

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

RSJ

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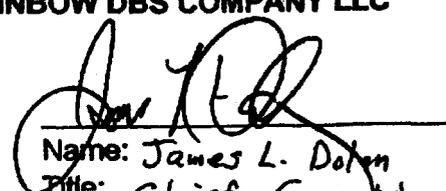
ECHOSTAR SATELLITE L.L.C.

By: _____


Charles W. Ergen
President and Chief Executive Officer

RAINBOW DBS COMPANY LLC

By: _____


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

Response to Question 36

In a Memorandum Opinion and Order released May 16, 2002, the Satellite Division of the International Bureau cancelled two conditional construction permits held by EchoStar affiliates for 22 channels at the 175° W.L. orbital location. *See In the Matter of EchoStar Satellite Corporation, Directsat Corporation, Direct Broadcasting Satellite Corporation, Consolidated Request for Additional Time to Commence Operation, Memorandum Opinion and Order, DA 02-1164 (rel. May 16, 2002).*

By Order released July 1, 2002, the International Bureau cancelled EchoStar's license for a Ka-band satellite system and dismissed a related modification application filed by EchoStar. *See In the Matter of EchoStar Satellite Corporation; Application for Authority to Construct, Launch, and Operate a Ka-band Satellite System in the Fixed-Satellite Service, Memorandum Opinion and Order, DA 02-1534 (rel. July 1, 2002).* On November 8, 2002, the International Bureau reinstated EchoStar's license for a Ka-band system as well as the related modification application. *See In the Matter of EchoStar Satellite Corporation; Application for Authority to Construct, Launch, and Operate a Ka-band Satellite System in the Fixed-Satellite Service, Memorandum Opinion and Order, DA 02-3085 (rel. Nov. 8, 2002).*

In a Memorandum Opinion and Order released April 29, 2004, the International Bureau denied, in part, four applications filed by EchoStar to operate GSO FSS satellites using the Ka and/or Extended Ku-bands at the 83° W.L., 105° W.L., 113° W.L., and 121° W.L orbital locations. *See In the Matter of EchoStar Satellite LLC, Applications for Authority to Construct, Launch, and Operate Geostationary Satellites in the Fixed-Satellite Service Using the Ka and/or Extended Ku Bands at the 83° W.L., 105° W.L., 113° W.L., and 121° W.L orbital locations, Memorandum Opinion and Order, DA 04-1167 (rel. Apr. 29, 2004).* EchoStar has petitioned for reconsideration of this decision.

In a Memorandum Opinion and Order released August 3, 2004, the International Bureau declared null and void the space station authorization held by VisionStar, an EchoStar affiliate, for use of the Ka-band at the 113° W.L. orbital location. *See VisionStar, Inc., Application for Modification of Authority to Construct, Launch and Operate a Ka-Band Satellite System in the Fixed Satellite Service*, Memorandum Opinion and Order, DA 04-2449 (rel. Aug. 3, 2004).

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.

(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

(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.

~~Black Hawk Property pursuant to Section 10 of this Letter Agreement.~~
satisfied with the condition of the Black Hawk Property pursuant to Section 9 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

(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.

(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

(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.

~~_____~~
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.

(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.

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

(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).

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.

(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,

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

This Letter Agreement shall be interpreted and governed by 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. 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

BSU

(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.

Agreement set forth in the
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.

