

## **SETTLEMENT AGREEMENT**

This Settlement Agreement is made and effective as of October 27, 2011 (the “Agreement Execution Date”) by and among Nansee Parker and Phong Pham (the “Named Plaintiffs”), the Class (defined below) and Defendant DISH Network L.L.C. (“DISH”) (the “Settlement Agreement” or the “Agreement”).

### **RECITALS**

WHEREAS, on March 25, 2011, the Named Plaintiffs initiated a putative class action against DISH in the United States District Court, Northern District of California, Oakland Division, captioned *Parker, et al. v. DISH Network L.L.C.*, Case No. 4:11-cv-01457-PJH, concerning a price increase that DISH implemented on or about February 1, 2011 for certain of its satellite television programming packages (the “Litigation”).

WHEREAS, the Complaint in the action alleged, among other things, that DISH violated the Colorado Consumer Protection Act, breached the applicable customer service agreements and the implied covenant of good faith and fair dealing, and was unjustly enriched by applying the February 1, 2011 Price Increase to customers who were within their initial 24-month commitment term and had signed up under a 12-month, promotional discounted price. The Named Plaintiffs also sought declaratory relief limiting DISH’s ability to raise its rates in the future. These claims were asserted on behalf of the Named Plaintiffs, who are California residents, and a putative nationwide class of DISH subscribers.

WHEREAS, based on the discovery, investigation, and evaluation of the facts and law relating to the matters alleged in the pleadings, the parties have agreed to settle the Litigation. The settlement was reached after considering, among other things, (1) the benefits available to Named Plaintiffs and the Settlement Class under the terms of this Agreement, (2) the risks and

uncertainty of litigation, especially in actions such as this, as well as the difficulties and delays inherent in such litigation, and (3) the desirability of consummating this Agreement promptly to provide effective relief to the Named Plaintiffs and the Settlement Class.

WHEREAS, DISH, denying wrongdoing of any kind whatsoever, and denying the factual allegations in the Complaint, has agreed to enter into this Agreement to avoid further expense, inconvenience, and the distraction of litigation, and to be completely free of further participation in the Litigation and any further controversy with respect to the Released Claims (defined below).

NOW THEREFORE, in consideration of the mutual promises and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

**I. DEFINITIONS.**

**A. The following terms shall have the meanings set forth below:**

1. "Action" means the lawsuit captioned *Parker, et al. v. DISH Network L.L.C.*, Case No. 4:11-cv-01457-PJH, in the United States District Court, Northern District of California, Oakland Division.
2. "Blockbuster By Mail" means Blockbuster L.L.C.'s one-disc-at-a-time DVD by mail rental service, which allows participants to rent movies online for delivery by mail, and return the rentals by mail or to a participating Blockbuster store, or exchange by mail rentals at a participating Blockbuster store for movies or select games, subject to the applicable terms and conditions (available at <http://www.blockbustermoviepass.com/corporate/termsAndConditions>). The current retail price of Blockbuster by Mail is \$9.99/month.
3. "Class Notice" means legal notice of the terms of the proposed settlement as approved by the Court, as part of its entry of the Preliminary Approval Order.

4. "Class Counsel" means the following individuals:

**GIRARD GIBBS LLP**

Eric H. Gibbs, Esq.  
David Stein, Esq.  
Amy M. Zeman, Esq.  
601 California Street, Suite 1400  
San Francisco, CA 94108  
Telephone: 415.981.4800

**COHEN MILSTEIN SELLERS & TOLL PLLC**

Andrew N. Friedman, Esq.  
Douglas J. McNamara, Esq.  
Stefanie M. Ramirez, Esq.  
1100 New York Ave. NW, Suite 500 West  
Washington, DC 20005  
Telephone: 202.408.4600

**THE WENTZ LAW FIRM**

Richard B. Wentz, Esq.  
Jean W. Wentz, Esq.  
82955 East Hillcrest Drive, Suite 123  
Thousand Oaks, CA 91362  
Telephone: 805.374.0060

5. "Complaint" means the Complaint filed on March 25, 2011 in the Action.
6. "Defendant's Counsel" means the following individuals:

**COBLENTZ, PATCH, DUFFY & BASS LLP**

Richard R. Patch, Esq.  
Zuzana S. Ikels, Esq.  
Charmaine G. Yu, Esq.  
Kathleen F. McConnell, Esq.  
One Ferry Building, Suite 200  
San Francisco, CA 94111-4213

7. "DISH Pay-Per-View Vouchers" means vouchers that can be used by

Class Members to pay for DISH Pay-Per-View movies with retail values of \$4.99-\$6.99.

Vouchers shall not apply to special event programming (such as, but not limited to, Sports and

Event Pay-Per-View events, or Adult Pay-Per-View events) with retail values that exceed \$6.99.

8. “Effective Date” means the first date after which *all* of the following events and conditions have been met or have occurred or have been mutually waived by written agreement of the parties pursuant to Section VIII.D below:

- (a) All parties have executed this Agreement;
- (b) The Court has certified the Settlement Class;
- (c) The Court has entered the Order (which shall be substantially in the form of **Exhibit A** attached hereto) issuing its Preliminary Approval (as defined herein) of this Agreement, the settlement set forth herein, and approving the method for providing notice to the Settlement Class;

- (d) The Court has entered the Final Judgment (which shall be substantially in the form of **Exhibit B** attached hereto) approving this Agreement, including all settlement considerations as set forth in this Agreement, releasing the Released Persons from the Released Claims, and dismissing, with prejudice as to the Class Members, the Action with respect to DISH, and all claims asserted therein; and

- (e) There has occurred: (i) the passage of five (5) days from entry of the Final Judgment and no formal objections are filed; (ii) in the event that one or more formal objections to entry of the Final Judgment are timely filed, the expiration (without the filing or notice of an appeal) of the time to appeal from the Final Judgment; (iii) the final non-appealable dismissal of any appeal from the Final Judgment; (iv) if a ruling or decision has been entered by an appellate court affirming the Final Judgment in a form substantially identical to that of the Final Judgment entered by the Court, the time to petition for review to the United States Supreme Court with respect to such ruling or decision has expired; or (v) if a petition for review to the United States Supreme Court with respect to the Final Judgment has been filed, the petition has been denied or, if granted, has resulted in affirmance of the Final Judgment in a form substantially identical to the form of the Final Judgment entered by the Court.

9. “Fairness Hearing” means the hearing at or after which the Court will make a final decision whether to approve this Agreement and the settlement set forth herein as fair, reasonable, and adequate.

10. “February 2011 Price Increase” means: (a) the \$5.00 price increase implemented by DISH with respect to its DISH America, DISH America Silver, and DISH America Gold; America’s Top 120 (AT120), America’s Top 120 Plus (AT120+), America’s Top 200 (AT200), and America’s Top 250 (AT250); America’s Everything Pak (AEP); and Latino Dos and Latino Max programming packages; and (b) the \$3.00 price increase implemented by DISH with respect to DISH’s Latino Welcome Pack, Latino Clásico, and Latino Plus programming packages on or about February 1, 2011.

11. “Final Judgment” means the judgment entered by the Court in substantially the form of **Exhibit B** attached hereto.

12. “Person” means any natural person, individual, corporation, association, partnership, trust, or any other type of legal entity.

13. “Preliminary Approval” shall mean the Court’s entry of an order (the “Preliminary Approval Order”) substantially in the form of **Exhibit A** attached hereto approving the timing, content, and manner of the Class Notice, conditionally certifying the Class for settlement purposes, preliminarily approving this Agreement and the terms of settlement contained herein, and enjoining the commencement or continued prosecution by any Releasing Person of any Released Claim against any Released Person.

14. “Released Claims” means and includes any and all claims, damages, rights, demands, actions, causes of action, suits, debts, liens, contracts, liabilities, agreements, costs, expenses, or losses, of whatever kind or nature, whether foreseen or unforeseen, and whether known or unknown, arising out of or relating to the facts alleged in the Action.

15. “Released Persons” means and includes DISH and EchoStar Technologies L.L.C., and their past and present direct and indirect parent, subsidiary, and affiliated Persons; the officers, directors, employees, partners, shareholders, agents, attorneys, and insurers of all of

the foregoing; and the predecessors, successors, assigns, and legal representatives of all of the foregoing.

16. “Releasing Persons” means the Named Plaintiffs, each Class Member, and any Person claiming by or through the Named Plaintiffs, or any Class Member, as his or her spouse, child, heir, associate, co-owner, attorney, agent, administrator, devisee, assignee, executor, successor, predecessor, or other representative.

17. “Settlement Class” means all persons residing in the United States who activated DISH programming services between February 1, 2009 and January 31, 2011 with a 24-month commitment term and an initial 12-month, promotional discounted price, and subscribed to a programming package that was subject to DISH’s February 2011 Price Increase, excluding only: (a) customers who received programming, equipment, and/or monetary accommodations after the February 2011 Price Increase in response to complaint(s) about the price increase, (b) customers who were in the second year (*i.e.*, months 13 to 24) of their 24-month commitment term for one of the following packages: DISH’s America’s Everything Pak, Latino Welcome Pack, Latino Clásico, Latino Plus, Latino Dos, or Latino Max at the time of the February 2011 Price Increase, and (c) the judge to whom this case is assigned, any member of the judge’s immediate family, and the judge’s staff and their immediate families.

18. “Settlement Class Member(s),” “Class Member(s),” or “Member(s)” means any Person who is included within the definition of the Settlement Class who does not validly and timely request exclusion from the Settlement Class in accordance with the provisions of the Notice of Pendency and Settlement of Class Action.

## **II. CERTIFICATION OF PLAINTIFF SETTLEMENT CLASS.**

A. The parties stipulate to certification of the Settlement Class as defined in Section I.A.17 above for purposes of effectuating this settlement; stipulate to the appointment of the Named Plaintiffs as representatives of the Settlement Class (the “Class Representatives”); and stipulate to the appointment of Class Counsel as counsel for the Settlement Class. The

parties agree to cooperate in the preparation of such moving papers as the Court shall require to effectuate certification of the Settlement Class for settlement purposes.

B. Certification of the Settlement Class and appointment of the Class Representatives and Class Counsel by the Court shall be binding only with respect to the settlement of the Action. In the event the Effective Date for any reason does not occur, the certification of the Settlement Class and appointment of Class Representatives and Class Counsel shall be vacated, the parties' stipulation shall be voided, and the Action shall proceed as though the certification and appointments had never occurred.

### **III. SETTLEMENT RELIEF.**

In consideration for the release hereinafter set forth, the termination and dismissal of this Action, and in full and final settlement of all claims by Settlement Class Members, DISH agrees that the Final Judgment shall order the following relief:

#### **A. Prohibition On Raising Rates.**

For Settlement Class Members, DISH is prohibited from raising rates before January 31, 2013 for the following packages: DISH America, America Silver, and America Gold, and America's Top 120 (AT120), America's Top 120 Plus (AT120+), America's Top 200 (AT200), and America's Top 250 (AT250), provided, however, that when the initial 12-month, promotional price has terminated, the price going forward shall be replaced by the then-current price (*i.e.*, the regular price for the applicable programming package that is in effect at the time of the expiration of the customer's initial 12-month period).

#### **B. Services.**

##### **I. Current DISH Customers.**

Current DISH customers who are Settlement Class Members that paid the February 2011 Price Increase during the initial 12 months of their 24-month commitment will receive a class

notice and claim form setting forth one of the offers specified below, which will vary depending upon which Class Sub-Group is applicable to the particular customer (the "Claim Form"). To simplify the claims process for Class Members, the Class Notices and Claim Forms for each Sub-Group will contain only the offer applicable to the Sub-Group that the Settlement Class Member is a part of and will not show the offers for the other Sub-Groups. DISH will determine which Class Sub-Group is applicable to each current DISH customer who is a Settlement Class Member prior to distributing the Class Notices and the Claim Forms. DISH will provide Class Counsel with the number of Settlement Class Members in each Sub-Group on or before the date that DISH distributes the Class Notices.

The Current DISH Customer Class Sub-Groups shall be defined as follows:

- (a) Current DISH Customer Class Sub-Group 1. Settlement Class Members who are current DISH customers as of the date of the Class Notice and paid one to four months of the February 2011 Price Increase within the first 12 months of their service contracts will be entitled to select one of the following three options:
  - i. Two (2) free months of the Blockbuster By Mail service, which will automatically terminate, or
  - ii. Three (3) free DISH Pay-Per-View Vouchers, or
  - iii. A one-time \$5.00 credit to the customer's DISH account.
- (b) Current DISH Customer Class Sub-Group 2. Settlement Class Members who are current DISH customers as of the date of the Class Notice and paid five to eight months of the February 2011 Price Increase within the first 12 months of their service contracts will be entitled to select one of the following three options:
  - i. Three (3) free months of the Blockbuster By Mail service, which will automatically terminate, or
  - ii. Four (4) free DISH Pay-Per-View Vouchers, or
  - iii. A one-time \$10.00 credit to the customer's DISH account.
- (c) Current DISH Customer Class Sub-Group 3. Settlement Class Members who are current DISH customers as of the date of the Class Notice and paid nine to twelve months of the February 2011 Price Increase within the first 12 months of their service contracts will be entitled to select one of the following three options:

- i. Four (4) free months of the Blockbuster By Mail service, which will automatically terminate, or
- ii. Five (5) free DISH Pay-Per-View Vouchers, or
- iii. A one-time \$15.00 credit to the customer's DISH account.

2. Former DISH Customers

Former DISH customers who are Settlement Class Members that paid the February 2011 Price Increase during the initial 12 months of their 24-month commitment will receive a Claim Form setting forth one of the offers specified below, which will vary depending upon which Class Sub-Group is applicable to the particular customer. The Class Notice and Claim Form for former DISH customers who are Settlement Class Members will reflect only the Blockbuster By Mail offer applicable to the Class Sub-Group of which the former customer is a part and will not show the Blockbuster By Mail offers applicable to other Sub-Groups. DISH will determine which Class Sub-Group is applicable to each former DISH customer who is a Settlement Class Member prior to distributing the Class Notices and the Claim Forms. DISH will provide Class Counsel with the number of Settlement Class Members in each Sub-Group on or before the date that DISH distributes the Class Notices.

The Former DISH Customer Class Sub-Groups shall be defined as follows:

- (a) Former DISH Customer Class Sub-Group 1. Settlement Class Members who are not current DISH customers as of the date of the Class Notice and: (i) paid one to four months of the February 2011 Price Increase within the first 12 months of their service contracts; (ii) voluntarily disconnected after February 1, 2011 (and were not otherwise disconnected because of their failure to pay); and (iii) did not receive a waiver of their cancellation fee will be entitled to elect to receive two (2) free months of the Blockbuster By Mail service, which will automatically terminate.
- (b) Former DISH Customer Class Sub-Group 2. Settlement Class Members who are not current DISH customers as of the date of the Class Notice and: (i) paid five to eight months of the February 2011 Price Increase within the first 12 months of their service contracts; (ii) voluntarily disconnected after February 1, 2011 (and

were not otherwise disconnected because of their failure to pay); and (iii) did not receive a waiver of their cancellation fee will be entitled to elect to receive three (3) free months of the Blockbuster By Mail service, which will automatically terminate.

- (c) Former DISH Customer Class Sub-Group 3. Settlement Class Members who are not current DISH customers as of the date of the Class Notice and: (1) paid nine to twelve months of the February 2011 Price Increase within the first 12 months of their service contracts; (2) voluntarily disconnected after February 1, 2011 (and were not otherwise disconnected because of their failure to pay); and (3) did not receive a waiver of their cancellation fee will be entitled to elect to receive four (4) free months of the Blockbuster By Mail service, which will automatically terminate.

3. Customers in the Second Year of their 24- Month Commitment.

Settlement Class Members who paid the February 2011 Price Increase during only the second year (*i.e.*, months 13 to 24) of their 24-month commitment term and who subscribe to DISH America, DISH America Silver, or DISH America Gold; or America's Top 120 (AT120), America's Top 120 Plus (AT120+), America's Top 200 (AT200), or America's Top 250 (AT250), will receive a class notice that describes the Prohibition On Raising Rates, in accordance with Section III. A. above.

**C. Miscellaneous**

1. Settlement Class Members who submit a Claim Form by the Claim Form submission deadline, but did not fully and accurately complete the Claim Form, will be sent an email allowing for 15 days to cure the defective claim. Claim Forms that are cured within 15 days will be deemed fully and accurately completed by the Claim Form submission deadline set forth in the Class Notices. Claim Forms that are not cured within 15 days will not be entitled to receive a Services benefit under Section III.B of the Agreement.

2. The Opt-Outs, *i.e.*, the Persons who request exclusion from the Settlement Class, will not be entitled to receive a Services benefit under Section III.B of the Agreement even if they timely submit a fully and accurately completed Claim Form.

3. Settlement Class Members who timely submit a fully and accurately completed "Current DISH Customer" Claim Form and select either the Pay-Per-View or Account Credit benefit but are not a current DISH customer at the time that benefits are distributed will instead be sent a promotional code for enrollment in the Blockbuster By Mail benefit applicable to their Sub Group and will have 30 days thereafter in which to claim that benefit.

4. Account Credits will be issued electronically by DISH. The remaining balance on any one-time Account Credits that have not been exhausted at the time a Member's account is terminated with DISH shall revert to DISH, and the Member shall not be entitled to any substitute benefit.

5. Pay-Per-View Vouchers will be issued electronically and will be valid for 18 months after issuance, after which time they will revert to DISH. Settlement Class Members who have unredeemed Pay-Per-View Vouchers at the time of any termination of their DISH account shall not be entitled to any substitute benefit, and their unredeemed vouchers will revert to DISH.

6. Settlement Class Members who select the Blockbuster By Mail benefit will receive a promotional code and instructions on how to activate their free subscription, or apply the benefit to their existing subscription. Promotional codes will remain valid for 60 days after issuance, and subscriptions begin upon enrollment. New subscriptions require a credit card or debit card (as security against unreturned merchandise). Settlement Class Members who do not timely activate their Blockbuster By Mail subscription after issuance of their promotional code shall not be entitled to any substitute benefit, and their unredeemed subscriptions shall revert to DISH.

**IV. NOTICE TO THE SETTLEMENT CLASS, REQUESTS FOR EXCLUSION, AND ADMINISTRATION OF THE SETTLEMENT.**

A. DISH shall issue the Class Notice and Claim Forms in accordance with the requirements of the Preliminary Approval Order, as follows:

1. Subject to the approval of the Court and to be completed no later than forty-five (45) days after the Court's order preliminarily approving the settlement, DISH shall cause the Class Notice and Claim Forms to be issued in substantially the same form as **Exhibit C** attached hereto by sending out the Class Notice via email to its current and former customers within the Settlement Class (the "Class Notice Emails"). If DISH does not possess a valid email address for any Settlement Class Member, DISH will send by U.S. Mail to the Settlement Class Member's last known mailing address a postcard notice, which shall inform the Member of his, her, or its designated Sub-Group and direct the Member to a website to download the applicable Class Notice and Claim Form (the "Postcard Notice") (to be issued in substantially the same form as **Exhibit D**). To the extent that any Class Notice Emails are returned to DISH as undeliverable, DISH will then send a Postcard Notice by U.S. Mail to the Settlement Class Member's last known mailing address. For current DISH customers, all Postcard Notices or other notices or communications that are sent via U.S. Mail may be included in the customers' monthly bill.

2. DISH shall pay all costs associated with preparing and disseminating the Class Notice in the manner described above.

3. DISH shall provide and bear the cost of notice to appropriate federal and state officials as required by the Class Action Fairness Act of 2005.

B. DISH shall administer the settlement.

1. DISH shall set up an email account to receive questions, exclusion requests, comments, and objections from the Settlement Class, and shall provide a response, if it involves administration of the claim, or forward the question(s) to Plaintiffs' Counsel for a response, if it presents a question regarding the Member's legal rights or entitlements.

2. DISH will also receive all Claim Forms submitted by Settlement Class Members and shall process timely Claim Forms, which are fully and accurately completed, for distribution of the appropriate benefits.

3. At its own expense, DISH shall compile, track and report to Class Counsel all requests from Persons that seek to be excluded from the Settlement Class (the "Opt-Outs").

C. Plaintiffs' Counsel will maintain a website at which Settlement Class Members and Opt-Outs may access information and documents related to this Settlement, including the Settlement Agreement, Class Notices, and Claim Forms.

**V. ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES.**

A. Plaintiffs and DISH acknowledge that attorneys' fees and reimbursement of expenses for Class Counsel are subject to the Court's approval and determination. DISH agrees not to oppose, and Class Counsel agrees that it shall submit, an application by Class Counsel in an amount not to exceed \$817,500.00. Class Counsel further agrees that, notwithstanding any award of fees and costs by the Court in an amount higher than \$817,500.00, Class Counsel will not enforce nor attempt to enforce such an award to the extent it exceeds the \$817,500.00 agreed to herein. Within thirty (30) days after the Effective Date, DISH shall deliver to Eric H. Gibbs a check for the benefit of Class Counsel payable to Girard Gibbs LLP, at the address set forth above, in the total amount actually awarded by the Court as attorneys' fees, expenses, and costs, but not to exceed \$817,500.00.

B. DISH agrees not to oppose an application by the Named Plaintiffs for an incentive award of \$500.00 each, and the Named Plaintiffs and Class Counsel agree not to apply for an incentive award in excess of \$500.00 each for the Named Plaintiffs. Within thirty (30) days after the Effective Date, DISH shall deliver to Eric H. Gibbs, at the address set forth above, a check

payable to "Nansee Parker" and a check payable to "Phong Pham" in the total amount actually awarded to each by the Court as an incentive award, but not exceeding the sum of \$500.00 each.

C. In no event shall DISH be required by Order of the Court to pay more than the \$817,500.00 in Class Counsel's fees, expenses, and costs (inclusive of any interest) set forth herein or the \$500.00 agreed herein as the incentive award for each Named Plaintiff (inclusive of any interest). Should the Court by Order require DISH to pay larger amounts, DISH shall have the right, but not the obligation, to cancel this Agreement, terminate the settlement, and to proceed as if the settlement had never been executed, and the Agreement shall be null and void as provided in Section VI.B, below.

D. Settlement Class Members shall not be responsible for paying any part of the agreed fees, costs, expenses, or incentive awards described in this Agreement.

E. Other than the attorneys' fees, costs, and expenses explicitly provided for above, the Named Plaintiffs, the Settlement Class and its individual Members, and DISH shall bear their own attorneys' fees, costs, and expenses associated with the Action or this Agreement.

F. Any amounts required to be paid by DISH shall be paid only after the Effective Date of the Agreement.

**VI. CONDITIONS OF SETTLEMENT AND EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION OF THIS AGREEMENT.**

A. The parties agree that no party shall conduct discovery against any of the others pending the preliminary approval of the settlement by the Court, and that, upon the preliminary approval of this settlement by the Court as evidenced by entry of the Preliminary Approval Order, all discovery and other proceedings in the Action shall be stayed until further order of the Court, except such proceedings as may be necessary either to implement this Agreement or to comply with or effectuate the terms of this Agreement.

B. In the event that any of the events or conditions described in Section I.A.8(a)-(e)

either are not met or do not occur, this entire Agreement shall become null and void, except that the parties shall have the option to agree mutually in writing to waive the event or condition and proceed with this settlement, in which event the Effective Date shall be deemed to have occurred on the date of said written agreement. If any of the events or conditions described in Section I.A.8(a)-(e) either are not met or do not occur (and the events or conditions are not mutually waived in writing), the parties shall return to their respective positions in this lawsuit as those positions existed immediately before the parties executed this Agreement, and nothing stated in the Agreement, or in any exhibits to the Agreement, shall be deemed an admission of any kind by any of the parties or used as evidence against, or over the objection of, any of the parties for any purpose in this Litigation or in any other action. In particular, DISH will retain the right to contest whether this case should be maintained as a class action or collective action and to contest the merits of the claims being asserted by Plaintiffs.

#### **VII. DISMISSAL OF ACTION AND RELEASE.**

A. As soon as practicable after execution of this Agreement, Class Counsel will take all necessary steps to secure the Court's approval of this settlement, certification of the Settlement Class, the entry of the Final Judgment in the form of **Exhibit B** attached hereto, and the subsequent dismissal of the Action, with prejudice, as to the Settlement Class.

B. Upon the Court's final approval of this Agreement and the settlement set forth herein, the Final Judgment shall be entered.

C. In consideration of the aforementioned payments and obligations undertaken by DISH, and save and except only those obligations created or arising from this Agreement or the attached Final Judgment, the Releasing Persons hereby release and forever discharge the Released Persons from the Released Claims, and stipulate and agree that they and the Settlement Class shall be deemed to be forever barred from initiating, asserting, and/or prosecuting any Released Claims against any Released Person in any court or other forum.

D. Upon the entry of the Final Judgment and the occurrence of the Effective Date, each and every Settlement Class Member and all successors in interest shall be permanently enjoined and forever barred from prosecuting any and all Released Claims against DISH and the Released Persons

E. The parties agree that they may hereafter discover facts in addition to or different from those they believe to be true with respect to the subject matter of this Agreement. Each party agrees that, notwithstanding the discovery of the existence of any such additional or different facts that, if known, would materially affect her, his, or its decision to enter into this Agreement, the releases given herein shall be and remain in effect as a full, final, and complete release to the Released Claims, and that no party shall be entitled to modify or set aside this Agreement, either in whole or in part, by reason thereof. The parties further agree that they have been informed of and waive the benefits of California Civil Code section 1542 (and any and all other similar state statutes regarding the effectiveness of general releases), which reads as follows:

**A general release does not extend to claims, which the creditor does not know or expect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**

#### **VIII. MISCELLANEOUS PROVISIONS.**

A. The parties hereto and their undersigned counsel agree to undertake commercially reasonable efforts and to offer their reasonable cooperation to effectuate this Agreement and the terms of the settlement set forth herein, including taking all steps and efforts contemplated by this Agreement and any other steps and efforts which may become reasonably necessary by order of the Court or otherwise.

B. This Agreement, together with its attachments, contains the entire agreement among the parties hereto and supersedes any prior agreements or understandings (including any term sheets) between them. All terms of this Agreement are contractual and not mere recitals and shall be construed as if drafted by all parties hereto. The terms of this Agreement are and

shall be binding upon each of the parties hereto, their agents, attorneys, employees, successors and assigns, and upon all other persons claiming any interest in the subject matter hereto through any of the parties hereto, including any Settlement Class Member and the Releasing Parties.

C. In entering into this Agreement, DISH does not admit to any wrongdoing of any kind, and expressly denies wrongdoing of any kind whatsoever, and has entered into this Agreement and agreed to the terms solely to avoid the risk, expense, inconvenience, distraction, and burden of further protracted litigation.

D. This Agreement may be amended or modified only by a written instrument signed by counsel for all parties. Amendments and modifications may be made without additional notice to the Settlement Class unless such notice is required by the Court.

E. This Agreement shall be subject to, governed by, construed, and enforced pursuant to the laws of the State of Colorado.

F. The exhibits to this Agreement are an integral part of the settlement and are hereby incorporated and made a part of this Agreement.

G. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective parent, subsidiary, and affiliated corporations and their officers, directors, employees, partners, shareholders, agents, and any other successors, assigns, or legal representatives.

H. Except as agreed to herein, the parties to this Agreement shall bear their own attorneys' fees, expenses, and costs, including in connection with finalizing this settlement, obtaining Court approval of the same, and proceedings subsequent to the same.

I. To the extent permitted by law, this Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceeding which may be instituted, prosecuted, or attempted in breach of or contrary to this Agreement.

J. This Agreement, whether or not executed and consummated, and any communications exchanged or actions taken pursuant to or during the negotiation of this

Agreement, are for settlement purposes only. Neither the fact of nor the contents of this Agreement or its exhibits, nor any communications exchanged nor actions taken pursuant to or during the negotiation of this Agreement, shall constitute or be construed as admissible evidence of the validity of any claim asserted or fact alleged in the Complaint or of any wrongdoing, fault, violation of law, or liability of any kind on the part of the Released Persons. This Agreement is made without prejudice to the rights of DISH to oppose certification of a class or classes should this Agreement not be approved or implemented or should the Effective Date not occur.

K. This Agreement shall be deemed to have been executed upon the Agreement Execution Date.

L. The parties warrant and represent that no claim or any portion of any claim referenced or released in this Agreement has been sold, assigned, conveyed, or otherwise transferred to any other Person.

M. This Agreement may be executed in counterparts, each of which shall constitute an original. This Agreement may be executed by facsimile or email signatures, each of which shall be deemed to be an original.

N. The Settlement Class Members and Class Counsel, including their experts and consultants, agree that they will not use any confidential material obtained, derived, or created in connection with this lawsuit for any purpose unrelated to this Litigation, and that they will, following the completion of the distribution of all awards to the Settlement Class Members and a reasonable period for resolution of any disputes relating to such awards, delete or destroy all electronic data and databases in their possession and delete or destroy any other information provided to them which was confidential information, and agree that they have not made and will not retain any copies.


O. Except as otherwise expressly agreed to in writing, DISH, its counsel, Named Plaintiffs, and Class Counsel agree not to make any oral or written statements to the press regarding the Action or the settlement. Class Counsel and DISH's counsel reserve the right to post neutral factual statements about the settlement on their websites and to provide information

about the settlement to courts or in the course of their practices, including but not limited to providing information to potential clients and/or co-counsel.

P. The signatories hereto warrant that they are authorized to enter into this Agreement on behalf of the entities below.

**PLAINTIFFS:**

DATED: 10-24, 2011

  
\_\_\_\_\_  
NANSEE PARKER

DATED: \_\_\_\_\_, 2011

\_\_\_\_\_  
PHONG PHAM

**DEFENDANT:**

DATED: \_\_\_\_\_, 2011

DISH Network L.L.C.

\_\_\_\_\_  
By: \_\_\_\_\_

Its: \_\_\_\_\_

about the settlement to courts or in the course of their practices, including but not limited to providing information to potential clients and/or co-counsel.

P. The signatories hereto warrant that they are authorized to enter into this Agreement on behalf of the entities below.

**PLAINTIFFS:**

DATED: \_\_\_\_\_, 2011

\_\_\_\_\_  
NANSEE PARKER

DATED: 10-27, 2011

  
\_\_\_\_\_  
PHONG PHAM

**DEFENDANT:**

DATED: \_\_\_\_\_, 2011

DISH Network L.L.C.

By: \_\_\_\_\_

Its: \_\_\_\_\_

about the settlement to courts or in the course of their practices, including but not limited to providing information to potential clients and/or co-counsel.

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**PLAINTIFFS:**

DATED: \_\_\_\_\_, 2011

\_\_\_\_\_  
NANSEE PARKER

DATED: \_\_\_\_\_, 2011

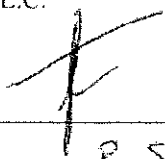
\_\_\_\_\_  
PHONG PHAM

**DEFENDANT:**

DATED: 10/25, 2011

DISH Network L.L.C.

By: \_\_\_\_\_

  
R. Stanton Dodge

Its: \_\_\_\_\_

EVP & General Counsel

**COUNSEL:**

DATED: 10/26, 2011

GIRARD GIBBS LLP

By: 

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David Stein, Esq.  
Amy M. Zeman, Esq.  
Attorneys for Plaintiffs  
NANSEE PARKER and PHONG PHAM,  
on Behalf of Themselves and All Others  
Similarly Situated

DATED: \_\_\_\_\_, 2011

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By: \_\_\_\_\_

Andrew N. Friedman, Esq.  
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Similarly Situated

DATED: \_\_\_\_\_, 2011

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By: \_\_\_\_\_

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on Behalf of Themselves and All Others  
Similarly Situated

DATED: \_\_\_\_\_, 2011

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Similarly Situated

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Similarly Situated

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