DISH Network CORP
Form 10-Q
November 09, 2009

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
Form 10-Q

(Mark One)

þ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
FOR THE QUARTERLY PERIOD ENDED SEPTEMBER 30, 2009.

OR

o **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
FOR THE TRANSITION PERIOD FROM _________ TO_________.

Commission File Number: 0-26176

DISH Network Corporation
(Exact name of registrant as specified in its charter)

Nevada	**88-0336997**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
9601 South Meridian Boulevard Englewood, Colorado	**80112**
(Address of principal executive offices)	(Zip code)

(303) 723-1000
(Registrant s telephone number, including area code)

Not Applicable
(Former name, former address and former fiscal year, if changed since last report)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes þ No o

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes þ No o

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer þ	**Accelerated filer o**	**Non-accelerated filer o** (Do not check if a smaller reporting company)	**Smaller reporting company o**

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes o No þ

As of October 23, 2009, the registrant s outstanding common stock consisted of 208,430,895 shares of Class A common stock and 238,435,208 shares of Class B common stock.

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PART I FINANCIAL INFORMATION

DISCLOSURE REGARDING FORWARD-LOOKING STATEMENTS

We make forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 throughout this report. Whenever you read a statement that is not simply a statement of historical fact (such as when we describe what we believe, intend, plan, estimate, expect or anticipate will occur, and other similar stateme must remember that our expectations may not be achieved, even though we believe they are reasonable. We do not guarantee that any future transactions or events described herein will happen as described or that they will happen at all. You should read this report completely and with the understanding that actual future results may be materially different from what we expect. Whether actual events or results will conform with our expectations and predictions is subject to a number of risks and uncertainties. The risks and uncertainties include, but are not limited to, the following:

Weakened economic conditions, including the recent downturn in financial markets and reduced consumer spending, may adversely affect our ability to grow or maintain our business.

If we do not improve our operational performance and customer satisfaction, our gross subscriber additions may decrease and our subscriber churn may increase.

If DISH Network gross subscriber additions decrease, or if subscriber churn, subscriber acquisition or retention costs increase, our financial performance will be further adversely affected.

If we are unsuccessful in overturning the District Court s ruling on Tivo s motion for contempt, we are not successful in developing and deploying potential new alternative technology and we are unable to reach a license agreement with Tivo on reasonable terms, we would be subject to substantial liability and would be prohibited from offering DVR functionality that would result in a significant loss of subscribers and place us at a significant disadvantage to our competitors.

We face intense and increasing competition from satellite television providers, cable television providers, telecommunications companies, and companies that provide/facilitate the delivery of video content via the Internet.

We may be required to make substantial additional investments in order to maintain competitive high definition, or HD, programming offerings.

Technology in our industry changes rapidly and could cause our services and products to become obsolete.

We may need additional capital, which may not be available on acceptable terms or at all, in order to continue investing in our business and to finance acquisitions and other strategic transactions.

A portion of our investment portfolio is invested in securities that have experienced limited or no liquidity in recent months and may not be immediately accessible to support our financing needs.

AT&T s termination of its distribution agreement with us may increase churn.

As technology changes, and in order to remain competitive, we may have to upgrade or replace subscriber equipment and make substantial investments in our infrastructure.

We rely on EchoStar Corporation, or EchoStar, to design and develop all of our new set-top boxes and certain related components, and to provide transponder capacity, digital broadcast operations and other services for us. Our business would be adversely affected if EchoStar ceases to provide these services to us and we are unable

to obtain suitable replacement services from third parties.

We rely on one or a limited number of vendors, and the inability of these key vendors to meet our needs could have a material adverse effect on our business.

Our programming signals are subject to theft, and we are vulnerable to other forms of fraud that could require us to make significant expenditures to remedy.

We depend on third parties to solicit orders for DISH Network services that represent a significant percentage of our total gross subscriber acquisitions.

We depend on others to provide the programming that we offer to our subscribers and, if we lose access to this programming, our subscriber additions may decline or we may suffer subscriber losses and subscriber churn may increase.

Our competitors may be able to leverage their relationships with programmers so that they are able to reduce their programming costs and offer exclusive content that will place them at a competitive advantage to us.

We depend on the Cable Act for access to programming from cable-affiliate programmers at cost-effective rates.

We face increasing competition from other distributors of foreign language programming that may limit our ability to maintain our foreign language programming subscriber base.

Our local programming strategy faces uncertainty because we may not be able to obtain necessary retransmission consents from local network stations.

We are subject to significant regulatory oversight and changes in applicable regulatory requirements could adversely affect our business.

We have made a substantial investment in certain 700 MHz wireless licenses and will be required to make significant additional investments in order to commercialize these licenses and recoup our investment.

We have substantial debt outstanding and may incur additional debt.

We have limited owned and leased satellite capacity and satellite failures could adversely affect our business.

Our owned and leased satellites under construction are subject to risks related to launch that could limit our ability to utilize these satellites.

Our owned and leased satellites in orbit are subject to significant operational and environmental risks that could limit our ability to utilize these satellites.

Our owned and leased satellites have minimum design lives of 12 years, but could fail or suffer reduced capacity before then.

We currently have no commercial insurance coverage on the satellites we own and could face significant impairment charges if one of our satellites fails.

We may have potential conflicts of interest with EchoStar due to our common ownership and management.

We rely on key personnel and the loss of their services may negatively affect our businesses.

We are controlled by one principal stockholder who is also our Chairman, President and Chief Executive Officer.

We are party to various lawsuits which, if adversely decided, could have a significant adverse impact on our business, particularly lawsuits regarding intellectual property.

We may pursue acquisitions and other strategic transactions to complement or expand our business that may not be successful and with respect to which we may lose up to the entire value of our investment.

Our business depends substantially on Federal Communications Commission, or FCC, licenses that can expire or be revoked or modified and applications for FCC licenses that may not be granted.

We are subject to digital HD carry-one-carry-all requirements that cause capacity constraints.

It may be difficult for a third party to acquire us, even if doing so may be beneficial to our shareholders, because of our capital structure.

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- We cannot assure you that there will not be deficiencies leading to material weaknesses in our internal control over financial reporting.

- We may face other risks described from time to time in periodic and current reports we file with the Securities and Exchange Commission, or SEC.

All cautionary statements made herein should be read as being applicable to all forward-looking statements wherever they appear. Investors should consider the risks described herein and should not place undue reliance on any forward-looking statements. We assume no responsibility for updating forward-looking information contained or incorporated by reference herein or in other reports we file with the SEC.

In this report, the words DISH Network, the Company, we, our and us refer to DISH Network Corporation and i subsidiaries, unless the context otherwise requires. EchoStar refers to EchoStar Corporation and its subsidiaries.

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Item 1. FINANCIAL STATEMENTS

DISH NETWORK CORPORATION
CONDENSED CONSOLIDATED BALANCE SHEETS
(Dollars in thousands, except share amounts)
(Unaudited)

	As of	
	September 30, 2009	December 31, 2008
Assets		
Current Assets:		
Cash and cash equivalents	$ 155,570	$ 98,574
Marketable investment securities	2,477,882	460,558
Trade accounts receivable other, net of allowance for doubtful accounts of $15,786 and $15,207, respectively	799,417	799,139
Trade accounts receivable EchoStar, net of allowance for doubtful accounts of zero	20,516	21,570
Inventories, net	278,118	426,671
Deferred tax assets	101,867	86,331
Income tax receivable		148,747
Other current assets	173,769	56,394
Total current assets	4,007,139	2,097,984
Noncurrent Assets:		
Restricted cash and marketable investment securities	141,701	83,606
Property and equipment, net of accumulated depreciation of $2,396,694 and $2,432,959, respectively	2,869,236	2,663,289
FCC authorizations	1,391,441	1,391,441
Marketable and other investment securities	168,784	158,296
Other noncurrent assets, net	80,438	65,431
Total noncurrent assets	4,651,600	4,362,063
Total assets	$ 8,658,739	$ 6,460,047
Liabilities and Stockholders Equity (Deficit)		
Current Liabilities:		
Trade accounts payable other	$ 262,061	$ 174,216
Trade accounts payable EchoStar	297,715	297,629
Deferred revenue and other	810,612	830,529
Accrued programming	971,922	1,020,086
Other accrued expenses	902,070	619,210
3% Convertible Subordinated Note due 2011	25,000	25,000
Current portion of long-term debt and capital lease obligations	27,193	13,333

Total current liabilities	3,296,573	2,980,003
Long-Term Obligations, Net of Current Portion:		
Long-term debt and capital lease obligations, net of current portion	6,075,629	4,969,423
Deferred tax liabilities	280,442	235,551
Long-term deferred revenue, distribution and carriage payments and other long-term liabilities	387,467	224,176
Total long-term obligations, net of current portion	6,743,538	5,429,150
Total liabilities	10,040,111	8,409,153
Commitments and Contingencies (Note 10)		
Stockholders Equity (Deficit):		
Class A common stock, $.01 par value, 1,600,000,000 shares authorized, 258,522,297 and 257,117,733 shares issued, 208,424,144 and 208,968,052 shares outstanding, respectively	2,585	2,571
Class B common stock, $.01 par value, 800,000,000 shares authorized, 238,435,208 shares issued and outstanding	2,384	2,384
Class C common stock, $.01 par value, 800,000,000 shares authorized, none issued and outstanding		
Additional paid-in capital	2,113,743	2,090,527
Accumulated other comprehensive income (loss)	(2,123)	(107,998)
Accumulated earnings (deficit)	(2,036,138)	(2,492,804)
Treasury stock, at cost	(1,462,380)	(1,443,786)
Total DISH Network stockholders equity (deficit)	(1,381,929)	(1,949,106)
Noncontrolling interest	557	
Total stockholders equity (deficit)	(1,381,372)	(1,949,106)
Total liabilities and stockholders equity (deficit)	$ 8,658,739	$ 6,460,047

The accompanying notes are an integral part of the Condensed Consolidated Financial Statements.

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DISH NETWORK CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
AND COMPREHENSIVE INCOME (LOSS)
(In thousands, except per share amounts)
(Unaudited)

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2009	2008	2009	2008
Revenue:				
Subscriber-related revenue	$ 2,862,554	$ 2,886,157	$ 8,605,608	$ 8,572,163
Equipment sales and other revenue	23,393	41,918	74,876	95,755
Equipment sales EchoStar	1,277	2,433	6,486	8,533
Transitional services and other revenue EchoStar	4,923	6,273	14,199	19,714
Total revenue	2,892,147	2,936,781	8,701,169	8,696,165
Costs and Expenses:				
Subscriber-related expenses (exclusive of depreciation shown below Note 11)	1,623,397	1,534,133	4,705,551	4,402,771
Satellite and transmission expenses (exclusive of depreciation shown below Note 11):				
EchoStar	78,911	76,848	246,866	232,798
Other	8,962	7,651	24,701	22,890
Equipment, transitional services and other cost of sales	28,651	69,315	96,244	131,488
Subscriber acquisition costs:				
Cost of sales subscriber promotion subsidies EchoStar (exclusive of depreciation shown below Note 11)	56,293	53,418	152,215	116,489
Other subscriber promotion subsidies	310,844	310,879	776,575	888,849
Subscriber acquisition advertising	72,453	73,469	191,275	178,800
Total subscriber acquisition costs	439,590	437,766	1,120,065	1,184,138
General and administrative expenses EchoStar	11,022	14,300	34,577	40,740
General and administrative expenses	146,626	133,282	415,857	371,364
Tivo litigation expense	131,930		328,335	
Depreciation and amortization (Note 11)	228,395	245,646	696,988	766,260
Total costs and expenses	2,697,484	2,518,941	7,669,184	7,152,449
Operating income (loss)	194,663	417,840	1,031,985	1,543,716
Other Income (Expense):				
Interest income	7,591	16,609	23,637	44,082

Interest expense, net of amounts capitalized	(98,857)	(101,802)	(273,926)	(284,845)
Other, net	(1,915)	(106,055)	(42,072)	(124,583)
Total other income (expense)	(93,181)	(191,248)	(292,361)	(365,346)
Income (loss) before income taxes	101,482	226,592	739,624	1,178,370
Income tax (provision) benefit, net	(20,989)	(134,697)	(283,027)	(492,007)
Net income (loss)	80,493	91,895	456,597	686,363
Less: Net income (loss) attributable to noncontrolling interest	(69)		(69)	
Net income (loss) attributable to DISH Network common shareholders	$ 80,562	$ 91,895	$ 456,666	$ 686,363
Comprehensive Income (Loss):				
Net income (loss)	$ 80,493	$ 91,895	$ 456,597	$ 686,363
Foreign currency translation adjustments		(1,384)	(106)	(2,961)
Unrealized holding gains (losses) on available-for-sale securities	55,599	(170,447)	100,406	(231,869)
Recognition of previously unrealized (gains) losses on available-for-sale securities included in net income (loss)	(8)	148,423	5,447	146,112
Deferred income tax (expense) benefit		(29,398)	128	(10,174)
Comprehensive income (loss)	136,084	39,089	562,472	587,471
Less: Comprehensive income (loss) attributable to noncontrolling interest	(69)		(69)	
Comprehensive income (loss) attributable to DISH Network common shareholders	$ 136,153	$ 39,089	$ 562,541	$ 587,471
Weighted-average common shares outstanding Class A and B common stock:				
Basic	446,823	449,425	446,816	449,318
Diluted	447,431	460,042	448,313	461,040
Earnings per share Class A and B common stock:				
Basic net income (loss) per share attributable to DISH Network common shareholders	$ 0.18	$ 0.20	$ 1.02	$ 1.53
Diluted net income (loss) per share attributable to DISH Network common shareholders	$ 0.18	$ 0.20	$ 1.02	$ 1.50

The accompanying notes are an integral part of the Condensed Consolidated Financial Statements.

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DISH NETWORK CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)
(Unaudited)

	For the Nine Months Ended September 30,	
	2009	2008
Cash Flows From Operating Activities:		
Net income (loss)	$ 456,597	$ 686,363
Adjustments to reconcile net income (loss) to net cash flows from operating activities:		
Depreciation and amortization	696,988	766,260
Equity in losses (earnings) of affiliates	4,149	1,884
Realized and unrealized losses (gains) on investments	40,518	120,669
Non-cash, stock-based compensation	8,557	11,690
Deferred tax expense (benefit)	29,131	151,638
Other, net	4,117	5,878
Change in noncurrent assets	6,769	8,470
Change in long-term deferred revenue, distribution and carriage payments and other long-term liabilities	44,074	31,010
Changes in current assets and current liabilities, net	600,829	41,525
Net cash flows from operating activities	1,891,729	1,825,387
Cash Flows From Investing Activities:		
Purchases of marketable investment securities	(4,056,711)	(4,344,319)
Sales and maturities of marketable investment securities	2,116,604	4,457,908
Purchases of property and equipment	(724,316)	(844,265)
Change in restricted cash and marketable investment securities	(58,398)	1,700
Deposit for 700 MHz wireless spectrum acquisition		(711,871)
Purchase of strategic investments included in noncurrent marketable and other investment securities	(47,142)	
Proceeds from the sale of strategic investment		106,200
Other	(83)	(705)
Net cash flows from investing activities	(2,770,046)	(1,335,352)
Cash Flows From Financing Activities:		
Distribution of cash and cash equivalents to EchoStar in connection with the Spin-off		(585,147)
Proceeds from issuance of long-term debt	1,000,000	750,000
Deferred debt issuance costs	(28,618)	(4,972)
Repayment of long-term debt and capital lease obligations	(20,043)	(535,513)
Class A common stock repurchases	(18,594)	(81,906)
Net proceeds from Class A common stock options exercised and Class A common stock issued under the Employee Stock Purchase Plan	2,568	19,903

Net cash flows from financing activities		935,313		(437,635)
Net increase (decrease) in cash and cash equivalents		56,996		52,400
Cash and cash equivalents, beginning of period		98,574		919,543
Cash and cash equivalents, end of period	$	155,570	$	971,943
Supplemental Disclosure of Cash Flow Information:				
Cash paid for interest	$	238,696	$	240,437
Capitalized interest	$	13,454	$	11,812
Cash received for interest	$	10,511	$	36,354
Cash paid for income taxes	$	250,576	$	361,737
Employee benefits paid in Class A common stock	$	12,198	$	19,374
Vendor financing	$		$	23,314
Satellites and other assets financed under capital lease obligations	$	131,178	$	
Net assets contributed in connection with the Spin-off, excluding cash and cash equivalents	$		$	2,765,398

The accompanying notes are an integral part of the Condensed Consolidated Financial Statements.

DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

1. Organization and Business Activities

Principal Business

DISH Network Corporation is a holding company. Its subsidiaries (which together with DISH Network Corporation are referred to as DISH Network, the Company, we, us and/or our) operate the DISH Network® direct broadcas satellite (DBS) subscription television service in the United States which had 13.851 million subscribers as of September 30, 2009. We have deployed substantial resources to develop the DISH Network DBS System. The DISH Network DBS System consists of our licensed Federal Communications Commission (FCC) authorized DBS and Fixed Satellite Service (FSS) spectrum, our owned and leased satellites, receiver systems, third-party broadcast operations, customer service facilities, in-home service and call center operations and certain other assets utilized in our operations.

Spin-off of Technology and Certain Infrastructure Assets

On January 1, 2008, we completed a tax-free distribution of our technology and set-top box business and certain infrastructure assets (the Spin-off) into a separate publicly-traded company, EchoStar Corporation (EchoStar). DISH Network and EchoStar now operate as separate publicly-traded companies, and neither entity has any ownership interest in the other. However, a substantial majority of the voting power of both companies is owned beneficially by Charles W. Ergen, our Chairman, President and Chief Executive Officer or by certain trusts established by Mr. Ergen for the benefit of his family. The two entities consist of the following:

DISH Network Corporation which retained its DISH Network® subscription television business and

EchoStar Corporation which sells equipment, including set-top boxes and related components, to DISH Network and international customers, and provides digital broadcast operations and satellite services to DISH Network and other customers.

2. Summary of Significant Accounting Policies

Basis of Presentation

The accompanying unaudited Condensed Consolidated Financial Statements have been prepared in accordance with accounting principles generally accepted in the United States (GAAP) and with the instructions to Form 10-Q and Article 10 of Regulation S-X for interim financial information. Accordingly, these statements do not include all of the information and notes required for complete financial statements prepared under GAAP. In our opinion, all adjustments (consisting of normal recurring adjustments) considered necessary for a fair presentation have been included. Operating results for the nine months ended September 30, 2009 are not necessarily indicative of the results that may be expected for the year ending December 31, 2009. For further information, refer to the Consolidated Financial Statements and notes thereto included in our Annual Report on Form 10-K for the year ended December 31, 2008 (2008 10-K). Certain prior period amounts have been reclassified to conform to the current period presentation. In addition, the Income tax (provision) benefit, net was reduced by prior period adjustments totaling $25 million for each of the three and nine months ended September 30, 2009. Further, in connection with preparation of the condensed consolidated financial statements, we have evaluated subsequent events through the issuance of these financial statements on November 9, 2009.

Accounting Standards Codification

In June 2009, the Financial Accounting Standards Board (FASB) issued Statement of Financial Accounting Standards No. 168, The FASB Accounting Standards Codification and the Hierarchy of Generally Accepted Accounting Principles A Replacement of FASB Statement No. 162 (SFAS 168). SFAS 168 establishes the FASB Accounting Standards Codification (the Codification)

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DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS Continued
(Unaudited)

as the single source of authoritative accounting principles recognized by the FASB to be applied by nongovernmental entities in the preparation of financial statements in conformity with GAAP. The Codification does not change current GAAP, but is intended to simplify user access to all authoritative GAAP by providing all the authoritative literature in one place related to a particular topic. We were required to implement the Codification during the third quarter of 2009. The Codification did not have any impact on our consolidated financial position or results of operations. However, it affects the way we reference authoritative accounting literature in our Condensed Consolidated Financial Statements. Accordingly, this Quarterly Report on Form 10-Q and all subsequent applicable public filings will reference the Codification as the source of authoritative literature.

Principles of Consolidation

We consolidate all majority owned subsidiaries, investments in entities in which we have controlling influence and variable interest entities where we have been determined to be the primary beneficiary. Non-majority owned investments are accounted for using the equity method when we have the ability to significantly influence the operating decisions of the investee. When we do not have the ability to significantly influence the operating decisions of an investee, the cost method is used. All significant intercompany accounts and transactions have been eliminated in consolidation.

Use of Estimates

The preparation of financial statements in conformity with GAAP requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses for each reporting period. Estimates are used in accounting for, among other things, allowances for doubtful accounts, inventory allowances, self-insurance obligations, deferred taxes and related valuation allowances, uncertain tax positions, loss contingencies, fair value of financial instruments, fair value of options granted under our stock-based compensation plans, fair value of assets and liabilities acquired in business combinations, capital leases, asset impairments, useful lives of property, equipment and intangible assets, retailer incentives, programming expenses, subscriber lives and royalty obligations. Illiquid credit markets and general downward economic conditions have increased the inherent uncertainty in the estimates and assumptions indicated above. Actual results may differ from previously estimated amounts, and such differences may be material to the Condensed Consolidated Financial Statements. Estimates and assumptions are reviewed periodically, and the effects of revisions are reflected prospectively in the period they occur.

Fair Value of Financial Instruments

As of September 30, 2009 and December 31, 2008, the carrying value of our cash and cash equivalents, marketable investment securities, trade accounts receivable, net of allowance for doubtful accounts, and current liabilities is equal to or approximates fair value due to their short-term nature. See Note 7 for the fair value of our long-term debt.

3. Basic and Diluted Income (Loss) Per Share

We present both basic earnings per share (EPS) and diluted EPS. Basic EPS excludes dilution and is computed by dividing Net income (loss) attributable to DISH Network common shareholders by the weighted-average number of common shares outstanding for the period. Diluted EPS reflects the potential dilution that could occur if stock awards were exercised and convertible securities were converted to common stock.

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DISH NETWORK CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS Continued
(Unaudited)

The potential dilution from our subordinated notes convertible into common stock was computed using the if converted method. The potential dilution from stock awards was computed using the treasury stock method based on the average market value of our Class A common stock. The following table presents earnings per share amounts for all periods and the basic and diluted weighted-average shares outstanding used in the calculation.

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2009	2008	2009	2008
	(In thousands, except per share amounts)			
Basic net income (loss) attributable to DISH Network common shareholders	$ 80,562	$ 91,895	$ 456,666	$ 686,363
Interest on dilutive subordinated convertible notes, net of related tax effect		1,537	351	6,494
Diluted net income (loss) attributable to DISH Network common shareholders	$ 80,562	$ 93,432	$ 457,017	$ 692,857
Weighted-average common shares outstanding Class A and B common stock:				
Basic	446,823	449,425	446,816	449,318
Dilutive impact of stock awards outstanding	608	2,318	1,015	2,941
Dilutive impact of subordinated notes convertible into common shares		8,299	482	8,781
Diluted	447,431	460,042	448,313	461,040
Earnings per share Class A and B common stock:				
Basic net income (loss) per share attributable to DISH Network common shareholders	$ 0.18	$ 0.20	$ 1.02	$ 1.53
Diluted net income (loss) per share attributable to DISH Network common shareholders	$ 0.18	$ 0.20	$ 1.02	$ 1.50
Shares of Class A common stock issuable upon conversion of:				
3% Convertible Subordinated Note due 2010 (repaid during third quarter 2008)		8,299		8,299
3% Convertible Subordinated Note due 2011 (repaid in October 2009)	482	482	482	482

As of September 30, 2009 and 2008, there were stock awards to purchase 9.1 million shares and 3.4 million shares, respectively, of Class A common stock outstanding not included in the above denominator as their effect is antidilutive. In addition, during the three months ended September 30, 2009, the convertible note is not included in the diluted EPS calculation as its conversion would be antidilutive.

Vesting of options and rights to acquire shares of our Class A common stock (Restricted performance units) granted pursuant to our long-term, performance-based stock incentive plans is contingent upon meeting certain long-term goals which have not yet been achieved. As a consequence, the following are also not included in the diluted EPS calculation:

	As of September 30,	
	2009	**2008**
	(In thousands)	
Performance-based options	9,633	9,548
Restricted performance units	585	571
Total	10,218	10,119

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4. Marketable Investment Securities, Restricted Cash and Other Investment Securities

Our marketable investment securities, restricted cash and other investment securities consist of the following:

	As of	
	September 30, 2009	**December 31, 2008**
	(In thousands)	
Marketable investment securities:		
Current marketable investment securities VRDNs	$ 1,663,367	$ 239,611
Current marketable investment securities strategic	211,503	13,561
Current marketable investment securities other	603,012	207,386
Total current marketable investment securities	2,477,882	460,558
Restricted marketable investment securities (1)	10,388	22,407
Noncurrent marketable investment securities ARS and MBS (2)	119,211	113,394
Total marketable investment securities	2,607,481	596,359
Restricted cash and cash equivalents (1)	131,313	61,199
Other investment securities:		
Other investment securities cost method	49,573	15,795
Other investment securities equity method		26,784
Other investment securities fair value method		2,323
Total other investment securities (2)	49,573	44,902
Total marketable investment securities, restricted cash and other investment securities	$ 2,788,367	$ 702,460

(1) Restricted marketable investment securities and restricted cash and cash equivalents are included in Restricted cash and marketable investment

securities on our Condensed Consolidated Balance Sheets.

(2) Noncurrent marketable investment securities auction rate securities (ARS), mortgage backed securities (MBS) and other investment securities are included in Marketable and other investment securities on our Condensed Consolidated Balance Sheets.

Marketable Investment Securities

Our marketable investment securities portfolio consists of various debt and equity instruments, all of which are classified as available-for-sale.

Current Marketable Investment Securities VRDNs

Variable rate demand notes (VRDNs) are long-term floating rate municipal bonds with embedded put options that allow the bondholder to sell the security at par plus accrued interest. All of the put options are secured by a pledged liquidity source. Our VRDN portfolio is comprised of many municipalities and financial institutions that serve as the pledged liquidity source. While they are classified as marketable investment securities, the put option allows for VRDNs to be liquidated on a same day or on a five business day settlement basis.

Current Marketable Investment Securities Strategic

Our strategic marketable investment securities are highly speculative and have experienced and continue to experience volatility. As of September 30, 2009, a significant portion of our strategic investment portfolio consisted of securities of a few issuers and the value of that portfolio therefore depends on those issuers.

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We account for certain debt securities acquired at a discount under the cost recovery method, partial accrual or full accrual methods based on management s quarterly evaluation of these securities. These debt securities were purchased at a discount due to their credit quality. As a result, the yield that may be accreted (accretable yield) is limited to the excess of our estimate of undiscounted expected principal, interest, and other cash flows (including the effects of prepayments) expected to be collected over our initial investment. The face value of these securities as of September 30, 2009 and December 31, 2008 was $137 million and $9 million, respectively. The carrying value, which is equal to fair value, of these securities as of September 30, 2009 and December 31, 2008 was $60 million and $2 million, respectively. The total discount on these securities was $91 million as of September 30, 2009 with $12 million classified as accretable yield and the remaining $79 million classified as non-accretable yield. As of December 31, 2008, the entire discount of $6 million was classified as non-accretable yield.

Current Marketable Investment Securities Other

Our other current marketable investment securities portfolio includes investments in various debt instruments including corporate and government bonds.

Restricted Cash and Marketable Investment Securities

As of September 30, 2009 and December 31, 2008, our restricted marketable investment securities, together with our restricted cash, included amounts required as collateral for our letters of credit or surety bonds. Restricted cash and marketable investment securities as of September 30, 2009 included $62 million related to our litigation with Tivo.

Noncurrent Marketable Investment Securities ARS and MBS

We have investments in ARS and MBS which are classified as available-for-sale securities and reported at fair value. Events in the credit markets have reduced or eliminated current liquidity for certain of our ARS and MBS investments. As a result, we classify these investments as noncurrent assets as we intend to hold these investments until they recover or mature.

The valuation of our ARS and MBS investments portfolio is subject to uncertainties that are difficult to estimate. Due to the lack of observable market quotes for identical assets, we utilize analyses that rely on Level 2 and/or Level 3 inputs, as defined in Fair Value Measurements. These inputs include, among other things, observed prices on similar assets as well as our assumptions and estimates related to the counterparty credit quality, default risk underlying the security and overall capital market liquidity. These securities were also compared, when possible, to other observable market data for financial instruments with similar characteristics.

Other Investment Securities

We have several strategic investments in certain equity securities that are included in noncurrent Marketable and other investment securities on our Condensed Consolidated Balance Sheets accounted for using the cost, equity or fair value methods of accounting.

Our ability to realize value from our strategic investments in companies that are not publicly traded depends on the success of those companies businesses and their ability to obtain sufficient capital to execute their business plans. Because private markets are not as liquid as public markets, there is also increased risk that we will not be able to sell these investments, or that when we desire to sell them we will not be able to obtain fair value for them.

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Unrealized Gains (Losses) on Marketable Investment Securities

As of September 30, 2009 and December 31, 2008, we had accumulated net unrealized losses of $11 million and $116 million, both net of related tax effect, respectively, as a part of Accumulated other comprehensive income (loss) within Total stockholders equity (deficit). A full valuation allowance has been established against the deferred tax assets associated with these unrealized capital losses. The components of our available-for-sale investments are detailed in the table below.

	As of September 30, 2009				As of December 31, 2008			
	Marketable Investment Securities	Gains	Unrealized Losses	Net	Marketable Investment Securities	Gains	Unrealized Losses	Net
	(In thousands)							
Debt securities:								
VRDNs	$ 1,663,367	$ 1	$	$ 1	$ 239,611	$	$	$
ARS and MBS	119,211	507	(73,121)	(72,614)	113,394		(103,943)	(103,943)
Other (including restricted)	741,833	38,972	(3,005)	35,967	231,863		(12,442)	(12,442)
Equity securities:								
Other	83,070	28,873	(2,759)	26,114	11,491			
Total marketable investment securities	$ 2,607,481	$ 68,353	$ (78,885)	$ (10,532)	$ 596,359	$	$ (116,385)	$ (116,385)

As of September 30, 2009, restricted and non-restricted marketable investment securities include debt securities of $2.344 billion with contractual maturities of one year or less and $180 million with contractual maturities greater than one year. Actual maturities may differ from contractual maturities as a result of our ability to sell these securities prior to maturity.

Marketable Investment Securities in a Loss Position

The following table reflects the length of time that the individual securities, accounted for as available-for-sale, have been in an unrealized loss position, aggregated by investment category. As of September 30, 2009, the unrealized losses on our investments in equity securities represent investments in a broad based-index. As of September 30, 2009 and December 31, 2008, the unrealized losses on our investments in debt securities primarily represent investments in auction rate, mortgage and asset-backed securities. We do not intend to sell our investments in these debt securities before they recover or mature, and it is more likely than not that we will hold these investments until that time. In addition, we are not aware of any specific factors indicating that the underlying issuers of these debt securities would not be able to pay interest as it becomes due or repay the principal at maturity. Therefore, we believe that these changes in the estimated fair values of these marketable investment securities are related to temporary market fluctuations.

			As of September 30, 2009					
			Less than Six Months		Six to Nine Months		Nine Months or More	
Investment Category	Primary Reason for Unrealized Loss	Total Fair Value	Fair Value	Unrealized Loss	Fair Value	Unrealized Loss	Fair Value	Unrealized Loss
			(In thousands)					

Debt securities	Temporary market fluctuations	$ 288,522	$ 111,128	$ (273)	$	$	$ 177,394	$ (75,853)
Equity securities	Temporary market fluctuations	47,241	47,241	(2,759)				
Total		$ 335,763	$ 158,369	$ (3,032)	$	$	$ 177,394	$ (75,853)

		As of December 31, 2008 (In thousands)						
Debt securities	Temporary market fluctuations	$ 295,676	$ 2,070	$ (540)	$ 8,114	$ (24)	$ 285,492	$ (115,821)
Total		$ 295,676	$ 2,070	$ (540)	$ 8,114	$ (24)	$ 285,492	$ (115,821)

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Fair Value Measurements

We determine fair value based on the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants. Market or observable inputs are the preferred source of values, followed by unobservable inputs or assumptions based on hypothetical transactions in the absence of market inputs. We apply the following hierarchy in determining fair value:

Level 1, defined as observable inputs being quoted prices in active markets for identical assets;

Level 2, defined as observable inputs including quoted prices for similar assets in active markets; quoted prices for identical or similar instruments in markets that are not active; and model-derived valuations in which significant inputs and significant value drivers are observable in active markets; and

Level 3, defined as unobservable inputs in which little or no market data exists, therefore requiring assumptions based on the best information available.

Our assets measured at fair value on a recurring basis were as follows:

	Total Fair Value As of September 30, 2009			
Assets	**Total**	**Level 1**	**Level 2**	**Level 3**
	(In thousands)			
Marketable investment securities	$ 2,607,481	$ 93,068	$ 2,403,350	$ 111,063

Changes in Level 3 instruments are as follows:

	Total	Level 3 Current and Noncurrent Marketable Investment Securities	Other Investment Securities
		(In thousands)	
Balance as of December 31, 2008	$ 106,679	$ 104,356	$ 2,323
Net realized/unrealized gains/(losses) included in earnings	(10,809)	(8,486)	(2,323)
Net realized/unrealized gains/(losses) included in other comprehensive income (loss)	31,460	31,460	
Purchases, issuances and settlements, net	(16,267)	(16,267)	
Balance as of September 30, 2009	$ 111,063	$ 111,063	$

Gains and Losses on Sales and Changes in Carrying Values of Investments

Other, net income and expense included on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss) includes other changes in the carrying amount of our marketable and non-marketable investments as follows:

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Other Income (Expense):	For the Three Months Ended September 30, 2009	2008	For the Nine Months Ended September 30, 2009	2008
	(In thousands)			
Marketable investment securities gains (losses) on sales/exchange	$ 16	$ (363)	$ (4,716)	$ 2,120
Other investment securities gains (losses) on sales		53,473		53,473
Marketable investment securities other-than-temporary impairments		(148,003)		(148,003)
Other investment securities unrealized gains (losses) on fair value investments and other-than-temporary impairments	(847)	(10,549)	(35,802)	(28,259)
Other	(1,084)	(613)	(1,554)	(3,914)
Total	$ (1,915)	$ (106,055)	$ (42,072)	$ (124,583)

5. Inventories
Inventories consist of the following:

	As of September 30, 2009	December 31, 2008
	(In thousands)	
Finished goods DBS	$ 179,648	$ 238,343
Raw materials	72,310	146,353
Work-in-process used	58,109	61,663
Work-in-process new	1,234	2,414
Subtotal	311,301	448,773
Inventory allowance	(33,183)	(22,102)
Inventories, net	$ 278,118	$ 426,671

At September 30, 2009 our inventory balance was $278 million, a decline of $149 million compared to our balance at December 31, 2008. This decline primarily related to the impact of our sales and marketing promotions and reduced churn during the third quarter of 2009.

6. Satellites
We currently utilize eleven satellites in geostationary orbit approximately 22,300 miles above the equator, four of which are owned by us. Each of the owned satellites had an original estimated minimum useful life of at least 12 years. We currently lease capacity on five satellites from EchoStar with terms ranging from two to ten years. We account for these as operating leases. See Note 12 for further discussion of our satellite leases with EchoStar. We also lease two satellites from third parties, which are accounted for as capital leases and are depreciated over the shorter of the economic life or the term of the satellite agreement.

Operation of our programming service requires that we have adequate satellite transmission capacity for the programming we offer. Moreover, current competitive conditions require that we continue to expand our offering of new programming, particularly by expanding local HD coverage and offering more HD national channels. While we generally have had in-orbit satellite capacity sufficient to transmit our existing channels and some backup capacity to recover the transmission of certain critical programming, our backup capacity is limited.

In the event of a failure or loss of any of our satellites, we may need to acquire or lease additional satellite capacity or relocate one of our other satellites and use it as a replacement for the failed or lost satellite. Such a failure could result in a prolonged loss of critical programming or a significant delay in our plans to expand programming as necessary to remain competitive and thus may have a material adverse effect on our business, financial condition and results of operations.

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Prior to 2009, certain satellites in our fleet have experienced anomalies, some of which have had a significant adverse impact on their remaining life and commercial operation. There can be no assurance that future anomalies will not further impact the remaining life and commercial operation of any of these satellites. See *Long-Lived Satellite Assets* below for further discussion of evaluation of impairment. There can be no assurance that we can recover critical transmission capacity in the event one or more of our in-orbit satellites were to fail. We do not anticipate carrying insurance for any of the in-orbit satellites that we own, and we will bear the risk associated with any in-orbit satellite failures. Recent developments with respect to our satellites are discussed below.

Owned Satellites

EchoStar V. EchoStar V was originally designed with a minimum 12-year design life. Momentum wheel failures in prior years, together with relocation of the satellite between orbital locations, resulted in increased fuel consumption, as disclosed in previous SEC filings. During 2005, as a result of this increased fuel consumption, we reduced the remaining estimated useful life of the satellite and as of October 2008, the satellite was fully depreciated. In late July 2009, it was determined that the satellite had less fuel remaining than previously estimated. The satellite was removed from the 148 degree orbital location and retired from commercial service on August 3, 2009 and this retirement did not have a material impact on the DISH Network service.

As a result of the retirement of EchoStar V, we currently do not have any satellites positioned at the 148 degree orbital location. While we have requested a waiver from the FCC for the continued use of this orbital location, there can be no assurance that the FCC will determine that our proposed future use of this orbital location complies fully with all licensing requirements. If the FCC decides to revoke this license, we may be required to write-off its $68 million carrying value.

Leased Satellites

EchoStar III. EchoStar III was originally designed to operate a maximum of 32 DBS transponders in full continental United States (CONUS) mode at approximately 120 watts per channel, switchable to 16 transponders operating at over 230 watts per channel, and was equipped with a total of 44 traveling wave tube amplifiers (TWTAs) to provide redundancy. As a result of TWTA failures in previous years and an additional pair of TWTA failures during August 2009, only 16 transponders are currently available for use. Due to redundancy switching limitations and specific channel authorizations, we are currently operating on 14 of our FCC authorized frequencies at the 61.5 degree orbital location. While the failures have not reduced the original minimum 12-year design life of the satellite, it is likely that additional TWTA failures will occur from time to time in the future, and such failures could further impact commercial operation of the satellite.

EchoStar XII. Prior to 2009, EchoStar XII experienced anomalies resulting in the loss of electrical power available from its solar arrays. During March and May 2009, EchoStar XII experienced more of these anomalies, which further reduced the electrical power available to operate EchoStar XII. We currently operate EchoStar XII in CONUS/spot beam hybrid mode. If we continue to operate the satellite in this mode, as a result of this loss of electrical power, we would be unable to use the full complement of its available transponders for the 12-year design life of the satellite. However, since the number of useable transponders on EchoStar XII depends on, among other things, whether EchoStar XII is operated in CONUS, spot beam, or hybrid CONUS/spot beam mode, we are unable to determine at this time the actual number of transponders that will be available at any given time or how many transponders can be used during the remaining estimated life of the satellite.

Nimiq 5. Nimiq 5 was launched in September 2009 and commenced commercial operation at the 72.7 degree orbital location during October 2009, where it provides additional high-powered capacity to support expansion of our programming services. See Note 12 for further discussion.

Long-Lived Satellite Assets

We evaluate our satellite fleet for impairment as one asset group and test for recoverability whenever events or changes in circumstances indicate that its carrying amount may not be recoverable. While certain of the anomalies discussed above, and previously disclosed, may be considered to represent a significant adverse change in the

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physical condition of an individual satellite, based on the redundancy designed within each satellite and considering the asset grouping, these anomalies are not considered to be significant events that would require evaluation for impairment recognition. Unless and until a specific satellite is abandoned or otherwise determined to have no service potential, the net carrying amount related to the satellite would not be written off.

7. Long-Term Debt

7 $^{7}/_{8}$% Senior Notes due 2019

On August 17, 2009, we issued $1.0 billion aggregate principal amount of our ten-year, 7 $^{7}/_{8}$% Senior Notes due September 1, 2019 at an issue price of 97.467%. Interest accrues at an annual rate of 7 $^{7}/_{8}$% and is payable semi-annually in cash, in arrears on March 1 and September 1 of each year, commencing on March 1, 2010.

On October 5, 2009, we issued $400 million aggregate principal amount of additional 7 $^{7}/_{8}$% Senior Notes due 2019 at an issue price of 101.750% plus accrued interest from August 17, 2009. These notes were issued as additional notes under the indenture, dated as of August 17, 2009 (the Indenture), pursuant to which we issued the $1.0 billion discussed above. These notes and the notes previously issued under the Indenture will be treated as a single class of debt securities under the Indenture.

The 7 $^{7}/_{8}$% Senior Notes are redeemable, in whole or in part, at any time at a redemption price equal to 100% of the principal amount plus a make-whole premium, as defined in the related Indenture, together with accrued and unpaid interest. Prior to September 1, 2012, we may also redeem up to 35% of each of the 7 $^{7}/_{8}$% Senior Notes at specified premiums with the net cash proceeds from certain equity offerings or capital contributions.

The 7 $^{7}/_{8}$% Senior Notes are:

- general unsecured senior obligations of DISH DBS Corporation (DDBS);
- ranked equally in right of payment with all of DDBS and the guarantors existing and future unsecured senior debt; and
- ranked effectively junior to our and the guarantors current and future secured senior indebtedness up to the value of the collateral securing such indebtedness.

The Indenture related to the 7 $^{7}/_{8}$% Senior Notes contains restrictive covenants that, among other things, impose limitations on the ability of DDBS and its restricted subsidiaries to:

- incur additional debt;
- pay dividends or make distributions on DDBS capital stock or repurchase DDBS capital stock;
- make certain investments;
- create liens or enter into sale and leaseback transactions;
- enter into transactions with affiliates;
- merge or consolidate with another company; and
- transfer or sell assets.

In the event of a change of control, as defined in the related indenture, we would be required to make an offer to repurchase all or any part of a holder s 7 $^{7}/_{8}$% Senior Notes at a purchase price equal to 101% of the aggregate principal amount thereof, together with accrued and unpaid interest thereon, to the date of repurchase.

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Fair Value of our Long-Term Debt

The following table summarizes the carrying value and fair values of our debt facilities as of September 30, 2009 and December 31, 2008:

	As of			
	September 30, 2009		December 31, 2008	
	Carrying Value	Fair Value	Carrying Value	Fair Value
	(In thousands)			
3% Convertible Subordinated Note due 2011	$ 25,000	$ 25,000	$ 25,000	$ 23,768
6 3/8% Senior Notes due 2011	1,000,000	1,021,250	1,000,000	899,000
7% Senior Notes due 2013	500,000	507,500	500,000	419,000
6 5/8% Senior Notes due 2014	1,000,000	977,500	1,000,000	840,300
7 3/4% Senior Notes due 2015	750,000	770,625	750,000	600,000
7 1/8% Senior Notes due 2016	1,500,000	1,492,500	1,500,000	1,246,890
7 7/8% Senior Notes due 2019 (1)	1,000,000	1,008,750		
Mortgages and other notes payable	43,287	43,287	46,211	46,211
Subtotal	5,818,287	5,846,412	4,821,211	4,075,169
Capital lease obligations (2)	309,535	N/A	186,545	N/A
Total long-term debt (including current portion)	$ 6,127,822	$ 5,846,412	$ 5,007,756	$ 4,075,169

(1) Excludes $400 million in additional 7 $^{7}/_{8}$% Senior Notes due 2019 issued on October 5, 2009.

(2) Disclosure regarding fair value of capital leases is not required.

Capital Lease Obligations

Ciel II, a Canadian DBS satellite, was launched in December 2008 and commenced commercial operation at the 129 degree orbital location in February 2009. We have leased 100% of the capacity on the satellite for an initial term of ten years. Prior to the launch, we pre-paid $131 million to SES Americom in connection with the lease agreement and we capitalized $16 million of interest related to this satellite. We have accounted for this agreement as a capital lease asset by recording $277 million as the estimated fair value of the satellite and recording a capital lease obligation in the amount of $130 million.

As of September 30, 2009 and December 31, 2008, we had $500 million and $223 million, respectively, capitalized for satellites acquired under capital leases included in Property and equipment, net with related accumulated depreciation of $56 million and $26 million, respectively. This increase during the nine months ended September 30, 2009 related to the Ciel II satellite is discussed above.

In our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss), we recognized depreciation expense on satellites acquired under capital lease agreements as follows:

	For the Three Months Ended September 30,		**For the Nine Months Ended September 30,**	
	2009	**2008**	**2009**	**2008**
	(In thousands)			
Depreciation expense capital leases	$ 10,634	$ 3,724	$ 29,598	$ 11,171

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Future minimum lease payments under our capital lease obligations, together with the present value of the net minimum lease payments as of September 30, 2009, are as follows (in thousands):

For the Years Ended December 31,	
2009 (remaining three months)	$ 19,333
2010	81,266
2011	78,353
2012	75,970
2013	75,970
Thereafter	542,178
Total minimum lease payments	873,070
Less: Amount representing use of the orbital location and estimated executory costs (primarily insurance and maintenance) including profit thereon, included in total minimum lease payments	(400,509)
Net minimum lease payments	472,561
Less: Amount representing interest	(163,026)
Present value of net minimum lease payments	309,535
Less: Current portion	(23,058)
Long-term portion of capital lease obligations	$ 286,477

8. Stockholders Equity (Deficit)

Common Stock Repurchase Program

Our board of directors previously authorized stock repurchases of up to $1.0 billion of our Class A common stock. During the nine months ended September 30, 2009, we repurchased 1.9 million shares of our common stock for $19 million. On November 3, 2009, our board of directors extended the plan and authorized an increase in the maximum dollar value of shares that may be repurchased under the plan, such that we are currently authorized to repurchase up to $1.0 billion of our outstanding shares through and including December 31, 2010.

9. Stock-Based Compensation

Stock Incentive Plans

In connection with the Spin-off, as permitted by our existing stock incentive plans and consistent with the Spin-off exchange ratio, each DISH Network stock option was converted into two stock options as follows:

- an adjusted DISH Network stock option for the same number of shares that were exercisable under the original DISH Network stock option, with an exercise price equal to the exercise price of the original DISH Network stock option multiplied by 0.831219.

- a new EchoStar stock option for one-fifth of the number of shares that were exercisable under the original DISH Network stock option, with an exercise price equal to the exercise price of the original DISH Network stock option multiplied by 0.843907.

Similarly, each holder of DISH Network restricted stock units retained his or her DISH Network restricted stock units and received one EchoStar restricted stock unit for every five DISH Network restricted stock units that they held. Consequently, the fair value of the DISH Network stock award and the new EchoStar stock award immediately following the Spin-off was equivalent to the fair value of such stock award immediately prior to the Spin-off.

We maintain stock incentive plans to attract and retain officers, directors and key employees. Stock awards under these plans include both performance and non-performance based stock incentives. As of September 30, 2009, we had outstanding under these plans stock options to acquire 21.7 million shares of our Class A common stock and 0.8 million restricted stock units. Stock options granted through September 30, 2009 were granted with exercise prices equal to or greater than the market value of our Class A common stock at the date of grant and with a maximum

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term of ten years. While historically we have issued stock awards subject to vesting, typically at the rate of 20% per year, some stock awards have been granted with immediate vesting and other stock awards vest only upon the achievement of certain company-wide objectives. As of September 30, 2009, we had 79.7 million shares of our Class A common stock available for future grant under our stock incentive plans. The 2009 Stock Incentive Plan, which was approved at the annual meeting of shareholders on May 11, 2009, allows us to grant new stock awards following the expiration of our 1999 Stock Incentive Plan on April 16, 2009.

As of September 30, 2009, the following stock awards were outstanding:

	As of September 30, 2009			
	DISH Network Awards		EchoStar Awards	
Stock Awards Outstanding	Stock Options	Restricted Stock Units	Stock Options	Restricted Stock Units
Held by DISH Network employees	18,221,050	400,068	1,398,788	63,833
Held by EchoStar employees	3,451,851	410,374	N/A	N/A
Total	21,672,901	810,442	1,398,788	63,833

We are responsible for fulfilling all stock awards related to DISH Network common stock and EchoStar is responsible for fulfilling all stock awards related to EchoStar common stock, regardless of whether such stock awards are held by our or EchoStar s employees. Notwithstanding the foregoing, our stock-based compensation expense, resulting from stock awards outstanding at the Spin-off date, is based on the stock awards held by our employees regardless of whether such stock awards were issued by DISH Network or EchoStar. Accordingly, stock-based compensation that we expense with respect to EchoStar stock awards is included in Additional paid-in capital on our Condensed Consolidated Balance Sheets.

Stock Award Activity

Our stock option activity for the nine months ended September 30, 2009 was as follows:

	For the Nine Months Ended September 30, 2009	
	Options	Weighted-Average Exercise Price
Total options outstanding, beginning of period	21,835,687	$22.50
Granted	2,339,500	14.09
Exercised	(140,600)	6.27
Forfeited and cancelled	(2,361,686)	22.52
Total options outstanding, end of period	21,672,901	21.69
Performance based options outstanding, end of period (1)	9,632,750	16.64
Exercisable at end of period	7,379,219	29.25

(1)

These stock options, which are included in the caption Total options outstanding, end of period, were issued pursuant to two separate long-term, performance-based stock incentive plans. Vesting of these stock options is contingent upon meeting certain long-term company goals. See discussion of the 2005 LTIP and 2008 LTIP below.

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We realized tax benefits from stock awards exercised during the three and nine months ended September 30, 2009 and 2008 as follows:

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2009	2008	2009	2008
	(In thousands)			
Tax benefit from stock awards exercised	$ 245	$ 605	$ 260	$ 2,851

Based on the closing market price of our Class A common stock on September 30, 2009, the aggregate intrinsic value of our stock options was as follows:

	As of September 30, 2009	
	Options Outstanding	Options Exercisable
	(In thousands)	
Aggregate intrinsic value	$ 64,836	$ 1,458

Our restricted stock unit activity for the nine months ended September 30, 2009 was as follows:

	For the Nine Months Ended September 30, 2009	
	Restricted Stock Units	Weighted-Average Grant Date Fair Value
Total restricted stock units outstanding, beginning of period	1,452,734	$27.87
Granted	6,666	11.11
Vested	(30,000)	25.90
Forfeited and cancelled	(618,958)	30.12
Total restricted stock units outstanding, end of period	810,442	26.10
Restricted performance units outstanding, end of period (1)	585,067	24.07

(1) These restricted performance units, which are included in the caption Total restricted stock units outstanding, end of period, were issued pursuant to two separate

long-term, performance-based stock incentive plans. Vesting of these restricted performance units is contingent upon meeting certain long-term company goals. See discussion of the 2005 LTIP and 2008 LTIP below.

Long-Term Performance-Based Plans

2005 LTIP. In 2005, we adopted a long-term, performance-based stock incentive plan (the 2005 LTIP). The 2005 LTIP provides stock options and restricted stock units, either alone or in combination, which vest over seven years at the rate of 10% per year during the first four years, and at the rate of 20% per year thereafter. Exercise of the stock awards is subject to a performance condition that a company-specific subscriber goal is achieved prior to March 31, 2015.

Contingent compensation related to the 2005 LTIP will not be recorded in our financial statements unless and until management concludes achievement of the performance condition is probable. Given the competitive nature of our business, small variations in subscriber churn, gross subscriber addition rates and certain other factors can significantly impact subscriber growth. Consequently, while it was determined that achievement of the goal was not probable as of September 30, 2009, that assessment could change at any time.

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If all of the stock awards under the 2005 LTIP were vested and the goal had been met or if we had determined that achievement of the goal was probable during the nine months ended September 30, 2009, we would have recorded total non-cash, stock-based compensation expense for our employees as indicated in the table below. If the goal is met and there are unvested stock awards at that time, the vested amounts would be expensed immediately on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss), with the unvested portion recognized ratably over the remaining vesting period.

	2005 LTIP	
	Total	Vested Portion
	(In thousands)	
DISH Network awards held by DISH Network employees	$ 39,097	$ 13,856
EchoStar awards held by DISH Network employees	7,938	2,813
Total	$ 47,035	$ 16,669

2008 LTIP. In December 2008, we adopted a long-term, performance-based stock incentive plan (the 2008 LTIP). The 2008 LTIP provides stock options and restricted stock units, either alone or in combination, which vest based on company-specific subscriber and financial metrics. Exercise of the stock awards is contingent on achieving these goals prior to December 31, 2015.

As of September 30, 2009, we generated cumulative free cash flow in excess of $1.0 billion which will result in approximately 10% of the 2008 LTIP stock awards vesting during the fourth quarter 2009. We recorded non-cash, stock-based compensation expense for the nine months ended September 30, 2009 as indicated in the table below. Additional compensation related to the 2008 LTIP will be recorded based on management s assessment of the probability of meeting the remaining performance conditions. If the remaining goals are probable of being achieved and stock awards vest, we will recognize the additional non-cash, stock-based compensation expense on our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss) over the term of this stock incentive plan as follows.

2008 LTIP	Non-Cash Stock-Based Compensation Expense
	(In thousands)
Total expense	$ 26,214
Less:	
Expense recognized during the nine months ended September 30, 2009	(1,935)
Remaining expense expected to be recognized during 2009	(366)
Remaining expense over the term of the plan	$ 23,913

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Of the 21.7 million stock options and 0.8 million restricted stock units outstanding under our stock incentive plans as of September 30, 2009, the following awards were outstanding pursuant to the 2005 LTIP and the 2008 LTIP:

	As of September 30, 2009	
	Number of Awards	Weighted-Average Exercise Price
Stock Options		
2005 LTIP	3,656,250	$25.06
2008 LTIP	5,976,500	$11.49
Total	9,632,750	$16.64
Restricted Performance Units		
2005 LTIP	504,245	
2008 LTIP	80,822	
Total	585,067	

Stock-Based Compensation

Total non-cash, stock-based compensation expense for all of our employees is shown in the following table for the three and nine months ended September 30, 2009 and 2008 and was allocated to the same expense categories as the base compensation for such employees:

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2009	2008	2009	2008
	(In thousands)			
Subscriber-related	$ 241	$ 213	$ 747	$ 673
General and administrative	1,041	3,676	7,810	11,017
Total non-cash, stock-based compensation	$ 1,282	$ 3,889	$ 8,557	$ 11,690

As of September 30, 2009, our total unrecognized compensation cost related to our non-performance based unvested stock awards was $28 million and includes compensation expense that we will recognize for EchoStar stock awards held by our employees as a result of the Spin-off. This cost is based on an estimated future forfeiture rate of approximately 4.0% per year and will be recognized over a weighted-average period of approximately three years. Share-based compensation expense is recognized based on stock awards ultimately expected to vest and is reduced for estimated forfeitures. Forfeitures are estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates. Changes in the estimated forfeiture rate can have a significant effect on share-based compensation expense since the effect of adjusting the rate is recognized in the period the forfeiture estimate is changed.

The fair value of each stock award for the three and nine months ended September 30, 2009 and 2008 was estimated at the date of the grant using a Black-Scholes option valuation model with the following assumptions:

	For the Three Months Ended September 30,		**For the Nine Months Ended September 30,**	
	2009	**2008**	**2009**	**2008**
Stock Options				
Risk-free interest rate	2.67% - 3.00%	3.15%	1.97% - 3.19%	2.74% - 3.42%
Volatility factor	33.10% - 34.00%	24.90%	29.72% - 34.00%	19.98% - 24.90%
Expected term of options in years	6.2 - 6.7	6.1	6.0 - 7.3	6.0 - 6.1
Weighted-average fair value of options granted	$7.37 - $7.74	$6.65	$3.86 - $7.74	$6.65 - $8.72

On November 6, 2009, our board of directors declared a dividend of $2.00 per share on our outstanding Class A and Class B common stock. The dividend will be payable in cash on December 2, 2009 to shareholders of record on November 20, 2009. We do not intend to pay additional dividends on our common stock and accordingly,

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the dividend yield percentage used in the Black-Scholes option valuation model is set at zero for all periods. The Black-Scholes option valuation model was developed for use in estimating the fair value of traded stock options which have no vesting restrictions and are fully transferable. Consequently, our estimate of fair value may differ from other valuation models. Further, the Black-Scholes option valuation model requires the input of highly subjective assumptions. Changes in the subjective input assumptions can materially affect the fair value estimate. Therefore, we do not believe the existing models provide as reliable a single measure of the fair value of stock-based compensation awards as a market-based model would.

We will continue to evaluate the assumptions used to derive the estimated fair value of our stock options as new events or changes in circumstances become known.

10. Commitments and Contingencies

Commitments

As of September 30, 2009, future maturities of our debt and contractual obligations are summarized as follows:

	Payments due by period (In thousands)						
	Total	**2009**	**2010**	**2011**	**2012**	**2013**	**Thereafter**
Long-term debt obligations	$ 5,818,287	$ 26,181	$ 4,142	$ 1,004,375	$ 4,622	$ 504,183	$ 4,274,784
Capital lease obligations	309,535	4,886	22,382	21,054	20,582	22,646	217,985
Interest expense on long-term debt and capital lease obligations	2,695,287	118,866	438,690	433,780	368,089	365,985	969,877
Satellite-related obligations	1,639,821	81,900	116,795	107,082	154,222	154,005	1,025,817
Operating lease obligations	120,285	12,032	45,753	25,220	19,402	9,817	8,061
Purchase obligations	1,342,570	1,093,823	194,480	19,160	15,450	15,827	3,830
Total	$ 11,925,785	$ 1,337,688	$ 822,242	$ 1,610,671	$ 582,367	$ 1,072,463	$ 6,500,354

The table above does not include $246 million of liabilities associated with unrecognized tax benefits which were accrued and are included on our Condensed Consolidated Balance Sheets as of September 30, 2009. We do not expect any portion of this amount to be paid or settled within the next twelve months.

In certain circumstances the dates on which we are obligated to make these payments could be delayed. These amounts will increase to the extent we procure insurance for our satellites or contract for the construction, launch or lease of additional satellites.

We have not yet procured a contract for the launch of our EchoStar XV satellite. While the cost of this launch will depend upon the terms and conditions of the contract, we estimate that the cost could range from approximately $90 million to $120 million, which is not included in the table above. We anticipate incurring this cost between the current period and the expected launch of the satellite in late 2010.

On November 6, 2009, our board of directors declared a dividend of $2.00 per share on our outstanding Class A and Class B common stock. The dividend will be payable in cash on December 2, 2009 to shareholders of record on November 20, 2009. Based on the number of shares of our Class A and B common stock outstanding as of

October 23, 2009, we will distribute approximately $894 million in cash to our shareholders as part of the dividend. This dividend is not included in the table above.

Guarantees

In connection with the Spin-off, we distributed certain satellite lease agreements to EchoStar and remained the guarantor under those capital leases for payments totaling approximately $444 million over the next eight years that are not included in the table above.

In addition, during the third quarter of 2009, EchoStar entered into a new satellite transponder service agreement for Nimiq 5 through 2024. We sublease this capacity from EchoStar and also guarantee a certain portion of its obligation

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under this agreement through 2019. As of September 30, 2009, the remaining obligation under this agreement was $591 million and is included in the table above.

As of September 30, 2009, we have not recorded a liability on the balance sheet for any of these guarantees.

Contingencies

In connection with the Spin-off, we entered into a separation agreement with EchoStar, which provides among other things for the division of certain liabilities, including liabilities resulting from litigation. Under the terms of the separation agreement, EchoStar has assumed certain liabilities that relate to its business including certain designated liabilities for acts or omissions prior to the Spin-off. Certain specific provisions govern intellectual property related claims under which, generally, EchoStar will only be liable for its acts or omissions following the Spin-off and we will indemnify EchoStar for any liabilities or damages resulting from intellectual property claims relating to the period prior to the Spin-off as well as our acts or omissions following the Spin-off.

Acacia

During 2004, Acacia Media Technologies (Acacia) filed a lawsuit against us and EchoStar in the United States District Court for the Northern District of California. The suit also named DirecTV, Comcast, Charter, Cox and a number of smaller cable companies as defendants. Acacia is an entity that seeks to license an acquired patent portfolio without itself practicing any of the claims recited therein. The suit alleges infringement of United States Patent Nos. 5,132,992, 5,253,275, 5,550,863, 6,002,720 and 6,144,702, which relate to certain systems and methods for transmission of digital data. On September 25, 2009, the Court granted summary judgment to defendants on invalidity grounds, and dismissed the action with prejudice. The plaintiffs have appealed.

We intend to vigorously defend this case. In the event that a Court ultimately determines that we infringe any of the asserted patents, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could require us to materially modify certain user-friendly features that we currently offer to consumers. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

Broadcast Innovation, L.L.C.

During 2001, Broadcast Innovation, L.L.C. (Broadcast Innovation) filed a lawsuit against us, EchoStar, DirecTV, Thomson Consumer Electronics and others in United States District Court in Denver, Colorado. The suit alleges infringement of United States Patent Nos. 6,076,094 (the 094 patent) and 4,992,066 (the 066 patent). The 094 patent relates to certain methods and devices for transmitting and receiving data along with specific formatting information for the data. The 066 patent relates to certain methods and devices for providing the scrambling circuitry for a pay television system on removable cards. Subsequently, DirecTV and Thomson settled with Broadcast Innovation leaving us as the only defendant.

During 2004, the judge issued an order finding the 066 patent invalid. Also in 2004, the Court found the 094 patent invalid in a parallel case filed by Broadcast Innovation against Charter and Comcast. In 2005, the United States Court of Appeals for the Federal Circuit overturned the 094 patent finding of invalidity and remanded the Charter case back to the District Court. During June 2006, Charter filed a reexamination request with the United States Patent and Trademark Office. The Court has stayed the Charter case pending reexamination, and our case has been stayed pending resolution of the Charter case.

We intend to vigorously defend this case. In the event that a Court ultimately determines that we infringe any of the asserted patents, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could require us to materially modify certain user-friendly features that we currently offer to consumers. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

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Channel Bundling Class Action

On September 21, 2007, a purported class of cable and satellite subscribers filed an antitrust action against us in the United States District Court for the Central District of California. The suit also names as defendants DirecTV, Comcast, Cablevision, Cox, Charter, Time Warner, Inc., Time Warner Cable, NBC Universal, Viacom, Fox Entertainment Group, and Walt Disney Company. The suit alleges, among other things, that the defendants engaged in a conspiracy to provide customers with access only to bundled channel offerings as opposed to giving customers the ability to purchase channels on an a la carte basis. On October 16, 2009, the Court granted defendants motion to dismiss with prejudice. The plaintiffs have appealed. We intend to vigorously defend this case. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

Enron Commercial Paper Investment

During October 2001, we received approximately $40 million from the sale of Enron commercial paper to a third party broker. That commercial paper was ultimately purchased by Enron. During November 2003, an action was commenced in the United States Bankruptcy Court for the Southern District of New York against approximately 100 defendants, including us, who invested in Enron s commercial paper. On April 7, 2009, we settled the litigation for an immaterial amount.

ESPN

On January 30, 2008, we filed a lawsuit against ESPN, Inc., ESPN Classic, Inc., ABC Cable Networks Group, Soapnet L.L.C., and International Family Entertainment (collectively ESPN) for breach of contract in New York State Supreme Court. Our complaint alleges that ESPN failed to provide us with certain high-definition feeds of the Disney Channel, ESPN News, Toon, and ABC Family. ESPN asserted a counterclaim, and then filed a motion for summary judgment, alleging that we owed approximately $35 million under the applicable affiliation agreements. We brought a motion to amend our complaint to assert that ESPN was in breach of certain most-favored-nation provisions under the affiliation agreements. On April 15, 2009, the trial court granted our motion to amend the complaint, and granted, in part, ESPN s motion on the counterclaim, finding that we are liable for some of the amount alleged to be owing but that the actual amount owing is disputed and will have to be determined at a later date. We will appeal the partial grant of ESPN s motion. Since the partial grant of ESPN s motion, they have sought an additional $30 million under the applicable affiliation agreements. We intend to vigorously prosecute and defend this case. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

Finisar Corporation

Finisar Corporation (Finisar) obtained a $100 million verdict in the United States District Court for the Eastern District of Texas against DirecTV for patent infringement. Finisar alleged that DirecTV s electronic program guide and other elements of its system infringe United States Patent No. 5,404,505 (the 505 patent).

During 2006, we and EchoStar, together with NagraStar LLC, filed a Complaint for Declaratory Judgment in the United States District Court for the District of Delaware against Finisar that asks the Court to declare that we do not infringe, and have not infringed, any valid claim of the 505 patent. During April 2008, the Federal Circuit reversed the judgment against DirecTV and ordered a new trial. On May 19, 2009, the District Court granted summary judgment to DirecTV, and dismissed the action with prejudice. Finisar is appealing that decision. Our case is stayed until the DirecTV action is resolved.

We intend to vigorously prosecute this case. In the event that a Court ultimately determines that we infringe the asserted patent, we may be subject to substantial damages, which may include treble damages, and/or an injunction

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that could require us to modify our system architecture. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

Global Communications

During April 2007, Global Communications, Inc. (Global) filed a patent infringement action against us and EchoStar in the United States District Court for the Eastern District of Texas. The suit alleges infringement of United States Patent No. 6,947,702 (the 702 patent), which relates to satellite reception. In October 2007, the United States Patent and Trademark Office granted our request for reexamination of the 702 patent and issued an initial Office Action finding that all of the claims of the 702 patent were invalid. At the request of the parties, the District Court stayed the litigation until the reexamination proceeding is concluded and/or other Global patent applications issue.

During June 2009, Global filed a patent infringement action against us and EchoStar in the United States District Court for the Northern District of Florida. The suit alleges infringement of United States Patent No. 7,542,717 (the 717 patent), which relates to satellite reception.

We intend to vigorously defend these cases. In the event that a Court ultimately determines that we infringe any of the asserted patents, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could require us to materially modify certain user-friendly features that we currently offer to consumers. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

Guardian Media

During December 2008, Guardian Media Technologies LTD (Guardian) filed suit against us, EchoStar, EchoStar Technologies L.L.C., DirecTV and several other defendants in the United States District Court for the Central District of California alleging infringement of United States Patent Nos. 4,930,158 and 4,930,160. Both patents are expired and relate to certain parental lock features. On September 9, 2009, Guardian voluntarily dismissed the case against us with prejudice.

Katz Communications

During June 2007, Ronald A. Katz Technology Licensing, L.P. (Katz) filed a patent infringement action against us in the United States District Court for the Northern District of California. The suit alleges infringement of 19 patents owned by Katz. The patents relate to interactive voice response, or IVR, technology.

We intend to vigorously defend this case. In the event that a Court ultimately determines that we infringe any of the asserted patents, we may be subject to substantial damages, which may include treble damages and/or an injunction that could require us to materially modify certain user-friendly features that we currently offer to consumers. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

Multimedia Patent Trust

On February 13, 2009, Multimedia Patent Trust (MPT) filed suit against us, EchoStar, DirecTV and several other defendants in the United States District Court for the Southern District of California alleging infringement of United States Patent Nos. 4,958,226, 5,227,878, 5,136,377, 5,500,678 and 5,563,593, which relate to video encoding, decoding and compression technology. MPT is an entity that seeks to license an acquired patent portfolio without itself practicing any of the claims recited therein.

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We intend to vigorously defend this case. In the event that a Court ultimately determines that we infringe any of the asserted patents, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could require us to materially modify certain user-friendly features that we currently offer to consumers. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

NorthPoint Technology

On July 2, 2009, NorthPoint Technology, Ltd (Northpoint) filed suit against us, EchoStar, and DirecTV in the United States District Court for the Western District of Texas alleging infringement of United States Patent No. 6,208,636 (the 636 patent). The 636 patent relates to the use of multiple low-noise block converter feedhorns, or LNBFs, which are antennas used for satellite reception.

We intend to vigorously defend this case. In the event that a Court ultimately determines that we infringe the asserted patent, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could require us to materially modify certain features that we currently offer to consumers. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

Personalized Media Communications

In February 2008, Personalized Media Communications, Inc. filed suit against us, EchoStar and Motorola, Inc. in the United States District Court for the Eastern District of Texas alleging infringement of United States Patent Nos. 4,694,490, 5,109,414, 4,965,825, 5,233,654, 5,335,277, and 5,887,243, which relate to satellite signal processing.

We intend to vigorously defend this case. In the event that a Court ultimately determines that we infringe any of the asserted patents, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could require us to materially modify certain user-friendly features that we currently offer to consumers. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

Retailer Class Actions

During 2000, lawsuits were filed by retailers in Colorado state and federal courts attempting to certify nationwide classes on behalf of certain of our retailers. The plaintiffs are requesting the Courts declare certain provisions of, and changes to, alleged agreements between us and the retailers invalid and unenforceable, and to award damages for lost incentives and payments, charge backs, and other compensation. We have asserted a variety of counterclaims. The federal court action has been stayed during the pendency of the state court action. We filed a motion for summary judgment on all counts and against all plaintiffs. The plaintiffs filed a motion for additional time to conduct discovery to enable them to respond to our motion. The state court granted limited discovery which ended during 2004. The plaintiffs claimed we did not provide adequate disclosure during the discovery process. The state court agreed, and denied our motion for summary judgment as a result. In April 2008, the state court granted plaintiff s class certification motion and in January 2009, the state court entered an order excluding certain evidence that we can present at trial based on the prior discovery issues. The state court also denied plaintiffs request to dismiss our counterclaims. The final impact of the court s evidentiary ruling cannot be fully assessed at this time. In May 2009, plaintiffs filed a motion for default judgment based on new allegations of discovery misconduct. We intend to vigorously defend this case. We cannot predict with any degree of certainty the outcome of the lawsuit or determine the extent of any potential liability or damages.

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Technology Development Licensing

On January 22, 2009, Technology Development and Licensing LLC (TechDev) filed suit against us and EchoStar in the United States District Court for the Northern District of Illinois alleging infringement of United States Patent No. 35, 952, which relates to certain favorite channel features. In July 2009, the Court granted our motion to stay the case pending two re-examination petitions before the Patent and Trademark Office.

We intend to vigorously defend this case. In the event that a Court ultimately determines that we infringe the asserted patent, we may be subject to substantial damages, which may include treble damages, and/or an injunction that could require us to materially modify certain user-friendly features that we currently offer to consumers. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

Tivo Inc.

During January 2008, the United States Court of Appeals for the Federal Circuit affirmed in part and reversed in part the April 2006 jury verdict concluding that certain of our digital video recorders, or DVRs, infringed a patent held by Tivo. As of September 2008, we had recorded a total reserve of $132 million on our Condensed Consolidated Balance Sheets to reflect the April 2006 jury verdict, supplemental damages through September 2006 and pre-judgment interest awarded by the Texas court, together with the estimated cost of potential further software infringement prior to implementation of our alternative technology, discussed below, plus interest subsequent to entry of the judgment. In its January 2008 decision, the Federal Circuit affirmed the jury s verdict of infringement on Tivo s software claims, and upheld the award of damages from the District Court. The Federal Circuit, however, found that we did not literally infringe Tivo s hardware claims, and remanded such claims back to the District Court for further proceedings. On October 6, 2008, the Supreme Court denied our petition for certiorari. As a result, approximately $105 million of the total $132 million reserve was released from an escrow account to Tivo.

We also developed and deployed next-generation DVR software. This improved software was automatically downloaded to our current customers DVRs, and is fully operational (our original alternative technology). The download was completed as of April 2007. We received written legal opinions from outside counsel that concluded our original alternative technology does not infringe, literally or under the doctrine of equivalents, either the hardware or software claims of Tivo s patent. Tivo filed a motion for contempt alleging that we are in violation of the Court s injunction. We opposed this motion on the grounds that the injunction did not apply to DVRs that have received our original alternative technology, that our original alternative technology does not infringe Tivo s patent, and that we were in compliance with the injunction.

On June 2, 2009, the District Court granted Tivo s contempt motion, finding that our original alternative technology was not more than colorably different than the products found by the jury to infringe Tivo s patent, that the original alternative technology still infringed the software claims, and that even if the original alternative technology was non-infringing, the original injunction by its terms required that we disable DVR functionality in all but approximately 192,000 digital set-top boxes in the field. The District Court awarded Tivo $103 million in supplemental damages and interest for the period from September 2006 to April 2008, based on an assumed $1.25 per subscriber per month royalty rate. We posted a bond to secure that award pending appeal of the contempt order.

On July 1, 2009, the Federal Circuit Court of Appeals granted a permanent stay of the District Court s contempt order pending resolution of our appeal. In so doing, the Federal Circuit found, at a minimum, that we had a substantial case on the merits. Oral argument on our appeal of the contempt ruling took place on November 2, 2009 before three judges of the Federal Circuit.

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The District Court held a hearing on July 28, 2009 on Tivo s claims for contempt sanctions, but has ordered that enforcement of any sanctions award will be stayed pending our appeal of the contempt order. Tivo sought up to $975 million in contempt sanctions for the period from April 2008 to June 2009 based on, among other things, profits Tivo alleges we made from subscribers using DVRs. We opposed Tivo s request arguing, among other things, that sanctions are inappropriate because we made good faith efforts to comply with the Court s injunction. We also challenged Tivo s calculation of profits.

On August 3, 2009, the Patent and Trademark Office (the PTO) issued an initial office action rejecting the software claims of United States Patent No. 6,233,389 (the 389 patent) as being invalid in light of two prior patents. These are the same software claims that we were found to have infringed and which underlie the contempt ruling now pending on appeal. We believe that the PTO s conclusions are relevant to the issues on appeal as well as the pending sanctions proceedings in the District Court. The PTO s conclusions support our position that our original alternative technology is more than colorably different than the devices found to infringe by the jury; that our original alternative technology does not infringe; and that we acted in good faith to design around Tivo s patent.

On September 4, 2009, the District Court partially granted Tivo s motion for contempt sanctions. In partially granting Tivo s motion for contempt sanctions, the District Court awarded $2.25 per DVR subscriber per month for the period from April 2008 to July 2009 (as compared to the award for supplemental damages for the prior period from September 2006 to April 2008, which was based on an assumed $1.25 per DVR subscriber per month). By the District Court s estimation, the total award for the period from April 2008 to July 2009 is approximately $200 million (the enforcement of the award has been stayed by the District Court pending DISH Network s appeal of the underlying June 2, 2009 contempt order). During the three and nine months ended September 30, 2009, we increased our total reserve by $132 million and $328 million, respectively, to reflect the supplemental damages and interest for the period from implementation of our original alternative technology through April 2008 and for the estimated cost of alleged software infringement (including contempt sanctions for the period from April 2008 through June 2009) for the period from April 2008 through September 2009 plus interest. Our total reserve at September 30, 2009 was $360 million and is included in Other accrued expenses on our Condensed Consolidated Balance Sheets.

In light of the District Court s finding of contempt, and its description of the manner in which it believes our original alternative technology infringed the 389 patent, we are also developing and testing potential new alternative technology in an engineering environment. As part of EchoStar s development process, EchoStar downloaded one of its design-around options to approximately 125 subscribers for beta testing.

If we are unsuccessful in overturning the District Court s ruling on Tivo s motion for contempt, we are not successful in developing and deploying potential new alternative technology and we are unable to reach a license agreement with Tivo on reasonable terms, we would be required to eliminate DVR functionality in all but approximately 192,000 digital set-top boxes in the field and cease distribution of digital set-top boxes with DVR functionality. In that event we would be at a significant disadvantage to our competitors who could continue offering DVR functionality, which would likely result in a significant decrease in new subscriber additions as well as a substantial loss of current subscribers. Furthermore, the inability to offer DVR functionality could cause certain of our distribution channels to terminate or significantly decrease their marketing of DISH Network services. The adverse effect on our financial position and results of operations if the District Court s contempt order is upheld is likely to be significant.

Additionally, the supplemental damage award of $103 million and further award of approximately $200 million does not include damages, contempt sanctions or interest for the period after June 2009. In the event that we are unsuccessful in our appeal, we could also have to pay substantial additional damages, contempt sanctions and interest. Depending on the amount of any additional damage or sanction award or any monetary settlement, we may be required to raise additional capital at a time and in circumstances in which we would normally not raise capital. Therefore, any capital we raise may be on terms that are unfavorable to us, which might adversely affect our financial position and results of operations and might also impair our ability to raise capital on acceptable terms in the future to fund our own operations and initiatives. We believe the cost of such capital and its terms and conditions may be

substantially less attractive than our previous financings.

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(Unaudited)

If we are successful in overturning the District Court s ruling on Tivo s motion for contempt, but unsuccessful in defending against any subsequent claim in a new action that our original alternative technology or any potential new alternative technology infringes Tivo s patent, we could be prohibited from distributing DVRs or could be required to modify or eliminate our then-current DVR functionality in some or all set-top boxes in the field. In that event we would be at a significant disadvantage to our competitors who could continue offering DVR functionality and the adverse effect on our business could be material. We could also have to pay substantial additional damages.

Because both we and EchoStar are defendants in the Tivo lawsuit, we and EchoStar are jointly and severally liable to Tivo for any final damages and sanctions that may be awarded by the Court. We have determined that we are obligated under the agreements entered into in connection with the Spin-off to indemnify EchoStar for substantially all liability arising from this lawsuit. EchoStar has agreed to contribute an amount equal to its $5 million intellectual property liability limit under the Receiver Agreement. We and EchoStar have further agreed that EchoStar s $5 million contribution would not exhaust EchoStar s liability to us for other intellectual property claims that may arise under the Receiver Agreement. We and EchoStar also agreed that we would each be entitled to joint ownership of, and a cross-license to use, any intellectual property developed in connection with any potential new alternative technology.

Voom

On May 28, 2008, Voom HD Holdings (Voom) filed a complaint against us in New York Supreme Court. The suit alleges breach of contract arising from our termination of the affiliation agreement we had with Voom for the carriage of certain Voom HD channels on the DISH Network satellite television service. In January 2008, Voom sought a preliminary injunction to prevent us from terminating the agreement. The Court denied Voom s motion, finding, among other things, that Voom was not likely to prevail on the merits of its case. Voom is claiming over $1.0 billion in damages. We intend to vigorously defend this case. We cannot predict with any degree of certainty the outcome of the suit or determine the extent of any potential liability or damages.

Other

In addition to the above actions, we are subject to various other legal proceedings and claims which arise in the ordinary course of business, including among other things, disputes with programmers regarding fees. In our opinion, the amount of ultimate liability with respect to any of these actions is unlikely to materially affect our financial position, results of operations or liquidity.

11. Depreciation and Amortization Expense

Depreciation and amortization expense consists of the following: