valuation allowance based on our commercial agreements with ECC, which, together with existing third-party contracts, are expected to result in EHC having taxable income for the foreseeable future. As a result, we expect to use all of our federal net operating losses before they expire, including those attributable to Sling Media.

(m) The calculation of pro forma basic earnings per share and shares outstanding is based on the number of shares of ECC common stock outstanding as of November 30, 2007 adjusted for the distribution ratio of one share of EHC common stock for every five shares of ECC common stock. The calculation of pro forma diluted earnings per share and shares outstanding for the periods presented is based on the number of shares of ECC common stock outstanding as of November 30, 2007 and diluted shares of common stock outstanding as of November 30, 2007 adjusted for the same distribution ratio. This calculation may not be indicative of the dilutive effect that will actually result from the replacement of ECC stock-based awards held by our employees and employees of ECC or the grant of new stock-based awards. The actual number of dilutive shares of our common stock that will result from ECC stock options and restricted stock units held by our employees will not be determined until immediately after the spin-off.

**Adjustments to Pro Forma Combined Balance Sheet:**

Further information regarding the Net Assets to be Contributed can be found in the audited Statement of Net Assets included in this information statement.

The pro forma balance sheet adjustments for the spin-off represent the following:

(n) Represents the tax effect of pro forma adjustments using our pro forma blended Federal and state statutory tax rate, the reduction of net operating losses and credits not transferred to EHC as part of the transaction and the release of our valuation allowance. The release of the valuation allowance based on our commercial agreements with ECC, which, together with existing third-party contracts, are expected to result in EHC having taxable income for the foreseeable future. As a result, we expect to use all of our federal net operating losses before they expire. Additionally, we expect sufficient capital gains to offset any realized capital losses within the statutory period as related to the impairments included in the deferred tax assets.

(o) The distribution of approximately 89.7 million shares of our common stock to holders of ECC common stock.

(p) Represents the elimination of ECC's net investment in us and the contribution of \$1.0 billion of cash and other net assets by ECC to us.



**ECHOSTAR HOLDING CORPORATION**  
**NOTES TO UNAUDITED PRO FORMA COMBINED FINANCIAL DATA — (Continued)**

The pro forma adjustments for the acquisition of Sling Media are as follows:

(q) Based on information currently available, the purchase price (including cash paid and estimated transaction costs to us) has been preliminarily allocated as follows (in thousands):

Cash	\$ 341,715
Estimated transaction costs	625
Total purchase price	<u>342,340</u>
Less: Sling Media net assets	(14,166)
Preliminary excess purchase price over book value of net assets acquired	<u>\$ 328,174</u>

We have not yet completed an analysis of the estimated fair value of Sling Media in order to determine a preliminary allocation of the purchase price to the net assets to be acquired. The final appraisal and purchase price allocation is expected to be finalized within one year after the October 19, 2007 acquisition date. Accordingly, the excess of the purchase price over the carrying value of Sling Media's net assets has been presented as an adjustment to total intangible assets in the accompanying unaudited pro forma combined and adjusted balance sheet. For purposes of the unaudited pro forma financial statements, we have estimated that approximately 44% of the excess of the purchase price over the carrying value of Sling Media's net assets will be allocated to intangible assets with a weighted-average composite life of approximately 3 years. We have also estimated that approximately 56% of the excess of the purchase price over the carrying value of Sling Media's net assets will be allocated to goodwill, which has an indefinite life. In the event that final appraisals determine that other material amortizable intangibles exist, actual annual amortization could be substantially higher than amounts presented in the unaudited pro forma combined and adjusted statements of operations.

(r) Adjustment to reflect elimination of Sling Media's historical stockholders' equity.

**MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND  
RESULTS OF OPERATIONS**

*You should read the following discussion of our financial condition and results of operations together with the audited and unaudited combined financial statements and notes to the financial statements included elsewhere in this information statement. This discussion contains forward-looking statements that involve risks and uncertainties. The forward-looking statements are not historical facts, but rather are based on current expectations, estimates, assumptions and projections about our industry, business and future financial results. Our actual results could differ materially from the results contemplated by these forward-looking statements due to a number of factors, including those discussed in the sections of this information statement entitled "Risk Factors" and "Cautionary Statement Concerning Forward-Looking Statements" and other sections in this information statement. To facilitate your understanding of our financial performance we also discuss certain pro forma financial data in this section. Our pro forma financial information is set out in more detail under the caption "Unaudited Pro Forma Combined and Adjusted Financial Information" elsewhere in this information statement.*

**Executive Overview**

***Business Summary***

In September 2007, the board of directors of ECC authorized management to pursue a plan to create two separate publicly-traded companies by spinning off certain of ECC's assets to its shareholders. The new company, which ECC has named EchoStar Holding Corporation, principally consists of the technology and certain infrastructure assets of ECC, including ECC's historical set-top box business and certain of ECC's satellites.

Our historical revenue was \$1.183 billion, \$1.525 billion, \$1.514 billion and \$1.720 billion during the nine months ended September 30, 2007 and during 2006, 2005 and 2004, respectively. Historically, ECC and one third party customer, Bell ExpressVu, have accounted for a significant portion of our revenue. ECC accounted for approximately 86.2%, 84.5%, 85.6% and 89.7% of our revenue during the nine months ended September 30, 2007 and during 2006, 2005 and 2004, respectively. Bell ExpressVu accounted for approximately 10.0%, 12.2%, 11.4% and 7.3% of our revenue during the nine months ended September 30, 2007 and during 2006, 2005 and 2004, respectively. Our historical net losses were \$39.9 million, \$34.2 million, \$44.9 million and \$43.2 million during the nine months ended September 30, 2007 and during 2006, 2005 and 2004, respectively.

As a consequence of the rapidly evolving nature of our business, and in light of the fact that we have historically sold set-top boxes to ECC at cost, period-to-period comparisons of revenue and income are not necessarily meaningful and should not be relied upon as indications of future performance. Following the spin-off, we will sell set-top boxes to ECC at cost plus an agreed upon margin. As a result, we expect that our revenues and net income will improve over those reflected in our financial statements for our historical periods. See "Unaudited Pro Forma Combined and Financial Information."

We expect performance in international markets to be a significant factor contributing to our ability to generate revenue and income growth in future periods. However, there can be no assurance that we will be able to sustain or grow our international business. A substantial majority of our international revenue during the nine months ended September 30, 2007 and the year ended December 31, 2006, respectively, was attributable to sales of set-top boxes that we made to Bell ExpressVu. We can not assure that we will continue to make sales to Bell ExpressVu at historical levels, or at all.

***Challenges***

In 2005 and 2006, sales of our set-top boxes declined. Growth and maintenance of our revenue will depend on our ability to attract new customers and on additional sales to existing customers, including ECC and Bell ExpressVu. The growth and maintenance of our revenue will also depend on our ability to introduce, and the

market acceptance of, new set-top boxes that we develop, as well as our ability to penetrate the market for fixed satellite services.

The number of potential new customers for our set-top boxes and fixed satellite services is small, and we expect our current customer concentration will therefore continue for the foreseeable future. Our operating results will consequently likely continue to depend on sales to a relatively small number of customers and on the continued success of these customers relative to their competitors. If we do not develop relationships with new customers, we may not be able to expand our customer base and our ability to increase or even maintain our revenue will be impacted.

In addition, unfavorable events in the economy, including the current downturn in real estate mortgage and credit markets, could cause consumer demand for our set-top boxes to materially decline because consumers may delay purchasing decisions or change or reduce their discretionary spending.

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

We currently have substantial unused satellite capacity. Future costs associated with this excess capacity will negatively impact our margins if we do not generate revenue to offset these costs. In addition, because a substantial portion of the capacity of each of our AMC-15, AMC-16 and EchoStar IX satellites remains unused, there is a significant risk that in the future, in addition to reporting lower than expected revenues and profitability, we will be required to record a substantial impairment charge relating to one or more of these satellites. We currently estimate that these potential charges could aggregate up to \$250 million, which, if incurred would have a material adverse effect on our reported operating results and financial position. Furthermore, it is possible that in 2008 ECC will discontinue the use of some or all of the capacity on one or more other satellites that it will initially lease from us. To the extent that this occurs and we are unable to find other customers to lease this additional anticipated excess capacity, we may be required to record substantial impairment charges that we currently estimate could aggregate up to \$100 million.

Our businesses change rapidly as new technologies are developed. These new technologies may cause our services and products to become obsolete. Changes in existing technologies could also cause demand for our products and services to decline. For example, if changes in technology allow digital television subscribers to use devices such as personal computers, cable ready televisions and network-based digital video recording services in place of set-top boxes, our customers may not need to purchase our set-top boxes to provide their digital television subscribers with digital video recording and other set-top box features. One or more new technologies also could be introduced that compete favorably with our set-top boxes or that cause our set-top boxes to be less attractive to our customers.

#### **Basis of Presentation**

The combined financial statements, which are discussed below, reflect the historical financial position, results of operations and cash flows of the entities included in the consolidated financial statements and accounting records of ECC, principally representing the set-top box business, using the historical results of operations and the historical bases of assets and liabilities of this segment.

The historical combined financial statements reflect sales of set-top boxes and related components to ECC at cost. Our historical combined financial statements do not include certain satellites, uplink and satellite transmission assets, real estate and other assets and related liabilities that will be contributed to us by ECC in the spin-off. These assets and liabilities, which will primarily comprise our fixed satellite services business, have been separately audited and are included in the Statement of Net Assets to be Contributed by ECC and Unaudited Pro Forma Combined and Adjusted Financial Information included herein. Our historical financial

data also does not include financial information of Sling Media, Inc., which was recently acquired by ECC and will be contributed to us in the spin-off. Sling Media's audited consolidated financial statements are included elsewhere in this information statement, and its historical financial information also has been included in our Unaudited Pro Forma Combined and Adjusted Financial Information. We have prepared unaudited pro forma combined financial statements to make adjustments for and give effect to the spin-off. See "Unaudited Pro Forma Combined and Adjusted Financial Information" above.

In addition, the combined statements of operations include expense allocations for certain corporate functions historically provided to us by ECC, including, among other things, treasury, tax, accounting and reporting, risk management, legal, internal audit, human resources, investor relations and information technology. In certain cases, these allocations were made on a specific identification basis. Otherwise, the expenses related to services provided to us by ECC were allocated to us based on the relative percentages, as compared to ECC's other businesses, of headcount or other appropriate methods depending on the nature of each item of cost to be allocated. Pursuant to transition services agreements we will enter into with ECC prior to the spin-off, ECC will continue to provide us with certain of these services at prices agreed upon by ECC and us for a period of two years from the date of the spin-off at cost plus an agreed upon margin, which is believed to be fair market value pricing. We will arrange to procure other services pursuant to arrangements with third parties. See "Certain Intercompany Agreements" for a description of the transition services agreements. The costs historically allocated to us by ECC may not be indicative of the costs that we will incur following the spin-off, nor are they necessarily indicative of costs that we will be charged or incur in the future. Following the spin-off, we will perform these functions using our own resources or purchased services, however, for an interim period, some of these functions will continue to be provided by ECC under the transition services agreement. In addition to the transition services agreement, we will enter into a number of commercial agreements with ECC in connection with the spin-off, many of which are expected to have terms longer than one year. See "Certain Intercompany Agreements."

We will incur increased costs as a result of becoming an independent publicly traded company, primarily from audit fees paid to our independent public accounting firm, Public Company Accounting Oversight Board fees, Nasdaq listing fees, legal fees and stockholder communications fees. We will also bear directly the costs of certain services currently provided to us by ECC, which may be higher than the allocated cost to us as described above.

We believe the assumptions underlying the combined financial statements are reasonable. However, for the reasons discussed above, the combined financial statements included herein will not reflect our future results of operations, financial position and cash flows or reflect what our results of operations, financial position and cash flows would have been had we been a separate, stand-alone company during the periods presented.

#### **Introduction**

Management's discussion and analysis, or "MD&A," of our results of operations and financial condition is provided as a supplement to the audited annual financial statements and unaudited interim financial statements and footnotes thereto included elsewhere herein to help provide an understanding of our financial condition, changes in financial condition and results of our operations. The information included in MD&A should be read in conjunction with the annual and interim financial statements.

#### **Explanation of Key Metrics and Other Items.**

*Equipment and other sales — ECC.* "Equipment and other sales — ECC" primarily includes sales of set-top boxes and related components to ECC at cost as discussed in "Basis of Presentation" above and other services provided to ECC.

*Equipment sales.* "Equipment sales" primarily includes sales of set-top boxes and related components to Bell ExpressVu and other international customers.

*Cost of equipment and other sales.* "Cost of equipment and other sales" principally includes costs associated with set-top boxes and related components sold to ECC, Bell ExpressVu and to other international customers.

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

*General and administrative expenses.* “General and administrative expenses” consists primarily of all other employee-related costs associated with administrative services such as legal, information systems and accounting and finance, including non-cash, stock-based compensation expense directly incurred by us. It also includes outside professional fees (i.e. legal, information systems and accounting services) and other items associated with facilities and administration. In addition, “General and administrative expenses” includes administrative support services, as discussed above, provided by ECC and charged to us as discussed in “Basis of Presentation” above.

*“Other” income (expense).* The main components of “Other” income and expense are gains and losses realized on the sale of investments, equity in earnings and losses of our affiliates, and impairment of marketable and non-marketable investment securities.

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

*Free cash flow.* We define free cash flow as “Net cash flows from operating activities” less “Purchases of property and equipment,” as shown on our Combined Statements of Cash Flows.

**Results of Operations**

The following discussion of combined results of operations refers to the nine months ended September 30, 2007 compared to the same period in 2006, the year ended December 31, 2006 compared to the same period in 2005, and the year ended December 31, 2005 compared to the same period in 2004.

*Nine Months Ended September 30, 2007 Compared to the Nine Months Ended September 30, 2006 (in thousands):*

	For the Nine Months Ended September 30,		Variance	
	2007 (Unaudited)	2006	Amount	%
<b>Revenue:</b>				
Equipment and other sales — ECC	\$ 1,019,729	\$ 948,683	\$ 71,046	7.5
Equipment sales	163,039	184,216	(21,177)	(11.5)
Total revenue	\$ 1,182,768	\$ 1,132,899	\$ 49,869	4.4
<b>Costs and Expenses:</b>				
Cost of equipment and other sales	1,121,067	1,065,216	55,851	5.2
<b>% of Total revenue</b>	<b>94.8%</b>	<b>94.0%</b>		
Research and development	40,634	39,093	1,541	3.9
<b>% of Total revenue</b>	<b>3.4%</b>	<b>3.5%</b>		
General and administrative	56,844	43,973	12,871	29.3
<b>% of Total revenue</b>	<b>4.8%</b>	<b>3.9%</b>		
Depreciation and amortization	4,391	4,593	(202)	(4.4)
Total costs and expenses	1,222,936	1,152,875	70,061	6.1
Operating income (loss)	(40,168)	(19,976)	(20,192)	N/M
<b>Other Income (Expense):</b>				
Interest income	2,861	568	2,293	N/M
Interest expense, net of amounts capitalized	(785)	(785)	—	—
Other	782	188	594	N/M
Total other income (expense)	2,858	(29)	2,887	N/M
Income (loss) before income taxes	(37,310)	(20,005)	(17,305)	(86.5)
Income tax (provision) benefit, net	(2,633)	(481)	(2,152)	N/M
<b>Effective tax rate</b>	<b>7.1%</b>	<b>2.4%</b>		
Net income (loss)	\$ (39,943)	\$ (20,486)	\$ (19,457)	(95.0)
<b>Other Data:</b>				
EBITDA	\$ (34,995)	\$ (15,195)	\$ (19,800)	N/M

*Equipment and other sales — ECC.* For the nine months ended September 30, 2007, revenue from “Equipment and other sales — ECC” totaled \$1.020 billion, an increase of \$71.0 million or 7.5% compared to the same period during 2006. This change resulted from an increase in sales of set-top boxes and related components to ECC, and an increase in the average sales price per unit. As discussed in Note 2 in the Notes to Combined Financial Statements of EchoStar Holding Corporation, set-top boxes and related components were historically sold to ECC at cost.

In the near term, we expect ECC to remain the primary customer of our set-top box business and the primary source of our total revenue. Pursuant to the commercial agreements we will enter into with ECC prior to the spin-off, we will continue to be obligated to sell set-top boxes to ECC at cost plus an agreed upon margin.

which is believed to be fair market value pricing, for a period of two years from the date of the spin-off, although ECC will have no obligations to purchase set-top boxes from us during or after this two year period.

*Equipment sales.* For the nine months ended September 30, 2007, "Equipment sales" totaled \$163.0 million, a decrease of \$21.2 million or 11.5% compared to the same period during 2006. This decrease principally resulted from a decline in sales of set-top boxes and related components to international customers.

While we currently have certain binding purchase orders from Bell ExpressVu through the beginning of 2008, the availability of new compression technology could impact our relationship with Bell ExpressVu, depending on its strategy to upgrade customers. There can be no assurance that Bell ExpressVu will continue to purchase set-top boxes from us.

*Cost of equipment and other sales.* "Cost of equipment and other sales" totaled \$1.121 billion during the nine months ended September 30, 2007, an increase of \$55.9 million or 5.2% compared to the same period in 2006. This change resulted from an increase in sales of set-top boxes and related components to ECC, partially offset by a decline in the sale of set-top boxes and related components to international customers. As discussed above, set-top boxes and related components were historically sold to ECC at cost. "Cost of equipment and other sales" represented 94.8% and 94.0% of "Total revenue" during the nine months ended September 30, 2007 and 2006, respectively. The increase in the expense to revenue ratio principally related to an increase from 2006 to 2007 in the relative percentage of equipment sales to ECC at cost versus sales to international customers. Additionally, this was partially offset by an increase in margins on sales of set-top boxes and related components sold to international customers.

*General and administrative expenses.* "General and administrative expenses" totaled \$56.8 million during the nine months ended September 30, 2007, an increase of \$12.9 million or 29.3% compared to the same period in 2006. This increase was primarily attributable to increased personnel and related costs, including non-cash, stock-based compensation expense, and increased administrative support from ECC. "General and administrative expenses" represented 4.8% and 3.9% of "Total revenue" during the nine months ended September 30, 2007 and 2006, respectively. The increase in the ratio of those expenses to "Total revenue" was primarily attributable to the increases in "General and administrative expenses" discussed above.

*Earnings before interest, taxes, depreciation and amortization.* EBITDA was negative \$35.0 million during the nine months ended September 30, 2007, a decrease of \$19.8 million compared to the same period in 2006. The following table reconciles EBITDA to the accompanying financial statements.

	For the Nine Months Ended September 30,	
	2007	2006
	(In thousands)	
EBITDA	\$ (34,995)	\$ (15,195)
Less:		
Interest expense, net	(2,076)	217
Income tax provision, net	2,633	481
Depreciation and amortization	4,391	4,593
Net income (loss)	<u>\$ (39,943)</u>	<u>\$ (20,486)</u>

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

EBITDA is used by our management as a measure of operating efficiency and overall financial performance for benchmarking against our peers and competitors. Management believes EBITDA provides meaningful supplemental information regarding liquidity and the underlying operating performance of our business.

Management also believes that EBITDA is useful to investors because it is frequently used by securities analysts, investors and other interested parties to evaluate companies in the digital set top box industry.

*Income tax (provision) benefit, net.* Our income tax policy is to record the estimated future tax effects of temporary differences between the tax bases of assets and liabilities and amounts reported in our accompanying combined balance sheets, as well as operating loss and tax credit carryforwards. We follow the guidelines set forth in Statement of Financial Accounting Standards No. 109, "Accounting for Income Taxes," or SFAS 109, regarding the recoverability of any tax assets recorded on the balance sheet and provide any necessary allowances as required. Determining necessary allowances requires us to make assessments about the timing of future events, including the probability of expected future taxable income and available tax planning opportunities. We currently have an approximate \$67.8 million valuation allowance recorded as an offset against all of our net deferred tax assets. In accordance with SFAS 109, we have evaluated our need for a valuation allowance based on historical evidence, including trends. All or a portion of the current valuation allowance is expected to be reversed on the effective date of the spin-off since we are expected to realize sufficient profit to utilize our deferred tax benefits as a result of the commercial and transitional agreements with ECC.

*Net income (loss).* Net loss was \$39.9 million during the nine months ended September 30, 2007, an increase in net loss of \$19.5 million compared to the same period in 2006. The increase in losses was primarily attributable to the changes in revenue and expenses discussed above.



Year Ended December 31, 2006 Compared to the Year Ended December 31, 2005 (in thousands):

	For the Years Ended December 31,		Variance	
	2006	2005	Amount	%
<b>Revenue:</b>				
Equipment and other sales — ECC	\$ 1,288,691	\$ 1,295,861	\$ (7,170)	(0.6)
Equipment sales	236,629	217,830	18,799	8.6
Total revenue	1,525,320	1,513,691	11,629	0.8
<b>Costs and Expenses:</b>				
Cost of equipment and other sales	1,440,178	1,438,629	1,549	0.1
<b>% of Total revenue</b>	<b>94.4%</b>	<b>95.0%</b>		
Research and development	56,451	45,928	10,523	22.9
<b>% of Total revenue</b>	<b>3.7%</b>	<b>3.0%</b>		
General and administrative	60,106	56,366	3,740	6.6
<b>% of Total revenue</b>	<b>3.9%</b>	<b>3.7%</b>		
Depreciation and amortization	6,032	5,832	200	3.4
Total costs and expenses	1,562,767	1,546,755	16,012	1.0
Operating income (loss)	(37,447)	(33,064)	(4,383)	(13.3)
<b>Other Income (Expense):</b>				
Interest income	831	252	579	N/M
Interest expense, net of amounts capitalized	(1,059)	(1,088)	29	2.7
Other	6,588	(10,109)	16,697	N/M
Total other income (expense)	6,360	(10,945)	17,305	N/M
Income (loss) before income taxes	(31,087)	(44,009)	12,922	29.4
Income tax (provision) benefit, net	(3,075)	(931)	(2,144)	N/M
<b>Effective tax rate</b>	<b>9.9%</b>	<b>2.1%</b>		
Net income (loss)	\$ (34,162)	\$ (44,940)	\$ 10,778	24.0
<b>Other Data:</b>				
EBITDA	\$ (24,827)	\$ (37,341)	\$ 12,514	33.5

*Equipment and other sales — ECC.* For the year ended December 31, 2006, revenue from “Equipment and other sales — ECC” totaled \$1.289 billion, a decrease of \$7.2 million or 0.6% compared to the same period during 2005. This change resulted from a decline in sales of set-top boxes and related components to ECC, partially offset by an increase in the average sales price per set-top box as a result of increased sales of advanced products, such as receivers with multiple tuners, DVRs and HD receivers.

*Equipment sales.* For the year ended December 31, 2006, “Equipment sales” totaled \$236.6 million, an increase of \$18.8 million or 8.6% compared to the same period during 2005. This increase principally resulted from an increase in sales of set-top boxes and related components to international customers.

*Cost of equipment and other sales.* “Cost of equipment and other sales” totaled \$1.440 billion during the year ended December 31, 2006, an increase of \$1.5 million or 0.1% compared to the same period in 2005. This increase primarily resulted from an increase in the sale of set-top boxes and related components to international customers, partially offset by a decrease in sales to ECC. “Cost of equipment and other sales” represented 94.4% and 95.0% of “Total revenue” during the years ended December 31, 2006 and 2005, respectively. The decrease in the expense to revenue ratio principally related to an improvement in margins on sales to international customers. As previously discussed, set-top boxes and related components were historically sold to ECC at cost.

*Research and development expenses.* “Research and development expenses” totaled \$56.5 million during the year ended December 31, 2006, an increase of \$10.5 million or 22.9% compared to the same period in 2005. This increase was primarily attributable to increases in personnel costs and consulting fees. “Research and development expenses” represented 3.7% and 3.0% of “Total revenue” during the years ended December 31, 2006 and 2005, respectively. The increase in the ratio of those expenses to “Total revenue” was primarily attributable to an increase in expenses, discussed above.

*General and administrative expenses.* “General and administrative expenses” totaled \$60.1 million during the year ended December 31, 2006, an increase of \$3.7 million or 6.6% compared to 2005. This increase was primarily attributable to increased personnel and related costs including, among other things, non-cash, stock-based compensation expense recorded related to the adoption of SFAS 123R, outside professional fees, and administrative support from ECC. “General and administrative expenses” represented 3.9% and 3.7% of “Total revenue” during the years ended December 31, 2006 and 2005, respectively. The increase in the ratio of those expenses to “Total revenue” was primarily attributable to an increase in expenses, discussed above.

*Other.* “Other” income totaled \$6.6 million during the year ended December 31, 2006 compared to “Other” expense of \$10.1 million during 2005. The increase of \$16.7 million primarily resulted from a loss in 2005 related to a \$25.4 million charge to earnings for other than temporary declines in the fair value of an investment in the marketable common stock of a company in the home entertainment industry, partially offset by a \$16.9 million gain related to the conversion of certain bond instruments into common stock. The increase also includes larger gains from the sale of investments in 2006 as compared to 2005.

*Earnings before interest, taxes, depreciation and amortization.* EBITDA was negative \$24.8 million during the year ended December 31, 2006, an improvement of \$12.5 million compared to the same period in 2006. The following table reconciles EBITDA to the accompanying financial statements.

	For the Years Ended December 31,	
	2006	2005
	(In thousands)	
EBITDA	\$ (24,827)	\$ (37,341)
Less:		
Interest expense, net	228	836
Income tax provision, net	3,075	931
Depreciation and amortization	6,032	5,832
Net income (loss)	<u>\$ (34,162)</u>	<u>\$ (44,940)</u>

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

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

*Net income (loss).* Net loss was \$34.2 million during the year ended December 31, 2006, compared to a \$44.9 million loss in 2005. The larger loss was primarily attributable to the changes in revenue and expenses discussed above.

Year Ended December 31, 2005 Compared to the Year Ended December 31, 2004 (in thousands):

	For the Years Ended December 31,		Variance	
	2005	2004	Amount	%
<b>Revenue:</b>				
Equipment and other sales — ECC	\$ 1,295,861	\$ 1,543,513	\$ (247,652)	(16.0)
Equipment sales	217,830	176,578	41,252	23.4
Total revenue	1,513,691	1,720,091	(206,400)	(12.0)
<b>Costs and Expenses:</b>				
Cost of equipment and other sales	1,438,629	1,650,775	(212,146)	(12.9)
<b>% of Total revenue</b>	<b>95.0%</b>	<b>96.0%</b>		
Research and development	45,928	39,809	6,119	15.4
<b>% of Total revenue</b>	<b>3.0%</b>	<b>2.3%</b>		
General and administrative	56,366	65,059	(8,693)	(13.4)
<b>% of Total revenue</b>	<b>3.7%</b>	<b>3.8%</b>		
Depreciation and amortization	5,832	5,071	761	15.0
Total costs and expenses	1,546,755	1,760,714	(213,959)	(12.2)
Operating income (loss)	(33,064)	(40,623)	7,559	18.6
<b>Other Income (Expense):</b>				
Interest income	252	349	(97)	(27.8)
Interest expense, net of amounts capitalized	(1,088)	(1,123)	35	3.1
Other	(10,109)	(1,412)	(8,697)	N/M
Total other income (expense)	(10,945)	(2,186)	(8,759)	N/M
Income (loss) before income taxes	(44,009)	(42,809)	(1,200)	(2.8)
Income tax (provision) benefit, net	(931)	(428)	(503)	N/M
<b>Effective tax rate</b>	<b>2.1%</b>	<b>(1.0)%</b>		
Net income (loss)	\$ (44,940)	\$ (43,237)	\$ (1,703)	(3.9)
<b>Other Data:</b>				
EBITDA	\$ (37,341)	\$ (36,964)	\$ (377)	(1.0)

*Equipment and other sales — ECC.* For the year ended December 31, 2005, revenue from “Equipment and other sales — ECC” totaled \$1.296 billion, a decrease of \$247.7 million or 16.0% compared to the same period during 2004. This change resulted from a significant decline in sales of set-top boxes and related components to ECC, partially offset by an increase in the average sales price per set-top box as a result of increased sales of advanced products, such as receivers with multiple tuners, DVRs and HD receivers.

*Equipment sales.* For the year ended December 31, 2005, “Equipment and other sales” totaled \$217.8 million, an increase of \$41.3 million or 23.4% compared to the same period during 2004. This increase principally resulted from an increase in sales of set-top boxes and related components to international customers.

*Cost of equipment and other sales.* “Cost of equipment and other sales” totaled \$1.439 billion during the year ended December 31, 2005, a decrease of \$212.1 million or 12.9% compared to the same period in 2004. This change resulted from a decline in sales of set-top boxes and related components to ECC, partially offset by an increase in the sale of set-top boxes and related components to international customers. “Cost of equipment and other sales” represented 95.0% and 96.0% of “Total revenue” during the years ended December 31, 2005 and 2004, respectively. As previously discussed, set-top boxes and related components were historically sold to ECC at cost. The decrease in the expense to revenue ratio principally resulted from a

decrease from 2004 to 2005 in the relative percentage of equipment sales to ECC at cost versus sales to international customers.

*Research and development expenses.* “Research and development expenses” totaled \$45.9 million during the year ended December 31, 2005, an increase of \$6.1 million or 15.4% compared to the same period in 2004. This increase was primarily attributable to increases in personnel costs and consulting fees. “Research and development expenses” represented 3.0% and 2.3% of “Total revenue” during the years ended December 31, 2006 and 2005, respectively. The increase in the ratio of those expenses to “Total revenue” was primarily attributable to an increase in expenses, discussed above.

*General and administrative expenses.* “General and administrative expenses” totaled \$56.4 million during the year ended December 31, 2005, a decrease of \$8.7 million or 13.4% compared to 2004. The decrease in “General and administrative expenses” was primarily attributable to a decrease in administrative support from ECC, partially offset by an increase in personnel costs. “General and administrative expenses” represented 3.7% and 3.8% of “Total revenue” during the years ended December 31, 2005 and 2004, respectively.

*Other.* “Other” expense totaled \$10.1 million during the year ended December 31, 2005 compared to \$1.4 million during 2004. The decrease in income of \$8.7 million primarily resulted from a loss in 2005 related to a \$25.4 million charge to earnings for other than temporary declines in the fair value of an investment in the marketable common stock of a company in the home entertainment industry, partially offset by a \$16.9 million gain related to the conversion of certain bond instruments into common stock.

*Earnings before interest, taxes, depreciation and amortization.* EBITDA was negative \$37.3 million during the year ended December 31, 2005, a decrease of \$0.4 million compared to the same period in 2004. The following table reconciles EBITDA to the accompanying financial statements.

	For the Years Ended December 31,	
	2005	2004
	(In thousands)	
EBITDA	\$ (37,341)	\$ (36,964)
Less:		
Interest expense, net	836	774
Income tax provision (benefit), net	931	428
Depreciation and amortization	5,832	5,071
Net income (loss)	<u>\$ (44,940)</u>	<u>\$ (43,237)</u>

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

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

*Net income (loss).* Net loss was \$44.9 million during the year ended December 31, 2005, compared to a \$43.2 million loss in 2004. The increase was primarily attributable to the changes in revenue and expenses discussed above.

### **Liquidity and Capital Resources**

As of September 30, 2007, our cash, cash equivalents and marketable investment securities totaled \$530.8 million, compared to \$323.6 million as of December 31, 2006. As discussed in Note 12 to our Combined Financial Statements, ECC has historically funded our working capital requirements. As of the effective date of the spin-off, this amount will be contributed to us as capital. In addition, in connection with the spin-off, ECC will distribute \$1.0 billion in cash to us. We intend to use this cash for, among other things, future working capital needs, satellite construction and strategic initiatives as necessary, and we may also repurchase shares of our Class A common stock pursuant to the authorization from our Board of Directors to repurchase up to \$1.0 billion of our Class A common stock

Following the spin-off, we expect that our future working capital and capital expenditure and debt service requirements will be satisfied primarily from existing cash and marketable investment securities, cash generated from operations and future financings. Our ability to generate positive future operating and net cash flows is dependent upon, among other things, our ability to retain existing customers and generate new business. There can be no assurance we will be successful in executing our business plan.

From time to time we evaluate opportunities for strategic investments or acquisitions that may complement our current services and products, enhance our technical capabilities, improve or sustain our competitive position, or otherwise offer growth opportunities. We may make investments in or partner with others to expand our business. Future material investments or acquisitions may require that we obtain additional capital, assume third party debt or other long-term obligations. There can be no assurance that we could raise all required capital or that required capital would be available on acceptable terms.

### **Capital Requirements**

We have incurred losses during each of the nine months ended September 30, 2007 and the years ended December 31, 2006, 2005 and 2004, including a net loss of \$39.9 million during the nine months ended September 30, 2007. These historical losses arose primarily as a result of the fact that we have historically sold set-top boxes to ECC at cost. We expect to have net income in future periods primarily because following the completion of the spin-off we will sell set-top boxes to ECC at cost plus an agreed upon margin. We anticipate that our current cash and cash equivalents, marketable securities, and cash from operations, will enable us to maintain our operations for a period of at least 12 months following the completion of the spin-off. However, our future capital requirements will be substantial and the level of these capital requirements will depend on many factors, certain of which may require us to consume available capital resources more rapidly than we currently anticipate. These factors include:

- Our levels of investment in infrastructure necessary to support our fixed satellite services business, other strategic initiatives, including strategic investments, and research and development related to our set-top box and related component business;
- the level of revenue that we receive from ECC and Bell ExpressVu;
- the level of purchases that we make pursuant to our stock buyback program of up to \$1.0 billion;
- the number of satellites leased or under construction at any point in time;
- whether we experience any significant satellite failures;
- the cost of any acquisitions of or investments in businesses, products and technologies;
- losses in connection with any acquisitions of or investments in businesses, products and technologies;
- the effect of competing technological and market developments;
- the effect of a general economic downturn;

- the filing, maintenance, prosecution, defense and enforcement of patent claims and other intellectual property rights; and
- the cost and timing of establishing or contracting for sales, marketing and distribution capabilities.

If our capital resources are insufficient to meet future capital requirements, we will have to raise additional funds. We have no experience as a separate entity in raising capital and we may be unable to raise sufficient additional capital when we need it, on favorable terms or at all. The sale of equity or convertible debt securities in the future may be dilutive to our shareholders, and debt-financing arrangements may require us to pledge certain assets and enter into covenants that would restrict certain business activities or our ability to incur further indebtedness and may contain other terms that are not favorable to our shareholders or us. If we are unable to obtain adequate funds on reasonable terms, we may be required to curtail operations significantly or obtain funds by entering into financing, supply or joint venture agreements on unattractive terms.

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

We consider all liquid investments purchased within 90 days of their maturity to be cash equivalents. See “— Quantitative and Qualitative Disclosures About Market Risk” for further discussion regarding our marketable investment securities. As of September 30, 2007, our cash, cash equivalents and marketable investment securities totaled \$530.8 million compared to \$323.6 million as of December 31, 2006.

The following discussion highlights our free cash flow and cash flow activities during the nine months ended September 30, 2007 and years ended December 31, 2006, 2005 and 2004.

#### ***Free Cash Flow***

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

During the nine months ended September 30, 2007 and years ended December 31, 2006, 2005 and 2004, free cash flow was significantly impacted by changes in operating assets and liabilities as shown in the “Net cash flows from operating activities” section of our Combined Statements of Cash Flows included herein. Operating asset and liability balances can fluctuate significantly from period to period and there can be no assurance that free cash flow will not be negatively impacted by material changes in operating assets and liabilities in future periods, since these changes depend upon, among other things, management’s timing of payments and control of inventory levels, and cash receipts. In addition to fluctuations resulting from changes in operating assets and liabilities, free cash flow can vary significantly from period to period depending upon, among other things, operating efficiencies, increases or decreases in purchases of property and equipment and other factors.

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

	For the Nine Months Ended September 30,		For the Years Ended December 31,		
	2007 (Unaudited)	2006	2006	2005	2004
Free cash flow	\$ (154,352)	\$ (23,366)	\$ (69,143)	\$ (18,443)	\$ (84,851)
Add back:					
Purchases of property and equipment	120,076	19,586	32,769	4,250	5,935
Net cash flows from operating activities	\$ (34,276)	\$ (3,780)	\$ (36,374)	\$ (14,193)	\$ (78,916)

Free cash flow was negative \$154.4 million and negative \$23.4 million for the nine months ended September 30, 2007 and 2006, respectively. Free cash flow was negative \$69.1 million, negative \$18.4 million and negative \$84.9 million for the years ended December 31, 2006, 2005 and 2004, respectively.

The decline in free cash flow during the nine months ended September 30, 2007 compared to the same period in 2006 of \$131.0 million resulted from an increase in “Purchases of property and equipment” of \$100.5 million primarily related to construction of the CMBStar satellite, discussed below, and a decrease in “Net cash flows from operating activities” of \$30.5 million principally attributable to an increase in net loss. CMBStar is scheduled to be completed during the second quarter of 2008. Based on the expected satellite obligations included in the schedule of obligations and future capital requirement, which includes CMBStar, we expect 2008 purchases of property and equipment to decrease from the 2007 levels.

The \$50.7 million decline in free cash flow during 2006 compared to 2005 resulted from an increase in “Purchases of property and equipment” of \$28.5 million primarily related to satellite construction and a decrease in “Net cash flows from operating activities” of \$22.2 million principally attributable to a decrease in cash resulting from changes in operating assets and liabilities and an increase in net loss.

The \$66.4 million improvement in free cash flow during 2005 compared to 2004 resulted from an increase in “Net cash flows from operating activities” of \$64.7 million and a decrease in “Purchases of property and equipment” of \$1.7 million. The increase in “Net cash flows from operating activities” was primarily attributable to an increase in cash resulting from changes in operating assets and liabilities, together with, a decline net loss.

Our future capital expenditures are likely to increase if we make additional investments in infrastructure necessary to support and expand our fixed satellite services business, if we increase the number of set-top boxes that we produce as a result of the expansion of our business because of improvements in the economy or otherwise, if we make additional investments in new businesses, products and technologies, and if we decide to purchase one or more additional satellites. Conversely, our future capital expenditures are likely to decrease if we are unable to successfully compete in the market for fixed satellite services, if we produce fewer set-top boxes as a result of a decrease in actual or anticipated set-top box revenues, and if we do not make material investments in new businesses, products and technology.

**Other Liquidity Items — Obligations and Future Capital Requirements**

**Contractual Obligations and Off-balance Sheet Arrangements — Historical**

In general, we do not engage in off-balance sheet financing activities. Our contractual obligations as of December 31, 2006 are summarized as follows:

	Total	2007	Payments Due by Period				Thereafter
			2008	2009	2010	2011	
							(In thousands)
Satellite-related obligations	\$ 98,270	\$ 79,530	\$ 18,740	\$ —	\$ —	\$ —	\$ —
Operating lease obligations	4,003	879	906	933	961	324	—
Purchase obligations	614,978	614,978	—	—	—	—	—
Total	<u>\$ 717,251</u>	<u>\$ 695,387</u>	<u>\$ 19,646</u>	<u>\$ 933</u>	<u>\$ 961</u>	<u>\$ 324</u>	<u>\$ —</u>

Future commitments related to satellites on the historical balance sheets are included in the table above under "Satellite-related obligations." CMBStar, an S-band satellite, is scheduled to be completed during the second quarter of 2008. If the required regulatory approvals are obtained and contractual conditions are satisfied, the transponder capacity of that satellite will be leased to a Hong Kong joint venture, which in turn will sublease a portion of the transponder capacity to an affiliate of a Chinese regulatory entity.

**Contractual Obligations and Off-balance Sheet Arrangements — Pro Forma Adjustments (excludes acquisition of Sling Media, Inc.)**

As of the effective date of the spin-off, ECC will contribute additional contracts for satellites under construction, capital leases and other long-term obligations related to our fixed satellite services business. Commitments related to these contracts are detailed in the tables below.

	Total	2007	2008	Payments Due by Period			Thereafter
				2009	2010	2011	
							(In thousands)
Satellite-related obligations	\$ 987,494	\$ 248,612	\$ 179,061	\$ 184,813	\$ 88,251	\$ 57,763	\$ 228,994
Purchase obligations	6,077	6,077	—	—	—	—	—
Total	<u>\$ 993,571</u>	<u>\$ 254,689</u>	<u>\$ 179,061</u>	<u>\$ 184,813</u>	<u>\$ 88,251</u>	<u>\$ 57,763</u>	<u>\$ 228,994</u>

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

*Interest on Long-Term Debt*

	Total	2007	2008	Payments Due by Period			Thereafter
				2009	2010	2011	
							(In thousands)
Capital lease obligations	\$ 160,527	\$ 33,843	\$ 30,707	\$ 27,216	\$ 23,337	\$ 19,032	\$ 26,392
Other long-term debt	4,842	722	678	630	579	524	1,709
Total	<u>\$ 165,369</u>	<u>\$ 34,565</u>	<u>\$ 31,385</u>	<u>\$ 27,846</u>	<u>\$ 23,916</u>	<u>\$ 19,556</u>	<u>\$ 28,101</u>

*Satellite-Related Obligations*

*Satellites under Construction.* As part of the spin-off, ECC will contribute several of its contracts to construct new satellites, described below, which are contractually scheduled to be completed within the next three years. Future commitments related to these satellites are included in the table above under "Satellite-related obligations."



ECC has entered into contracts for the construction of three additional SSL Ka and/or Ku expanded band satellites which are expected to be completed during 2009 and 2010. ECC will contribute these to us as part of the spin-off. ECC has not yet procured launches for these satellites.

*Leased Satellites.* In addition to its lease of the AMC-15 and AMC-16 satellites discussed below under “*Capital Lease Obligations*,” ECC will also contribute satellite service agreements to lease all of the capacity on other satellites discussed below. Future commitments related to these satellites are included in the table above under “*Satellite-related obligations*.”

*AMC-2.* AMC-2 is a fixed satellite services satellite positioned at the 85 degree orbital location. Our lease of this satellite is expected to continue through 2007 and has been accounted for as an operating lease.

*AMC-14.* AMC-14 is a DBS satellite, which is currently expected to launch early in 2008 and commence commercial operation at an orbital location to be determined at a future date. The initial ten-year lease for all of the capacity on the satellite will be accounted for as a capital lease.

#### *Capital Lease Obligations*

As part of the spin-off, ECC will also contribute to us two ten-year satellite service agreements with SES Americom to lease all the capacity on the following satellites:

*AMC-15.* AMC-15, a fixed satellite services satellite, commenced commercial operation during January 2005. This lease will be renewable by us on a year to year basis following the initial term, and will provide us with certain rights to replacement satellites.

*AMC-16.* AMC 16, a fixed satellite services satellite, commenced commercial operation during February 2005. This lease is renewable by us on a year to year basis following the initial term, and will provide us with certain rights to replacement satellites.

In accordance with Statement of Financial Accounting Standards No. 13, “*Accounting for Leases*” (“*SFAS 13*”), we will account for the satellite component of these agreements as a capital lease. The commitment related to the present value of the net future minimum lease payments for the satellite component of the agreement is included under “*Capital Lease Obligations*” in the table above. The commitment related to future minimum payments designated for the lease of the orbital slots and other executory costs is included under “*Satellite-Related Obligations*” in the table above. The commitment related to the amount representing interest is included under Interest on “*Long-Term Debt*” in the table above.

#### *Purchase Obligations*

Our purchase obligations primarily consist of binding purchase orders for set-top boxes and related components. Our purchase obligations can fluctuate significantly from period to period due to, among other things, management’s control of inventory levels, and can materially impact our future operating asset and liability balances, and our future working capital requirements.

#### *Satellite Insurance*

We do not anticipate carrying insurance for any of the in-orbit satellites that we will own because we believe that the premium costs are uneconomic relative to the risk of satellite failure. The loss of a satellite or other satellite malfunctions or anomalies could have a material adverse effect on our financial performance which we may not be able to mitigate by using available capacity on other satellites. There can be no assurance that we can recover critical transmission capacity in the event one or more of our in-orbit satellites were to fail. In addition, the loss of a satellite or other satellite malfunctions or anomalies could affect our ability to comply with FCC regulatory obligations and our ability to fund the construction or acquisition of replacement satellites for our in-orbit fleet in a timely fashion, or at all.

*Future Capital Requirements*

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. For example, we are exploring business plans for extended Ku-band and Ka-band satellite systems, including licenses to operate at the 86.5, 97 and 113 degree orbital locations. Future material investments or acquisitions may require that we obtain additional capital. There can be no assurance that we could raise all required capital or that required capital would be available on acceptable terms, or at all.

**Critical Accounting Estimates**

The preparation of the combined financial statements in conformity with GAAP requires management to make estimates, judgments and assumptions that affect amounts reported therein. Management bases its estimates, judgments and assumptions on historical experience and on various other factors that are believed to be reasonable under the circumstances. Due to the inherent uncertainty involved in making estimates, actual results reported in future periods may be affected by changes in those estimates. The following represent what we believe are the critical accounting policies that may involve a high degree of estimation, judgment and complexity. For a summary of our significant accounting policies, including those discussed below, see Note 2 in the Notes to Combined Financial Statements for EchoStar Holding Corporation.

*Accounting for investments in publicly-traded securities.* We hold debt and equity interests in companies, some of which are publicly traded and have highly volatile prices. We record an investment impairment charge when we believe an investment has experienced a decline in value that is judged to be other than temporary. We monitor our investments for impairment by considering current factors including economic environment, market conditions and the operational performance and other specific factors relating to the business underlying the investment. Future adverse changes in these factors could result in losses or an inability to recover the carrying value of the investments that may not be reflected in an investment's current carrying value, thereby possibly requiring an impairment charge in the future.

*Valuation of investments in non-marketable investment securities.* We calculate the fair value of our interest in non-marketable investment securities either at consideration given, or for non-cash acquisitions, based on the results of valuation analyses utilizing a discounted cash flow or DCF model. The DCF methodology involves the use of various estimates relating to future cash flow projections and discount rates for which significant judgments are required.

*Valuation of long-lived assets.* We evaluate the carrying value of long-lived assets to be held and used, other than goodwill and intangible assets with indefinite lives, when events and circumstances warrant such a review. The carrying value of a long-lived asset or asset group is considered impaired when the anticipated undiscounted cash flow from such asset or asset group is less than its carrying value. In that event, a loss is recognized based on the amount by which the carrying value exceeds the fair value of the long-lived asset or asset group. Fair value is determined primarily using the estimated cash flows associated with the asset or asset group under review, discounted at a rate commensurate with the risk involved. Losses on long-lived assets to be disposed of by sale are determined in a similar manner, except that fair values are reduced for estimated selling costs. Changes in estimates of future cash flows could result in a write-down of the asset in a future period.

*Valuation of goodwill and intangible assets with indefinite lives.* We evaluate the carrying value of goodwill and intangible assets with indefinite lives annually, and also when events and circumstances warrant. We use estimates of fair value to determine the amount of impairment, if any, of recorded goodwill and intangible assets with indefinite lives. Fair value is determined primarily using the estimated future cash flows, discounted at a rate commensurate with the risk involved. Changes in our estimates of future cash flows could result in a write-down of goodwill and intangible assets with indefinite lives in a future period, which could be material to our combined results of operations and financial position.

*Allowance for doubtful accounts.* Management estimates the amount of required allowances for the potential non-collectibility of accounts receivable based upon past collection experience and consideration of other

relevant factors. However, past experience may not be indicative of future collections and therefore additional charges could be incurred in the future to reflect differences between estimated and actual collections.

*Inventory reserve.* Management estimates the amount of reserve required for potential obsolete inventory based upon past experience, the introduction of new technology and consideration of other relevant factors. However, past experience may not be indicative of future reserve requirements and therefore additional charges could be incurred in the future to reflect differences between estimated and actual reserve requirements.

*Stock-based compensation.* We account for stock-based compensation in accordance with the fair value recognition provisions of SFAS 123R. We use the Black-Scholes option pricing model, which requires the input of subjective assumptions. These assumptions include, among other things, estimating the length of time employees will retain their vested stock options before exercising them (expected term); the estimated volatility of our common stock price over the expected term (volatility), and the number of options that will ultimately not complete their vesting requirements (forfeitures), see Note 3 in the Notes to our Combined Financial Statements of EchoStar Holding Corporation. Changes in these assumptions can materially affect the estimate of fair value of stock-based compensation.

*Income taxes.* Our income tax policy is to record the estimated future tax effects of temporary differences between the tax bases of assets and liabilities and amounts reported in the accompanying combined balance sheets, as well as operating loss and tax credit carryforwards. We follow the guidelines set forth in Statement of Financial Accounting Standards No. 109, "Accounting for Income Taxes," or SFAS 109, regarding the recoverability of any tax assets recorded on the balance sheet and provide any necessary valuation allowances as required. Determining necessary valuation allowances requires us to make assessments about the timing of future events, including the probability of expected future taxable income and available tax planning opportunities. In accordance with SFAS 109, we periodically evaluate our need for a valuation allowance based on both historical evidence, including trends, and future expectations in each reporting period. Future performance could have a significant effect on the realization of tax benefits, or reversals of valuation allowances, as reported in our results of operations.

*Contingent liabilities.* A significant amount of management judgment is required in determining when, or if, an accrual should be recorded for a contingency and the amount of such accrual. Estimates generally are developed in consultation with outside counsel and are based on an analysis of potential outcomes. Due to the uncertainty of determining the likelihood of a future event occurring and the potential financial statement impact of such an event, it is possible that upon further development or resolution of a contingency matter, a charge could be recorded in a future period that would be material to our consolidated results of operations and financial position.

#### **New Accounting Pronouncements**

We adopted the provisions of FASB Interpretation No. 48, "Accounting for Uncertainty in Income Taxes — an Interpretation of FASB Statement No. 109," or FIN 48, on January 1, 2007. FIN 48 clarifies the accounting for uncertainty in income taxes recognized in an enterprise's financial statements in accordance with Statement of Financial Accounting Standards No. 109, "Accounting for Income Taxes," and prescribes a recognition threshold and measurement process for financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. FIN 48 also provides guidance on derecognition, classification, interest and penalties, accounting in interim periods, disclosure and transition.

In September 2006, the FASB issued Statement of Financial Accounting Standards No. 157, "Fair Value Measurements," or SFAS 157, which defines fair value, establishes a framework for measuring fair value in accordance with generally accepted accounting principles and expands disclosures about fair value measurements. This pronouncement applies to other accounting standards that require or permit fair value measurements. Accordingly, this statement does not require any new fair value measurement. This statement is effective for fiscal years beginning after November 15, 2007, and interim periods within that fiscal year. We

are currently evaluating the impact the adoption of SFAS 157 will have on our financial position and results of operations.

In February 2007, the FASB issued Statement of Financial Accounting Standards No. 159, "The Fair Value Option for Financial Assets and Financial Liabilities," or SFAS 159, which permits entities to choose to measure financial instruments and certain other items at fair value. This statement is effective as of the beginning of an entity's first fiscal year that begins after November 15, 2007. We are currently evaluating the impact the adoption of SFAS 159 will have on our financial position and results of operations.

#### **Seasonality**

Our revenues vary throughout the year depending upon the seasonality of our customers in the subscription television service industry. As is typical for our customers, the first half of the year generally produces fewer new subscribers than the second half of the year.

#### **Inflation**

Inflation has not materially affected our operations during the past three years. We believe that our ability to increase the prices charged for our products and services in future periods will depend primarily on competitive pressures. We do not have any material backlog of our products.

#### **Quantitative and Qualitative Disclosures About Market Risk**

##### *Market Risks Associated With Financial Instruments*

As of September 30, 2007, our cash, cash equivalents and marketable investment securities had a fair value of \$530.8 million. Of that amount, a total of \$33.7 million was invested in fixed or variable rate instruments or money market type accounts. The primary purpose of these investing activities has been to preserve principal until the cash is required to, among other things, fund operations, make strategic investments and expand the business. Consequently, the size of this portfolio fluctuates significantly as cash is received and used in our business.

Our cash, cash equivalents and marketable investment securities had an average annual return for the nine months ended September 30, 2007 of 5.3%. A hypothetical 10% decrease in interest rates would result in a decrease of approximately \$0.2 million in annual interest income. The value of certain of the investments in this portfolio can be impacted by, among other things, the risk of adverse changes in securities and economic markets, 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.

Included in our marketable investment securities portfolio balance is debt and equity of public companies we hold for strategic and financial purposes. As of September 30, 2007, we held strategic and financial debt and equity investments of public companies with a fair value of \$497.0 million. These investments are highly speculative and are concentrated in a small number of companies. We may make additional strategic and financial investments in debt and other equity securities in the future. The fair value of our strategic and financial debt and equity investments can be significantly impacted by the risk of adverse changes in securities markets generally, as well as risks related to the performance of the companies whose securities we have invested in, risks associated with specific industries, and other factors. These investments are subject to significant fluctuations in fair value due to the volatility of the securities markets and of the underlying businesses. A hypothetical 10.0% adverse change in the price of our public strategic debt and equity investments would result in approximately a \$49.7 million decrease in the fair value of that portfolio. The fair value of our strategic debt investments are currently not materially impacted by interest rate fluctuations due to the nature of these investments.

We currently classify all marketable investment securities as available-for-sale. We adjust the carrying value of our available-for-sale securities to fair value and report the related temporary unrealized gains and losses as a separate component of "Accumulated other comprehensive income (loss)" within "Total owner's equity (deficit)," net of related deferred income tax. Declines in the fair value of a marketable investment security which are estimated to be "other than temporary" are recognized in the Combined Statements of Operations and Comprehensive Income (Loss), thus establishing a new cost basis for such investment. We evaluate our marketable investment securities portfolio on a quarterly basis to determine whether declines in the fair 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 amount, the historical volatility of the price of each security and any market and company specific factors related to each security. Generally, absent specific factors to the contrary, declines in the fair value of investments below cost basis for a continuous period of less than six months are considered to be temporary. Declines in the fair value of investments for a continuous 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 a continuous period 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, 2007, we had gains net of related tax effect of \$104.5 million as a part of "Accumulated other comprehensive income (loss)" within "Total owner's equity (deficit)." During the nine months ended September 30, 2007, we did not record any charge to earnings for other than temporary declines in the fair value of our marketable investment securities. In addition, during the nine months ended September 30, 2007, we recognized in our Combined Statements of Operations and Comprehensive Income (Loss) realized and net gains on marketable investment securities of \$5.0 million. During the nine months ended September 30, 2007, our strategic investments have experienced and continue to experience volatility. If the fair value of our strategic marketable investment securities portfolio does not remain above cost basis or if we become aware of any market or company specific factors that indicate that the carrying value of certain of our securities is impaired, we may be required to record charges to earnings in future periods equal to the amount of the decline in fair value.

We have several strategic investments in certain non-marketable equity securities which are included in "Investment in affiliates" on our Combined Balance Sheets. Generally, we account for our unconsolidated equity investments under either the equity method or cost method of accounting. Because these equity securities are not publicly traded, it is not practical to regularly estimate the fair value of the investments; however, these investments are subject to an evaluation for other than temporary impairment on a quarterly basis. This quarterly evaluation consists of reviewing, among other things, company business plans and current financial statements, if available, for factors that may indicate an impairment of our investment. Such factors may include, but are not limited to, cash flow concerns, material litigation, violations of debt covenants and changes in business strategy. The fair value of these equity investments is not estimated unless there are identified changes in circumstances that may indicate an impairment exists and these changes are likely to have a significant adverse effect on the fair value of the investment. As of September 30, 2007, we had \$81.4 million aggregate carrying amount of non-marketable and unconsolidated strategic equity investments, of which \$60.4 million is accounted for under the cost method. During the nine months ended September 30, 2007, we did not record any impairment charges with respect to these investments.

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

**PROPERTIES**

The following table sets forth certain information concerning our principal properties. We operate various facilities in the United States and abroad. We believe that our facilities are well maintained and are sufficient to meet our current and projected needs.

<b>Description/Use/Location</b>	<b>Approximate Square Footage</b>	<b>Owned or Leased</b>
Corporate headquarters, Englewood, Colorado	476,000	Owned
Corporate facilities, Littleton, Colorado	202,000	Owned
EchoStar Technologies Corporation engineering offices and service center, Englewood, Colorado	144,000	Owned
EchoStar Technologies Corporation engineering offices, Englewood, Colorado	63,000	Owned
EchoStar Data Networks engineering offices, Atlanta, Georgia	50,000	Leased
Digital broadcast operations center, Cheyenne, Wyoming	143,000	Owned
Digital broadcast operations center, Gilbert, Arizona	124,000	Owned
Regional digital broadcast operations center, Monee, Illinois	45,000	Owned
Regional digital broadcast operations center, New Braunsfels, Texas	35,000	Owned
Regional digital broadcast operations center, Quicksberg, Virginia	35,000	Owned
Regional digital broadcast operations center, Spokane, Washington	35,000	Owned
Engineering offices and warehouse, Almelo, The Netherlands	55,000	Owned
Engineering offices, Steeton, England	43,000	Owned

Under the terms of our separation from ECC, we will lease portions of certain of our owned facilities to ECC. See “Certain Intercompany Agreements — Agreements with ECC — Real Estate Lease Agreements.”

## BUSINESS

### Overview

We intend to operate two primary businesses, a digital set-top box business and a fixed satellite services business.

Our set-top box business designs, develops and distributes set-top boxes and related products for direct-to-home satellite service providers. In 2006, our set-top box business shipped over nine million set-top boxes. Most of these set-top boxes were sold to ECC, but we also sold set-top boxes to Bell ExpressVu and other international customers. We currently employ over 700 engineers in our set-top box and related businesses.

Our fixed satellite services business will be developed using our nine owned or leased in-orbit satellites and related FCC licenses, a network of seven full service digital broadcast centers, and leased fiber optic capacity with points of presence in approximately 150 cities. All of these assets will be contributed to us on the distribution date. We expect that our primary customer initially will be ECC. However, we also expect to lease capacity in the spot market and to government and enterprise customers.

We will enter into commercial agreements with ECC pursuant to which we will have the obligation to sell set-top boxes and related products and provide fixed satellite services to ECC at set prices for a period of two years. However, ECC is under no obligation to purchase our set-top boxes and related products during or after this two-year period and ECC may terminate the agreements to receive fixed satellite services upon 60 days notice.

As part of ECC, we competed with many of our potential customers. We believe our separation from ECC may expand our opportunities to enter into commercial relationships with these and other new customers, although there can be no assurance that we will be successful in entering into any of these commercial relationships.

### Products and Services

#### *Set-top Boxes and Related Products*

Our set-top boxes permit consumers to watch, control and record television programming through digital video recorder, or DVR, technology integrated with satellite receivers. Certain of our set-top boxes are also capable of incorporating internet protocol television, or IPTV, functionality, which allows consumers to download movies, music and other content from the internet through an Ethernet connection.

Our current set-top box lineup includes:

- *Standard-definition (SD) basic digital set-top boxes:* These devices allow consumers who subscribe to television service from multi-channel video distributors to access encrypted digital video and audio content and make use of a variety of interactive applications. These applications include an on-screen interactive program guide, pay-per-view offerings, the ability to support V-chip type technology, games and shopping and parental control.
- *SD-DVR digital set-top boxes:* In addition to the functionality of a SD basic digital set-top box, these devices enable subscribers to pause, stop, reverse, fast forward, record and replay live or recorded digital television content using a built-in hard drive capable of storing up to 200 hours of content. They also include the ability to support video-on-demand, or VOD, services.
- *High-Definition (HD) digital set-top boxes:* These devices enable subscribers to access the enhanced picture quality and sound of high-definition content, in addition to the functionality of a SD digital set-top box.
- *HD-DVR digital set-top boxes:* These devices combine the functionality of the HD set-top box and the DVR digital set-top box into a single device. Our most-advanced HD-DVR set-top boxes are capable of storing up to 350 hours of SD, or 55 hours of HD, content, contain IPTV functionality, and allow users to greatly increase their DVR storage capacity through the use of external hard drives.

In addition to set-top boxes we also design and develop related products such as satellite dishes, remote controls and other devices and accessories.

#### ***Fixed Satellite Services***

Following the completion of the spin-off, we will operate six owned and three leased in-orbit satellites. We will also have one owned and one leased satellite under construction.

We will also operate a number of digital broadcast centers in the United States. Our principal digital broadcast centers are located in Cheyenne, Wyoming and Gilbert, Arizona. We also have five regional digital broadcast centers that allow us to utilize the spot beam capabilities of our satellites. Programming and other data is received at these centers by fiber or satellite, processed, and then "uplinked" to our satellites for transmission to consumers. Equipment at our digital broadcast centers also performs compression and encryption of our customers' programming signals.

Our transponder capacity is currently used for a variety of applications:

- *Broadcasting Services.* We lease satellite transponder capacity to broadcasters and programmers who use our satellites to deliver their programming to U.S. cable systems and cable households. Our satellites are also used for the transmission of live sporting events and satellite news gathering services.
- *Government Services.* We lease satellite capacity and provide technical services to US government agencies and contractors. We believe the U.S. government may increase its use of commercial satellites for Homeland Security, emergency response, continuing education, distance learning, and training.
- *Network Services.* We lease satellite transponder capacity and provide terrestrial network services to corporations. These networks are dedicated private networks that allow delivery of video and data services for corporate communications. Our satellites can be used for point to point or point to multi-point one way or two way communications.
- *Satellite IP.* We currently aggregate content at our digital broadcast centers and offer transport services for over 300 channels of MPEG IV IP encapsulated standard-definition and high-definition programming from our satellite located at the 85 degree orbital location. We intend to offer these wholesale programming transport services to telecommunication companies, rural cable operators, local exchange carriers and wireless broadband providers.

#### ***Other Business Opportunities***

ECC has entered into agreements to construct and launch an S-band satellite and to lease its transponder capacity to a Hong Kong joint venture, which in turn will sublease a portion of such transponder capacity to an affiliate of a Chinese governmental entity to support the development of satellite-delivered mobile video services in China. ECC also has recently completed several other strategic investments, and we intend to evaluate new strategic development opportunities both in the United States and in other international markets. These investments will be transferred to us as part of the spin-off, and are part of our strategy to expand our business and support the development of new satellite-delivered services, such as mobile video services. The expertise we obtain through these investments may also help us to improve and expand the services that we provide to our existing customers.

However, these investments involve many significant risks, including, among other things, the risks that required regulatory approvals and other conditions may not be obtained or satisfied, that we may not be able to enter into necessary distribution and other relationships, and that the companies in which we invest or with whom we partner may not be able to compete effectively in their markets or that there may be insufficient demand for the new services planned by these companies.

During 2007 ECC participated in an FCC auction for licenses in the 1.4 GHz band and was the winning bidder for several licenses with total winning bids of \$57.4 million. ECC intends to transfer these licenses to us in the spin-off subject to receipt of final FCC approvals. We are currently evaluating commercial uses for this spectrum. While its propagation characteristics are attractive, the small amount of spectrum limits its



potential commercial use. There can be no assurance that we will be able to exploit these licenses or that we could raise all capital required to develop these licenses.

### **Sling Media**

Sling Media, Inc. was acquired in October 2007 by ECC and will be transferred to us as part of the spin-off. Sling Media is the maker of the Slingbox, which allows consumers to watch and control their television programming at any time, from any location, using personal computers, personal digital assistants, smartphones and other digital media devices. This information statement includes historical financial statements and other information regarding Sling Media.

### **Our Business Strategy**

*Expand set-top box business to additional customers.* We believe our separation from ECC could enhance our opportunities to sell set-top boxes to a broader group of multi-channel video distributors. Historically, many of our potential customers have perceived us as a competitor due to our affiliation with ECC. After the spin-off, we believe we could have opportunities to enter into commercial relationships with other multi-channel video distributors. There can be no assurance, however, that we will be successful in entering into any of these commercial relationships (particularly if we continue to be perceived as affiliated with ECC as a result of common ownership and related management).

*Leverage satellite capacity and related infrastructure.* Our fixed satellite services business benefits from excess satellite and fiber capacity that we believe was in large part created through innovation and operational efficiencies at ECC. While we expect that ECC will initially be our primary customer for fixed satellite services, we believe market opportunities exist to utilize our capacity to provide digital video distribution, satellite-delivered IP, corporate communications and government services to a broader customer base.

*Offer comprehensive network infrastructure solutions.* We intend to leverage our over 700 engineers to customize infrastructure solutions for a broad base of customers. For example, we could offer a customer the ability to deliver a fully integrated video programming solution, incorporating our satellite and backhaul capacity, customized set-top boxes and network design and management.

*Capitalize on change in regulations.* Changes in federal law and regulations applicable to the set-box industry may create opportunities for us to expand our business.

- *Digital transition.* Congress has mandated that by February 2009 all network broadcasts be transmitted digitally, which will require households that receive over-the-air broadcast signals with an analog television to obtain a digital converter device. This digital converter device is a new product and we believe that we are in a position to develop and market devices that could allow us to effectively compete in this new market.
- *Removable security systems.* The Federal Communications Commission, or FCC, mandated that by July 2007 cable providers use removable security modules to provide conditional access security for television content. The FCC intends for this regulation to spur competition in the retail set-top box market, providing an even playing field between leased cable set-top boxes and retail-bought, cable-ready TVs and set-top box equipment. We believe this new regulation may create an opportunity for us to compete on a more level field in the domestic market for cable set-top boxes.

*Exploit international opportunities.* We believe that direct-to-home satellite service is particularly well-suited for countries without extensive cable infrastructure, and we intend to continue to try to secure new customer relationships from international direct-to-home satellite service providers.

*Pursue strategic partnerships, joint ventures and acquisitions.* We intend to selectively pursue partnerships, joint ventures and strategic acquisition opportunities that we believe may allow us to increase our existing market share, expand into new markets, broaden our portfolio of products or intellectual property, or strengthen our relationships with our customers.

*Act on the set-top box replacement cycle.* The broader adoption of high definition television by consumers will require more advanced compression (e.g., MPEG-4) and security technologies within set-top boxes. This may launch a replacement cycle, particularly among direct-to-home and cable providers with substantial bases of legacy equipment, which may create additional market opportunities for us.

## **Customers**

### ***Digital Set-top Box Business***

Historically the primary customer of our digital set-top box business has been ECC. For the nine month period ended September 30, 2007 and the fiscal years ended December 31, 2006, 2005 and 2004, ECC accounted for approximately 86.2%, 84.5%, 85.6% and 89.7% of our total historical revenue, respectively. In addition, Bell ExpressVu, a direct-to-home satellite service provider in Canada, accounted for 10.0%, 12.2%, 11.4% and 7.3% respectively, of our historical total revenue for the nine month period ended September 30, 2007 and the fiscal year ended December 31, 2006, 2005 and 2004. We also currently sell our set-top boxes to other international direct-to-home satellite service providers, although these customers do not account for a significant amount of our total revenue.

In the near term, we expect to rely on ECC to remain the primary customer of our set-top box business and the primary source of our total revenue. We will enter into commercial agreements with ECC pursuant to which we will be obligated to sell set-top boxes and related products to ECC at set prices for a period of two years. ECC is under no obligation to purchase our set-top boxes or related products during or after this two- year period. In addition, while we currently have certain binding purchase orders from Bell ExpressVu through the beginning of 2008, the availability of new compression technology could impact our relationship with Bell ExpressVu, depending on its strategy to upgrade customers. There can be no assurance that ECC or Bell ExpressVu will continue to use our set-top boxes in the future or that we will be successful in growing our set-top box business.

### ***Fixed Satellite Services***

We lease transponder capacity on our satellite fleet primarily to ECC, but also to a small number of government and enterprise customers, telecommunications companies and other users. In the near term, due to our limited base of customers, we expect to have a substantial amount of excess capacity. For the nine month period ended September 30, 2007 and the fiscal year ended December 31, 2006, ECC accounted for approximately 93.9% and 97.5% of our pro forma total fixed satellite services revenue, respectively. We will enter into commercial agreements with ECC pursuant to which we will be obligated to provide ECC with fixed satellite services at fixed prices for up to two years. However, ECC may terminate these agreements upon 60 days notice. Our other fixed satellite service sales are generally characterized by shorter-term contracts or spot market sales.

We currently have substantial unused satellite capacity. Future costs associated with this excess capacity will negatively impact our margins if we do not generate revenue to offset these costs. In addition, because a substantial portion of the capacity of each of our AMC-15, AMC-16 and EchoStar IX satellites remains unused, there is a significant risk that in the future, in addition to reporting lower than expected revenues and profitability, we will be required to record a substantial impairment charge relating to one or more of these satellites. We currently estimate that these potential charges could aggregate up to \$250 million, which, if incurred would have a material adverse effect on our reported operating results and financial position. Furthermore, it is possible that in 2008 ECC will discontinue the use of some or all of the capacity on one or more other satellites that it will initially lease from us. To the extent that this occurs and we are unable to find other customers to lease this additional anticipated excess capacity, we may be required to record additional substantial impairment charges that we currently estimate could aggregate up to \$100 million.

## **Marketing and Sales**

Historically, our sales and marketing efforts have been limited in scope and focused on international opportunities because the majority of our products and services were provided to ECC pursuant to purchase

orders and not long term contracts. Therefore, to successfully implement our business strategy we will need to significantly expand our marketing and sales capabilities both domestically and internationally.

#### **Manufacturing and Material Sources**

Although we design, engineer and distribute set-top boxes and related products, we are not generally engaged in the manufacturing process. Instead we outsource the manufacturing of our set-top boxes and related products to third party manufacturers who manufacture our products according to specifications supplied by us. We depend on a few manufacturers, and in some cases a single manufacturer, for the production of set-top boxes and related products. Although there can be no assurance, we do not believe that the loss of any single manufacturer would materially impact our business. Sanmina-SCI Corporation and Jabil Circuit, Inc. currently manufacture the majority of our set-top boxes.

#### **Research and Development**

For the fiscal years ended December 31, 2006, 2005 and 2004, we have invested approximately \$56.5 million, \$45.9 million and \$39.8 million, respectively, in research and development primarily related to our set-top box business.

#### **Competition**

##### *Digital Set-top box Business*

As we seek to establish ourselves in the digital set-top box industry as an independent business we will face substantial competition. Many of our primary competitors, such as Motorola and Cisco, which recently acquired Scientific Atlanta, have established longstanding relationships with their customers. For instance, some of these competitors own the conditional access technology deployed by their customers. We may not be able to license this technology from these competitors on favorable terms or at all. In addition, we may face competition from international developers of set-top box systems who may be able to develop and manufacture products and services at costs that are substantially lower than ours. Our ability to compete in the digital multi-media industry will also depend heavily on our ability to successfully bring new technologies to market to keep pace with our competitors.

##### *Fixed Satellite Services Business*

We compete against larger, well-established fixed satellite service companies, such as Intelsat, SES Americom and Telesat Canada, in an industry that is characterized by long-term leases and high switching costs. Therefore, it will be difficult to displace customers from their current relationships with our competitors. Intelsat and SES Americom maintain key North American orbital slots which may further limit competition and competitive pricing. In addition, our fixed satellite service business could face significant competition from suppliers of terrestrial communications capacity.

While we believe that there may be opportunities to capture new business as a result of market trends such as the digital transition and the increased communications demands of homeland security initiatives, there can be no assurance that we will be able to effectively compete against our competitors due to their significant resources and operating history.

#### **Satellite Fleet Overview**

As discussed above, we will have six owned and three leased in-orbit satellites, and we will have one owned and one leased satellite currently under construction. While we believe that overall our satellite fleet is generally in good condition, during 2007 and prior periods certain satellites in our fleet have experienced anomalies, some of which have had a significant adverse impact on their commercial operation. There can be no assurance that we can recover critical transmission capacity in the event one or more of our in-orbit satellites were to fail. We do not anticipate carrying insurance for any of the in-orbit satellites that we will own.

**Owned Satellites**

*EchoStar III.* EchoStar III was launched during October 1997 and currently operates at the 61.5 degree orbital location. The satellite was originally designed to operate a maximum of 32 transponders at approximately 120 watts per channel, switchable to 16 transponders operating at over 230 watts per channel, and was equipped with a total of 44 transponders to provide redundancy. Prior to 2006, TWTA anomalies caused 22 transponders to fail. During April and October 2006, further TWTA anomalies caused the failure of four additional transponders. As a result, a maximum of 18 transponders are currently available for use on EchoStar III, but due to redundancy switching limitations and specific channel authorizations, we can only operate on 15 of the 30 FCC authorized frequencies we will have the right to utilize at the 61.5 degree location. While we do not expect a large number of additional TWTA failures in any year, and the failures have not reduced the original minimum 12-year design life of the satellite, it is likely that additional TWTA failures will occur from time to time in the future, and those failures will further impact commercial operation of the satellite.

*EchoStar IV.* EchoStar IV was launched during May 1998 and currently operates at the 77 degree orbital location. The satellite was originally designed to operate a maximum of 32 transponders at approximately 120 watts per channel, switchable to 16 transponders operating at over 230 watts per channel. As a result of past TWTA failures, only six transponders are currently available for use and the satellite has been fully depreciated on our books. There can be no assurance that further material degradation, or total loss of use, of EchoStar IV will not occur in the immediate future.

*EchoStar VI.* EchoStar VI was launched during July 2000 and is currently stationed at the 110 degree orbital location as an in-orbit spare. The satellite was originally equipped with 108 solar array strings, approximately 102 of which are required to assure full power availability for the original minimum 12-year design life of the satellite. Prior to 2006, EchoStar VI experienced anomalies resulting in the loss of 15 solar array strings. During 2006, two additional solar array strings failed, reducing the number of functional solar array strings to 91. While the design life of the satellite has not been affected, commercial operability has been reduced. The satellite was designed to operate 32 transponders at approximately 125 watts per channel, switchable to 16 transponders operating at approximately 225 watts per channel. The power reduction resulting from the solar array failures limits us to operation of a maximum of 26 transponders in standard power mode, or 13 transponders in high power mode currently. The number of transponders to which power can be provided is expected to continue to decline in the future at the rate of approximately one transponder every three years. See discussion of evaluation of impairment in "Long-Lived Satellite Assets" in Note 2 in the Notes to Statement of Net Assets to be Contributed by ECC.

*EchoStar VIII.* EchoStar VIII was launched during August 2002 and currently operates at the 110 degree orbital location. The satellite was designed to operate 32 transponders at approximately 120 watts per channel, switchable to 16 transponders operating at approximately 240 watts per channel. EchoStar VIII also includes spot-beam technology. This satellite has experienced several anomalies since launch, but none have reduced the 12-year estimated useful life of the satellite. However, there can be no assurance that future anomalies will not cause further losses which could materially impact its commercial operation, or result in a total loss of the satellite.

*EchoStar IX.* EchoStar IX was launched during August 2003 and currently operates at the 121 degree orbital location. The satellite was designed to operate 32 fixed satellite services transponders operating at approximately 110 watts per channel, along with transponders that can provide services in the Ka-Band (a "Ka-band payload"). The satellite also includes a C-band payload which is owned by a third party. During 2006, EchoStar IX experienced the loss of one of its three momentum wheels, two of which are utilized during normal operations. A spare wheel was switched in at the time and the loss did not reduce the 12-year estimated useful life of the satellite. During September 2007, the satellite experienced anomalies resulting in the loss of three solar array strings. An investigation of the anomalies is continuing. The anomalies have not impacted commercial operation of the satellite to date. The design life of the satellite is not expected to be impacted since the satellite is equipped with a total of 288 solar array strings, only approximately 276 of which are required to assure full power availability for the design life of the satellite. However, there can be

no assurance future anomalies will not cause further losses, which could impact the remaining life or commercial operation of the satellite.

*EchoStar XII.* EchoStar XII was launched during July 2003 and currently operates at the 61.5 degree orbital location. The satellite was designed to operate 13 transponders at 270 watts per channel, in CONUS mode, or 22 spot beams using a combination of 135 and 65 watt TWTAs. We currently operate the satellite in CONUS mode. EchoStar XII has a total of 24 solar array circuits, approximately 22 of which are required to assure full power for the original minimum 12-year design life of the satellite. Since late 2004, eight solar array circuits on EchoStar XII have experienced anomalous behavior resulting in both temporary and permanent solar array circuit failures. The cause of the failures is still being investigated. The design life of the satellite has not been affected. However, these temporary and permanent failures have resulted in a reduction in power to the satellite which will preclude us from using the full complement of transponders on EchoStar XII for the 12-year design life of the satellite. The exact extent of this impact has not yet been determined. There can be no assurance future anomalies will not cause further losses, which could further impact commercial operation of the satellite or its useful life. See discussion of evaluation of impairment in "Long-Lived Satellite Assets" in Note 2 in the Notes to Statement of Net Assets to be Contributed by ECC.

#### **Leased Satellites**

We are currently leasing all of the capacity on an existing in-orbit fixed satellite services satellite, AMC-2, at the 85 degree orbital location. Our lease of this satellite is expected to continue through 2007 and has been accounted for as an operating lease.

*AMC-15.* AMC-15 commenced commercial operation during January 2005 and currently operates at the 105 degree orbital location. This SES Americom fixed satellite services satellite is equipped with 24 Ku fixed satellite services transponders that operate at approximately 120 watts per channel and a Ka fixed satellite services payload consisting of 12 spot beams. As part of the spin-off, ECC will contribute to us a ten-year satellite service agreement for this satellite which will be renewable by us on a year to year basis following the initial term, and provides us with certain rights to replacement satellites.

*AMC-16.* AMC-16 commenced commercial operation during February 2005 and currently operates at the 85 degree orbital location. This SES Americom fixed satellite services satellite is equipped with 24 Ku-band transponders that operate at approximately 120 watts per channel and a Ka-band payload consisting of 12 spot beams. As part of the spin-off, ECC will contribute to us a ten-year satellite service agreement for this satellite which will be renewable by us on a year to year basis following the initial term, and provides us with certain rights to replacement satellites.

#### **Satellites Under Construction**

*CMBStar.* The CMBStar satellite is an S-band satellite intended to be used in our mobile video project in China and is scheduled to be completed during the second quarter of 2008. If the required regulatory approvals are obtained and contractual conditions are satisfied, the transponder capacity of that satellite will be leased to a Hong Kong joint venture, which in turn will sublease a portion of the transponder capacity to an affiliate of a Chinese regulatory entity.

*AMC-14.* AMC-14 will launch and commence commercial operation in early 2008 at an orbital location to be determined at a future date. The satellite is being equipped with transmit antennas optimized for multiple orbital locations, providing greater backup flexibility in the event certain other in-orbit satellites fail.

ECC has entered into contracts for the construction of three additional SSL Ka and/or Ku expanded band satellites which are expected to be completed during 2009 and 2010. ECC will contribute these contracts to us as part of the spin-off.

#### **Government Regulations**

We are subject to comprehensive regulation by the FCC for our domestic operations. We are also regulated by other federal agencies, state and local authorities and the International Telecommunication Union. Depending

upon the circumstances, noncompliance with legislation or regulations promulgated by these entities could result in suspension or revocation of our licenses or authorizations, the termination or loss of contracts or the imposition of contractual damages, civil fines or criminal penalties.

The following summary of regulatory developments and legislation in the United States is not intended to describe all present and proposed government regulation and legislation affecting the satellite and set-top box equipment markets. Government regulations that are currently the subject of judicial or administrative proceedings, legislative hearings or administrative proposals could change our industry to varying degrees. We cannot predict either the outcome of these proceedings or any potential impact they might have on the industry or on our operations.

#### ***Regulations Applicable to Satellite Operations***

***FCC Jurisdiction over our Satellite Operations.*** The Communications Act gives the FCC broad authority to regulate the operations of satellite companies. Specifically, the Communications Act gives the FCC regulatory jurisdiction over the following areas relating to communications satellite operations:

- the assignment of satellite radio frequencies and orbital locations;
- licensing of satellites, earth stations, the granting of related authorizations, and evaluation of the fitness of a company to be a licensee;
- approval for the relocation of satellites to different orbital locations or the replacement of an existing satellite with a new satellite;
- ensuring compliance with the terms and conditions of such assignments and authorizations, including required timetables for construction and operation of satellites and other due diligence requirements;
- avoiding interference with other radio frequency emitters; and
- ensuring compliance with other applicable provisions of the Communications Act and FCC rules and regulations governing the operations of satellite communications providers.

In order to obtain FCC satellite licenses and authorizations, satellite operators must satisfy strict legal, technical and financial qualification requirements. Once issued, these licenses and authorizations are subject to a number of conditions including, among other things, satisfaction of ongoing due diligence obligations, construction milestones, and various reporting requirements. Applications for new or modified satellites and earth stations are necessary for further development and expansion of satellites services. Necessary federal approval of these applications may not be granted, or may not be granted in a timely manner.

***Overview of Our Satellites Licenses and Authorizations.*** This overview describes the satellite licenses and authorizations that will be contributed to us in the spin-off, and it assumes for purposes of this description the completion of these contributions. However, transfer of these licenses and authorizations remains subject to receipt of all required FCC and other governmental approvals.

Our satellites are located in orbital positions, or slots, that are designated by their western longitude. An orbital position describes both a physical location and an assignment of spectrum in the applicable frequency band. Each transponder on our satellites typically exploits one frequency channel. Through digital compression technology, we can currently transmit up to 13 standard-definition digital video channels from each transponder. Several of our satellites also include spot-beam technology which enables us to provide services on a local or regional basis, but reduces the number of video channels that could otherwise be offered across the entire United States.

We have U.S. DBS licenses for 30 frequencies at the 61.5 degree orbital location, capable of providing service to the Eastern and Central United States. We are also currently operating on the two unassigned frequencies at the 61.5 orbital location under a conditional special temporary authorization. We recently sought renewal of that authority. The licensing of those two channels is under FCC review, and also subject to an FCC moratorium on new DBS applications. The FCC has previously found that existing DBS providers will not be

eligible for the two unassigned channels at the 61.5 degree orbital location. EchoStar Satellite L.L.C. has a pending reconsideration petition of that decision.

Following the spin-off, we will have the right to use 32 frequencies at a Mexican DBS orbital slot at the 77 degree orbital location, but it is likely to be several years before a satellite is available to exploit all of that spectrum.

We also hold licenses or have entered into agreements to lease capacity on satellites at the following fixed satellite services orbital locations including:

- 500 MHz of Ku spectrum divided into 32 frequencies at the 121 degree orbital location, capable of providing service to CONUS, plus 500 MHz of Ka spectrum at the 121 degree orbital location capable of providing service into select spot beams;
- 500 MHz of Ku spectrum divided into 24 frequencies at the 105 degree orbital location, currently capable of providing service to CONUS, Alaska and Hawaii, plus approximately 720 MHz of Ka spectrum capable of providing service through spot beams to CONUS, Alaska and Hawaii; and
- 500 MHz of Ku spectrum divided into 24 frequencies at the 85 degree orbital location, currently capable of providing service to CONUS, plus approximately 720 MHz of Ka spectrum capable of providing service through spot beams to CONUS.

We also hold authorizations to construct additional satellites at other orbital locations. Specifically, we hold Ka-band licenses at the 97 and 113 degree orbital locations. More recently, we were granted authority for a "tweener" DBS satellite at the 86.5 degree orbital location. That authorization will be conditioned on final FCC licensing and service rules in the "tweener" proceeding, in which the FCC is examining permitting satellites to operate from orbital locations 4.5 degrees (half of the usual 9 degrees) away from traditional DBS satellites. The FCC has also granted authorizations to Spectrum Five for a tweener satellite at the 114.5 degree orbital location. EchoStar Satellite L.L.C. challenged the Spectrum Five authorization, and Telesat Canada, a Canadian satellite operator, has challenged our license.

Use of these licenses and conditional authorizations is subject to certain technical and due diligence requirements, including the requirement to construct and launch satellites according to specific milestones and deadlines. There can be no assurance that we will develop acceptable plans to meet these deadlines, or that we will be able to utilize these orbital slots.

*Duration of our Satellite Licenses.* Generally speaking, all of our satellite licenses are subject to expiration unless renewed by the FCC. The term of each of our DBS licenses is 10 years; fixed satellite services licenses generally are for 15 year terms. In addition, our special temporary authorizations are granted for periods of only 180 days or less, subject again to possible renewal by the FCC.

*Opposition and other Risks to our Licenses.* Several third parties have opposed, and we expect them to continue to oppose, some of our FCC satellite authorizations and pending requests to the FCC for extensions, modifications, waivers and approvals of our licenses. In addition, we may not have fully complied with all of the FCC reporting and filing requirements in connection with our satellite authorizations. Consequently, it is possible the FCC could revoke, terminate, condition or decline to extend or renew certain of our authorizations or licenses.

*FCC Rulemaking Affecting our Licenses and Applications.* A number of our other applications have been denied or dismissed without prejudice by the FCC, or remain pending. We cannot be sure that the FCC will grant any of our satellite applications, or that the authorizations, if granted, will not be subject to onerous conditions. Moreover, the cost of building, launching and insuring a satellite can be as much as \$300 million or more, and we cannot be sure that we will be able to construct and launch all of the satellites for which we have requested authorizations. The FCC has also imposed a \$3.0 million bond requirement for our fixed satellite services satellite licenses, all or part of which would be forfeited by a licensee that does not meet its diligence milestones for a particular satellite.

*Reverse Band (17/24 GHz BSS) Spectrum.* The FCC has recently announced licensing and service rules for the 17/24 GHz BSS or “reverse band” spectrum, which could create substantial additional capacity for satellite providers. It could also result in additional satellite competition from new entrants. Under FCC rules, we are eligible for up to 5 orbital locations. We cannot predict when, or whether, the FCC will grant our applications. Nor can we predict whether FCC action, or other applicants’ selected orbital locations, will limit the utility of this new spectrum for our operations.

*Interference from Other Services Sharing Satellite Spectrum.* The FCC has adopted rules that allow non-geostationary orbit fixed satellite services to operate on a co-primary basis in the same frequency band as DBS and Ku-band-based fixed satellite services. The FCC has also authorized the use of terrestrial communication services (MVDDS) in the DBS band. MVDDS licenses were auctioned in 2004. Despite regulatory provisions to protect DBS operations from harmful interference, there can be no assurance that operations by other satellite or terrestrial communication services in the DBS band will not interfere with our DBS operations and adversely affect our business.

*International Satellite Competition and Interference.* DIRECTV has obtained FCC authority to provide service to the United States from a Canadian DBS orbital slot. We have also received authority to do the same from a Mexican orbital slot at 77 degrees. The possibility that the FCC will allow service to the U.S. from additional foreign slots may permit additional competition against us from other satellite providers. It may also provide a means by which to increase our available satellite capacity in the United States. In addition, a number of administrations, such as Great Britain and the Netherlands, have requested to add orbital locations serving the U.S. close to our licensed slots. Such operations could cause harmful interference into our satellites and constrain our future operations at those slots if such “tweener” operations are approved by the FCC. The risk of harmful interference will depend upon the final rules adopted in the FCC’s “tweener” proceeding.

*Emergency Alert System.* The Emergency Alert System (“EAS”) requires participants to interrupt programming during nationally declared emergencies and to pass through emergency-related information. The FCC requires satellite carriers to participate in the “national” portion of EAS, and is considering whether to mandate that satellite carriers also interrupt programming for local emergencies and weather events. We cannot be sure that this requirement will not affect us adversely by requiring us to devote additional resources to complying with EAS requirements.

*The International Telecommunication Union.* Our satellites also must conform to the International Telecommunication Union, or ITU, requirements and regulations. We have cooperated, and continue to cooperate, with the FCC in the preparation of ITU filings and responses. Requests for modification that have been filed by the United States government for our satellites are pending or in various stages of completion. We cannot predict if all the required requests will be made or when the ITU will act upon them.

#### **Regulations Applicable to Set-top box Operations**

*Plug and Play.* Cable companies were required to separate the security functionality from their set-top boxes to increase competition and encourage the sale of set-top boxes in the retail market by July 1, 2007. Traditionally, cable service providers sold or leased set-top boxes with integrated security functionality to subscribers. DBS providers are not currently subject to the removable security requirements. The development of a retail market for cable set-top boxes could provide us with an opportunity to expand operations providing set-top box equipment to non-DBS households. The FCC has an open proceeding addressing the need to expand the scope of the cable “plug and play” rules, and the need for all-video provider set-top box solutions. If the FCC were to extend or expand its separate security rules to include DBS providers, sales of our set-top boxes to DBS providers may be negatively impacted. Specifically, if a retail DBS set-top box market develops capable of accepting the security modules, we risk reduced sales if competitors produce DBS set-top boxes.

*NTIA Digital Converter Box Program.* The Commerce Department’s National Telecommunications and Information Administration (NTIA) has established a coupon program allowing U.S. households to request up to two coupons, worth \$40 each, to be used toward the purchase of up to two, digital-to-analog converter boxes as part of the February 2009 digital television transition. This program is necessary to ensure that



consumers with analog televisions will continue to be able to view over-the-air broadcast signals after the digital transition. To be eligible for the coupons, converter boxes must be approved by the NTIA, and we have submitted a converter box for NTIA approval. We cannot predict when, or if, our box will be approved for the coupon program.

#### **Export Control Regulation Applicable to Satellite and Set-top box Equipment**

We are required to obtain import and export licenses from the United States government to receive and deliver components of direct-to-home satellite TV systems. In addition, the delivery of satellites and the supply of related ground control equipment, technical data, and satellite communication/control services to destinations outside the United States is subject to strict export control and prior approval requirements from the United States government (including prohibitions on the sharing of certain satellite-related goods and services with China).

#### **Patents And Trademarks**

Many entities, including some of our competitors, have or may in the future obtain patents and other intellectual property rights that cover or affect products or services related to those that EHC will offer. In general, if a court determines that one or more of our products infringes on intellectual property held by others, we may be required to cease developing or marketing those products, to obtain licenses from the holders of the intellectual property at a material cost, or to redesign those products in such a way as to avoid infringing the patent claims. If those intellectual property rights are held by a competitor, we may be unable to obtain the intellectual property at any price, which could adversely affect our competitive position.

We may not be aware of all intellectual property rights that our products may potentially infringe. In addition, patent applications in the United States are confidential until the Patent and Trademark Office issues a patent and, accordingly, our products may infringe claims contained in pending patent applications of which we are not aware. Further, the process of determining definitively whether a claim of infringement is valid often involves expensive and protracted litigation, even if we are ultimately successful on the merits.

We cannot estimate the extent to which we may be required in the future to obtain intellectual property licenses or the availability and cost of any such licenses. Those costs, and their impact on our results of operations, could be material. Damages in patent infringement cases may also include treble damages in certain circumstances. To the extent that we are required to pay unanticipated royalties to third parties, these increased costs of doing business could negatively affect our liquidity and operating results. EHC is currently defending multiple patent infringement actions. We cannot be certain the courts will conclude these companies do not own the rights they claim, that our products do not infringe on these rights, that we would be able to obtain licenses from these persons on commercially reasonable terms or, if we were unable to obtain such licenses, that we would be able to redesign our products to avoid infringement. See "Legal Proceedings."

#### **Environmental Regulations**

We are subject to the requirements of federal, state, local and foreign environmental and occupational safety and health laws and regulations. These include laws regulating air emissions, water discharge and waste management. We attempt to maintain compliance with all such requirements. We do not expect capital or other expenditures for environmental compliance to be material in 2007 or 2008. Environmental requirements are complex, change frequently and have become more stringent over time. Accordingly, we cannot provide assurance that these requirements will not change or become more stringent in the future in a manner that could have a material adverse effect on our business.

#### **Geographic Area Data and Transactions with Major Customers**

For principal geographic area data and transactions with major customers for 2006, 2005 and 2004, see Note 8 in the Notes to the Combined Financial Statements of EchoStar Holding Corporation.

## **Employees**

Upon completion of the spin-off, we will have approximately 1,500 employees. We anticipate that subsequent to the spin-off, ECC will provide us with certain management and administrative services, which will include the services of certain executive officers of ECC. See “Certain Intercompany Agreements — Management Services Agreement.”

## **Legal Proceedings**

### ***Separation Agreement***

In connection with the spin-off, we have entered into a separation agreement with ECC, which provides for, among other things, the division of liability resulting from litigation. Under the terms of the separation agreement, we have assumed liability for any acts or omissions that relate to our business whether such acts or omissions occurred before or after the spin-off. Certain exceptions are provided, including for intellectual property related claims generally, whereby we will only be liable for our acts or omissions that occurred following the spin-off. In accordance with these terms of the separation agreement, we may be partially or completely responsible for any liability resulting from the legal proceedings described below.

### ***Acacia***

During 2004, Acacia Media Technologies, which we refer to as Acacia filed a lawsuit against us and ECC in the United States District Court for the Northern District of California. The suit also named DirecTV, Comcast, Charter, Cox and a number of smaller cable companies as defendants. Acacia is an intellectual property holding company which seeks to license the patent portfolio that it has acquired. The suit alleges infringement of United States Patent Nos. 5,132,992 (the ‘992 patent), 5,253,275 (the ‘275 patent), 5,550,863 (the ‘863 patent), 6,002,720 (the ‘720 patent) and 6,144,702 (the ‘702 patent). The ‘992, ‘863, ‘720 and ‘702 patents have been asserted against us.

The patents relate to various systems and methods related to the transmission of digital data. The ‘992 and ‘702 patents have also been asserted against several Internet content providers in the United States District Court for the Central District of California. During 2004 and 2005, the Court issued Markman rulings which found that the ‘992 and ‘702 patents were not as broad as Acacia had contended, and that certain terms in the ‘702 patent were indefinite. In April 2006, ECC and other defendants asked the Court to rule that the claims of the ‘702 patent are invalid and not infringed. That motion is pending. In June and September 2006, the Court held Markman hearings on the ‘992, ‘863, ‘720 and ‘275 patents, and issued a ruling during December 2006. Acacia’s various patent infringement cases have been consolidated for pre-trial purposes in the United States District Court for the Northern District of California.

We and ECC intend to vigorously defend this case. In the event that a Court ultimately determines that we and ECC infringe any of the patents, we may be subject to an injunction that could require us to materially modify certain user-friendly features that we currently offer to consumers. We are being indemnified by ECC for any potential liability or damages resulting from this suit relating to the period prior to the effective date of the spin-off.

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

In 2001, Broadcast Innovation, L.L.C., which we refer to as Broadcast Innovation, filed a lawsuit against ECC, DirecTV, Thomson Consumer Electronics and others in Federal District Court in Denver, Colorado. The suit alleges infringement of United States Patent Nos. 6,076,094 (which we refer to as the ‘094 patent) and 4,992,066 (which we refer to as the ‘066 patent). The ‘094 patent relates to certain methods and devices for transmitting and receiving data along with specific formatting information for the data. The ‘066 patent relates to certain methods and devices for providing the scrambling circuitry for a pay television system on removable cards. We examined these patents and believe that they are not infringed by any of our products or services. Subsequently, DirecTV and Thomson settled with Broadcast Innovation leaving us as the only defendant.

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

We and ECC intend to vigorously defend this case. In the event that a Court ultimately determines that we and ECC infringe any of the patents, we may be subject to an injunction that could require us to materially modify certain user-friendly features that we currently offer to consumers. We are being indemnified by ECC for any potential liability or damages resulting from this suit relating to the period prior to the effective date of the spin-off.

***Finisar Corporation***

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

In July 2006, ECC, together with NagraStar LLC, filed a Complaint for Declaratory Judgment in the United States District Court for the District of Delaware against Finisar that asks the Court to declare that they and we do not infringe, and have not infringed, any valid claim of the '505 patent. Trial is not currently scheduled. The District Court has stayed our action until the Federal Circuit has resolved DirecTV's appeal.

We and ECC intend to vigorously prosecute this case. In the event that a Court ultimately determines that we and ECC infringe any of the patents, we may be subject to an injunction that could require us to materially modify certain user-friendly features that we currently offer to consumers. We are being indemnified by ECC for any potential liability or damages resulting from this suit relating to the period prior to the effective date of the spin-off.

***Global Communications***

On April 19, 2007, Global Communications, Inc., which we refer to as Global, filed a patent infringement action against ECC in the United States District Court for the Eastern District of Texas. The suit alleges infringement of United States Patent No. 6,947,702 (which we refer to as the '702 patent). This patent, which involves satellite reception, was issued in September 2005. On October 24, 2007, the United States Patent and Trademark Office granted ECC's request for re-examination of the '702 patent and issued an Office Action finding that all of the claims of the '702 patent were invalid. Based on the PTO's decision, ECC has asked the District Court to stay the litigation until the re-examination proceeding is concluded.

We and ECC intend to vigorously defend this case. In the event that a Court ultimately determines that we and ECC infringe any of the patents, we may be subject to an injunction that could require us to materially modify certain user-friendly features that we currently offer to consumers. We are being indemnified by ECC for any potential liability or damages resulting from this suit relating to the period prior to the effective date of the spin-off.

***Superguide***

During 2000, Superguide Corp., which we refer to as Superguide, filed suit against ECC, DirecTV, Thomson 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 (which we refer to as the '211 patent), 5,293,357 (which we refer to as the '357 patent) and 4,751,578 (which we refer to as the '578 patent) which relate to certain electronic program guide functions, including the use of electronic program guides to control VCRs. Superguide sought injunctive and declaratory relief and damages in an unspecified amount.

On summary judgment, the District Court ruled that none of the asserted patents were infringed by us. These rulings were appealed to the United States Court of Appeals for the Federal Circuit. During 2004, the Federal

Circuit affirmed in part and reversed in part the District Court's findings and remanded the case back to the District Court for further proceedings. In 2005, Superguide indicated that it would no longer pursue infringement allegations with respect to the '211 and '357 patents and those patents have now been dismissed from the suit. The District Court subsequently entered judgment of non-infringement in favor of all defendants as to the '211 and '357 patents and ordered briefing on Thomson's license defense as to the '578 patent. During December 2006, the District Court found that there were disputed issues of fact regarding Thomson's license defense, and ordered a trial solely addressed to that issue. That trial took place in March 2007. In July 2007, the District Court ruled in favor of Superguide. As a result, Superguide will be able to proceed with their infringement action against us, DirecTV and Thomson.

We and ECC intend to vigorously defend this case. In the event that a Court ultimately determines that we infringe the '578 patent, we may be subject to a portion of the final damages, which may include treble damages and/or an injunction that could require us to materially modify certain user-friendly electronic programming guide and related features that we currently offer to consumers. We are being indemnified by ECC for any potential liability or damages resulting from this suit relating to the period prior to the effective date of the spin-off. We cannot predict with any degree of certainty the outcome of the suit.

***Tivo Inc.***

During April 2006, a Texas jury concluded that certain of our digital video recorders, or DVRs, infringed a patent held by Tivo. The Texas court subsequently issued an injunction prohibiting us from offering DVR functionality. A Court of Appeals has stayed that injunction during the pendency of our appeal.

We and ECC intend to vigorously defend this case. In the event that a Court ultimately determines that we and ECC infringe any of the patents, we may be subject to an injunction that could require us to materially modify certain user-friendly features that we currently offer to consumers. We are being indemnified by ECC for any potential liability or damages resulting from this suit relating to the period prior to the effective date of the spin-off. We and ECC believe that we do not infringe any of the claims asserted against us and ECC.

***Trans Video***

In August 2006, Trans Video Electronic, Ltd., which we refer to as Trans Video, filed a patent infringement action against ECC in the United States District Court for the Northern District of California. The suit alleges infringement of United States Patent Nos. 5,903,621 (which we refer to as the '621 patent) and 5,991,801 (which we refer to as the '801 patent). The patents relate to various methods related to the transmission of digital data by satellite. On May 14, 2007, we and ECC reached a settlement which did not have a material impact on our results of operations.

***Other***

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

**MANAGEMENT****Directors and Executive Officers**

The following table sets forth certain information as of December 12, 2007, concerning our directors and executive officers, including a five-year employment history and any directorships held in public companies:

<u>Name</u>	<u>Age</u>	<u>Position With the Company</u>
Charles W. Ergen	54	Chairman of the Board and Chief Executive Officer
R. Stanton Dodge	39	Executive Vice President, General Counsel and Secretary
Michael T. Dugan	58	Director
Steven R. Goodbarn	50	Director
Bernard L. Han	43	Executive Vice President and Chief Financial Officer
Mark W. Jackson	46	President
David K. Moskowitz	49	Director
Tom A. Ortoif	57	Director
Steven B. Schaver	53	President -- EchoStar International Corporation
C. Michael Schroeder	59	Director
Carl E. Vogel	50	Director, Vice Chairman of the Board and Advisor

ECC elected our directors and appointed our executive officers in October 2007. Each director was elected for a term expiring at our annual meeting of shareholders to be held in 2008 or until such director's successor is duly elected and qualified. At the 2008 annual meeting of shareholders and thereafter, each director will be elected to a one-year term to expire at the annual meeting of shareholders for the following year or until such director's successor is duly elected and qualified. Seven of our directors, Charles W. Ergen, Michael T. Dugan, Stephen R. Goodbarn, David K. Moskowitz, Tom A. Ortoif, C. Michael Schroeder and Carl E. Vogel, currently serve on ECC's board of directors. Mr. Dugan and Mr. Schroeder intend to resign from the board of directors of ECC on the distribution date. In addition, Mr. Ergen and Mr. Vogel currently serve as the Chairman and Chief Executive Officer and Vice-Chairman and President of ECC, respectively. We also expect to share three non-business executives with ECC: Bernard L. Han, R. Stanton Dodge and Paul W. Orban, as Executive Vice President and Chief Financial Officer, Executive Vice President, General Counsel and Secretary and Senior Vice President and Controller, respectively.

The following sets forth the business experience of each of our directors and executive officers over the last five years:

*Charles W. Ergen.* Mr. Ergen is our Chairman of the Board and Chief Executive Officer. Mr. Ergen is also the Chairman of the Board and Chief Executive Officer of ECC, positions he has held since its formation. During the past five years he has also held various executive officer and director positions with ECC's subsidiaries.

*R. Stanton Dodge.* Mr. Dodge serves as our Executive Vice President, General Counsel and Secretary. Mr. Dodge also serves in the same capacity for ECC. Mr. Dodge is responsible for all legal and regulatory affairs of EHC and ECC. Since joining ECC in November 1996, he has held various positions in ECC's legal department. Prior to joining ECC, Mr. Dodge was a law clerk to the Hon. Jose D.L. Marquez of the Colorado Court of Appeals. He received his J.D., magna cum laude, from Suffolk University Law School in 1995 and his B.S. in accounting from the University of Vermont in 1991.

*Michael T. Dugan.* Mr. Dugan serves as a member of our board of directors. He is currently a senior advisor to ECC and serves as a member of ECC's board of directors. Until October 2006, Mr. Dugan was ECC's Chief Technology Officer, and prior to 2004 was its President and Chief Operating Officer. In that capacity, Mr. Dugan had been responsible for, among other things, all operations except legal, finance and accounting at ECC. Until April 2000, Mr. Dugan had been President of EchoStar

Technologies Corporation. Previously, he was the Senior Vice President of the Consumer Products Division of ECC. Mr. Dugan has been employed with ECC since 1990. Mr. Dugan has served as a director of Citizens Communications Company since October 2006.

*Steven R. Goodbarn.* Mr. Goodbarn serves as a member of our board of directors and is a member of our Executive Compensation Committee, Nominating Committee, and Audit Committee, where he serves as our "audit committee financial expert." Mr. Goodbarn has also served as a member of ECC's board of directors since December 2002, and is a member of its Executive Compensation Committee, Nominating Committee, and Audit Committee. Since July 2002, Mr. Goodbarn has served as director and president of Secure64 Software Corporation, a company he co-founded. Mr. Goodbarn was chief financial officer of Janus Capital Corporation from 1992 until late 2000. During that time, he was a member of the executive committee and served on the board of directors of many Janus corporate and investment entities. Until September 2003, Mr. Goodbarn also served as a director of Nighthawk Systems. Mr. Goodbarn is a CPA and spent 12 years at Price Waterhouse prior to joining Janus.

*Bernard L. Han.* Mr. Han serves as our Executive Vice President and Chief Financial Officer and is responsible for all accounting, finance and information technology functions of the Company. Mr. Han also serves in the same capacity for ECC, where he was named Executive Vice President and Chief Financial Officer of ECC in September 2006. From October 2002 to May 2005, Mr. Han served as Executive Vice President and Chief Financial Officer of Northwest Airlines, Inc. Prior to October 2002, he held positions as Executive Vice President and Chief Financial Officer and Senior Vice President and Chief Marketing Officer at America West Airlines, Inc.

*Mark W. Jackson.* Mr. Jackson serves as our President. Until completion of the spin-off, Mr. Jackson will also continue to serve as President of EchoStar Technologies Corporation, a position he has held since 2004. Mr. Jackson served as Senior Vice President of ETC from April 2000 until June 2004 and as Senior Vice President of Satellite Services from December 1997 until April 2000.

*David K. Moskowitz.* Mr. Moskowitz serves as a member of our board of directors. From March 1990 until July 1, 2007, Mr. Moskowitz was an Executive Vice President and the Secretary and General Counsel of ECC, where he is currently a senior advisor and serves as a member of its board of directors.

*Tom A. Ortolf.* Mr. Ortolf serves as a member of the board of directors, and is a member of our Executive Compensation Committee, Nominating Committee, and Audit Committee. Mr. Ortolf also serves as a member of the board of directors of ECC, and is a member of its Executive Compensation Committee, Nominating Committee, and Audit Committee. Mr. Ortolf has been the President of Colorado Meadowlark Corp., a privately held investment management firm, for more than ten years. From 1988 until 1991, Mr. Ortolf served as ECC's President and Chief Operating Officer.

*Steven B. Schaver.* Mr. Schaver is currently President of EchoStar International Corporation, which is one of our subsidiaries. He has served in this role for ECC since April 2000. Mr. Schaver served as ECC's Chief Financial Officer from February 1996 through August 2000 and served as ECC's Chief Operating Officer from November 1996 until April 2000.

*C. Michael Schroeder.* Mr. Schroeder serves as a member of our board of directors, and serves on our Executive Compensation Committee, Nominating Committee, and Audit Committee. Mr. Schroeder has served on the board of directors of ECC since November 2003 and is a member of its Executive Compensation Committee, Nominating Committee, and Audit Committee. In 1981, Mr. Schroeder founded Consumer Satellite Systems, Inc. (CSS), which he grew to encompass a 10 state distribution system operating in a region ranging from Wisconsin to Florida. CSS served retailers selling satellite systems, televisions and a range of consumer electronics products. Mr. Schroeder also founded a programming division of CSS that grew to serve over 400,000 subscribers.

*Carl E. Vogel.* Mr. Vogel is currently Vice-Chairman of our board of directors and is an advisor to us. Mr. Vogel also serves as Vice-Chairman of ECC's board of directors and President of ECC. From 2001 until 2005, Mr. Vogel served as the President and CEO of Charter Communications Inc., a publicly-traded company providing cable television and broadband services to approximately six million

customers. Prior to joining Charter, Mr. Vogel worked as an executive officer in various capacities for the companies affiliated with Liberty Media Corporation. Mr. Vogel was one of ECC's executive officers from 1994 until 1997, including serving as ECC's President from 1995 until 1997. Mr. Vogel has served as a director of Shaw Communications, Inc. since June 2006.

During the past five years, none of the above persons has had any involvement in legal proceedings that would be material to an evaluation of his or her ability or integrity.

#### **Board Composition**

Immediately after the spin-off, Charles W. Ergen, our Chairman and Chief Executive Officer, will beneficially own approximately 50.0% of our total equity securities and possess approximately 80.0% of the total voting power. Please see "Security Ownership of Certain Beneficial Owners and Management" below. Thus, Mr. Ergen will have the ability to elect a majority of our directors and to control all other matters requiring the approval of our stockholders. As a result of Mr. Ergen's voting power, we will be a "controlled company" as defined in the Nasdaq listing rules. Therefore, we will not be subject to the Nasdaq listing requirements that would otherwise require us to have:

- a board of directors comprised of a majority of independent directors;
- compensation of our executive officers determined by a majority of the independent directors or a compensation committee composed solely of independent directors; and
- director nominees selected, or recommended for the Board's selection, either by a majority of the independent directors or a nominating committee composed solely of independent directors.

Nevertheless, we have created an Executive Compensation Committee, which we refer to as the "Compensation Committee," and a Nominating Committee, in addition to an Audit Committee, all of which are composed entirely of independent directors.

#### **Committees of the Board**

Our board of directors has established a Compensation Committee, an Audit Committee and a Nominating Committee. The membership and function of each committee is described below.

*Compensation Committee.* The Compensation Committee operates under a Compensation Committee Charter adopted by the board. The principal functions of the Compensation Committee are, to the extent the board deems necessary or appropriate, to:

- make and approve all option grants and other issuances of EHC's equity securities to EHC's executive officers and board members other than nonemployee directors;
- approve all other option grants and issuances of EHC's equity securities, and recommend that the full board make and approve such grants and issuances;
- establish in writing all performance goals for performance-based compensation that together with other compensation to senior executive officers could exceed \$1 million annually, other than standard stock incentive plan options that may be paid to EHC's executive officers, and certify achievement of such goals prior to payment; and
- set the compensation of the Chairman and Chief Executive Officer.

The current members of the Compensation Committee are Mr. Goodbarn, Mr. Ortolfo and Mr. Schroeder. The board of directors has determined that each of these individuals meets the independence requirements of Nasdaq and applicable SEC rules and regulations.

*Audit Committee.* Our board of directors has established a standing Audit Committee in accordance with Nasdaq rules and Section 3(a)(58)(A) of the Securities Exchange Act of 1934. The Audit Committee operates

under an Audit Committee Charter adopted by the board. The principal functions of the Audit Committee are to:

- select the independent registered public accounting firm and set its compensation;
- select the internal auditor;
- review and approve management’s plan for engaging our independent registered public accounting firm during the year to perform non-audit services and consider what effect these services will have on the independence of our independent registered public accounting firm;
- review our annual financial statements and other financial reports that require approval by our board of directors;
- oversee the integrity of our financial statements, our systems of disclosure and internal controls, and our compliance with legal and regulatory requirements;
- review the scope of our independent registered public accounting firm’s audit plans and the results of their audits; and
- evaluate the performance of our internal audit function and independent registered public accounting firm.

The current members of the Audit Committee are Mr. Goodbarn, Mr. Ortoft and Mr. Schroeder, with Mr. Goodbarn serving as Chairman of the Committee. Each of these individuals meets the independence requirements of Nasdaq and applicable SEC rules and regulations. The board of directors has determined that each member of our Audit Committee is financially literate and that Mr. Goodbarn qualifies as an “audit committee financial expert” as defined by applicable SEC rules and regulations.

*Nominating Committee.* The Nominating Committee operates under a Nominating Committee Charter adopted by the Board. The principal function of the Nominating Committee is to recommend independent director nominees for selection by the board of directors. The current members of the Nominating Committee are Mr. Goodbarn, Mr. Ortoft and Mr. Schroeder. The board of directors has determined that each of these individuals meets the independence requirements of Nasdaq and applicable SEC rules and regulations.

The Nominating Committee will consider candidates suggested by its members, other directors, senior management and shareholders as appropriate. No search firms or other advisors were retained to identify nominees during the past fiscal year. The Nominating Committee has not adopted a written policy with respect to the consideration of candidates proposed by security holders or with respect to nominating anyone to our board of directors other than nonemployee directors. Director candidates, whether recommended by the Nominating Committee, other directors, senior management or shareholders are currently considered by the Nominating Committee and the board of directors, as applicable, in light of the entirety of their credentials, including but not limited to the following factors: (i) their reputation and character; (ii) their ability and willingness to devote sufficient time to board duties; (iii) their educational background; (iv) their business and professional achievements, experience and industry background; (v) their independence from management under listing standards and EHC’s governance guidelines; and (vi) the needs of our board of directors and EHC.

#### **Compensation Discussion and Analysis**

This Compensation Discussion and Analysis (“CD&A”) describes the compensation policy applied by our parent company, ECC, to our named executive officers (the “NEOs”) with respect to fiscal 2006, which is substantially the same as the compensation policy we will implement after we become an independent public company. Our NEOs include Messrs. Charles W. Ergen, Bernard L. Han, Mark W. Jackson, Steven B. Schaver and R. Stanton Dodge. Of these NEOs, Mr. Ergen and Mr. Han were NEOs of ECC in 2006. Messrs. Jackson and Schaver will be employed by and will be solely compensated by EHC. Mr. Ergen will be employed and compensated by both EHC and ECC and each company expects to follow the compensation policies described below with respect to Mr. Ergen’s compensation. In addition, as two separately traded-public companies, the compensation paid by one company has no impact on the compensation decisions of the other company. In



respect of EHC's remaining two NEOs, pursuant to the Management Services Agreement, Mr. Han and Mr. Dodge, will be employed by, and receive compensation from, ECC, and will not be directly compensated by us. Under the Management Services Agreement, we will make payments to ECC based upon a portion of ECC's personnel costs for these two NEOs (taking into account salary and fringe benefits) based upon the anticipated percentages of time to be spent by these NEOs performing services for us. Incentive compensation for Messrs. Han and Dodge will be solely the responsibility of ECC. See "Certain Intercompany Agreements — Management Services Agreement." Other than as described above with respect to Mr. Ergen and in relation to the payments to be made by EHC to ECC in respect of Messrs. Han and Dodge pursuant to the Management Services Agreement, there are no NEOs of EHC who will receive direct compensation from both EHC and ECC.

#### **Compensation Philosophy**

Historically, ECC's executive compensation program was, and following the spin-off our executive compensation program will continue to be, guided by the following principles:

- Attraction, retention and motivation of executive officers over the long-term; and
- Creation of shareholder value by aligning the interest of management with that of the shareholders through equity incentives.

#### **Compensation Oversight**

Our Compensation Committee will be composed entirely of independent, outside directors and will operate under a Compensation Committee Charter adopted by our board of directors. See "— Committees of the Board — Compensation Committee" above for a more detailed description of the duties of the Compensation Committee.

#### **General Compensation Levels**

*Historically.* The total direct compensation opportunities, both base salaries and long-term incentives, offered to ECC's NEOs have been designed to ensure that they are competitive with market practice, support ECC's executive recruitment and retention objectives and will contribute to its long-term success by aligning the interest of its executive officers and shareholders.

Mr. Ergen recommends to the board of directors, but ECC's board of directors ultimately approves, the base compensation of ECC's other NEOs. ECC's compensation committee has made and approved grants of options and other equity-based compensation to ECC's NEOs, and established in writing performance goals for any performance-based compensation that together with other compensation to any NEO could exceed \$1 million annually. ECC's compensation committee has also certified achievement of those performance goals prior to payment of performance-based compensation. In addition to peer group analysis, as described below, factors considered by ECC's compensation committee and board of directors have included their perception of the individual's performance, the individual's success in achieving ECC's and individual goals, equity awards previously granted to the individual and planned changes in responsibilities. ECC's compensation committee and board of directors have also considered each of ECC's NEO's individual extraordinary efforts resulting in tangible increases in corporate, division or department success when setting base cash salaries and annual bonuses.

*Going Forward.* Following the spin-off, it is expected that our Compensation Committee and board of directors will continue to take a similar approach in establishing compensation levels.

#### **Peer Group Analysis**

*Historically.* In connection with making recommendations for ECC's executive officer compensation, ECC's board of directors and compensation committee considered an internally-prepared, informal benchmarking survey of the compensation components for the NEOs of companies selected by the compensation committee, as disclosed in their respective publicly-filed proxy statements. These surveyed companies included: The

DirecTV Group, Inc., Comcast Corporation, Cablevision Systems Corporation, Cox Communications, Inc., Charter Communications, Inc., Adelphia Communications Corporation, Liberty Media Corporation, UnitedGlobalCom, Inc., CenturyTel, Inc., and Level 3 Communications, Inc. However, the survey was used merely as an informal and subjective frame of reference for comparisons to base cash salaries paid to similarly situated executives. Moreover, the survey was not a conventional “benchmarking survey” but rather a table that listed the compensation components for the named executive officers of the selected companies, as disclosed in their respective publicly-filed proxy statements. Neither ECC’s compensation committee nor its board of directors used the survey to “benchmark” in the traditional sense, as ECC’s compensation committee and board of directors do not utilize any kind of formulaic or standard, formalized benchmarking level or element in tying or otherwise setting ECC’s executive compensation to that of other companies.

*Going Forward.* Following the spin-off, it is expected that our Compensation Committee and board of directors will take a similar approach to comparing our executive compensation program against those of other companies comparable to EHC.

***Weighting and Selection of Elements of Compensation***

*Historically.* Neither ECC’s board of directors nor its compensation committee has in the past assigned specific weights to any factors considered by the ECC’s board of directors and its compensation committee in determining compensation, and none of the factors are more dispositive than others.

*Going Forward.* Following the spin-off, our board of directors and Compensation Committee anticipate taking a similar approach to weighting and selection of elements of compensation.

***Elements of Executive Compensation***

*Historically.* The primary components of ECC’s executive compensation program have included:

- base cash salary;
- incentive compensation, including conditional and/or performance-based cash incentive compensation and long-term equity incentive compensation in the form of stock options and restricted stock units offered under ECC’s stock incentive plans;
- 401(k) plan; and
- other compensation, including perquisites and personal benefits and post-termination compensation.

ECC has not required that a certain percentage of an executive salary be provided in one form versus another. Each element of ECC’s historical executive compensation and the rationale for each element is described below.

*Going Forward.* Following the spin-off, we expect to use a similar mix of base cash salary, conditional and/or performance based cash bonuses and long-term equity incentives in our compensation program, as described below.

***Base Cash Salary***

*Historically.* ECC has traditionally included salary in its executive compensation package under the belief that it is appropriate that some portion of the compensation paid to its executives be provided in a form that is fixed and liquid occurring over regular intervals. Generally, for the reasons discussed in “Incentive Compensation”, ECC has weighted overall compensation towards equity components as opposed to base salaries. ECC’s compensation committee and board of directors have traditionally been free to set salary at any level deemed appropriate and any increases or decreases in base salary on a year-over-year basis have been dependent on either the compensation committee’s or board of directors’ respective assessment of ECC, the applicable business unit and individual performance.

Annual base salaries paid to ECC’s executive officers have historically been at levels below those generally paid to executive officers with comparable experience and responsibilities in the telecommunications industry

or other similarly-sized companies. In addition, ECC has stated that it believes the compensation paid to Mr. Ergen has generally been at a level that is below amounts paid to chief executive officers at other companies of similar size in comparable industries. Since 1996, changes in Mr. Ergen's base salary have been set by ECC's compensation committee.

*Going Forward.* Following the spin-off, it is expected that our Compensation Committee and board of directors will determine the base salaries of our executive officers in the same manner and in accordance with the same policies and principles as described above.

#### ***Incentive Compensation***

*Historically.* ECC has traditionally operated under the belief that executive officers will be better able to contribute to its long-term success and help build incremental shareholder value if they have a stake in that future success and value. ECC has stated it believes this stake focuses the executive officers' attention on managing ECC as owners with equity positions in ECC and has aligned their interests with the long-term interests of ECC's shareholders. Equity awards therefore have represented an important and significant component of ECC's compensation program for executive officers. ECC has attempted to create general incentives with its standard stock option grants and conditional incentives through special performance-based conditional awards that may include payouts in cash or equity.

#### ***General Equity Incentives***

Standard awards under ECC's stock incentive plans have generally included stock options and have been based on a review of the individual employee's performance, years of service, position and level of responsibility with ECC, long-term potential contribution to ECC and the number of options and terms of any other awards previously granted to the employee. However, the number of options to be granted at any one time has not been based on any objective criteria. ECC has not assigned specific weights to these factors, although such employee's position and a subjective evaluation of his or her performance have been considered most important. To encourage executive officers to remain in ECC's employ, options granted under ECC's stock incentive plans generally vest at the rate of 20% per year and have exercise prices not less than the fair market value of ECC's Class A common stock on the date of grant. ECC's standard form of option agreement given to executive officers has included acceleration of vesting upon a change in control of ECC for those executive officers that do not continue with ECC or the surviving entity, as applicable.

#### ***Practices Regarding Grant of Equity Incentives***

ECC has generally awarded stock options and restricted stock as of the last day of each calendar quarter and has set exercise prices, as applicable, of not less than the fair market value of ECC's Class A common stock on the date of grant.

#### ***Stock Incentive Plan***

We have adopted an employee stock incentive plan, which we refer to as the 2008 Stock Incentive Plan, that will be similar to ECC's 1999 Stock Incentive Plan. The purpose of the 2008 Stock Incentive Plan will be to provide incentives to attract and retain executive officers and other key employees. Awards available to be granted under the 2008 Stock Incentive Plan will include: (i) stock options; (ii) stock appreciation rights; (iii) restricted stock and restricted stock units; (iv) performance awards; (v) dividend equivalents; and (vi) other stock-based awards. Up to 16 million shares of our Class A common stock will be available for awards under the 2008 Stock Incentive Plan. No awards will be granted under the 2008 Stock Incentive Plan prior to the spin-off.

#### ***Class B CEO Stock Option Plan***

We have adopted a Class B CEO stock option plan, which we refer to as the 2008 Class B CEO Stock Option Plan, that is similar to ECC's 2002 Class B CEO Stock Option Plan. The purpose of the 2008 Class B CEO Stock Option Plan is to promote the interests of EHC and its subsidiaries by aiding in retaining and

incentivizing Charles W. Ergen, the Chairman and Chief Executive Officer of EHC, whom our board of directors believes is crucial to assuring our future success, to offer Mr. Ergen incentives to put forth maximum efforts for our future success and to afford Mr. Ergen an opportunity to acquire additional proprietary interests in EHC. Mr. Ergen abstained from our board of directors' vote on this matter. Awards available to be granted under the 2008 Class B CEO Stock Option Plan will include nonqualified stock options and dividend equivalent rights with respect to EHC's Class B Common Stock. Up to 4 million shares of EHC's Class B common stock will be available for awards under the 2008 Class B CEO Stock Option Plan. No awards will be granted under the 2008 Class B CEO Stock Option Plan prior to the spin-off.

***Employee Stock Purchase Plan***

We have adopted an employee stock purchase plan, which we refer to as the 2008 ESPP, that is similar to ECC's employee stock purchase plan. The purpose of the 2008 ESPP will be to provide our eligible employees with an opportunity to acquire a proprietary interest in us by the purchase of our Class A common stock. All full-time employees who will have been employed by EHC for at least one calendar year quarter will be eligible to participate in the 2008 ESPP. Employee stock purchases will be made through payroll deductions. Under the proposed terms of the 2008 ESPP, employees will not be permitted to deduct an amount which would permit such employee to purchase our capital stock under all of our stock purchase plans which would exceed \$25,000 in fair value of capital stock in any one year. The 2008 ESPP is intended to qualify under Section 423 of the Internal Revenue Code and thereby provide participating employees with an opportunity to receive certain favorable income tax consequences as to stock purchase rights under the 2008 ESPP. Up to 360,000 Shares of EHC's Class A common stock will be available for awards under the 2008 ESPP. No stock purchase rights will be granted under the 2008 ESPP prior to the spin-off.

***Nonemployee Director Stock Option Plan***

We have adopted a non-employee director stock option plan, which we refer to as the 2008 NEDSOP, that is similar to ECC's non-employee director stock option plan. The purpose of the 2008 NEDSOP will be to advance our interests through the motivation, attraction and retention of highly-qualified non-employee directors. The 2008 NEDSOP will grant our non-employee directors, upon their initial election or appointment to our board, an option to acquire a certain number of shares of EHC's Class A common stock. We may also grant, in our discretion, any continuing non-employee directors further options to acquire our shares of Class A common stock in exchange for their continuing services. Up to 250,000 shares of our Class A common stock will be available for awards under the 2008 NEDSOP. No options will be granted under the 2008 NEDSOP prior to the spin-off.

***401(k) Plan***

*Historically.* ECC has adopted a defined-contribution tax-qualified 401(k) plan for its employees, including its executives, to encourage its employees to save some percentage of their cash compensation for their eventual retirement. ECC's executives have participated in the 401(k) plan on the same terms as ECC's other employees. Under the plan, employees have become eligible for participation in the 401(k) plan upon completing six months of service with ECC and reaching age 19. 401(k) plan participants have been able to contribute up to 50% of their compensation in each contribution period, subject to the maximum deductible limit provided by the Internal Revenue Code. ECC may also make a 50% matching employer contribution up to a maximum of \$1,000 per participant per calendar year. In addition, ECC may also make an annual discretionary profit sharing or employer stock contribution to the 401(k) plan with the approval of its compensation committee and board of directors. 401(k) plan participants are immediately vested in their voluntary contributions and earnings on voluntary contributions. ECC's employer contributions to 401(k) plan participants' accounts vest 20% per year commencing one year from the employee's date of employment.

*Going Forward.* Following the spin-off, we expect to offer a 401(k) plan on similar terms as described above.

***Perquisites and Personal Benefits, Post-Termination Compensation and Other Compensation***

*Historically.* ECC has traditionally offered numerous plans and other benefits to its executive officers on the same terms as other employees. These plans and benefits have included medical, vision, and dental insurance, life insurance, and its employee stock purchase plan as well as discounts on its services. Relocation benefits may also be reimbursed, but are individually negotiated when they occur. ECC has also permitted members of its executive team to use its corporate aircraft for personal use. ECC has also paid for annual tax preparation costs for certain executive officers.

ECC has not traditionally had any plans in place to provide severance benefits to employees. However, certain stock options and restricted stock units have been granted to its executive officers subject to accelerated vesting upon a change in control.

*Going Forward.* Following the spin-off, we anticipate benefits and perquisites offered to our NEOs will be similar to those described above.

***Tax Deductibility***

Section 162(m) of the U.S. Internal Revenue Code places a limit on the tax deduction for compensation in excess of \$1 million paid to certain “covered employees” of a publicly held corporation (generally, the corporation’s principal executive officer and its next four most highly compensated executive officers in the year that the compensation is paid). This limitation applies only to compensation which is not considered performance-based under the Section 162(m) rules. ECC’s compensation committee conducts an ongoing review of its compensation practices for purposes of obtaining the maximum continued deductibility of compensation paid consistent with ECC’s existing commitments and ongoing competitive needs. However, ECC has allowed the payment of nondeductible compensation in excess of this limitation. Following the spin-off, we intend to continue ECC’s policies with respect to the deductibility of our compensation paid to executive officers.

***Executive Compensation***

We have not yet paid any compensation to any of our NEOs. After the completion of the spin-off, certain of our NEOs will continue to be employed and compensated by ECC. Pursuant to the Management Services Agreement between us and ECC, we will share two non-business NEOs focused on providing legal and accounting services. Bernard L. Han and R. Stanton Dodge will serve as our Executive Vice President and Chief Financial Officer and our Executive Vice President, General Counsel and Secretary, respectively. As noted above, these NEOs will be employed by ECC and compensated by ECC as an executive officer or employee of that company, and will not be directly compensated by EHC. Under the Management Services Agreement, we will make payments to ECC based upon a portion of ECC’s personnel costs for our NEOs (taking into account salary and fringe benefits) based upon the anticipated percentages of time to be spent by our executive officers performing services for us. Incentive compensation for Messrs. Han and Dodge will be solely the responsibility of ECC. See “Certain Intercompany Agreements — Management Services Agreement.”

***Fiscal 2006 Summary Compensation Table***

All information included in the following tables reflects compensation earned by our NEOs in fiscal 2006 for their services with ECC. All references to stock and stock options relate to awards of stock and stock options granted by ECC. The historical compensation set forth below does not necessarily reflect future compensation to be paid by us to our NEOs following the spin-off because historical compensation was determined by ECC

and future compensation levels will be determined based on the compensation policies, programs and procedures to be established by our compensation committee.

Name and Principal Position	Year	Salary (\$)	Bonus (\$)	Stock Awards (\$)	Option Awards(2) (\$)	Non-Equity Incentive Plan Compensation(3) (\$)	Change in Pension Value and Nonqualified Deferred Compensation Earnings (\$)	All Other Compensation(4) (\$)	Total (\$)
Charles W. Ergen Chairman and Chief Executive Officer	2006	\$ 550,000	\$ —	\$ —	\$ 1,412,882	\$ —	\$ —	\$ 858,171	\$ 2,821,053
Bernard L. Han(1) Executive Vice President and Chief Financial Officer	2006	\$ 88,077	\$ —	\$ —	\$ 203,248	\$ 33,250	\$ —	\$ —	\$ 324,575
Mark W. Jackson President	2006	\$ 305,769	\$ —	\$ —	\$ 800,870	\$ 124,800	\$ —	\$ 7,775	\$ 1,239,214
Steven B. Schaver President, EchoStar International Corporation	2006	\$ 278,668	\$ —	\$ —	\$ 282,576	\$ 140,500	\$ —	\$ 7,485	\$ 709,229
R. Stanton Dodge Executive Vice President, General Counsel and Secretary	2006	\$ 216,925	\$ 10,000	\$ —	\$ 142,753	\$ 60,956	\$ —	\$ 7,614	\$ 438,248

- (1) Mr. Han joined ECC as Executive Vice President and Chief Financial Officer on September 28, 2006.
- (2) Represents the dollar amounts of expense recognized for financial statement reporting purposes for fiscal 2006, in accordance with Statement of Financial Accounting Standards No. 123(R), Share-Based Payment (“SFAS 123R”). Assumptions used in the calculation of these amounts are included in Note 3 to the audited financial statements for the fiscal year ended December 31, 2006, included herein.
- (3) Represents the dollar amounts earned pursuant to the 2006 Cash Incentive Plan that will be paid by ECC during 2007. Mr. Ergen declined to accept any distributions he was otherwise entitled to receive pursuant to the 2006 Cash Incentive Plan.
- (4) Represents the dollar amounts contributed pursuant to ECC’s 401(k) matching program and our profit sharing program. Mr. Ergen’s “All Other Compensation” also includes tax preparation payments. In addition, with respect to Mr. Ergen “All Other Compensation” includes his personal use of ECC corporate aircraft valued at \$821,771. We calculated the value of Mr. Ergen’s personal use of corporate aircraft based upon the incremental cost of such usage to ECC.

**Fiscal 2006 Grant of Plan-Based Awards**

The following table sets forth information relating to equity and non-equity awards granted to our NEOs by ECC under ECC's plans during Fiscal 2006.

Name	Grant Date	Date of Compensation Committee Approval	Estimated Future Payouts Under Non-Equity Incentive Plan Awards			Estimated Future Payouts Under Equity Incentive Plan Awards			All Other Stock Awards: Number of Shares of Stock or Units (#)	All Other Option Awards: Number of Securities Underlying Options (#)	Exercise or Base Price of Option Awards (\$/sh)	Grant Date Fair Value of Stock and Option Awards(2)
			Threshold (\$)	Target (\$)	Maximum (\$)	Threshold (#)	Target (1) (#)	Maximum (#)				
Charles W. Ergen	3/7/2006	2/28/06	\$ —	\$ —	\$ —	—	—	—	125	—	\$ —	\$ —
	3/8/2006	2/28/06	\$ —	\$ —	\$ —	—	—	—	147	—	\$ —	\$ —
Bernard L. Han	9/30/2006	9/26/06	\$ —	\$ —	\$ —	—	30,000	—	—	—	\$ —	\$ 982,200
	9/30/2006	9/26/06	\$ —	\$ —	\$ —	—	90,000	—	—	350,000	\$ 32.74	\$ 5,432,630
Mark W. Jackson	3/7/2006	2/28/06	\$ —	\$ —	\$ —	—	—	—	65	—	\$ —	\$ —
	3/8/2006	2/28/06	\$ —	\$ —	\$ —	—	—	—	147	—	\$ —	\$ —
Steven B. Schaver	3/7/2006	2/28/06	\$ —	\$ —	\$ —	—	—	—	60	—	\$ —	\$ —
	3/8/2006	2/28/06	\$ —	\$ —	\$ —	—	—	—	147	—	\$ —	\$ —
R. Stanton Dodge	3/7/2006	2/28/06	\$ —	\$ —	\$ —	—	—	—	45	—	\$ —	\$ —
	3/8/2006	2/28/06	\$ —	\$ —	\$ —	—	—	—	147	—	\$ —	\$ —

(1) Represents the amount of stock and/or option awards that will become exercisable upon achievement of specified long-term business objectives, as discussed in CD&A above.

(2) Represents the total SFAS 123R fair value of the grant.

Each stock option and equity grant with respect to ECC common stock outstanding as of the distribution date will be adjusted in connection with the spin-off. In connection with these adjustments, certain options to acquire shares of our common stock will be granted. See "The Spin-Off — Treatment of ECC Stock Incentive Awards" for a discussion of these adjustments and grants.

Outstanding Equity Awards at Fiscal 2006 Year-End

The following table sets forth information relating to outstanding equity awards of ECC's common stock held by our NEOs at fiscal 2006 year-end.

Name	Option Awards					Stock Awards			
	Number of Securities Underlying Unexercised Options (#) Exercisable	Number of Securities Underlying Unexercised Options (#) Unexercisable	Equity Incentive Plan Awards: Number of Securities Underlying Unexercised Unearned Options (#)	Option Exercise Price (\$)	Option Expiration Date	Number of Units of Stock That Have Not Vested (#)	Market Value of Shares or Units of Stock That Have Not Vested (\$)	Equity Incentive Plan Awards: Number of Unearned Shares, Units or Other Rights That Have Not Vested (#)	Equity Incentive Plan Awards: Market or Payout Value of Unearned Shares, Units or Other Rights That Have Not Vested(1) (\$)
Charles W. Ergen	40,000	40,000(3)	400,000(2)	\$ 6.00	2/17/2009	—	\$ —	—	\$ —
	160,000	240,000(4)	—	\$ 28.88	3/31/2013	—	\$ —	—	\$ —
	500,000	—	—	\$ 30.75	6/30/2014	—	\$ —	—	\$ —
	—	—	900,000(5)	\$ 33.25	12/31/2014	—	\$ —	—	\$ —
	—	—	—	\$ 29.57	9/30/2015	—	\$ —	—	\$ —
Bernard L. Han	—	350,000(6)	90,000(7)	\$ 32.74	9/30/2016	—	\$ —	30,000(7)	\$ 1,140,900
Mark W. Jackson	206,668	—	400,000(2)	\$ 6.00	2/17/2009	—	\$ —	—	\$ —
	16,000	4,000(3)	—	\$ 28.88	3/31/2013	—	\$ —	—	\$ —
	120,000	80,000(4)	—	\$ 30.75	6/30/2014	—	\$ —	—	\$ —
	—	—	300,000(8)	\$ 29.25	3/31/2015	—	\$ —	—	\$ —
	40,000	60,000(9)	—	\$ 30.16	6/30/2015	—	\$ —	—	\$ —
	200,000	—	—	\$ 27.18	12/30/2015	—	\$ —	—	\$ —
Steven B. Schaver	—	—	400,000(2)	\$ 6.00	2/17/2009	—	\$ —	—	\$ —
	16,000	4,000(3)	—	\$ 28.88	3/31/2013	—	\$ —	—	\$ —
	48,000	32,000(4)	—	\$ 30.75	6/30/2014	—	\$ —	—	\$ —
	—	—	300,000(8)	\$ 29.25	3/31/2015	—	\$ —	—	\$ —
R. Stanton Dodge	—	—	80,000(2)	\$ 6.00	2/17/2009	—	\$ —	—	\$ —
	18,440	—	—	\$ 10.20	3/31/2009	—	\$ —	—	\$ —
	8,000	2,000(3)	—	\$ 28.88	3/31/2013	—	\$ —	—	\$ —
	6,000	4,000(10)	—	\$ 32.75	3/31/2014	—	\$ —	—	\$ —
	6,000	4,000(4)	—	\$ 30.75	6/30/2014	—	\$ —	—	\$ —
	10,000	15,000(11)	37,500(8)	\$ 29.25	3/31/2015	—	\$ —	12,500(8)	\$ 475,375

- (1) Represents the number of unvested, performance-based restricted stock units multiplied by the closing market price of ECC's shares of Class A common stock of \$38.03 on December 29, 2006, the last trading day of fiscal 2006.
- (2) These options are performance-based awards that do not become exercisable until achievement of specified long-term business objectives, as discussed in "Compensation Discussion and Analysis" above.
- (3) These options were awarded on March 31, 2003 and vest in 20% increments on each of the first five anniversaries of the date of grant.
- (4) These options were awarded on June 30, 2004 and vest in 20% increments on each of the first five anniversaries of the date of grant.
- (5) These options were awarded on September 30, 2005 and vest in 20% increments on each of the first five anniversaries of the date of grant. However, these options are performance-based awards that do not become exercisable until achievement of specified long-term business objectives, as discussed in "Compensation Discussion and Analysis" above.
- (6) These options were awarded on September 30, 2006 and vest in 20% increments on each of the first five anniversaries of the date of grant.
- (7) These options and restricted stock units were awarded on September 30, 2006 and vest in 10% increments on each of the first four anniversaries of the date of grant and then at the rate of 20% per



year thereafter. However, these options are performance-based awards that do not become exercisable until achievement of specified long-term business objectives, as discussed in “Compensation Discussion and Analysis” above.

- (8) These options were awarded on March 31, 2005 and vest in 10% increments on each of the first four anniversaries of the date of grant and then at the rate of 20% per year thereafter. However, these options are performance-based awards that do not become exercisable until achievement of specified long-term business objectives, as discussed in “Compensation Discussion and Analysis” above.
- (9) These options were awarded on June 30, 2005 and vest in 20% increments on each of the first five anniversaries of the date of grant.
- (10) These options were awarded on March 31, 2004 and vest in 20% increments on each of the first five anniversaries of the date of grant.
- (11) These options were awarded on March 31, 2005 and vest in 20% increments on each of the first five anniversaries of the date of grant.

**Option Exercises and Stock Vested in Fiscal 2006**

The following table sets forth certain information relating to exercises and vesting of options for ECC’s common stock during fiscal 2006 by our NEOs:

Name	Option Awards		Stock Awards	
	Number of Shares Acquired on Exercise (#)	Value Realized on Exercise(1) (\$)	Number of Shares Acquired on Vesting (#)	Value Realized on Vesting (\$)
Charles W. Ergen	—	\$ —	—	\$ —
Bernard L. Han	—	\$ —	—	\$ —
Mark W. Jackson	97,332	\$ 2,846,309	—	\$ —
Steven B. Schaver	—	\$ —	—	\$ —
R. Stanton Dodge	—	\$ —	—	\$ —

(1) The value realized on exercise is computed by multiplying the difference between the exercise price of the stock option and market price of the shares of ECC Class A common stock on the date of exercise by the number of shares with respect to which the option was exercised.

**Potential Payments Upon Termination or Change in Control**

Except as described below, we will have no employment contracts, termination of employment agreements or change in control agreements with any of our NEOs at the time of the spin-off.

As discussed in “Compensation Discussion and Analysis” above, ECC’s standard form of option agreement given to executive officers includes acceleration of vesting upon a change in control of ECC for those executive officers that do not continue to be employed by ECC or the surviving entity, as applicable.

Generally a change in control is deemed to occur upon: (i) a transaction or a series of transactions the result of which is that any person (other than the principal or a related party) individually owns more than fifty percent (50%) of the total equity interests of either (A) ECC or (B) the surviving entity in any such transaction(s) or a controlling affiliate of such surviving entity in such transaction(s); and (ii) the first day on which a majority of the members of the board of directors of ECC are not continuing directors.

Assuming a change in control were to have taken place as of December 31, 2006, and the executives were no longer to continue with ECC or the surviving entity at such date, the estimated benefits that would have been provided are as follows:

Name	Maximum Value of Accelerated Vesting of Options <sup>(1)</sup>
Charles W. Ergen	\$ 2,113,200
Bernard L. Han	1,851,500
Mark W. Jackson	1,091,200
Steven B. Schaver	269,560
R. Stanton Dodge	200,240

- (1) This amount reflects the intrinsic value (i.e. the amount by which the \$38.03 closing price of a share of ECC's Class A common stock on the Nasdaq Global Select Market on December 29, 2006, the last trading day of fiscal 2006, exceeded the exercise price) of each of the executive officer's unvested stock options that would become vested as a result of a change in control.

**Director Compensation for Fiscal 2006**

*Historically.* ECC's employee directors are not compensated for their services as directors. Each nonemployee director of ECC receives an annual retainer of \$40,000 which is paid in equal quarterly installments on the last day of each calendar quarter, provided such person is a member of ECC's board of directors on the last day of the applicable calendar quarter. ECC's nonemployee directors also receive \$1,000 for each meeting attended in person and \$500 for each meeting attended by telephone. Additionally, the chairperson of each committee of ECC's board of directors receives a \$5,000 annual retainer, which is paid in equal quarterly installments on the last day of each calendar quarter, provided such person is the chairperson of the committee on the last day of the applicable calendar quarter. Furthermore, ECC's nonemployee directors receive: (i) reimbursement, in full, of reasonable travel expenses related to attendance at all meetings of ECC's board of directors and its committees and (ii) reimbursement of reasonable expenses related to educational activities undertaken in connection with service on ECC's board of directors and its committees.

Upon election to ECC's board of directors, ECC's nonemployee directors are granted an option to acquire a certain number of shares of ECC's Class A common stock under ECC's nonemployee director stock option plan. Options granted under ECC's nonemployee director plans are 100% vested upon issuance and have a term of five years. ECC also currently grants each continuing nonemployee director an option to acquire shares of ECC's Class A common stock every year in exchange for their continuing services.

The following table sets forth information relating to the compensation for Fiscal 2006 awarded by ECC to the individuals who will act as our nonemployee directors.

Name	Fees Earned or Paid in Cash (\$)	Stock Awards (\$)	Option Awards <sup>(1)</sup> (\$)	Non-Equity Incentive Plan Compensation (\$)	Change in Pension Value and Nonqualified Deferred Compensation Earnings (\$)	All Other Compensation (\$)	Total (\$)
Steven R. Goodbarn	\$ 54,500	\$ —	\$ 31,509	\$ —	\$ —	\$ —	\$ 86,009
Tom A. Ortolf	\$ 53,500	\$ —	\$ 31,509	\$ —	\$ —	\$ —	\$ 85,009
C. Michael Schroeder	\$ 54,500	\$ —	\$ 31,509	\$ —	\$ —	\$ —	\$ 86,009

- (1) Represents the dollar amount recognized for financial statement reporting purposes for the fiscal year ended December 31, 2006, in accordance with SFAS 123R. Assumptions used in the calculation of these amounts are included in Note 3 to ECC's audited financial statements for the fiscal year ended December 31, 2006, included in ECC's Annual Report on Form 10-K/A filed with the Securities and Exchange Commission on March 6, 2007. On June 30, 2006, each of ECC's nonemployee directors was

granted an option to acquire 5,000 shares of ECC Class A common stock at an exercise price of \$30.81 per share. Options granted under ECC's nonemployee director plans are 100% vested upon issuance. Thus, the amount recognized for financial statement reporting purposes and the full grant date fair value are the same.

Nonemployee directors of ECC have been granted the following options under ECC's nonemployee director plans:

Name	Option Awards		
	Number of Securities Underlying Unexercised Options (#) Exercisable	Option Exercise Price (\$)	Option Expiration Date
Steven R. Goodbarn	10,000	\$ 22.26	12/31/2007
	5,000	\$ 34.62	6/30/2008
	5,000	\$ 31.12	9/30/2009
	5,000	\$ 30.16	6/30/2010
	40,000	\$ 27.18	12/30/2010
	5,000	\$ 30.81	6/30/2011
<i>Total Options Outstanding at December 31, 2006</i>	<u>70,000</u>		
Tom A. Ortolf	10,000	\$ 30.16	6/30/2010
	40,000	\$ 27.18	12/30/2010
	5,000	\$ 30.81	6/30/2011
<i>Total Options Outstanding at December 31, 2006</i>	<u>55,000</u>		
C. Michael Schroeder	10,000	\$ 33.99	12/31/2008
	5,000	\$ 31.12	9/30/2009
	5,000	\$ 30.16	6/30/2010
	40,000	\$ 27.18	12/30/2010
	5,000	\$ 30.81	6/30/2011
<i>Total Options Outstanding at December 31, 2006</i>	<u>65,000</u>		

*Going Forward.* We expect that our Board of Directors will adopt similar policies to those listed above.

**Compensation Committee Interlocks and Insider Participation**

The Compensation Committee is comprised solely of outside directors. The Compensation Committee members are Mr. Goodbarn, Mr. Ortolf and Mr. Schroeder. None of these individuals will be an officer or employee of EHC at any time during the 2007 fiscal year. Following the spin-off, none of our executive officers will serve as a member of the compensation committee of any entity that has one or more executive officers serving on our Compensation Committee.

**SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT**

As of the date hereof, all of our outstanding shares of common stock are owned by ECC. None of our directors or executive officers currently owns any shares of our common shares, but those who own shares of ECC common stock will receive shares of the same class of our common stock in the distribution on the same basis as the shares held by other ECC shareholders.

The following table sets forth, to the best of our knowledge, the anticipated beneficial ownership of EHC voting securities immediately following the distribution by: (i) each person known by us to be the beneficial owner of more than 5% of ECC's voting securities; (ii) each of our directors; (iii) each officer named in the Summary Compensation Table; and (iv) all of our directors and executive officers as a group. We base the share amounts on each person's beneficial ownership of ECC common stock as of November 30, 2007. Unless otherwise indicated, each person listed in the following table (alone or with family members) has sole voting and dispositive power over the shares listed opposite such person's name.

Name(1)	Amount and Nature of Beneficial Ownership (2)	Percentage of Class (3)
<b>Class A Common Stock(4):</b>		
Charles W. Ergen(5),(6)	41,870,946	50.0%
David K. Moskowitz(7)	5,403,050	11.4%
Barclays Global Investors, NA(8)	4,380,290	10.4%
Dodge & Cox(9)	2,930,816	7.0%
Fairholme Capital Management, L.L.C.(10)	2,742,728	6.5%
Harris Associates L.P.(11)	2,080,690	5.0%
Michael T. Dugan(12)	104,896	*
Mark W. Jackson(13)	82,542	*
Carl E. Vogel(14)	64,083	*
Tom A. Ortolf(15)	24,240	*
Steven B. Schaver(16)	16,216	*
C. Michael Schroeder(17)	17,020	*
Steven R. Goodbarn(18)	14,000	*
Bernard L. Han(19)	14,000	*
R. Stanton Dodge(20)	6,464	*
All Directors and Executive Officers as a Group (11 persons)(21)	49,189,410	58.2%
<b>Class B Common Stock:</b>		
Charles W. Ergen	41,611,830	87.3%
Trusts(22)	5,226,180	11.0%
All Directors and Executive Officers as a Group (11 persons)(21)	46,838,010	98.2%

\* Less than 1%.

(1) Except as otherwise noted below, the address of each such person is 9601 S. Meridian Blvd., Englewood, Colorado 80112.

(2) The amounts included in this column represent the shares of our common stock which will be beneficially owned by the listed individuals are based on the distribution ratio of one share of common stock to be received for every five shares of ECC common stock beneficially owned by such individuals on November 30, 2007 (unless otherwise specified). Based on the shares of ECC common stock outstanding on November 30, 2007 and the distribution ratio, there are expected to be 42,012,362 outstanding shares of EHC Class A common stock and 47,687,042 shares of EHC Class B common stock.

- (3) Represents the percentage of our common stock which we expect to be outstanding (based on the expected number of our shares to be distributed based on the number of ECC shares outstanding on November 30, 2007). An asterisk indicates that the percentage of common stock projected to be beneficially owned by the named individual does not exceed 1% of EHC common stock.
- (4) The following table sets forth, to the best knowledge of EHC based on the outstanding shares of ECC common stock on November 30, 2007 and the distribution ratio the expected ownership of EHC's Class A common stock (including options exercisable within 60 days) by: (i) each person expected by EHC to be the beneficial owner of more than five percent of any class of EHC's voting shares; (ii) each director of EHC; (iii) each officer named in the Summary Compensation Table; and (iv) all directors and executive officers as a group:

Name(1)	Amount and Nature of Beneficial Ownership	Percentage of Class
<b>Class A Common Stock:</b>		
Barclays Global Investors, NA	4,380,290	10.4%
Dodge & Cox	2,930,816	7.0%
Fairholme Capital Management, L.L.C	2,742,728	6.5%
Harris Associates L.P	2,080,690	5.0%
Charles W. Ergen	259,116	*
David K. Moskowitz	176,870	*
Michael T. Dugan	104,896	*
Mark W. Jackson	82,542	*
Carl E. Vogel	64,083	*
Tom A. Ortolf	24,240	*
Steven B. Schaver	16,216	*
C. Michael Schroeder	17,020	*
Steven R. Goodbarn	14,000	*
Bernard L. Han	14,000	*
R. Stanton Dodge	6,464	*
All Directors and Executive Officers as a Group (11 persons)	2,351,400	5.5%

\* Less than 1%.

- (5) Mr. Ergen is deemed to own beneficially all of the EHC Class A Shares owned by his spouse, Mrs. Ergen. Mr. Ergen's beneficial ownership includes: (i) 89,730 EHC Class A Shares; (ii) 3,704 EHC Class A Shares held in the Company's 401(k) Employee Savings Plan, (which we refer to as the 401(k) Plan); (iii) the right to acquire 160,000 EHC Class A Shares within 60 days upon the exercise of employee stock options; (iv) 47 EHC Class A Shares held by Mrs. Ergen; (v) 200 EHC Class A Shares held in the 401(k) Plan held by Mrs. Ergen; (vi) 5,435 EHC Class A Shares held as custodian for his children; and (vii) 41,611,830 EHC Class A Shares issuable upon conversion of Mr. Ergen's EHC Class B Shares. Mr. Ergen's beneficial ownership of EHC Class A Shares excludes 5,226,180 EHC Class A Shares issuable upon conversion of EHC Class B Shares held by certain trusts established by Mr. Ergen for the benefit of his family.
- (6) The percentage of total voting power held by Mr. Ergen is approximately 80% after giving effect to the exercise of Mr. Ergen's options exercisable within 60 days.
- (7) Mr. Moskowitz's beneficial ownership includes: (i) 24,970 EHC Class A Shares; (ii) 3,542 EHC Class A Shares held in the 401(k) Plan; (iii) the right to acquire 140,000 EHC Class A Shares within 60 days upon the exercise of employee stock options; (iv) 265 EHC Class A Shares held as custodian for his minor children; (v) 1,636 EHC Class A Shares held as trustee for Mr. Ergen's children; (vi) 6,000 EHC Class A Shares held by a charitable foundation for which Mr. Moskowitz is a member of the Board of

Directors; (vii) 457 EHC Class A Shares held in the employee stock purchase plan; and (viii) 5,226,180 EHC Class A Shares issuable upon conversion of the EHC Class B Shares held by certain trusts established by Mr. Ergen for the benefit of Mr. Ergen's family for which Mr. Moskowitz is trustee.

- (8) The address of Barclays Global Investors, N.A. ("Barclays") is 45 Fremont Street, San Francisco, California, 94105. The EHC Class A Shares listed as beneficially owned by Barclays includes 3,459,087 EHC Class A Shares owned by Barclays Global Investors, N.A., of which Barclays has sole voting power as to 3,071,779 EHC Class A Shares, as well as (i) 178,821 EHC Class A Shares owned by Barclays Global Fund Advisors, (ii) 488,625 EHC Class A Shares owned by Barclays Global Investors, LTD., (iii) 49,140 EHC Class A Shares owned by Barclays Global Investors Japan Trust and Banking Company Limited and (iv) 204,617 EHC Class A Shares owned by Barclays Global Investors Japan Limited. This information is based solely upon a Schedule 13G filed on May 9, 2007.
- (9) The address of Dodge & Cox is 555 California Street, 40th Floor, San Francisco, California, 94104. Of the EHC Class A Shares beneficially owned, Dodge & Cox has sole voting power as to 2,930,816 EHC Class A Shares. This information is based solely upon a Schedule 13G filed on February 8, 2007.
- (10) The address of Fairholme Capital Management, L.L.C. ("Fairholme") is 1001 Brickell Bay Drive, Suite 3112, Miami, Florida, 33131. Of the EHC Class A Shares beneficially owned, Fairholme has shared voting power as to 2,136,844 EHC Class A Shares and shared dispositive power as to all 2,742,728 EHC Class A Shares. This information is based solely upon a Schedule 13G filed on February 14, 2007.
- (11) The address of Harris Associates L.P. ("Harris") is Two North LaSalle Street, Suite 500, Chicago, Illinois, 60602. Of the EHC Class A Shares beneficially owned, Harris has shared voting power as to 2,080,690 EHC Class A Shares and shared dispositive power as to 1,955,000. This information is based solely upon a Schedule 13G filed on February 14, 2007.
- (12) Mr. Dugan's beneficial ownership includes: (i) 86 EHC Class A Shares; (ii) 606 EHC Class A Shares held in the 401(k) Plan; and (iii) the right to acquire 104,204 EHC Class A Shares within 60 days upon the exercise of employee stock options.
- (13) Mr. Jackson's beneficial ownership includes: (i) 83 EHC Class A Shares; (ii) 2,459 EHC Class A Shares held in the 401(k) Plan; and (iii) the right to acquire 80,000 EHC Class A Shares within 60 days upon the exercise of employee stock options.
- (14) Mr. Vogel's beneficial ownership includes: (i) 2,033 EHC Class A Shares; (ii) 50 EHC Class A Shares held in the 401(k) Plan; and (iii) the right to acquire 62,000 EHC Class A Shares within 60 days upon the exercise of employee stock options;
- (15) Mr. Ortolf's beneficial ownership includes: (i) the right to acquire 12,000 EHC Class A Shares within 60 days upon the exercise of nonemployee director stock options; (ii) 40 EHC Class A Shares held in the name of one of his children; and (iii) 12,200 EHC Class A Shares held by a partnership of which Mr. Ortolf is a partner.
- (16) Mr. Schaver's beneficial ownership includes: (i) 482 EHC Class A Shares; (ii) 3,334 EHC Class A Shares held in the 401(k) Plan; and (iii) the right to acquire 12,400 EHC Class A Shares within 60 days upon the exercise of employee stock options.
- (17) Mr. Schroeder's beneficial ownership includes: (i) 3,020 EHC Class A Shares; and (ii) the right to acquire 14,000 EHC Class A Shares within 60 days upon the exercise of nonemployee director stock options.
- (18) Mr. Goodbarn's beneficial ownership includes: (i) 1,000 EHC Class A Shares; and (ii) the right to acquire 13,000 EHC Class A Shares within 60 days upon the exercise of nonemployee director stock options.
- (19) Mr. Han's beneficial ownership includes the right to acquire 14,000 EHC Class A Shares within 60 days upon the exercise of employee stock options.
- (20) Mr. Dodge's beneficial ownership includes: (i) 36 EHC Class A Shares; (ii) 428 EHC Class A Shares held in the 401(k) Plan; and (iii) the right to acquire 6,000 EHC Class A Shares within 60 days upon the exercise of employee stock options.

[Table of Contents](#)

- (21) Includes: (i) 888,166 EHC Class A Shares; (ii) 18,119 EHC Class A Shares held in the 401(k) Plan; (iii) the right to acquire 954,802 EHC Class A Shares within 60 days upon the exercise of employee stock options; (iv) 462,200 EHC Class A Shares held in a partnership; (v) 46,838,010 EHC Class A Shares issuable upon conversion of EHC Class B Shares; (vi) 20,312 EHC Class A Shares held in the name of, or in trust for, children and other family members; (vii) 6,000 EHC Class A Shares held by a charitable foundation for which Mr. Moskowitz is a member of its board of directors; (viii) 20 EHC Class A Shares held by a spouse; and (ix) 1,781 EHC Class A Shares held in the employee stock purchase plan. EHC Class A and EHC Class B common stock beneficially owned by both Mr. and Mrs. Ergen is only included once in calculating the aggregate number of shares owned by directors and executive officers as a group.
- (22) Held by certain trusts established by Mr. Ergen for the benefit of Mr. Ergen's family of which Mr. Moskowitz is trustee.

#### CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

We expect that our Board will adopt a written policy for the review and approval of transactions involving related parties, such as directors, executive officers and their immediate family members, which policy will cover transactions between us and ECC. In order to survey these transactions, we plan to distribute questionnaires to our officers and directors on a quarterly basis. Our General Counsel will direct the appropriate review of all potential related-party transactions and schedule their presentation at the next regularly-scheduled meetings of the Audit Committee and the board of directors. Both the Audit Committee and the board of directors must approve these transactions, with all interested parties abstaining from the vote. Once each calendar year, the Audit Committee and the board of directors will undertake a review of all recurring potential related-party transactions. Both the Audit Committee and the board of directors must approve the continuation of each such transaction, with all interested parties abstaining.

In March of 2000, ECC purchased Kelly Broadcasting Systems, Inc. ("KBS"). At that time, Michael Kelly, one of our officers, was a shareholder of KBS and served as its President. Certain assets and liabilities of KBS will be distributed to us in connection with the spin-off. Title to certain assets purchased in the acquisition have been transferred, and payments of as much as approximately \$2 million may be due to Mr. Kelly in accordance with the terms of the purchase agreement. No changes to the purchase agreement occurred during 2006 and no assets or payments were exchanged during 2006. During 2006, ECC entered into a routine mutual release with Mr. Kelly in connection with certain KBS transactions.

The brother of Mark Jackson, our President, earned approximately \$80,000 during 2006 as an employee of a non-public company that provides programming content to ECC. Affiliates of that company also supply us with parts used in the manufacture of our satellite receivers and related equipment. Neither us or ECC, nor any of our or ECC's directors or executive officers has any ownership or other personal financial interest in that company. We and our contract manufacturers paid that company and its affiliates a total of approximately \$180 million during 2006, representing approximately 48% of their total revenues.



## CERTAIN INTERCOMPANY AGREEMENTS

### **Agreements with ECC**

Following the spin-off, our company and ECC will operate independently, and neither will have any ownership interest in the other. In order to govern certain of the ongoing relationships between our company and ECC after the spin-off and to provide mechanisms for an orderly transition, we and ECC are entering into certain agreements pursuant to which we will obtain certain services and rights from ECC, ECC will obtain certain services and rights from us, and we and ECC will indemnify each other against certain liabilities arising from our respective businesses. The following is a summary of the terms of the material agreements we are entering into or we expect to enter into with ECC. We anticipate entering into these agreements shortly before the distribution date on January 1, 2008.

#### ***Broadcast Agreement***

It is anticipated that we will enter into a broadcast agreement with a subsidiary of ECC, whereby ECC will receive broadcast services including teleport services such as transmission and downlinking, channel origination services, and channel management services from us thereby enabling ECC to deliver satellite television programming to subscribers. Additionally, ECC will have the right, but not the obligation, to have us purchase certain equipment on ECC's behalf at an agreed upon margin. The broadcast agreement will have a term of two years; however, ECC will have the right, but not the obligation, to extend the agreement annually for successive one-year periods for up to two additional years. ECC may terminate channel origination services and channel management services for any reason and without any liability upon sixty days written notice to us. If ECC terminates teleport services for a reason other than our breach, ECC shall pay us a sum equal to the aggregate amount of the remainder of the expected cost of providing the teleport service. The fees for the services to be provided under the broadcast agreement will be cost plus an agreed upon margin, which is believed to be fair market value pricing.

#### ***Employee Matters Agreement***

We will enter into an employee matters agreement with ECC, providing for our respective obligations to our employees. Pursuant to the agreement, we will establish a defined contribution plan for the benefit of our eligible employees in the United States (including our employees that transferred to us prior to the spin-off). Subject to any adjustments required by applicable law, it is our and ECC's present intent that the assets and liabilities of the ECC 401(k) Employee Savings Plan attributable to transferring employees, other than certain employees whose employment has terminated prior to the distribution date, be transferred to and assumed by a defined contribution plan established by us. In addition, we intend to establish, on, or as soon as practicable following, the distribution date, welfare plans for the benefit of our eligible employees and their respective eligible dependents that are substantially similar to the welfare plans maintained by ECC. We will also establish a stock incentive plan and an employee stock purchase plan as described in "Management Performance-Based Conditional Cash Incentives." There are no payments expected under the employee matters agreement except for the reimbursement of certain expenses in connection with these employee benefit plans and potential indemnification payments in accordance with the separation agreement. The employee matters agreement is non-terminable and will survive for the applicable statute of limitations.

The employee matters agreement also addresses the treatment of ECC stock options and restricted stock unit awards in connection with the spin-off. For a discussion of the treatment of these stock incentive awards in the spin-off, please see "The Spin-Off — Treatment of ECC Stock Incentive Awards."

#### ***Installation Services Agreement***

We will enter into an installation services agreement with ECC whereby we will have the right but not the obligation to engage ECC and its network of installation service providers to provide installation services in respect of various types of equipment we provide to our customers. For the provision of these services, we

will pay ECC fees that reflect the fair market value of the installation services that we purchase from ECC. The term of the installation services agreement will be one year. Furthermore, we may not generally solicit any installer of ECC for employment during the agreement and for a period of one year thereafter.

***Intellectual Property Matters Agreement***

We expect to enter into an intellectual property matters agreement with ECC and certain of its subsidiaries in connection with the spin-off. The intellectual property matters agreement will govern our relationship with ECC with respect to patents, trademarks and other intellectual property. Pursuant to the intellectual property matters agreement ECC and certain of its subsidiaries will irrevocably assign to us all right, title and interest in certain patents, trademarks and other intellectual property necessary for the operation of our set-top box business. In addition, the agreement will permit us to use, in the operation of our set-top box business, certain other intellectual property currently owned or licensed by ECC and its subsidiaries.

We will grant to ECC and its subsidiaries a non-exclusive, non-transferable, worldwide license to use the name "EchoStar" and a portion of the assigned intellectual properties as trade names and trademarks for a limited period of time in connection with ECC's continued operation of the consumer business. The purpose of such license is to eliminate confusion on the part of customers and others during the period following the spin-off. After the transitional period, ECC and its subsidiaries may not use the "EchoStar" name as trademarks. Similarly, the intellectual property matters agreement will provide that we will not make any use of the name or trademark "DISH Network" or any other trademark owned by ECC or its subsidiaries. There are no payments expected under the intellectual property matters agreement and it will continue in perpetuity.

***Real Estate Lease Agreements***

We anticipate entering into the following lease agreements with ECC so that ECC can continue to operate out of these properties, which will be contributed to us in the spin-off. In each case we will charge ECC annual rent that we believe is fair market value for the premises, and ECC will be responsible for their portion of the taxes, insurance, utilities and maintenance of the premises.

*Inverness Lease Agreement.* The lease for 90 Inverness Circle East in Englewood, Colorado will be for a period of no longer than two years.

*Meridian Lease Agreement.* The lease for 9601 S. Meridian Blvd. in Englewood, Colorado will be for a period of two years with annual renewal options for up to three additional years.

*Santa Fe Lease Agreement.* The lease for 5701 S. Santa Fe Dr. in Littleton, Colorado will be for a period of two years with annual renewal options for up to three additional years.

***Management Services Agreement***

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

The management services agreement will continue in effect until the first anniversary of the spin-off, and will be renewed automatically for successive one-year periods thereafter, unless earlier terminated (1) by us at any time upon at least 30 days' prior written notice, (2) by ECC at the end of any renewal term, upon at least 180 days' prior notice; and (3) by ECC upon written notice to us, following certain changes in control.

***Packout Services Agreement***

We will enter into a packout services agreement, whereby we will have the right, but not the obligation, to engage an ECC subsidiary to package and ship satellite receivers to customers that are not associated with ECC or its subsidiaries. The fees charged by ECC for the services provided under the packout services agreement will be at cost plus an agreed upon margin, which is believed to be fair market value pricing. This agreement is designed to allow us time to develop our own packaging and shipping function. The packout services agreement will have a term of one year unless terminated earlier. We may terminate this agreement for any reason upon sixty days prior written notice to ECC. In the event of an early termination of this agreement, we will be entitled to a refund of any unearned fees paid to ECC for the services.

***Product Support Agreement***

Following the spin-off, ECC will need us to provide product support (including engineering and technical support services and IPTV functionality) for all receivers and related accessories that our subsidiaries have sold and will sell to ECC. As a result, we will enter into a product support agreement, under which ECC will have the right, but not the obligation, to receive product support services in respect of such receivers and related accessories. The fees for the services to be provided under the product support agreement will be cost plus an agreed upon margin, which is believed to be fair market value pricing. The term of the product support agreement will be for the life of such receivers and related accessories unless terminated earlier. ECC may terminate the product support agreement for any reason upon sixty days prior written notice. In the event of an early termination of this agreement, ECC shall be entitled to a refund of any unearned fees paid to us for the services.

***Receiver Agreement***

It is anticipated that we will continue to design, develop and distribute receivers, antennae and other digital equipment for the DISH Network following the spin-off. ECC will need assurance that the DISH Network will be able to acquire receivers and accessories needed to operate its business following the spin-off. Our subsidiaries will enter into a receiver agreement for the sale of receivers and other satellite television programming accessories to ECC. Under the receiver agreement, an ECC subsidiary will have the right but not the obligation to purchase receivers and accessories from us for a two year period. Additionally, we will provide ECC with standard manufacturer warranties for the goods sold under the receiver agreement. ECC may terminate the receiver agreement for any reason upon sixty days written notice We may also terminate this agreement if certain entities were to acquire ECC. ECC will have the right, but not the obligation, to extend the receiver agreement annually for up to two years. The receiver agreement will allow ECC to purchase receivers and accessories from us at cost plus an agreed upon margin, which is believed to be fair market value pricing. The receiver agreement will also include an indemnification provision, whereby the parties will indemnify each other for certain intellectual property issues.

***Remanufactured Receiver Agreement***

It is anticipated that we will enter into a remanufactured receiver agreement under which we have the right to purchase remanufactured receivers, services and accessories from ECC for a two year period. Under the remanufactured receiver agreement we may purchase remanufactured receivers and accessories from ECC at cost plus an agreed upon margin, which is believed to be fair market value pricing. We may terminate the remanufactured receiver agreement for any reason upon sixty days written notice. ECC may also terminate this agreement if certain entities were to acquire us.

#### **Satellite Capacity Agreements**

It is anticipated that we will enter into satellite capacity agreements, whereby an ECC subsidiary, on a transitional basis, will lease satellite capacity on satellites owned by us and/or slots licensed by us. Certain DISH Network subscribers currently point their satellite antenna at these slots and this agreement is designed to facilitate the separation of us and ECC by allowing a period of time for these DISH Network subscribers to be moved to satellites owned by ECC and/or to slots that will be licensed to ECC following the spin-off. The fees for the services to be provided under the satellite capacity agreements will be at fair market value. Generally, the satellite capacity agreements will terminate upon the earlier of: (a) the end of life or replacement of the satellite; (b) the date the satellite fails; (c) the date that the transponder on which service is being provided under the agreement fails; or (d) two years.

#### **Satellite Procurement Agreement**

We will enter into a satellite procurement agreement, whereby ECC will have the right, but not the obligation, to engage us to manage the process of procuring new satellite capacity for ECC. The satellite procurement agreement will have a term of two years. The fees for the services to be provided under the satellite procurement agreement will be cost plus an agreed upon margin, which is believed to be fair market value pricing. ECC may terminate the satellite procurement agreement for any reason upon sixty days written notice.

#### **Separation Agreement**

The separation agreement will govern the contribution to us of ECC's set-top box business and the other assets to be transferred to us in the spin-off (the "distributed assets"), the subsequent distribution of shares of our common stock to ECC stockholders and other matters related to ECC's relationship with us.

*The Contribution.* To effect the contribution, ECC will, or will cause its subsidiaries to, transfer or agree to transfer all of the distributed assets to us as described in this information statement (which assets may include stock or other equity interests of ECC subsidiaries). We will assume, or agree to assume, and will agree to perform and fulfill all of the liabilities (including contingent liabilities) of the distributed assets in accordance with their respective terms, except for certain liabilities to be retained by ECC, including the intellectual property liabilities relating to the distributed assets for acts or events occurring on or before the distribution date. ECC will not make any representation or warranty as to the assets or liabilities transferred or assumed as part of the contribution or sale or as to any consents which may be required in connection with the transfers. Except as expressly set forth in the separation agreement or in any other ancillary agreements, all assets will be transferred on an "as is," "where is" basis.

If it is not practicable to transfer specified assets and liabilities on the separation date, the agreement provides that these assets and/or liabilities will be transferred after the separation date. If another ancillary agreement expressly provides for the transfer of an asset or an assumption of a liability, the terms of the other ancillary agreement will determine the manner of the transfer and assumption. The parties agree to use reasonable best efforts to obtain any required consents, substitutions or amendments required to novate or assign all rights and obligations under any contracts to be transferred in connection with the contribution.

*The Distribution.* The separation agreement will provide that on the distribution date (which will be determined by ECC), ECC will distribute all of its shares of our common stock to its stockholders of record as of the record date (which also will be determined by ECC). ECC will have the sole and absolute discretion to determine (and change) the terms of, and whether to proceed with, the distribution and, to the extent it determines to so proceed, to determine the date of the distribution. The separation agreement will provide that the distribution may be abandoned at any time, or may be accelerated or delayed, in ECC's discretion. In addition to ECC's discretion to determine not to proceed with the distribution, ECC's agreement to consummate the distribution also is subject to the satisfaction or waiver of a number of conditions, including the following:

- the registration statement for our common stock into which information from this information statement is incorporated by reference has been declared effective by the SEC;

- a definitive Schedule 14C information statement relating to amendments to the Articles of Incorporation of ECC that provide for (i) the change of ECC's name to "DISH Network Corporation," and (ii) the elimination of certain corporate opportunities provisions; will be filed with the SEC and mailed to ECC stockholders;
- our common stock has been accepted for listing on the Nasdaq Global Select Market;
- there is no legal restraint or prohibition preventing the consummation of the contribution or distribution or any other transaction related to the spin-off being in effect;
- ECC's receipt of an opinion of White & Case LLP on the distribution date substantially to the effect that the spin-off, together with certain related transactions, will qualify as reorganizations under Section 355 and 368(a)(1)(D) of the Code, in form and substance satisfactory to ECC;
- the contribution shall have become effective in accordance with the separation agreement and the ancillary agreements;
- any consents and governmental approvals, necessary to consummate the separation and distribution shall have been obtained and be in full force and effect; and
- no other events or developments shall have occurred that, in the judgment of the ECC board of directors, would result in the separation or the distribution having a material adverse effect on ECC, its stockholders, the consumer business or the non-consumer receiver business.

The separation agreement will provide that we and ECC will use our reasonable best efforts to consummate the distribution, including to use such efforts to file a registration statement and any subsequent amendments or supplements thereto with the SEC regarding our common stock, take such actions as may be necessary under state blue-sky laws and prepare and mail to ECC stockholders such other materials as ECC determines necessary or desirable and required under law. In addition, the separation agreement will provide that prior to the distribution, we will agree to prepare, file and use our reasonable best efforts to make effective an application for listing our stock on the Nasdaq Global Select Market.

*Exchange of Information.* We and ECC will agree to provide each other with information reasonably necessary to comply with reporting, disclosure or filing requirements of governmental authorities, for use in judicial, regulatory, administrative and other proceedings and to satisfy audit, accounting, claims, litigation or similar requests, whether business or legal related. We and ECC also will agree to certain record retention and production procedures and agree to cooperate in any litigation as described below. After the spin-off, each party will agree to maintain at its own cost and expense adequate systems and controls for its business to the extent reasonably necessary to allow the other party to satisfy its reporting, accounting, audit and other obligations. Each party also will agree to provide to the other party all financial and other data and information that the requesting party determines necessary or advisable in order to prepare its financial statements and reports or filings. Each party will agree to use its reasonable best efforts to make available to the other party its current, former and future directors, officers, employees and other personnel or agents who may be used as witnesses and books, records and other documents which may reasonably be required in connection with legal, administrative or other proceedings.

*Cooperation in Obtaining New Agreements.* ECC will agree, at our request, to facilitate introductions with third parties from whom our business has derived benefits under agreements and relationships which are not being assigned or transferred to us in connection with the contribution. ECC also will agree to provide reasonable assistance to us so that we may enter into agreements or relationships with such third parties under substantially equivalent terms and conditions that apply to ECC.

*Limitation on Damages.* We and ECC will agree to waive, and neither we nor ECC will be able to seek, consequential, special, indirect or incidental damages or punitive damages.

*Dispute Resolution.* If a dispute arises with ECC under the separation agreement or any ancillary agreement (unless otherwise provided in any such agreement), we will agree to the following procedures:

- the dispute generally will be submitted to senior executives of both parties, one appointed by each of us and ECC;
- if resolution through the senior executives does not settle the dispute, the parties must generally make a good faith attempt to settle the dispute through mediation before resorting to binding arbitration; and
- if resolution through the mediation fails, the parties can resort to binding arbitration.

*Termination.* The separation agreement and any of the ancillary agreements may be terminated or the distribution may be amended, modified or abandoned, in each case, at any time prior to the effective time by and in the sole and absolute discretion of ECC, without our approval. In the event of such termination, neither party shall have any liability of any kind to the other party.

#### ***Services Agreement***

We anticipate entering into a services agreement with ECC under which ECC will have the right, but not the obligation, to receive logistics, procurement and quality assurance services from us. This agreement will have a term of no longer than two years, and the fees for the services provided under this agreement will be cost plus an agreed upon margin, which is believed to be fair market value pricing. This limited-term agreement is designed to facilitate the separation of us and ECC by allowing a period of time for ECC to provide these services for its own behalf. ECC may terminate the services agreement with respect to a particular service for any reason upon sixty days prior written notice.

#### ***Tax Sharing Agreement***

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

#### ***Transition Services Agreement***

We anticipate entering into a transition services agreement with ECC pursuant to which ECC, or one of its subsidiaries, will provide certain transitional services to us. Under such transition services agreement, we will have the right, but not the obligation, to receive the following services from ECC or one of its subsidiaries: finance, information technology, benefits administration, travel and event coordination, human resources, human resources development (training), program management, internal audit and corporate quality, legal, accounting and tax, and other support services.

We anticipate that the transition services agreement will have a term of no longer than two years and that the fees for the services provided under such agreement will be at cost plus an agreed upon margin, which is believed to be fair market value pricing. We may terminate the transition services agreement with respect to a particular service for any reason upon thirty days prior written notice. This limited-term agreement is designed to smooth our transition to a stand-alone public company.

***TT&C Agreement***

Following the spin-off, ECC or its subsidiaries will need us to provide telemetry, tracking and control (“TT&C”) services to support ECC’s satellite fleet. As a result, we will enter into a TT&C agreement under which we will provide TT&C services to ECC or its subsidiaries. The TT&C agreement will have a term of two years. However, ECC will have the right, but not the obligation, to extend the agreement annually for up to an additional two years. The fees for the services to be provided under the TT&C agreement will be cost plus an agreed upon margin, which is believed to be fair market value pricing. ECC may terminate the TT&C agreement for any reason upon sixty days prior written notice.

## DESCRIPTION OF OUR CAPITAL STOCK

The following information reflects our certificate of incorporation and bylaws as these documents will be in effect at the time of the spin-off.

### General

Upon the completion of the distribution, we will be authorized to issue the following capital stock:

- 4,000,000,000 shares of common stock, of which 1,600,000,000 shares are designated Class A common stock, 800,000,000 shares are designated Class B common stock, 800,000,000 shares are designated Class C common stock and 800,000,000 shares are designated Class D common stock; and
- 20,000,000 shares of preferred stock.

A summary of the powers, preferences and rights of the shares of each class of common stock and preferred stock is described below.

### Our Class A Common Stock

Each holder of Class A common stock is entitled to one vote for each share owned of record on all matters submitted to a vote of stockholders. Except as otherwise required by law, the Class A common stock votes together with the Class B common stock, the Class C common stock and the preferred stock on all matters submitted to a vote of stockholders. Subject to the preferential rights of any outstanding series of preferred stock and to any restrictions on the payment of dividends imposed under the terms of our indebtedness, the holders of Class A common stock are entitled to such dividends as may be declared from time to time by our board of directors from legally available funds and, together with the holders of the Class B common stock and the Class C common stock, are entitled, after payment of all prior claims, to receive pro rata all of our assets upon a liquidation. Holders of Class A common stock have no redemption, conversion or preemptive rights.

### Our Class B Common Stock

Each holder of Class B common stock is entitled to ten votes for each share of Class B common stock on all matters submitted to a vote of stockholders. Except as otherwise required by law, the Class B common stock votes together with the Class A common stock, the Class C common stock and the preferred stock on all matters submitted to a vote of the stockholders. Each share of Class B common stock is convertible, at the option of the holder, into one share of Class A common stock. The conversion ratio is subject to adjustment from time to time upon the occurrence of certain events, including: (i) dividends or distributions on Class A common stock payable in Class A common stock or certain other capital stock; (ii) subdivisions, combinations or certain reclassifications of Class A common stock; and (iii) issuances of rights, warrants or options to purchase Class A common stock at a price per share less than the fair market value of the Class A common stock. Each share of Class B common stock is entitled to receive dividends and distributions upon liquidation on a basis equivalent to that of the Class A common stock and Class C common stock.

### Our Class C Common Stock

Each holder of Class C common stock is entitled to one vote for each share of Class C common stock on all matters submitted to a vote of stockholders, except in the event of a change in control, in which case each Class C holder is entitled to ten votes per share. Except as otherwise required by law, the Class C common stock votes together with the Class A common stock, the Class B common stock and the preferred stock on all matters submitted to a vote of stockholders. Each share of Class C common stock is convertible into Class A common stock on the same terms as the Class B common stock. Each share of Class C common stock is entitled to receive dividends and distributions upon liquidation on a basis equivalent to that of the Class A common stock and Class B common stock. We do not currently intend to issue any shares of Class C common stock.



#### **Our Class D Common Stock**

Each holder of Class D common stock is not entitled to a vote on any matter. Each share of Class D common stock is entitled to receive dividends and distributions upon liquidation on a basis equivalent to that of the Class A common stock. We do not currently intend to issue any shares of Class D common stock.

#### **Our Preferred Stock**

Our board of directors is authorized to divide the preferred stock into series and, with respect to each series, to determine the preferences and rights and the qualifications, limitations or restrictions of the series, including the dividend rights, conversion rights, voting rights, redemption rights and terms, liquidation preferences, sinking fund provisions, the number of shares constituting the series and the designation of such series. Our board of directors may, without stockholder approval, issue additional preferred stock of existing or new series with voting and other rights that could adversely affect the voting power of the holders of common stock and could have certain anti-takeover effects.

#### **Provisions of Our Articles of Incorporation Relating to Related-Party Transactions and Corporate Opportunities**

In order to address potential conflicts of interest between us and ECC, our articles of incorporation contain provisions regulating and defining the conduct of our affairs as they may involve ECC and its officers and directors, and our powers, rights, duties and liabilities and those of our officers, directors and shareholders in connection with our relationship with ECC. In general, these provisions recognize that we and ECC may engage in the same or similar business activities and lines of business, have an interest in the same areas of corporate opportunities and will continue to have contractual and business relations with each other, including officers and directors or both of ECC serving as our officers or directors or both.

If one of our directors or officers who is also a director or officer of ECC learns of a potential transaction or matter that may be a corporate opportunity for both us and ECC, our amended and restated articles of incorporation provides that such director or officer is required to first present the opportunity to us only if (A) we have expressed an interest in such corporate opportunity as evidenced by resolutions appearing in the minutes of our board of directors; (B) such potential corporate opportunity was expressly offered to one of our directors or officers solely in his or her capacity as a director or officer of us or as a director or officer of any subsidiary of us; and (C) such opportunity relates to a line of business in which we or any subsidiary of us is then directly engaged.

For purposes of our articles of incorporation, “corporate opportunities” include, but are not limited to, business opportunities that we are financially able to undertake, that are, from their nature, in our line of business, are of practical advantage to us and are ones in which we would have an interest or a reasonable expectancy.

The corporate opportunity provisions in our articles of incorporation will expire on the date that no person who is a director or officer of us is also a director or officer of ECC.

By becoming a shareholder in us, you will be deemed to have notice of and have consented to the provisions of our articles of incorporation related to corporate opportunities that are described above.

#### **Nevada Law and Limitations on Changes in Control**

The Nevada Revised Statutes prevent an “interested stockholder” defined generally as a person owning 10% or more of a corporation’s outstanding voting stock, from engaging in a “combination” with a Nevada corporation for three years following the date such person became an interested stockholder unless, before such person became an interested stockholder, the board of directors of the corporation approved the transaction in which the interested stockholder became an interested stockholder or approves the combination.

The provisions authorizing our board of directors to issue preferred stock without stockholder approval and the provisions of the Nevada Revised Statutes relating to combinations with interested stockholders could have the effect of delaying, deferring or preventing a change in our control or the removal of our existing management.

## LIMITATION OF LIABILITY AND INDEMNIFICATION MATTERS

Chapter 78.7502(1) of the Nevada Revised Statutes allows EHC to indemnify any person made or threatened to be made a party to any action (except an action by or in the right of EHC, a “derivative action”), by reason of the fact that he is or was a director, officer, employee or agent of EHC, or is or was serving at the request of EHC as a director, officer, employee or agent of another corporation, against expenses including attorneys’ fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with the action, suit or proceeding if he acted in a good faith manner which he reasonably believed to be in or not opposed to the best interests of EHC, and, with respect to any criminal proceeding, had no reasonable cause to believe that his conduct was unlawful. Under chapter 78.7502(2), a similar standard of care applies to derivative actions, except that indemnification is limited solely to expenses (including attorneys’ fees) incurred in connection with the defense or settlement of the action and court approval of the indemnification is required where the person is seeking advance payment of indemnifiable expenses prior to final disposition of the proceeding in question. Under chapter 78.751, decisions as to the payment of indemnification are made by a majority of the Board of Directors at a meeting at which quorum of disinterested director is present, or by written opinion of special legal counsel, or by the stockholders.

Provisions relating to liability and indemnification of officers and directors of EHC for acts by such officers and directors are contained in Article IX of our Articles of Incorporation, which will be filed by amendment as Exhibit 3.1 hereto, and Article IX of our Bylaws, which will be filed by amendment as Exhibit 3.2 hereto, which are incorporated by reference. These provisions state, among other things, that, consistent with and to the extent allowable under Nevada law, and upon the decision of a disinterested majority of EHC’s Board of Directors, or a written opinion of outside legal counsel, or our stockholders: (1) EHC shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal (other than an action by or in the right of EHC) by reason of the fact that he is or was a director, officer, employee, fiduciary or agent of EHC, or is or was serving at the request of EHC as a director, employee, fiduciary or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding, if he conducted himself in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of EHC, and with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful; and (2) EHC shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of EHC to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee, fiduciary or agent of EHC, or is or was serving at the request of EHC as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise against expenses (including attorneys’ fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of EHC and except that no indemnification shall be made in respect to any claim, issue or matter as to which such person shall have adjudged to be liable for negligence or misconduct in the performance of his duty to EHC unless and only to the extent that the court in which such action or suit was brought shall determine upon application that despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

### **Transfer Agent and Registrar**

The transfer agent and registrar for our common stock is Computershare Trust Company, N.A.

### **Nasdaq Listing**

We have applied to list our Class A common stock on the Nasdaq Global Select Market under the symbol “[ ].”

#### WHERE YOU CAN FIND MORE INFORMATION

We have filed a registration statement on Form 10 with the SEC with respect to the shares of our common stock being distributed as contemplated by this information statement. This information statement is a part of, and does not contain all of the information set forth in, the registration statement and the exhibits and schedules to the registration statement. For further information with respect to our company and our common stock, please refer to the registration statement, including its exhibits and schedules. Statements made in this information statement relating to any contract or other document are not necessarily complete, and you should refer to the exhibits attached to the registration statement for copies of the actual contract or document. You may review a copy of the registration statement, including its exhibits and schedules, at the SEC's public reference room, located at 100 F Street, N.E., Washington, D.C. 20549, as well as on the Internet website maintained by the SEC at [www.sec.gov](http://www.sec.gov). Information contained on any website referenced in this information statement is not incorporated by reference in this information statement.

As a result of the distribution, we will become subject to the information and reporting requirements of the Securities Exchange Act of 1934 and, in accordance with the Exchange Act, we will file periodic reports, proxy statements and other information with the SEC.

You may request a copy of any of our filings with the SEC at no cost, by writing or telephoning the office of:

Investor Relations  
EchoStar Holding Corporation  
90 Inverness Circle E.  
Englewood, Colorado 80112  
Telephone: (303) 723-1000

We intend to furnish holders of our common stock with annual reports containing combined financial statements prepared in accordance with U.S. generally accepted accounting principles and audited and reported on, with an opinion expressed, by an independent public accounting firm.

You should rely only on the information contained in this information statement or to which we have referred you. We have not authorized any person to provide you with different information or to make any representation not contained in this information statement.

INDEX TO FINANCIAL TABLES OF ECHOSTAR HOLDING CORPORATION

	Page
<b>Combined Financial Statements of EchoStar Holding Corporation:</b>	
<a href="#">Report of KPMG LLP, Independent Registered Public Accounting Firm</a>	F-2
<a href="#">Combined Balance Sheets at September 30, 2007 (unaudited) and December 31, 2006 and 2005</a>	F-3
<a href="#">Combined Statements of Operations and Comprehensive Income (Loss) for the nine months ended September 30, 2007 and 2006 (unaudited) and for each of the years ended December 31, 2006, 2005 and 2004</a>	F-4
<a href="#">Combined Statements of Net Investment in EchoStar Holding Corporation for the years ended December 31, 2004, 2005 and 2006 and for the nine months ended September 30, 2007 (unaudited)</a>	F-5
<a href="#">Combined Statements of Cash Flows for the nine months ended September 30, 2007 and 2006 (unaudited) and for the years ended December 31, 2006, 2005 and 2004</a>	F-6
<a href="#">Notes to Combined Financial Statements</a>	F-7

**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

The Board of Directors and Stockholders  
EchoStar Communications Corporation  
EchoStar Holding Corporation:

We have audited the accompanying combined balance sheets of EchoStar Holding Corporation (the Company) as of December 31, 2006 and 2005, and the related combined statements of operations and comprehensive income (loss), statements of net investment and cash flows for each of the years in the three-year period ended December 31, 2006. These combined financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these combined financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the combined financial statements referred to above present fairly, in all material respects, the financial position of EchoStar Holding Corporation as of December 31, 2006 and 2005, and the results of their operations and their cash flows for each of the years in the three-year period ended December 31, 2006, in conformity with U.S. generally accepted accounting principles.

As discussed in note 3 to the accompanying combined financial statements, effective January 1, 2006, the Company adopted Statement of Financial Accounting Standards No. 123(R), Share-Based Payment.

/s/ KPMG LLP

Denver, Colorado  
November 6, 2007

**ECHOSTAR HOLDING CORPORATION**  
**COMBINED BALANCE SHEETS**

	As of		
	September 30, 2007 (Unaudited)	December 31, 2006	December 31, 2005
(Dollars in thousands, except per share amounts)			
<b>ASSETS</b>			
<i>Current Assets:</i>			
Cash and cash equivalents	\$ 33,734	\$ 29,621	\$ 16,242
Marketable investment securities	497,019	293,955	89,867
Trade accounts receivable, net of allowance for doubtful accounts of \$347 (unaudited), \$823, and \$243, respectively	38,511	19,062	18,963
Inventories, net	13,055	2,726	507
Other current assets	10,215	2,329	1,119
Total current assets	592,534	347,693	126,698
Restricted cash	—	—	1,581
Property and equipment, net	187,217	70,510	26,290
FCC authorizations	42,873	42,873	42,874
Intangible assets, net	11,037	11,919	13,096
Investment in affiliates	81,391	40,254	18,853
Other noncurrent assets, net	4,572	4,572	—
Total assets	<u>\$ 919,624</u>	<u>\$ 517,821</u>	<u>\$ 229,392</u>
<b>LIABILITIES AND OWNER'S EQUITY (DEFICIT)</b>			
<i>Current Liabilities:</i>			
Trade accounts payable	\$ 31,384	\$ 3,095	\$ 2,171
Accrued expenses and other	24,171	12,152	9,594
Current portion of mortgage	—	—	105
Total current liabilities	55,555	15,247	11,870
<i>Long-term obligations, net of current portion:</i>			
Mortgage, net of current portion	—	—	390
Deferred tax liabilities	301	291	—
Total long-term obligations, net of current portion	301	291	390
Total liabilities	55,856	15,538	12,260
<i>Commitments and Contingencies (Note 7)</i>			
<i>Net investment in EHC (Owner's Equity (Deficit)):</i>			
Preferred Stock of EHC, \$.001 par value, 20,000,000 shares authorized	—	—	—
EHC Class A common stock, \$.001 par value, 1,600,000,000 shares authorized	—	—	—
EHC Class B common stock, \$.001 par value, 800,000,000 shares authorized	—	—	—
EHC Class C common stock, \$.001 par value, 800,000,000 shares authorized	—	—	—
EHC Class D common stock, \$.001 par value, 800,000,000 shares authorized	—	—	—
Accumulated other comprehensive income (loss)	103,863	63,805	4,063
Owner's net investment	759,905	438,478	213,069
Total net investment in EHC (Owner's equity (deficit))	863,768	502,283	217,132
Total liabilities and net investment in EHC (Owner's equity (deficit))	<u>\$ 919,624</u>	<u>\$ 517,821</u>	<u>\$ 229,392</u>

The accompanying notes are an integral part of these combined financial statements.

**ECHOSTAR HOLDING CORPORATION**  
**COMBINED STATEMENTS OF OPERATIONS AND COMPREHENSIVE INCOME (LOSS)**

	For the Nine Months Ended September 30,		For The Years Ended December 31,		
	2007	2006	2006	2005	2004
	(Unaudited)		(In thousands)		
<b>Revenue:</b>					
Equipment and other sales — ECC	\$ 1,019,729	\$ 948,683	\$ 1,288,691	\$ 1,295,861	\$ 1,543,513
Equipment sales	163,039	184,216	236,629	217,830	176,578
Total revenue	<u>1,182,768</u>	<u>1,132,899</u>	<u>1,525,320</u>	<u>1,513,691</u>	<u>1,720,091</u>
<b>Costs and Expenses:</b>					
Cost of equipment and other sales	1,121,067	1,065,216	1,440,178	1,438,629	1,650,775
Research and development	40,634	39,093	56,451	45,928	39,809
General and administrative (Note 12)	56,844	43,973	60,106	56,366	65,059
Depreciation and amortization	4,391	4,593	6,032	5,832	5,071
Total costs and expenses	<u>1,222,936</u>	<u>1,152,875</u>	<u>1,562,767</u>	<u>1,546,755</u>	<u>1,760,714</u>
Operating income (loss)	<u>(40,168)</u>	<u>(19,976)</u>	<u>(37,447)</u>	<u>(33,064)</u>	<u>(40,623)</u>
<b>Other Income (Expense):</b>					
Interest income	2,861	568	831	252	349
Interest expense, net of amounts capitalized (Note 12)	(785)	(785)	(1,059)	(1,088)	(1,123)
Other	782	188	6,588	(10,109)	(1,412)
Total other income (expense)	<u>2,858</u>	<u>(29)</u>	<u>6,360</u>	<u>(10,945)</u>	<u>(2,186)</u>
Income (loss) before income taxes	(37,310)	(20,005)	(31,087)	(44,009)	(42,809)
Income tax (provision) benefit, net	(2,633)	(481)	(3,075)	(931)	(428)
Net income (loss)	<u>\$ (39,943)</u>	<u>\$ (20,486)</u>	<u>\$ (34,162)</u>	<u>\$ (44,940)</u>	<u>\$ (43,237)</u>
Foreign currency translation adjustments	694	(873)	(1,430)	1,227	(948)
Unrealized holding gains (losses) on available-for-sale securities	42,412	14,895	61,206	(11,769)	1,218
Recognition of previously unrealized (gains) losses on available-for-sale securities included in net income (loss)	(3,048)	(135)	(34)	(30,956)	—
Comprehensive income (loss)	<u>\$ 115</u>	<u>\$ (6,599)</u>	<u>\$ 25,580</u>	<u>\$ (86,438)</u>	<u>\$ (42,967)</u>

**ECHOSTAR HOLDING CORPORATION**  
**COMBINED STATEMENTS OF NET INVESTMENT IN ECHOSTAR HOLDING CORPORATION**

	Accumulated Other Comprehensive Income (Loss)	Net Investment in EHC (In thousands)	Total
<b>Balance, December 31, 2003</b>	<b>\$ 45,291</b>	<b>\$ 184,731</b>	<b>\$ 230,022</b>
Net income (loss)	—	(43,237)	(43,237)
Advances from owner	—	71,398	71,398
Foreign currency translation	(948)	—	(948)
Change in unrealized holding gains (losses) on available-for-sale securities, net	1,218	—	1,218
<b>Balance, December 31, 2004</b>	<b>\$ 45,561</b>	<b>\$ 212,892</b>	<b>\$ 258,453</b>
Net income (loss)	—	(44,940)	(44,940)
Advances from owner	—	45,117	45,117
Foreign currency translation	1,227	—	1,227
Change in unrealized holding gains (losses) on available-for-sale securities, net	(42,725)	—	(42,725)
<b>Balance, December 31, 2005</b>	<b>\$ 4,063</b>	<b>\$ 213,069</b>	<b>\$ 217,132</b>
Net income (loss)	—	(34,162)	(34,162)
Advances from owner	—	256,411	256,411
Stock-based compensation, net of tax	—	3,160	3,160
Foreign currency translation	(1,430)	—	(1,430)
Change in unrealized holding gains (losses) on available-for-sale securities, net	61,172	—	61,172
<b>Balance, December 31, 2006</b>	<b>\$ 63,805</b>	<b>\$ 438,478</b>	<b>\$ 502,283</b>
Net income (loss)	—	(39,943)	(39,943)
Advances from owner	—	358,505	358,505
Stock-based compensation, net of tax	—	2,865	2,865
Foreign currency translation	694	—	694
Change in unrealized holding gains (losses) on available-for-sale securities, net	39,364	—	39,364
<b>Balance, September 30, 2007 (unaudited)</b>	<b>\$ 103,863</b>	<b>\$ 759,905</b>	<b>\$ 863,768</b>

The accompanying notes are an integral part of these combined financial statements.



**ECHOSTAR HOLDING CORPORATION**  
**COMBINED STATEMENTS OF CASH FLOWS**

	For the Nine Months Ended September 30,		For the Years Ended December 31,		
	2007	2006	2006	2005	2004
	(Unaudited)		(In thousands)		
<b>Cash Flows From Operating Activities:</b>					
Net income (loss)	\$ (39,943)	\$ (20,486)	\$ (34,162)	\$ (44,940)	\$ (43,237)
<i>Adjustments to reconcile net income (loss) to net cash flows from operating activities:</i>					
Depreciation and amortization	4,391	4,593	6,032	5,832	5,071
Equity in losses (earnings) of affiliates	(478)	(697)	(1,953)	(5,315)	(9,537)
Realized losses (gains) on investments	(4,533)	(2,032)	(8,706)	8,482	—
Non-cash, stock-based compensation recognized	2,865	2,440	3,160	—	—
Deferred tax expense (benefit)	10	10	291	(247)	—
Other, net	850	(977)	(890)	3,681	2,651
Change in noncurrent assets	—	(100)	(100)	—	2,183
Changes in current assets and current liabilities:					
Trade accounts receivable	(18,972)	10,041	(679)	18,965	(14,875)
Allowance for doubtful accounts	(477)	421	580	(297)	78
Inventories	(10,329)	(10,396)	(2,219)	5,708	(2,755)
Other current assets	(7,968)	(750)	(1,211)	671	(20,664)
Trade accounts payable	28,288	(884)	925	(6,028)	3,455
Accrued expenses and other	12,020	15,037	2,558	(705)	(1,286)
Net cash flows from operating activities	<u>(34,276)</u>	<u>(3,780)</u>	<u>(36,374)</u>	<u>(14,193)</u>	<u>(78,916)</u>
<b>Cash Flows From Investing Activities:</b>					
Purchases of property and equipment	(120,076)	(19,586)	(32,769)	(4,250)	(5,935)
Change in restricted cash	—	(33,321)	1,581	119	(177)
Purchase of technology-based intangibles	—	—	—	(14,000)	—
Purchases of non-marketable investments	(40,000)	19,541	19,541	—	—
Other	(160)	(3,505)	4,052	1,431	493
Net cash flows from investing activities	<u>(160,236)</u>	<u>(75,953)</u>	<u>(54,781)</u>	<u>(16,700)</u>	<u>(5,619)</u>
<b>Cash Flows From Financing Activities:</b>					
Changes in advances from owner	198,625	91,555	105,030	39,933	71,281
Repayment of mortgage	—	(379)	(496)	(151)	(1,566)
Net cash flows from financing activities	<u>198,625</u>	<u>91,176</u>	<u>104,534</u>	<u>39,782</u>	<u>69,715</u>
Net increase (decrease) in cash and cash equivalents	4,113	11,443	13,379	8,889	(14,820)
Cash and cash equivalents, beginning of period	29,621	16,242	16,242	7,353	22,173
Cash and cash equivalents, end of period	<u>\$ 33,734</u>	<u>\$ 27,685</u>	<u>\$ 29,621</u>	<u>\$ 16,242</u>	<u>\$ 7,353</u>
<b>Supplemental Disclosure of Cash Flow Information:</b>					
Cash paid for interest	<u>\$ 138</u>	<u>\$ 72</u>	<u>\$ 1,114</u>	<u>\$ 1,030</u>	<u>\$ 733</u>
Cash received for interest	<u>\$ 974</u>	<u>\$ 561</u>	<u>\$ 830</u>	<u>\$ 253</u>	<u>\$ 348</u>
Cash paid for income taxes	<u>\$ 91</u>	<u>\$ 380</u>	<u>\$ 2,525</u>	<u>\$ —</u>	<u>\$ 618</u>

The accompanying notes are an integral part of these combined financial statements.

**ECHOSTAR HOLDING CORPORATION**  
**NOTES TO COMBINED FINANCIAL STATEMENTS**  
**NINE MONTHS ENDED SEPTEMBER 30, 2007 AND 2006 (UNAUDITED) AND**  
**THE YEARS ENDED DECEMBER 31, 2006, 2005 AND 2005**

**1. Organization and Business Activities**

On September 25, 2007, EchoStar Communications Corporation ("ECC") announced its intention to separate its technology and certain infrastructure assets into a separate publicly-traded company. We were incorporated in Nevada on October 12, 2007 to effect the separation. We will have no material assets or activities as a separate corporate entity until the contribution to us by ECC, prior to the completion of the spin-off, of the businesses and assets described in this information statement. Our historical combined financial statements reflect the historical financial position and results of operations of entities included in consolidated financial statements of ECC, representing almost exclusively ECC's set-top box business, using the historical results of operations and historical bases of assets and liabilities of this business. However, our historical combined financial statements do not include certain satellites, uplink and satellite transmission assets, real estate and other assets and related liabilities that will be contributed to us by ECC in the spin-off. These assets and liabilities, which will primarily comprise our fixed satellite services business. The financial condition and results of operations of our fixed satellite services business have not been included in our historical combined financial statements because our fixed satellite services business was operated as an integral part of ECC's subscription television business and did not constitute a "business" in the historical financial statements of ECC. Our historical financial data also does not include financial information of Sling Media, Inc., which was recently acquired by ECC and will be contributed to us in the spin-off.

*Organization and Legal Structure*

The following table summarizes our significant affiliates included in our combined financial statements as of September 30, 2007:

<u>Legal Entity</u>	<u>Referred to Herein As</u>
EchoStar Holding Corporation	EHC
EchoStar Technologies Corporation	ETC
EchoStar Technology Holdings Corporation	ETH
EchoStar Data Networks Corporation	EDN
EchoStar International Corporation	EIC
EchoStar Asia Holdings Corporation	EAH
EchoStar Asia Satellite Corporation	EAS
EchoStar UK Holdings, Ltd.	EUK

**2. Summary of Significant Accounting Policies**

*Basis of Presentation*

The combined financial statements, which are discussed below, reflect the historical financial position, results of operations and cash flows of the entities included in the consolidated financial statements and accounting records of ECC, principally representing the digital set-top box and other related products segment, using the historical results of operations and the historical basis of assets and liabilities of our business. The historical combined financial statements do not include ECC's infrastructure assets and operations to be contributed to us as part of the spin-off such as certain satellites, uplink and satellite transmission assets, real estate and other assets and related liabilities. All significant intercompany transactions and accounts have been eliminated. Earnings per share has not been presented in these combined financial statements.

**ECHOSTAR HOLDING CORPORATION**  
**NOTES TO COMBINED FINANCIAL STATEMENTS — (Continued)**

The combined statements of operations include expense allocations for certain corporate functions historically provided to us by ECC, including, among other things, treasury, tax, accounting and reporting, risk management, legal, internal audit, human resources, investor relations and information technology. In certain cases, these allocations were made on a specific identification basis. Otherwise, the expenses related to services provided to us by ECC were allocated to us based on the relative percentages, as compared to ECC's other businesses, of headcount or other appropriate methods depending on the nature of each item of cost to be allocated. Pursuant to transition services agreements we will enter into with ECC prior to the spin-off, ECC will continue to provide us with certain of these services at prices agreed upon by ECC and us for a period of two years from the date of the spin-off at cost plus an agreed upon margin, which is believed to be fair market value pricing. We will arrange to procure other services pursuant to arrangements with third parties.

We believe the assumptions underlying the combined financial statements are reasonable. However, the combined financial statements included herein will not reflect our future results of operations, financial position and cash flows or reflect what our results of operations, financial position and cash flows would have been had we been a separate, stand-alone company during the periods presented. Our fixed satellite services assets and Sling Media acquisition are not reflected in our historical financial statements included herein because they were not historically operated as part of the business of ECC.

***Unaudited Interim Financial Information***

The accompanying unaudited combined financial statements as of September 30, 2007 and for the nine months ended September 30, 2007 and 2006 have been prepared in accordance with accounting principles generally accepted in the United States ("U.S.") and with the instructions to Form 10-Q and Article 10 of Regulation S-X. The unaudited combined financial statements as of September 30, 2007 and for the nine month periods ended September 30, 2007 and 2006 have been prepared on the same basis as the combined financial statements as of December 31, 2006 and 2005 and for each of the years in the three year period ended December 31, 2006 included herein, and in the opinion of management, reflect all adjustments, consisting only of normal and recurring accruals, considered necessary to present fairly our combined financial position as of September 30, 2007 and the combined results of operations and cash flows for the nine month periods ended September 30, 2007 and 2006. The combined results of operations for the nine months ended September 30, 2007 are not necessarily indicative of the results that may be expected for the year ending December 31, 2007 or for any other period.

***Principles of Consolidation/Combination***

We have included in the combined financial statements all majority owned subsidiaries and investments in entities in which we have controlling influence. Non-majority owned investments are accounted for using the equity method when we have the ability to significantly influence the operating decisions of the issuer. When we do not have the ability to significantly influence the operating decisions of an issuer, the cost method is used. For entities that are considered variable interest entities we apply the provisions of Financial Accounting Standards Board ("FASB") Interpretation No. 46-R, "Consolidation of Variable Interest Entities — An Interpretation of ARB No. 51" ("FIN 46-R"). All significant intercompany accounts and transactions have been eliminated in consolidation.

***Use of Estimates***

The preparation of financial statements in conformity with accounting principles generally accepted in the United States ("GAAP") requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses for each reporting period. Estimates are used in accounting for, among other things, allowances for uncollectible accounts, inventory allowances, warranty reserve

**ECHOSTAR HOLDING CORPORATION**  
**NOTES TO COMBINED FINANCIAL STATEMENTS — (Continued)**

obligations, self-insurance obligations, deferred taxes and related valuation allowances, loss contingencies, fair values of financial instruments, fair value of options granted under our stock-based compensation plans, fair value of assets and liabilities acquired in business combinations, asset impairments, useful lives of property, equipment and intangible assets, and royalty obligations. Actual results may differ from previously estimated amounts, and such differences may be material to the Combined Financial Statements. Estimates and assumptions are reviewed periodically, and the effects of revisions are reflected prospectively beginning in the period they occur.

***Foreign Currency Translation***

The functional currency of the majority of our foreign subsidiaries is the U.S. dollar because their sales and purchases are predominantly denominated in that currency. However, for our subsidiaries where the functional currency is the local currency, we translate assets and liabilities into U.S. dollars at the period-end exchange rate and revenue and expenses based on the exchange rates at the time such transactions arise, if known, or at the average rate for the period. The difference is recorded to equity as a component of other comprehensive income (loss). Financial assets and liabilities denominated in currencies other than the functional currency are recorded at the exchange rate at the time of the transaction and subsequent gains and losses related to changes in the foreign currency are included in other miscellaneous income and expense. Net transaction gains (losses) during 2006, 2005 and 2004 were not significant.

***Cash and Cash Equivalents***

We consider all liquid investments purchased with an original maturity of 90 days or less to be cash equivalents. Cash equivalents as of September 30, 2007 and December 31, 2006 and 2005 consist of money market funds. The cost of these investments approximates their fair value.

***Marketable and Non-Marketable Investment Securities and Restricted Cash***

We currently classify all marketable investment securities as available-for-sale. We adjust the carrying value of our available-for-sale securities to fair value and report the related temporary unrealized gains and losses as a separate component of "Accumulated other comprehensive income (loss)" within "Total owner's equity (deficit)," net of related deferred income tax. Declines in the fair value of a marketable investment security which are estimated to be "other than temporary" are recognized in the Combined Statements of Operations and Comprehensive Income (Loss), thus establishing a new cost basis for such investment. We evaluate our marketable investment securities portfolio on a quarterly basis to determine whether declines in the fair 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 amount, the historical volatility of the price of each security and any market and company specific factors related to each security. Generally, absent specific factors to the contrary, declines in the fair value of investments below cost basis for a continuous period of less than six months are considered to be temporary. Declines in the fair value of investments for a continuous 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 a continuous period 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, 2007 and December 31, 2006, we had gains net of related tax effect of \$104.5 million and \$65.2 million as a part of "Accumulated other comprehensive income (loss)" within "Total owner's equity (deficit)," respectively. During the nine months ended September 30, 2007 and 2006, we did not record any charge to earnings for other than temporary declines in the fair value of our marketable investment securities. In addition, during the nine months ended September 30, 2007 and 2006, we recognized in our Combined

**ECHOSTAR HOLDING CORPORATION**  
**NOTES TO COMBINED FINANCIAL STATEMENTS — (Continued)**

Statements of Operations and Comprehensive Income (Loss) realized and net gains on marketable investment securities of \$5.0 million and \$2.0 million, respectively. During the nine months ended September 30, 2007, our strategic investments have experienced and continue to experience volatility. If the fair value of our strategic marketable investment securities portfolio does not remain above cost basis or if we become aware of any market or company specific factors that indicate that the carrying value of certain of our securities is impaired, we may be required to record charges to earnings in future periods equal to the amount of the decline in fair value.

The fair value of our strategic marketable investment securities aggregated \$497.0 million and \$294.0 million as of September 30, 2007 and December 31, 2006, respectively. These investments are highly speculative and are concentrated in a small number of companies. During the nine months ended September 30, 2007, our strategic investments have experienced and continue to experience volatility. If the fair value of our strategic marketable investment securities portfolio does not remain above cost basis or if we become aware of any market or company specific factors that indicate that the carrying value of certain of our securities is impaired, we may be required to record charges to earnings in future periods equal to the amount of the decline in fair value.

***Non-Marketable Investments***

We also have several strategic investments in certain non-marketable equity securities which are included in "Investment in affiliates" on our Combined Balance Sheets. Generally, we account for our unconsolidated equity investments under either the equity method or cost method of accounting. Because these equity securities are generally not publicly traded, it is not practical to regularly estimate the fair value of the investments; however, these investments are subject to an evaluation for other than temporary impairment on a quarterly basis. This quarterly evaluation consists of reviewing, among other things, company business plans and current financial statements, if available, for factors that may indicate an impairment of our investment. Such factors may include, but are not limited to, cash flow concerns, material litigation, violations of debt covenants and changes in business strategy. The fair value of these equity investments is not estimated unless there are identified changes in circumstances that may indicate an impairment exists and these changes are likely to have a significant adverse effect on the fair value of the investment. As of September 30, 2007 and December 31, 2006, we had \$81.4 million and \$40.3 million aggregate carrying amount of non-marketable and unconsolidated strategic equity investments, respectively, of which \$60.4 million and \$19.5 million are accounted for under the cost method, respectively. During the nine months ended September 30, 2007 and 2006, we did not record any impairment charges with respect to these investments.

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

***Restricted Cash***

As of December 31, 2005, restricted cash included amounts set aside as collateral for the construction of a new facility.

***Inventories***

Inventories are stated at the lower of cost or market value. Cost is determined using the first-in, first-out method. Proprietary products are built by contract manufacturers to our specifications. We depend on a few manufacturers, and in some cases a single manufacturer, for the production of our set-top boxes and related

**ECHOSTAR HOLDING CORPORATION**  
**NOTES TO COMBINED FINANCIAL STATEMENTS — (Continued)**

components. Manufactured inventories include materials, labor, freight-in, royalties and manufacturing overhead.

Inventories consist of the following (in thousands):

	As of		
	September 30, 2007 (unaudited)	December 31, 2006	2005
Finished goods	\$ 5,682	\$ 945	\$ 1,191
Raw materials	137	81	81
Work-in-process	72	1,661	67
Consignment	7,613	488	78
Inventory allowance	(449)	(449)	(910)
Inventories, net	<u>\$ 13,055</u>	<u>\$ 2,726</u>	<u>\$ 507</u>

***Property and Equipment***

Property and equipment are stated at cost. Depreciation is recorded on a straight-line basis over lives ranging from one to forty years. Repair and maintenance costs are charged to expense when incurred. Renewals and betterments are capitalized.

***Long-Lived Assets***

We account for impairments of long-lived assets in accordance with the provisions of Statement of Financial Accounting Standards No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets" ("SFAS 144"). We review our long-lived assets and identifiable intangible assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. For assets which are held and used in operations, the asset would be impaired if the carrying value of the asset (or asset group) exceeded its undiscounted future net cash flows. Once an impairment is determined, the actual impairment is reported as the difference between the carrying value and the fair value as estimated using discounted cash flows. Assets which are to be disposed of are reported at the lower of the carrying amount or fair value less costs to sell. We consider relevant cash flow, estimated future operating results, trends and other available information in assessing whether the carrying value of assets are recoverable.

***Goodwill, Intangible Assets and FCC Authorizations***

We account for our goodwill and intangible assets in accordance with the provisions of Statement of Financial Accounting Standards No. 142, "Goodwill and Other Intangible Assets" ("SFAS 142"), which requires goodwill and intangible assets with indefinite useful lives not be amortized, but to be tested for impairment annually or whenever indicators of impairments arise. Intangible assets that have finite lives continue to be amortized over their estimated useful lives.

We have determined that our FCC licenses have indefinite useful lives and evaluate impairment in accordance with the guidance of EITF Issue No. 02-7, "Unit of Accounting for Testing Impairment of Indefinite-Lived Intangible Assets" ("EITF 02-7"). In conducting our annual impairment testing, we determined that the estimated fair value of our FCC licenses, calculated using the discounted cash flow analysis, exceeded their carrying amount.

**ECHOSTAR HOLDING CORPORATION**  
**NOTES TO COMBINED FINANCIAL STATEMENTS — (Continued)**

As of September 30, 2007 and December 31, 2006 and 2005, our identifiable intangibles subject to amortization consisted of the following:

	September 30, 2007		As of December 31, 2006		December 31, 2005	
	Intangible Assets	Accumulated Amortization	Intangible Assets	Accumulated Amortization	Intangible Assets	Accumulated Amortization
	(In thousands)					
Contract-based	\$ 140	\$ (89)	\$ 140	\$ (82)	\$ 140	\$ (72)
Technology-based	14,000	(3,014)	14,000	(2,139)	14,000	(972)
Total	<u>\$ 14,140</u>	<u>\$ (3,103)</u>	<u>\$ 14,140</u>	<u>\$ (2,221)</u>	<u>\$ 14,140</u>	<u>\$ (1,044)</u>

Amortization of these intangible assets, recorded on a straight line basis over an average finite useful life primarily ranging from approximately twelve to fourteen years, was \$0.9 million for the nine months ended September 30, 2007 and \$1.2 million and \$0.9 million for the years ended December 31, 2006 and 2005, respectively.

Estimated future amortization of our identifiable intangible assets as of September 30, 2007 is as follows (in thousands):

**For the Years Ending December 31,**

2007 (remaining three months)	\$ 294
2008	1,177
2009	1,177
2010	1,177
2011	1,177
2012	1,175
Thereafter	4,860
Total	<u>\$ 11,037</u>

**Sales Taxes**

In accordance with the guidance of EITF Issue No. 06-3, "How Taxes Collected from Customers and Remitted to Governmental Authorities Should Be Presented in the Income Statement" ("EITF 06-3"), we account for sales taxes imposed on our goods and services on a net basis in our "Combined Statements of Operations and Comprehensive Income (Loss)." Since we primarily act as an agent for the governmental authorities, the amount charged to the customer is collected and remitted directly to the appropriate jurisdictional entity.

**Income Taxes**

We establish a provision for income taxes currently payable or receivable and for income tax amounts deferred to future periods in accordance with Statement of Financial Accounting Standards No. 109, "Accounting for Income Taxes" ("SFAS 109"). SFAS 109 requires that deferred tax assets or liabilities be recorded for the estimated future tax effects of differences that exist between the book and tax bases of assets and liabilities. Deferred tax assets are offset by valuation allowances in accordance with SFAS 109, when we believe it is more likely than not that such net deferred tax assets will not be realized.

SFAS No. 109 specifies that the amount of current and deferred tax expense for an income tax return group shall be allocated among the members of that group when those members issue separate financial statements. For purposes of the financial statements, EHC income tax expense has been recorded as if it filed a consolidated tax return separate from ECC, notwithstanding that a majority of the operations were historically

**ECHOSTAR HOLDING CORPORATION**  
**NOTES TO COMBINED FINANCIAL STATEMENTS — (Continued)**

included in the U.S. consolidated income tax return filed by ECC. EHC's valuation allowance was also determined on the separate tax return basis. Additionally, EHC's tax attributes (i.e. net operating losses) have been determined based on U.S. consolidated tax rules describing the apportioning of these items upon departure (i.e. spin off) from the ECC consolidated group.

ECC manages its tax position for the benefit of its entire portfolio of businesses. ECC's tax strategies are not necessarily reflective of the tax strategies that EHC would have followed or will follow as a stand-alone company, nor were they necessarily strategies that optimized EHC's stand-alone position. As a result, EHC's effective tax rate as a stand-alone entity may differ significantly from those prevailing in historical periods.

***Fair Value of Financial Instruments***

As of December 31, 2006 and 2005, the book value approximates fair value for cash and cash equivalents, trade accounts receivable, net of allowance for doubtful accounts, and current liabilities due to their short-term nature. Also, the book value is equal to fair value for marketable securities as of December 31, 2006 and 2005.

***Revenue Recognition***

We recognize revenue when an arrangement exists, prices are determinable, collectibility is reasonably assured and the goods or services have been delivered.

***Cost of Equipment and Other Sales***

Cost of equipment sales associated with set-top boxes and related components includes materials, labor, freight-in, royalties and manufacturing overhead. ETC and EIC have designed and developed digital set-top boxes, antennae and other equipment for ECC and international satellite service providers and other international customers. Historically, digital set-top boxes and related components were sold to ECC at cost.

***New Accounting Pronouncements***

We adopted the provisions of FASB Interpretation No. 48, "Accounting for Uncertainty in Income Taxes — an Interpretation of FASB Statement No. 109" ("FIN 48"), on January 1, 2007. FIN 48 clarifies the accounting for uncertainty in income taxes recognized in an enterprise's financial statements in accordance with Statement of Financial Accounting Standards No. 109, "Accounting for Income Taxes," and prescribes a recognition threshold and measurement process for financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. FIN 48 also provides guidance on derecognition, classification, interest and penalties, accounting in interim periods, disclosure and transition.

In addition to filing federal income tax returns, we and one or more of our subsidiaries file income tax returns in all states that impose an income tax and a small number of foreign jurisdictions where we have operations. We are subject to U.S. federal, state and local income tax examinations by tax authorities for the years beginning in 1996 due to the carryover of previously incurred net operating losses. As of September 30, 2007, no taxing authority has proposed any significant adjustments to our tax positions. We have no significant current tax examinations in process.

As a result of the implementation of FIN 48, we recognized no adjustment to "Accumulated earnings (deficit)." We have \$8.7 million in unrecognized tax benefits that, if recognized, would affect the effective tax rate. We do not expect that the unrecognized tax benefit will change significantly within the next 12 months.

In September 2006, the FASB issued Statement of Financial Accounting Standards No. No. 157, "Fair Value Measurements" ("SFAS 157") which defines fair value, establishes a framework for measuring fair value in accordance with generally accepted accounting principles and expands disclosures about fair value



**ECHOSTAR HOLDING CORPORATION**  
**NOTES TO COMBINED FINANCIAL STATEMENTS — (Continued)**

measurements. This pronouncement applies to other accounting standards that require or permit fair value measurements. Accordingly, this statement does not require any new fair value measurement. This statement is effective for fiscal years beginning after November 15, 2007, and interim periods within that fiscal year. We are currently evaluating the impact the adoption of SFAS 157 will have on our financial position and results of operations.

In February 2007, the FASB issued Statement of Financial Accounting Standards No. 159, “The Fair Value Option for Financial Assets and Financial Liabilities” (“SFAS 159”), which permits entities to choose to measure financial instruments and certain other items at fair value. This statement is effective as of the beginning of an entity’s first fiscal year that begins after November 15, 2007. We are currently evaluating the impact the adoption of SFAS 159 will have on our financial position and results of operations.

**3. Stock-Based Compensation**

In December 2004, the FASB issued Statement of Financial Accounting Standards No. 123R (As Amended), “Share-Based Payment” (“SFAS 123R”) which (i) revises Statement of Financial Accounting Standards No. 123, “Accounting and Disclosure of Stock-Based Compensation,” (“SFAS 123”) to eliminate both the disclosure only provisions of that statement and the alternative to follow the intrinsic value method of accounting under Accounting Principles Board Opinion No. 25, “Accounting for Stock Issued to Employees” (“APB 25”) and related interpretations, and (ii) requires the cost resulting from all share-based payment transactions with employees be recognized in the results of operations over the period during which an employee provides the requisite service in exchange for the award and establishes fair value as the measurement basis of the cost of such transactions. Effective January 1, 2006, we adopted SFAS 123R under the modified prospective method.

Prior to January 1, 2006, we applied the intrinsic value method of accounting under APB 25 and applied the disclosure only provisions of SFAS 123. Pro forma information regarding net income and earnings per share was required by SFAS 123 and has been determined as if we had accounted for our stock-based compensation plans using the fair value method prescribed by that statement. For purposes of pro forma disclosures, the estimated fair value of the options was amortized to expense over the options’ vesting period on a straight-line basis. We accounted for forfeitures as they occurred. Compensation previously recognized was reversed in the event of forfeitures of unvested options. The following table illustrates the effect on net income (loss) as if we had accounted for our stock-based compensation plans using the fair value method under SFAS 123:

	For the Years Ended December 31,	
	2005	2004
	(In thousands)	
Net income (loss)	\$ (44,940)	\$ (43,237)
Deduct: Total stock-based employee compensation expense determined under fair value based method for all awards, net of related tax effect	(4,208)	(4,003)
Pro forma net income (loss)	<u>\$ (49,148)</u>	<u>\$ (47,240)</u>

**Stock Incentive Plans**

EHC participates in ECC’s stock incentive plans to attract and retain officers, directors and key employees. Awards under these plans include both performance and non-performance based equity incentives. As of September 30, 2007, we had options to acquire 4.4 million shares of ECC’s Class A common stock and 61,666 restricted stock awards outstanding under these plans. In general, stock options granted through September 30, 2007 have included exercise prices not less than the market value of ECC Class A common stock at the date of grant and a maximum term of ten years. While historically ECC’s board of directors has issued options that vest at the rate of 20% per year, some option grants have immediately vested. As of

**ECHOSTAR HOLDING CORPORATION**  
**NOTES TO COMBINED FINANCIAL STATEMENTS — (Continued)**

September 30, 2007, ECC had 66.6 million shares of its Class A common stock available for future grant under the stock incentive plans.

A summary of ECC stock option activity (including performance and non-performance based options) related to EHC employees for the nine months ended September 30, 2007 and the years ended December 31, 2006, 2005, and 2004 was as follows:

	For the Nine Months Ended September 30,		2006		For the Years Ended December 31,		2005		2004	
	Options	Weighted-Average Exercise Price	Options	Weighted-Average Exercise Price	Options	Weighted-Average Exercise Price	Options	Weighted-Average Exercise Price	Options	Weighted-Average Exercise Price
Options outstanding, beginning of period	4,619,622	\$ 20.86	5,024,137	\$ 19.52	3,800,561	\$ 15.11	3,508,902	\$ 12.05		
Granted	234,500	43.43	208,500	30.93	1,522,000	29.04	575,500	31.16		
Exercised	(372,113)	22.61	(367,015)	11.85	(170,124)	5.99	(250,237)	5.76		
Forfeited and Cancelled	(43,392)	7.60	(246,000)	15.37	(128,300)	19.91	(33,604)	40.56		
Options outstanding, end of period	4,438,617	22.89	4,619,622	20.86	5,024,137	19.52	3,800,561	15.11		
Exercisable at end of period	1,284,839	27.93	1,227,566	24.43	1,305,469	19.80	1,254,939	15.94		

ECC received all cash proceeds and realized all tax benefits related to the exercise of stock options by EHC employees during all periods presented. A portion of the tax benefit was allocated to EHC based on the EHC employees who participate in the ECC stock option plan. Based on the average market value of ECC's Class A common stock for the nine months ended September 30, 2007, the aggregate intrinsic value for the options outstanding was \$94.3 million. Of that amount, options with an aggregate intrinsic value of \$22.4 million were exercisable at the end of the period.

Exercise prices for ECC options outstanding and exercisable as of December 31, 2006 for EHC employees are as follows:

	Options Outstanding			Options Exercisable		
	Number Outstanding as of December 31, 2006	Weighted-Average Remaining Contractual Life	Weighted-Average Exercise Price	Number Exercisable as of December 31, 2006	Weighted-Average Remaining Contractual Life	Weighted-Average Exercise Price
\$ 2.13 - \$ 6.00	1,744,358	2.11	\$ 5.96	304,358	2.04	\$ 5.77
\$ 6.01 - \$20.00	258,564	2.28	11.45	178,564	2.29	12.01
\$20.01 - \$29.00	389,600	7.53	27.94	185,326	6.65	28.41
\$29.01 - \$31.00	1,782,100	8.17	29.67	300,307	7.85	30.33
\$31.01 - \$40.00	348,000	6.78	35.07	206,011	5.63	36.53
\$40.01 - \$79.00	97,000	3.19	72.76	53,000	3.24	79.00
<b>\$ 2.13 - \$79.00</b>	<b>4,619,622</b>	<b>5.29</b>	<b>20.86</b>	<b>1,227,566</b>	<b>4.85</b>	<b>24.43</b>

**ECHOSTAR HOLDING CORPORATION**  
**NOTES TO COMBINED FINANCIAL STATEMENTS — (Continued)**

As of September 30, 2007 and December 31, 2006 and 2005, the grant date fair value of ECC's restricted stock awards outstanding for EHC employees was as follows. Vesting of these restricted performance units is contingent upon meeting a long-term goal which ECC's management has determined is not probable as of September 30, 2007.

	For the Nine Months Ended September 30,		For the Years Ended December 31,			
	2007		2006		2005	
	Restricted Share Units	Weighted- Average Grant Date Fair Value	Restricted Share Units	Weighted- Average Grant Date Fair Value	Restricted Share Units	Weighted- Average Grant Date Fair Value
Restricted Share Units outstanding, beginning of period	95,666	\$ 29.72	90,000	\$ 29.25	—	\$ —
Granted	833	43.43	18,999	31.63	95,000	29.25
Exercised	—	—	—	—	—	—
Forfeited	(34,833)	29.25	(13,333)	29.25	(5,000)	29.25
Restricted Share Units outstanding, end of period	<u>61,666</u>	<u>29.53</u>	<u>95,666</u>	<u>29.72</u>	<u>90,000</u>	<u>29.25</u>

**Long-Term Performance-Based Plans**

In February 1999, ECC adopted a long-term, performance-based stock incentive plan (the "1999 LTIP") within the terms of its 1995 Stock Incentive Plan. The 1999 LTIP provided stock options to key employees which vest over five years at the rate of 20% per year. Exercise of the options is also contingent on ECC achieving an industry-related subscriber goal prior to December 31, 2008.

In January 2005, ECC adopted a long-term, performance based stock incentive plan (the "2005 LTIP") within the terms of its 1999 Stock Incentive Plan. The 2005 LTIP provides stock options and restricted performance units, either alone or in combination, which vest over seven years at the rate of 10% per year during the first four years, and at the rate of 20% per year thereafter. Exercise of the options is also contingent on achieving an ECC specific subscriber goal within the ten-year term of each award issued under the 2005 LTIP.

Contingent compensation related to the 1999 LTIP and the 2005 LTIP will not be recorded in our financial statements unless and until ECC's management concludes achievement of the corresponding goal is probable. Given the competitive nature of ECC's business, small variations in subscriber churn, gross subscriber addition rates and certain other factors can significantly impact subscriber growth. Consequently, while ECC's management did not believe achievement of either of the goals was probable as of September 30, 2007, that assessment could change with respect to either goal at any time. In accordance SFAS 123R, if all of the awards under each plan were vested and each goal had been met, we would have recorded total non-cash, stock-based compensation expense of \$9.2 million and \$16.0 million under the 1999 LTIP and the 2005 LTIP, respectively. If the goals are met and there are unvested options at that time, the vested amounts would be expensed immediately in our Combined Statements of Operations and Comprehensive Income (Loss), with the unvested portion recognized ratably over the remaining vesting period. As of September 30, 2007, if ECC's management had determined each goal was probable, we would have expensed \$9.2 million for the 1999 LTIP and \$3.9 million for the 2005 LTIP.

Of the 4.4 million ECC options outstanding for EHC employees under ECC's stock incentive plans as of September 30, 2007, options to purchase 1.4 million shares and 1.0 million shares were outstanding pursuant to the 1999 LTIP and the 2005 LTIP, respectively. These options were granted with exercise prices at least equal to the market value of the underlying shares on the dates they were issued. The weighted-average exercise price of these options is \$8.18 under the 1999 LTIP and \$29.29 under the 2005 LTIP. The fair value

**ECHOSTAR HOLDING CORPORATION**  
**NOTES TO COMBINED FINANCIAL STATEMENTS — (Continued)**

of options granted during the nine months ended September 30, 2007 pursuant to the 2005 LTIP, estimated at the date of the grant using a Black-Scholes option pricing model, was \$18.94 per option share. Further, pursuant to the 2005 LTIP, there were also 61,666 outstanding restricted performance units as of September 30, 2007 with a weighted-average grant date fair value of \$29.53.

**Stock-Based Compensation**

Total non-cash, stock-based compensation expense, net of related tax effect, is shown in the following table for the nine months ended September 30, 2007 and 2006 and the year ended December 31, 2006, and was allocated to the same expense categories as the base compensation for EHC employees who participate in the ECC stock option plans:

	For the Nine Months Ended September 30,		For the Year Ended December 31,
	2007	2006	2006
	(In thousands)		
Research and development	\$ 788	\$ 605	\$ 889
General and administrative	986	905	1,067
<b>Total</b>	<b>\$ 1,774</b>	<b>\$ 1,510</b>	<b>\$ 1,956</b>

As of September 30, 2007, total unrecognized compensation for EHC employees related to ECC's non-performance based unvested stock options was \$9.1 million. This cost is based on an assumed future forfeiture rate of approximately 6.5% per year and will be recognized over a weighted-average period of approximately three years. Share-based compensation expense is recognized based on awards ultimately expected to vest and is reduced for estimated forfeitures. SFAS 123R requires forfeitures to be estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates. Changes in the estimated forfeiture rate can have a significant effect on share-based compensation expense since the effect of adjusting the rate is recognized in the period the forfeiture estimate is changed.

The fair value of each option grant for the nine months ended September 30, 2007 and 2006 and the years ended December 31, 2006, 2005, and 2004 was estimated at the date of the grant using a Black-Scholes option pricing model with the following weighted-average assumptions:

	For the Nine Months Ended September 30,		For the Years Ended December 31,		
	2007	2006	2006	2005	2004
Risk-free interest rate	4.50%	4.74%	4.68%	4.09%	3.69%
Volatility factor	20.20%	25.09%	24.99%	26.12%	33.23%
Expected term of options in years	6.0	6.2	6.2	6.4	5.4
Weighted-average fair value of options granted	\$ 13.68	\$ 11.38	\$ 11.66	\$ 10.39	\$ 11.64

During December 2004, ECC paid a one-time dividend of \$1 per outstanding share of its Class A and Class B common stock. ECC does not currently plan to pay additional dividends on its common stock, and therefore the dividend yield percentage is set at zero for all periods. The Black-Scholes option valuation model was developed for use in estimating the fair value of traded options which have no vesting restrictions and are fully transferable. Consequently, our estimate of fair value may differ from other valuation models. Further, the Black-Scholes model requires the input of highly subjective assumptions. Changes in the subjective input assumptions can materially affect the fair value estimate. Therefore, the existing models do not provide as reliable a single measure of the fair value of stock-based compensation awards as a market-based model would. Changes in the intervals of ECC's regular historical price observations from daily to monthly contributed to the 2005 reduction in the estimated volatility factor.

**ECHOSTAR HOLDING CORPORATION**  
**NOTES TO COMBINED FINANCIAL STATEMENTS — (Continued)**

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

**4. Property and Equipment**

Property and equipment consist of the following:

	Depreciable Life (In Years)	As of		
		September 30, 2007 (Unaudited)	December 31, 2006	December 31, 2005
(In thousands)				
Furniture, fixtures, equipment and other	1-10	\$ 34,222	\$ 31,793	\$ 30,043
Buildings and improvements	1-40	17,089	17,077	18,050
Land	—	2,509	2,579	2,579
Construction in progress	—	165,547	47,707	3
Total property and equipment		\$ 219,367	\$ 99,156	\$ 50,675
Accumulated depreciation		(32,150)	(28,646)	(24,385)
Property and equipment, net		\$ 187,217	\$ 70,510	\$ 26,290

“Construction in progress” includes progress amounts for satellite construction, including launch costs.

Depreciation and amortization expense consists of the following:

	For the Nine Months Ended September 30, 2007 (Unaudited)		As of December 31,		
	2007	2006	2006	2005	2004
(In thousands)					
Furniture, fixtures, equipment and other	\$ 3,149	\$ 3,348	\$ 4,378	\$ 4,359	\$ 4,659
Identifiable intangible assets subject to amortization	883	883	1,176	982	10
Buildings and improvements	359	362	478	491	402
Total depreciation and amortization	\$ 4,391	\$ 4,593	\$ 6,032	\$ 5,832	\$ 5,071

*Long-Lived Satellite Assets.* We account for impairments of long-lived satellite assets in accordance with the provisions of Statement of Financial Accounting Standards No. 144, “Accounting for the Impairment or Disposal of Long-Lived Assets” (“SFAS 144”). SFAS 144 requires a long-lived asset or asset group to be tested for recoverability whenever events or changes in circumstance indicate that its carrying amount may not be recoverable.

**ECHOSTAR HOLDING CORPORATION**  
**NOTES TO COMBINED FINANCIAL STATEMENTS — (Continued)**

**5. Income Taxes**

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

	For the Years Ended December 31,		
	2006	2005	2004
	(In thousands)		
Domestic	\$ (34,010)	\$ (47,166)	\$ (41,889)
Foreign	2,923	3,157	(920)
<b>Total</b>	<b>\$ (31,087)</b>	<b>\$ (44,009)</b>	<b>\$ (42,809)</b>

The components of the (provision for) benefit from income taxes are as follows:

	For the Years Ended December 31,		
	2006	2005	2004
	(In thousands)		
<b>Current (provision) benefit:</b>			
Federal	\$ —	\$ —	\$ —
State	—	—	—
Foreign	(2,784)	(1,178)	(428)
	<u>(2,784)</u>	<u>(1,178)</u>	<u>(428)</u>
<b>Deferred (provision) benefit:</b>			
Federal	311	(10,212)	16,400
State	1,895	1,455	1,206
Foreign	(291)	247	—
Decrease (increase) in valuation allowance	(2,206)	8,757	(17,606)
	<u>(291)</u>	<u>247</u>	<u>—</u>
<b>Total benefit (provision)</b>	<b>\$ (3,075)</b>	<b>\$ (931)</b>	<b>\$ (428)</b>

The actual tax provisions for 2006, 2005 and 2004 reconcile to the amounts computed by applying the statutory Federal tax rate to income before taxes as shown below:

	For the Years Ended December 31,		
	2006	2005	2004
	% of pre-tax (income)/loss		
Statutory rate	35.0	35.0	35.0
State income taxes, net of Federal benefit	3.4	3.3	2.8
Foreign taxes and income not U.S. taxable	(9.0)	(0.8)	(3.4)
Stock option compensation	(1.7)	—	—
Intercompany adjustment	(33.2)	(59.5)	5.7
Cumulative change in state tax rate, net of Federal benefit	2.7	—	—
Decrease (increase) in valuation allowance	(7.1)	19.9	(41.1)
Total benefit (provision) for income taxes	<u>(9.9)</u>	<u>(2.1)</u>	<u>(1.0)</u>

All or a portion of the current valuation allowance is expected to be reversed on the effective date of the spin-off since we are expected to realize sufficient profit to utilize our deferred tax benefits as a result of the commercial and transitional agreements with ECC.

**ECHOSTAR HOLDING CORPORATION**  
**NOTES TO COMBINED FINANCIAL STATEMENTS — (Continued)**

The temporary differences, which give rise to deferred tax assets and liabilities as of December 31, 2006 and 2005, are as follows:

	As of December 31,	
	2006	2005
	(In thousands)	
<b>Deferred tax assets:</b>		
NOL, credit and other carryforwards	\$ 29,039	\$ 30,613
Unrealized (gains) losses on investments	51,916	50,360
Accrued expenses	1,399	452
Stock compensation	7,811	8,334
Research and development credit	2,225	2,225
State taxes net of federal effect	5,358	4,479
Other	812	798
Total deferred tax assets	98,560	97,261
Valuation allowance	(72,135)	(93,773)
Deferred tax asset after valuation allowance	26,425	3,488
<b>Deferred tax liabilities:</b>		
Equity method investments	625	635
Depreciation and amortization	973	1,348
Other	291	—
Other comprehensive income	24,827	1,505
Total deferred tax liabilities	26,716	3,488
Net deferred tax asset (liability)	\$ (291)	\$ —
Current portion of net deferred tax asset (liability)	\$ —	\$ —
Noncurrent portion of net deferred tax asset (liability)	(291)	—
Total net deferred tax asset (liability)	\$ (291)	\$ —

EHC's deferred tax assets included net operating losses ("NOL") and credits of \$29.0 million and \$30.6 million as of December 31, 2006 and 2005, respectively. The NOL's and credits represent the amounts that would be apportioned to these entities in accordance with the Internal Revenue Code and Treasury Regulations should EHC be legally separated from ECC. The NOL's and credits decreased \$1.6 million for the year ended December 31, 2006 to correspond to the apportionment of ECC's consolidated tax group's tax attributes as adjusted for the 2006 utilization of NOL's in consolidation. The impact of these allocation rules on the tax attributes determined on a separate company basis is reflected as an intercompany adjustment in the statutory income tax rate reconciliation above. The federal NOL carryforwards begin to expire in 2020, state NOL's begin to expire in 2019, and the credits will begin to expire in the year 2010.

Overall, EHC's net deferred tax assets are offset by a valuation allowance of \$72.1 million and \$93.8 million as of December 31, 2006 and 2005, respectively. The valuation allowance was decreased by \$21.6 million for the year ended December 31, 2006. EHC evaluated and assessed the expected near-term utilization of NOL's, book and taxable income trends, available tax strategies and the overall deferred tax position to determine the valuation allowance required as of December 31, 2006 and 2005.

**ECHOSTAR HOLDING CORPORATION**  
**NOTES TO COMBINED FINANCIAL STATEMENTS — (Continued)**

As of December 31, 2006 and 2005, the Federal NOL includes amounts related to tax deductions for exercised options that have been allocated directly to contributed capital for exercised stock options totaling \$3.6 million and \$3.1 million, respectively.

Stock option compensation expenses for which an estimated deferred tax benefit was previously recorded exceeded the actual tax deductions allowed during 2006 and 2005. Tax charges associated with the reversal of the prior tax benefit have been reported in "Net investment in EHC" in accordance with APB 25 and SFAS 123R. During 2006 and 2005, charges of \$0.5 million and \$0.8 million, respectively, were made to "Net investment in EHC."

**6. Employee Benefit Plans**

***Employee Stock Purchase Plan***

EHC employees participate in ECC's employee stock purchase plan (the "ESPP"). During 2006, this plan was amended for the purpose of registering an additional 1,000,000 shares of Class A common stock and was approved by the stockholders at ECC's Annual Meeting held on May 11, 2006 by the requisite vote of stockholders. Under the ESPP, ECC is now authorized to issue a total of 1,800,000 shares of Class A common stock. Substantially all full-time employees who have been employed by us for at least one calendar quarter are eligible to participate in the ESPP. Employee stock purchases are made through payroll deductions. Under the terms of the ESPP, employees may not deduct an amount which would permit such employee to purchase ECC's capital stock under all of ECC's stock purchase plans at a rate which would exceed \$25,000 in fair value of capital stock in any one year. The purchase price of the stock is 85% of the closing price of ECC's Class A common stock on the last business day of each calendar quarter in which such shares of Class A common stock are deemed sold to an employee under the ESPP. During 2006, 2005 and 2004 our employees purchased approximately 20,700, 17,600 and 13,300 shares of ECC's Class A common stock through the ESPP, respectively.

***401(k) Employee Savings Plan***

EHC participates in ECC's 401(k) Employee Savings Plan (the "401(k) Plan") for eligible employees. Voluntary employee contributions to the 401(k) Plan may be matched 50% by ECC, subject to a maximum annual contribution of \$1,000 per employee. Forfeitures of unvested participant balances which are retained by the 401(k) Plan may be used to fund matching and discretionary contributions. Expense recognized related to matching 401(k) contributions, net of forfeitures, totaled \$0.2 million and \$0.2 million during the years ended December 31, 2006 and 2005, respectively. We did not recognize any expense related to matching 401(k) contributions during the year ended December 31, 2004, as 401(k) Plan forfeitures were sufficient to fund all of the matching contributions.

ECC may also make an annual discretionary contribution to the plan with approval by its board of directors, subject to the maximum deductible limit provided by the Internal Revenue Code of 1986, as amended. These contributions may be made in cash or in ECC's stock. Discretionary stock contributions, net of forfeitures, for our employees were \$1.9 million, \$1.7 million and \$1.5 million relating to the 401(k) Plan years ended December 31, 2006, 2005 and 2004, respectively.



**ECHOSTAR HOLDING CORPORATION**  
**NOTES TO COMBINED FINANCIAL STATEMENTS — (Continued)**

**7. Commitments and Contingencies**

**Commitments**

Future maturities of our contractual obligations are summarized as follows:

	<u>Total</u>	<u>2007</u>	<u>Payments Due by Period</u>				
			<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>Thereafter</u>
			(In thousands)				
Satellite-related obligations	\$ 98,270	\$ 79,530	\$ 18,740	\$ —	\$ —	\$ —	\$ —
Operating lease obligations	4,003	879	906	933	961	324	—
Purchase obligations	614,978	614,978	—	—	—	—	—
Total	<u>\$ 717,251</u>	<u>\$ 695,387</u>	<u>\$ 19,646</u>	<u>\$ 933</u>	<u>\$ 961</u>	<u>\$ 324</u>	<u>\$ —</u>

**Satellite-Related Obligations**

*Satellites under Construction.* Future commitments related to the satellites on the historical balance sheets are included in the table above under “Satellite-related obligations.” CMBStar, an S-band satellite, is scheduled to be completed during the second quarter of 2008. If the required regulatory approvals are obtained and contractual conditions are satisfied, the transponder capacity of that satellite will be leased to a Hong Kong joint venture, which in turn will sublease a portion of the transponder capacity to an affiliate of a Chinese regulatory entity.

**Purchase Obligations**

Our 2007 purchase obligations primarily consist of binding purchase orders for set-top box and related components.

**Rent Expense**

For the nine months ended September 30, 2007 and the years ended December 31, 2006, 2005, and 2004, total rent expense for operating leases approximated \$1.0 million, \$1.1 million, \$1.1 million, and \$0.9 million, respectively.

**Patents and Intellectual Property**

Many entities, including some of our competitors, now have and may in the future obtain patents and other intellectual property rights that cover or affect products or services directly or indirectly related to those that we offer. We may not be aware of all patents and other intellectual property rights that our products may potentially infringe. Damages in patent infringement cases can include a tripling of actual damages in certain cases. Further, we cannot estimate the extent to which we may be required in the future to obtain licenses with respect to patents held by others and the availability and cost of any such licenses. Various parties have asserted patent and other intellectual property rights with respect to components within our direct broadcast satellite system. We cannot be certain that these persons do not own the rights they claim, that our products do not infringe on these rights, that we would be able to obtain licenses from these persons on commercially reasonable terms or, if we were unable to obtain such licenses, that we would be able to redesign our products to avoid infringement.

**ECHOSTAR HOLDING CORPORATION**  
**NOTES TO COMBINED FINANCIAL STATEMENTS — (Continued)**

**Contingencies**

*Acacia*

During 2004, Acacia Media Technologies, which we refer to as Acacia, filed a lawsuit against us and ECC in the United States District Court for the Northern District of California. The suit also named DirecTV, Comcast, Charter, Cox and a number of smaller cable companies as defendants. Acacia is an intellectual property holding company which seeks to license the patent portfolio that it has acquired. The suit alleges infringement of United States Patent Nos. 5,132,992 (the '992 patent), 5,253,275 (the '275 patent), 5,550,863 (the '863 patent), 6,002,720 (the '720 patent) and 6,144,702 (the '702 patent). The '992, '863, '720 and '702 patents have been asserted against us.

The patents relate to various systems and methods related to the transmission of digital data. The '992 and '702 patents have also been asserted against several Internet content providers in the United States District Court for the Central District of California. During 2004 and 2005, the Court issued Markman rulings which found that the '992 and '702 patents were not as broad as Acacia had contended, and that certain terms in the '702 patent were indefinite. In April 2006, ECC and other defendants asked the Court to rule that the claims of the '702 patent are invalid and not infringed. That motion is pending. In June and September 2006, the Court held Markman hearings on the '992, '863, '720 and '275 patents, and issued a ruling during December 2006. Acacia's various patent infringement cases have been consolidated for pre-trial purposes in the United States District Court for the Northern District of California.

We and ECC intend to vigorously defend this case. In the event that a Court ultimately determines that we and ECC infringe any of the patents, we may be subject to an injunction that could require us to materially modify certain user-friendly features that we currently offer to consumers. We are being indemnified by ECC for any potential liability or damages resulting from this suit relating to the period prior to the effective date of the spin-off.

*Broadcast Innovation, L.L.C.*

In 2001, Broadcast Innovation, L.L.C., which we refer to as Broadcast Innovation filed a lawsuit against ECC, DirecTV, Thomson Consumer Electronics and others in Federal District Court in Denver, Colorado. The suit alleges infringement of United States Patent Nos. 6,076,094 (which we refer to as the '094 patent) and 4,992,066 (which we refer to as the '066 patent). The '094 patent relates to certain methods and devices for transmitting and receiving data along with specific formatting information for the data. The '066 patent relates to certain methods and devices for providing the scrambling circuitry for a pay television system on removable cards. We examined these patents and believe that they are not infringed by any of our products or services. Subsequently, DirecTV and Thomson settled with Broadcast Innovation leaving us as the only defendant.

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

We and ECC intend to vigorously defend this case. In the event that a Court ultimately determines that we and ECC infringe any of the patents, we may be subject to an injunction that could require us to materially modify certain user-friendly features that we currently offer to consumers. We are being indemnified by ECC for any potential liability or damages resulting from this suit relating to the period prior to the effective date of the spin-off.

**ECHOSTAR HOLDING CORPORATION**  
**NOTES TO COMBINED FINANCIAL STATEMENTS — (Continued)**

*Finisar Corporation*

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

In July 2006, ECC, together with NagraStar LLC, filed a Complaint for Declaratory Judgment in the United States District Court for the District of Delaware against Finisar that asks the Court to declare that they and we do not infringe, and have not infringed, any valid claim of the '505 patent. Trial is not currently scheduled. The District Court has stayed our action until the Federal Circuit has resolved DirecTV's appeal.

We and ECC intend to vigorously prosecute this case. In the event that a Court ultimately determines that we and ECC infringe any of the patents, we may be subject to an injunction that could require us to materially modify certain user-friendly features that we currently offer to consumers. We are being indemnified by ECC for any potential liability or damages resulting from this suit relating to the period prior to the effective date of the spin-off.

*Global Communications*

On April 19, 2007, Global Communications, Inc., which we refer to as Global, filed a patent infringement action against ECC in the United States District Court for the Eastern District of Texas. The suit alleges infringement of United States Patent No. 6,947,702 (which we refer to as the '702 patent). This patent, which involves satellite reception, was issued in September 2005. On October 24, 2007, the United States Patent and Trademark Office granted our request for re-examination of the '702 patent and issued an Office Action finding that all of the claims of the '702 patent were invalid. Based on the PTO's decision, we have asked the District Court to stay the litigation until the re-examination proceedings is concluded.

We and ECC intend to vigorously defend this case. In the event that a Court ultimately determines that we and ECC infringe any of the patents, we may be subject to an injunction that could require us to materially modify certain user-friendly features that we currently offer to consumers. We are being indemnified by ECC for any potential liability or damages resulting from this suit relating to the period prior to the effective date of the spin-off.

*Superguide*

During 2000, Superguide Corp., which we refer to as Superguide, filed suit against ECC, DirecTV, Thomson 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 (which we refer to as the '211 patent), 5,293,357 (which we refer to as the '357 patent) and 4,751,578 (which we refer to as the '578 patent) which relate to certain electronic program guide functions, including the use of electronic program guides to control VCRs. Superguide sought injunctive and declaratory relief and damages in an unspecified amount.

On summary judgment, the District Court ruled that none of the asserted patents were infringed by us. These rulings were appealed to the United States Court of Appeals for the Federal Circuit. During 2004, the Federal Circuit affirmed in part and reversed in part the District Court's findings and remanded the case back to the District Court for further proceedings. In 2005, Superguide indicated that it would no longer pursue infringement allegations with respect to the '211 and '357 patents and those patents have now been dismissed from the suit. The District Court subsequently entered judgment of non-infringement in favor of all defendants as to the '211 and '357 patents and ordered briefing on Thomson's license defense as to the '578 patent. During December 2006, the District Court found that there were disputed issues of fact regarding Thomson's license defense, and ordered a trial solely addressed to that issue. That trial took place in March 2007. In July 2007, the District

**ECHOSTAR HOLDING CORPORATION**  
**NOTES TO COMBINED FINANCIAL STATEMENTS — (Continued)**

Court ruled in favor of Superguide. As a result, Superguide will be able to proceed with their infringement action against us, DirecTV and Thomson.

We and ECC intend to vigorously defend this case. In the event that a Court ultimately determines that we infringe the '578 patent, we may be subject to a portion of the final damages, which may include treble damages and/or an injunction that could require us to materially modify certain user-friendly electronic programming guide and related features that we currently offer to consumers. We are being indemnified by ECC for any potential liability or damages resulting from this suit relating to the period prior to the effective date of the spin-off. We cannot predict with any degree of certainty the outcome of this suit.

*Tivo Inc.*

During April 2006, a Texas jury concluded that certain of our digital video recorders, or DVRs, infringed a patent held by Tivo. The Texas court subsequently issued an injunction prohibiting us from offering DVR functionality. A Court of Appeals has stayed that injunction during the pendency of our appeal.

We and ECC intend to vigorously defend this case. In the event that a Court ultimately determines that we and ECC infringe any of the patents, we may be subject to an injunction that could require us to materially modify certain user-friendly features that we currently offer to consumers. We are being indemnified by ECC for any potential liability or damages resulting from this suit relating to the period prior to the effective date of the spin-off. We and ECC believe that we do not infringe any of the claims asserted against us and ECC.

*Trans Video*

In August 2006, Trans Video Electronic, Ltd., which we refer to as Trans Video filed a patent infringement action against us and ECC in the United States District Court for the Northern District of California. The suit alleges infringement of United States Patent Nos. 5,903,621 (which we refer to as the '621 patent) and 5,991,801 (which we refer to as the '801 patent). The patents relate to various methods related to the transmission of digital data by satellite. On May 14, 2007, we and ECC reached a settlement with Trans Video which did not have a material impact on our results of operations.

*Other*

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

**8. Geographic Information and Transactions with Major Customers**

*Geographic Information*

We currently operate in one reportable segment: the design, development and distribution of digital set-top boxes and related components.

**ECHOSTAR HOLDING CORPORATION**  
**NOTES TO COMBINED FINANCIAL STATEMENTS — (Continued)**

The following table summarizes total long-lived assets and revenue attributed to foreign locations:

	United States	Europe	Asia	Total
	(In thousands)			
<b>Long-lived assets, including FCC authorizations</b>				
As of December 31, 2006	\$ 65,028	\$ 12,818	\$ 47,456	\$ 125,302
As of December 31, 2005	\$ 67,961	\$ 14,299	\$ —	\$ 82,260
<b>Revenue</b>				
2006	\$ 1,446,926	\$ 78,394	\$ —	\$ 1,525,320
2005	\$ 1,456,276	\$ 57,415	\$ —	\$ 1,513,691
2004	\$ 1,660,525	\$ 59,566	\$ —	\$ 1,720,091

Revenue is attributed to geographic regions based upon the location where the sale originated. United States revenue includes transactions with both United States and customers abroad. International revenue includes transactions with customers in Europe, Africa, South America and the Middle East.

**Transactions with Major Customers**

During the nine months ended September 30, 2007 and 2006 and the years ended December 31, 2006, 2005 and 2004, United States revenue in the table above primarily included sales to two major customers. The following table summarizes sales to each customer and its percentage of total revenue.

	For the Nine Months Ended September 30,		For the Years Ended December 31,		
	2007 (Unaudited)	2006	2006	2005	2004
	(In thousands)				
<b>Total revenue:</b>					
ECC	\$ 1,019,729	\$ 948,683	\$ 1,288,691	\$ 1,295,861	\$ 1,543,513
Bell ExpressVu	118,170	164,680	186,387	173,168	125,313
Other	44,869	19,536	50,242	44,662	51,265
Total revenue	\$ 1,182,768	\$ 1,132,899	\$ 1,525,320	\$ 1,513,691	\$ 1,720,091
<b>Percentage of total revenue:</b>					
ECC	86.2%	83.7%	84.5%	85.6%	89.7%
Bell ExpressVu	10.0%	14.5%	12.2%	11.4%	7.3%

**ECHOSTAR HOLDING CORPORATION**  
**NOTES TO COMBINED FINANCIAL STATEMENTS — (Continued)**

**9. Valuation and Qualifying Accounts**

Our valuation and qualifying accounts as of December 31, 2006, 2005 and 2004 are as follows:

	Balance at Beginning of Year	Charged to Costs and Expenses	Deductions	Balance at End of Year
	(In thousands)			
<b>Allowance for doubtful accounts</b>				
For the years ended:				
December 31, 2006	\$ 243	\$ 660	\$ (80)	\$ 823
December 31, 2005	\$ 540	\$ (83)	\$ (214)	\$ 243
December 31, 2004	\$ 462	\$ 48	\$ 30	\$ 540
<b>Reserve for inventory</b>				
For the years ended:				
December 31, 2006	\$ 910	\$ 187	\$ (648)	\$ 449
December 31, 2005	\$ 1,648	\$ 542	\$ (1,280)	\$ 910
December 31, 2004	\$ 245	\$ 1,547	\$ (144)	\$ 1,648

**10. Quarterly Financial Data (Unaudited)**

Our quarterly results of operations are summarized as follows:

	For the Three Months Ended			
	March 31	June 30	September 30	December 31
	(In thousands) (Unaudited)			
<b>Year ended December 31, 2007:</b>				
Total revenue	\$ 447,763	\$ 330,589	\$ 404,416	N/A
Operating income (loss)	\$ (17,972)	\$ (13,489)	\$ (8,707)	N/A
Net income (loss)	\$ (18,504)	\$ (14,789)	\$ (6,650)	N/A
<b>Year ended December 31, 2006:</b>				
Total revenue	\$ 365,509	\$ 390,107	\$ 377,283	\$ 392,421
Operating income (loss)	\$ (6,101)	\$ 1,891	\$ (15,766)	\$ (17,471)
Net income (loss)	\$ (6,940)	\$ 4,616	\$ (18,162)	\$ (13,676)
<b>Year ended December 31, 2005:</b>				
Total revenue	\$ 401,598	\$ 335,651	\$ 380,103	\$ 396,339
Operating income (loss)	\$ (7,849)	\$ (11,533)	\$ (7,782)	\$ (5,900)
Net income (loss)	\$ (7,858)	\$ (12,060)	\$ (9,588)	\$ (15,434)

**11. Investments in Affiliates Accounted for Using the Equity Method**

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

**ECHOSTAR HOLDING CORPORATION**  
**NOTES TO COMBINED FINANCIAL STATEMENTS — (Continued)**

Summarized financial information of NagraStar for the periods in which we used the equity method to account for NagraStar is as follows:

**Balance Sheets**

	As of December 31,	
	2006	2005
	(In thousands)	
<b>Assets</b>		
Current assets	\$ 84,426	\$ 43,890
Noncurrent assets	854	940
Total assets	\$ 85,280	\$ 44,830
<b>Liabilities and Owner's Equity (Deficit)</b>		
Current and total liabilities	\$ 44,470	\$ 7,774
Owners' equity (deficit)	40,810	37,056
Total liabilities and owners' equity (deficit)	\$ 85,280	\$ 44,830

**Statement of Operations**

	For the Years Ended December 31,		
	2006	2005	2004
	(In thousands)		
Revenue	\$ 57,640	\$ 126,651	\$ 126,119
Operating, selling, general administrative expenses, net	56,278	116,677	113,102
Depreciation and amortization	245	335	518
Operating income (loss)	1,117	9,639	12,499
Other income (expense)	2,447	855	71
Net income (loss)	\$ 3,564	\$ 10,494	\$ 12,570

**12. Related Party Transactions**

***Related Party Transactions with NagraStar***

During the nine months ended September 30, 2007 and the years ended December 31, 2006, 2005 and 2004, we purchased security access devices from NagraStar of \$46.6 million, \$55.8 million, \$121.4 million and \$123.8 million, respectively. As of September 30, 2007 and December 31, 2006 and 2005, amounts payable to NagraStar totaled \$6.2 million, \$3.3 million and \$3.9 million, respectively. Additionally, as of September 30, 2007, we were committed to purchase \$22.8 million of security access devices from NagraStar.

***Related Party Transactions with ECC***

The Combined Statements of Operations and Comprehensive Income (Loss) include service costs and expense allocations for certain corporate functions historically provided to EHC by ECC. In certain cases, these allocations were made on a specific identification basis. Otherwise, the expenses related to services provided to EHC by ECC were allocated to EHC based on relative percentages, as compared to ECC's other businesses, of headcount or other appropriate methods depending on the nature of each item of cost to be allocated.

Charges for functions historically provided to EHC by ECC are primarily attributable to ECC's performance of many shared services that EHC benefits from such as, among other things, treasury, tax, accounting and reporting, mergers and acquisitions, risk management, legal, internal audit, human resources, investor relations

**ECHOSTAR HOLDING CORPORATION**  
**NOTES TO COMBINED FINANCIAL STATEMENTS — (Continued)**

and information technology. EHC also participates in certain ECC insurance, benefit and incentive plans. The Combined Statements of Operations and Comprehensive Income (Loss) reflect charges from ECC and its affiliates for these services of \$35.6 million and \$30.1 million for the nine months ended September 30, 2007 and 2006, respectively, and \$40.4 million, \$36.6 million and \$37.4 million for the years ended December 31, 2006, 2005 and 2004, respectively. Certain of these services will continue to be provided subsequent to the Distribution for varying periods. Included in the charges above are amounts recognized for employee benefit expenses (Note 6).

In addition, during the nine months ended September 30, 2007 and 2006 and the years ended December 31, 2006, 2005 and 2004, we sold set-top boxes and other services to ECC. The Combined Statements of Operation and Comprehensive Income (Loss) reflect revenue from ECC and its affiliates for equipment and other sales of \$1.020 billion and \$948.7 million for the nine months ended September 30, 2007 and 2006, respectively, and \$1.289 billion, \$1.296 billion and \$1.544 billion for the years ended December 31, 2006, 2005 and 2004, respectively. For the nine months ended September 30, 2007 and 2006, income before taxes was \$(0.04) million and \$0.2 million, respectively, and for the years ended December 31, 2006, 2005 and 2004 \$ (0.3) million, \$0.3 million and zero for the years ended December 31, 2006, 2005 and 2004, respectively.

**13. Subsequent Events**

On October 19, 2007, we acquired Sling Media, Inc., a privately-held digital lifestyle products company. As of December 31, 2006, Sling Media had total assets of \$49.8 million and a net loss of \$20.9 million. The transaction values Sling Media at approximately \$380.0 million and was paid in cash and EchoStar options.

During October 2007, the Board of Directors of EHC authorized a stock buy back of up to \$1.0 billion of our Class A common stock.



INDEX TO STATEMENT OF NET ASSETS TO BE CONTRIBUTED BY  
ECHOSTAR COMMUNICATIONS CORPORATION

	<u>Page</u>
<b>Statement of Net Assets to be Contributed by EchoStar Communications Corporation (“ECC”):</b>	
<a href="#">Report of KPMG LLP, Independent Registered Public Accounting Firm</a>	F-31
<a href="#">Statement of Net Assets to be Contributed by ECC as of September 30, 2007</a>	F-32
<a href="#">Notes to Statement of Net Assets to be Contributed by ECC</a>	F-33

**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

The Board of Directors and Stockholders  
EchoStar Communications Corporation:

We have audited the accompanying statement of net assets to be contributed by EchoStar Communications Corporation as of September 30, 2007. This statement of net assets to be contributed is the responsibility of EchoStar Communications Corporation's management. Our responsibility is to express an opinion on the statement of net assets to be contributed based on our audit.

We conducted our audit in accordance with the auditing standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the statement of net assets to be contributed is free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the statement of net assets to be contributed by EchoStar Communications Corporation, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the statement of net assets to be contributed. We believe that our audit provides a reasonable basis for our opinion.

The accompanying statement was prepared to present the net assets to be contributed by EchoStar Communications Corporation to EchoStar Holding Corporation in connection with the proposed spin-off transaction referred to in note 1, and is not intended to be a complete presentation of EchoStar Communications Corporation's assets and liabilities.

In our opinion, the accompanying statement of net assets to be contributed by EchoStar Communications Corporation presents fairly, in all material respects, the net assets to be contributed by EchoStar Communications Corporation as of September 30, 2007 to EchoStar Holding Corporation, in connection with the proposed spin-off transaction referred to in Note 1, in conformity with U.S. generally accepted accounting principles.

/s/ KPMG LLP

Denver, Colorado  
December 12, 2007

**STATEMENT OF NET ASSETS TO BE CONTRIBUTED BY  
ECHOSTAR COMMUNICATIONS CORPORATION**

	<u>As of September 30, 2007 (In thousands)</u>
<b>ASSETS</b>	
<i>Current Assets:</i>	
Cash	\$ 1,000,000
Trade accounts receivable, net of allowance for doubtful accounts of \$319	2,692
Current deferred tax assets	4,816
Other current assets	6,025
<b>Total current assets</b>	<b>1,013,533</b>
Restricted cash and marketable investment securities	3,150
Property and equipment, net	1,281,682
FCC authorizations (Note 2)	83,121
Intangible assets, net	147,374
Other noncurrent assets, net	21,254
<b>Total assets</b>	<b>\$ 2,550,114</b>
<b>LIABILITIES</b>	
<i>Current Liabilities:</i>	
Accrued expenses	\$ 14,535
Current portion of capital lease obligations, mortgages and notes payable	38,167
<b>Total current liabilities</b>	<b>52,702</b>
<i>Long-term obligations, net of current portion:</i>	
Capital lease obligations, mortgages and notes payable, net of current portion	349,590
Deferred tax liabilities	237,079
<b>Total long-term obligations, net of current portion</b>	<b>586,669</b>
<b>Total liabilities</b>	<b>639,371</b>
Net assets to be contributed	<b>\$ 1,910,743</b>

The accompanying notes are an integral part of this statement of net assets to be contributed.

**NOTES TO STATEMENT OF NET ASSETS TO BE CONTRIBUTED BY  
ECHOSTAR COMMUNICATIONS CORPORATION**

**1. Overview of Proposed Transaction and Assets to be Contributed and Basis of Presentation**

On September 25, 2007, EchoStar Communications Corporation ("ECC") announced its intention to separate its technology and certain infrastructure assets into a separate publicly-traded company. Pursuant to the spin-off, certain assets of ECC, consisting of satellites, uplink and satellite transmission assets and certain real estate and other assets and related liabilities will be contributed to EchoStar Holding Corporation ("EHC"). The net assets to be contributed by ECC historically were an integral part of ECC's historical satellite television business. These net assets are expected to be used by EHC primarily to comprise its fixed satellite service business as an independent publicly-traded company.

This Statement of Net Assets to be Contributed by ECC has been prepared in order to set forth those assets and related liabilities that will be contributed by ECC to EHC, but which do not comprise part of the historical combined financial statements of EHC. These assets and related liabilities are reflected in this Statement of Net Assets to be Contributed by ECC rather than in the historical combined financial statements of EHC and no Statement of Revenues and Direct Expenses has been included herein because these assets have been dedicated to and were an integral part of the ECC's DISH Network business, were not operated as a separate business within ECC and do not constitute a separate business under EITF 98-3, "*Determining Whether a Nonmonetary Transaction Involves Receipt of Productive Assets or of a Business.*"

The accounting policies described herein are the same accounting policies historically applied by ECC in the preparation of its Consolidated Financial Statements. The net assets to be contributed by ECC are shown at ECC's historical basis.

**2. Summary of Significant Accounting Policies**

*Use of Estimates*

The preparation of the Statement of Net Assets to be Contributed by ECC in conformity with accounting principles generally accepted in the United States ("GAAP") requires ECC 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. Estimates are used in accounting for, among other things, allowances for uncollectible accounts, deferred income taxes and related valuation allowances, fair values of financial instruments, fair value of assets and liabilities acquired in business combinations, capital leases, asset impairments, and useful lives of property, equipment and intangible assets. Actual results may differ from previously estimated amounts, and such differences may be material to the Statement of Net Assets to be Contributed by ECC. Additionally, upon contribution of these net assets to EHC, EHC will be required to make its own estimates and assumptions. These estimates and assumptions may be different from those made by ECC and may have a significant affect on the reported amounts. Estimates and assumptions are reviewed periodically, and the effects of revisions are reflected prospectively beginning in the period they occur.

*Cash and Restricted Cash and Marketable Investment Securities*

The Statement of Net Assets to be Contributed includes \$1.0 billion of cash to be contributed by ECC upon consummation of the spin-off.

As of September 30, 2007, restricted cash and marketable investment securities included letters of credit for FCC authorizations.

*Property and Equipment*

Property and equipment are stated at historical cost. The cost of satellites under construction, including certain amounts prepaid under our satellite service agreements, are capitalized during the construction phase, assuming the eventual successful launch and in-orbit operation of the satellite. If a satellite were to fail during launch or while in-orbit, the resultant loss would be charged to expense in the period such loss was incurred.

**NOTES TO STATEMENT OF NET ASSETS TO BE CONTRIBUTED BY  
ECHOSTAR COMMUNICATIONS CORPORATION — (Continued)**

The amount of any such loss would be reduced to the extent of insurance proceeds estimated to be received, if any. Depreciation is recorded on a straight-line basis over lives ranging from one to forty years. Repair and maintenance costs are charged to expense when incurred. Renewals and betterments are capitalized.

**Long-Lived Assets**

ECC accounts for impairments of long-lived assets in accordance with the provisions of Statement of Financial Accounting Standards No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets" ("SFAS 144"). ECC reviews its long-lived assets and identifiable intangible assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Based on the guidance under SFAS 144, ECC evaluates its satellite fleet for recoverability as one asset group. For assets which are held and used in operations, the asset would be impaired if the carrying value of the asset (or asset group) exceeded its undiscounted future net cash flows. Once an impairment is determined, the actual impairment is reported as the difference between the carrying value and the fair value as estimated using discounted cash flows. Assets which are to be disposed of are reported at the lower of the carrying amount or fair value less costs to sell. ECC considers relevant cash flow, estimated future operating results, trends and other available information in assessing whether the carrying value of assets are recoverable.

**FCC Authorizations and Intangible Assets**

ECC accounts for its intangible assets in accordance with the provisions of Statement of Financial Accounting Standards No. 142, "Goodwill and Other Intangible Assets" ("SFAS 142"), which requires intangible assets with indefinite useful lives not be amortized, but to be tested for impairment annually or whenever indicators of impairment arise. Intangible assets that have finite lives continue to be amortized over their estimated useful lives.

ECC has determined that its FCC licenses have indefinite useful lives and evaluates impairment in accordance with the guidance of EITF Issue No. 02-7, "Unit of Accounting for Testing Impairment of Indefinite-Lived Intangible Assets" ("EITF 02-7"). In our most recent annual impairment testing, ECC determined that the estimated fair value of the FCC licenses, calculated using the discounted cash flow analysis, exceeded their carrying amount.

As of September 30, 2007, our identifiable intangibles subject to amortization consisted of the following:

	As of September 30, 2007		
	Intangible Assets	Accumulated Amortization (In thousands)	Net Book Value
Contract based	\$ 189,928	\$ (57,480)	\$ 132,448
Technology-based	20,500	(5,574)	14,926
<b>Total</b>	<b>\$ 210,428</b>	<b>\$ (63,054)</b>	<b>\$ 147,374</b>

During the nine months ended September 30, 2007, ECC participated in an FCC Auction for licenses in the 1.4 GHz band and was the winning bidder for several licenses with total winning bids of \$57.4 million. This amount is included in "FCC authorizations" in the Statement of Net Assets to be Contributed by ECC.

**Income Taxes**

ECC establishes a provision for income taxes currently payable or receivable and for income tax amounts deferred to future periods in accordance with Statement of Financial Accounting Standards No. 109, "Accounting for Income Taxes" ("SFAS 109"). SFAS 109 requires that deferred tax assets and liabilities be recorded for the estimated future tax effects of differences that exist between the book and tax bases of assets

**NOTES TO STATEMENT OF NET ASSETS TO BE CONTRIBUTED BY  
ECHOSTAR COMMUNICATIONS CORPORATION — (Continued)**

and liabilities. Deferred tax assets are offset by valuation allowances in accordance with SFAS 109, when ECC believes it is more likely than not that such net deferred tax assets will not be realized.

**Fair Value of Financial Instruments**

As of September 30, 2007, the book value approximates fair value for cash, trade accounts receivable, net of allowance for doubtful accounts, current liabilities and mortgages and satellite vendor financing due to their short-term nature. Pursuant to Statement of Financial Accounting Standards No. 107 “Disclosures about Fair Value of Financial Instruments,” disclosures regarding fair value of capital leases is not required.

**New Accounting Pronouncements**

In September 2006, the FASB issued SFAS No. 157, “Fair Value Measurements” (“SFAS 157”) which defines fair value, establishes a framework for measuring fair value in accordance with generally accepted accounting principles and expands disclosures about fair value measurements. This pronouncement applies to other accounting standards that require or permit fair value measurements. Accordingly, this statement does not require any new fair value measurement. This statement is effective for fiscal years beginning after November 15, 2007, and interim periods within that fiscal year. ECC is currently evaluating the impact if any, of the adoption of SFAS 157 will have on the net assets to be contributed.

**3. Property and Equipment**

Property and equipment consist of the following:

	Depreciable Life (In Years)	As of September 30, 2007 (In thousands)
Land	—	\$ 24,155
Buildings and improvements	1-10	175,670
Furniture, fixtures, equipment and other	1-7	511,367
<b>Satellites:</b>		
EchoStar III	12	234,083
EchoStar IV — fully depreciated	N/A	78,511
EchoStar VI	12	245,022
EchoStar VIII	12	175,801
EchoStar IX	12	127,376
EchoStar XII	10	190,051
Satellites acquired under capital leases	10	551,628
Construction in process	—	104,101
Total property and equipment		\$ 2,417,765
Accumulated depreciation		(1,136,083)
Property and equipment, net		<u>1,281,682</u>

“Construction in progress” includes progress amounts for satellite construction, including launch costs.

**Satellites**

ECC is contributing nine of its satellites to EHC, six of which are owned and three are leased. Each of the owned satellites had an original minimum useful life of at least 12 years. Two of the leased satellites are accounted for as capital leases pursuant to Statement of Financial Accounting Standards No. 13, “Accounting

NOTES TO STATEMENT OF NET ASSETS TO BE CONTRIBUTED BY  
ECHOSTAR COMMUNICATIONS CORPORATION — (Continued)

for Leases” (“SFAS 13”) and are depreciated over the ten-year terms of the satellite service agreements. While ECC believes that overall these satellites are generally in good condition, during 2007 and prior periods, certain of these satellites have experienced anomalies, some of which have had a significant adverse impact on their commercial operation.

*EchoStar III.* EchoStar III was launched during October 1997 and currently operates at the 61.5 degree orbital location. The satellite was originally designed to operate a maximum of 32 transponders at approximately 120 watts per channel, switchable to 16 transponders operating at over 230 watts per channel, and was equipped with a total of 44 transponders to provide redundancy. Prior to 2006, traveling wave tube amplifiers (“TWTA”) anomalies caused 22 transponders to fail. During April and October 2006, further TWTA anomalies caused the failure of four additional transponders. As a result, a maximum of 18 transponders are currently available for use on EchoStar III, but due to redundancy switching limitations and specific channel authorizations, we can only operate on 15 of the 30 FCC authorized frequencies we have the right to utilize at the 61.5 degree location. While we do not expect a large number of additional TWTAs to fail in any year, and the failures have not reduced the original minimum 12-year design life of the satellite, it is likely that additional TWTA failures will occur from time to time in the future, and those failures will further impact commercial operation of the satellite.

*EchoStar IV.* EchoStar IV was launched during May 1998 and currently operates at the 77 degree orbital location, which is licensed by the government of Mexico to a venture in which we hold a minority interest. The satellite was originally designed to operate a maximum of 32 transponders at approximately 120 watts per channel, switchable to 16 transponders operating at over 230 watts per channel. As a result of past TWTA failures, only six transponders are currently available for use and the satellite has been fully depreciated. There can be no assurance that further material degradation, or total loss of use, of EchoStar IV will not occur in the immediate future.

*EchoStar VI.* EchoStar VI was launched during July 2000 and is currently stationed at the 110 degree orbital location as an in-orbit spare. The satellite was originally equipped with 108 solar array strings, approximately 102 of which are required to assure full power availability for the original minimum 12-year design life of the satellite. Prior to 2006, EchoStar VI experienced anomalies resulting in the loss of 15 solar array strings. During 2006, two additional solar array strings failed, reducing the number of functional solar array strings to 91. While the design life of the satellite has not been affected, commercial operability has been reduced. The satellite was designed to operate 32 transponders at approximately 125 watts per channel, switchable to 16 transponders operating at approximately 225 watts per channel. The power reduction resulting from the solar array failures limits us to operation of a maximum of 26 transponders in standard power mode, or 13 transponders in high power mode currently. The number of transponders to which power can be provided is expected to continue to decline in the future at the rate of approximately one transponder every three years. See discussion of evaluation of impairment in “*Long-Lived Assets*” below.

*EchoStar VIII.* EchoStar VIII was launched during August 2002 and currently operates at the 110 degree orbital location. The satellite was designed to operate 32 transponders at approximately 120 watts per channel, switchable to 16 transponders operating at approximately 240 watts per channel. EchoStar VIII also includes spot-beam technology. This satellite has experienced several anomalies since launch, but none have reduced the 12-year estimated useful life of the satellite. However, there can be no assurance that future anomalies will not cause further losses which could materially impact its commercial operation, or result in a total loss of the satellite.

*EchoStar IX.* EchoStar IX was launched during August 2003 and currently operates at the 121 degree orbital location. The satellite was designed to operate 32 FSS transponders operating at approximately 110 watts per channel, along with transponders that can provide services in the Ka-Band (a “Ka-band payload”). The satellite also includes a C-band payload which is owned by a third party. During 2006, EchoStar IX experienced the loss of one of its three momentum wheels, two of which are utilized during normal

NOTES TO STATEMENT OF NET ASSETS TO BE CONTRIBUTED BY  
ECHOSTAR COMMUNICATIONS CORPORATION — (Continued)

operations. A spare wheel was switched in at the time and the loss did not reduce the 12-year estimated useful life of the satellite. During September 2007, the satellite experienced anomalies resulting in the loss of three solar array strings. An investigation of the anomalies is continuing. The anomalies have not impacted commercial operation of the satellite to date. The design life of the satellite is not expected to be impacted since the satellite is equipped with a total of 288 solar array strings, only approximately 276 of which are required to assure full power availability for the design life of the satellite. However, there can be no assurance future anomalies will not cause further losses, which could impact the remaining life or commercial operation of the satellite.

*EchoStar XII.* EchoStar XII was launched during July 2003 and currently operates at the 61.5 degree orbital location. The satellite was designed to operate 13 transponders at 270 watts per channel, in CONUS mode, or 22 spot beams using a combination of 135 and 65 watt TWTAs. We currently operate the satellite in CONUS mode. EchoStar XII has a total of 24 solar array circuits, approximately 22 of which are required to assure full power for the original minimum 12-year design life of the satellite. Since late 2004, eight solar array circuits on EchoStar XII have experienced anomalous behavior resulting in both temporary and permanent solar array circuit failures. The cause of the failures is still being investigated. The design life of the satellite has not been affected. However, these temporary and permanent failures have resulted in a reduction in power to the satellite which will preclude us from using the full complement of transponders on EchoStar XII for the 12-year design life of the satellite. The extent of this impact has not yet been determined. There can be no assurance future anomalies will not cause further losses, which could further impact commercial operation of the satellite or its useful life. See discussion of evaluation of impairment in “*Long-Lived Assets*” below.

**Long-Lived Satellite Assets.** ECC accounts for impairments of long-lived satellite assets in accordance with the provisions of Statement of Financial Accounting Standards No. 144, “*Accounting for the Impairment or Disposal of Long-Lived Assets*” (“SFAS 144”). SFAS 144 requires a long-lived asset or asset group to be tested for recoverability whenever events or changes in circumstance indicate that its carrying amount may not be recoverable. Based on the guidance under SFAS 144, ECC evaluates its satellite fleet for recoverability as one asset group. While certain of the anomalies discussed above, and previously disclosed, may be considered to represent a significant adverse change in the physical condition of an individual satellite, based on the redundancy designed within each satellite and considering the asset grouping, these anomalies (none of which caused a loss of service to subscribers for an extended period) are not considered to be significant events that would require evaluation for impairment recognition pursuant to the guidance under SFAS 144. Unless and until a specific satellite is abandoned or otherwise determined to have no service potential, the net carrying amount related to the satellite would not be written off.

Upon contribution of these satellites, EHC will be required to perform its own analysis of each satellite for recoverability. EHC’s conclusion regarding the recoverability of each satellite may be different from the conclusion reached by ECC.



NOTES TO STATEMENT OF NET ASSETS TO BE CONTRIBUTED BY  
ECHOSTAR COMMUNICATIONS CORPORATION — (Continued)

4. Long-Term Debt

*Capital Lease Obligations, Mortgages and Notes Payable*

Capital lease obligations, mortgages and notes payable consist of the following:

	As of September 30, 2007 (In thousands)
Satellites financed under capital lease obligations	\$ 379,280
8% note payable for EchoStar IX satellite vendor financing, payable over 14 years from launch	8,139
8% mortgage due in installments through 2015	338
Total	\$ 387,757
Less current portion	(38,167)
Capital lease obligations, mortgages and other notes payable, net of current portion	\$ 349,590

*Capital Lease Obligations*

Three of the in-orbit satellites that ECC currently leases will be contributed to EHC. Two of these satellites, discussed below, are accounted for as capital leases pursuant to SFAS 13 and are depreciated over the ten-year terms of the satellite service agreements.

*AMC-15.* AMC-15, an FSS satellite, commenced commercial operation during January 2005. This lease will be renewable by us on a year to year basis following the initial term, and will provide us with certain rights to replacement satellites.

*AMC-16.* AMC 16, an FSS satellite, commenced commercial operation during February 2005. This lease is renewable by us on a year to year basis following the initial term, and will provide us with certain rights to replacement satellites.

**NOTES TO STATEMENT OF NET ASSETS TO BE CONTRIBUTED BY  
ECHOSTAR COMMUNICATIONS CORPORATION — (Continued)**

As of September 30, 2007, ECC had \$551.6 million capitalized for the estimated fair value of satellites acquired under capital leases included in "Property and equipment, net," with related accumulated depreciation of \$149.9 million. Future minimum lease payments under these capital lease obligations, together with the present value of the net minimum lease payments as of September 30, 2007 are as follows:

<b>For the Years Ending December 31,</b>	
2007 (remaining three months)	\$ 21,588
2008	86,351
2009	86,351
2010	86,351
2011	86,351
Thereafter	254,373
<b>Total minimum lease payments</b>	<b>621,365</b>
Less: Amount representing lease of the orbital location and estimated executory costs (primarily insurance and maintenance) including profit thereon, included in total minimum lease payments	(107,221)
<b>Net minimum lease payments</b>	<b>514,144</b>
Less: Amount representing interest	(134,864)
<b>Present value of net minimum lease payments</b>	<b>379,280</b>
Less: Current portion	(37,574)
<b>Long-term portion of capital lease obligations</b>	<b>\$ 341,706</b>

In addition to its lease of the AMC-15 and AMC-16 satellites, ECC will also contribute satellite service agreements to lease all of the capacity on other satellites discussed below.

**AMC-2.** AMC-2 is an FSS satellite positioned at the 85 degree orbital location. ECC's lease of this satellite is expected to continue through 2007 and has been accounted for as an operating lease.

**AMC-14.** AMC-14 is a DBS satellite, which is currently expected to launch in early 2008 and commence commercial operation at an orbital location to be determined at a future date. The initial ten-year lease for all of the capacity on the satellite will be accounted for as a capital lease.

#### **5. Income Taxes**

Our income tax policy is to record the estimated future tax effects of temporary differences between the tax bases of assets and liabilities and amounts reported in the Statement of Net Assets to be Contributed by ECC. We followed the guidelines set forth in SFAS 109 regarding the recoverability of any tax assets recorded on the Statement of Net Assets to be Contributed by ECC and provided any necessary valuation allowances. In accordance with SFAS 109, we periodically evaluate our need for a valuation allowance. Determining necessary valuation allowances requires us to make assessments about historical financial information as well as the timing of future events, including the probability of expected future taxable income and available tax planning opportunities.

**NOTES TO STATEMENT OF NET ASSETS TO BE CONTRIBUTED BY  
ECHOSTAR COMMUNICATIONS CORPORATION — (Continued)**

The temporary differences, which give rise to significant deferred tax assets and liabilities as of September 30, 2007, are as follows:

	<u>As of September 30,</u> <u>2007</u> <u>(In thousands)</u>
<b>Deferred tax assets:</b>	
Accrued expenses	\$ 4,444
Other	248
Total deferred tax assets	<u>\$ 4,692</u>
<b>Deferred tax liabilities:</b>	
Depreciation and amortization	\$ (219,013)
State taxes net of federal effect	(17,942)
Total deferred tax liabilities	<u>(236,955)</u>
Net deferred tax asset (liability)	<u>\$ (232,263)</u>
Current portion of net deferred tax asset (liability)	\$ 4,816
Noncurrent portion of net deferred tax asset (liability)	(237,079)
Total net deferred tax asset (liability)	<u>\$ (232,263)</u>

INDEX TO FINANCIAL TABLES OF SLING MEDIA, INC.

	<u>Page</u>
<b>Consolidated Financial Statements of Sling Media, Inc.:</b>	
<a href="#">Report of KPMG LLP, Independent Registered Public Accounting Firm</a>	F-42
<a href="#">Consolidated Balance Sheets at September 30, 2007 (unaudited) and December 31, 2006 and 2005</a>	F-43
<a href="#">Consolidated Statements of Operations and Other Comprehensive Income (Loss) for the nine months ended September 30, 2007 and 2006 (unaudited), for each of the years ended December 31, 2006, 2005, and for the period from inception (June 14, 2004) to December 31, 2004</a>	F-44
<a href="#">Consolidated Statements of Shareholders' Equity for the years ended December 31, 2004, 2005 and 2006 and for the nine months ended September 30, 2007 (unaudited)</a>	F-45
<a href="#">Consolidated Statements of Cash Flows for the nine months ended September 30, 2007 and 2006 (unaudited), for the years ended December 31, 2006, 2005, and or the period from inception (June 14, 2004) to December 31, 2004</a>	F-46
<a href="#">Notes to Consolidated Financial Statements</a>	F-47

**Report of Independent Registered Public Accounting Firm**

The Board of EchoStar Communications Corporation, Inc.:

We have audited the consolidated financial statements of Sling Media, Inc. and subsidiaries as of December 31, 2006 and 2005, and the related consolidated statements of operations and other comprehensive income (loss), shareholders' equity and cash flows for each of the years then ended and the period from inception (June 14, 2004) to December 31, 2004. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Sling Media, Inc. and subsidiaries as of December 31, 2006 and 2005, and the results of their operations and their cash flows for the years then ended and the period from inception (June 14, 2004) to December 31, 2004, in conformity with U.S. generally accepted accounting principles.

As discussed in Note 2(I) to the consolidated financial statements, effective January 1, 2006, the Company adopted the provisions of Statement of Financial Accounting Standards (SFAS) No. 123 (revised 2004), *Share-Based Payment*, applying the prospective method.

/s/ KPMG LLP

San Francisco, California  
November 5, 2007

SLING MEDIA, INC.  
Consolidated Balance Sheets

September 30,  
2007  
(Unaudited)

December 31,  
2006      2005

(In thousands, except share and  
per-share data)

ASSETS			
Current assets:			
Cash and cash equivalents	\$ 7,763	\$ 24,382	\$ 4,827
Short-term investments	—	73	3,805
Accounts receivable	7,276	11,987	6,067
Inventories	6,446	5,657	1,881
Prepaid expenses	1,451	2,156	271
Other current assets	656	337	134
Total current assets	23,592	44,592	16,985
Property and equipment, net	3,877	1,585	197
Intangible assets, net	2,597	2,818	77
Restricted cash	400	400	—
Other assets	728	434	74
Total assets	\$ 31,194	\$ 49,829	\$ 17,333
LIABILITIES AND SHAREHOLDERS' EQUITY			
Current liabilities:			
Accounts payable, trade	\$ 3,643	\$ 8,869	\$ 878
Accrued expenses	4,674	2,644	978
Accrued employee benefits	630	950	94
Notes payable	1,380	297	4,313
Total current liabilities	10,327	12,760	6,263
Deferred revenue	4,000	—	—
Other long-term liabilities	2,701	1,280	—
Total liabilities	17,028	14,040	6,263
Commitments and contingencies (Note 7)			
Shareholders' equity:			
Convertible Series A preferred stock, \$0.0001 par value. Authorized 8,400,000 shares; outstanding 7,759,082 shares respectively; aggregate liquidation preference of \$11,574,999	1	1	1
Convertible Series B preferred stock, \$0.0001 par value. Authorized 7,930,000 shares; outstanding 7,695,271, 7,695,271 and 0 shares, respectively; aggregate liquidation preference of \$46,374,501	1	1	—
Common stock, \$0.0001 par value. Authorized 30,670,000, 30,670,000 and 26,600,000 shares, respectively; issued and outstanding 10,015,923, 9,910,681 and 8,755,763 shares, respectively	1	1	1
Additional paid-in capital	70,298	61,094	15,594
Warrants	533	347	194
Accumulated deficit	(56,763)	(25,665)	(4,733)
Accumulated other comprehensive income	95	10	13
Total shareholders' equity	14,166	35,789	11,070
Total liabilities and shareholders' equity	\$ 31,194	\$ 49,829	\$ 17,333

See accompanying notes to consolidated financial statements.

SLING MEDIA, INC.

Consolidated Statements of Operations and Other Comprehensive Income (Loss)

	Nine Months Ended September 30,		Year Ended December 31,		Inception (June 14, 2004) to December 31, 2004
	2007	2006	2006	2005	
	(Unaudited)				
	(In thousands, except share and per-share data)				
Net revenues	\$ 21,233	13,280	29,055	10,929	—
Cost of sales	15,408	10,430	20,191	4,906	—
Gross profit	5,825	2,850	8,864	6,023	—
Operating expenses:					
Research and development	13,078	4,012	6,515	2,343	668
Sales and marketing	19,695	11,205	18,555	5,114	164
General and administrative	3,932	3,272	5,573	1,665	309
Total operating expenses	36,705	18,489	30,643	9,122	1,141
Loss from operations	(30,880)	(15,639)	(21,779)	(3,099)	(1,141)
Other income (expense):					
Interest income	378	1,168	1,478	210	20
Interest expense	(493)	(510)	(512)	(659)	—
Other expense	—	—	(45)	(39)	—
Total other income (expense)	(115)	658	921	(488)	20
Loss before provision for income taxes	(30,995)	(14,981)	(20,858)	(3,587)	(1,121)
Provision for income taxes	103	68	74	25	—
Net loss	\$ (31,098)	(15,049)	(20,932)	(3,612)	(1,121)
Foreign currency translation adjustment	85	—	(3)	13	—
Comprehensive loss	(31,013)	(15,049)	(20,935)	(3,599)	(1,121)
Weighted average shares outstanding, (basic and diluted)	8,098,947	5,535,044	5,853,470	3,451,019	1,362,500
Loss per share (basic and diluted)	\$ (3.84)	(2.72)	(3.58)	(1.05)	(0.82)

See accompanying notes to consolidated financial statements.

SLING MEDIA, INC.

Consolidated Statements of Shareholders' Equity — (Continued)

	Convertible A Preferred Stock		Convertible B Preferred Stock		Common Stock		Warrants	Additional Paid-in Capital	Accumulated Deficit	Accumulated Other Comprehensive Income	Total Shareholders' Equity
	Shares	Amount	Shares	Amount	Shares	Amount					
	(In thousands, except share and per-share data)										
Net loss	—	\$ —	—	\$ —	—	\$ —	\$ —	\$ —	\$ (1,121)	\$ —	\$ (1,121)
Exercise of employee stock options	—	—	—	—	406	—	—	20	—	—	20
Issuance of preferred stock	7,759	1	—	—	—	—	—	11,496	—	—	11,497
Issuance of common stock	—	—	—	—	7,500	1	—	68	—	—	69
Balances as of December 31, 2004	7,759	\$ 1	—	—	7,906	1	—	11,584	(1,121)	—	10,465
Net loss	—	—	—	—	—	—	—	—	(3,612)	—	(3,612)
Cumulative translation adjustment	—	—	—	—	—	—	—	—	—	13	13
Exercise of employee stock options, net of share repurchases	—	—	—	—	850	—	—	10	—	—	10
Beneficial conversion feature related to convertible notes payable	—	—	—	—	—	—	—	4,000	—	—	4,000
Issuance of preferred stock warrants	—	—	—	—	—	—	194	—	—	—	194
Balances as of December 31, 2005	7,759	1	—	—	8,756	1	194	15,594	(4,733)	13	11,070
Net loss	—	—	—	—	—	—	—	—	(20,932)	—	(20,932)
Cumulative translation adjustment	—	—	—	—	—	—	—	—	—	(3)	(3)
Issue of common stock for patent purchase	—	—	—	—	175	—	—	1,312	—	—	1,312
Issue of preferred stock and preferred stock warrants	—	—	7,028	1	—	—	153	42,374	—	—	42,528
Conversion of note payable to preferred stock	—	—	667	—	—	—	—	4,000	—	—	4,000
Adjustment of beneficial conversion feature related to convertible notes payable	—	—	—	—	—	—	—	(3,277)	—	—	(3,277)
Employee stock compensation	—	—	—	—	—	—	—	1,014	—	—	1,014
Exercise of employee stock options, net of share repurchases	—	—	—	—	980	—	—	77	—	—	77
Balances as of December 31, 2006	7,759	1	7,695	1	9,911	1	347	61,094	(25,665)	10	35,789
Net loss	—	—	—	—	—	—	—	—	(31,098)	—	(31,098)
Cumulative translation adjustment	—	—	—	—	—	—	—	—	—	85	85
Issue of preferred stock and preferred stock warrants	—	—	—	—	—	—	186	—	—	—	186
Beneficial conversion feature related to convertible notes payable	—	—	—	—	—	—	—	5,000	—	—	5,000
Employee stock compensation	—	—	—	—	—	—	—	4,096	—	—	4,096
Exercise of employee stock options, net of share repurchases	—	—	—	—	130	—	—	108	—	—	108
Balances as of September 30, 2007 (unaudited)	7,759	\$ 1	7,695	\$ 1	10,041	\$ 1	\$ 533	\$ 70,298	\$ (56,763)	\$ 95	\$ 14,166

See accompanying notes to consolidated financial statements.



**SLING MEDIA, INC.**  
**Consolidated Statements of Cash Flows**

	Nine Months Ended September 30,		Year Ended December 31,		Inception (June 14, 2004) to December 31, 2004
	2007	2006	2006	2005	
	(Unaudited)		(In thousands)		
<b>Cash flows from operating activities:</b>					
Net loss	\$ (31,098)	\$ (15,049)	\$ (20,932)	\$ (3,612)	\$ (1,121)
<b>Adjustments to reconcile net loss to net cash used in operating activities:</b>					
Depreciation and amortization	1,119	181	366	70	8
Accretion of debt discounts	397	415	415	502	—
Stock-based compensation	4,096	271	1,014	—	—
<b>Changes in assets and liabilities:</b>					
Accounts receivable	4,651	818	(5,860)	(6,067)	—
Prepaid expenses and other current assets	669	(516)	(2,149)	(408)	(43)
Inventories	(789)	(1,588)	(3,777)	(1,881)	—
Other assets	(516)	(689)	(759)	28	(52)
Accounts payable, trade	(5,225)	3,293	7,991	758	120
Accrued expenses	1,701	1,079	1,732	581	274
Accrued employee benefits	(320)	236	857	74	49
Deferred revenue	4,070	—	—	—	—
Net cash used in operating activities	(21,245)	(11,549)	(21,102)	(9,955)	(765)
<b>Cash flows from investing activities:</b>					
Purchases of property and equipment	(1,608)	(573)	(553)	(233)	(18)
Purchases of intangible assets	—	(1,500)	(1,500)	—	(101)
Deposits received	138	—	—	—	—
Sales (purchase) of short-term investments	73	5	3,732	(3,805)	(2)
Net cash provided by (used) in investing activities	(1,397)	(2,068)	1,679	(4,038)	(121)
<b>Cash flows from financing activities:</b>					
Proceeds from convertible promissory note	—	—	—	4,004	—
Proceeds from (repayments of) senior loan	5,000	(4,000)	(4,000)	4,000	—
Proceeds from issuance of debt	1,444	—	—	—	—
Repayment of capital lease	(630)	(44)	(89)	—	—
Proceeds from issuance of preferred stock, net of issuance costs	—	42,528	42,528	—	11,498
Proceeds from issuance of common stock	124	97	542	121	89
Issuance costs, Series A preferred stock	—	—	—	(19)	—
Net cash (used) provided by financing activities	5,938	38,581	38,981	8,106	11,587
Impact of foreign exchange on cash	85	(7)	(3)	13	—
Net increase (decrease) in cash and cash equivalents	(16,619)	24,957	19,555	(5,874)	10,701
Cash and cash equivalents at beginning of period	24,382	4,827	4,827	10,701	—
Cash and cash equivalents at end of period	<u>\$ 7,763</u>	<u>\$ 29,784</u>	<u>\$ 24,382</u>	<u>\$ 4,827</u>	<u>\$ 10,701</u>
<b>Supplementary disclosures of cash flow information:</b>					
<b>Cash paid during the period:</b>					
Interest	\$ 106	\$ 76	\$ 121	\$ 47	\$ —
Income taxes	84	63	84	6	—
<b>Disclosure of material non-cash items:</b>					
Issuance of common stock for purchase of intangible assets	\$ —	—	1,313	—	—
Issuance of warrants	186	—	—	—	—
Vesting of stock options early exercised	45	9	465	98	14
Conversion of notes to Series B preferred stock and preferred stock warrants	—	4,000	4,000	—	—
Assets acquired under capital lease	1,584	—	1,129	—	—

See accompanying notes to consolidated financial statements.

SLING MEDIA, INC.

Notes to Consolidated Financial Statements

Nine Months Ended September 30, 2007 and 2006 (unaudited) and  
the Years Ended December 31, 2006 and 2005 and the period from  
inception (June 14, 2004) to December 31, 2004

Amounts in thousands except share and per-share data

**(1) Organization**

**(a) Description of Business**

Sling Media, Inc. ("the Company"), incorporated in the state of Delaware on June 14, 2004, manufactures consumer electronic products that enable users to watch and interact with their subscription television through an internet connected computer or mobile device.

**(b) Basis of Presentation**

The consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries: Sling Media Private Limited, Sling Media Pte, Limited, Sling Media UK Limited and Sling Media Ireland Limited. The consolidated financial statements include accounts of all wholly-owned subsidiaries after elimination of intercompany accounts and transactions.

In September, 2007, the Company agreed to be acquired by EchoStar Communications Corporation ("EchoStar") for approximately \$380,000. EchoStar, through a wholly-owned subsidiary, was already an investor in the Company.

**(c) Reclassification**

Certain reclassifications have been made to the 2005 consolidated financial statements to conform to 2006 presentation.

**(d) Unaudited Interim Financial Information**

The accompanying unaudited consolidated financial statements as of September 30, 2007, and for the nine months ended September 30, 2007 and 2006 have been prepared in accordance with accounting principles generally accepted in the United States ("U.S.") and Article 10 of Regulation S-X for interim financial information. The unaudited consolidated financial statements as of September 30, 2007 and for the nine-month periods ended September 30, 2007 and 2006 have been prepared on the same basis as the consolidated financial statements as of December 31, 2006 and 2005 and for each of the years then ended and the period from inception (June 14, 2004) to December 31, 2004 included therein, and in the opinion of management, reflect all adjustments, consisting only of normal and recurring accruals, considered necessary to present fairly the Company's consolidated financial position as of September 30, 2007 and the consolidated results of its operations and its cash flows for the nine month periods ended September 30, 2007 and 2006. However, they do not include all of the information and footnotes required by accounting principles generally accepted in the U.S. (U.S. GAAP) for complete financial statements. The consolidated results of operations for the nine months ended September 30, 2007 are not necessarily indicative of the results that may be expected for the year ending December 31, 2007 or for any other period.

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

**(a) Use of Estimates**

The preparation of financial statements in conformity with accounting principles generally accepted in the U.S. requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the

## SLING MEDIA, INC.

## Notes to Consolidated Financial Statements — (Continued)

reporting period. Management periodically evaluates such estimates and assumptions for continued reasonableness. Appropriate adjustments, if any, to the estimates used are made prospectively based upon such periodic evaluation. Actual results could differ from those estimates.

**(b) Fair Value of Financial Instruments**

For certain financial instruments, including cash and cash equivalents, prepaid expenses and other current assets, accounts receivable, and accounts payable, recorded amount approximates fair value due to their relatively short maturity period.

**(c) Cash Equivalents and Short-Term Investments**

The Company classifies all highly liquid investments purchased with an original or remaining maturity of three months or less at the date of purchase to be cash equivalents and those investments with an original or remaining maturity of greater than three months to be short-term investments. Both are stated at cost, which approximates fair value. Cash equivalents and short-term investments are maintained with several high credit quality financial institutions. The Company's investments consist primarily of cash, money market investments, and certificates of deposits amounting to \$73 and \$3,805 at December 31, 2006 and 2005, respectively. Although the Company deposits its cash with multiple financial institutions, its deposits exceed insured amounts.

**(d) Concentration of Credit Risk**

Financial instruments that potentially subject the Company to concentration of credit risk consist principally of trade accounts receivable. The Company's trade receivables result from sales of its products to large, well-established wholesale and retail distributors, primarily located in the U.S. and the European Union. Management reviews the creditworthiness of its customers in the ordinary course of business, and further reviews the need for allowances for potential credit losses. At December 31, 2006 and 2005 there were no such allowances.

As of December 31, 2006, three customers individually accounted for 43%, 28% and 13% of total accounts receivable and 16%, 31% and 24% of total revenue. As of December 31, 2005, two customers individually accounted for 57% and 22% of total accounts receivable and 58% and 35% of total revenue.

**(e) Restricted Cash**

As of December 31, 2006 and 2005, \$400 and \$ — were classified as restricted on the accompanying consolidated balance sheets, and consist of a certificate of deposit held by a financial institution for the benefit of the landlord of the Company's corporate headquarters.

**(f) Inventories**

Inventories, which consist primarily of finished goods held for sale, are stated at the lower of cost (determined on a weighted-average basis) or market. Products are built by contract manufacturers to Company specifications. The Company depends on a few manufacturers for its finished good products. The Company periodically reviews its inventories and reduces the carrying value for slow-moving or obsolete items to the estimated market value, if lower, based upon assumptions about future demand and market conditions.

**(g) Property and Equipment**

Property and equipment are stated at cost less accumulated depreciation and amortization. Depreciation and amortization is computed using the straight-line method based on the estimated useful lives of three to five years for the respective assets. Leasehold improvements are amortized on a straight-line basis over the shorter

## SLING MEDIA, INC.

## Notes to Consolidated Financial Statements — (Continued)

of the lease term or estimated useful life of the assets. Depreciation and amortization expense of property and equipment for the years ended December 31, 2006 and 2005 was \$294 and \$54, respectively, and \$1 for the period from inception (June 14, 2004) to December 31, 2004, is included as a component of operating expenses, dependent upon the department to which the asset is allocated, in the accompanying consolidated statements of operations.

**(h) Intangible Assets**

Intangible assets with finite lives, which consist of patents and other intellectual property assets, are stated at cost less accumulated amortization. Amortization is computed using the straight-line method based on the estimated useful lives of the assets of three to ten years, respectively. Amortization expense for intangible assets with finite lives for the years ended December 31, 2006 and 2005 was \$72 and \$16, respectively, and \$7 for the period from inception (June 14, 2004) to December 31, 2004, and is included as a component of costs of goods sold in the accompanying consolidated statements of operations. Amortization expense is expected to be \$293 for 2007, \$289 for 2008, 2009 and 2010, and \$1,658 thereafter.

**(i) Foreign Currency Translation**

The functional currencies of the Company's non-U.S. subsidiaries are their respective local currencies. Asset and liability balances denominated in non-U.S. dollar currencies are translated into U.S. dollars using period-end exchange rates, while revenues and expenses based upon the exchange rate at the time of the transaction, if known, or at the average rate for the period. Differences are recorded as a component of accumulated other comprehensive income (loss). Financial assets and liabilities denominated in currencies other than the functional currency are recorded at the exchange rate at the time of the transaction and subsequent gains and losses related to changes in the foreign currency are included in other income and expense. Net transaction gains (losses) during 2006, 2005 and for the period of inception (June 14, 2004) through December 31, 2004 were not significant.

**(j) Impairment of Long-Lived Assets**

In accordance with Statement of Financial Accounting Standards ("SFAS") No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets*, long-lived assets, such as property and equipment and intangible assets with finite lives, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to estimated undiscounted future cash flows expected to be generated by the asset. If the carrying amount of an asset exceeds its estimated future cash flows, an impairment charge is recognized by the amount by which the carrying amount of the asset exceeds the fair value of the asset. There were no indicators of impairment for any period presented.

**(k) Income Taxes**

Income taxes are accounted for using the asset and liability method as prescribed by SFAS No. 109, *Accounting For Income Taxes*. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income (loss) in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period of enactment. The Company is subject to foreign income taxes on its foreign operations.

SLING MEDIA, INC.

Notes to Consolidated Financial Statements — (Continued)

**(l) Stock-Based Compensation and Equity Instruments Issued to Nonemployees for Services**

Effective January 1, 2006, the Company adopted SFAS No. 123(R), *Share-Based Payment* which requires that all stock-based compensation be recognized as an expense in the financial statements and that such cost be measured at the fair value of the award. This statement was adopted using the Prospective method of application, which requires the Company to recognize compensation cost on a prospective basis. Therefore, prior years' financial statements have not been restated.

Under this method, the Company has recorded stock-based compensation expense only for awards granted or modified after January 1, 2006, based on estimated grant date fair value using the Black-Scholes, single option award approach, which requires the Company to estimate the fair-value of its common stock, expected term, expected volatility, risk-free interest rate, and dividend yield. For expected term, the Company has estimated the life over which each award will remain outstanding based on expected behavior of the optionees. Because there is no open market for the Company's stock, expected volatility is based upon the historical volatility of several other companies in the Company's peer group. This peer group was the same as was used in determining the Company's common stock valuation. Risk-free interest rate is based on an average interest rate based on U.S. Treasury instruments whose term is consistent with the expected term of the Company's awards. Estimated forfeitures represent the Company's historical forfeiture rate. As the Company has not declared dividends for any period presented, and does not anticipate doing so in the future, dividend yield is zero.

These variables are highly subjective, determined on a periodic basis and can vary over time, thus changes in these assumptions can materially affect the fair value estimate. The Company will continue to evaluate the assumptions used to derive estimated fair value as new events or changes in circumstances occur.

Compensation cost is recognized in the results of operations over the period during which an employee provides the requisite service in exchange for the award, and is adjusted for expected forfeitures.

Prior to January 1, 2006, the Company accounted for stock-based employee compensation using the intrinsic value method in accordance with the provisions of Accounting Principles Board ("APB") Opinion No. 25, *Accounting for Stock Issued to Employees*, Financial Accounting Standards Boards ("FASB") Interpretation ("FIN") No. 44, *Accounting for Certain Transactions Involving Stock Compensation — an Interpretation of APB Opinion No. 25*, and Emerging Issues Task Force ("EITF") Issue No. 00-23, *Issues Related to the Accounting for Stock Compensation*. Under APB Opinion No. 25, compensation expense is based on the difference, if any, between the fair value of the Company's common stock and the exercise price of the option on the measurement date, which is typically the date of grant and would be recognized on a straight-line basis.

The Company accounted for equity instruments granted to non-employees under EITF Issue No. 96-18, *Accounting for Equity Instruments That Are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling, Goods or Services*. The options are recorded at fair value using the Black-Scholes model and are measured and recognized in accordance with EITF No. 96-18 and FIN No. 28.

Refer to Note 10 for additional discussion regarding details of the Company's stock-based compensation plans, adoption of SFAS 123(R) and recognized compensation expense.

**(m) Shares Subject to Repurchase**

The Company has granted to founders shares of restricted stock that are subject to repurchase at the original exercise price until they vest. The Company's stock option plan also allows certain employees to exercise options prior to vesting. Upon the exercise of an option prior to vesting, the Company has a right to repurchase the shares purchased upon exercise of the option at the original exercise price; provided, however, that its right to repurchase these shares will lapse in accordance with the vesting schedule included in the

SLING MEDIA, INC.

Notes to Consolidated Financial Statements — (Continued)

optionee's option agreement. In accordance with EITF 00-23, *Issues Related to Accounting for Stock Compensation under APB 25* and FIN 44, the consideration received for restricted stock and for the exercise of an option is considered to be a deposit of the exercise price, and the related dollar amount is recorded as a liability. This liability is then reclassified into equity on a ratable basis as the award vests. As of December 31, 2006 and 2005, respectively, 2,457,057 and 4,030,402 shares were issued but subject to repurchase. These shares are presented as outstanding on the accompanying consolidated statements of stockholders' equity and consolidated balance sheets. See Note 2(n) for discussion of treatment of these shares in Loss per Share.

(n) *Loss Per Share*

Basic loss per share is computed using the weighted average number of shares outstanding during each period, including restricted shares outstanding during the period, less the weighted average number of shares of common stock that are subject to repurchase. Diluted loss per share is computed by including the dilutive effect of common stock that would be issued assuming conversion or exercise of outstanding convertible notes, convertible preferred stock, stock options, warrants, stock based compensation awards and other dilutive securities. For the years ended December 31, 2006, 2005, and the period from inception (June 14, 2004) to December 31, 2004, and the nine-month periods ended September 30, 2007 and 2006, there is no difference between the Company's basic and diluted net loss per share attributable to holders of common stock because losses were incurred in each of the periods presented. The following table presents the calculation of basic and diluted net loss per share:

	Nine-Month Period Ended September 30,		Year Ended December 31,		Inception (June 14, 2004 to December 31, 2004
	2007 (Unaudited)	2006	2006	2005	
Net Loss	\$ (31,098)	\$ (15,049)	\$ (20,932)	\$ (3,612)	\$ (1,121)
Basic and diluted weighted shares:					
Weighted average number of shares outstanding	10,026,145	8,841,052	8,954,320	7,991,763	7,788,163
Less: Weighted average number of shares subject to repurchase	(1,927,198)	(3,306,008)	(3,100,850)	(4,540,744)	(6,425,663)
Weighted average number of shares used in computing basic and diluted net loss per share	8,098,947	5,535,044	5,853,470	3,451,019	1,362,500
Basic and diluted net loss per share	\$ (3.84)	\$ (2.72)	\$ (3.58)	\$ (1.05)	\$ (0.82)

SLING MEDIA, INC.

Notes to Consolidated Financial Statements — (Continued)

Potential shares of common stock, which have been excluded from the determination of net loss per share for the years ended December 31, 2006 and 2005, the period from inception (June 14, 2004) to December 31, 2004 and the unaudited nine month periods ended September 30, 2006 and 2007, respectively, since their effect was anti-dilutive, consisted of potential shares issuable upon the exercise of outstanding options, shares of restricted common stock subject to repurchase and shares of common stock issuable upon the conversion of outstanding Series B and Series A Convertible Preferred Stock and are as follows:

	Nine Month Period Ended September 30,		Year Ended December 31,		Inception (June 14, 2004) to December 31, 2004
	2007 (Unaudited)	2006	2006	2005	
Shares issuable under stock options	2,897,198	2,291,814	2,733,157	1,650,626	1,165,126
Shares exercised but unvested and subject to repurchase	1,022,896	679,412	1,207,057	905,402	398,263
Shares of restricted stock subject to repurchase	—	1,718,750	1,250,000	3,125,000	5,000,000
Shares issuable upon conversion of preferred stock	15,454,353	15,454,353	15,454,353	7,759,082	7,759,082
Shares issuable upon conversion of convertible debt	825,083	—	—	2,681,325	—
Shares issuable upon exercise of warrants	251,846	227,093	227,093	187,693	—
Basic and diluted net loss per share	20,451,375	20,371,422	20,871,660	16,309,128	14,322,471

(o) **Software Development Costs**

The Company accounts for internally generated software development costs in accordance with SFAS No. 86, *Accounting for the Costs of Computer Software to be Sold, Leased, or Otherwise Marketed*. Capitalization of software development costs begins upon the establishment of technological feasibility of the product, which the Company defines as the development of a working model which generally occurs upon the completion of beta testing of the software. The establishment of technological feasibility and the ongoing assessment of the recoverability of these costs requires considerable judgment by management with respect to certain external factors, including, but not limited to, anticipated future gross product revenue, estimated economic life, and changes in technology. To date, internal software development costs that were eligible for capitalization have been insignificant, and the Company has charged all software development costs to research and development expenses as incurred.

(p) **Revenue Recognition**

Revenue is derived from sales of its products to wholesale and retail distributors. The Company recognizes revenues in accordance with SOP 97-2, *Software Revenue Recognition*, as amended. Revenue is recognized when persuasive evidence of an arrangement exists, delivery has occurred, the fee is fixed or determinable and collection is probable. If any of these criteria are not met, revenue recognition is deferred until such time as all of the criteria are met.

The Company establishes allowances for expected product returns in accordance with SFAS No. 48, *Revenue Recognition When Right of Return Exists*. These allowances are recorded as a direct reduction of revenues and accounts receivable.

In accordance with EITF 01-09, *Accounting for Consideration Given by a Vendor to a Customer (Including a Reseller of the Vendors Products)*, certain payments to retailers and distributors such as market development

SLING MEDIA, INC.

Notes to Consolidated Financial Statements — (Continued)

funds and co-operative advertising are shown as a reduction of revenue rather than as sales and marketing expense. The Company also records rebates offered to consumers as a reduction to revenue. The classification of these items was as follows:

	Nine Months Ended September 30 (unaudited)		Year Ending December 31		Period from Inception (June 14, 2004) to December 31, 2004
	2007	2006	2006	2005	
Reductions to revenue	782	1,153	1,539	572	—
Sales and marketing expense	1,480	176	600	—	—
	<u>2,262</u>	<u>1,329</u>	<u>2,139</u>	<u>572</u>	<u>—</u>

**(q) Warranty**

The Company offers a basic limited parts and labor warranty on its hardware products. The basic warranty period for hardware products is typically one year from the date of purchase by the end-user. The Company currently estimates warranty costs at the time the related revenue is recognized based on historical warranty cost. As of December 31, 2006 and 2005, the Company had reserves totaling \$68 and \$ —, respectively.

**(r) Cost of Sales**

Cost of sales consists primarily of the cost of finished goods as charged by the Company's outsourced manufacturer. Cost of sales also includes fees paid to the Company's third-party customer support providers and amortization of intangible assets.

**(s) Shipping and Handling Costs**

Shipping and handling costs for 2006, 2005 and the period from inception (June 14, 2004) through December 31, 2004 totaling \$256, \$69 and \$ —, respectively, are classified as a component of sales and marketing expense in the accompanying consolidated statements of operations.

**(t) Comprehensive Loss**

Comprehensive loss, as defined by SFAS No. 130, *Reporting Comprehensive Income*, includes all non-owner changes to shareholders' equity. For the years ended December 31, 2006 and 2005 comprehensive loss differed from reported net loss by the cumulative translation adjustment. There was no such difference for the period from inception (June 14, 2004) through December 31, 2004.

**(u) Advertising Costs**

The Company expenses the cost of advertising as incurred. Advertising expense costs for 2006, 2005 and the period from inception (June 14, 2004) through December 31, 2004 totaling \$12,556, \$3,529 and \$33, respectively, are included as a component of sales and marketing expense in the accompanying consolidated statements of operations.

**(v) Legal Proceedings**

From time to time, the Company may be involved in claims or lawsuits that arise in the ordinary course of business. We reserve for legal contingencies when a liability for those contingencies has become probable and the cost is reasonably estimable, in accordance with SFAS No. 5, *Accounting for Contingencies*. Any significant litigation or significant change in estimates on outstanding litigation could cause an increase in the provision for related costs, which, in turn, could materially affect financial results. Any provision made for



SLING MEDIA, INC.

Notes to Consolidated Financial Statements — (Continued)

these legal contingencies are expensed to general and administrative or research and development, dependent upon the nature of the case, in the accompanying consolidated statements of operations. Although the outcome of these claims or lawsuits cannot be ascertained, on the basis of present information and advice from counsel, it is management's opinion that the ultimate outcome will not have a material adverse effect on the Company.

(w) **Recent Accounting Pronouncements**

In February 2007, the FASB issued SFAS No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities-Including and amendment of FASB Statement No. 115*. SFAS No. 159 permits entities to choose to measure many financial instruments and certain other items at fair value. This statement provides entities the opportunity to mitigate volatility in reported earnings caused by measuring related assets and liabilities differently without having to apply complex hedge accounting provisions. This statement is effective as of the beginning of an entity's first fiscal year that begins after November 15, 2007. Management is currently evaluating the impact of adopting this statement.

In November 2006 the FASB ratified the EITF consensus reached in EITF Issue No. 06-6, *Debtor's Accounting for a Modification (or Exchange) of Convertible Debt Instruments*, which provides guidance for debtor's accounting for a modification or exchange of convertible debt instruments. The guidance is effective for modifications or exchanges of debt occurring in interim or annual reporting periods beginning after November, 2006, thus for the periods presented there is no impact.

In September 2006, the FASB issued SFAS No. 157, *Fair Value Measurements*, which defines fair value, provides a framework for measuring fair value, and expands the disclosures required for fair value measurements. SFAS No. 157 applies to other accounting pronouncements that require fair value measurements; it does not require any new fair value measurements. SFAS No. 157 is effective for fiscal years beginning after November 15, 2007 (certain provisions related to nonfinancial assets and liabilities have been deferred to fiscal years beginning after November 15, 2008). Although the Company will continue to evaluate the application of SFAS No. 157, management does not currently believe adoption will have a material impact on the Company's results of operations or financial position.

In June 2006, the FASB issued FIN No. 48, *Accounting for Uncertainty in Income Taxes — an Interpretation of FASB Statement No. 109*. FIN No. 48 clarifies the accounting for uncertainty in income taxes by creating a framework for how companies should recognize, measure, present, and disclose in their financial statements uncertain tax positions that they have taken or expect to take in a tax return. FIN No. 48 is effective for fiscal years beginning after December 15, 2006 and is required to be adopted by the Company beginning in fiscal 2007. Management has adopted the standard and it currently will not have a material impact on the Company's results of operations or financial position.

(3) **Balance Sheets Components**

The following tables provide details of selected balance sheet items as of December 31, 2006 and 2005:

	December 31,	
	2006	2005
Inventories:		
Raw material	\$ 577	\$ 401
Finished goods	5,080	1,480
	<u>\$ 5,657</u>	<u>\$ 1,881</u>

SLING MEDIA, INC.

Notes to Consolidated Financial Statements — (Continued)

	December 31,	
	2006	2005
<b>Property and equipment:</b>		
Computer equipment	\$ 742	\$ 178
Software	517	15
Furniture and fixtures	476	34
Leasehold improvements	10	—
Other equipment	189	25
	<u>1,934</u>	<u>252</u>
Less: accumulated depreciation	(349)	(55)
	<u>\$ 1,585</u>	<u>\$ 197</u>
<b>Intangible assets:</b>		
Purchased technology	\$ 2,888	\$ 75
Capitalized patent costs	25	25
	<u>2,913</u>	<u>100</u>
Less: accumulated amortization	(95)	(23)
	<u>\$ 2,818</u>	<u>\$ 77</u>

Inventories as of September 30, 2007 consist of \$1,593 (unaudited) of raw material and \$4,853 (unaudited) of finished goods.

In November 2006, the Company acquired ownership rights of technology in exchange for \$1,500 in cash and 175,000 shares of the Company's common stock, with a value of \$1,313.

**(4) Senior Loan**

In June 2005, the Company signed a Senior Loan and Security Agreement (the Line) in an aggregate principal amount of \$4,000 secured by all tangible and intangible assets of the Company. The Line bore interest at 10.25% annually with monthly installment repayments due starting February 1, 2006 and final payment was due December 1, 2008. The Company drew the full amount of the Line, all of which was outstanding as of December 31, 2005, which is included as a component of current liabilities. On February 28, 2006, the Company paid the balance drawn on the Line, in full, and terminated the governing agreement.

The Line also included a provision giving the lender a right to purchase shares of the Company's equity securities up to an aggregate amount of \$500 upon completion of the Company's next round of financing. As discussed in Note 9, the Company completed its Series B round of financing, in which the lender participated.

Additionally, the agreement required the Company to issue the lender a warrant to purchase 187,693 shares of Series A Preferred Stock. The warrants were bifurcated from the debt and valued using the Black-Scholes pricing model. The value was determined based on a risk-free interest rate of 4%, contractual life of seven years; expected volatility of 70% and no expected dividends. The resulting value of approximately \$194 was recorded as a discount on the Line, and for the year ended December 31, 2006 and 2005 approximately \$4 and \$31 of the discount was accreted into interest expense. Upon the payoff of the Line, the remaining discount of \$161 was recorded to interest expense in 2006.

**(5) Convertible Notes Payable**

On November 18, 2005, the Company entered into a Note and Warrant Purchase Agreement, pursuant to which the Company issued Convertible Notes ("the Notes") payable to a lender in the aggregate principal amount of \$4,000. A Director of the Company is a General Partner of the lender. The Notes bore interest at

SLING MEDIA, INC.

Notes to Consolidated Financial Statements — (Continued)

6% with a stated maturity of one year, and also required the Company to issue the lender a warrant to purchase shares of the Company's preferred stock with a value equal to 6% of the principal balance of the Notes. The Notes were automatically convertible into equity securities issued in the Company's next financing, defined as the sale by the Company of its equity securities for gross proceeds of not less than \$10,000 (including the \$4,000 aggregate principal and interest outstanding under the Notes). If said financing were not to occur by November 18, 2006, then, at the option of the lender, the notes were convertible into Series A Preferred Stock at \$1.49 per share subject to anti-dilution adjustments.

The Company determined that an initial conversion feature existed at the commitment date under the guidance of EITF 00-27, *Application of Issues No. 98-5 to Certain Convertible Instruments* which should be recorded based on the best conversion option available to the lender if the only circumstances to change were the passage of time. Due to the initial conversion price (\$1.49) being less than the fair value of the Series A Preferred Stock (the stock into which the note would convert) at the commitment date, the Company recorded a beneficial conversion feature. The value of the feature was determined to be in excess of the carrying value of the debt and, as such, a debt discount equal to the carrying value of the \$4,000 principal was recorded, which reduced the carrying value of the debt to zero, with a corresponding increase to additional paid-in capital. This discount was accreted into interest expense in the accompanying consolidated statements of operations over the life of the Notes, and for the years ended December 31, 2006 and 2005, totaled \$250 and \$471, respectively.

As discussed in Note 9, the Company completed its Series B financing round, during which the Company raised in excess of the \$10,000 trigger in the Notes agreement discussed above. Under the terms of the Notes agreement, this financing automatically adjusted the conversion price to the \$6.06 per share price raised in the Series B financing. In accordance with the provisions of EITF 00-27, the Company recalculated the beneficial conversion feature as a result of the change in conversion price, and determined that the new value of the beneficial conversion feature was de minimus. Accordingly, the remaining un-accreted portion of the debt discount was reversed by reducing additional paid-in capital and increasing the debt balance to the original \$4,000. This debt balance and accrued interest thereon were converted into 666,727 shares of Series B Preferred Stock. There was no impact on the consolidated statement of operations as a result of the conversion.

Additionally, upon conversion, the Company issued 39,400 warrants to acquire Series B Preferred Stock to the lender, valued using the Black-Scholes pricing model. The value was determined based on a risk-free interest rate of 4%, contractual life of five years, expected volatility of 75%, and no expected dividend yield. The resulting value of approximately \$153 was recorded as a separate component of shareholder's equity.

In September 2007, the Company entered into a Revolving Credit Agreement pursuant to which the Company issued Convertible Notes ("the Notes") payable to a lender in the aggregate principal amount of \$5,000. A Director of the Company is a General Partner of the lender. The Notes bore interest at 9% with a stated maturity of June 2008. The Notes were automatically convertible into equity securities issued in the Company's next financing, defined as the sale by the Company of its equity securities for gross proceeds of not less than \$15,000 (including the \$5,000 aggregate principal and interest outstanding under the Notes). If said financing were not to occur by June 7, 2008, then, at the option of the lender, the notes were convertible into Series B Preferred Stock at \$6.06 per share subject to anti-dilution adjustments. Due to the initial conversion price (\$6.06) being less than the fair value of the Series B Preferred Stock (the stock into which the note would convert) at the commitment date, the Company recorded a beneficial conversion feature. The value of the feature was determined to be in excess of the carrying value of the debt and, as such, a debt discount equal to the carrying value of the \$5,000 principal was recorded, which reduced the carrying value of the debt to zero, with a corresponding increase to additional paid-in capital. This discount is being accreted into interest expense in the accompanying consolidated statements of operations over the life of the Notes, and for the nine month period ended September 30, 2007, totaled \$367 (unaudited). The aggregate principal and

SLING MEDIA, INC.

Notes to Consolidated Financial Statements — (Continued)

interest outstanding under the Notes was repaid by EchoStar Communications Corporation in connection with its acquisition of Sling Media, Inc. as discussed in Note 13.

**(6) Capital Lease Obligations**

The Company has non-cancelable capital lease agreements in place for furniture and fixtures, software, and various computer and office equipment. As of December 31, 2006, and 2005 balances of \$1,129 and \$ — were capitalized as components of property, plant and equipment, respectively, in the accompanying consolidated balance sheet. Related accumulated depreciation of \$86 and \$ —, respectively was also recorded in the accompanying consolidated balance sheet. Short- and long-term obligations are shown as components of notes payable and long-term liabilities, respectively, in the accompanying consolidated balance sheet. The Company recognized \$86, \$ — and \$ — of depreciation expense related to assets held under capital leases for the years ended December 31, 2006, 2005 and the period from inception (June 14, 2004) through December 31, 2004, respectively, as a component of operating expenses depending on which department to which the asset was assigned, in the accompanying consolidated statements of operation.

Future minimum lease payments under these capital lease obligations for the nine months ended September 30, 2007 and year ended December 31, 2006, respectively are as follows:

	Nine Months Ended September 30, 2007 (unaudited)	Year Ended December 31, 2006
2007	\$ 258	\$ 378
2008	1,402	342
2009	1,350	217
2010	510	112
2011	109	109
Total minimum lease payments	3,629	1,158
Less: amount representing interest	(260)	(187)
Present value of net minimum lease payments	3,369	971
Less: current portion	(1,053)	(297)
Long-term portion of capital lease obligations	<u>\$ 2,316</u>	<u>\$ 674</u>

During the unaudited nine-month period in 2007, the Company issued warrants to purchase 24,753 shares of Series B Preferred stock with a determined value of \$186 in conjunction with the formation of a capital lease agreement. The value was determined based on a risk-free interest rate of 4%, contractual life of five years; expected volatility of 75% and no expected dividends. The value of the warrants was recorded to the accompanying consolidated balance sheets as a discount to the short and long term portions of capital lease obligations, and the discount accreted to interest expense over the life of the lease agreement, which is four years. Interest expense related to this transaction for the nine-month period ended September 30, 2007 was \$29.

## SLING MEDIA, INC.

## Notes to Consolidated Financial Statements — (Continued)

**(7) Future Commitments and Obligations**

The Company rents facilities under non-cancelable operating lease agreements. As of December 31, 2006, future minimum payments under these leases are as follows:

For the year ended December 31,	
2007	\$ 827
2008	822
2009	817
2010	734
2011 and Thereafter	821

The terms of certain of the lease agreements provide for rental payments on a graduated basis, and accordingly the Company recognizes related rent expense on the straight-line basis over the term of the lease.

Rent expense for the years ended December 31, 2006, 2005 and the period from inception (June 14, 2004) through December 31, 2004 was \$443, \$129 and \$28, respectively.

In August, 2006, the Company entered into an operating lease agreement for its new corporate headquarters. Rather than terminate the lease agreement for its previous headquarters, the Company entered into a sub-lease agreement with a third party. The terms of the sub-lease are such that the Company expects to recoup all rent and rent-related expenses through the end of the lease period in May 2008. Sublease income is expected to total \$166 and \$69 in 2007 and 2008, respectively. Rental payments for both the old and new facility are included in the commitments table above.

In September, 2006, the Company entered into an operating lease agreement for its new India operations facilities. Rather than terminate the lease agreement for its previous location, the Company entered into a sub-lease agreement with a third party. The terms of the sub-lease are such that the Company expects to recoup all rent and rent-related expenses through the end of the lease period in January 2009. Sublease income is expected to total \$349 in 2007, \$202 in 2008, and \$12 in 2009, respectively. Rental payments for both the old and new facility are included in the commitments table above.

The Company purchases materials from many domestic and foreign suppliers. The Company has no long-term purchase commitments or arrangements with any of its suppliers, and believes it is not dependent on any one supplier.

The Company undertakes indemnification obligations in its ordinary course of business. For instance, the Company has undertaken to indemnify its underwriters and certain investors in connection with the issuance and sale of its securities. The Company has also undertaken to indemnify certain customers and business partners for, among other things, the licensing of its technology, the sale of its products, and the provision of engineering and consulting services. Pursuant to these agreements, the Company may indemnify the other party for certain losses suffered or incurred by the indemnified party in connection with various types of claims, which may include, without limitation, intellectual property infringement, advertising and consumer disclosure laws, certain tax liabilities, negligence and intentional acts in the performance of services and violations of laws. The term of these indemnification obligations is generally perpetual. The Company's obligation to provide indemnification generally would arise in the event that a third party filed a claim against one of the parties that was covered by the Company's indemnification obligation. As an example, if a third party sued a customer for intellectual property infringement arising from the use of the Company's product and the Company agreed to indemnify that customer against such claims, its obligation would be triggered.

The Company is unable to estimate with any reasonable accuracy the liability that may be incurred pursuant to its indemnification obligations. A few of the variables affecting any such assessment include but are not limited to: the nature of the claim asserted; the relative merits of the claim; the financial ability of the party

SLING MEDIA, INC.

Notes to Consolidated Financial Statements — (Continued)

suing the indemnified party to engage in protracted litigation; the number of parties seeking indemnification; the nature and amount of damages claimed by the party suing the indemnified party; and the willingness of such party to engage in settlement negotiations. Due to the nature of the Company's potential indemnity liability, its indemnification obligations could range from immaterial to having a material adverse impact on its financial position and its ability to continue operation in the ordinary course of business

(8) Income Taxes

The components of net loss before income taxes are as follows:

	December 31,		Period From Inception (June 14, 2004) Through December 31, 2004
	2006	2005	
United States	\$ (21,028)	\$ (3,649)	\$ (1,121)
Foreign	170	62	—
<b>Total net loss before income taxes</b>	<b>\$ (20,858)</b>	<b>\$ (3,587)</b>	<b>\$ (1,121)</b>

The provision for income taxes consisted of the following:

	December 31,		Period from Inception (June 14, 2004) Through December 31, 2004
	2006	2005	
<b>Current:</b>			
Federal	\$ —	\$ —	\$ —
State and local	14	3	—
Foreign	60	22	—
<b>Total</b>	<b>74</b>	<b>25</b>	<b>—</b>
<b>Deferred:</b>			
Federal	—	—	—
State and local	—	—	—
Foreign	—	—	—
<b>Total</b>	<b>—</b>	<b>—</b>	<b>—</b>
<b>Provision for income taxes</b>	<b>\$ 74</b>	<b>\$ 25</b>	<b>\$ —</b>

The reconciliation of the federal statutory income tax rate to the Company's effective income tax rate is as follows.

SLING MEDIA, INC.

Notes to Consolidated Financial Statements — (Continued)

	December 31,		Period from Inception (June 14, 2004) Through December 31, 2004			
	2006	2005				
Loss before income taxes	\$ (20,858)	\$ (3,587)		\$ (1,121)		
U.S. statutory rate	(7,092)	34.0%	(1,220)	34.0%	(381)	34.0%
State taxes	(1,604)	7.7	2	(0.1)	—	—
Foreign rate differential	(10)	0.1	1	0.0	—	—
Permanent items	(1,812)	8.7	47	(1.3)	—	—
Other	23	(0.1)	—	—	—	—
Valuation allowance	10,569	(50.8)	1,195	(33.3)	381	(34.0)
	\$ 74	(0.4)%	\$ 25	(0.7)%	\$ —	—%

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. Significant components of the Company's deferred tax assets and liabilities are as follows:

	December 31,	
	2006	2005
<b>Deferred tax assets</b>		
Fixed assets	\$ 434	\$ 6
Accruals and reserves	446	294
State taxes	0	1
Net operating losses	11,388	1,234
Credits	481	247
Stock compensation	137	—
Net deferred tax assets	\$ 12,886	\$ 1,782
<b>Deferred tax liabilities</b>		
Intangible assets	(556)	(21)
Total deferred tax liabilities	\$ (556)	\$ (21)
Subtotal	12,330	1,761
Valuation allowance	(12,330)	(1,761)
<b>Total net deferred tax assets/liabilities</b>	\$ —	\$ —

As of December 31, 2006, the deferred tax assets were fully offset by a valuation allowance. The total valuation allowance for the year ended December 31, 2006 was \$12,330.

SFAS No. 109 *Accounting for Income Taxes* provides for the recognition of deferred tax assets if realization of such assets is more likely than not to occur. Based upon the weight of available evidence, which includes its historical operating performance, reported cumulative net losses since inception and difficulty in accurately forecasting its results, the Company provided a full valuation allowance against its net deferred tax assets. The Company reassesses the need for its valuation allowance on a quarterly basis.

As of December 31, 2006 and 2005, the Company has net operating loss carryforwards for federal and state income tax purposes of approximately \$29,051 and \$24,027 and \$3,084 and \$3,123, respectively. The federal

SLING MEDIA, INC.

Notes to Consolidated Financial Statements — (Continued)

net operating loss carryforwards expire, if not utilized, beginning in the year 2024. The California net operating loss carryforwards expire, if not utilized, beginning in the year 2014.

As of December 31, 2006 and 2005, unused research and development tax credits of approximately \$322 and \$159 and \$141 and \$106 are available to reduce future federal and California income taxes, respectively. The federal credit carryforward expires, if not utilized, beginning in the year, 2024. The California credit will carry forward indefinitely.

Utilization of the net operating loss carryforwards and credits may be subject to substantial annual limitation due to the ownership change limitations provided by the Internal Revenue Code of 1986, as amended, and similar state provisions. The annual limitation may result in the expiration of net operating losses and credits before utilization.

**(9) Shareholders' Equity**

**(a) Convertible Preferred Stock**

Convertible Preferred Stock as of December 31, 2006 and 2005 was comprised of the following:

	<u>Shares Authorized</u>	<u>Shares Issued and Outstanding</u>	<u>Liquidation Preference</u>	<u>Net Proceeds After Issuance Costs</u>
<b>2006:</b>				
Series A	8,400,000	7,759,082	\$ 11,575	\$ 11,497
Series B	7,930,000	7,695,271	46,633	42,528
Total	<u>16,330,000</u>	<u>15,454,353</u>	<u>\$ 58,208</u>	<u>\$ 54,025</u>
<b>2005:</b>				
Series A	8,400,000	7,759,082	\$ 11,575	\$ 11,497
Series B	—	—	—	—
Total	<u>8,400,000</u>	<u>7,759,082</u>	<u>\$ 11,575</u>	<u>\$ 11,497</u>

On January 23, January 31 and February 13, 2006, the Company sold 7,695,271 shares of Series B Preferred Stock for proceeds of approximately \$46,528 net of \$107 in issuance costs. Shares issued include conversion of debt and accrued interest related to notes payable to 666,727 shares of Series B Preferred Stock. See Note 5 for further discussion. Proceeds from the issuance were used to fund ongoing operations and research and development efforts.

As of December 31, 2006 and 2005 there were 227,293 and 187,693 warrants outstanding for the right to purchase Preferred Series stock, respectively. At September 30, 2007 and 2006 there were 251,846 and 227,293 warrants outstanding for the right to purchase Preferred Series stock, respectively.

The holders of convertible preferred stock have various rights and preferences as follows:

*Voting*

Each share of both Series A Preferred Stock and Series B Preferred Stock has voting rights equal to an equivalent number of shares of common stock into which it is convertible.

*Dividends*

Holders of both Series A Preferred Stock and Series B Preferred Stock are entitled to receive noncumulative dividends out of any assets legally available, prior and in preference to any declaration or payment of any



SLING MEDIA, INC.

Notes to Consolidated Financial Statements — (Continued)

dividend on the Common Stock of the Company. For holders of Series A Preferred Stock the per annum dividend rate is \$0.1193 per share and for holders of Series B Preferred Stock the per annum dividend rate is \$0.4848 per share, when and if declared by the board of directors (the Board). No dividends on convertible preferred stock or common stock were declared by the Board for any period presented.

*Liquidation*

Upon any liquidation, dissolution, or winding up of the Company, whether voluntary or involuntary, owners of Series B Preferred Stock will be entitled to receive, prior and in preference to owners of Series A Preferred Stock and Common Stock, an amount per share equal to the sum of the original issue price of \$6.06 for the Series B Preferred Stock (as adjusted for any stock dividends, splits, combinations, recapitalizations, and the like) plus any declared and unpaid dividends. If upon occurrence of any such event, the assets and funds of the Company legally available for distribution are insufficient to permit payment of the aforesaid preferential amounts, then the assets and funds of the Company legally available for distribution shall be distributed ratably among the owners of Series B Preferred Stock in accordance with the preferences noted above.

On completion of the distribution to owners of Series B Preferred Stock, the owners of Series A Preferred Stock will be entitled to receive, prior to and in preference to the owners of Common Stock, an amount per share equal to the sum of the original issue price of \$1.4918 for the Series A Preferred Stock (as adjusted for any stock dividends, splits, combinations, recapitalizations, and the like) plus any declared and unpaid dividends. If upon occurrence of any such event, and on completion of the distribution to owners of Series B Preferred Stock, the remaining assets and funds of the Company legally available for distribution are insufficient to permit payment of the preferential amounts to owners of Series A Preferred Stock, then the assets and funds of the Company legally available for distribution shall be distributed ratably among the owners of Series A Preferred Stock in accordance with the preferences noted above.

After fulfillment of the aforesaid preferences, any remaining assets of the Company legally available for distribution shall be distributed ratably to the holders of Common Stock.

The following shall be deemed to be a liquidation, dissolution or winding up of the Company:

- (A) The closing of the sale, transfer, exclusive license or other disposition of all or substantially all of the Company's assets,
- (B) the consummation of a merger or consolidation of the Company with or into another entity (except a merger or consolidation in which the holders of capital stock of the Company, immediately prior to such merger or consolidation, continue to hold at least 50% of the voting power of the capital stock of the Company or the surviving or acquiring entity),
- (C) the closing of the transfer (whether by merger, consolidation or otherwise), in one transaction or a series of related transactions, to a person or group of affiliated persons (other than an underwriter of the Company's securities), of the Company's securities if, after such closing, such person or group of affiliated persons would hold 50% or more of the outstanding voting stock of the Company (or surviving or acquiring entity), or
- (D) a liquidation, dissolution or winding up of the Company.

*Conversion*

Each share of both Series B Preferred Stock and Series A Preferred Stock is convertible at the option of the holder, according to a conversion ratio calculated by dividing the applicable original issue price by the applicable conversion price. Each share of Preferred Stock automatically converts into the number of shares of Common Stock in to which such shares are convertible at the then effective conversion ratio upon: (1) the closing of a public offering of Common stock in which the aggregate public offering price equals or exceeds

SLING MEDIA, INC.

Notes to Consolidated Financial Statements — (Continued)

\$18.18 per share (as adjusted for any stock dividends, splits, combinations, recapitalizations, and the like) and \$30,000 in the aggregate, or (2) the written consent or agreement of the holders of a majority of the then outstanding Preferred stock provided, however, that the conversion of the shares of Series B Preferred Stock requires the written consent of the holders of a majority of the then outstanding shares of Series B Preferred Stock. The per share effective purchase price of the Series A Preferred Stock is \$1.49 and the Series B Preferred Stock is \$6.06. The per share conversion prices of the Series A Preferred Stock is \$1.49 and the Series B Preferred Stock is \$6.06.

**(b) Common Stock**

The Company's Articles of Incorporation authorize the Company to issue 30,670,000 shares of Common Stock at a par value of \$0.0001. The Company issued 7,500,000 shares of its Common stock to the founders and employees under its stock purchase agreement, some of which are subject to certain repurchase provisions. As of December 31, 2006 and 2005, 1,210,286 and 3,083,973 shares, respectively, are subject to repurchase. For the majority of such shares of Common Stock subject to such repurchase rights, the right of repurchase lapses with respect to the first 25% of the shares subject to repurchase when the stockholder completes 12 months of continuous service after the vesting commencement date. The right of repurchase after the first 12 months lapses at a rate of 1/48 per month as the stockholder completes each month of continuous service.

As discussed in footnote 2(m), the Company's stock option plan allows certain employees to exercise options prior to their having vested. Upon the exercise of an option prior to its vesting, the Company has a right to repurchase the shares at the option's original exercise price. For shares that have been exercised prior to vesting, the Company has recorded a liability for an amount equal to the consideration received. As of December 31, 2006 and 2005, 1,207,062 and 878,267 shares were exercised but not yet vested, and the related liability was \$576 and \$111, respectively, which is reflected in the accompanying consolidated balance sheets.

In November, 2006 the Company issued 175,000 shares of Common Stock valued at \$7.50 per share as part of an agreement to purchase technology.

**(10) Stock Options and Stock-Based Compensation**

In September 2004, the Company adopted the 2004 Stock Option Plan ("the Plan"), which authorizes 2,490,000 shares of common stock for the granting of stock options. The Plan was amended by the board in October 2004 to authorize an additional 727,500 shares, and in January and August 2006 to authorize an additional 799,580 and 1,500,000 shares respectively, bringing the total number of authorized shares to 5,517,080 (2005 and 2004: 3,217,500). The Plan provides for the granting of stock options to employees, consultants, and directors of the Company. Options granted under the Plan may be either incentive stock options or non-statutory stock options. Incentive stock options (ISO) may be granted only to Company employees (including officers and directors who are also employees). Non-statutory stock options (NSO) may be granted to Company employees, consultants and directors.

Options under the Plan may be granted for periods up to 10 years and at prices no less than 85% of the estimated fair value of the shares on the date of grant as determined by the board of directors, provided; however, that (i) the exercise price of an ISO and NSO shall not be less than 100% and 85% of estimated fair value of the shares on the date of grant, respectively; and (ii) the exercise price of an ISO and NSO granted to a 10% stockholder shall not be less than 110% of the estimated fair value of the shares on the date of grant. Options generally become exercisable in monthly equal increments over a four-year vesting period subject to a first year vesting of 25% upon the first year vesting anniversary and expire at the end of 10 years from the date of grant or sooner if the optionee's service is terminated by the Company.

SLING MEDIA, INC.

Notes to Consolidated Financial Statements — (Continued)

Effective January 1, 2006 the Company adopted SFAS No. 123(R), *Share-Based Payment* requiring that all stock-based compensation be recognized as an expense in the financial statements and that such cost be measured at the fair value of the award. This statement was adopted using the Prospective method of application, which requires the Company to recognize compensation cost on a prospective basis. Therefore, prior years' financial statements have not been restated. Total non-cash, stock based compensation expense net of related tax effect was \$4,096 (unaudited), \$271 (unaudited) and \$1,014 for the nine months ended September 30, 2007 and 2006 and year ended December 31, 2006, respectively, and is reflected in the accompanying consolidated statement of operations in the same expense categories as the base compensation for key employees as follows:

	Nine Months Ended September 30, 2007 (Unaudited)	Nine Months Ended September 30, 2006 (Unaudited)	Year Ended December 31, 2006
Research and development	\$ 965	\$ 71	\$ 197
Sales and marketing	2,126	123	482
General and administrative	1,005	77	335
Total compensation expense	<u>\$ 4,096</u>	<u>\$ 271</u>	<u>\$ 1,014</u>

As of September 30, 2007 and 2006 and December 31, 2006 the Company had \$17,361 (unaudited), \$4,288 (unaudited) and \$16,757, respectively, of unrecognized compensation expense related to unvested options, based upon an assumed average future forfeiture rate of 12% per year, which will be recognized over a weighted-average period of approximately 4 years.

No compensation cost was recognized in the accompanying consolidated financial statements of operations prior to 2006 on stock options granted to employees, since all options granted under the Company's stock option plan had an exercise price equal to the market value of the underlying common stock on the date of grant.

The fair value of each stock option grant is estimated on the date of grant using the Black-Scholes option pricing model using the following weighted-average assumptions:

	September 30, 2007 (Unaudited)	September 30, 2006 (Unaudited)	December 31, 2006
Fair value of common stock	\$10.25 - \$11.00	\$0.35 - 7.50	\$0.35 - 9.84
Risk free interest rate	4.37%	4.71%	4.71%
Expected term (in years)	7 yrs	7 yrs	7 yrs
Dividend yield	—	—	—
Volatility	70%	70%	70%
Weighted average grant date fair value	9.79	\$4.85	7.36

SLING MEDIA, INC.

Notes to Consolidated Financial Statements — (Continued)

A summary of stock option activity for the years ended December 31, 2006 2005 and 2004 under the Plan is as follows:

	Available for Grant	Options Outstanding	Weighted- Average Exercise Price
Balance as of company inception	—	—	\$ —
Shares reserved	3,217,500	—	—
Granted	(1,563,389)	1,563,389	0.07
Exercised	—	(398,263)	0.04
Balance as of December 31, 2004	<u>1,654,111</u>	<u>1,165,126</u>	\$ 0.08
Additional shares reserved	—	—	—
Granted	(1,428,000)	1,428,000	0.15
Exercised	—	(850,000)	0.13
Forfeited	92,500	(92,500)	0.12
Balance as of December 31, 2005	<u>318,611</u>	<u>1,650,626</u>	\$ 0.11
Additional shares reserved	2,299,580	—	1.52
Granted	(2,428,562)	2,428,562	0.66
Exercised	—	(979,918)	0.55
Repurchased	20,017	(20,017)	0.15
Forfeited	346,096	(346,096)	0.16
Balance as of December 31, 2006	<u>555,742</u>	<u>2,733,157</u>	\$ 0.43
Granted	(542,500)	542,500	1.50
Exercised	—	(129,803)	0.96
Forfeited	248,656	(248,656)	0.58
Balance at September 30, 2007 (unaudited)	<u>261,898</u>	<u>2,897,198</u>	\$ 0.60

Options exercised during the nine-month period ended September 30, 2007 and 2006 and the year ended December 31, 2006 had an aggregate intrinsic value of \$1,371 (unaudited), \$923 (unaudited) and \$8,351, respectively.

During the nine-month period ended September 30, 2007 and 2006 and the year ended December 31, 2006, shares with an aggregate fair value of \$292 (unaudited), \$262 (unaudited) and \$362, respectively vested. Payments under share-based liabilities were not material during the year or for either of the nine-month periods.

As of December 31, 2006 there were 418,638 shares vested and outstanding with a weighted average exercise price of \$0.16, a weighted-average remaining contractual life of 8.16 years, and aggregate intrinsic value of \$4,052. As of September 30, 2007, there were 1,006,557 (unaudited) shares vested and outstanding with a weighted average exercise price of \$0.25 (unaudited), a weighted average remaining contractual life of 7.64 (unaudited) and aggregate intrinsic value of \$11,341 (unaudited). Aggregate intrinsic value of options outstanding and options exercisable was \$25,715 and \$15,134, respectively, as of December 31, 2006. Aggregate intrinsic value of options outstanding and options exercisable was \$33,030 (unaudited) and \$24,201 (unaudited), respectively, as of September 30, 2007.

SLING MEDIA, INC.

Notes to Consolidated Financial Statements — (Continued)

The Plan provides the right to early exercise options granted which may not have vested, however this feature excludes non-US employees. The Plan also provides that the Company can repurchase those unvested options that were not exercised as of an employee's termination date at the original exercise price. The table below reflects those options that are exercisable as of December 31, 2006 taking these factors into account, and also reflects those shares not exercisable and unvested. As of September 30, 2007, exercisable shares totaled 2,150,774 (unaudited), less shares exercisable, but unvested of 1,144,217 (unaudited), and vested shares were 1,006,557 (unaudited). The Company expects an additional 1,438,000 (unaudited) shares to vest during the twelve month period ending December 31, 2007.

Exercise Price	Options Outstanding		Options Exercisable Shares
	Shares	Weighted Average Remaining Contractual Life (Years)	
\$0.02	147,750	7.67	17,484
0.08	202,188	7.75	17,851
0.15	808,688	8.19	358,774
0.35	38,000	9.03	7,728
0.43	393,000	9.31	315,832
0.73	422,031	9.67	383,031
0.76	721,500	9.89	525,000
	2,733,157		1,625,700
	Less shares exercisable but unvested		(1,207,062)
	Shares vested		418,638

(11) Employee Benefit Plans

The Company sponsors a 401(k) Employee Savings Plan ("the 401(k) Plan") for eligible employees. Employees may make voluntary contributions to the 401(k) Plan, however the Company does not match contributions of the employees, nor are there any discretionary contributions on behalf of the Company to the plan.

(12) Deferred Revenue

In August 2007 the Company entered into a Supply, Development, and Licensing Agreement with an independent third party, pursuant to which the Company agreed to develop and provide certain products to the third party. In connection with the agreement, the Company received a \$4,000 (unaudited) deposit from the third party which is classified as long term deferred revenue at September 30, 2007. The revenue has been deferred due to certain acceptance provisions having not yet been met. Due to the uncertainty of the timing of this acceptance, the Company has classified the deferred revenue as long-term. The revenue is expected to be recognized over the remaining term of the arrangement subsequent to acceptance.

Pursuant to the Supply, Development, and Licensing Agreement, the Company issued warrants to the third party to purchase 75,000 shares of common stock. The warrants vest upon the earlier of the delivery of a specified number of products, a liquidation event as defined by the Company's Certificate of Incorporation, or the consummation by the Company to sell its common stock or other securities under the Securities Act of 1933, or the termination date of August 2017. As such, the warrants were exercised pursuant to the terms of the Warrant Agreement in connection with its acquisition of Sling Media, Inc. by EchoStar Communications

SLING MEDIA, INC.

Notes to Consolidated Financial Statements — (Continued)

Corporation as noted below. The value of the warrants was determined to be \$797 based on a risk-free interest rate of 4%, contractual life of ten years; expected volatility of 75% and no expected dividends. These warrants will be accounted for using the guidance in EITF 01-09, *Accounting for Consideration Given by a Vendor to a Customer (Including a Reseller of the Vendor's Products)*. This guidance will require the value to be recorded once the warrants are probable of vesting. This value will then be netted against the proceeds from the arrangement and recognized as a revenue reduction over the life of the arrangement. As the acquisition of the Company was not consummated until October 15, 2007, the warrants were not probable of vesting as of September 30, 2007.

**(13) Subsequent Events**

On October 15, 2007, EchoStar Communications Corporation acquired Sling Media, Inc. for \$380,000 in cash and stock options.