

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MICHAEL SPAFFORD, JR., individually and on behalf of  
a class of Washington residents similarly situated,

Plaintiff,

v.

ECHOSTAR COMMUNICATIONS CORPORATION, a  
Nevada corporation; et al.,

Defendants.

NO. CV06-0479 RAJ

DECLARATION OF  
MICHAEL SPAFFORD IN  
SUPPORT OF JOINT  
MOTION FOR  
CERTIFICATION OF A  
SETTLEMENT CLASS AND  
PRELIMINARY APPROVAL  
OF SETTLEMENT  
AGREEMENT

ECHOSTAR COMMUNICATIONS CORPORATION, a  
Colorado corporation, et al.,

Third-Party Plaintiffs,

v.

SATELLITE SYSTEMS NETWORK, LLC., a California  
limited liability corporation,

Third-Party Defendant.

I, MICHAEL SPAFFORD, declare as follows:

1. I am over the age of 21 and reside in the state of Washington. I am a Class Representative in the above entitled action. I submit this declaration in support of the Settlement with Echostar Communications Corporation, et al. If called as a witness I could and would testify to the following:

1           2.       I am a self-employed professional photographer. I have a studio in Seattle.

2           3.       Beginning in or about December 2004, I began receiving telephone calls to my  
3 studio soliciting Dish Network satellite television products and services. These calls were  
4 always pre-recorded messages of several minutes length during which a male or female would  
5 self identify with a first name only such as "Hi, this is Jerry with Dish ..." The message would  
6 detail the offer being solicited for digital video recording hardware, receivers, a satellite dish,  
7 free installation, and satellite television programming. The pre-recorded message would end  
8 with a request that I press "1" to be connected to a live operator.

9           4.       I believe I received dozens of pre-recorded solicitations from Dish over the past  
10 four years at work and at home. Some of the pre-recorded messages were recorded by my  
11 answering service, and I have saved those. For other pre-recorded solicitations where I actually  
12 answered the phone I tried to keep a record of the call for which I have records of nineteen such  
13 calls from 2004 to 2008.

14           5.       In an effort to determine the originating source of the calls I frequently stayed on  
15 the line following the pre-recorded solicitation to ask the live operator questions. The live  
16 operators, beyond providing a claimed first name, would occasionally mention a city where  
17 they were located but would not provide an address. The live operators always claimed to be  
18 working for Dish Network either as Dish Network or as an authorized Dish Network retailer.

19           6.       Receiving the calls and working to discover their origin was time consuming. I  
20 am a professional photographer. The calls most often came to my studio and required me to  
21 delay work for my clients in order to facilitate the case as the class representative. Some of my  
22 duties included: spending significant time waiting for the recordings; speaking with  
23 representatives; recording information; and later relating what happened with my attorneys. I  
24 also took time to transfer pre-recorded messages to digital files so they could be produced in  
25 discovery. This transfer alone required most of a day to accomplish.

1           7.       On another occasion, KIRO television news contacted me about a story they  
2 wanted to do on the case. In cooperation with that I spent an entire morning with a film crew at  
3 my studio explaining how the calls came in and interrupted my work while they filmed and  
4 interviewed me. I did this because I understood that the story would likely lead other  
5 Washington residents to become aware of the lawsuit.

6           8.       I also spent significant time working with my attorneys to prepare responses to  
7 defendants' written interrogatories and requests for production. This entailed reviewing written  
8 interrogatories and requests for production, determining what information I had that was  
9 responsive and gathering my hand-written and voice mail records and transcribing them to  
10 digital format for emailing and production. Over the course of the four years I received the  
11 calls and have been involved in this case as a class representative I estimate I have spent 75  
12 hours on this case. My professional hourly billing rate is \$125.00. This adds up to over  
13 \$9,000.00 in billable time.

14           9.       I have been informed of the work done by Class Counsel that has resulted in the  
15 settlement with EchoStar Communications Corporation. I approve of the settlement reached  
16 with EchoStar Communications Corporation for the benefit of the class.

17           10.      I am aware that class counsel have vigorously prosecuted the claims brought on  
18 behalf of the class, and Echostar Communications Corporation has defended its positions with  
19 equal vigor. The parties have engaged in extensive discovery, including written discovery, and  
20 depositions. I am aware that there have been contested law and motion hearings, and I  
21 reviewed the briefing for many of those motions.


22           11.      Class counsel have kept me apprised of this lawsuit and have sought my input  
23 as the litigation progressed.

24           12.      I believe that the Class Settlement is fair and reasonable and will serve to aid in  
25 enforcing the law prohibiting ADAD calls to Washington residents.  
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13. I am aware that class counsel will be seeking an award of reasonable attorneys' fees and costs from the defendant. I am aware that there has been a great deal of attorney time and effort and expense put into this case. I am satisfied with the level of understanding class counsel possess of the law and facts of this case. I find class counsel to be conscientious advocates on behalf of the class. They are well organized and perform skillfully against the opponents.

I declare under penalty of perjury of the laws of the state of Washington and the United States that the foregoing is true and correct, and that this declaration was executed in Seattle, Washington, dated this 17th day of September, 2008.

  
Michael Spafford

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on September 18, 2008, I electronically filed the foregoing with  
3 the Clerk of the Court using the CM/ECF system, which will send notification of such filing to  
4 the following:

<p>5 Daniel C. Gallagher 6 <a href="mailto:seattlelaw@hotmail.com">seattlelaw@hotmail.com</a> 7 GALLAGHER LAW OFFICE, P.S. 8 10611 Battle Point Drive NE 9 Bainbridge Island, WA 98110-1493</p> <p>10 <i>and</i></p> <p>11 Michael F. Ram 12 <a href="mailto:mfr@lrolaw.com">mfr@lrolaw.com</a> 13 Erica L. Craven 14 <a href="mailto:elc@lrolaw.com">elc@lrolaw.com</a> 15 Karl Olson 16 <a href="mailto:ko@lrolaw.com">ko@lrolaw.com</a> 17 LEVY RAM &amp; OLSON LLP 18 639 Front Street, Fourth Floor 19 San Francisco, CA 94111-1913</p> <p>20 <i>Attorneys for Plaintiffs</i></p>	<p>Shelley M. Hall <a href="mailto:shelley.hall@stokeslaw.com">shelley.hall@stokeslaw.com</a> STOKES LAWRENCE, P.S. 800 Fifth Avenue, Suite 4000 Seattle, WA 98104-3179</p> <p><i>and</i></p> <p>Joseph H. Boyle, Appearing <i>Pro Hac Vice</i> <a href="mailto:jboyle@twowlaw.com">jboyle@twowlaw.com</a> Christine D. Willetts, Appearing <i>Pro Hac Vice</i> <a href="mailto:cwilletts@twowlaw.com">cwilletts@twowlaw.com</a> T. WADE WELCH &amp; ASSOCIATES 2401 Fountainview, Suite 700 Houston, TX 77057</p> <p><i>Attorneys for Defendants</i></p>
<p>Rob McKenna <a href="mailto:robm@atg.wa.gov">robm@atg.wa.gov</a> Shannon E. Smith <a href="mailto:shannons@atg.wa.gov">shannons@atg.wa.gov</a> OFFICE OF THE ATTORNEY GENERAL 800 Fifth Avenue, Suite 2000 Seattle, WA 98104-3188</p> <p><i>Attorneys for Intervenor The State of Washington</i></p>	<p>Steven I. Hochfelsen, Appearing <i>Pro Hac Vice</i> <a href="mailto:shochfelsen@alsalaw.com">shochfelsen@alsalaw.com</a> SAMINI &amp; ASSOCIATES 1201 Dove Street, Suite 400 Newport Beach, CA 92660</p> <p><i>Attorneys for Third-Party Defendant Satellite Systems Network</i></p>

1 DATED this 18th day of September, 2008.

2 TOUSLEY BRAIN STEPHENS PLLC

3 By: /s/ Kim D. Stephens

4 Kim D. Stephens, P.S., WSBA #11984

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