

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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.

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

Third-Party Plaintiffs,

v.

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

Third-Party Defendant.

NO. CV06-0479 RAJ

STIPULATION OF
SETTLEMENT

STIPULATION OF SETTLEMENT

It is hereby stipulated and agreed, by and between Michael Spafford, Jr., on behalf of
himself and all similarly situated Washington residents ("Plaintiff") and DISH Network
Corporation (Nevada corporation) (formerly known as EchoStar Communications Corporation

1 (Nevada corporation)), EchoStar Orbital Corporation (Colorado corporation), EchoStar Orbital II
2 L.L.C. (Colorado limited liability company), EchoStar DBS Corporation (Colorado corporation),
3 EchoSphere L.L.C. (Colorado limited liability company), DISH Network Service L.L.C.
4 (Colorado limited liability company), EchoStar Technologies L.L.C. (Texas limited liability
5 company), and DISH Network L.L.C. (Colorado limited liability company) (formerly known as
6 EchoStar Satellite L.L.C. (Colorado limited liability company)) (collectively "Defendants"), that
7 the Action (as defined below), is settled, compromised and dismissed on the merits and with
8 prejudice on the terms and conditions set forth in this Stipulation of Settlement, including all
9 exhibits attached hereto (the "Stipulation").

10 **RECITALS**

11 WHEREAS, the named Plaintiff has filed a class action complaint in the United States
12 District Court, Western District of Washington (the "Court") concerning certain Washington
13 residents who allegedly received commercial solicitations for "DISH Network" products or
14 services via an automatic dialing and announcing device ("ADAD");

15 WHEREAS, the Complaint (as defined below) alleges that Defendants and their agents
16 unlawfully utilized ADADs for commercial solicitations of class members in order to encourage
17 them to purchase subscriptions to the DISH Network direct broadcast satellite television service in
18 violation of the Revised Code of Washington ("RCW") sections 80.36.400, *et seq.* and the
19 Washington Consumer Protection Act (RCW 19.86.090) which allegations and all other material
20 allegations in the Complaint have been denied and countered with numerous affirmative defenses
21 thereto by Defendants;

22 WHEREAS, before commencing the Action and during litigation Plaintiff and counsel for
23 Plaintiff conducted a thorough examination and evaluation of the relevant law and facts to assess
24 the merits of Plaintiff's claims and potential claims and to determine how best to serve the
25 interests of the class;

26 ///

1 WHEREAS, based on discovery, investigation and evaluation of the facts and law relating
2 to the matters alleged in the pleadings, Plaintiff and counsel for Plaintiff and the class have agreed
3 to settle the Action pursuant to the provisions of this Stipulation after considering, among other
4 things, (1) the benefits available to Plaintiff and the class under the terms of this Stipulation,
5 (2) the risks and uncertainty of litigation, especially in actions such as this, as well as the
6 difficulties and delays inherent in such litigation, and (3) the desirability of consummating this
7 Stipulation promptly to provide effective relief to Plaintiff and the class; and

8 WHEREAS, Defendants, denying wrongdoing of any kind whatsoever, and without
9 admitting liability, nevertheless have agreed to enter into this Stipulation to avoid further expense,
10 inconvenience, and the distraction of litigation, and to be completely free of further participation
11 in the Action and any further controversy with respect to the Released Claims (as defined below).

12 **I. DEFINITIONS**

13 THE FOLLOWING TERMS SHALL HAVE THE MEANINGS AS SET FORTH
14 BELOW:

15 A. “Action” means the lawsuit captioned *Spafford v. EchoStar Communications*
16 *Corporation, et al.*, Case No. CV06-0479-RAJ, in the United States District Court, Western
17 District of Washington, at Seattle.

18 B. “ADAD” means an automatic dialing and announcing device.

19 C. “Class” means all Washington residents who received one or more commercial
20 solicitations for “DISH Network” products or services via an automatic dialing and announcing
21 device (“ADAD”) in the State of Washington at any time prior to the date of the Preliminary
22 Approval Order. Excluded from the Class are the judge to whom this case is assigned, any
23 member of the judge’s immediate family, as well as the judge’s staff and their immediate families.

24 D. “Class Member” means any Person who is included within the definition of the
25 Class who does not validly and timely request exclusion from the Class in accordance with the
26 provisions of the Notice of Pendency and Settlement of Class Action.

1 E. "Class Notice" means legal notice of the terms of the proposed settlement to be
2 substantially in the form as **Exhibit A** hereto, subject to approval by the Court as part of its entry
3 of the Preliminary Approval Order.

4 F. "Class Period" means any time prior to the Effective Date (as defined below.)

5 G. "Class Counsel" means the following individuals:

6 TOUSLEY BRAIN STEPHENS PLLC
7 Kim D. Stephens, P.S., WSBA #11984
8 kstephens@tousley.com
9 Chase C. Alvord, WSBA #26080
10 calvord@tousley.com
11 1700 Seventh Avenue, Suite 2200
12 Seattle, Washington 98101
13 Telephone: (206) 682-5600

14 GALLAGHER LAW OFFICE, P.S.
15 Daniel C. Gallagher, WSBA #21940
16 seattlelaw@hotmail.com
17 10611 Battle Point Drive NE
18 Bainbridge Island, Washington 98110
19 Telephone: (206) 855-9310

20 LEVY RAM & OLSON LLP
21 Michael F. Ram, *Pro Hac Vice*
22 mfr@lrolaw.com
23 Erica L. Craven, *Pro Hac Vice*
24 elc@lrolaw.com
25 Karl Olson, *Pro Hac Vice*
26 ko@lrolaw.com
639 Front Street, Fourth Floor
San Francisco, California 94111-1913
Telephone: (415) 433-4949

20 H. "Complaint" means the Amended Complaint for Damages, filed February 5, 2007
21 in the Action.

22 I. "Defendants' Counsel" means the following individuals:

23 STOKES LAWRENCE, P.S.
24 Shelley M. Hall, WSBA #28586
25 shelley.hall@stokeslaw.com
26 800 Fifth Avenue, Suite 4000
Seattle, Washington 98104-3179
Telephone: (206) 626.6000

1 T. WADE WELCH & ASSOCIATES
2 Joseph H. Boyle, *Pro Hac Vice*
3 jboyle@twvlaw.com
4 Christine D. Willetts, *Pro Hac Vice*
5 cwilletts@twvlaw.com
6 2401 Fountainview, Suite 700
7 Houston, Texas 77057
8 Telephone: 713.952.4334

9 J. "DISH Network" means DISH Network Corporation, a Nevada corporation,
10 together with its past and present affiliates and its and their respective past and present trustees,
11 predecessors, successors, heirs, assigns, executors, administrators, agents, attorneys, legal
12 representatives, parents, subsidiaries, shareholders, employees, officers and directors (collectively,
13 "DISH"); formerly known as EchoStar Communications Corporation, a Nevada corporation, and
14 all of its subsidiaries and affiliates including but not limited to DISH Network L.L.C., a Colorado
15 limited liability company, formerly known as EchoStar Satellite L.L.C. DISH Network does not
16 include DISH Network's retailers or other independent contractors who are not also a subsidiary,
17 affiliate or an employee, officer or director of DISH Network or an employee, officer or director
18 of such subsidiary or affiliate.

19 K. "Effective Date" means the first date after which *all* of the following events and
20 conditions have been met or have occurred or have been waived by a written agreement of the
21 parties pursuant to Section VIII.C below:

- 22 (1) All parties have executed this Stipulation;
- 23 (2) The Court has certified the Class described above;
- 24 (3) The Court has entered the Preliminary Approval Order (which shall be
25 substantially in the form of **Exhibit B**), and preliminarily approved this Stipulation, the settlement
26 set forth herein, and the method for providing notice to the Class;
- (4) The Court has entered the Final Judgment (which shall be substantially in
the form of **Exhibit C**) approving this Stipulation, including all settlement considerations as set
forth in this Stipulation, releasing the Released Persons from the Released Claims, and dismissing,

1 with prejudice as to Class Members, the Action with respect to Defendants, and all claims asserted
2 therein; and

3 (5) There has occurred: (i) the passage of five (5) days from entry of Final
4 Judgment if no formal objections were filed; (ii) in the event one or more formal objections to
5 entry of the Final Judgment are timely filed, the expiration (without the filing or notice of an
6 appeal) of the time to appeal from the Final Judgment; (iii) the final non-appealable dismissal of
7 any appeal from the Final Judgment; (iv) if a ruling or decision has been entered by an appellate
8 court affirming the Final Judgment in a form substantially identical to that of the Final Judgment
9 entered by the Court, the time to petition for review to the Ninth Circuit Court of Appeals with
10 respect to such ruling or decision has expired; or (vi) if a petition for review to the Ninth Circuit
11 Court of Appeals with respect to the Final Judgment has been filed, the petition has been denied
12 or, if granted, has resulted in affirmance of the Final Judgment in a form substantially identical to
13 the form of the Final Judgment entered by the Court.

14 L. "Fairness Hearing" means the hearing at or after which the Court will make a final
15 decision whether to approve this Stipulation and the settlement set forth herein as fair, reasonable
16 and adequate.

17 M. "Final Judgment" means the judgment entered by the Court in substantially the
18 form of attached as Exhibit C hereto.

19 N. "Injunction Period" means the period commencing on the Effective Date and
20 ending three (3) years later.

21 O. "Person" means any natural person, individual, corporation, association,
22 partnership, trust, or any other type of legal entity.

23 P. "Released Claims" means and includes any and all claims, damages, rights,
24 demands, actions, causes of action, suits, debts, liens, contracts, liabilities, agreements, costs,
25 expenses or losses, of whatever kind or nature, whether foreseen or unforeseen, and whether
26 known or unknown, arising out of or relating to telemarketing activity via an ADAD, as alleged in

1 the Complaint or which could have been alleged based upon the same facts, for DISH Network
2 products or services within the State of Washington at any time prior to the date of the
3 Preliminary Approval Order.

4 Q. "Released Persons" means all of the Defendants and DISH Network and their
5 direct and indirect parent, subsidiary and affiliated Persons and the officers, directors, employees,
6 partners, shareholders, agents and any other successors, assigns or representatives of any of the
7 foregoing Persons. Released Persons does not include DISH Network's retailers or other
8 independent contractors who are not also a subsidiary, affiliate or an employee, officer or director
9 of DISH Network or an employee, officer or director of such subsidiary or affiliate.

10 **II. CERTIFICATION OF PLAINTIFF CLASS**

11 A. The parties stipulate to certification of the Class as defined in Section I.C. above
12 and appointment of Plaintiff as representative of the Class and Class Counsel as counsel for the
13 Class.

14 B. Certification of the Class and appointment of the Class representative and Class
15 Counsel by the Court shall be binding only with respect to the settlement of the Action. In the
16 event the Effective Date for any reason does not occur, the certification of the Class and
17 appointment of the Class Representative and Class Counsel shall be vacated, and the Action shall
18 proceed as though the certification and appointments had never occurred.

19 **III. SETTLEMENT RELIEF**

20 In consideration for the release hereinafter set forth, the termination of this Action, and in
21 full and final settlement of all claims by Class Members, Defendants agree that the Final Judgment
22 shall order the following *cy pres* and injunctive relief:

23 A. **Cy Pres Settlement Relief**

24 A contribution shall be made by Defendants pursuant to the *cy pres* doctrine to the Legal
25 Aid for Washington Fund ("LAW Fund") to support civil legal aid programs in the aggregate total
26 amount of \$50,000. This contribution shall be paid within thirty (30) days of the Effective Date.

1 B. Injunctive Settlement Relief

2 During the Injunction Period:

3 1. Code Compliance. DISH Network L.L.C. shall comply with RCW
4 Sections 80.36.400, *et seq.* For purposes of this injunction, the acts of DISH Network L.L.C.'s
5 retailers shall not be construed as conduct of DISH Network L.L.C. or violations of this provision.

6 2. DISH Network L.L.C. Due Diligence and Reporting Requirements.

7 (a) At the time of renewal, new and renewal DISH Network L.L.C.
8 written retailer agreements shall contain a clause expressly prohibiting violation of applicable state
9 and federal telephone solicitation laws.

10 (b) DISH Network L.L.C. shall promptly investigate complaints
11 received from consumers, government entities, and third-parties (e.g., the Better Business Bureau)
12 originating in Washington State regarding use of ADADs and shall take reasonable steps to
13 identify the retailer or the retailer's agent whose activities prompted the complaint.

14 (c) Within thirty (30) days of the Effective Date, DISH Network L.L.C.
15 shall notify retailers of the text of the Washington ADAD statute through a mass communication
16 to retailers and shall post a copy of that mass communication to the DISH Network L.L.C. retailer
17 website for the Injunction Period. Not earlier than six (6) months and not later than one (1) year
18 after issuance of the original mass communications to retailers, DISH Network L.L.C. shall issue a
19 second mass communication to the retailers of the text of the Washington ADAD statute.

20 (d) For the purpose of ensuring ADAD compliance in Washington, new
21 and renewal DISH Network L.L.C. written retailer agreements shall prohibit retailers from using
22 independent contractors or agents to fulfill the retailer's obligations under the retailer agreement
23 with respect to telemarketing activities in Washington without DISH Network L.L.C.'s specific
24 prior written consent.

25 ///

26 ///

1 (e) If DISH Network L.L.C. learns that retailers are using ADADs to
2 solicit new customers in Washington State, then DISH Network L.L.C. shall retain and investigate
3 that information as a complaint.

4 (f) When a retailer who has violated the Washington ADAD statute is
5 identified through investigation, then DISH Network L.L.C. shall use reasonable efforts to inform
6 the complaining customer, governmental entity and/or third party (as applicable) in writing of the
7 identity and contact information for the retailer who violated the Washington ADAD statute.

8 (g) DISH Network L.L.C. shall document receipt of ADAD complaints
9 about retailers originating in the State of Washington and provide a report to Class Counsel not
10 more than once per year upon Class Counsel's written request, within 30 days of receipt of such
11 request. The report shall identify the complaints received including, if available, the date of the
12 alleged violation, the originating telephone number, the identity, address and telephone number of
13 the alleged retailer, the conclusion reached, and the resolution of each complaint, including any
14 penalty or enforcement action imposed. DISH Network L.L.C. shall maintain the complaining
15 consumer's name but the reports will exclude information protected by applicable privacy laws
16 unless and until the requirements for disclosure under those laws has been satisfied.

17 (h) Progressive Retailer Enforcement:

18 (i) Level 1: Upon identification of a retailer pursuant to the
19 above-stated complaint investigation process, DISH Network L.L.C. shall notify the retailer in
20 writing of the complaint and demand a written explanation.

21 (ii) Level 2: If at any time DISH Network L.L.C. becomes
22 aware of clear and convincing proof measured against a reasonable, objective standard that a
23 retailer or its agent has violated the Washington ADAD statute, DISH Network L.L.C. shall
24 impose appropriate discipline on the retailer; the type of discipline to be determined in DISH
25 Network L.L.C.'s sole discretion. Such discipline may include, but is not limited to:

26 a) Termination;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

- b) Imposing monetary fines;
 - c) Withholding of compensation;
 - d) Suspending the right to telemarket for a period of time;
 - e) Prohibiting telemarketing;
 - f) Requiring the retailer to improve its process and procedures for compliance with the Washington ADAD statute;
 - g) Requiring the retailer to terminate certain employees involved in violation of the Washington ADAD statute;
 - h) Requiring the retailer to terminate telemarketing affiliates;
 - i) Requiring the retailer to retrain employees in Washington ADAD statute compliance; or
 - j) Other appropriate discipline under the circumstances.
- (iii) **Level 3:** If after a second found violation, DISH

Network L.L.C. becomes aware of clear and convincing proof measured against a reasonable, objective standard that a retailer or retailer's agent has violated the Washington ADAD statute three (3) times within a thirty-six (36) month period, then DISH Network L.L.C. shall impose a fine on the retailer in an amount to be determined in DISH Network L.L.C.'s sole discretion, in addition to other appropriate discipline to be determined in DISH Network L.L.C.'s sole discretion. For the purpose of this paragraph, each violation must be a separate violation in connection with a telemarketing campaign that is separate and distinct from the telemarketing campaigns involved in the prior violations.

C. **Record Retention** DISH Network L.L.C. shall retain all records of investigations and punitive actions taken against non-complying retailers under this Stipulation of Settlement for a minimum of three (3) years.

1 **IV. NOTICE TO THE CLASS**

2 Defendants shall issue the Class Notice in accordance with the requirements of the
3 Preliminary Approval Order, as follows:

4 A. Subject to the approval of the Court and to be completed no later than thirty (30)
5 days prior to the Fairness Hearing, Defendants shall cause the Class Notice to be published in
6 substantially the form attached as **Exhibit A** hereto as follows: one (1) day in each of the
7 following publications: *Vancouver Columbian*, *Seattle Times/Post-Intelligencer*, *Spokane*
8 *Spokesman-Review*, and *Tri-City Herald*; and, for one (1) day, fourteen (14) days later in each of
9 the following publications: *Vancouver Columbian*, *Tacoma News Tribune*, *Bellingham Herald*,
10 *Spokane Spokesman-Review*, and *Yakima Herald Republic*.

11 B. Defendants shall pay all costs associated with preparing and publishing the Class
12 Notice.

13 C. Tracking and reporting of class members who request exclusion shall be compiled
14 by Plaintiff and reported to the court.

15 **V. ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES**

16 A. Plaintiff, counsel for Plaintiff and the Class, and Defendants have agreed pursuant
17 to a separately executed Stipulation and Agreement, to submit the amount of attorneys' fees and
18 expenses pursuant to terms and conditions agreed upon by the parties (which terms and conditions
19 are incorporated herein by this reference) to arbitration before the Honorable William Cahill,
20 retired Judge of the Superior Court of the State of California in and for the City and County of San
21 Francisco, which award will be subject to and conditioned upon approval by this Court.

22 B. Defendants agree not to oppose an application by Class Counsel, and Class Counsel
23 agrees to only submit an application, for attorneys' fees and reimbursement of expenses that shall
24 not exceed the amount awarded by Judge Cahill, Retired, pursuant to the arbitration proceeding
25 which has been agreed to by the parties hereto, as Plaintiff's attorneys' fees, expenses and costs.
26 Within thirty (30) days after the Effective Date, DISH Network L.L.C. shall deliver to Michael F.

1 Ram, at the address set forth above, a check payable to "Levy Ram & Olson, LLP" in the total
2 amount awarded by the Court as attorneys' fees, expenses and costs, not to exceed the amount
3 awarded by Judge Cahill, Retired, pursuant to the arbitration proceeding which has been agreed to
4 by the parties hereto. DISH Network L.L.C. agrees to pay interest at the rate of five percent (5%)
5 per annum on all unpaid amounts commencing thirty (30) days after the Effective Date and
6 continuing until paid in full.

7 C. Defendants agree not to oppose an application by Plaintiff, and Plaintiff agrees only
8 to submit an application, for an incentive award of \$3,000. Within thirty (30) days after the
9 Effective Date, DISH Network L.L.C. shall deliver to Michael F. Ram, at the address set forth
10 above, a check payable to "Michael Spafford, Jr." in the total amount awarded by the Court as an
11 incentive award not to exceed the sum of \$3,000. DISH Network L.L.C. agrees to pay interest at
12 the rate of five percent (5%) per annum on all unpaid amounts commencing thirty (30) days after
13 the Effective Date and continuing until paid in full.

14 D. In no event shall Defendants be required to pay more than the fees, expenses and
15 costs awarded pursuant to arbitration and, in the event the Court awards a greater amount,
16 Defendants shall have the right to cancel this Stipulation, terminate the settlement and to proceed
17 as if the settlement had never been executed and the same shall be null and void as provided in
18 Section VI.B., below.

19 **VI. CONDITIONS OF SETTLEMENT AND EFFECT OF DISAPPROVAL,**
20 **CANCELLATION, OR TERMINATION OF AGREEMENT**

21 A. Upon the preliminary approval of this settlement by the Court as evidenced by
22 entry of the Preliminary Approval Order, all discovery and other proceedings in the Action shall
23 be stayed until further order of the Court, except such proceedings as may be necessary either to
24 implement the Stipulation or to comply with or effectuate the terms of the Stipulation.

25 B. In the event that any of the events or conditions described in Section I.K. hereof
26 either are not met or do not occur, this entire Stipulation shall, upon written notice from

1 Defendants to Plaintiff become null and void, except that the parties shall have the option to agree
2 mutually in writing to waive the event or condition and proceed with this settlement, in which
3 event the Effective Date shall be deemed to have occurred on the date of said written agreement.

4 **VII. DISMISSAL OF ACTION AND RELEASE**

5 A. As soon as practicable after execution of this Stipulation, Class Counsel will take
6 all necessary steps to secure the Court's approval of this settlement, certification of the Class, the
7 entry of the Judgment substantially in the form of **Exhibit C**, and the subsequent dismissal of the
8 Action, with prejudice, as to the Class.

9 B. Upon the Court's final approval of this Stipulation and the settlement set forth
10 herein, the Final Judgment Pursuant to Stipulation shall be entered.

11 C. In consideration of the aforementioned payment and obligations undertaken by
12 Defendants, and save and except only those obligations created or arising from this Stipulation or
13 the attached Final Judgment, Plaintiff, on behalf of himself and the Class described herein, hereby
14 releases and forever discharges the Released Persons from the Released Claims.

15 **VIII. MISCELLANEOUS PROVISIONS**

16 A. The parties hereto and their undersigned counsel agree to undertake commercially
17 reasonable efforts and to offer their reasonable cooperation to effectuate this Stipulation and the
18 terms of the settlement set forth herein, including taking all steps and efforts contemplated by this
19 Stipulation and any other steps and efforts which may become reasonably necessary by order of
20 the Court or otherwise.

21 B. This Stipulation, the Stipulation for Arbitration and Selection of Arbitrator, and the
22 Letter Agreement dated August 14, 2008, executed concurrently herewith, contain the entire
23 agreement among the parties hereto and supersede any prior agreements or understandings
24 between them. All terms of this Stipulation are contractual and not mere recitals and shall be
25 construed as if drafted by all parties hereto. The terms of this Stipulation are and shall be binding
26 upon each of the parties hereto, their agents, attorneys, employees, successors and assigns, and

