

STATE OF COLORADO
OFFICE OF THE ATTORNEY GENERAL

ASSURANCE OF DISCONTINUANCE
IN THE MATTER OF DISH NETWORK L.L.C. HD FEE

This Assurance of Discontinuance (“Assurance”) is entered into between the State of Colorado, *ex rel.* Philip J. Weiser, Attorney General for the State of Colorado (“the State” or “Attorney General”), and Respondent DISH Network L.L.C. (“DISH” or “Respondent”). The State and the Respondent are collectively referred to as “the Parties.” This Assurance is entered into pursuant to the Attorney General’s powers under C.R.S. section 6-1-110(2) and constitutes a settlement between the Parties regarding the allegations described below.

I. PARTIES

1. Philip J. Weiser is the duly elected Attorney General for the State of Colorado and has express jurisdiction to investigate and prosecute violations of the Colorado Consumer Protection Act (“CCPA”), C.R.S. sections 6-1-101, *et seq.*

2. DISH is a limited liability company with its principal place of business at 9601 S Meridian Blvd., Englewood, CO 80112.

II. DEFINITIONS

3. The term “Effective Date” means the first date upon which both Parties execute this Assurance.

4. Unless otherwise specified, all definitions found in C.R.S. section 6-1-102 are incorporated herein by this reference, and any term defined in those sections shall have the same meaning when used in this Assurance.

III. COLORADO ATTORNEY GENERAL’S ALLEGATIONS

5. In or around 2008, DISH began offering high-definition television (“HD”) service for an additional fee.

6. HD service has since become standard industry-wide. DISH eliminated the HD service fee for new subscribers in 2015.

7. However, DISH continued to charge approximately 2,480 Colorado consumers a \$10 monthly fee for HD service.

8. It is unfair and misleading to charge some customers an extra fee for a service that is now standard. *See* C.R.S. 6-1-105(1)(kkk).

9. DISH is not the only television service provider that continued to charge this additional fee, and the State has taken action against other providers.

10. After the State’s inquiry to DISH about the HD service fee, DISH cooperated fully with the State’s inquiry and voluntarily stopped charging the HD service fee in Colorado.

IV. RESPONDENT'S DENIAL OF ALLEGATIONS

11. DISH specifically denies that it has violated any laws, including the CCPA. Except as specifically provided herein, nothing contained herein may be taken as or construed to be an admission or concession of any violation of law or regulation, or of any other matter of fact or law, or of any liability or wrongdoing, nor shall it constitute any evidence or finding supporting any of the allegations of fact or law alleged by the Attorney General, or any violation of state or federal law, rule, or regulation, or any liability or wrongdoing whatsoever.

V. CONSIDERATION

12. The Parties enter into this Assurance as a compromise and settlement of the Attorney General's allegations herein. The Parties have consented to this Assurance without trial of any issue of fact or law or finding of liability.

13. Neither this Assurance, nor any negotiations, statements, nor documents related thereto, shall be offered or received in any legal or administrative proceeding or action as an admission, evidence, or proof of any factual allegation, violation, liability, or wrongdoing in connection with any law, rule, or regulation, except in an action by the Attorney General to enforce the terms of this Assurance.

VI. RELEASE

14. The State acknowledges by its execution hereof that this

Assurance constitutes a complete settlement and release of all claims under the CCPA on behalf of the State against DISH or any of DISH's past and present subsidiaries, successors, officers, directors, managers, agents, owners, divisions, principals, parents, predecessors, shareholders, assigns, transferees, and employees with respect to all claims, causes of action, damages, restitution, fines, costs, attorneys' fees, remedies, injunctive relief, and/or penalties which were asserted or could have been asserted under the CCPA for the conduct described in this Assurance, that arose prior to the Effective Date and relating to or based upon the acts or practices which are the subject of this Assurance. The State agrees that, except as provided in this Assurance, it shall not proceed with or institute any civil action or proceeding under the CCPA against DISH for any conduct or practice prior to the Effective Date which relates to the subject matter of this Assurance.

VII. ASSURANCE

15. DISH ceased charging a separate fee for HD service to consumers residing in the State of Colorado by February 15, 2022.

16. By April 31, 2022, DISH shall confirm in writing to the State that it is in full compliance with ¶ 15, above, or explain in writing why DISH is not in full compliance and identify the date on which DISH will come into compliance.

17. DISH agrees to direct customer questions about this

Assurance to appropriate DISH personnel who have been trained to answer questions about this Assurance. DISH shall implement appropriate procedures for routing Colorado customers who inquire about this Assurance through a general DISH customer service telephone number or through any online customer service platform to the appropriate personnel described in this Paragraph.

18. DISH reaffirms and attests to the truthfulness, accuracy, and completeness in all material respects of all of the information DISH provides and has provided to the Attorney General in connection with entry of this Assurance to the best of its knowledge.

VIII. NOTICE

19. Whenever notice must be provided to the Attorney General pursuant to the terms of this Assurance, such notice shall be made by first-class mail, return receipt requested, or email addressed to the following:

To the Attorney General:

Mark T. Bailey
Senior Assistant Attorney General II
Mark.Bailey@coag.gov

Abigail Hinchcliff
First Assistant Attorney General
Abigail.Hinchcliff@coag.gov
Consumer Fraud Unit
1300 Broadway, 7th Floor
Denver, CO 80203
Fax: 720-508-6040

To DISH:

Lori Kalani
Cozen O'Connor
1200 19th Street NW
Washington, DC 20036
LKalani@cozen.com

IX. GENERAL PROVISIONS

20. Scope of Assurance. This Assurance shall apply to Respondent, its successors and assigns, affiliates, and subsidiaries.

21. Preservation of Law Enforcement Action. Nothing herein precludes the Attorney General from enforcing the provisions of this Assurance or from pursuing any non-released claims, including instituting any law enforcement action with respect to any acts or practices of Respondent not released herein or any acts or practices in which Respondent engages after the Effective Date of this Assurance.

22. Enforcement. Proof by a preponderance of the evidence of a violation of any of the terms of this Assurance shall constitute a prima facie violation of the CCPA in accordance with C.R.S. § 6-1-110(2).

23. Compliance with and Application of State Law. Nothing herein relieves Respondent of the duty to comply with applicable laws of the State of Colorado nor constitutes authorization by the State or the Attorney General for Respondent to engage in acts and practices prohibited by such laws. This Assurance shall be governed by the laws of the State of Colorado.

24. No Third-Party Beneficiaries Intended. This Assurance is for the benefit of the Parties only and does not create or confer rights or remedies upon any other person, including rights as a third-party beneficiary except as otherwise provided herein. This Assurance does not create a private right of action on the part of any person or entity, whether to enforce this Assurance or otherwise, other than the Parties hereto.

25. Waiver and Amendment. No waiver, modification, or amendment of the terms of this Assurance shall be valid or binding unless made in writing and agreed upon by the Parties affected by the waiver, modification, or amendment, and then only to the extent specifically set forth in such written waiver, modification, or amendment.

26. Severability. If any clause, provision, or section of this Assurance is held to be invalid, illegal, unenforceable, or in conflict with the law of any jurisdiction, the validity, legality, and enforceability of the remaining provisions, clauses, or sections shall not in any way be affected or impaired, and this Assurance shall be construed and enforced as if such illegal, invalid, or unenforceable clause, section, or other provision had not been contained herein.

27. Complete Agreement. This Assurance represents the entire agreement between the Parties hereto and a complete merger of prior negotiations and agreements. No other written or oral terms or agreements exist except for those contained in this Assurance.

28. Public Record. This Assurance shall be a matter of public record.

29. Jointly Drafted. For purposes of construing this Assurance, this Assurance shall be deemed to have been drafted jointly by all Parties and, in the event of any dispute arising out of this Assurance, shall not be construed against or in favor of any Party.

30. Non-Approval of Conduct. Nothing herein constitutes approval by the Attorney General of any of the Respondent's past, present, or future business practices, and Respondent shall not make any representation to the contrary.

31. Voluntary Agreement. Respondent acknowledges that it has had an adequate opportunity to review this Assurance and consult with legal counsel in connection with the negotiation, drafting, and execution of this Assurance. Each Party and signatory to this Assurance represents that he, she, or it freely and voluntarily enters into this Assurance without any degree of duress or compulsion.

32. Entire Agreement. Respondent agrees and represents that Respondent has read and understands this Assurance, accepts the legal consequences involved in signing this Assurance, and that there are no other representations, agreements, or understandings between Respondent and the Attorney General that are not stated in writing herein.

33. Signatures. Facsimiles of signatures and signatures provided by portable documents format (.pdf) or other electronic image format shall constitute acceptable, binding signatures for all purposes of this Assurance. This Assurance may be executed in one or more counterparts, taken together shall constitute the entire agreement. If Respondent fails to execute this Assurance, the Attorney General and the State shall not be bound by any provisions herein.

34. Nothing in this Assurance shall be construed to limit or to restrict DISH's right to use this Assurance to assert and maintain the defenses of res judicata, collateral estoppel, payment, compromise and settlement, accord and satisfaction, or any other legal or equitable defense in any pending or future legal or administrative action or proceeding.

35. If the Attorney General determines that DISH has failed to comply with any provision of this Assurance, and if in the Attorney General's sole discretion, the failure to comply does not immediately threaten the health, safety, or welfare of the citizens of Colorado, the Attorney General agrees not to initiate any action or proceeding against DISH based upon DISH's alleged non-compliance without the Attorney General's Office first notifying DISH in writing of such failure to comply and specifying the issue of non-compliance. DISH shall then have fifteen (15) business days from receipt of such written notice to provide a written response to the Attorney General, which may include (a) a statement why

DISH believes it is in compliance with the Assurance; or (b) a statement explaining how the alleged non-compliance occurred, and how and when it will be addressed or corrected, as necessary. Upon request by DISH, a representative of the Attorney General shall meet with DISH at DISH's expense to discuss the alleged failure to comply and/or DISH's responses thereto.

Jointly approved and agreed to by:

STATE OF COLORADO, *ex rel.*
PHILIP J. WEISER, Attorney General

By: /s/ Mark T. Bailey

Dated: 3/23/22

Mark T. Bailey
Senior Assistant Attorney General
Colorado Department of Law

DISH Network L.L.C.

By: 

Dated: 3/23/22

Lori Kalani, Cozen O'Connor
Counsel for DISH Network L.L.C.