

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

_____)	
In the Matter of:)	
)	
Rainbow DBS Company LLC, Assignor)	Call Signs: DBS 8701 and E020248
)	
and)	IB File No. SAT-ASG-_____;
)	
EchoStar Satellite L.L.C., Assignee)	IB File No. SES-ASG-_____;
)	
Consolidated Application for Consent to)	IB File No. SAT-STA-20030623-00122
Assignment of Space Station and Earth)	(renewals pending: SAT-STA-20040319-
Station Licenses, and related Special)	00081; and SAT-STA-20040924-00191)
Temporary Authorization.)	
_____)	

APPLICATION FOR CONSENT TO
ASSIGNMENT OF LICENSES

EchoStar Satellite L.L.C. ("EchoStar") and Rainbow DBS Company LLC

("Rainbow DBS," and together with EchoStar, the "Applicants") hereby apply for consent to assignment of the authority to operate a Direct Broadcast Satellite ("DBS") space station at the 61.5° W.L. orbital location on the 11 odd numbered channels from 1-21 currently held by Rainbow DBS,¹ as well as the Special Temporary Authority ("STA") to operate on two additional channels (23 and 24) at that location.² The Applicants are also requesting consent to

¹ See File No. SAT-AMD-20030314-00034. Rainbow DBS is authorized to provide service pursuant to this license on the Rainbow 1 satellite. Rainbow 1 is nominally located at the 61.65° W.L. orbital location in order to avoid any risk of a potential collision with the EchoStar 3 satellite, which is also authorized to operate at 61.5 ° W.L. See Letter from Benjamin Griffin, counsel for Rainbow DBS Company LLC, to Thomas Tycz, Chief, Satellite Division, Federal Communications Commission (July 15, 2003). By this Application, the Applicants request confirmation as to the current operation of Rainbow 1 at its nominal orbital location of 61.65° W.L.

² See File No. SAT-STA-20030623-00122 (renewals pending: SAT-STA-20040319-00081; and SAT-STA-20040924-00191).

the assignment of the associated earth station facilities licensed to Rainbow DBS at the Black Hawk site in Rapid City, South Dakota.³ As described in greater detail below, the requested assignments of these licenses comply with the requirements of the Communications Act of 1934, as amended, all other applicable statutes, and the Commission's Rules and policies. The Applicants urge the Commission to promptly grant this Application as the proposed transaction will serve the public interest, convenience and necessity by, among other matters, promoting competition in the Multichannel Video Programming Distribution ("MVPD") market.

I. BACKGROUND

A. *Description of the Assignor and Assignee*

1. Assignor

Rainbow DBS, a limited liability company organized under the laws of Delaware, is an indirect, wholly-owned subsidiary of Cablevision Systems Corporation ("Cablevision"). Since October 15, 2003, Rainbow DBS has been providing MVPD services marketed under its VOOMsm brand on a subscription basis to consumers over its authorized DBS channels on the Rainbow 1 satellite. Rainbow DBS has offered consumers up to 39 high definition video channels and 88 standard definition video channels using its proprietary receivers. Despite Cablevision's expertise in programming and program distribution, the VOOM service has not been a commercial success. As of September 30, 2004, Rainbow DBS had approximately 26,000 activated VOOM customers. Since the service was launched through September 2004, approximately 39 percent of the customers who had activated the VOOM service subsequently terminated the service or were 90 days or more past due in payment. The churn rate for the service has also been high. In August and September, 2004, the churn rates were 16 percent and

³ File No. SES-LIC-20020913-01555.

13 percent respectively when accounts that were 90 days or more past due are included. In 2003, Rainbow DBS had not produced any revenues and incurred operating expenses of \$57.7 million. For the nine months ended September 30, 2004, Rainbow DBS reported net revenues of \$9.6 million, primarily resulting from programming service fees, equipment rental fees and equipment sales, and operating losses of \$211.6 million.

2. Assignee

EchoStar, a limited liability company organized under the laws of Colorado, through its DISH Networktm brand, is a leading U.S. provider of advanced digital television services. DISH Network's services include hundreds of video and audio channels, interactive TV, HDTV, sports and international programming, together with professional installation and 24-hour customer service. EchoStar has also been a leader for 25 years in satellite TV equipment sales and support worldwide.

EchoStar launched its first satellite in December 1995, and began service soon thereafter.⁴ EchoStar currently owns and operates nine in-orbit satellites located in seven orbital positions, as well as major uplink facilities in Cheyenne, Wyoming and Gilbert, Arizona. EchoStar has become the nation's second largest DBS provider with more than 10.4 million U.S. subscribers. EchoStar provides satellite-delivered programming, including local broadcast channels in 152 DMAs in all 50 states and the District of Columbia.

B. Description of the Proposed Transaction

In May 2003, Cablevision announced that its board of directors had approved a plan to pursue the spin off of Rainbow DBS and other Cablevision businesses. At that time, it

⁴ See *EchoStar Satellite Corporation*, 7 FCC Rcd. 1765 (1992); *EchoStar Satellite Corporation*, 11 FCC Rcd. 3015, 3015 (Int'l Bur. 1996).

was expected that the proposed spin off would be completed by the end of 2003. After revisions to the initial plan and several postponements, Cablevision's board decided in December, 2004 to suspend plans for a spin off of Rainbow DBS and instead to pursue strategic alternatives for its Rainbow DBS business.

On January 20, 2005 and January 27, 2005 respectively, the Applicants entered into a Satellite Sale Agreement and a Letter Agreement whereby EchoStar would purchase certain assets from Rainbow DBS for \$200 million in cash consideration subject to several conditions, including the Commission's approval of the transaction. Copies of the agreements (redacted in part to protect certain non-public trade secrets and other sensitive information) are appended to this Application. The assets being sold include the Rainbow 1 satellite, associated earth station facilities located at Black Hawk, South Dakota, and related Commission authorizations to operate 11 DBS channels from the 61.5° W.L. orbital location, an additional two DBS channels on an STA basis, and the Black Hawk earth station facility.

Cablevision has indicated that it will continue to explore strategic alternatives, including monetization, for its remaining Rainbow DBS related assets, including programming, equipment and spectrum. It has also stated that VOOM will continue to provide service to its current customers during a transition period.

EchoStar intends to use Rainbow 1 to compliment its existing fleet of satellites, including EchoStar 3 (also at 61.5° W.L.) with additional programming including some local channels to comply with the recently enacted Satellite Home Viewer Extension and Reauthorization Act of 2004 ("SHVERA").⁵

⁵ The recently passed Satellite Home Viewer Extension and Reauthorization Act of 2004 requires that satellite carriers allow all local programming to be received by subscribers by

II. PUBLIC INTEREST ANALYSIS

The proposed transaction clearly merits approval under the public interest standard set forth in Section 310(d) of the Communications Act.⁶ To make this finding, the Commission has traditionally weighed the public interest benefits of the proposed transaction against any potential harm to determine whether, on balance, the benefits outweigh the harms.⁷ Applying this calculus, the unavoidable conclusion is that the proposed transaction is in the public interest.

A. Approval of the Proposed Transaction Will Promote Competition and is in the Public Interest

As the nation's second largest DBS provider and long standing licensee of the Commission, it is beyond question that EchoStar is technically, legally, and financially qualified to operate Rainbow 1 and its associated earth station facilities at Black Hawk, South Dakota. Moreover, the approval of the proposed transaction will clearly promote competition in the MVPD market, which far outweighs any potential negative effects associated with this

means of a single satellite dish within 18 months of enactment. *See* Section 203 of the Satellite Home View Extension and Reauthorization Act of 2004.

⁶ 47 U.S.C. § 310(d).

⁷ *See, e.g.,* In the Matter of Lockheed Martin Global Telecommunications, Comsat Corporation, and Comsat General Corporation, Assignor and Telenor Satellite Mobile Services, Inc. and Telenor Satellite, Inc., Assignee, *Order and Authorization*, FCC 01-369 at ¶ 13 (rel. Dec. 18, 2001) (*citing* Application of VoiceStream Wireless Corporation, Powertel, Inc., Transferors, and Deutsche Telekom AG, Transferee, for Consent to Transfer Control of Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act and for Declaratory Ruling Pursuant to Section 310 of the Communications Act, *Memorandum Opinion and Order*, 16 FCC Rcd 9779, 9789 (2001) (VoiceStream/Deutsche Telekom Order); AT&T Corp., British Telecommunications, plc, VLT Co. L.L.C., Violet License Co. LLC, and TNV [Bahamas] Limited Applications For Grant of Section 214 Authority, Modification of Authorizations and Assignment of Licenses in Connection with the Proposed Joint Venture Between AT&T Corp. and British Telecommunications, plc, FCC 99-313, *Memorandum Opinion and Order*, 14 FCC Rcd 19140, 19147 (1999) (AT&T/BT Order).

transaction. Normally, a careful determination of the relevant market would be a necessary component of such a competitive analysis, however, in this case, no matter what market is chosen, there are significant overall benefits to competition that will be realized upon Commission approval of the proposed transaction.⁸

The market for MVPD services is the appropriate product market for consideration of this transaction. For nearly a decade, both Congress and the Commission have made concerted efforts to open up the MVPD market to effective competition -- Congress with the enactment of the Cable Television Consumer Protection and Competition Act of 1992 and the Satellite Home Viewer Improvement Act of 1999 ("SHVIA"),⁹ and the Commission with its rules implementing these laws.¹⁰

Despite significant inroads in recent years by DBS providers, according to the leading cable industry trade association, cable providers maintain a greater than 73% share of the MVPD market nationwide.¹¹ In comparison, with approximately 14 million subscribers, DirecTV is currently the nation's largest DBS provider. DirecTV has been strengthened significantly by becoming a subsidiary of News Corp, with its vast programming holdings, and

⁸ See *In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations by Time Warner Inc. and America Online, Inc., Transferors, to AOL Time Warner Inc., Transferee, Memorandum Opinion and Order*, 16 FCC Rcd 6547 at 6554 (2001) (In a merger context, the Commission has stated, "To obtain approval, the Applicants must demonstrate that their proposed transaction will serve the public interest, convenience, and necessity. In this regard, we must weigh the potential public interest harms of the proposed merger against the potential public interest benefits to ensure that the Applicants have shown that, on balance, the benefits outweigh the harms.").

⁹ Pub. L. 106-113, 113 Stat. 1501, App. I.

¹⁰ See generally 47 C.F.R. Part 76.

¹¹ See *In the Matter of Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, Comments of the National Cable and Telecommunications Association, MB Docket No. 04-227 (filed Jul. 23, 2004).

being able to convert some of the Spaceway assets to high power direct-to-home satellites. For its part, EchoStar's 10.4 million subscribers comprise a small fraction of the overall MVPD market. Even if all of Rainbow's subscriber base were attributed to EchoStar, there would be no appreciable increase in EchoStar's overall MVPD market share.¹²

In contrast, there would be competitive benefits to the MVPD market from the contemplated transaction. As EchoStar has previously stated, one of the most significant handicaps on the ability of DBS providers to compete on an even footing other MVPD providers is limited bandwidth.¹³ Approval of the proposed assignment of Rainbow 1 to EchoStar will help reduce this constraint on effective competition by combining virtually all of the DBS satellite capacity at one orbital location (61.5° W.L.) with EchoStar's satellite fleet. Allowing EchoStar to acquire some additional spectrum at 61.5° W.L. should offer EchoStar greater flexibility in its service offerings and enhance its ability to compete in the market. EchoStar intends to use Rainbow 1 to complement its existing fleet of satellites, including EchoStar 3 (also at 61.5° W.L.). The addition of Rainbow 1 will permit EchoStar to offer additional programming including, among other things, some local channels that will assist EchoStar in complying with SHVERA's prohibition on certain two-dish offerings of local stations.¹⁴ As the Commission knows, the recently enacted law affects uniquely EchoStar, which had developed a

¹² Since EchoStar is not purchasing Rainbow's business or existing customers as part of this transaction it is not even appropriate to combine Rainbow's subscription base with EchoStar's customers. Rather, EchoStar is only buying certain DBS assets from Rainbow, with Rainbow retaining the rights to its existing customer contracts, receivers and other assets (including the leasing of transponders on another satellite).

¹³ See, e.g., *EchoStar 2004 MVPD Competition Comments* at 5.

¹⁴ Satellite Home Viewer Extension and Reauthorization Act of 2004, Pub. L. No. 108-477, Title IX, Sec. 203 (*to be codified as* 47 U.S.C. § 338(g)).

two-dish satellite strategy and spent a significant amount of money pursuing that strategy.

Nevertheless, EchoStar is committed to complying with this law within the required 18-month time frame. Approval of the proposed transaction could help EchoStar meet its new obligations, although it would be only part of the solution.

The addition of more channels resulting from the acquisition by EchoStar would increase competition in the relevant market to a much greater extent than a third competitor is likely to have in the foreseeable future. Regardless of any theoretical advantages that may be realized from a third entrant in the DBS market, in reality, the market has shown itself unable to sustain more than two nationwide DBS providers. This has been made evident by the recent experiences of Rainbow DBS and the Commission's auction of a substantial number of DBS channels at three western orbital locations, 175° W.L., 166° W.L., and 157° W.L., where no other new entrant qualified as a bidder.¹⁵

B. The Transaction Will Comply with the Requirements of the Communications Act, All Other Applicable Statutes, and With the Commission's Rules

The proposed transaction does not implicate any foreign ownership, aggregation, cross-ownership, or any other restrictions imposed by the Communications Act, Commission regulation or applicable statute. EchoStar is a current Commission licensee, and the qualifications of EchoStar are therefore a matter of record before the Commission. The acquisition of Rainbow 1 and associated assets will not in any way affect the ownership structure of EchoStar, nor will it implicate any Commission Rule or policy governing cross-ownership or MVPD programming relationships. Nor does the Commission have to waive any of its Rules or policies to grant this Application, including the use of DBS channels 23 and 24 on an STA basis.

¹⁵ See Direct Broadcast Satellite Service Licenses Auction; 2 Qualified Bidders, Public Notice, DA 04-1957 (rel. June 28, 2004).

C. Approval of the Proposed Transaction Will Not Substantially Frustrate Or Impair the Commission's Implementation or Enforcement of the Communications Act or Other Related Statutes or Interfere With the Act's Objectives

As part of the public interest analysis, the Commission will also consider whether approval of the proposed transaction will substantially frustrate or impair the Commission's implementation or enforcement of the Communications Act or other related statutes or interfere with the Act's objectives. In this case, it will not. The only issue of note is that the Commission has recently determined that neither EchoStar nor any other licensee currently operating satellites at orbital locations capable of providing DBS service to the 50 U.S. states will be eligible to acquire at auction a permanent license to operate the two remaining unlicensed DBS channels at 61.5° W.L.¹⁶ This decision, however, should have no impact on the proposed transaction.

First, the restrictions contained in the *Auction 52 Order* are applicable only to DBS channels 23 and 24 at 61.5 W.L. Thus, they have absolutely no bearing on the other 11 DBS channels that have already been assigned to Rainbow DBS.

Second, the *Auction 52 Order*, by its terms, only relates to the permanent authority that would be conveyed pursuant to an auction, and does not act as a bar against the assignment of the special temporary authority held by Rainbow DBS to operate on the two DBS channels pending such an auction. In granting an STA to Rainbow DBS and denying EchoStar's extension request to operate on a temporary basis over DBS channels 23 and 24, the Commission recognized that prior to the entrance of Rainbow DBS into the market, it had "reviewed the facts presented ... and determined that EchoStar's use of the unoccupied spectrum would offer sufficient public interest benefits under the circumstances of that time to satisfy the requirements

¹⁶ See *In the Matter of Auction of Direct Broadcast Satellite Licenses*, Order, AUC-03-52 (rel. Dec. 3, 2004) ("*Auction 52 Order*").

of [the Act].”¹⁷ Still, the Commission concluded that granting Rainbow DBS an STA rather than EchoStar would “allow Rainbow, a new entrant in the DBS business, the opportunity to use expanded capacity for a limited period of time, in order to help initiate its DBS service.”¹⁸ However, now that Rainbow DBS has made the business decision to dispose of its DBS assets at 61.5° W.L., the circumstances on which the Commission based its earlier decision to deny EchoStar’s STA extension request have changed. Accordingly, there is no longer any reason to deny EchoStar the ability to temporarily operate these two unassigned DBS channels.

Third, EchoStar anticipates asking the Commission to reconsider its decision to establish eligibility restrictions for Auction 52, especially in light of the changed circumstances associated with Rainbow DBS’s decision to dispose of its DBS assets at 61.5° W.L. There simply is no basis for maintaining any such restrictions in light of these changed facts.

III. CONCLUSION

For the foregoing reasons, the Applicants respectfully request that the Commission grant this Application promptly and issue such other orders as it deems necessary or appropriate to enable the Applicants to consummate the proposed transaction.

Respectfully submitted,

ECHOSTAR SATELLITE L.L.C.

RAINBOW DBS COMPANY LLC

¹⁷ See *In the Matter of EchoStar Satellite Corporation and Rainbow DBS Company LLC*, Order and Authorization, File Nos. SAT-STA-20030617-00117 and SAT-STA-20030623-00122, DA 03-3024 at ¶ 6 (rel. Oct. 1, 2003) (“*EchoStar/Rainbow STA Order*”).

¹⁸ *Id.* at ¶ 5.

ATTACHMENT 1

Satellite Sale Agreement

SATELLITE SALE AGREEMENT

between

Rainbow DBS Company LLC

and

EchoStar Satellite L.L.C.

Dated: January 20, 2005

**Redacted for
Public Inspection**

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SATELLITE SALE AGREEMENT

This SATELLITE SALE AGREEMENT (this "Agreement") is made and effective as of this 20th day of January, 2005 (the "Execution Date"), by and between Rainbow DBS Company LLC, a limited liability company organized under the laws of the State of Delaware ("Rainbow DBS"), and EchoStar Satellite L.L.C., a limited liability company organized under the laws of the State of Colorado ("Buyer"). Buyer and Rainbow DBS are referred to collectively herein as the "Parties" and individually as a "Party."

RECITALS

WHEREAS, Rainbow DBS wishes to sell, and Buyer wishes to purchase, a certain DBS satellite known as Rainbow-1 currently in geostationary orbit at the 61.5° West Longitude orbital location ("Rainbow-1") and certain other assets relating to the ownership and operation of Rainbow-1, in accordance with and subject to the terms and conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the respective promises herein made; the representations, warranties, and covenants herein contained; and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS

In addition to the capitalized terms defined elsewhere herein, the following terms shall have the following meanings:

1.1 "Acquired Assets" means Rainbow-1, the Contract Rights, the Deliverable Data, the Ground Equipment, and, except as provided in Section 2.1 with respect to the Unlicensed Frequency Channels, the FCC Licenses.

1.2 "Acquired Asset Material Adverse Effect" means a material adverse effect on the use by or benefit to Buyer of any of the Acquired Assets, excluding any change or development resulting from (i) events adversely affecting any of the principal markets served by the businesses of Buyer or any of its Affiliates, or (ii) general economic conditions, including changes in the economies of any of the jurisdictions in which Buyer or any of its Affiliates conduct business.

1.3 "Actual CONUS Beam Operational Capability" means, when Rainbow-1 is configured to operate with the maximum number of CONUS beam Transponders, the sum of the periods (expressed in years and/or portions thereof, measured from Closing and determined based upon the results of the in-orbit testing contemplated pursuant to Section 4.3.9) over which it is determined that each CONUS beam Transponder operating in boost mode will remain an Operating Transponder, or until the end of the Remaining Mission

Life, whichever is earlier. Actual CONUS Beam Operational Capability shall be expressed in Transponder years (or portions thereof), *i.e.*, one (1) CONUS beam Operating Transponder for one (1) year equals one (1) Transponder year.

1.4 “Actual Spot Beam Operational Capability” means, when Rainbow-1 is configured to operate with the maximum number of spot beam Transponders, the sum of the periods (expressed in years and/or portions thereof, measured from Closing and determined based upon the results of the in-orbit testing contemplated pursuant to Section 4.3.9) over which it is determined that each spot beam Transponder will remain an Operating Transponder, or until the end of the Remaining Mission Life, whichever is earlier. Actual Spot Beam Operational Capability shall be expressed in Transponder years (or portions thereof), *i.e.*, one hundred thirty (130) spot beam Operating Transponders for one (1) year equals one hundred thirty (130) Transponder years.

1.5 “Affiliate” means, with respect to a specified Person, any other Person, directly or indirectly, controlling, controlled by, or under common control with the Person specified. “Control” (including, with correlative meaning, “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

1.6 “Agreement” shall have the meaning set forth in the Preamble.

1.7 “Buyer” shall have the meaning set forth in the preamble to this Agreement.

1.8 “Buyer Material Adverse Effect” means a material adverse effect on the business, assets, operations, prospects or condition (financial or otherwise) of Buyer and its Affiliates, taken as a whole, excluding any change or development resulting from (i) events adversely affecting any of the principal markets served by the business of Buyer or any of its Affiliates or (ii) general economic conditions, including changes in the economies of any of the jurisdictions in which Buyer or any of its Affiliates conduct business.

1.9 “Closing” shall have the meaning set forth in Section 2.3.

1.10 “Communications Act” means the Communications Act of 1934, as amended.

1.11 “Consideration” shall have the meaning set forth in Section 2.2.

1.12 “Contract Rights” means all rights and remedies of Rainbow DBS under the Lockheed Contract, including any indemnities, warranty payments, support services, Flight Operations (TT&C) and guarantees due from the manufacturer of Rainbow-1 and its subcontractors, but excluding any obligations remaining to be performed by Rainbow DBS under the Lockheed Contract.

1.13 “DBS” means direct broadcast satellite.

1.14 “Deliverable Data” means all specifications, technical drawings and data, design data, test data and test results and other data and documentation regarding Rainbow-1 provided to Rainbow DBS by the manufacturer of Rainbow-1 and/or any of such manufacturer’s subcontractors; all operational and maintenance logs and data for Rainbow-1 generated or maintained by or for Rainbow DBS; and all data regarding any and all anomalies identified on or experienced by Rainbow-1, including without limitation the results of any anomaly investigations.

1.15 “Execution Date” shall have the meaning set forth in the preamble to this Agreement.

1.16 “FCC” means the Federal Communications Commission and any successor agency thereto.

1.17 “FCC Licenses” means (i) the permanent FCC authorization to construct, launch and operate Rainbow-1 in the Direct Broadcast Satellite Service over 11 frequency channels (1-21 odd) at the 61.5° West Longitude orbital location (FCC DBS8701); (ii) the FCC special temporary authority to operate the Unlicensed Frequency Channels at the 61.5° West Longitude orbital location (FCC File No. SAT-STA-20030623-00122, extension requests pending, FCC File No. SAT-STA-20040319-00081; SAT-STA-20040924-00191); and (iii) any application for modification of any of the foregoing licenses that may be required to be filed hereafter until Closing.

1.18 “Governmental Entities” shall have the meaning set forth in Section 3.1.2.

1.19 “Ground Equipment” means all personal property of Rainbow DBS situated on the real property located in Black Hawk, South Dakota, referred to in Section 4.3.6.

1.20 “Hart-Scott-Rodino Act” or “HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

1.21 “Indemnified Party” shall have the meaning set forth in Section 6.5.1.

1.22 “Indemnitor” shall have the meaning set forth in Section 6.5.1.

1.23 “Liability” means any liability or obligation of any nature (whether known or unknown, whether absolute or contingent, whether liquidated or unliquidated, whether due or to become due and whether accrued or unaccrued), including without limitation any liability for Taxes.

1.24 “Liens” means any lien, mortgage, deed of trust, pledge, hypothecation, assignment, security interest, charge, easement, encumbrance, preference, option, restrictive covenant, priority or other security agreement or preferential arrangement of any kind or nature (including without limitation any conditional sale or other title retention agreement having substantially the same economic effect as any of the foregoing).

1.25 "Lockheed Contract" mean the Contract between R/L DBS Company, LLC (now known as Rainbow DBS) and Lockheed Martin Corporation for Rainbow-1, dated as of May 1, 2001, as previously amended through the Execution Date.

1.26 "Operating Transponder" means a Transponder that, at Closing has been determined based upon the results of the in-orbit testing contemplated pursuant to Section 4.3.9 to meet the applicable Satellite Performance Specifications, including through periods of eclipse, or that Buyer, using reasonable business judgment, and after examining all reasonable technical alternatives for correcting any failures of such Transponder to meet the Satellite Performance Specifications, determines can be used for its intended commercial communications purposes. In the event a component of Rainbow-1 fails, all applicable spare components available must be used before an affected Transponder ceases to be an Operating Transponder.

1.27 "Ordinary Course of Business" means the ordinary course of business consistent with past custom and practice (including without limitation with respect to quantity and frequency), but in all events at least the same degree of care as would be exercised by a reasonably prudent satellite owner and operator.

1.28 "Partial Loss" means that, at Closing and as determined based upon the results of the in-orbit testing contemplated pursuant to Section 4.3.9, either Actual CONUS Beam Operational Capability is less than Stated CONUS Beam Operational Capability or Actual Spot Beam Operational Capability is less than Stated Spot Beam Operational Capability, but in either case Rainbow-1 is not a Total Loss.

1.29 "Person" means an individual, partnership, trust, corporation, joint venture, limited liability company, association, government bureau or agency or other entity of whatever kind or nature.

1.30 "Rainbow-1" shall have the meaning set forth in the Recitals.

1.31 "Rainbow DBS" shall have the meaning set forth in the preamble to this Agreement.

1.32 "Regulatory Approvals" means (a) all approvals from the FCC (or a bureau or subdivision thereof acting under delegated authority) required for the assignment of the FCC Licenses provided that such approvals are effective, have not been stayed, enjoined or reconsidered by the FCC or any bureau thereof or by any court, and the period for such reconsideration by the FCC or any bureau thereof or by any court has elapsed, and (b) the expiration or termination of the waiting period (and any extensions thereof) with respect to this transaction under the HSR Act or the entry of a final non-appealable consent judgment by a court of competent jurisdiction that permits such transaction.

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

1.34 "Remaining Mission Life" means fifteen (15) years minus the number of days between July 27, 2003 and the Closing.

1.35 "Satellite Performance Specifications" means the performance specifications for Rainbow-1 in the form of Appendix A hereto.

1.36 "Stated CONUS Beam Operational Capability" means, when Rainbow-1 is configured to operate with the maximum number of CONUS beam Transponders, thirteen (13) CONUS beam Operating Transponders operating in boost mode, multiplied by the Remaining Mission Life, and expressed in Transponder years and/or portions thereof. For example, if the Remaining Mission Life at Closing is twelve (12) years, the stated CONUS Beam Operational Capability would equal one hundred fifty-six (156) CONUS beam Transponder years.

1.37 "Stated Spot Beam Operational Capability" means, when Rainbow-1 is configured to operate with the maximum number of spot beam Transponders, one hundred thirty (130) spot beam Operating Transponders multiplied by the Remaining Mission Life, and expressed in Transponder years and/or portions thereof. For example, if the Remaining Mission Life at Closing is twelve (12) years, the Stated Spot Beam Operational Capability would equal one thousand five hundred sixty (1,560) spot beam Transponder years.

1.38 "Survival Date" shall have the meaning set forth in Section 5.3.

1.39 "Taxes" shall have the meaning set forth in Section 2.5.

1.41 "Transponder" means, individually, those sets of equipment within the communications subsystem of Rainbow-1 that provide a discrete path to receive communications signals from Earth, translate and amplify such signals, and transmit them to Earth.

1.42 "TT&C" means tracking, telemetry and control functions.

1.43 "Unconditional" with respect to any Regulatory Approvals or other consents means that such Regulatory Approvals or other consents contain no conditions that would (a) have a material adverse effect (i) on either Party's ability to consummate the transactions contemplated by this Agreement, or (ii) on Buyer's ability to own and operate the Acquired Assets after Closing, or (b) create any obligation on the part of Buyer to accept (as a condition to receipt of such Regulatory Approvals or otherwise): (i) any restriction on the right of Buyer to operate pursuant to (A) the FCC Licenses (except with respect to the Unlicensed Frequency Channels),

other than (1) any restrictions generally imposed on operators of high-powered DBS services, by applicable Regulatory Provisions and restrictions of the types generally and customarily imposed by the FCC on operators of high-powered DBS services, and (2) such other restrictions, which, individually or in the aggregate, do not have an Acquired Asset Material Adverse Effect or a Buyer Material Adverse Effect; or (ii)

other than (A) any restrictions generally imposed on operators of high-powered DBS services, by applicable regulatory provisions and restrictions of the types generally and customarily imposed by the FCC on operators of high-powered DBS services, and (B) such other restrictions, which, individually or in the aggregate, do not have an Buyer Material Adverse Effect.

1.44 "Unlicensed Frequency Channels" means DBS frequency channels 23 and 24 at the 61.5° West Longitude orbital location that have not been assigned permanently by the FCC and for which Rainbow DBS currently holds special temporary authority to operate from the FCC (File Nos. SAT-STA-20030623-00122, SAT-STA-20040319-00081 and SAT-STA-20040924-00191 (extension requests pending)).

2. PURCHASE AND SALE

2.1 Assets to be Transferred. At the Closing, in accordance with and subject to the terms and conditions set forth in this Agreement, Rainbow DBS agrees to sell, assign, transfer and convey to Buyer, or at Buyer's option, one or more Affiliates of Buyer, all of Rainbow DBS' right, title and interest in and to the Acquired Assets, free and clear of any and all Liens; provided that if the FCC does not permit Rainbow DBS to assign the portion of the FCC Licenses authorizing operation of the Unlicensed Frequency Channels, or imposes any conditions or restrictions on such assignment of the Unlicensed Frequency Channels whatsoever, (i) the Parties will proceed with the Closing on all other Acquired Assets, (ii) there shall be no adjustment to the Consideration paid by Buyer hereunder, and

(iii) Rainbow DBS shall have no Liability arising out of the FCC's refusal to permit the assignment of the portion of the FCC Licenses authorizing operation of the Unlicensed Frequency Channels or any conditions or restrictions placed on such assignment of the Unlicensed Frequency Channels. Except for obligations arising after Closing in the Ordinary Course of Business under the Contract Rights and the FCC Licenses, Buyer will take the Acquired Assets free of, and Buyer is not assuming any Liabilities of Rainbow DBS.

2.2 Consideration. As consideration for the sale, assignment, transfer and conveyance of the Acquired Assets hereunder, in accordance with and subject to the terms and conditions set forth in this Agreement, Buyer agrees to pay Rainbow DBS at Closing the sum of Two Hundred Million United States Dollars (\$200,000,000) subject to adjustment as set forth in Section 4.3.11 (the "Consideration").

2.3 The Closing. The closing of the transactions contemplated by this Agreement (the "Closing") shall occur at 9:00 a.m. local time on the fifth (5th) business day following the date on which all conditions to closing in Article 3 have been satisfied or waived, at the offices of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., Chrysler Center, 666 Third Avenue, New York, NY 10017, or on such other date or at such other time or place as the Parties may agree.

2.4 Deliveries at Closing.

2.4.1 *Rainbow Deliveries.* At the Closing, Rainbow DBS shall deliver to Buyer (i) a bill of sale in the form of Appendix B and other assignments and instruments of transfer reasonably requested by Buyer, all in form and substance reasonably acceptable to Buyer, transferring good and marketable title to all of the Acquired Assets to Buyer, free and clear of any and all Liens, (ii) a certificate dated as of the date of Closing, containing a true and accurate description of the performance specifications of Rainbow-1 as of the Closing, and as determined based upon the results of the in-orbit testing contemplated pursuant to Section 4.3.9, (iii) the certificate specified in Section 3.1.1, and (iv) the Deliverable Data.

2.4.2 *Buyer Deliveries.* At the Closing, Buyer shall deliver to Rainbow DBS (i) the Consideration by wire transfer to an account designated in writing by Rainbow DBS not less than five (5) business days prior to Closing, and (ii) the certificate specified in Section 3.2.1.

2.6 Further Assurances. At any time and from time to time after the Closing, at the request of Buyer and without further consideration, Rainbow DBS will promptly execute and deliver such other instruments of sale, transfer, conveyance, assignment and confirmation, and will, without delay, take such further action, as may be reasonably requested in order to more effectively transfer, convey and assign to Buyer, and to confirm Buyer's title free and clear of all Liens (other than Liens arising under contracts to which Buyer or its Affiliates are a party) to, the Acquired Assets, and each of the Parties shall execute such other documents and take such further action as may be reasonably required or desirable to carry out the provisions of this Agreement and the transactions contemplated hereby.

3. *CONDITIONS TO CLOSING*

3.1 Conditions to Obligation of Buyer. The obligation of Buyer to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, at or prior to Closing, of each of the following conditions (unless waived by Buyer):

3.1.1 *Representations, Warranties and Covenants*. The representations and warranties of Rainbow DBS contained in this Agreement shall be true and correct in all material respects as of the Execution Date and the Closing, and all the covenants contained in this Agreement to be complied with by Rainbow DBS at or before the Closing shall have been complied with in all material respects, and Buyer shall have received a certificate of Rainbow DBS to such effect signed by a duly authorized officer of Rainbow DBS.

3.1.2 *Compliance with Law*. There shall be no statute, law, judgment, decree, injunction, rule or order of any federal, state, local or foreign government, governmental authority, governmental department, commission, administrative or regulatory agency, instrumentality, court or arbitrator ("Governmental Entities") outstanding or in effect that prohibits, restricts, conditions (except for conditions that, despite their existence would make the matter Unconditional hereunder) or delays consummation of the transactions contemplated by this Agreement. There shall be no litigation pending that would enjoin, restrain, condition (except for conditions that, despite their existence would make the matter Unconditional hereunder), delay or prohibit the consummation of the transactions contemplated by this Agreement.

3.1.3 *Regulatory Approvals*. The Parties shall have received the Unconditional grant of all Regulatory Approvals, except for any approval from the FCC to assign Rainbow DBS' special temporary authority with respect to the Unlicensed Frequency Channels.

3.1.4 *Third Party Consents.* Rainbow DBS shall have obtained the necessary consent from Lockheed Martin Corporation to assign the Contract Rights to Buyer.

3.1.5 *Total Loss.* No Total Loss shall have occurred on or before the Closing.

3.1.6 *In-orbit Testing.* The in-orbit testing contemplated by Section 4.3.9 below shall have been completed and the report on such testing shall have been delivered as specified in Section 4.3.9.

3.2 Conditions to Obligation of Rainbow DBS. The obligation of Rainbow DBS to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, at or prior to the Closing, of each of the following conditions (unless waived by Rainbow DBS):

3.2.1 *Representations, Warranties and Covenants.* The representations and warranties of Buyer contained in this Agreement shall be true and correct in all material respects as of the Execution Date and the Closing, and all the covenants contained in this Agreement to be complied with by Buyer at or before the Closing shall have been complied with in all material respects and Rainbow DBS shall have received a certificate of Buyer to such effect signed by a duly authorized officer of Buyer.

3.2.2 *Compliance with Law.* There shall be no statute, law, judgment, decree, injunction, rule or order of any Governmental Entities outstanding or in effect that prohibits, restricts, conditions (except for conditions that, despite their existence would make the matter Unconditional hereunder) or delays consummation of the transactions contemplated by this Agreement. There shall be no litigation pending that would enjoin, restrain, condition (except for conditions that, despite their existence would make the matter Unconditional hereunder), delay or prohibit the consummation of the transactions contemplated by this Agreement.

3.2.3 *Regulatory Approvals.* The Parties shall have received the Unconditional grant of all Regulatory Approvals, except for any approval from the FCC to assign Rainbow DBS' special temporary authority with respect to the Unlicensed Frequency Channels.

3.2.4 *Third Party Consents.* Rainbow DBS shall have obtained the necessary consent from Lockheed Martin Corporation to assign the Contract Rights to Buyer.

4. REPRESENTATIONS, WARRANTIES AND COVENANTS

4.1 Representations, Warranties and Covenants of Rainbow DBS. Rainbow DBS represents, warrants and covenants to Buyer as follows:

4.1.1 *Organization of Rainbow DBS.* Rainbow DBS is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. Rainbow DBS has all requisite power and authority to own and operate the Acquired Assets as currently owned and operated by it. Rainbow DBS is duly qualified or licensed as a foreign entity to conduct business, and is in good standing, under the laws of each jurisdiction where the character of the properties owned, leased or operated by it, or the nature of its activities, makes such qualification or licensing necessary, except where the failure to do so would not have a material adverse effect on its ability to consummate the transactions contemplated by this Agreement.

4.1.2 *Authority.* Rainbow DBS has all requisite power and authority to execute and deliver this Agreement and the other documents executed and delivered pursuant hereto, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the other documents executed and delivered pursuant hereto, the performance of Rainbow DBS' obligations hereunder and the consummation of the transactions contemplated hereby, have been duly authorized by all necessary action on the part of Rainbow DBS and no other proceedings are necessary in connection therewith. No vote of the holders of the outstanding shares of any class of Rainbow DBS' outstanding securities is necessary to approve the consummation of the transactions contemplated by this Agreement.

4.1.3 *Binding Obligation.* This Agreement and the other documents delivered pursuant hereto have been duly executed and delivered by Rainbow DBS and constitute valid and binding obligations of Rainbow DBS, enforceable against it in accordance with their terms.

4.1.4 *No Conflicts.* Except with respect to matters that would not have a material adverse effect on Rainbow DBS' ability to consummate the transactions contemplated by this Agreement, the execution and delivery of this Agreement and the other documents delivered pursuant hereto do not, and the performance by the Rainbow DBS of its obligations hereunder and the consummation of the transactions contemplated hereby, will not (A) conflict with or result in any violation of, or default (with or without notice or lapse of time, or both), or (B) give rise to any right of termination, cancellation or acceleration of any obligation or to a loss of a material benefit under, (i) any provision of Rainbow DBS' organizational documents or those of any Affiliate of Rainbow DBS, (ii) any material contract (including the Lockheed Contract) to which Rainbow DBS or any of its Affiliates is a party, or (iii) subject to the governmental filings and other matters referred to in Section 4.1.5, any permit, license, franchise, statute, law, ordinance, rule, regulation, writ, injunction, judgment, decree or order applicable to Rainbow DBS or any of its Affiliates, or by which any of their respective properties or assets may be bound or affected. Except for any Liens arising under contracts to which Buyer or its Affiliates are a party, the consummation of the transactions contemplated by this Agreement will not result in any Liens on the Acquired Assets.

4.1.5 *Governmental Consents.* No consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Entity is required by or with respect to Rainbow DBS or any of its Affiliates in connection with the execution and delivery of this Agreement and the other documents delivered pursuant hereto and the consummation of the transactions contemplated hereby, except for (i) the Unconditional grant of the Regulatory Approvals, and (ii) such consents, approvals, orders or authorizations, or registrations, declarations or filings which if not obtained or made will not, or could not reasonably be expected to, adversely affect in any material respect the transactions contemplated by this Agreement.

4.1.6 *FCC Licenses and Acquired Assets.* Except for Rainbow DBS' special temporary authorization for the Unlicensed Frequency Channels for which requests for extension were timely filed and are presently pending before the FCC, each of the FCC Licenses is valid and in full force and effect and none of the FCC Licenses has been modified, canceled, revoked, or conditioned, except for the conditions expressly stated therein or which, despite their existence, would make the matter Unconditional hereunder. None of the Acquired Assets has been sold, conveyed, pledged, assigned or transferred to any other Person, and no Person (other than Buyer or Rainbow DBS) has any present or future preemptive right, right of first refusal or other right to acquire, license or use any of the Acquired Assets. Rainbow DBS is the licensee under, and controls, the FCC Licenses and is the owner of, and controls, the other Acquired Assets. The Acquired Assets are not subject to any Liens. Rainbow DBS has timely and completely performed all material obligations required to date under the FCC Licenses. Rainbow DBS has taken all required actions to date to achieve international coordination of the Acquired Assets, including, without limitation, cooperating with the FCC in filing and prosecuting all necessary modifications to the International Telecommunication Union's Region 2 Broadcasting-Satellite Service Plan and associated feeder link plan set forth at Appendices 30 and 30A to the International Radio Regulations, including TT&C for the system, and such Acquired Assets have been designed and are in compliance with, and Rainbow DBS has been, and is, in compliance with, all material obligations required to date under the FCC Licenses and the applicable Regulatory Provisions. Rainbow DBS is not aware of any facts or circumstances relating to the FCC qualifications of Rainbow DBS or any of its Affiliates or otherwise, or to the International Telecommunication Union's coordination process, that would prevent or materially delay the Unconditional grant of the relevant Regulatory Approvals by the FCC or the modification of the International Telecommunication Union's Region 2 Broadcasting-Satellite Service Plan and associated feeder link plan. Except for Rainbow DBS' pending applications to extend its temporary authority for the Unlicensed Frequency Channels, there is no pending, or, to the knowledge of the Rainbow DBS, threatened, application, petition, objection or other pleading with the FCC or other Governmental Entity which challenges the validity of, or any rights of the holder under, the FCC Licenses and no pending or, to the knowledge of Rainbow DBS, threatened FCC enforcement proceeding is underway regarding the FCC Licenses. Rainbow DBS and its Affiliates have been and are in compliance with the Communications Act and the rules and regulations of the FCC, except where such non-compliance could not reasonably be

expected to have a material adverse effect on the transactions contemplated by this Agreement.

4.1.7 *Compliance with Laws.* Rainbow DBS and its Affiliates, and their ownership and operation of the Acquired Assets, have, at all times, been and are in compliance with all, federal, state, local and foreign statutes, laws, rules, regulations, judgments, orders, writs, injunctions and decrees, and are not in violation of, and have not received any actual or, to the knowledge of Rainbow DBS, threatened claim or notice of violation of, any such statutes, laws rules, regulations, judgments, orders, writs, injunctions and decrees with respect to the conduct of its business related to, or the ownership and operation of, the Acquired Assets, except for such instances of non-compliance or violation, if any, which could not reasonably be expected to have a material adverse effect on the transactions contemplated by this Agreement. Rainbow DBS and its Affiliates have complied with, and Rainbow-1 has been designed and constructed in compliance with, all material Regulatory Provisions applicable to the Acquired Assets.

4.1.8 *Agreements, Contracts and Commitments.* Rainbow DBS has supplied to Buyer true, complete (excluding certain redactions required by Lockheed Martin Corporation) and correct copies of all agreements containing Contract Rights, and each such agreement is in full force and effect and is the valid and legally binding obligation of Rainbow DBS, Rainbow DBS' Affiliates and the other parties thereto, enforceable in accordance with their respective terms, and, subject to obtaining the consent of Lockheed Martin Corporation, is freely and fully assignable to Buyer free and clear of all Liens without penalty or other adverse consequences. Neither Rainbow DBS, Rainbow DBS' Affiliates nor, to the knowledge of Rainbow DBS or Rainbow DBS' Affiliates, any other party to such agreement is in breach of, or default under, any such agreement. Neither Rainbow DBS nor Rainbow DBS' Affiliates has received or delivered any notice of default under any such agreement and no event, occurrence or condition exists which, with the passage of time or the giving of notice or both, would constitute a default under any such agreement by Rainbow DBS, Rainbow DBS' Affiliates or to Rainbow DBS' knowledge, any other party thereto. Neither Rainbow DBS nor Rainbow DBS' Affiliates has received notice of the pending or threatened cancellation, modification, revocation or termination of any such agreement, nor does Rainbow DBS have knowledge of any facts or circumstances which could reasonably be expected to lead to any such cancellation, modification, revocation or termination. Rainbow DBS has performed all of its required obligations under the Lockheed Contract and, between the Execution Date and the Closing, will not (i) terminate the Lockheed Contract or (ii) amend or modify the Lockheed Contract in a manner that would have a material adverse effect on the Contract Rights. Rainbow DBS has the Contract Right to require Lockheed Martin Corporation to provide Flight Operations (as defined in the Lockheed Contract) for Rainbow-1 in accordance with the terms and conditions of the Lockheed Contract at no additional charge through August 28, 2005.

4.1.9 *Acquired Assets.* Rainbow DBS has made available and, between now and the Closing will continue to make available to Buyer, at Rainbow DBS' offices, and will deliver to Buyer at Closing, all Deliverable Data related to Rainbow-1, all waivers and

deviations from the Rainbow-1 performance specification approved by Rainbow DBS, all variations from the Satellite Performance Specifications occurring and observed on Rainbow-1, all anomalies occurring and observed on Rainbow-1 since its launch and all actions taken with respect thereto. The health and operational reports provided to Buyer regarding the status of Rainbow-1 pursuant to Section 4.3.3 are the originals, or true and correct copies of, the health and operational reports delivered to Rainbow DBS by Lockheed Martin Corporation. Rainbow-1 and the other Acquired Assets has not been sold, conveyed, pledged, assigned or transferred to any other Person, and no Person (other than Buyer or Rainbow DBS) has any right to acquire, or has any other economic interest in, Rainbow-1 and the other Acquired Assets. No other Person except Rainbow DBS has rights to access or use the Acquired Assets. None of the Acquired Assets is subject to any Liens, and, upon Closing, Buyer shall acquire good and marketable title to the Acquired Assets, free and clear of any Liens. From the date of its acquisition of Rainbow-1, Rainbow DBS has, or has caused, Rainbow-1 to be operated and maintained in accordance with the requirements of Rainbow-1's manufacturer and pursuant to procedures and processes that meet general standards in the industry for the operation and maintenance of communications satellites. Rainbow DBS owns Rainbow-1 free and clear of any Liens.

4.1.10 *Litigation.* There is no suit, action, arbitration, claim, governmental or other proceeding or investigation before any Governmental Entity pending or, to the knowledge of the Rainbow DBS, threatened, against Rainbow DBS or any of its Affiliates related to the Acquired Assets or the transactions contemplated by this Agreement which, if decided adversely could reasonably be expected to have a material adverse effect on Rainbow DBS' ability to consummate the transactions contemplated by this Agreement. There are no agreements with any taxing authority with respect to the taxation of the Acquired Assets or income therefrom.

4.1.11 *Performance Specifications.* The Satellite Performance Specifications attached as Appendix A hereto (Docket No. 8584123, Revision B, June 20, 2002, issued and released August 19, 2002) is the revision of the Rainbow-1 satellite performance specifications in effect on the Execution Date, under the Lockheed Contract, and includes all waivers and deviations that have been approved by Rainbow DBS as of the Execution Date.

4.2 Representations, Warranties and Covenants of Buyer. Buyer represents, warrants and covenants to Rainbow DBS as follows:

4.2.1 *Organization of Buyer.* Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Colorado. Buyer is duly qualified or licensed as a foreign entity to conduct business, and is in good standing, under the laws of each jurisdiction where the character of the properties owned, leased or operated by it, or the nature of its activities, makes such qualification or licensing necessary, except where the failure to do so would not have a material adverse effect on its ability to consummate the transactions contemplated by this Agreement.

4.2.2 *Authority.* Buyer has all requisite power and authority to execute and deliver this Agreement and the other documents executed and delivered pursuant hereto, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the other documents delivered pursuant hereto, the performance of Buyer's obligations hereunder and the consummation of the transactions contemplated hereby, have been duly authorized by all necessary action on the part of the Buyer and no other proceedings are necessary in connection therewith. No vote of the holders of the outstanding shares of any class of Buyer's outstanding securities is necessary to approve the consummation of the transactions contemplated by this Agreement.

4.2.3 *Binding Obligation.* This Agreement and the other documents delivered pursuant hereto have been duly executed and delivered by Buyer and constitute valid and binding obligations of Buyer, enforceable against it in accordance with their terms.

4.2.4 *No Conflicts.* Except with respect to matters that would not have a material adverse effect on Buyer's ability to consummate the transactions contemplated by this Agreement, the execution and delivery of this Agreement and the other documents delivered pursuant hereto do not, and the performance by Buyer of its obligations hereunder and the consummation of the transactions contemplated hereby, will not (A) conflict with or result in any violation of, or default (with or without notice or lapse of time, or both), or (B) give rise to any right of termination, cancellation or acceleration of any obligation or to a loss of a material benefit under (i) any provision of Buyer's organizational documents or those of any Affiliate of Buyer, (ii) any material contract to which Buyer or any of its Affiliates is a party, or (iii) subject to the governmental filings and other matters referred to in Section 4.2.5, any permit, license, franchise, statute, law, ordinance, rule, regulation, writ, injunction, judgment, decree or order applicable to Buyer or any of its Affiliates, or by which any of their respective properties or assets may be bound or affected.

4.2.5 *Governmental Consents.* No consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Entity is required by or with respect to Buyer or any of its Affiliates in connection with the execution and delivery of this Agreement and the other documents executed and delivered pursuant hereto, and the consummation of the transactions contemplated hereby, except for: (i) the Unconditional grant of the Regulatory Approvals and (ii) such consents, approvals, orders or

authorizations, or registrations, declarations or filings which if not obtained or made, will not or could not reasonably be expected to have a material adverse effect on Buyer's ability to consummate the transactions contemplated by this Agreement.

4.2.6 *Compliance with Laws.* Buyer and its Affiliates have, at all times, been and are in compliance with all federal, state, local and foreign statutes, laws, rules, regulations, judgments, orders, writs, injunctions and decrees, and are not in violation of and have not received any written claim or notice of violation of, any such statutes, laws, rules, regulations, judgments, orders, writs, injunctions and decrees with respect to the conduct of its business related to the acquisition and operation of the Acquired Assets, except for such instances of non-compliance or violation, if any, which could not reasonably be expected to have a material adverse effect on Buyer's ability to consummate the transactions contemplated by this Agreement.

4.2.7 *Litigation.* There is no suit, action, arbitration, claim, governmental or other proceeding or investigation before any Governmental Entity pending or, to the knowledge of the Buyer, threatened, against Buyer or any of its Affiliates related to the Acquired Assets or the transactions contemplated by this Agreement which, if decided adversely, could reasonably be expected to have a material adverse effect on Buyer's ability to consummate the transactions contemplated by this Agreement.

4.2.8 *FCC Licenses.* There is no pending, or, to the knowledge of Buyer, threatened, application, petition, objection or other pleading with the FCC or other Governmental Entity which challenges the ability of Buyer to acquire the FCC Licenses, other than the FCC Order, FCC 04-271, released December 3, 2004, in AUC 03-52, relating to the Unlicensed Frequencies. To the knowledge of Buyer there are no circumstances or actual or threatened actions that could result in the imposition of any conditions (other than those deemed Unconditional hereunder) in connection with the Regulatory Approvals. Buyer and its Affiliates have been and are in compliance with the Communications Act and the rules and regulations of the FCC, except where such non-compliance could not reasonably be expected to have a material adverse effect on Buyer's ability to consummate the transactions contemplated by this Agreement.

4.2.9 *Brokers' Fees.* Neither Buyer nor any of its Affiliates has any Liability or obligation to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement for which Rainbow DBS would be liable.

4.3 Further Agreements of the Parties.

4.3.1 *General.* Each of the Parties will cooperate to its fullest extent and use its respective best efforts to take all action and to do all things necessary, proper, or advisable to consummate and make effective the transactions contemplated by this Agreement (including without limitation satisfying the closing conditions set forth in Article 3 above) as soon as practicable following the date of this Agreement.

4.3.2 Application for Government Approvals. Within ten (10) days of the Execution Date, the Parties shall jointly file all applications necessary for the Unconditional grant of the Regulatory Approvals. In addition to, but not in limitation of the Parties' obligations under Section 4.3.1 above, each of Buyer and Rainbow DBS shall take all steps, and shall supply to the other Party and/or to Governmental Entities all information reasonably necessary to obtain the Unconditional grant of the Regulatory Approvals. The Parties shall split the costs of any filing fees necessary in connection with the joint application for the Regulatory Approvals.

4.3.3 Ongoing Data. After the date hereof and until the Closing, Rainbow DBS shall deliver to Buyer (i) prompt notice of any anomalies on Rainbow-1, or of any anomaly notice or alert from the manufacturer of Rainbow-1, and (ii) monthly health and operational reports reflecting the performance of Rainbow-1, and any anomalies thereto, during the preceding month.

4.3.4 Operation of Rainbow-1. Title to and risk of loss of the Acquired Assets shall remain with Rainbow DBS until Closing, and at Closing shall transfer to Buyer. After the date hereof and until the Closing, Rainbow DBS shall cause Rainbow-1 to be operated and maintained (including the provision of TT&C) in accordance with the FCC Licenses and all applicable laws, rules and regulations, and with the same degree of diligence and care that a reasonably prudent satellite owner and operator would use.

4.3.5 TT&C. Commencing sixty (60) days prior to the later to occur of August 28, 2005 or the scheduled Closing, Rainbow DBS shall coordinate with Buyer and the manufacturer of Rainbow-1 (which currently provides TT&C for Rainbow-1) to transition in a safe and effective manner the TT&C, operation and maintenance of Rainbow-1 on the later to occur of August 28, 2005 or the date of Closing, and, effective as of the later to occur of August 28, 2005 or the date of Closing, the TT&C, operation and maintenance of Rainbow-1 shall be the responsibility of Buyer.

4.3.6 Black Hawk Facilities. Within five (5) business days after the execution of this Agreement, Rainbow DBS and Buyer will enter into a Letter Agreement regarding property located in Black Hawk, South Dakota, currently owned by Rainbow DBS and used by Rainbow DBS to support telemetry, tracking and control ("TT&C") and beacon tracking for Rainbow-1 (the "Black Hawk Facilities"). If the closing of the transactions under such agreement (the "Black Hawk Closing") does not occur simultaneous with the Closing under this Agreement, Rainbow DBS will permit Buyer, the manufacturer of Rainbow-1 or any other third-party designated by Buyer (as applicable) to use, from the Closing until the earlier of the Black Hawk Closing or one (1) year after the Closing hereunder, the Black Hawk Facilities to support the provision of TT&C and beacon tracking for Rainbow-1. Buyer will reimburse Rainbow DBS on a monthly basis for that portion of the operating costs of the Black Hawk Facility incurred by Rainbow DBS that are reasonably allocable to supporting TT&C and beacon tracking for Rainbow-1. If, at the end of such one (1) year period, the Black Hawk Closing has still not occurred, Buyer shall cease all use of the Black Hawk Facilities and Buyer shall remove the Ground Equipment from the Black Hawk

property. Except in the case of gross negligence or willful misconduct, Rainbow DBS will have no liability whatsoever for any damage or loss to Rainbow-1 after Closing resulting from any malfunction or improper operation of the Black Hawk Facilities during any period that Buyer is using the Black Hawk Facilities under this Section 4.3.6. After the Black Hawk Closing, Rainbow DBS shall have no further obligations or liabilities to Buyer under this Section 4.3.6.

4.3.8 *Cooperation; Consents.* Each Party covenants and agrees that, during the period between the date hereof and the Closing, it shall cooperate with the other and use its best efforts to (i) cause the conditions to Closing set forth in Article 3 to be satisfied; and (ii) obtain any required governmental and third party consents and make and obtain effectiveness of all filings necessary for the consummation of the transactions contemplated hereunder.

4.3.9 *In-Orbit Testing and Test Plan.* Commencing as soon as reasonably practicable after the receipt of all Regulatory Approvals, Rainbow DBS, with the assistance of Lockheed Martin Corporation, shall conduct an in-orbit test of Rainbow-1 in accordance with the test plan attached hereto as Appendix C to ascertain (i) the then-current performance of Rainbow-1 vis-à-vis the Spacecraft Performance Specifications, and (ii) the Actual CONUS Beam Operational Capability and the Actual Spot Beam Operational Capability based on such performance, including without limitation the performance of the solar arrays, batteries, propulsion system and communications payload of Rainbow-1. It is anticipated that such in-orbit testing can be completed in no more than two (2) days. Buyer may observe such in-orbit tests at the test facility. At the conclusion of the test, Rainbow DBS, with assistance of Lockheed Martin Corporation, shall deliver a report on the test results to Buyer which report shall state the Actual CONUS Beam Operational Capability and the Actual Spot Beam Operational Capability based on the results of the in-orbit tests.

4.3.10 *Special Provision Relating to Total Loss.* In the event that a Total Loss of Rainbow-1 occurs at or before the Closing, Buyer shall have the right, in its sole discretion for any reason or no reason, to terminate this Agreement in accordance with the provisions of Section 5.1(iii) below.

4.3.12 *No Solicitation.* Except for the transactions contemplated by this Agreement, from and after the date of the Execution Date, until the date of receipt of the Regulatory Approvals, Rainbow DBS shall not, nor shall it authorize any officer, director or employee of, or any investment banker, attorney, accountant, or other representative retained by, any one of them to, directly or indirectly, solicit, initiate, participate in, encourage or entertain (including by way of furnishing information) discussions, offers or proposals for the purpose or with the intention of leading to any proposal or offer from any Person to acquire any portion of the Acquired Assets.

4.3.13 *Special Provision Relating to Insurance.*

(a) At the request of Buyer, Rainbow DBS, using International Space Brokers (ISB) or such other broker as may be designated by Buyer from time to time as its broker, shall obtain quotes for in-orbit insurance for Rainbow-1 covering the period from and after the Execution Date through and including Closing (or any portion of such period) on such terms and conditions (including without limitation the sum insured) as Buyer may from time to time request. In the event that Buyer, in its sole discretion, elects to accept one of the quotes obtained by Rainbow DBS, then Buyer shall direct Rainbow DBS in writing to procure such insurance (the "Insurance Policy") at Buyer's expense. Upon Rainbow DBS's receipt of such written request, Rainbow DBS shall promptly procure the Insurance Policy and Buyer will pay to Rainbow DBS, or directly to the underwriters and/or insurers, as applicable under the Insurance Policy all amounts due under such Insurance Policy.

(b) Buyer shall be the named insured and loss payee under any insurance policy placed by Rainbow DBS under this Section 4.3.13. In the event that, notwithstanding the foregoing, any loss is paid to Rainbow DBS under the Insurance Policy, then Rainbow DBS agrees to hold such amounts in trust for Buyer and to pay such amounts to Buyer as soon as reasonably practicable (and in any event within three (3) business days) after Rainbow DBS receives the corresponding payment from the insurers. Notwithstanding the foregoing, Rainbow DBS shall reasonably cooperate with Buyer in recovering all amounts due from the insurers under the Insurance Policy, in which case Buyer shall be entitled to direct and control any litigation and settlement negotiations arising in connection therewith and Buyer shall (whether incurred by Buyer or Rainbow DBS) pay all costs of litigation and administrative costs and expenses, including attorney's fees, incurred in connection with the prosecution of any such litigation. Buyer shall comply with all material terms and conditions in the Insurance Policy necessary for the payment of claims, including any terms and conditions relating to salvage.

(c) In lieu of requesting that Rainbow DBS procure insurance under Section 4.3.13(a) and (b), above, Buyer, at its option, may procure insurance directly for Rainbow-1. Regardless of whether Buyer or Rainbow DBS is attempting to procure insurance regarding risks relating to the in orbit operation of Rainbow-1, Rainbow DBS shall, at its own cost and expense, timely provide all reasonable assistance requested by Buyer in connection with the procurement of insurance for Rainbow-1, provide such information regarding Rainbow-1 as is reasonably requested by Buyer's or Rainbow DBS's brokers and underwriters, and perform technical presentations to brokers and underwriters. In addition, Rainbow DBS shall provide such information regarding Rainbow-1 as is reasonably requested by the insurer(s) and will cooperate in any insurance reviews.

5. TERMINATION

5.1 Termination of Agreement.

The Parties may terminate this Agreement only as provided below:

(i) Buyer and Rainbow DBS may terminate this Agreement by mutual agreement in writing;

(ii) In the event that the conditions to Closing for the benefit of a Party set forth in Article 3 have not been met by the other Party on or before the first anniversary of the Execution Date, the Party for whose benefit conditions have not been met may terminate this Agreement upon notice to the other Party; provided that if the condition to Closing that has not been met is the Regulatory Approvals specified in Sections 3.1.3 and 3.2.3, either Party may extend the termination date for an additional ninety (90) days, and if such condition (and all other conditions to Closing) have been satisfied by such extended date, the Parties shall proceed with Closing; and

(iii) Buyer may terminate this Agreement, in its sole and absolute discretion for any reason or no reason, in the event that a Total Loss occurs on or before the Closing.

5.2 Effect of Termination. If any Party terminates this Agreement pursuant to Section 5.1, this Agreement shall become null and void and all obligations of the Parties hereunder shall terminate without any Liability of either Party to the other Party, except with respect to any Liability arising out of a breach or default prior to the time of such termination of this Agreement.

5.3 Survival. The covenants, agreements and obligations set forth in Sections 4.3.6 and 4.3.11 shall survive for the periods set forth therein, and the covenants, agreements and obligations set forth in Section 4.3.13 shall survive for a reasonable period to permit the Parties to comply with the requirements set forth therein. The covenants, agreements and obligations set forth in Sections 2.5, and 2.6, and Articles 6, 8 and 9 (except for Section 9.9) shall survive indefinitely (and not be affected in any respect by) the Closing, any investigation conducted by any Party hereto and any information which any Party may receive. Notwithstanding anything to the contrary in the foregoing, each representation and warranty contained in this Agreement or made pursuant to any document delivered pursuant hereto (other than the representations and warranties of Rainbow DBS contained in Section 4.1.9 (as it relates to the ownership of Rainbow-1), which shall survive indefinitely) shall terminate on the last day of the eighteenth (18th) month anniversary of the Closing (the "Survival Date"); provided, however, that the right to indemnification with respect to such representations and warranties, and the Liability of any Party with respect thereto, shall not terminate with respect to any claim, whether or not fixed as to Liability or liquidated as to amount, with respect to which such Party has been given written notice prior to the Survival Date.

6. *DISCLAIMER OF WARRANTIES, LIMITATION OF LIABILITY AND INDEMNIFICATION*

6.2 Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH HEREIN, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY EXEMPLARY, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION ANY PAYMENT FOR LOST BUSINESS, FUTURE PROFITS, OR LOSS OF GOODWILL, WHETHER FORESEEABLE OR NOT, OCCASIONED BY ANY CAUSE WHATSOEVER; PROVIDED THAT THIS SECTION 6.2 SHALL NOT LIMIT THE INDEMNIFICATION OBLIGATIONS OF THE PARTIES SET FORTH IN SECTIONS 6.3 AND 6.4. THE PROVISIONS OF THIS SECTION 6.2 SHALL SURVIVE EXPIRATION OR TERMINATION OF THIS AGREEMENT (FOR ANY REASON WHATSOEVER) INDEFINITELY.

6.3 Indemnification Provisions for Benefit of Buyer. Rainbow DBS shall indemnify, defend and hold Buyer and its Affiliates, and its and their respective officers, directors, employees, agents and shareholders, and its and their respective assigns, heirs, successors and legal representatives (collectively the "Buyer Group") harmless from and against, any and all costs, losses, liabilities, damages, lawsuits, judgments, claims, actions, penalties, fines and expenses (including, without limitation, interest, penalties, reasonable attorney fees and all monies paid in the investigation, defense or settlement of any or all of the foregoing) ("Claims") incurred by any member of the Buyer Group that arise out of, or are incurred in connection with, the breach or default of any representation, warranty, covenant or obligation of Rainbow DBS hereunder.

6.4 Indemnification Provisions for Benefit of Rainbow DBS. Buyer shall indemnify, defend and hold Rainbow DBS and its Affiliates, and its and their respective officers, directors, employees, agents and shareholders, and its and their respective assigns, heirs, successors and legal representatives (collectively the "Rainbow DBS Group") harmless from and against, any and all Claims incurred by any member of the Rainbow DBS Group that arise out of, or are incurred in connection with, the breach or default of any representation, warranty, covenant or obligation of Buyer hereunder.

6.5 Indemnification Procedure.

6.5.1 *Notice.* Each party indemnified under Section 6.3 or Section 6.4 above (an "Indemnified Party") shall, promptly after receipt of notice of a claim or action against such Indemnified Party in respect of which indemnity may be sought hereunder, notify the indemnifying party (the "Indemnitor") in writing of the claim or action; provided that the failure to notify the Indemnitor shall not relieve it from any liability that it may have to an Indemnified Party on account of the indemnity agreements contained in Section 6.3 or Section 6.4 above except to the extent that the Indemnitor was actually substantially prejudiced by such failure, and in no event shall such failure relieve the Indemnitor from any other liability that it may have to such Indemnified Party.

6.5.2 *Assumption of Defense.* If any such claim or action shall be brought against an Indemnified Party, and it shall have notified the Indemnitor thereof, the Indemnitor shall be entitled to participate therein and, to the extent that it wishes, assume the defense thereof.

6.5.3 *Cooperation.* If the Indemnitor elects to assume the defense of any such claim or action, it shall within thirty (30) calendar days (or sooner, if the nature of the claim or action so requires) notify the Indemnified Party of its intent to do so, and the Indemnified Party shall, at the Indemnitor's request and expense, give the Indemnitor all reasonable cooperation and assistance in the defense against, such claim or action, which cooperation and assistance shall include, among other things, the retention and (upon the Indemnitor's request) the provision to the Indemnitor of any books, records, documents and other information in its control as reasonably necessary or appropriate for such defense, and making employees available on a mutually convenient basis as reasonably necessary or appropriate for such defense. Except as expressly set forth to the contrary below, after timely notice from the Indemnitor to the Indemnified Party of its election to assume the defense of any such claim or action and the undertaking of such defense with counsel reasonably acceptable to the Indemnified Party, the Indemnitor shall not be liable to the Indemnified Party under this Section 6.5 for any legal or other expenses subsequently incurred by the Indemnified Party in connection with the defense thereof.

6.5.4 *Defense by Indemnified Party.* If the Indemnitor elects not to defend any such claim or action, fails to timely notify the Indemnified Party of its election as herein provided or contests its obligation to indemnify under this Agreement (or if counsel to the Indemnified Party advises such party that there may be a potential conflict of interest between the Indemnitor and the Indemnified Party), the Indemnified Party may defend, at the expense of the Indemnitor, such claim or action as the Indemnified Party considers appropriate.

6.5.5 *Admission.* The Indemnified Party shall not make any admission as to liability or agree to any settlement of, or otherwise compromise, any claim or action without the prior written consent of the Indemnitor (such consent not to be unreasonably withheld, delayed or conditioned). Any Indemnitor against whom indemnity may be sought under

this Section 6.5 shall not be liable to indemnify an Indemnified Party if such Indemnified Party makes an admission as to liability, settles or otherwise compromises such claim or action without the consent of the Indemnitor (such consent not to be unreasonably withheld, delayed or conditioned). The Indemnitor shall not settle or otherwise compromise any such claim or action over the objection of the Indemnified Party; *provided, however*, that consent to settlement or compromise shall not be unreasonably withheld by the Indemnified Party.

6.5.6 *Participation.* With respect to any claim or action as to which the Indemnitor has timely assumed the defense thereof, the Indemnified Party shall continue to be entitled to participate in the defense thereof, with counsel of its own choice, but the Indemnitor shall not be obligated hereunder to reimburse the Indemnified Party for the costs thereof unless: (i) the Indemnitor agrees to pay such costs; (ii) the Indemnitor fails to promptly assume and continue the defense of such claim or action with counsel reasonably satisfactory to the Indemnified Party; (iii) counsel to such Indemnified Party advises that a potential conflict of interest between such Indemnified Party and Indemnitor may exist in respect of such claim; or (iv) the Indemnitor contests its obligation to indemnify under this Agreement.

7. ASSIGNMENT AND SUCCESSORS

7.1 Assignment. Neither Party may assign its rights and interests under this Agreement without the prior written consent of the other Party; provided, however, that EchoStar may assign its rights, but not its obligations, under this Agreement, in its sole discretion for any reason or no reason, to one of its Affiliates. As used in this Section 7.1, “assign” shall mean to grant, sell, assign, encumber or otherwise convey directly or indirectly, in whole or in part.

7.2 Successors. Subject to the provisions concerning assignments above, this Agreement shall be binding on and shall inure to the benefit of any successors and permitted assigns of the Parties. Any purported assignment by either Party not in compliance with the provisions of this Agreement shall be null and void and of no force and effect.

8. CONFIDENTIALITY

8.1 Non-Disclosure. Buyer and Rainbow DBS will hold in confidence the material terms and conditions of this Agreement; provided that disclosure, on a confidential basis, by either Party is permitted: (a) to its principals, auditors, attorneys, investors, lenders, insurance agents, and proposed and actual successors in interest and (b) to comply with law and enforce its rights and perform its obligations under this Agreement.

8.2 Proprietary Information. To the extent that either Party discloses to the other Party any other information which it considers proprietary, said Party shall identify such information as proprietary when disclosing it to the other Party by marking it clearly and

conspicuously as proprietary information. Any proprietary disclosure to either Party, if made orally, will be identified at the time of disclosure as proprietary information, if the disclosing Party wishes to keep such information proprietary under this Agreement. Any such information disclosed under this Agreement will be used by the recipient thereof only in its performance under this Agreement. Neither Party will be liable for the inadvertent or accidental disclosure of such information marked as proprietary, if such disclosure occurs despite the exercising of the same degree of care as the receiving Party normally takes to preserve and safeguard its own proprietary information (but not less than reasonable care) or if such information (i) is or becomes lawfully available to the public from a source other than the receiving Party; (ii) is released in writing by the disclosing Party without restrictions; (iii) is lawfully obtained by the receiving Party from a third party or parties without obligation of confidentiality; (iv) is lawfully known by the receiving Party prior to such disclosure; or (v) is at any time lawfully developed by the receiving Party completely independently of any such disclosure or disclosures from the disclosing Party. In addition, neither Party will be liable for the disclosure of any proprietary information which it receives under this Agreement pursuant to judicial action or decree, or pursuant to any requirement of any government or any agency or department thereof, having jurisdiction over such Party, provided, that in the reasonable opinion of counsel for such Party such disclosure is required, and provided further that such Party to the extent reasonably practical shall have given the other Party notice prior to such disclosure.

9. MISCELLANEOUS

9.1 Applicable Law, Attorney Fees, Entire Agreement and Effectiveness. This Agreement shall be interpreted according to the laws of the State of New York, U.S.A. and, where applicable, subject to compliance with the laws, rules and regulations of the United States, including, without limitation, those of the FCC and those governing communications, exports and re-exports, without regard to any conflict of law provisions. Each Party consents to the jurisdiction of courts located in New York. In any action or arbitration brought with respect to this Agreement by one Party hereto against the other Party hereto, in addition to any other money damages awarded, the prevailing Party shall be entitled to recover from the other Party its reasonable costs, including reasonable attorneys' fees, in successfully bringing or defending against such action or arbitration. This Agreement, including the Appendices and any non-disclosure agreements between the Parties, constitutes the entire agreement between the Parties and supersedes any and all prior or contemporaneous statements, understandings, writings, commitments, or representations concerning its subject matter. This Agreement may not be amended or modified in any way, and none of its provisions may be waived, except by a prior writing signed by an authorized officer of each Party. This Agreement shall not be binding or effective on any Party until fully executed by both Parties hereto.

9.2 U.S. Export Control Laws. The Parties acknowledge and agree that the Acquired Assets, technical information, and/or accompanying technology provided under this Agreement are subject to export controls under the laws and regulations of the United States. Each Party shall comply with such laws and regulations and agrees not to export,

re-export, or otherwise transfer such services or items to foreign persons (including foreign national employees) without first obtaining all required United States authorizations or licenses.

9.3 Severability. Nothing contained in this Agreement shall be construed so as to require the commission of any act contrary to law. If any provision of this Agreement shall be held invalid or unenforceable, the provisions of this Agreement so affected shall be curtailed and limited only to the extent necessary to permit compliance with the minimum legal requirements and the remaining provisions of this Agreement shall not in any way be affected or impaired.

9.4 No Third Party Beneficiary. Except as expressly set forth herein, the provisions of this Agreement are for the benefit only of Rainbow DBS and Buyer and no third party may seek to enforce or benefit from these provisions.

9.5 Non-Waiver of Breach. Either Party may specifically waive any breach of this Agreement by the other Party; provided, that no such waiver shall be binding or effective unless in writing and signed by an authorized officer of the Party to be bound and no such waiver shall constitute a continuing waiver of similar or other breaches. A waiving Party may at any time, upon notice given in writing to the breaching Party, direct future compliance with the waived term or terms of this Agreement, in which event the breaching Party shall comply as directed from such time forward.

9.6 Notices. Except as otherwise expressly set forth to the contrary herein, any notice or other communications required or permitted to be given hereunder shall be in English, in writing and shall be delivered personally or sent by facsimile transmission, or by first class certified mail, postage prepaid, or by overnight courier service, charges prepaid, to the Party to be notified, addressed to such Party at the address set forth below, or sent by facsimile to the fax number set forth below, or such other address or fax number as such Party may have substituted by written notice to the other Party. The sending of such notice with confirmation of receipt thereof (in the case of facsimile transmission) or receipt of such notice (in the case of personal delivery or delivery by mail or by overnight courier service) shall constitute the giving thereof:

If to EchoStar: EchoStar Satellite L.L.C.

P.O. Box 6655 (for certified mail)
Englewood, Colorado 80155

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

Attn: Charles W. Ergen, President and Chief
Executive Officer

Fax: 303.723.1099

With a copy to: EchoStar Satellite L.L.C.
(same addresses as above)
Attn: David K. Moskowitz, Senior Vice President and
General Counsel
Fax: (303) 723-1699

If to Rainbow DBS: Rainbow DBS Company LLC
200 Jericho Quadrangle
Jericho, New York 11753
Attn: Hank Ratner
Fax: 516.803.2577

With a copy to: Cablevision Systems Corporation
1111 Stewart Avenue
Bethpage, New York 11714
Attn: Victoria Salhus
Fax: 516.803.2577

9.7 Headings. The descriptive headings of the sections and subsections of this Agreement are inserted for convenience only and do not constitute a part of this Agreement.

9.8 Documents. Subject to applicable legal compliance, each Party agrees to provide information and to execute, and, if necessary, to file with the appropriate Governmental Entities and international organizations, such documents as the other Party shall reasonably request in order to carry out the purposes of this Agreement.

9.9 Reconstitution. In the event the Regulatory Approvals necessary to consummate this transaction are denied or conditioned (except for any condition that would make the matter Unconditional hereunder) by any Governmental Entity, the Parties will use their respective best efforts for a period of six (6) months thereafter to reconstitute this Agreement in a manner that would permit each Party to realize the material benefits of this Agreement in a manner that either does not require Regulatory Approval or can reasonably be expected to achieve such Unconditional approval, and if such material benefits can be realized, the Parties will proceed to implement this Agreement as reconstituted; *provided, however*, that no Party shall be obligated to enter into any such reconstituted Agreement that would require it to make material expenditures or dispose of material assets in excess of the amount of expenditures or assets contemplated by this Agreement unless compensated for such arrangement.

9.10 Counterparts and Facsimile Signatures. This Agreement may be executed by facsimile signatures and in several counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute but one and the same instrument.

9.11 Specific Performance. Nothing herein shall be deemed to preclude either Party from seeking injunctive relief, if necessary, in order to prevent the other from breaching its material obligations under this Agreement or to compel the other to perform its material obligations under this Agreement in the event of a failure to comply with this Agreement. Both Parties acknowledge that the Acquired Assets are unique and not readily available on the open market and that, if the Acquired Assets are not available to Buyer because the terms of this Agreement are not fulfilled through no fault of Buyer and for reasons attributable to a breach of this Agreement by Rainbow DBS, then Buyer's remedies at law would not be adequate.

IN WITNESS WHEREOF, each of the Parties has duly executed and delivered this Agreement as of the Execution Date.

ECHOSTAR SATELLITE L.L.C.

By: _____
Charles W. Ergen
President and Chief Executive Officer

RAINBOW DBS COMPANY LLC

By: _____
James L. Dolan
CEO and President

9.11 Specific Performance. Nothing herein shall be deemed to preclude either Party from seeking injunctive relief, if necessary, in order to prevent the other from breaching its material obligations under this Agreement or to compel the other to perform its material obligations under this Agreement in the event of a failure to comply with this Agreement. Both Parties acknowledge that the Acquired Assets are unique and not readily available on the open market and that, if the Acquired Assets are not available to Buyer because the terms of this Agreement are not fulfilled through no fault of Buyer and for reasons attributable to a breach of this Agreement by Rainbow DBS, then Buyer's remedies at law would not be adequate.

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ECHOSTAR SATELLITE L.L.C.

By: 

Charles W. Ergen
President and Chief Executive Officer

RAINBOW DBS COMPANY LLC

By: _____

James L. Dolan
CEO and President

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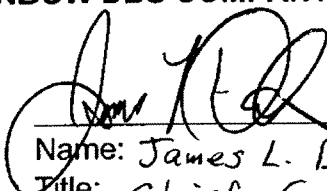
ECHOSTAR SATELLITE L.L.C.

By: _____


Charles W. Ergen
President and Chief Executive Officer

RAINBOW DBS COMPANY LLC

By: _____


Name: James L. Dolan
Title: Chief Executive Officer
and President

ATTACHMENT 2

Letter Agreement



RAINBOW DBS COMPANY LLC

200 Jericho Quadrangle

Jericho, NY 11753

516-803-3000

January 27, 2005

Mr. Charles W. Ergen
President and Chief Executive Officer
EchoStar Satellite L.L.C.
9601 South Meridian Boulevard
Englewood, CO 80112

Dear Mr. Ergen:

Upon acceptance by EchoStar Satellite L.L.C., and/or assigns ("Buyer"), this letter will constitute an agreement ("Letter Agreement") between Buyer and Rainbow DBS Company LLC ("Rainbow DBS") pursuant to which Rainbow DBS agrees to sell to Buyer certain real property of Black Hawk, South Dakota postal address, located in Meade County, South Dakota, and related assets and contracts, currently owned by Rainbow DBS and used by Rainbow DBS to support tracking, telemetry and control ("TT&C") and beacon tracking for the Rainbow 1 communications satellite. On January 20, 2005, Rainbow DBS and Buyer entered into an agreement ("Satellite Sale Agreement") pursuant to which, among other things, Rainbow DBS will sell the Rainbow-1 satellite to Buyer. The terms and conditions of the sale of the Black Hawk Property and related assets and contracts are as follows:

1. Definitions. The capitalized terms used in this Letter Agreement shall have the meanings set forth in Appendix A or as otherwise defined in this Letter Agreement.

2. Assets To Be Transferred. At the Black Hawk Closing, in accordance with and subject to the terms and conditions of this Letter Agreement, Rainbow DBS agrees to sell, assign, transfer and convey to Buyer, all of Rainbow DBS' right, title and interest in and to the Black Hawk Assets, free and clear of any Liens. Except for obligations arising after the Black Hawk Closing in the ordinary course of business under the Black Hawk Contracts, Buyer will take the Black Hawk Assets free of, and Buyer is not assuming any liabilities of Rainbow DBS. The Black Hawk Property shall be subject to the Declaration of Covenants and Restrictions set forth in Appendix D.

Redacted for
Public Inspection

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4. Closing. The closing of the transactions contemplated by this Letter Agreement (the "Black Hawk Closing") shall occur at the same time and place as the closing under the Satellite Sale Agreement, provided that if, at the time of such closing under the Satellite Sale Agreement, all the conditions to the Black Hawk Closing specified in Paragraphs 9 and 10 of this Letter Agreement have not been satisfied or waived, the Black Hawk Closing shall be postponed until the fifth (5th) business day following the date on which all such conditions to the Black Hawk Closing have been satisfied or waived, or such other date as Rainbow DBS and Buyer may agree. The time and place of the Black Hawk Closing, if postponed beyond the closing under the Satellite Sale Agreement, shall be as mutually agreed.

5. Closing Deliveries. At the Black Hawk Closing, (i) Rainbow DBS shall deliver to Buyer a general warranty deed in the form of Appendix B hereto, conveying the real property included in the Black Hawk Property to Buyer, and such other assignments and instruments of transfer reasonably requested by Buyer transferring good and marketable title to the Black Hawk Assets free and clear of any Liens, including, without limitation, an assignment of the Black Hawk Contracts, other than the Excluded Contracts, which shall include, without limitation, an indemnification by Rainbow DBS of Buyer from and against all claims, costs, damages, and expenses arising prior to the Black Hawk Closing date, in form and substance reasonably acceptable to Buyer, and a general warranty bill of sale, conveying all personal property, free and clear of all Liens, and such other documents as are customarily delivered to the parties in real estate transactions; (ii) Buyer shall deliver to Rainbow DBS the Consideration by wire transfer to the Title Company's account on or before Closing. Possession of the Black Hawk Property shall be given to Buyer concurrent with the Black Hawk Closing free and clear of all leases and encumbrances other than those which are included as Black Hawk Contracts and are not Excluded Contracts, and (iii) the Title Policy with extended coverage, issued by the Title Company in accordance with the Title Commitment, insuring Buyer's fee simple title in and to the Black Hawk Property, subject only to the Permitted Real Estate Exceptions.

6. Taxes and Fees.

(b) FCC License Fees. The FCC license fees related to the Earth Station Authorization for the calendar year in which the Black Hawk Closing occurs shall be prorated between the parties according to the proportion of such calendar year that each party owned the Black Hawk Assets.

(c) Other Taxes. Except as otherwise provided herein, any other taxes, charges, levies, duties, usage or other fees which may be asserted by any Governmental Entity with respect to the sale of the Black Hawk Assets shall be shared equally by the parties, unless any of the foregoing are levied on an annual basis in which case they shall be prorated based on the proportion of such annual period that each party owned the Black Hawk Assets.

(d) Other Prorations. Payments due or payable under Black Hawk Contracts, which are not Excluded Contracts shall be prorated through the Black Hawk Closing date. Water and sewer charges shall be prorated through the Black Hawk Closing date. All other items applicable to the Black Hawk Property shall be prorated in accordance with the local custom and practice in Black Hawk, South Dakota.

7. Diligence Deliveries. Within ten (10) business days of the date of this Letter Agreement, Rainbow DBS shall deliver to Buyer the following:

(a) A standard ALTA commitment for title insurance ("Title Commitment"), issued by the Title Company in an amount not less than the amount determined pursuant to Section 3, showing Buyer as the proposed insured;

(b) True, complete, and legible copies of all documents referred to in the Title Commitment as title exceptions (the "Title Commitment Documents");

(c) A boundary survey of the Black Hawk Property (the "Survey"), subject to reimbursement by Buyer for one-half of the cost of such survey at the Black Hawk Closing;

(d) All vendor and service agreements, if any, in effect with respect to the Black Hawk Property, including without limitation the Black Hawk Contracts;

(e) All current and relevant engineering and technical reports in the possession of Rainbow DBS that concern the Black Hawk Property, the improvements thereon, and/or any portion thereof, including, without limitation, copies of existing soils testing reports, property conditions reports and environmental site assessments, or any updates thereto received by Rainbow DBS regarding toxic or hazardous waste and, if applicable, underground tank tests and storage results;

(f) Any plans and specifications in the possession of Rainbow DBS for the improvements as constructed on the Black Hawk Property;

(g) A schedule setting forth all personal property, if any, to be delivered to Buyer at Closing;

(h) Copies of the most recent tax bill and valuation notices which pertain to the Black Hawk Property;

Within thirty (30) days after delivery of the last of the items identified in this Section 7, Buyer shall notify Rainbow DBS of any objections to same, and in the absence of such notice, all materials delivered pursuant to this Section 7 shall be deemed satisfactory to Buyer in accordance with Section 9(e)(iii) of this Letter Agreement and the Black Hawk Contracts shall be deemed approved by Buyer in accordance with Section 9(e)(iv) of this Letter Agreement.

8. Property Inspection. From and after the date of this Letter Agreement through the Black Hawk Closing, Buyer shall also have the right to enter upon the Black Hawk Property and conduct such tests and inspections as Buyer determines to be necessary. Any objection to the condition of the Black Hawk Property not made by Buyer within thirty (30) days after the

execution of this Letter Agreement shall be deemed waived by Buyer, and in the absence of such objection during such thirty (30) day period, Buyer shall be deemed to be satisfied with the condition of the Black Hawk Property for purposes of Section 9(e)(ii) of this Letter Agreement.

9. Conditions to Obligation of Buyer. The obligation of Buyer to consummate the transactions contemplated by this Letter Agreement shall be subject to the fulfillment, at or prior to the Black Hawk Closing, of each of the following conditions (unless waived by Buyer):

(a) Representations, Warranties and Covenants. The representations and warranties of Rainbow DBS contained in this Letter Agreement shall be true and correct in all material respects as of the date of execution and the Black Hawk Closing, and all the covenants contained in this Letter Agreement to be complied with by Rainbow DBS at or before the Black Hawk Closing shall have been complied with in all material respects.

(b) Compliance with Law. There shall be no statute, law, judgment, decree, injunction, rule or order of any Governmental Entity outstanding or in effect that prohibits, restricts, materially conditions or delays consummation of the transactions contemplated by this Letter Agreement. There shall be no litigation pending that would enjoin, restrain, materially condition, delay or prohibit the consummation of the transactions contemplated by this Letter Agreement.

(c) Regulatory Approvals. The Parties shall have received the grant of all Regulatory Approvals.

(d) Third Party Consents. Rainbow DBS shall have obtained the necessary consents to assign the Black Hawk Contracts, other than the Excluded Contracts, to Buyer.

(e) Title/Condition of Property. (i) Buyer shall have approved the title to the Black Hawk Property pursuant to Section 13 (h) of this Letter Agreement; (ii) Buyer shall be satisfied with the condition of the Black Hawk Property pursuant to Section 8 of this Letter Agreement; (iii) Buyer shall be satisfied with the materials delivered pursuant to Section 7 of this Letter Agreement; and (iv) Buyer shall have approved the Black Hawk Contracts, other than the Excluded Contracts.

(f) Simultaneous Closing. Buyer shall have closed or shall simultaneously be closing under the Satellite Sale Agreement.

10. Conditions to Obligation of Rainbow DBS. The obligation of Rainbow DBS to consummate the transactions contemplated by this Letter Agreement shall be subject to the fulfillment, at or prior to the Black Hawk Closing, of each of the following conditions (unless waived by Rainbow DBS):

(a) Representations, Warranties and Covenants. The representations and warranties of Buyer contained in this Letter Agreement shall be true and correct in all material respects as of the date of execution and the Black Hawk Closing, and all the covenants contained in this Letter Agreement to be complied with by Buyer at or before the Black Hawk Closing shall have been complied with in all material respects.

(b) Compliance with Law. There shall be no statute, law, judgment, decree, injunction, rule or order of any Governmental Entity outstanding or in effect that prohibits, restricts, materially conditions or delays consummation of the transactions contemplated by this Letter Agreement. There shall be no litigation pending that would enjoin, restrain, materially condition, delay or prohibit the consummation of the transactions contemplated by this Letter Agreement.

(c) Regulatory Approvals. The Parties shall have received the grant of all Regulatory Approvals.

(d) Third Party Consents. Rainbow DBS shall have obtained the necessary consents to assign the Black Hawk Contracts, other than the Excluded Contracts, to Buyer.

11. Mutual Representations and Warranties. Buyer and Rainbow DBS each represents and warrants to, and agrees with the other that:

(a) Authority. It has the right, power and authority to enter into and perform its obligations under this Letter Agreement.

(b) Approvals. It has taken all requisite corporate action, as applicable, to approve the execution, delivery and performance of this Letter Agreement, and this Letter Agreement constitutes a legal, valid and binding obligation upon itself.

(c) Consents. The fulfillment of its obligations will not constitute a material violation of any existing applicable laws of any Governmental Entity, or contract to which it is subject. All public or private consents, permissions, agreements, licenses or authorizations necessary for the performance of its obligations under this Letter Agreement to which it is subject have been obtained, or it will use all reasonable efforts to obtain them, in a timely manner and prior to the Black Hawk Closing.

(d) Litigation. There is no outstanding or, to the best of its knowledge, threatened judgment, pending litigation or proceeding, involving or affecting the transactions provided for in this Letter Agreement, except as has been previously disclosed in writing by either party to the other.

(e) No Broker. It does not know of any broker, finder or intermediary involved in connection with the negotiations and discussions incident to the execution of this Letter Agreement, or of any broker, finder or intermediary who might be entitled to a fee or commission upon the consummation of the transactions contemplated by this Letter Agreement.

12. Additional Representations and Warranties of Rainbow DBS. Rainbow DBS represents and warrants to Buyer that:

(a) Title. Rainbow DBS owns good and marketable title to the Black Hawk Property free and clear of all Liens that could affect Buyer's or its Subsidiaries' title to or possession of the Black Hawk Property, except for (i) Permitted Real Estate Exceptions and (ii) Liens for taxes and other governmental charges, assessments or fees which are not yet due and payable.

BSU

(b) Options. There are no outstanding options or rights of first refusal to purchase the Black Hawk Property, or any portion thereof or interest therein; and there are no leases, subleases, licenses, concessions or other agreements, written or oral, granting to any party or parties the right of use or occupancy of any portion of the Black Hawk Property.

(c) Condemnation. There are no pending or, to the knowledge of Rainbow DBS, threatened condemnation proceedings relating to the Black Hawk Property.

(d) Possession. There are no parties (other than Rainbow DBS) in possession of the Black Hawk Property who are lawfully in possession.

(e) Environmental Laws. The use and condition of, and operations on, the Black Hawk Property are in compliance with Environmental Laws, except where the failure to comply, individually or in the aggregate, would not have a Black Hawk Material Adverse Effect.

(f) Environmental Permits. There are no judicial or administrative actions, proceedings or investigations pending or, to the knowledge of Rainbow DBS, currently threatened to revoke any environmental permits required for the current use of and the operations on the Black Hawk Property, and Rainbow DBS has not received any written notice from any Governmental Entity or written notice from any person to the effect that there is lacking any such permit.

(g) Environmental Actions. There are no judicial or administrative actions, proceedings, or investigations pending or, to the knowledge of Rainbow DBS, currently threatened against Rainbow DBS alleging the violation of, or liability pursuant to, any Environmental Law or environmental permit, except for liabilities or violations which could not reasonably be expected to have, individually or in the aggregate, a Black Hawk Material Adverse Effect.

(h) Hazardous Materials. Rainbow DBS has no knowledge of, and has not filed any notice with respect to the Black Hawk Property under any Environmental Law indicating, past or present treatment, storage, transfer, release, manufacture, presence or disposal of or reporting a release or currently threatened release of hazardous material into the environment, except for such releases that could not reasonably be expected to have, individually or in the aggregate, a Black Hawk Material Adverse Effect.

(i) Environmental Injunction. With respect to the Black Hawk Property, Rainbow DBS is not subject to any outstanding order, injunction, judgment, decree, ruling, assessment, or arbitration award or any agreement with any governmental entity or other person, or to any federal, state, local or foreign investigation respecting (i) Environmental Laws or (ii) the release or currently threatened release of any hazardous material, except in either case for such orders, injunctions, judgments, decrees, rulings, assessments, arbitration awards, or agreements which could not reasonably be expected to have, individually or in the aggregate, a Black Hawk Material Adverse Effect.

(j) Hazardous Waste. None of the operations on the Black Hawk Property involves or, to Rainbow DBS's knowledge, previously involved the generation, transportation, treatment, storage, release, use, manufacture or disposal of hazardous waste, as defined under

40 C.F.R. Parts 260-270 or any state, local or foreign equivalent, except for as may be permitted by law or as could not reasonably be expected to have, individually or in the aggregate, a Black Hawk Material Adverse Effect.

(k) Environmental Reports. Rainbow DBS will provide to Buyer, as promptly as practicable, all environmental reports of which it is aware concerning the Black Hawk Property.

(l) Easements, etc. (A) the buildings and improvements on the Black Hawk Property are located within the boundary lines of the Black Hawk Property, and do not encroach on any easement that may burden the land, (B) the land does not serve any adjoining property for any purpose inconsistent with the use of the land, and (C) the Black Hawk Property is not located within any flood plain, wetland, or subject to any similar type of restriction for which any permits or licenses necessary for the use thereof have not been obtained, except where such encroachment or restriction would not, individually or in the aggregate, have a Black Hawk Material Effect.

(m) Utilities. All facilities located on the Black Hawk Property are supplied with utilities and other services necessary for their current use and operation.

(n) Insurance. Appendix C attached hereto sets forth a listing of all insurance policies in force associated with the Black Hawk Property and the amount of coverage thereunder. Each such insurance policy is in full force and effect, and the rights of the parties thereunder will not be affected in any material respect by the transactions contemplated by this Letter Agreement. Rainbow DBS shall maintain all such insurance policies or similar coverages until the Black Hawk Closing.

(o) Contracts. The Black Hawk Contracts include all of the maintenance and equipment contracts, agreements, understandings, rights, warranties and arrangements of Rainbow DBS with respect to the Black Hawk Property.

13. Further Agreements of the Parties

(a) General. Each of the parties will cooperate to its fullest extent and use its respective commercially reasonable efforts to take all action and to do all things necessary, proper, or advisable to consummate and make effective the transactions contemplated by this Letter Agreement (including without limitation satisfying the closing conditions set forth in Paragraphs 9 and 10 above) as soon as practicable following the date of this Letter Agreement.

(b) Application for Government Approvals. Within ten (10) days of the execution of this Letter Agreement, the parties shall jointly file all applications necessary for the grant of the Regulatory Approvals. In addition to, but not in limitation of the parties' obligations under Paragraph 11(a) above, each of Buyer and Rainbow DBS shall take all steps, and shall supply to the other party and/or to Governmental Entities all information reasonably necessary to obtain the grant of the Regulatory Approvals. The parties shall split the costs of any filing fees necessary in connection with the joint application for the Regulatory Approvals.

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(c) Operation of Black Hawk Assets. Title to and risk of loss of the Black Hawk Assets shall remain with Rainbow DBS until the Black Hawk Closing, and at the Black Hawk Closing shall transfer to Buyer. After the date hereof and until the Black Hawk Closing, Rainbow DBS shall cause the Black Hawk Assets to be operated and maintained in accordance with all applicable laws, rules and regulations, and with the same degree of diligence and care that a reasonably prudent TT&C owner and operator would use. Rainbow DBS shall keep and maintain the Black Hawk Property substantially in the same condition as it exists on the date hereof and shall preserve the Black Hawk Property from deterioration, other than ordinary wear and tear; *provided, however*, that Buyer acknowledges and agrees that Rainbow DBS is under no obligation to continue construction of or make any additional improvements to any of the structures, furniture, fixtures or equipment located at the Black Hawk Property, other than pursuant to the Black Hawk Contracts. From and after the Black Hawk Closing, Buyer shall have title to and risk of loss of the Black Hawk Assets and shall assume all responsibility for the operation and maintenance of the Black Hawk Assets and for compliance with the terms and conditions of the Black Hawk Contracts, other than the Excluded Contracts.

(d) Conduct of Business. Rainbow DBS covenants and agrees that, during the period between the date hereof and the Black Hawk Closing, unless Buyer shall otherwise agree in writing, the business of Rainbow DBS as it relates to the Black Hawk Assets shall be conducted in, and Rainbow DBS shall not take any action regarding the Black Hawk Assets except in, the ordinary course of business. Without limiting the foregoing, Rainbow DBS shall not, directly or indirectly do, or propose to in any way reduce the value, term or any of its rights under, or incur any Liens with respect to, the Black Hawk Assets. Rainbow DBS shall enforce the Black Hawk Contracts and will not modify the Black Hawk Contracts or take any other action that could reasonably result in a material adverse effect on the transactions contemplated by this Letter Agreement.

(e) Cooperation; Consents. Each party covenants and agrees that, during the period between the date hereof and the Black Hawk Closing, it shall cooperate with the other and use its commercially reasonable efforts to (i) cause the conditions to the Black Hawk Closing set forth in Paragraphs 9 and 10 to be satisfied; and (ii) obtain any required governmental and third party consents and make and obtain effectiveness of all filings necessary for the consummation of the transactions contemplated hereunder.

(f) Black Hawk Contracts. At any time after the date hereof, until the date that is thirty (30) days prior to the Black Hawk Closing, Buyer may notify Rainbow DBS in writing that it does not require the assignment of one or more of the Black Hawk Contracts. In such case, Rainbow DBS shall terminate any such contract (and pay any fees associated with such termination), and such contract shall be designated an "Excluded Contract" for purposes of this Letter Agreement and shall no longer be included in the Black Hawk Assets.

(g) Casualty; Condemnation

(i) Risk of Loss. Between the date of this Letter Agreement until the Black Hawk Closing, the risk of loss or damage to the Black Hawk Property by fire or other casualty shall be borne and assumed by Rainbow DBS. Rainbow DBS, after learning of any such fire or other casualty, shall promptly notify Buyer thereof, and, as soon as reasonably

practicable thereafter, Rainbow DBS shall provide Buyer with an estimate of the cost of repairs and the amount of insurance proceeds available to undertake such repairs. Within ten (10) days after receipt of such notice and estimate, Buyer shall in turn notify Rainbow DBS whether Buyer wants Rainbow DBS to commence repair of the resultant damage of the Black Hawk Property. If Buyer wants Rainbow DBS to so commence, or if Rainbow DBS, in the exercise of prudent business judgment, decides to so commence, Rainbow DBS shall proceed to repair the Black Hawk Property but shall not be obligated to expend more than any collected insurance proceeds and the amount of any insurance deductible. Should such fire or other casualty create an emergency situation, Rainbow DBS may elect to take such measures to protect, secure and repair the Black Hawk Property as Rainbow DBS in its own discretion determines. At the Black Hawk Closing, Rainbow DBS shall pay to Buyer any proceeds it has received in respect of any such fire or other casualty; provided, however, that if Rainbow DBS has undertaken any repairs in accordance with this Paragraph 13 (g), Rainbow DBS shall turn over to Buyer the balance of any unused insurance proceeds in Rainbow DBS' possession. At the Black Hawk Closing, Rainbow DBS shall also assign to Buyer all of Rainbow DBS' rights to any payments to be made after the Black Hawk Closing under any hazard insurance policy then in effect with respect to the Black Hawk Property. If it is necessary to prosecute a claim to maximize the proceeds of insurance recovery, from and after the Black Hawk Closing, Rainbow DBS shall diligently undertake such prosecution for the benefit of Buyer. Rainbow DBS shall not enter into any agreement to undertake repairs with a term that extends beyond the Black Hawk Closing without the prior written consent of Buyer, which consent shall not be unreasonably withheld or delayed. Following the Black Hawk Closing, except as set forth above, Rainbow DBS shall have no further liability or responsibility with respect to any such preceding fire or other casualty at the Black Hawk Property. Following the Black Hawk Closing, Buyer shall reimburse Rainbow DBS for the cost of any repairs made by Rainbow DBS prior to the Black Hawk Closing and not reimbursed by Rainbow DBS' hazard insurance company, to the extent Buyer receives any insurance proceeds from and after the Black Hawk Closing, applicable to the repairs performed by Rainbow DBS.

(ii) Eminent Domain. Between the date of this Letter Agreement until the Black Hawk Closing, in the event any part of the Black Hawk Property is taken or a proceeding is commenced to so take any part of the Black Hawk Property, the risk of any such occurrence shall be borne by Rainbow DBS. At the Black Hawk Closing, Rainbow DBS shall pay to Buyer any proceeds it has received in respect of any such occurrence, and shall assign to Buyer without recourse or warranty its right to any future proceeds in respect thereof. Following the Black Hawk Closing, Rainbow DBS shall have no further liability or responsibility with respect to any such preceding taking or proceeding regarding the Black Hawk Property. If it is necessary to prosecute a claim to maximize the proceeds of taking recovery, prior to the Black Hawk Closing, Rainbow DBS shall diligently undertake such prosecution for the benefit of Buyer.

(h) Title Insurance. Rainbow DBS will obtain, not later than ten (10) business days following the date of this Letter Agreement with respect to the Black Hawk Property, the Title Commitment, referred to in Section 7 above, for an extended coverage ALTA Owner's Policy of Title Insurance Form 1992 ("Title Policy") issued by a Chicago Title Insurance Company or such other title insurer reasonably satisfactory to Buyer ("Title Company") (and, if requested by Buyer, reinsured in whole or in part by one or more insurance companies and

pursuant to a direct access agreement reasonably acceptable to Buyer), such amount as determined to be the fair market value of such real property pursuant to Section 3 (including all improvements located thereon), insuring title to such real property to be in the name of Buyer as of the Black Hawk Closing. The cost of such title policy shall be borne one-half by Rainbow DBS, on the one hand, and one-half by Buyer, on the other hand. Within fifteen (15) days after delivery of the last of the Title Commitment, Title Commitment Documents and Survey (collectively, "Title Documents") to Buyer, Buyer shall notify Rainbow DBS of any objections that Buyer may have to the exceptions or other matters shown in the Title Documents. Buyer's failure to object to the conditions of title or any exceptions contained in the Title Documents within such fifteen (15) day period shall be deemed approval or waiver of that item and approval of the title to the Black Hawk Property in accordance with Section 9(e)(i) of this Letter Agreement. Any Liens or other conditions that are to be discharged or cured by Rainbow DBS at or before the Black Hawk Closing shall not be considered an objection to title. If Rainbow DBS receives a notice from Buyer of an objection to the condition of title to the Black Hawk Property or to any exception or other matter contained in the Title Documents, Rainbow DBS will notify Buyer within seven (7) days after receipt of such notice of Rainbow DBS' intention either (i) to cure the exception prior to the Black Hawk Closing, by taking the action specified in such notice; or (ii) to take no action with respect to same. If the action Rainbow DBS intends to take pursuant to clause (i) above is not completed within five (5) days after receipt of such notice or if Rainbow DBS elects to take no action pursuant to clause (ii) above, within five (5) days after receipt of such notice or failure to complete, Buyer shall have the right (A) to terminate this Letter Agreement in which event neither party will have any further obligations under this Letter Agreement or (B) to accept such condition or exception and close on the purchase of the Black Hawk Property. Failure by Buyer to notify Rainbow DBS of its election under clause (A) or (B) above within the five (5) day period shall be deemed an election by Buyer to proceed to closing under clause (B).

(i) Surveys. With respect to the Black Hawk Property, Rainbow DBS will procure in preparation for the Black Hawk Closing a current survey certified to Buyer, prepared by a licensed surveyor and conforming to current ALTA Minimum Detail Requirements for Land Title Surveys, disclosing the location of all improvements, easements, party walls, sidewalks, roadways, utility lines, and other matters shown customarily on such surveys, and showing access affirmatively to a public street or road (the "Survey"). The cost of the Survey shall be borne one-half by Rainbow DBS, on the one hand, and one-half by Buyer, on the other hand. The Survey shall be delivered to Buyer pursuant to Section 7 of this Letter Agreement.

(j) Division of Expenses for this Transaction. In addition to the division of the various expenses of this transaction set forth above, the parties agree to the further allocation of expenses as follows:

- | | |
|---|-------------|
| (A) Broker/Real Estate Commission (if any): | Rainbow DBS |
| (B) Title Corrections: | Rainbow DBS |
| (C) Real Estate Transfer Fees: | Rainbow DBS |
| (D) Recording Expenses: | |

- | | |
|---------------------------------|-------------|
| (i) Conveyance Instruments: | Buyer |
| (ii) Mortgage Release (if any): | Rainbow DBS |
| (iii) Title Corrections: | Rainbow DBS |

(E) Attorney's Fees: Each party shall separately pay the legal fees each has and may accrue with respect to this transaction.

14. Termination. Buyer may terminate this Letter Agreement at any time prior to 5:00 p.m. mountain standard time on the date which is thirty (30) days after Buyer's receipt of the last of the materials delivered pursuant to Section 7 above. In the event that the conditions to closing for the benefit of the applicable party set forth in Paragraphs 9 or 10 have not been met by the other party on or before the first anniversary of the date of this Letter Agreement, the party for whose benefit conditions have not been met may terminate this Letter Agreement upon notice to the other party; provided that if the condition to closing that has not been met is the Regulatory Approvals specified in Paragraphs 7(c) and 8(c), either party may extend the termination date for an additional ninety (90) days, and if such condition (and all other conditions to closing) have been satisfied by such extended date, the parties shall proceed with the Black Hawk Closing. This Letter Agreement shall automatically terminate if the Satellite Sale Agreement is terminated. If this Letter Agreement is terminated pursuant to this Paragraph 14, this Letter Agreement shall become null and void and all obligations of the parties hereunder shall terminate without any liability of either party to the other party, except with respect to any liability arising out of a breach or default prior to the time of such termination of this Letter Agreement.

15. Disclaimer Of Warranties, Limitation Of Liability And Indemnification.

(a) Disclaimer of Warranty. EXCEPT AS SPECIFICALLY PROVIDED IN THIS LETTER AGREEMENT, ANY AND ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PURPOSE OR USE WITH RESPECT TO THE BLACK HAWK ASSETS, ARE EXPRESSLY EXCLUDED AND DISCLAIMED AND BUYER ACKNOWLEDGES THAT IT IS ACQUIRING EACH OF THE ACQUIRED ASSETS "AS IS."

(b) Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH HEREIN, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY EXEMPLARY, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION ANY PAYMENT FOR LOST BUSINESS, FUTURE PROFITS, OR LOSS OF GOODWILL), WHETHER FORESEEABLE OR NOT, OCCASIONED BY ANY CAUSE WHATSOEVER.

(c) Indemnification. Each party ("Indemnifying Party") shall indemnify, defend and hold the other party and its Subsidiaries, and its and their respective officers, directors, employees, agents and shareholders, and its and their respective assigns, heirs,

Handwritten initials/signature

successors and legal representatives (collectively the "Indemnified Group") harmless from and against, any and all costs, losses, liabilities, damages, lawsuits, judgments, claims, actions, penalties, fines and expenses (including, without limitation, interest, penalties, reasonable attorney fees and all monies paid in the investigation, defense or settlement of any or all of the foregoing) incurred by any member of the Indemnified Group that arise out of, or are incurred in connection with, the breach or default of any representation, warranty, covenant or obligation of the Indemnifying Party hereunder.

16. Assignment And Successors

(a) Assignment. Neither party may assign its rights and interests under this Letter Agreement without the prior written consent of the other party. As used in this Paragraph 16(a), "assign" shall mean to grant, sell, assign, encumber or otherwise convey directly or indirectly, in whole or in part. Notwithstanding the foregoing to the contrary, Buyer shall have the right, without the consent of Rainbow DBS, to assign this Letter Agreement to an affiliate.

(b) Successors. Subject to the provisions concerning assignments above, this Letter Agreement shall be binding on and shall inure to the benefit of any successors and permitted assigns of the parties. Any purported assignment by either party not in compliance with the provisions of this Letter Agreement shall be null and void and of no force and effect.

17. Confidentiality. Buyer and Rainbow DBS will hold in confidence the material terms and conditions of this Letter Agreement under the same terms and conditions as in the Satellite Sale Agreement.

18. Miscellaneous

(a) Applicable Law, Attorney Fees, Entire Agreement and Effectiveness

This Letter Agreement shall be interpreted according to the laws of the State of {South Dakota} U.S.A. and, where applicable, subject to compliance with the laws, rules and regulations of the United States, including, without limitation, those of the FCC and those governing communications, exports and re-exports, without regard to any conflict of law provisions. This Letter Agreement, including the Appendices and any non-disclosure agreements between the parties, constitutes the entire agreement between the parties and supersedes any and all prior or contemporaneous statements, understandings, writings, commitments, or representations concerning its subject matter. This Letter Agreement may not be amended or modified in any way, and none of its provisions may be waived, except by a prior writing signed by an authorized officer of each party. This Letter Agreement shall not be binding or effective on any party until fully executed by both parties hereto.

(b) U.S. Export Control Laws. The parties acknowledge and agree that portions of the Black Hawk Assets, technical information, and/or accompanying technology provided under this Letter Agreement are subject to export controls under the laws and regulations of the United States. Each party shall comply with such laws and regulations and agrees not to export, re-export, or otherwise transfer such services or items to foreign persons

(including foreign national employees) without first obtaining all required United States authorizations or licenses.

(c) Severability. Nothing contained in this Letter Agreement shall be construed so as to require the commission of any act contrary to law. If any provision of this Letter Agreement shall be held invalid or unenforceable, the provisions of this Letter Agreement so affected shall be curtailed and limited only to the extent necessary to permit compliance with the minimum legal requirements and the remaining provisions of this Letter Agreement shall not in any way be affected or impaired.

(d) No Third Party Beneficiary. Except as expressly set forth herein, the provisions of this Letter Agreement are for the benefit only of Rainbow DBS and Buyer and no third party may seek to enforce or benefit from these provisions.

(e) Non-Waiver of Breach. Either party may specifically waive any breach of this Letter Agreement by the other party; provided, that no such waiver shall be binding or effective unless in writing and signed by an authorized officer of the party to be bound and no such waiver shall constitute a continuing waiver of similar or other breaches. A waiving party may at any time, upon notice given in writing to the breaching party, direct future compliance with the waived term or terms of this Letter Agreement, in which event the breaching party shall comply as directed from such time forward.

(f) Notices. Except as otherwise expressly set forth to the contrary herein, any notice or other communications required or permitted to be given hereunder shall conform to the requirements for notices under the Satellite Sale Agreement.

(g) Headings. The descriptive headings of the paragraphs of this Letter Agreement are inserted for convenience only and do not constitute a part of this Letter Agreement.

(h) Documents. Subject to applicable legal compliance, each party agrees to provide information and to execute, and, if necessary, to file with the appropriate Governmental Entities, such documents as the other party shall reasonably request in order to carry out the purposes of this Letter Agreement.

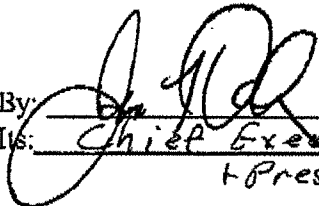
(i) Reconstitution. In the event the Regulatory Approvals necessary to consummate this transaction are denied or conditioned in any material respect by any Governmental Entity, the parties will use their respective best efforts for a period of six (6) months thereafter to reconstitute this Letter Agreement in a manner that would permit each party to realize the material benefits of this Letter Agreement in a manner that either does not require Regulatory Approval or can reasonably be expected to achieve such approval, and if such material benefits can be realized, the parties will proceed to implement this Letter Agreement as reconstituted; *provided, however*, that no party shall be obligated to enter into any such reconstituted Letter Agreement that would require it to make material expenditures or dispose of material assets in excess of the amount of expenditures or assets contemplated by this Letter Agreement unless compensated for such arrangement.

(j) Counterparts and Facsimile Signatures. This Letter Agreement may be executed by facsimile signatures and in several counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute but one and the same instrument.

If the terms and conditions of this Letter Agreement are acceptable to Buyer, please sign, date and have notarized in the space provided below two (2) copies and return one (1) originally executed copy to me. The terms of this Letter Agreement shall be binding on the parties.

Sincerely,

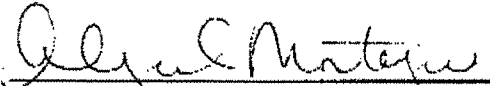
RAINBOW DBS COMPANY LLC

By: 
 Its: Chief Executive Officer ^{VS}
+ President

State of New York,)
) ss.
 County of Nassau)

ON THIS DAY, January 27, 2005, before me, the undersigned officer, personally appeared James Dylan, who acknowledged himself to be CEO + Pres of Rainbow DBS Company LLC, a Delaware limited liability company, and that he, as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as CEO + Pres.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.


 Notary Public
 My Commission Expires: 05/28/06

(SEAL)

ABIGAIL MONTAGUE
 NOTARY PUBLIC, State of New York
 01M05060869, Nassau County
 My Commission Expires May 28, 2006



ACKNOWLEDGED AND ACCEPTED
THIS 27th DAY OF January, 2005

ECHOSTAR SATELLITE L.L.C.

By:

Its: Executive Vice President / General Counsel & Secretary

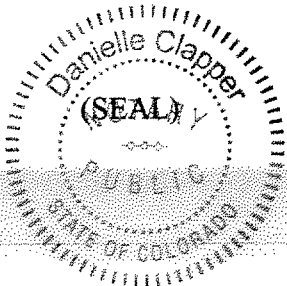
State of Colorado,)

) SS.

County of Douglas)

ON THIS DAY, January 27, 2005, before me, the undersigned officer, personally appeared David V. Markowitz, who acknowledged himself to be EVP, GC & Sec. of EchoStar Satellite L.L.C., a limited liability company, and that he, as such EVP, GC & Sec., being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as EVP, GC & Sec.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Notary Public

My Commission Expires: 09/08/08

Danielle Clapper

Notary Public

State of Colorado

My commission expires 09/08/08

RB