

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

-----X  
VOOM HD HOLDINGS LLC,

Plaintiff,

-against-

ECHOSTAR SATELLITE L.L.C.,

Defendant.  
-----X

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Index No. 600292/08

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Hon. Richard B. Lowe III

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**REPLY TO**  
**COUNTERCLAIMS**

Plaintiff-Counterclaim Defendant VOOM HD Holdings LLC ("VOOM HD"), by its attorneys Akin Gump Strauss Hauer & Feld LLP and Sidley Austin LLP, answers the Counterclaims asserted by Defendant-Counterclaim Plaintiff Dish Network L.L.C., formerly known as EchoStar Satellite L.L.C. ("EchoStar") in its Answer and Counterclaims dated June 24, 2008 ("Counterclaims") as follows:

1. With respect to the allegations contained in Paragraph No. 1 of the Counterclaims, this paragraph contains legal conclusions to which no response is required. To the extent that Paragraph No. 1 contains any factual allegations, VOOM HD denies them, except admits that the Counterclaims purport to assert certain claims against VOOM HD.

**PARTIES**

2. Admits the allegations in the first sentence of Paragraph No. 2 of the Counterclaims. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in the second and third sentences of Paragraph No. 2, except admits that EchoStar is a leading provider of direct broadcast satellite ("DBS") services to subscribers on a nationwide basis.

3. Admits the allegations in Paragraph No. 3 of the Counterclaims.

## **JURISDICTION AND VENUE**

4. Admits the allegations in Paragraph No. 4 of the Counterclaims.
5. Admits the allegations in Paragraph No. 5 of the Counterclaims.

## **BACKGROUND**

6. Admits the allegations in the first and second sentences of Paragraph No. 6 of the Counterclaims. Denies the allegations in the third sentence of Paragraph No. 6, except admits that cable operators are EchoStar's competitors in regional distribution markets for multi-channel, video programming, and further admits that DirecTV is the only provider other than EchoStar of DBS services to subscribers on a nationwide basis.

7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph No. 7 of the Counterclaims.

8. Denies the allegations in the first sentence of Paragraph No. 8 of the Counterclaims, except admits that there is growing demand for HD television programming in the United States and in certain parts of the world. Denies the allegations in the second sentence of Paragraph No. 8, except admits that some cable operators and DBS providers seek HD programming at different times and in different quantities. Denies the allegations in the third sentence of Paragraph No. 8, except admits that programmers can have opportunities to distribute HD programming to some cable operators and DBS providers on a regional basis in the United States and in certain parts of the world at different times and in different quantities.

9. Admits the allegations in the first sentence of Paragraph No. 9 of the Counterclaims. Denies the allegations in the second sentence of Paragraph No. 9, except admits that Rainbow DBS Company, LLC, a subsidiary of Cablevision Systems Corporation ("Cablevision"), offered a suite comprised of 21 high-definition ("HD") channels. Denies the

allegations in the third sentence of Paragraph No. 9, except admits that Rainbow DBS was unable to attract more than a minimal number of subscribers, and further admits that Cablevision made the decision in 2005 to shut down the Rainbow DBS business. Denies the allegations in the fourth sentence of Paragraph No. 9, and respectfully refers the Court to the Interim Agreement between EchoStar and VOOM HD dated April 28, 2005 (the "Interim Agreement") for the true and complete contents thereof.

10. Denies the allegations in Paragraph No. 10 of the Counterclaims, except admits that EchoStar and VOOM HD entered into the Affiliation Agreement dated November 17, 2005 (the "Affiliation Agreement"), and respectfully refers the Court to the Affiliation Agreement and the Interim Agreement for the true and complete contents thereof. To the extent that the allegations in Paragraph No. 10 contain legal conclusions, no response is required.

11. Denies the allegations in the first sentence of Paragraph No. 11 of the Counterclaims. Denies the allegations in the second sentence of Paragraph No. 11, except admits that VOOM HD's suite of high-definition channels known as VOOM was made available for a one-year period beginning on July 1, 2007 to approximately 900,000 Cablevision subscribers in the metropolitan New York region pursuant to a distribution agreement between VOOM HD and Cablevision, which agreement expired on June 30, 2008. Denies the allegations in the third sentence of Paragraph No. 11, except admits that VOOM HD has sold programming in the countries and region identified in the third sentence, and further admits that a single 24/7 linear VOOM channel is distributed internationally.

12. Denies the allegations in Paragraph No. 12 of the Counterclaims, and respectfully refers the Court to the Affiliation Agreement for the true and complete contents thereof. To the extent that the allegations in Paragraph No. 12 contain legal conclusions, no response is required.

13. Admits the allegations in the first sentence of Paragraph No. 13 of the Counterclaims. Admits the allegations in the second sentence of Paragraph No. 13, and respectfully refers the Court to the Affiliation Agreement for the true and complete contents thereof. To the extent that the allegations in the third and/or fourth sentences of Paragraph No. 13 contain legal conclusions, no response is required. With respect to any factual allegations in the third and/or fourth sentences of Paragraph No. 13, VOOM HD denies them, and respectfully refers the Court to the Affiliation Agreement for the true and complete contents thereof. To the extent that the allegations in the fifth sentence of Paragraph No. 13 contain legal conclusions, no response is required. With respect to any factual allegations in the fifth sentence of Paragraph No. 13, VOOM HD denies knowledge or information sufficient to form a belief as to the truth of such allegations.

14. To the extent that the allegations in Paragraph No. 14 of the Counterclaims contain legal conclusions, no response is required. With respect to any factual allegations in Paragraph No. 14, VOOM HD denies them, and respectfully refers the Court to the Affiliation Agreement for the true and complete contents thereof, except with respect to the allegations in the third sentence regarding the number of subscribers to other cable and satellite operators, VOOM HD denies knowledge or information sufficient to form a belief as to the truth of such allegations.

15. To the extent that the allegations in Paragraph No. 15 of the Counterclaims contain legal conclusions, no response is required. With respect to any factual allegations in Paragraph No. 15, VOOM HD denies them, except admits that VOOM HD properly certified its compliance with Section 4 of the Affiliation Agreement by letter dated February 27, 2007, and

respectfully refers the Court to that February 27, 2007 letter for the true and complete contents thereof.

16. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph No. 16 of the Counterclaims, and respectfully refers the Court to VOOM HD's monthly financial statements for the calendar year 2006 for the true and complete contents thereof, except denies that VOOM HD had a \$100 million spend requirement. To the extent that the allegations in Paragraph No. 16 contain legal conclusions, no response is required.

17. Denies the allegations in the first sentence of Paragraph No. 17 of the Counterclaims, except admits that Kevin Cross of EchoStar sent a letter dated June 19, 2007 to VOOM HD, and respectfully refers the Court to that June 19, 2007 letter and the Affiliation Agreement for the true and complete contents thereof, and further denies knowledge or information sufficient to form a belief as to the truth of any allegation in the first clause of the first sentence. To the extent that the first clause of the first sentence of Paragraph No. 17 contains any legal conclusions, no response is required. With respect to the allegations in the second sentence of Paragraph No. 17, VOOM HD denies them, except admits that Kevin Cross of EchoStar sent a letter dated June 20, 2007 to VOOM HD, and respectfully refers the Court to that June 20, 2007 letter and the Affiliation Agreement for the true and complete contents thereof.

18. Denies the allegations in the first sentence of Paragraph No. 18 of the Counterclaims, except admits that John Huffman is, and has been since, at least, July 2007, the Executive Vice President, Finance, for Rainbow Media Holdings, LLC, a subsidiary of Cablevision, and further admits that, on or about July 11, 2007, Mr. Huffman sent EchoStar a one-page spreadsheet containing VOOM HD's spending breakdown for 2006 ("Spending

Breakdown”), and respectfully refers the Court to the Spending Breakdown for the true and complete contents thereof. The allegations in the second sentence of Paragraph No. 18 contain legal conclusions to which no response is required. With respect to any remaining factual allegations in the second sentence of Paragraph No. 18, VOOM HD denies them, and respectfully refers the Court to the Spending Breakdown and the Affiliation Agreement for the true and complete contents thereof.

19. VOOM HD denies the allegations in Paragraph No. 19 of the Counterclaims, and respectfully refers the Court to EchoStar’s July 13, 2007 letter for the true and complete contents thereof. To the extent that the allegations in Paragraph No. 19 contain legal conclusions, no response is required.

20. Denies the allegations in the first sentence of Paragraph No. 20 of the Counterclaims, except admits that representatives of VOOM HD met with Carl Vogel and Carolyn Crawford of EchoStar on or about July 25, 2007, and further admits that Mr. Vogel and Ms. Crawford alleged during that meeting that VOOM HD had failed to meet its Section 10 spend requirement for calendar year 2006. Denies the allegations in the second sentence of Paragraph No. 20, except admits that representatives of VOOM HD informed Mr. Vogel and Ms. Crawford during such meeting that VOOM HD had fully satisfied its Section 10 spending obligation. Denies the allegations in the third sentence of Paragraph No. 20, except admits that EchoStar indicated that it would proceed with a review of VOOM HD’s spending on the Service for calendar year 2006, and further admits that EchoStar conducted such review in late October. VOOM HD further denies that the portrayal or summary of the discussions between the parties during the meeting identified or otherwise referred to in Paragraph No. 20 is a complete and accurate summary of such discussions.

21. To the extent that the allegations in Paragraph No. 21 of the Counterclaims contain legal conclusions, no response is required. With respect to the factual allegations in Paragraph No. 21, VOOM HD denies them.

22. Denies the allegations in the first sentence of Paragraph No. 22 of the Counterclaims, except admits that EchoStar employees conducted a review of VOOM HD's spending on the Service for calendar year 2006 at VOOM HD's offices in Long Island during the week of October 22, 2007. The second, third and fourth sentences of Paragraph No. 22 contain legal conclusions to which no response is required. With respect to any remaining factual allegations in the second sentence of Paragraph No. 22, VOOM HD denies them, and respectfully refers the Court to the Spending Breakdown for the true and complete contents thereof. With respect to any remaining factual allegations in the third sentence of Paragraph No. 22, VOOM HD denies them. With respect to any remaining factual allegations in the fourth sentence of Paragraph No. 22, VOOM HD denies that EchoStar had any right to terminate the Affiliation Agreement, but lacks knowledge and information sufficient to form a belief as to the truth of EchoStar's subjective knowledge or thoughts relating to the Audit, and respectfully refers the Court to the Affiliation Agreement for the true and complete contents thereof.

23. Paragraph No. 23 of the Counterclaims contains legal conclusions to which no response is required. With respect to any remaining factual allegations in the first sentence of Paragraph No. 23, VOOM HD denies them, except admits that Eric Sahl of EchoStar wrote a letter to VOOM HD on or about November 16, 2007, and respectfully refers the Court to that November 16, 2007 letter for the true and complete contents thereof. With respect to any remaining allegations in the second sentence of Paragraph No. 23, VOOM HD denies them,

except admits that EchoStar Media Holdings Corporation has a 20% equity interest in VOOM HD.

24. VOOM HD denies the allegations in the first and second sentences of Paragraph No. 24, except admits that Charles Dolan, the Chairman of Cablevision, Tom Rutledge, the COO of Cablevision, and Joshua Sapan, the CEO of VOOM HD, arranged a meeting with Charlie Ergen, the Chairman of EchoStar, Eric Sahl and Carolyn Crawford at EchoStar's headquarters in Denver, Colorado on December 14, 2007 in an effort to resolve the parties' dispute. With respect to the allegations in the third and fourth sentences of Paragraph No. 24, to the extent that they contain legal conclusions, no response is required. With respect to any factual allegations in the third sentence of Paragraph No. 24, VOOM HD denies them, except admits that Mr. Ergen claimed that VOOM HD allegedly had breached its spend requirement under Section 10 of the Affiliation Agreement. With respect to any factual allegations in the fourth sentence of Paragraph No. 24, VOOM HD denies them, except admits that the Cablevision and VOOM HD participants discussed their view that EchoStar was not entitled to terminate the Affiliation Agreement, and further admits that the participants discussed business ideas. VOOM HD further denies that the portrayal or summary of the discussions between the parties during the meeting identified or otherwise referred to in Paragraph No. 24 is a complete and accurate summary of such discussions.

25. Admits the allegations in the first sentence of Paragraph No. 25 of the Counterclaims. With respect to the allegations in the second, third and fourth sentences of Paragraph No. 25, to the extent that they contain a legal conclusion, no response is required. With respect to any factual allegations in the second sentence of Paragraph No. 25, VOOM HD denies them, except admits that Mr. Ergen alleged that VOOM HD had failed to comply with its



Section 10 spend requirement and claimed that EchoStar had a purported right to terminate the Affiliation Agreement. With respect to any factual allegations in the third sentence of Paragraph No. 25, VOOM HD denies them, except admits that Charlie Ergen told representatives of VOOM HD at their meeting on January 24, 2008 that EchoStar was going to terminate the Affiliation Agreement effective February 1, 2008 unless the parties agreed to a 30-day “standstill” period, during which period VOOM would be re-tiered. With respect to any factual allegations in the fourth sentence of Paragraph No. 25, VOOM HD denies them. VOOM HD further denies that the portrayal or summary of the discussions between the parties during the meeting identified or otherwise referred to in Paragraph No. 25 is a complete and accurate summary of such discussions.

26. Denies the allegations in the first sentence of Paragraph No. 26, except admits that VOOM HD sent a letter to EchoStar dated January 28, 2008, and respectfully refers the Court to that January 28, 2008 letter for the true and complete contents thereof. Denies the allegations in the second sentence of Paragraph No. 26, except admits that EchoStar sent a letter to VOOM HD dated January 30, 2008, and respectfully refers the Court to that January 30, 2008 letter for the true and complete contents thereof. To extent that the second sentence of Paragraph No. 26 contains any legal conclusions, no response is required.

#### **FIRST COUNTERCLAIM**

#### **(BREACH OF CONTRACT)**

27. VOOM HD repeats, reiterates and realleges each and every response to Paragraph Nos. 1 through 26 of the Counterclaims as if more fully set forth herein.

28. With respect to the allegations contained in Paragraph No. 28 of the Counterclaims, this paragraph contains legal conclusions as to which no response is required. To the extent that Paragraph No. 28 contains any factual allegations, VOOM HD denies them.

29. With respect to the allegations contained in Paragraph No. 29 of the Counterclaims, this paragraph contains a legal conclusion as to which no response is required. To the extent that Paragraph No. 29 contains any factual allegations, VOOM HD denies them.

30. With respect to the allegations contained in Paragraph No. 30 of the Counterclaims, this paragraph contains a legal conclusion as to which no response is required. To the extent that Paragraph No. 30 contains any factual allegations, VOOM HD denies them.

### **SECOND COUNTERCLAIM**

#### **(BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING)**

31. VOOM HD repeats, reiterates and realleges each and every response to Paragraph Nos. 1 through 30 of the Counterclaims as if more fully set forth herein.

32. With respect to the allegations contained in Paragraph No. 32 of the Counterclaims, this paragraph contains a legal conclusion as to which no response is required. To the extent that Paragraph No. 32 contains any factual allegations, VOOM HD denies them.

33. With respect to the allegations contained in Paragraph No. 33 of the Counterclaims, this paragraph contains a legal conclusion as to which no response is required. To the extent that Paragraph No. 33 contains any factual allegations, VOOM HD denies them.

34. With respect to the allegations contained in Paragraph No. 34 of the Counterclaims, this paragraph contains a legal conclusion as to which no response is required. To the extent that Paragraph No. 34 contains any factual allegations, VOOM HD denies them.

35. With respect to the allegations contained in Paragraph No. 35 of the Counterclaims, this paragraph contains a legal conclusion as to which no response is required. To the extent that Paragraph No. 35 contains any factual allegations, VOOM HD denies them.

36. With respect to the allegations contained in Paragraph No. 36 of the Counterclaims, this paragraph contains a legal conclusion as to which no response is required. To the extent that Paragraph No. 36 contains any factual allegations, VOOM HD denies them.

37. With respect to the allegations contained in Paragraph No. 37 of the Counterclaims, this paragraph contains a legal conclusion as to which no response is required. To the extent that Paragraph No. 37 contains any factual allegations, VOOM HD denies them.

38. With respect to the allegations contained in Paragraph No. 38 of the Counterclaims, this paragraph contains a legal conclusion as to which no response is required. To the extent that Paragraph No. 38 contains any factual allegations, VOOM HD denies them.

With respect to the request for relief in the Counterclaims, it contains legal conclusions to which no response is required. To the extent that a response is deemed necessary, VOOM HD denies the conclusions in the request for relief.

Each and every remaining allegation in the Complaint not specifically responded to above is hereby denied.

#### **FIRST AFFIRMATIVE DEFENSE**

EchoStar has failed to state any Counterclaim for which relief may be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

EchoStar's Counterclaims are barred by its breaches of Section 10 and Section 4 of the Affiliation Agreement.

**THIRD AFFIRMATIVE DEFENSE**

EchoStar's Counterclaims are barred in whole or in part by the doctrines of waiver, ratification, estoppel and/or election of remedies.

**FOURTH AFFIRMATIVE DEFENSE**

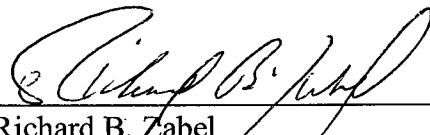
EchoStar's Counterclaims are barred in whole or in part by EchoStar's failure to mitigate damages.

**FIFTH AFFIRMATIVE DEFENSE**

EchoStar is barred from seeking any purported remedy or damages with respect to its Counterclaim for breach of Section 4 of the Affiliation Agreement other than the exclusive remedies set forth under Section 4 for such a violation.

Dated: New York, New York  
July 14, 2008

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VOOM HD Holdings LLC

SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY: COMMERCIAL DIVISION

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VOOM HD HOLDINGS, LLC

Plaintiff,

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: AFFIRMATION OF SERVICE  
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I hereby affirm that, on July 14, 2008, I caused to be served by overnight mail and e-mail true and correct copies of Plaintiff's Reply to Counterclaims on Charles L. Kerr of Morrison & Foerster, LLP, 1290 Avenue of the Americas, New York, New York 10104-0050, counsel to Defendant Dish Network L.L.C., formerly known as EchoStar Satellite L.L.C.

Dated: New York, New York  
July 14, 2008

  
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Vincenzo A. DeLeo