16-transponder satellite had it not been given that right. EchoStar had all the more reason to rely on that expectation because the Commission reconfirmed the Continental right in the 1992 Order granting eastern channel assignments to EchoStar.

4. The difference in cost between an 11-transponder and a 16-transponder satellite is in the tens of millions of dollars. The added costs of a 16-transponder satellite include additional traveling wave tubes, solar panels, batteries and other items, resulting in additional weight, which in turn dramatically increases the launch expense.

5. In 1992, EchoStar decided to proceed with construction of its DBS system, in which it has now invested hundreds of millions of dollars, on the basis of the expectation that it would receive the additional frequencies to which Continental gave it a conditional right.

6. The substantial investments made in DirectSat's DBS system after the merger of DirectSat with a subsidiary of EchoComm were similarly based on that expectation.

7. Without the Continental right to additional frequencies, I would have had in 1992 considerable doubt over whether the DBS system of EchoStar (with only 11 full-CONUS transponders) could viably compete against Hughes, which was already assigned 27 full-CONUS channels. A 27-channel full-CONUS

system can offer consumers 250% more programming than an 11-channel system, creating a hard-to-overcome built-in disadvantage. A similar disadvantage would persist for a 21-channel offering (e.g., the joint systems of EchoStar and DirectSat) compared to a 32-channel offering (the joint offerings of DirecTV and USSB). This disadvantage is further exacerbated by the structure of the deals between satellite distributors and important programming vendors, including major studios. Studios, for example, typically impose minimum carriage requirements on a substantial portion of the programming they sell. The minimum requirements for the less popular competitive offerings "eat up" a substantially larger portion of an 11 or 21-channel DBS system's capacity than in the case of a 27 or 32-channel system. This leaves the high capacity system much greater leeway to show the more popular offerings that are decisive in attracting subscribers.

8. In 1992 I and EchoStar believed that an 11-channel DBS system would likely be at a decisive disadvantage. Absent the right to receive additional channels, I would have considered whether to proceed with construction of a DBS system based on an entirely different set of assumptions, and would likely have reached a different decision than the course taken.

9. I reasonably perceived the promise given by the Commission in Continental as encouraging the bold DBS pioneers like me, EchoStar and DirectSat to risk substantial capital in a then highly uncertain venture in order to promote the emergence of competition to cable in the MVPD market. Now that this capital has been invested at great risk and the DBS prospects have become tangible enough for everyone to want to enter the fray, it would be entirely inappropriate to disregard the Commission's promise and the DBS pioneers' reliance on it, and deny them the reward to which the Commission entitled them.

10. In sum, EchoStar and DirectSat have heavily invested in reliance on their Continental rights, both in constructing 16-transponder satellites, and in deciding to proceed with construction of their systems in the first place.

11. The cost of sale, delivery, or transmission of programming for distribution by a DBS operator such as EchoStar typically is lower, not higher, than the cost incurred by programming vendors in their dealings with cable.

12. In a typical transaction between a cable operator and a programming vendor, the vendor incurs the cost of uplinking the signal and downlinking it to a large number of cable headends. It also incurs the cost of auditing each and every one

of those headends. Further, it often incurs substantial piracy costs.

13. On the other hand, in a typical transaction between a vendor and a satellite distributor such as EchoStar, the vendor incurs the cost of uplinking and downlinking the signal to only one location -- the satellite operator's uplink facility. In fact, the only reason why the vendor incurs the cost of using a satellite in the first place is the need of the cable operators for transmission to several headends. A DBS provider can obtain the programming by piggy-backing on the satellite transmission that is necessary for the cable operators, at no incremental cost for the vendor. But for the point-to-multipoint needs of the cable operators, the vendor could transmit its signal to a DBS provider by a cheaper, point-to-point means -- e.g., fiber. Further, the programming vendor needs to audit only one as opposed to many headends. Moreover, the risk of piracy is reduced because of the technological advances, and resulting in breaking EchoStar's and DirectSat's addressable digital compressed signal.

14. Similarly, there can be no significant economies of scale attaching to the number of subscribers. Conversely, the sale of programming to cable operators entails substantial

diseconomies of scale, as it requires service to several headends as opposed to one centralized facility.

**VERIFICATION**

I, Charles W. Ergen, verify under penalty of perjury that the information set forth in the foregoing is true and correct.

Executed on November 17, 1995.

Charles W. Ergen