

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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VOOM HD HOLDINGS LLC, :
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Plaintiff, :
 :
 :
- against - :
 :
ECHOSTAR SATELLITE L.L.C., :
 :
Defendant. :
 :
----- X

Index No. _____
Date Purchased: January 31, 2008

SUMMONS

08600292

Plaintiff designates
New York County
as the place of trial.

TO THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer on the Plaintiff's Attorneys within thirty (30) days after the service of this Summons, exclusive of the day of service; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

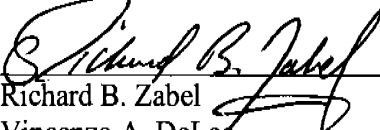
Plaintiff designates New York County as the venue for this action pursuant to CPLR §§ 503, 509. The basis of the designated venue is that Defendant, a foreign limited liability company, designated New York County as the location of its offices in its application to conduct business filed with the New York Secretary of State.

FILED
JAN 31 2008
NEW YORK
COUNTY CLERK'S OFFICE

Dated: New York, New York
January 31, 2008

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Albany, NY 12231

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SUPREME COURT OF THE STATE OF NEW YORK
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VOOM HD HOLDINGS LLC,

Plaintiff,

- against -

ECHOSTAR SATELLITE L.L.C.,

Defendant.

SUMMONS

AKIN GUMP STRAUSS HAUER & FELD LLP

ATTORNEYS FOR PLAINTIFF
VOOM HD HOLDINGS LLC

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(212) 872-1000

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VOOM HD HOLDINGS LLC,

:

Index No. _____

Plaintiff,

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- against -

:

ECHOSTAR SATELLITE L.L.C.,

:

Defendant.

:

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Plaintiff VOOM HD Holdings LLC f/k/a Rainbow HD Holdings LLC ("VOOM

HD"), by its attorneys, as and for its Complaint against EchoStar Satellite L.L.C. ("EchoStar"),

alleges as follows:

NATURE OF THE ACTION

1. This is an action for a declaratory judgment, and preliminary and permanent

injunctive relief, to preserve the benefits of a multi-billion dollar, 15-year contract between

EchoStar and VOOM HD that EchoStar has announced it is terminating, effective February

2008. EchoStar is one of the two main direct-to-home providers of satellite television

programming to residential subscribers. VOOM HD owns and operates a suite of 15 high-

definition ("HD") channels known as VOOM. For the last two years, EchoStar has made

VOOM available to its television subscribers as part of its basic HD programming package

pursuant to the terms of a November 17, 2005 affiliation agreement (the "Affiliation

Agreement") between the parties. Under the contract, EchoStar has paid VOOM monthly

affiliation fees that are calculated on a per-subscriber basis for each subscriber receiving VOOM,

and VOOM HD has made substantial investments in VOOM.

FILED

JAN 31 2008

**NEW YORK
COUNTY CLERK'S OFFICE**

irreparable and devastating harm, and threatening its continued existence.

VOOM to which it is unquestionably entitled under that agreement, thereby causing VOOM HD Agreement and will deprive VOOM HD of the substantial payments and broad distribution for the contract. Such termination is entirely improper under the clear terms of the Affiliation and take VOOM off the air, effective February 1, 2008 – 13 years before the end of the term of

4. On January 30, 2008, EchoStar purported to terminate the Affiliation Agreement

EchoStar evidently had decided it no longer liked.

the Affiliation Agreement in order to extricate itself from clear-cut contractual obligations that The letter urged EchoStar to reconsider its ill-advised strategy of inventing a pretextual breach of any such noticed termination would violate the Affiliation Agreement and devastate VOOM HD.

3. VOOM HD swiftly responded by letter dated January 28, 2008, making clear that VOOM off the air.

planned to notice a termination of the Affiliation Agreement by February 1, 2008 and take impermissible change in distribution, EchoStar advised VOOM HD on January 24, 2008 that it prohibited by the Affiliation Agreement, and (vi) receiving VOOM HD's objection to such an in which VOOM was distributed to EchoStar's HD subscribers in a manner indisputably purported right to termination, (v) announcing that EchoStar would unilaterally change the way (iv) electing to perform the Affiliation Agreement for two more months and exercising no asserting yet again a right to terminate in November of last year based on the same 2006 conduct, Agreement for the next five months and exercising no purported right of termination, (iii) last year based on activity that took place in 2006, (ii) electing to perform the Affiliation

2. After (i) wrongfully threatening to terminate the Affiliation Agreement in June of

5. Under the Affiliation Agreement, EchoStar is obligated to (1) distribute VOOM "as part of its most widely distributed package of HD programming" (the "Packaging Commitment") and (2) ensure that the vast majority of its total HD subscribers – at least 93% in 2008 – actually receive VOOM throughout the term of the Affiliation Agreement (the "Penetration Commitment"). EchoStar is further obligated to pay VOOM HD an annually escalating per subscriber fee that is determined by the number of EchoStar HD subscribers who have access to VOOM. That fee was \$3.25 per month per HD subscriber receiving VOOM in the first year of the term, and increases annually thereafter until it reaches \$6.43 per month per HD subscriber actually receiving VOOM in the final year of the term. Until recently, the number of HD subscribers receiving VOOM – which currently exceeds one million – had been projected to grow to more than eleven million by the end of the term.
6. For months EchoStar has been dissatisfied with its payment obligations under the Affiliation Agreement, and has tried to fabricate a basis for avoiding its commitments to VOOM HD. In particular, EchoStar has manufactured various alleged breaches of the Affiliation Agreement that would give rise, according to EchoStar, to a termination right under the Affiliation Agreement. But these vague and often unspecified claims of breach are patently baseless and were conceived merely as pretext for pressuring VOOM HD to relinquish its valuable and enforceable contract rights. Indeed, EchoStar has candidly told VOOM HD on more than one occasion that EchoStar needs to change the deal it struck under the Affiliation Agreement, and that EchoStar would find means to do so.
7. To the limited extent EchoStar has ever explained its assertions of breach, it has focused on VOOM HD's spending obligations under Section 10 of the Affiliation Agreement. Under Section 10 of the Affiliation Agreement, VOOM HD agreed to spend \$100 million

annually on a 21-channel version of VOOM up to an aggregate amount of \$500 million. Section 10 also provided that, if the number of channels on VOOM was permanently reduced, the annual spending requirement would decrease commensurately pursuant to a prescribed formula. Because VOOM now has only 15 channels, the spend requirement, pursuant to the formula, is currently no more than \$82 million. Failure to achieve the required spending threshold was subject to the broad cure provision in Section 10.

8. In its June 20, 2007 letter to VOOM HD, EchoStar declared that VOOM HD had failed to meet its Section 10 spending obligation. EchoStar, however, did not offer one word of explanation as to the nature or amount of the alleged shortfall. Nor was EchoStar's claim plausible. As EchoStar is well aware from documentation supplied to it by VOOM HD, VOOM HD in fact spent \$102.9 million on VOOM in 2006, not only achieving the requisite threshold, but exceeding it by millions of dollars.

9. In any event, despite asserting an alleged right to terminate for the first time in June 2007, VOOM HD did not in fact attempt to terminate the Affiliation Agreement, but elected to proceed with the Affiliation Agreement for the next *seven months*. In 2007, VOOM HD spent another \$114 million in *new dollars* on VOOM – including \$65.5 million after June 2007 – while EchoStar continued to perform. Moreover, in October 2007, EchoStar subsequently conducted an in-person audit of VOOM HD's annual spending and found no issues.

10. Nevertheless, in November 2007, EchoStar advised VOOM HD that it would terminate on the basis of VOOM HD's alleged spending shortfall unless VOOM HD consented to permit EchoStar to carry VOOM after February 1, 2008 "on a 'tiered' basis, as determined by EchoStar in its discretion," including in ways that are clearly forbidden under the Affiliation Agreement. In that letter, EchoStar merely claimed that VOOM HD's 2006 spending was

deficient because it included certain allocated overhead expenses. EchoStar did not identify the particular amounts or types of the disputed expenses.

11. Both before and after the November 2007 letter, VOOM HD attempted to resolve the parties' differences amicably. But VOOM HD also has given clear notice to EchoStar that VOOM HD would not consent to any unilateral alteration of EchoStar's carriage requirements under the Affiliation Agreement, absent a larger restructuring of the relationship that was acceptable to both parties.

12. EchoStar again did not attempt to terminate the Affiliation Agreement. Instead, at some point, EchoStar decided that it was going to go through with an impermissible re-tiering of VOOM *with or without VOOM HD's consent* and that it would engage in that material breach on February 1, 2008 as part of a larger rearrangement of EchoStar's HD television offerings. Yet VOOM HD continued actively to engage with EchoStar to resolve the issues between the companies amicably, but obviously without any success.

13. On January 5, 2008, VOOM HD reiterated in writing to EchoStar that it would not agree to EchoStar's unilateral and impermissible re-tiering of VOOM. Further, VOOM HD reminded EchoStar that such re-tiering was squarely prohibited by the Affiliation Agreement. Undeterred, EchoStar continued to press ahead with its plan improperly to re-tier VOOM.

14. Then, on January 24, 2008, VOOM HD representatives traveled to EchoStar's offices in Colorado in another effort to resolve the parties' dispute. During the meeting, EchoStar suddenly declared that it had abandoned its plan to re-tier VOOM. Instead, EchoStar stated that it intended to notice a termination of the Affiliation Agreement and take VOOM off the air entirely, effective February 1, 2008 unless VOOM HD agreed to a 30-day "standstill" period during which VOOM would be re-tiered. EchoStar further stated that it reserved its right

to shut VOOM off again if a new deal acceptable to VOOM was not reached during such interim period.

15. On January 28, 2008, VOOM HD wrote to EchoStar to reaffirm its position that EchoStar had no right whatsoever to terminate the Affiliation Agreement.

16. On January 30, 2008, EchoStar wrote to VOOM HD informing it that "EchoStar hereby terminates the [Affiliation] Agreement effective February 1, 2008."

17. EchoStar's purported termination is clearly improper for several reasons. First, VOOM HD unquestionably met its spending threshold under Section 10 by spending \$102.9

million on VOOM in 2006. Indeed, pursuant to the express terms of Section 10, VOOM HD's annual spending threshold was, at a maximum, \$82 million – not \$100 million. The decrease in the spending requirement resulted from the reduction in the number of channels comprising

VOOM from 21 to 15 before EchoStar launched VOOM. Second, EchoStar's purported right to terminate was subject to the notice and cure requirements under Section 10. In this regard, any possible spending shortfall for 2006 has already been cured pursuant to Section 10 because

VOOM HD spent \$114 million on VOOM in 2007 and has taken reasonable steps to prevent a future shortfall. VOOM HD also has made it clear to EchoStar that it is prepared to cure any spending shortfall. Third, despite asserting an alleged right to terminate seven months ago,

EchoStar elected to continue the contract by performing under its terms, and that election cannot be changed now.

18. By itself, the 15-year Affiliation Agreement with EchoStar created and sustained a viable and highly profitable business for VOOM HD until 2020, whether or not any other television provider ever distributed the VOOM channels. EchoStar's termination of that agreement and its taking VOOM off the air will seriously threaten VOOM HD's very existence,

and almost certainly cause VOOM HD to go out of business. Cablevision is the only other television provider that currently carries VOOM, but it does so pursuant to a short-term arrangement that will expire mid-year. In reliance on EchoStar's continued performance, VOOM HD already has spent over a quarter of a billion dollars on VOOM, and has committed to spend a total of \$500 million in the early years of operation. Absent judicial relief, however, the lack of affiliation fees that VOOM HD will receive from EchoStar will leave VOOM HD with nothing but substantial losses.

19. Not only will EchoStar's termination of the Affiliation Agreement be known throughout the industry, making it virtually impossible for VOOM HD to attract any new distributors for the Service, but VOOM HD will be unable to sustain the losses occasioned by EchoStar's actions.

20. VOOM HD has been forced to bring this suit for declaratory and injunctive relief to prevent the destruction of VOOM that EchoStar is bent on bringing about, and to stop EchoStar from taking any steps to terminate the Affiliation Agreement.

21. In the end, EchoStar is a sophisticated multi-billion-dollar corporation that knowingly negotiated and signed the Affiliation Agreement, including its Packaging and Penetration Commitments and its payment obligations. EchoStar did so as part of a larger transaction whereby its affiliate received 20% ownership in VOOM HD. It was contemplated by the parties that the 20% stake held by EchoStar's affiliate would significantly increase in value over time, and serve as additional, substantial consideration for EchoStar's significant distribution and payment obligations under the Affiliation Agreement. EchoStar should be held to the deal it made. EchoStar should not be allowed to terminate on the basis of a trumped-up and pretextual claim of breach simply because it no longer likes the deal it struck.

has its principal place of business in the State of New York.

26. This Court has jurisdiction pursuant to CPLR § 301, *et seq.* because VOOM HD

JURISDICTION AND VENUE

Boulevard, Englewood, Colorado 80112.

a Colorado limited liability company with its principal offices at 9601 South Meridian

25. Upon information and belief, Defendant EchoStar Satellite L.L.C. ("EchoStar") is

EchoStar member of VOOM HD.

Member of VOOM HD. EchoStar Media Holdings Corporation, a Colorado corporation, is the

Rainbow Programming Holdings, LLC, a Delaware limited liability company, is the Rainbow

24. VOOM HD has an 80% "Rainbow Member" and a 20% "EchoStar Member".

the IFC Center, a movie theater in New York City.

feature film production library), IFC Entertainment (which owns and operates a film library), and

First Take/IFC in Theaters (a feature film/video on demand initiative), IFC Productions (a

Entertainment, Rainbow Media owns and manages IFC Films (a film distribution company), IFC

("IFC"), AMC, and WE tv. Rainbow Media also runs IFC Entertainment. Through IFC

operates several individual programming channels, including the Independent Film Channel

innovator for the last quarter century. In addition to VOOM, Rainbow Media currently owns and

23. Rainbow Media, the parent of VOOM HD, has been a television programming

Systems Corporation ("Cablevision").

Rainbow Media Holdings LLC ("Rainbow Media"), which in turn is a subsidiary of Cablevision

offices located at 11 Pennsylvania Plaza, New York, New York. VOOM HD is a subsidiary of

22. Plaintiff VOOM HD is a Delaware limited liability company with its principal

THE PARTIES

A. The April 2005 Deal

BACKGROUND

27. This Court has jurisdiction over EchoStar pursuant to CPLR §§ 301 and 302(a)(1) because EchoStar does business and transacts business in the State of New York through the sale of its satellite television service to New York residents. Furthermore, EchoStar agreed to submit to jurisdiction in the State of New York by registering with the New York Department of State as a foreign limited liability company licensed to transact business.

28. Venue is proper in New York County pursuant to CPLR § 509 and pursuant to CPLR § 503(a) because EchoStar, a foreign limited liability company, designated New York County as the location of its offices in its application to conduct business filed with the New York Secretary of State.

and operated by Rainbow Media, other HD channels, and a number of other popular cable

channels that were licensed in standard-definition format from third party providers.

31. Rainbow DBS was unable to attract more than a minimal number of subscribers,

and Cablevision's Board of Directors made the decision in 2005 to shut down the Rainbow DBS

business and discontinue the proprietary programming channels it provided.

32. Rainbow DBS, and the VOOM channels, were scheduled to go off the air on

April 30, 2005. A few days before that deadline, the parties struck a deal. In broad terms,

EchoStar committed to carrying VOOM, which as reflected in the contracts was understood as a

suite of 21 VOOM channels, first under an interim arrangement and then under the Affiliation

Agreement. In turn, EchoStar's affiliate received a 20% equity interest in VOOM HD. The

Affiliation Agreement was fully negotiated and agreed to in form by the end of April 2005. It

was executed in connection with the consummation of the equity interest transaction in

November 2005.

33. Under the interim agreement, EchoStar agreed that, pending its formal launch of

all 21 VOOM channels, it would distribute a subset of 10 VOOM channels to its subscribers

beginning May 1, 2005. Ultimately, after discussion with EchoStar, it was decided to reduce the

number of VOOM channels and to launch VOOM in February 2006 as a suite of 15 channels, as

permitted under the Affiliation Agreement.

B. The Affiliation Agreement

34. EchoStar's commitment under the Affiliation Agreement to make VOOM

available to an ever-increasing number of HD television subscribers across the country for a term

of 15 years and to pay VOOM HD successively higher affiliation fees each year of that term

essentially guaranteed that VOOM HD would become highly profitable, and increasingly so,

throughout the term, whether or not additional distribution of VOOM by other cable or digital satellite providers was ever obtained.

EchoStar's Distribution Obligations Under Section 5

35. The Affiliation Agreement was carefully crafted to ensure that VOOM would gain wide exposure with EchoStar's HD subscribers. First, the Packaging Commitment requires that:

EchoStar shall distribute the Service as part of its most widely distributed package of HD programming services that includes any High Definition Programming Service other than an Excluded HD Service (the "Highest Penetrated HD Package")

(Affiliation Agreement, § 5(a) (emphasis in original).) Second, through the Penetration Commitment, EchoStar agreed to ensure that VOOM "shall be received" by at least 95% of its total HD subscribers within the first year of the term. This penetration requirement dropped by 1% in each succeeding year. Even in the final year of the term in 2020, EchoStar committed that it would ensure VOOM would reach no less than 81% of its total HD subscribers. In Contract Year 3, which will begin on February 1, 2008, EchoStar is obligated to make VOOM available to at least 93% of its total HD subscribers.

36. The Affiliation Agreement and its express carriage requirements represent the anchor of VOOM HD's business, and their preservation is necessary to maintain VOOM HD's extraordinarily unique and valuable programming offerings.

The Termination Provisions and Spend Requirement Under Section 10

37. Section 10 of the Affiliation Agreement sets out the general rights of the parties to terminate the agreement in specific situations. Specifically, it allows either party to terminate upon the occurrence of a material breach by the other, subject to a general cure provision:

Either party shall have the right to terminate this Agreement if (A) the other party has (i) committed a material breach of this Agreement unless such breach, is cured within the 60 day period following receipt of notice of breach, provided that if a longer cure period is provided elsewhere in this Agreement for a particular breach, then such longer cure period shall apply and provided further that if such breach is not susceptible to cure, such breach shall nonetheless be deemed cured for purposes of this provision if the breaching party has taken all reasonable steps to prevent the recurrence of such breach so long as the same or a substantially similar material breach does not occur again within a 6 month period or 2 times in any year, in which case the steps taken by the breaching party to prevent the recurrence of such a breach shall be deemed insufficient and the non-breaching party shall be availed of its termination rights notwithstanding any cure period.

(Affiliation Agreement § 10.)

38. Section 10 then sets forth one particular obligation -- VOOM HD's annual

spending obligation of up to \$100 million -- that would trigger a termination right upon a material breach, subject to the notice and cure requirements:

[I]f during any calendar year during the Term [VOOM HD] fails to spend \$100 million US Dollars on the Service EchoStar shall have the right to terminate this Agreement, provided that if and to the extent [VOOM HD] permanently reduces the number of channels on the Service during any calendar year such \$100 million US Dollars amount shall be decreased by \$3 million US Dollars per calendar year if it discontinues a Movie Channel and a \$5 million US Dollars per calendar year if it permanently discontinues a channel other than a Movie Channel. For clarity, the parties agree that such decreases shall apply only on a pro rata basis for any part of a calendar year during which a channel is permanently discontinued. Additionally, the parties agree that such \$100 million US Dollars per calendar year shall only apply until such time as [VOOM HD] has invested \$500 million US Dollars in the Service.

(Id.)

39. The annual spending threshold of \$100 million on the Service was subject to a

reduction, where the number of channels that comprised VOOM was reduced below 21 channels.

40. Because VOOM HD ultimately decided to reduce the number of VOOM channels

from 21 to 15, VOOM HD's annual spending requirement was no more than \$82 million under

the formula set forth in Section 10.

41. The Affiliation Agreement, in turn, defines the term "Service" as follows:

"Service" shall mean the Service as more specifically described below in Section 4 and shall, for the avoidance of doubt, include, in the aggregate, all components and/or parts thereof including without limitation, all interactive components, graphic scrolls or other visual graphics and all portions of the VBI (or its digital equivalent) and any commercial advertising that airs on the Service and shall for clarity refer to, in the aggregate, all constituent channels that make up the Service.

(Id. § 1.)

C. EchoStar Conducted Extensive Financial Due Diligence Regarding, Among Other Items, the Allocations

42. Before entering into the April 2005 Agreements, EchoStar conducted extensive financial due diligence of VOOM HD. Through that process, EchoStar became familiar with the financial accounting protocols used by Cablevision and its affiliates, including that of VOOM HD's parent, Rainbow Media.

43. Like other large, sophisticated companies with multiple subsidiary business units, Rainbow Media incurs certain shared expenses, including overhead expenses, on behalf of its numerous business units and then allocates such expenses to its business units. Cablevision, the parent of Rainbow Media, similarly incurs and then allocates a portion of its shared expenses to its subsidiaries, which include Cable & Communications (the consumer television, cable, and telephone business), Lightpath (the commercial telecom business), Madison Square Garden (owner of professional basketball and hockey teams and related properties), Clearview Cinemas, and Rainbow Media. A portion of the shared expenses Cablevision allocates to Rainbow Media are further allocated by Rainbow Media to its business units, including to VOOM HD and, by extension, to VOOM.

44. The rationale for incurring expenses on a shared basis is common and well-accepted. As VOOM HD is part of Rainbow Media, it would be entirely inefficient and wasteful

for each of Rainbow Media's programming channels to hire its own marketing, public relations, legal and business staff. Those functions can be performed more efficiently by one central staff for the benefit of all of Rainbow Media's channels. The benefits received by VOOM for these services are real and substantial. It is also common sense, and certainly consistent with generally accepted accounting principles, that appropriate portions of these shared expenses are allocated to VOOM. These expenses, like the benefits received, are real and substantial.

45. Likewise, Rainbow Media is part of Cablevision. Just as it would be inefficient to staff matters at the VOOM HD level instead of the Rainbow Media level, so too would it be inefficient to staff certain matters at the Rainbow Media level, instead of the Cablevision level. For example, Cablevision's financial statements are prepared on a consolidated basis, and therefore, the annual audit of Cablevision encompasses both Rainbow Media and, by definition, VOOM HD. Accounting personnel at Cablevision are therefore engaged working on Rainbow Media's accounting, and by definition, VOOM HD's.

46. During the negotiation of the Affiliation Agreement and the LLC Agreement which created VOOM HD, EchoStar was explicitly told that certain shared expenses, including overhead expenses, were allocated to VOOM from Rainbow Media and Cablevision, and would continue to be allocated in this fashion. Budgeted financial information provided to EchoStar during the due diligence phase of the negotiations reflected these very expense allocations, and EchoStar's representatives discussed the allocations and understood that the allocation of these expenses, including overhead expenses, would continue to be made. Under these circumstances, it is simply misleading and certainly wrong for EchoStar to claim that certain overhead expense allocations – so far not even identified or quantified – are not legitimate expenses of VOOM HD,

or that it did not know that a portion of the 2006 spend for VOOM would be represented by such overhead allocations.

D. EchoStar Challenges VOOM HD's Spending on the Service

47. Since April 2005, VOOM HD has spent more than \$270 million on VOOM. In

2006 alone, VOOM HD spent a total of approximately \$102,890,000, almost \$3 million more than even EchoStar contends that VOOM HD was required to spend in 2006 and far in excess of its actual spending requirement. At no point in 2006, or for almost the first six months of 2007, did EchoStar ever inquire about, mention, or challenge VOOM HD's 2006 spending.

48. Nevertheless, on June 19, 2007, Kevin Cross, EchoStar's Corporate Counsel, sent a letter to VOOM HD, indicating that "[p]ursuant to Sections 7(b)(ii) and 10 of the Agreement, [VOOM HD] is hereby notified that EchoStar intends to avail itself of its audit right in connection with the provisions of the latter such Section."

49. Then, on June 20, 2007, Mr. Cross sent another letter to VOOM HD, in which he announced definitively that "EchoStar believes that [VOOM HD] failed to spend \$100 million on the Service in calendar year 2006 and that EchoStar is thus entitled to terminate the Agreement in accordance with its terms."

50. Mr. Cross did not explain why he thought there was a spending shortfall, what the purported shortfall was, or in what amount. Nor did he specify the type of expense EchoStar believed was improperly included in VOOM HD's 2006 spending calculation. Similarly, Mr. Cross did not offer any explanation for why EchoStar had said nothing about 2006 spending until June of the following year, when VOOM HD was already well on its way to spending \$114 million in new money on VOOM in 2007. EchoStar also did not explain why it requested an audit of VOOM HD's compliance with Section 10's spend requirement when it had already

purportedly concluded without the audit that VOOM HD "failed to spend \$100 million on the Service in calendar year 2006," and had an immediate termination right that it could elect to utilize.

51. But despite its pronouncement of a purported termination right in June, EchoStar did not terminate at that time, or at any time for the next seven months. To the contrary, it manifested a clear election to continue the Affiliation Agreement.

52. Just eight days after the June 20 letter, EchoStar persuaded VOOM HD to enter a new letter agreement, dated June 28, 2007 (the "Letter Agreement"). In that agreement, VOOM HD agreed to forego increases in affiliation fees that would have otherwise resulted from the addition of new subscribers to EchoStar's HD service during the period August 15, 2007 through January 31, 2008. VOOM HD made this concession at EchoStar's request to facilitate EchoStar's desire to launch a promotional campaign offering new subscribers six months' worth of HD programming for free. VOOM HD entered into the Letter Agreement in reliance on the fact that the Affiliation Agreement would continue and EchoStar would fulfill its obligations thereunder. VOOM HD would not have agreed to accommodate EchoStar in this fashion if it believed EchoStar was going to terminate the Affiliation Agreement.

53. On July 11, 2007, John Huffman, Rainbow Media's Executive Vice President, Finance, sent EchoStar a spending breakdown for 2006 (the "Spending Breakdown"). Upon receipt of the Spending Breakdown, EchoStar was advised that VOOM HD had included in its 2006 spending calculations certain shared expenses allocated by Rainbow Media and Cablevision in the amount of \$6.067 million, which included, among other things, certain overhead expenses. Mr. Huffman's cover e-mail enclosing this analysis invited EchoStar to contact him if it had "any questions or comments."

54. Nor was this alleged breach of the annual spend requirement the only alleged

breach of the Affiliation Agreement that EchoStar identified over the summer and fall of 2007. EchoStar spent considerable time since June 2007 manufacturing various claims of breach. VOOM HD successfully refuted each of EchoStar's allegations. EchoStar subsequently abandoned them.

55. During the same period, VOOM HD used its best efforts to engage cooperatively with EchoStar in broad-ranging discussion regarding possible, mutually acceptable, alternative arrangements.

56. Although EchoStar invoked its audit rights on June 19, 2007, it waited until

October 2007 – approximately three months after receiving the Spending Breakdown – to actually conduct an audit. At the conclusion of the October 2007 audit, EchoStar's lead auditor, Katherine Knight, found that all matters were in order and raised no issues or concerns.

57. Despite Ms. Knight's findings, after some delay, EchoStar once again, after some

delay, subsequently alleged non-compliance with Section 10 and asserted a right to terminate the Affiliation Agreement based on spending that occurred more than a year ago. On November 16,

2007, Eric Sahl of EchoStar wrote:

As you are aware, pursuant to Section 10 of the [Affiliation] Agreement, [VOOM HD] is obligated to expend not less than \$100 million US Dollars on the Service per annum (the "Annual Investment Obligation"). Section 10 also provides that EchoStar may terminate the Agreement if [VOOM HD] fails to comply with the Annual Investment Obligation.

Further to EchoStar's recent audit of Network's compliance with the provisions of Section 10 of the Agreement, EchoStar has concluded that [VOOM HD] failed to satisfy the requirement by, among other things, inappropriately allocating general overhead costs of the Network to [VOOM HD's] investment in the Service (emphasis added). Such an allocation is not supported by the Agreement's express terms and, as such, is a material breach of the Agreement. Since such breach is not capable of cure and thus is not subject to a cure period, EchoStar hereby reserves its right to terminate the Agreement, effective immediately. In

the alternative, EchoStar will continue to carry the Service provided that, beginning February 1, 2008, such ongoing carriage would be on a 'tiered' basis, as determined by EchoStar in its discretion. If this is not acceptable to [VOOM HD], kindly so advise so that EchoStar may formally terminate the Agreement.

(Emphases added and deleted.)

58. EchoStar's November 16 letter did not articulate any other purported spending shortfall, and VOOM HD has never received any letter from EchoStar advising it of any other purported shortfall. EchoStar's November 16 letter also failed to identify any specific spending amount within the general category of allocated overhead expenses that it is challenging, or to quantify the amount of overhead expenses allocated to VOOM that it believes are impermissible and explain why it has that belief. EchoStar has never provided such explanation, which it clearly is required to do.

59. The November 16 termination threat makes abundantly clear that EchoStar hoped, by threatening to terminate the Affiliation Agreement a second time, it could coerce a modification to the Affiliation Agreement that would enable it to re-tier VOOM and avoid what would otherwise be a clear violation of the express and unambiguous Packaging and Penetration Commitments.

60. After receiving the November 16, 2007 letter, VOOM HD informed EchoStar that it did not "agree with [EchoStar's] claims/assertions of breach/proposed actions." Shortly thereafter, VOOM HD initiated broad-ranging business discussions with EchoStar in an effort to resolve the parties' differences. During these discussions, EchoStar made it clear that its sole interest was in carrying VOOM on a tier, or at least differently than it was obligated to carry VOOM under the Affiliation Agreement.

61. In an effort to continue the productive discussions that had taken place in recent months, representatives of VOOM HD traveled to EchoStar's headquarters in Colorado on

January 24, 2008. EchoStar changed radically the tenor of the parties' discussions at that meeting. Whereas before, EchoStar seemed genuinely interested in finding a mutually

acceptable solution to the parties' differences, EchoStar made it clear that none of the business solutions the parties had been discussing for months would be acceptable. Despite all

appearances to the contrary, EchoStar intended to notice a termination of the Affiliation

Agreement and take VOOM off the air forever, as of February 1, 2008, unless VOOM HD

agreed to a 30-day "standstill" period during which VOOM would be re-tiered. EchoStar further stated that it reserved its right to shut VOOM off again if a new deal acceptable to VOOM was

not reached during such interim period.

62. In response to EchoStar's new position, VOOM HD reiterated that if EchoStar

would only identify a legitimate spending shortfall in the 2006 spending, VOOM HD stood

ready, willing and able to cure. However, EchoStar made quite clear that it was not interested in any cure, and wanted only to be finished with its obligations under the Affiliation Agreement.

On January 30, 2008, for the first time, EchoStar sent VOOM HD a letter that purported to notice a termination of the Affiliation Agreement, effective February 1, 2008.

63. To prevent the massive irreparable harm that VOOM HD would sustain if

EchoStar carries out a termination of the Affiliation Agreement and takes VOOM off the air, as EchoStar has just confirmed to VOOM HD that it will do, VOOM HD has filed this lawsuit, and

respectfully seeks immediate and urgent relief.

COUNT I
(DECLARATORY JUDGMENT AND FOR TEMPORARY
RESTRAINING ORDER, AND PRELIMINARY AND PERMANENT
INJUNCTIVE RELIEF)

64. VOOM HD repeats and realleges paragraphs 1 through 62 of this Complaint as if

fully set forth herein.

65. The Affiliation Agreement is a valid and enforceable contract.

66. VOOM HD has performed its obligations under the Affiliation Agreement.

67. EchoStar's threatened termination under Section 10 of the Affiliation Agreement

is entirely impermissible and would constitute a material breach of the Affiliation Agreement.

68. The threatened termination will irreparably harm VOOM HD, and the balance of

equities tips decidedly in VOOM HD's favor.

69. VOOM HD has no adequate remedy at law.

70. Accordingly, a real controversy involving substantial legal interests exists

between VOOM HD and EchoStar regarding their respective rights under the Affiliation

Agreement. Furthermore, a declaratory judgment is essential to settle the justiciable dispute

concerning the rights and obligations of VOOM HD and EchoStar under the Affiliation

Agreement.

71. VOOM HD seeks a declaratory judgment that EchoStar lacks any right to

terminate the Affiliation Agreement, or to cease or diminish its performance under the Affiliation

Agreement.

72. Moreover, pending the declaratory judgment sought herein, and in light of

EchoStar's threatened breach of the Affiliation Agreement, VOOM HD seeks a temporary

restraining order, and a preliminary and permanent injunction restraining and enjoining EchoStar

from taking any steps to terminate the Affiliation Agreement.

COUNT II (ATTORNEYS' FEES AND DISBURSEMENTS)

73. VOOM HD repeats and realleges paragraphs 1 through 71 of this Complaint as if

fully set forth herein.

74. The Affiliation Agreement entitles VOOM HD to its "costs, expenses and

reasonable attorney fees."

75. Section 13(j) provides as follows:

Attorney Fees. In the event of any suit or action to enforce or interpret this Agreement or any provision thereof, the prevailing party shall be entitled to recover its costs, expenses and reasonable attorney fees, both at trial and on appeal, in addition to all other sums allowed by law.

76. In the event that VOOM HD is the "prevailing party" in the above-captioned

action, it is entitled to "to recover its costs, expenses and reasonable attorney fees, both at trial

and on appeal, in addition to all other sums allowed by law."

77. VOOM HD has incurred, and will continue to incur, costs and expenses,

including attorneys' fees and disbursements, in connection with this action to enforce the

Affiliation Agreement.

78. Accordingly, VOOM HD seeks a monetary judgment "to recover its costs,

expenses and reasonable attorney fees" in connection with this action to enforce the Affiliation

Agreement.

WHEREFORE, VOOM HD demands that, upon a final determination by this

Court, judgment be entered in its favor and against EchoStar as follows:

On Count I of the Complaint:

a. declaring that EchoStar lacks any right to terminate the Affiliation Agreement, or to cease or diminish its performance under the Affiliation Agreement;

b. preliminarily and permanently (i) restraining and enjoining EchoStar from terminating, or taking any steps to terminate, the Affiliation Agreement; and (ii) restraining and enjoining EchoStar from taking VOOM off the air; and

c. awarding costs and attorney's fees to VOOM HD; and

d. granting VOOM HD such other and further relief as the Court deems just and appropriate.

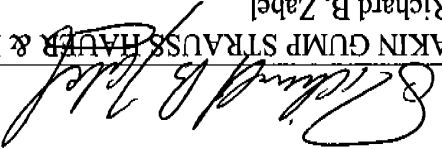
On Count II of the Complaint:

a. awarding VOOM HD its costs, expenses and reasonable attorney fees, both at trial and on appeal, in addition to all other sums allowed by law; and

b. granting VOOM HD such other and further relief as the Court deems just and appropriate.

Dated: New York, New York
January 31, 2008

By:


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Index No. _____

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

VOOM HD HOLDINGS LLC,

Plaintiff,

- against -

ECHOSTAR SATELLITE L.L.C.,

Defendant.

COMPLAINT

AKIN GUMP STRAUSS HAUER & FELD LLP

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