

<p>DISTRICT COURT, CITY AND  COUNTY OF DENVER, COLORADO  1437 Bannock Street  Denver, CO 80202</p> <hr/> <p>STATE OF COLORADO, ex rel. JOHN W.  SUTHERS, ATTORNEY GENERAL</p> <p>Plaintiff,</p> <p>v.</p> <p>DISH NETWORK L.L.C.</p> <p>Defendant.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
	<p>Case No.</p>
<p><b>FINAL CONSENT JUDGMENT</b></p>	

This matter is before the Court on the parties' Stipulation for Entry of a Final Consent Judgment. The Court has reviewed the Stipulation, the Complaint and is otherwise advised in the grounds therefore. The Court concludes that good cause has been shown for entering this Final Consent Judgment.

Accordingly, IT IS ORDERED that:

## I. GENERAL PROVISIONS

1.1 Scope of Final Consent Judgment. The injunctive provisions of this Final Consent Judgment are entered pursuant to the Colorado Consumer Protection Act, §§ 6-1-101, *et seq.* C.R.S. (2014) (“CCPA”). This Final Consent Judgment shall apply to DEFENDANT DISH NETWORK L.L.C. (“DISH”) its successors, subsidiaries, and assigns. DISH acknowledges that it may be vicariously liable under law for certain acts of its principals, executive officers, directors and employees who have received actual notice of this Court’s Order.

1.2 Release of Claims. The State of Colorado, *ex rel.* John W. Suthers, Attorney General (hereinafter the “STATE”), acknowledges by its execution hereof that this Final Consent Judgment constitutes a complete settlement and release of all claims on behalf of the STATE against DISH and its successors, subsidiaries, predecessors and assigns, and the principals, executive officers, directors, employees and former employees of all of the foregoing persons and entities (collectively, the “Released Parties”), with respect to all claims, causes of action, damages, fines, costs, and penalties which were asserted or could have been asserted based in whole or in part on the acts, practices or omissions alleged by the STATE in the Complaint, that arose prior to this date, relating to or based upon the acts, practices or omissions which are the subject of the Complaint filed in this action (collectively, the “Released Claims”). The STATE agrees that it shall not proceed with or institute any civil action or proceeding against the Released Parties arising out of or relating to the Released Claims, including but not limited to an action or proceeding seeking restitution, injunctive relief, fines, penalties, attorneys’ fees, or costs.

1.3 Not Evidence or Admission of Liability. The parties are entering into this Final Consent Judgment for the purpose of compromising and resolving disputed claims and to avoid the expense of further proceedings, including litigation. DISH expressly denies the STATE’s allegations asserted in the Complaint, and entering into this Final Consent Judgment does not constitute an admission of liability on behalf of DISH. Neither the fact of, nor any provision contained in, this Final Consent Judgment, nor any action taken hereunder, shall constitute, be construed as, or be admissible in evidence as an admission of or evidence in support of a claim or allegation in any pending or future litigation or other proceeding initiated by any third party.

1.4 Preservation of Law Enforcement Action. Nothing herein precludes the STATE from enforcing the provisions of this Final Consent Judgment, or from pursuing any law enforcement action under the CCPA with respect to the acts or practices of DISH not covered by this lawsuit and Final Consent Judgment or any acts or practices of DISH conducted after the entry of this Final Consent Judgment.

1.5 Compliance with and Application of State Law. Nothing herein relieves DISH of its duty to comply with applicable laws of the State of Colorado nor constitutes authorization by the STATE for DISH to engage in acts and practices prohibited by such laws. This Final Consent Judgment shall be governed by the laws of the State of Colorado.

1.6 Non-Approval of Conduct. Nothing herein constitutes approval by the STATE of DISH's past or future business practices. DISH shall not make any representation contrary to this paragraph. Under no circumstances shall this Final Consent Judgment or the name of the Attorney General or any of the STATE's employees or representatives be used by DISH or any of its employees, representatives, or agents in conjunction with any marketing activity or as an endorsement of any conduct, past or present, by DISH.

1.7 Use of Settlement as Defense. Nothing herein shall be interpreted to prevent the STATE from taking enforcement action to address conduct occurring after the entry of this Final Consent Judgment that the STATE believes to be in violation of the law. The fact that such conduct was not expressly prohibited by the terms of this Final Consent Judgment shall not be a defense to any such enforcement action.

1.8 Change in Law or Business Practice. If any provision of this Final Consent Judgment comes into conflict with any newly enacted law or change in an existing law; there is a change in DISH's business practices; there are changes in or advancements in technology; or there are any other reasons that may be appropriate under the circumstances, the parties to this Final Consent Judgment may modify this Final Consent Judgment with the express written consent of all parties. In the event that any of the circumstances described in this § 1.8 occur, DISH shall be entitled to request the consent of the STATE for any and all reasonable modifications to this Final Consent Judgment, such consent not to be unreasonably withheld.

1.9 Retention of Jurisdiction. This Court shall retain jurisdiction over this matter for the purpose of enabling any party to this Final Consent Judgment to apply to the Court at any time for any further orders which may be necessary or appropriate for the construction, modification or execution of this Final Consent Judgment, and for the enforcement of compliance herewith and the punishment of

violations hereof.

1.10 Violations. The parties understand and agree that a finding of any violation of any term or provision of this Final Consent Judgment may give rise to all remedies available to the Court, including those provided under C.R.S § 6-1-112(1)(b).

1.11 Execution in Counterparts. This Final Consent Judgment may be executed in counterparts.

1.12 Severability. If any provision(s) of this Final Consent Judgment is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, which shall continue in full force and effect without being impaired or invalidated in any way, and such invalid, illegal or unenforceable provisions shall be restated by a court of competent jurisdiction to reflect as nearly as possible the original intent of the Parties in accordance with applicable law; provided, however, that if the release contained in § 1.2 or the monetary provisions of § IV are declared invalid, this entire Final Consent Judgment shall be null and void, and the STATE shall immediately refund any payments previously made by DISH hereunder.

1.13 Successors. The terms and provisions of this Final Consent Judgment may be enforced by the current Colorado Attorney General, and by any of his duly authorized agents or representatives, as well as by any of his successors, and by any of his successors' agents or representatives.

1.14 Amendment and Termination. This Final Consent Judgment may be amended solely by written agreement signed by the STATE and DISH. This Final Consent Judgment will terminate three (3) years from the date upon which DISH receives written notice of entry of this Final Consent Judgment.

1.15 Notice. All notices or requests that are required or permitted to be given pursuant to this Agreement shall be given in writing and shall be sent by facsimile transmission; first-class certified mail, postage prepaid; or by overnight courier service, charges prepaid, to the party to be notified, addressed to such party at the address or fax number(s) set forth below, or such other address(es) or fax number(s) as such party may have substituted by written notice (given in accordance with this §1.15) to the other party. The sending of such notice with confirmation of receipt of the complete transmission (in the case of facsimile transmission) or receipt of such notice (in the case of delivery by first-class certified mail or by overnight courier service) shall constitute the giving thereof.

If to be given to Plaintiff:

Office of the Colorado Attorney General  
Jeffrey M. Leake

Assistant Attorney General  
Ralph L. Carr Judicial Center  
1300 Broadway  
Tenth Floor  
Denver, Colorado 80203  
720-508-6000  
[jeffrey.leake@state.co.us](mailto:jeffrey.leake@state.co.us)

If to be given to DISH:

DISH Network L.L.C.  
Attn: General Counsel  
9601 S. Meridian Boulevard  
Englewood, Colorado 80112

With a copy to:

Lori Kalani  
Dickstein Shapiro LLP  
1825 I Street, NW  
Washington, DC 20006

If by first-class certified mail:

P.O. Box 6663  
Englewood, Colorado, 80155-6663

With a copy to:

Lori Kalani  
Dickstein Shapiro LLP  
1825 I Street, NW  
Washington, DC 20006

If by facsimile: 303-723-1699  
With a copy to: 202-330-5806

## **II. DEFINITIONS**

2.1 Unless otherwise stated herein, all terms herein that are defined in the CCPA shall be given the definition provided by the CCPA.

### III. INJUNCTION

3.1 The injunctive provisions of this Final Consent Judgment set forth in §§ 3.2 – 3.7, below, shall be effective within thirty (30) days of the date upon which DISH receives written notice of entry of this Final Consent Judgment.

3.2 DISH will modify its Oral Sales Disclosures to include the following statement: “DISH may raise your monthly bill at any time.”

3.3 DISH will modify its QA Monitoring Procedures to evaluate whether DISH sales agents provided the oral disclosure “DISH may raise your monthly bill at any time” to potential subscribers during monitored sales calls.

3.4 DISH will eliminate from its Oral Sales Disclosures the terms “normal” and “regular” when describing DISH pricing during the second year of new subscribers’ initial contracts.

3.5 DISH will send an email to new subscribers who provide DISH a valid email address, prior to installation of DISH equipment, with a subject line reading “Your DISH order and other important information (including DISH agreements).” The email will contain a prominently-displayed link to the standard DISH subscriber agreements and make reference therein to those agreements as “contracts” between DISH and the subscriber.

3.6 DISH will continue its current practice of sending a PDF copy of the executed agreements after installation *via* email to new subscribers who provide DISH a valid email address.

3.7 DISH will inform its Order Entry retailers, as that term has customarily been used by DISH to classify certain of its independent retailers, (“OE Retailers”) of this Final Consent Judgment and shall provide each such OE Retailer with a copy of this Final Consent Judgment. DISH shall inform such OE Retailers that the Colorado Attorney General’s Office expects that they abide by §§ 3.2-3.4 of this Final Consent Judgment, including making disclosures to consumers in a manner consistent with this Final Consent Judgment.

3.8 Upon request, DISH will provide the Colorado Attorney General’s Office with copies of its most current Oral Sales Disclosures. The Colorado Attorney General’s Office agrees to maintain the confidentiality of such Oral Sales Disclosures provided by DISH to the greatest extent allowed under the Colorado Open Records Act, C.R.S. § 24-72-201 *et seq.* The Colorado Attorney General’s Office will inform DISH of any open records request that would cover DISH Oral Sales Disclosures documents at least ten (10) days prior to any production of records.

3.9 The parties agree that this Final Consent Judgment does not affect DISH's obligations under the 2009 Assurance of Voluntary Compliance multistate agreement.

#### **IV. MONETARY PROVISIONS**

4.1 In consideration of this settlement, DISH agrees to pay \$1,000,000.00 to the State of Colorado.

4.2 DISH also agrees to pay \$1,000,000.00 to the Colorado Department of Law. The payment, specific to § 4.2 of the Final Consent Judgment, shall be paid by DISH to the Colorado Department of Law to be held, along with any interest thereon, in trust for the benefit of the consumer protection section, to be used in the Attorney General's sole discretion for consumer restitution, to reimburse the state of Colorado for its reasonable costs and attorney fees, and for future consumer education, consumer fraud and antitrust enforcement efforts under C.R.S. § 6-1-110(1).

4.3 DISH shall make the payments set forth in § 4.1 and § 4.2 within sixty (60) days of the date upon which DISH receives written notice of entry of this Final Consent Judgment.

4.4 All payments shall be made payable to the Colorado Department of Law with a reference to "*State v. DISH Network L.L.C.*" and shall be delivered to:

Kyle Odegaard, Program Assistant  
Consumer Fraud Unit  
Colorado Department of Law  
1300 Broadway  
Denver, Colorado 80203

#### **V. REPRESENTATIONS AND WARRANTIES**

5.1 Except as expressly provided in this Final Consent Judgment, nothing herein shall be construed as relieving DISH of its obligation to comply with all state and federal laws, regulations or rules, or granting permission to engage in any acts or practices prohibited by such law, regulation or rule.

5.2 Due to the public-interest nature of the STATE's claims in this matter, DISH hereby specifically agrees and stipulates that the monetary obligation imposed hereunder is not compensation for actual pecuniary loss and is specifically non-dischargeable under 11 U.S.C.A. § 523(a)(7).

5.3 DISH acknowledges that it has thoroughly reviewed this Final

Consent Judgment with its counsel, that it understands and agrees to its terms, and that it agrees that it shall be entered as an Order of this Court.

5.4 Each of the non-Court signatories to this Final Consent Judgment warrants and represents that he or she has authority to agree to this Consent Judgment on behalf of the specified parties.

**VI. VIOLATIONS OF CONSENT JUDGMENT**

6.1 If the STATE determines that DISH has failed to comply with any of the terms of this Final Consent Judgment, the STATE agrees not to initiate any action or proceeding against DISH based upon DISH's alleged non-compliance without the Colorado Attorney General's Office first notifying DISH in writing of such failure to comply and permitting DISH the opportunity to respond to or cure the alleged failure to comply. DISH shall then have ten (10) business days from receipt of such written notice to provide a written response to the Colorado Attorney General's Office.

6.2 In any action brought by the STATE to enforce this Final Consent Judgment, DISH consents to personal and subject matter jurisdiction in the District Court, County of Denver, Colorado.

DATED this \_\_\_\_ day of January, 2015.

**IT IS SO ORDERED, ADJUDGED AND DECREED.**

\_\_\_\_\_  
**District Court Judge**

