

Qu

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

-----	X	
VOOM HD HOLDINGS LLC,	:	
	:	Index No. 600292/08
Plaintiff,	:	
	:	I.A.S. Part 56
-against-	:	
	:	Hon. Richard B. Lowe III
ECHOSTAR SATELLITE L.L.C.,	:	
	:	
Defendant.	:	
-----	X	

**STIPULATION AND ORDER FOR THE PRODUCTION AND EXCHANGE OF
CONFIDENTIAL INFORMATION**

IT IS HEREBY STIPULATED AND AGREED by all parties to this action (the "Action"), through their undersigned counsel, that the following provisions shall govern the handling of all information contained in documents, electronically stored information, recordings, testimony, exhibits and any other written, recorded or graphic matter ("Discovery Material") produced in connection with the Action, whether or not in response to a formal discovery request. The provisions of this Stipulation and Order for the Production and Exchange of Confidential Information ("Stipulation and Order") also shall apply to any non-party who provides Discovery Material and agrees to be bound by the terms of this Stipulation and Order. References to a "party" or "parties" herein shall also include such non-parties.

1. All discovery received from a producing party shall be used solely for the purpose of prosecuting or defending the Action and for no other purpose.

FILED
JUN 27 2008
NEW YORK
COUNTY CLERK'S OFFICE

2. Confidential Information and Attorneys' Eyes Only Information

(a) The party producing Discovery Material may designate as "Confidential Information" any information that it in good faith believes embodies confidential, commercially sensitive or proprietary information.

(b) Additionally, the party producing Discovery Material may designate as "Attorneys' Eyes Only Information" any information that counsel believes in good faith contains trade secrets or equivalent information that is so commercially sensitive that disclosure to the receiving party is more likely than not to cause competitive harm to the producing party.

(c) The producing party may designate Confidential Information by stamping each page of a document containing such Confidential Information with the legend "Confidential." The producing party may designate Attorneys' Eyes Only Information by stamping each page of a document containing such Attorneys' Eyes Only Information with the legend "Attorneys' Eyes Only." Inadvertent failure to designate material as "Confidential" or "Attorneys' Eyes Only" shall not be deemed a waiver of any claim of confidentiality as to such matter, and the same thereafter may be corrected by supplemental written notice. Testimony containing Confidential Information and/or Attorneys' Eyes Only Information will be subject to the provisions of Paragraph 8 herein.

(d) In the case of the production of Confidential Information or Attorneys' Eyes Only Information in electronic format on compact discs, the producing party shall also include a label on any such compact discs with the legend "CONTAINS CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER" and/or "CONTAINS ATTORNEYS' EYES ONLY INFORMATION – SUBJECT TO PROTECTIVE ORDER," as the case may be.

(e) All depositions shall be presumptively treated as Confidential Information (except for any portion of the deposition specifically designated as Attorneys' Eyes Only Information during the course of or immediately following the deposition) and subject to this Stipulation and Order during the deposition and for a period of fifteen (15) days after a transcript of said deposition is received by counsel for each of the parties. At or before the end of such fifteen (15) day period, the deposition shall be classified appropriately by each of the parties in accordance with this Stipulation and Order.

(f) A party may designate as Confidential Information or Attorneys' Eyes Only Information any document or information produced by any non-party to this Action in accordance with the provisions in this paragraph.

(g) Extracts and summaries of Confidential Information or Attorneys' Eyes Only Information shall also be treated as confidential subject to the same terms and conditions set forth herein for Confidential Information or Attorneys' Eyes Only Information.

(h) Nothing herein shall prevent the parties from seeking an order further restricting the use of or access to information.

3. Confidential Information may be disclosed to or made available by the party receiving such information only to the following persons:

(a) the Supreme Court for the County of New York, Commercial Division, (the "Court"), including the personnel of the Court, subject to Paragraph 7 below;

(b) any party to the Action, including in-house counsel and current employees of any party or any of its affiliates to this Action participating with counsel in the prosecution or defense of this Action;

(c) any former employees of any party to the Action, including former employees of a party's affiliates, participating with counsel in the prosecution or defense of this Action, provided that such former employees shall execute a copy of the Certification substantially in the form of Exhibit A, and shall not be permitted to retain copies of any Confidential Information;

(d) outside counsel of record to any party to the Action;

(e) court reporters, typists, or videographers who record or transcribe testimony and who acknowledge on the record a duty to keep the designated Confidential Information confidential;

(f) outside experts, advisors or consultants, who are retained (i) by counsel of record in the Action or (ii) by any party to the Action, as reasonably deemed necessary to the prosecution or defense of the Action by counsel of record in the Action. Such disclosure shall be only to the extent reasonably deemed necessary by such counsel of record, provided that such experts, advisors or consultants are not employed currently by any cable or satellite television network, or any cable, satellite or other multi-channel television distributor. Prior to disclosure of any Confidential Information to any such outside expert, advisor or consultant, counsel for the party proposing such disclosure shall deliver a copy of this Stipulation and Order to the expert, advisor or consultant and shall explain the terms of the Stipulation and Order. Such expert, advisor or consultant shall execute a copy of the Certification substantially in the form of Exhibit A. A copy of each such Certification shall be forwarded to the other party at the earlier of the end of the Action or at the time the identity of the expert, advisor or consultant is disclosed, and if any expert, advisor or consultant is called to testify, a copy of such person's Certification will be provided to the other party no later than at that time;

(g) any bona fide potential or actual witness who is not a party under subparagraph 3(b) or a former employee under subparagraph 3(c) above and who is identified as an actual sender of or recipient of any such information. Such witness shall execute a copy of the Certification substantially in the form of Exhibit A, and shall not be permitted to retain copies of any Confidential Information; and

(h) any outside duplicating or litigation support services personnel engaged by any party or its counsel;

(i) any other persons only after notice to all parties and upon order of the Court, or upon prior written consent of the producing party.

4. "Attorneys' Eyes Only Information" may be disclosed to or made available by the party receiving such information only to the following persons:

(a) the Court, including the personnel of the Court, subject to Paragraph 7 below;

(b) outside counsel of record to any party to the Action;

(c) the following in-house litigation counsel for the parties to the Action, who shall execute a copy of the Certification substantially in the form of Exhibit A:

- James Gallagher, Esq., General Counsel of Rainbow Media Holdings, LLC, and Paul Oetken, Associate General Counsel of Cablevision Systems Corporation, for Plaintiff and
- Jeffrey Blum, Esq., Vice President and Associate General Counsel of DISH Network LLC (f/k/a EchoStar Satellite LLC), and Kevin P. Cross, Director and Senior Corporate Counsel of DISH Network LLC (f/k/a EchoStar Satellite LLC), for Defendant;

- provided that both parties shall have the right to designate a successor to either of its two designated in-house counsel by providing written notice to the other party and subject to the consent of the other party, which consent shall not be unreasonably withheld. In the event that the other party objects to any such designation, the objecting party shall promptly seek a ruling from the Court that its objection is reasonable.

(d) court reporters, typists, or videographers who record or transcribe testimony and who acknowledge on the record a duty to keep the designated Attorneys' Eyes Only Information confidential;

(e) outside experts, advisors or consultants, who are retained (i) by counsel of record in the Action or (ii) by any party to the Action, as reasonably deemed necessary to the prosecution or defense of the Action by counsel of record in the Action. Such disclosure shall be only to the extent reasonably deemed necessary by such counsel of record, provided that such experts, advisors or consultants are not employed currently by any cable or satellite television network, or any cable, satellite or other multi-channel television distributor. Prior to disclosure of any Attorneys' Eyes Only Information to any such outside expert, advisor or consultant, counsel for the party proposing such disclosure shall deliver a copy of this Stipulation and Order to the expert, advisor or consultant and shall explain the terms of the Stipulation and Order. Such expert, advisor or consultant shall execute a copy of the Certification substantially in the form of Exhibit A. A copy of each such Certification shall be forwarded to the other party at the earlier of the end of the Action or at the time the identity of the expert, advisor or consultant is disclosed, and if any expert, advisor or consultant is called to testify, a copy of such person's Certification will be provided to the other party no later than at that time;

(f) any bona fide potential or actual witness who is identified as an actual sender of or recipient of any such information, provided that, if any such witness is not a "party" as described in subparagraph 3(b) above, he or she shall execute a copy of the Certification substantially in the form of Exhibit A and shall not be permitted to retain copies of any Attorneys' Eyes Only Information; and

(g) any outside duplicating or litigation support services personnel engaged by any party or its counsel;

(h) any other persons only after notice to all parties and upon order of the Court, or upon prior written consent of the producing party.

5. The terms "counsel," "expert," "advisor" and "consultant" include their staff who are assigned to assist and necessary to assist such counsel, expert, advisor or consultant in the preparation of this litigation.

6. All persons who have received Confidential Information and/or Attorneys' Eyes Only Information pursuant hereto shall safeguard such information so as to prevent its disclosure to persons who are not entitled to have access to such information pursuant to this Stipulation and Order.

7. In the event that a party elects to file with the Court any Confidential Information or Attorneys' Eyes Only Information, the following procedures should be followed:

(a) The filing party shall provide the other parties with both redacted and unredacted versions of any submission containing Confidential Information or Attorneys' Eyes Only Information at the time that such party is required to serve such materials on other parties pursuant to the pertinent section of the Civil Practice Law and Rules, or Order of the Court;

(b) The filing party may file a redacted copy of any submission containing Confidential Information or Attorneys' Eyes Only Information with the Clerk of the Court;

(c) The filing party shall file with the Clerk of the Court an unredacted copy of any submission containing Confidential Information or Attorneys' Eyes Only Information in sealed envelopes marked as follows:

VOOM HD Holdings LLC v. EchoStar Satellite L.L.C.

Index No. 600292/08

CONFIDENTIAL FILED UNDER SEAL

(d) The filing party may also provide a courtesy copy of the unredacted version of such submission to the Court by delivering it to the Part Clerk in a sealed envelope or other appropriate sealed container on which shall be endorsed the caption of this action, the words "CONFIDENTIAL MATERIAL-DO NOT FILE" as an indication of the nature of the contents and a statement in substantially the following form: "This envelope, containing documents which are provided to the Court by (name of party), but not filed, is not to be opened nor are the contents thereof to be displayed or revealed other than to the Court, the parties and their counsel of record, except by order of the Court or consent of the parties."

8. Confidential Information and Attorneys' Eyes Only Information may be offered in evidence at the trial of the Action or any hearing related thereto, and testimony containing Confidential Information and Attorneys' Eyes Only Information may be elicited. Any party may move for an order that Confidential Information and/or Attorneys' Eyes Only Information so offered in evidence or so elicited in testimony be received under conditions to prevent its disclosure to persons or entities not entitled under this Stipulation and Order to have access to it.

9. The attorneys of record for each party shall maintain a list of all persons to whom Confidential Information and/or Attorneys' Eyes Only Information has been disclosed, together with the Certifications executed pursuant to this Stipulation. Upon final conclusion of the Action, copies of the list and Certifications shall be provided to the other party upon request.

10. This Stipulation and Order shall be without prejudice to the right of any person to oppose production of Discovery Material on any applicable ground, including any applicable privilege, and nothing in this Stipulation and Order shall be construed as a waiver of any party's right to object or assert any such privilege in response to any request for information, or be deemed an admission as to the admissibility in evidence of any Discovery Material, or otherwise affect the admissibility of any Discovery Material. The existence of this Stipulation and Order shall not be used by any party as a basis for discovery that is not otherwise proper under the New York Civil Practice Law and Rules.

11. Nothing herein shall prevent or in any way limit disclosure, use or dissemination by a producing party of any of its own documents or information, or in any way limit disclosure, use or dissemination by either party of documents or information that are in the public domain or which now are or hereinafter become available to a party independent of or outside of discovery proceedings in this Action.

12. Any party to the Action to whom Confidential Information or Attorneys' Eyes Only Information is produced or disclosed may object to the designation at any time. The objection shall be made in writing to counsel for the producing party (the "Notice"). The Notice shall have attached a copy of such designated material or shall identify each subject document by production number and shall (a) state that the receiving party objects to the designation and (b) set forth the particular reasons for such objection. Counsel shall confer in good faith in an effort

to resolve any dispute concerning such designation. If the objection cannot be resolved by agreement within ten (10) business days of the date of service of the objection, the objecting party may move to remove the designation. All materials whose designation is so objected to shall continue to be treated as Confidential Information or Attorneys' Eyes Only Information, as the case may be, until there is a ruling to the contrary by the Court.

13. All Confidential Information, Attorneys' Eyes Only Information, and all copies thereof shall be destroyed, and certified to the producing party as having been destroyed, or returned to counsel for the producing party within sixty (60) days after the conclusion of the Action following the exhaustion of all appeals; provided, however, that the parties' counsel may retain copies of briefs and other papers (including any exhibits thereto) filed in the proceeding and documents offered as evidence at trial that contain Confidential Information and/or Attorneys' Eyes Only Information, so long as such briefs, other papers or documents offered as evidence at trial are maintained in accordance with the provisions hereof.

14. After the final conclusion of the Action, this Stipulation and Order shall continue to be binding upon the parties hereto, and upon all persons to whom Confidential Information and/or Attorneys' Eyes Only Information has been disclosed or communicated.

15. The inadvertent production of any Discovery Material that is protected by attorney-client privilege and/or protected from discovery as work product shall be without prejudice to any such claim, and the producing party shall not be held to have waived any such claim by inadvertent production, provided that the producing party promptly advises the other party of its position after discovering the alleged inadvertent production and identifies the documents to which the assertion is claimed. All inadvertently produced materials as to which a claim of privilege or work product protection is asserted and any copies thereof shall be returned

promptly, and the information contained therein shall not be used or relied upon in any way by the receiving party other than for the purpose of challenging before the Court the assertion of privilege or work product protection.

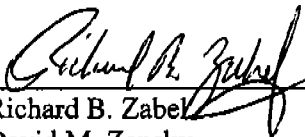
16. Any notice required or permitted herein shall be made, if to VOOM HD Holdings LLC, to its counsel Richard B. Zabel, Akin Gump Strauss Hauer & Feld LLP, and if to Dish Network L.L.C. f/k/a EchoStar Satellite LLC, to its counsel Charles L. Kerr, Morrison & Foerster LLP. Notice may be by telephone with facsimile or e-mail confirmation or other such means so as to provide timely notice as appropriate.

17. Each of the parties hereto shall be entitled to seek modification of this Stipulation and Order for good cause shown by application to the Court on reasonable notice to the other parties hereto.


18. The parties acknowledge and agree that this Stipulation is immediately and fully effective and binding upon them based solely upon the signatures below of their respective undersigned counsel. Notwithstanding that the Stipulation is immediately and fully effective and binding upon them, the parties further agree to use their best efforts to obtain the timely endorsement of this Order by the Court.

Dated: June 10, 2008

AKIN GUMP STRAUSS HAUER & FELD, LLP MORRISON & FOERSTER LLP

By: 
Richard B. Zabel
David M. Zensky
Vincenzo A. DeLeo
590 Madison Avenue
New York, NY 10022
212.872.1000


*Attorneys for Plaintiff
VOOM HD Holdings LLC*

By: 
Charles L. Kerr
J. Alexander Lawrence
1290 Avenue of the Americas
New York, NY 10104-0050
212.468.8000

*Attorneys for Defendant
EchoStar Satellite L.L.C. (n/k/a DISH
Network L.L.C.)*

Dated: June 13, 2008

SO ORDERED:


Hon. Richard B. Lowe III
New York Supreme Court Justice

FILED
JUN 27 2008
NEW YORK
COUNTY CLERK'S OFFICE

EXHIBIT "A"

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

-----	X	
VOOM HD HOLDINGS LLC,	:	
	:	
Plaintiff,	:	Index No. 600292/08
	:	
-against-	:	I.A.S. Part 56
	:	
ECHOSTAR SATELLITE L.L.C.,	:	Hon. Richard B. Lowe III
	:	
Defendant.	:	
-----	X	

CERTIFICATION

1. I, _____, have read the foregoing Stipulation and Order for the Production and Exchange of Confidential Information in the above-captioned matter, and agree to be bound by its terms with respect to any documents, information or material that is furnished to me as set forth in the Stipulation and Order.

2. I further agree not to disclose to anyone such documents, information, or materials except as expressly authorized by the Stipulation and Order.

3. I hereby consent to the jurisdiction of the New York Supreme Court, Commercial Division, for New York County for the limited purpose of any proceedings to enforce the terms of this Stipulation and Order.

4. I hereby agree that any documents, materials or information furnished to me will be used by me only for the purposes as set forth in the Stipulation and Order and for no other purpose, and will be returned to the person who furnished such documents, materials or information to me.

Dated: _____

Print Name

Title