

F. EchoStar Also Challenges VOOM HD's Programming And Certification Requirements Under Section 4 Of The Affiliation Agreement

71. The alleged breach of the annual spend requirement in Section 10 was not the only purported breach of the Affiliation Agreement that EchoStar identified over the summer and fall of 2007. EchoStar also has spent considerable time since June 2007 manufacturing various claims that VOOM HD had breached its programming obligations under Section 4 of the Affiliation Agreement.

72. After VOOM HD successfully refuted each of EchoStar's allegations, EchoStar abandoned its Section 4 claim until its recent effort to revive it as part of this litigation. In particular, EchoStar has raised claims relating to the amount of non-repeat programming that VOOM HD was required to broadcast on VOOM's non-movie channels.

73. VOOM HD fully complied with all its Section 4 obligations. Nevertheless, on November 16, 2007, EchoStar refused to allow VOOM HD to continue to schedule its programming in accordance with its past practices. As a result, VOOM HD was forced to change the programming schedules for VOOM in an attempt to comply as much as practicable with EchoStar's various incorrect, unreasonable and bad faith interpretations of Section 4, while reserving all of VOOM HD's rights and remedies under the Affiliation Agreement.

74. As VOOM HD warned EchoStar on numerous occasions, the scheduling changes to VOOM demanded by EchoStar jeopardized the perception and quality of VOOM.

G. EchoStar Improperly Terminates The Affiliation Agreement And Takes VOOM Off The Air

75. On or about May 13, 2008, EchoStar improperly terminated the Affiliation Agreement when it dropped 10 of the VOOM channels from the air, and publicly announced that it would drop the other five channels as soon as possible. Accordingly, VOOM HD sent