

ECHOSTAR COMMUNICATIONS CORP
Form 10-Q
August 09, 2007

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

Form 10-Q

(Mark One)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 FOR THE QUARTERLY PERIOD ENDED JUNE 30, 2007.

OR

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

EchoStar Communications Corporation
(Exact name of registrant as specified in its charter)

Nevada
(State or other jurisdiction of incorporation or organization)

88-0336997
(I.R.S. Employer Identification No.)

9601 South Meridian Boulevard
Englewood, Colorado
(Address of principal executive offices)

80112
(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 No

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

Large Accelerated Filer

Accelerated Filer

Non-Accelerated Filer

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

As of July 31, 2007, the registrant's outstanding common stock consisted of 209,040,467 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 statements) must remember that our expectations may not be correct, 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:

- we face intense and increasing competition from satellite and cable television providers as well as new competitors, including telephone companies; our competitors are increasingly offering video service bundled with 2-way high-speed Internet access and telephone services that consumers may find attractive and which are likely to further increase competition. We also expect to face increasing competition from content and other providers who distribute video services directly to consumers over the Internet;
- as technology changes, and in order to remain competitive, we will have to upgrade or replace some, or all, subscriber equipment periodically. We will not be able to pass on to our customers the entire cost of these upgrades;
- DISH Network® subscriber growth may decrease, subscriber turnover may increase and subscriber acquisition costs may increase; we may have difficulty controlling other costs of continuing to maintain and grow our subscriber base;
- satellite programming signals are subject to theft; theft of service will continue and could increase in the future, causing us to lose subscribers and revenue, and also resulting in higher costs to us;
- we depend on others to produce programming; programming costs may increase beyond our current expectations; we may be unable to obtain or renew programming agreements on acceptable terms or at all; existing programming agreements could be subject to cancellation; we may be denied access to sports programming; foreign programming is increasingly offered on other platforms; our inability to obtain or renew attractive programming could cause our subscriber additions and related revenue to decline and could cause our subscriber turnover to increase;
- we depend on Federal Communications Commission (“FCC”) program access rules (which will expire this year unless extended by the FCC), and the Telecommunications Act of 1996 as Amended to secure nondiscriminatory access to programming produced by others, neither of which assure that we have fair access to all programming that we need to remain competitive;
- our industry is heavily regulated by the FCC. Those regulations could become more burdensome at any time, causing us to expend additional resources on compliance;
- absent reversal of the jury verdict in our Tivo patent infringement case, and if we are unable to successfully implement alternative technology, we will be required to pay substantial damages as well as materially modify or eliminate certain user-friendly digital video recorder features that we currently offer to consumers, and we could be forced to discontinue offering digital video recorders to our customers completely, any of which could have a

significant adverse affect on our business;

- if our EchoStar X satellite experienced a significant failure, we could lose the ability to deliver local network channels in many markets; if our EchoStar VIII satellite experienced a significant failure, we could lose the ability to provide certain programming to the continental United States;
- our satellite launches may be delayed or fail, or our satellites may fail in orbit prior to the end of their scheduled lives causing extended interruptions of some of the channels we offer;
- we currently do not have commercial insurance covering losses incurred from the failure of satellite launches and/or in-orbit satellites we own;
- service interruptions arising from technical anomalies on satellites or on-ground components of our direct broadcast satellite system, or caused by war, terrorist activities or natural disasters, may cause customer cancellations or otherwise harm our business;

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- we are heavily dependent on complex information technologies; weaknesses in our information technology systems could have an adverse impact on our business; we may have difficulty attracting and retaining qualified personnel to maintain our information technology infrastructure;
- we rely on key personnel including Charles W. Ergen, our chairman and chief executive officer, and other executives;
- we may be unable to obtain needed retransmission consents, FCC authorizations or export licenses, and we may lose our current or future authorizations;
- we are party to various lawsuits which, if adversely decided, could have a significant adverse impact on our business;
- we may be unable to obtain patent licenses from holders of intellectual property or redesign our products to avoid patent infringement;
- sales of digital equipment and related services to international direct-to-home service providers may decrease;
- we depend on telecommunications providers, independent retailers and others to solicit orders for DISH Network services. Certain of these resellers account for a significant percentage of our total new subscriber acquisitions. Loss of one or more of these relationships could have an adverse effect on our net new subscriber additions and certain of our other key operating metrics because we may not be able to develop comparable alternative distribution channels;
 - we are highly leveraged and subject to numerous constraints on our ability to raise additional debt;
- we may pursue acquisitions, business combinations, strategic partnerships, divestitures and other significant transactions that involve uncertainties; these transactions may require us to raise additional capital, which may not be available on acceptable terms. These transactions, which could become substantial over time, involve a high degree of risk and could expose us to significant financial losses if the underlying ventures are not successful;
- we have entered into certain strategic transactions in Asia, and we may increase our strategic investment activity in these and other international markets. These transactions, which could become substantial over time, involve a high degree of risk and could expose us to significant financial losses if the underlying ventures are not successful;
- weakness in the global or U.S. economy may harm our business generally, and adverse political or economic developments, including increased mortgage defaults as a result of subprime lending practices, may impact some of our markets;
- terrorist attacks, the possibility of war or other hostilities, natural and man-made disasters, and changes in political and economic conditions as a result of these events may continue to affect the U.S. and the global economy and may increase other risks;
- we periodically evaluate and test our internal control over financial reporting in order to satisfy the requirements of Section 404 of the Sarbanes-Oxley Act. Although our management concluded that our internal control over financial reporting was effective as of December 31, 2006, and while no change in our internal control over financial reporting occurred during our most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting, if in the future we are unable to report that our internal control over financial reporting is effective (or if our auditors do not agree with our assessment of the

effectiveness of, or are unable to express an opinion on, our internal control over financial reporting), we could lose investor confidence in our financial reports, which could have a material adverse effect on our stock price and our business; and

- we may face other risks described from time to time in periodic and current reports we file with the Securities and Exchange Commission (“SEC”).

All cautionary statements made herein should be read as being applicable to all forward-looking statements wherever they appear. In this connection, 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 “EchoStar,” the “Company,” “we,” “our” and “us” refer to EchoStar Communications Corporation and its subsidiaries, unless the context otherwise requires. “EDBS” refers to EchoStar DBS Corporation and its subsidiaries.

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Item 1. FINANCIAL STATEMENTS

ECHOSTAR COMMUNICATIONS CORPORATION
CONDENSED CONSOLIDATED BALANCE SHEETS

(Dollars in thousands, except share amounts)

	As of	
	June 30, 2007	December 31, 2006
	(Unaudited)	
Assets		
<i>Current Assets:</i>		
Cash and cash equivalents	\$ 1,076,876	\$ 1,923,105
Marketable investment securities	1,322,682	1,109,465
Trade accounts receivable, net of allowance for uncollectible accounts of \$17,654 and \$15,006, respectively	706,962	665,149
Inventories, net	289,345	237,507
Current deferred tax assets	387,859	548,766
Other current assets	160,183	115,549
Total current assets	3,943,907	4,599,541
Restricted cash and marketable investment securities	172,114	172,941
Property and equipment, net of accumulated depreciation of \$3,279,275 and \$2,872,015, respectively	4,017,089	3,765,596
FCC authorizations	748,101	748,101
Intangible assets, net	176,175	197,863
Other noncurrent assets, net	336,999	284,654
Total assets	\$ 9,394,385	\$ 9,768,696
Liabilities and Stockholders' Equity (Deficit)		
<i>Current Liabilities:</i>		
Trade accounts payable	\$ 274,141	\$ 283,471
Deferred revenue and other	837,080	819,899
Accrued programming	958,951	913,687
Other accrued expenses	481,457	535,953
Current portion of capital lease obligations, mortgages and other notes payable	47,210	38,464
5 3/4% Convertible Subordinated Notes due 2008 (Note 8)	-	1,000,000
Total current liabilities	2,598,839	3,591,474
<i>Long-term obligations, net of current portion:</i>		
3% Convertible Subordinated Note due 2010	500,000	500,000
5 3/4% Senior Notes due 2008	1,000,000	1,000,000
6 3/8% Senior Notes due 2011	1,000,000	1,000,000
3% Convertible Subordinated Note due 2011	25,000	25,000
6 5/8% Senior Notes due 2014	1,000,000	1,000,000
7 1/8% Senior Notes due 2016	1,500,000	1,500,000
7% Senior Notes due 2013	500,000	500,000
Capital lease obligations, mortgages and other notes payable, net of current portion	573,085	403,857
Deferred tax liabilities	217,382	192,617
	253,669	275,131

Long-term deferred revenue, distribution and carriage payments and other long-term liabilities		
Total long-term obligations, net of current portion	6,569,136	6,396,605
Total liabilities	9,167,975	9,988,079

Commitments and Contingencies (Note 10)

Stockholders' Equity (Deficit):

Class A common stock, \$01 par value, 1,600,000,000 shares authorized, 254,045,533 and 252,481,907 shares issued, 209,032,733 and 207,469,107 shares outstanding, respectively	2,540	2,525
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	1,986,599	1,927,897
Accumulated other comprehensive income (loss)	55,111	49,874
Accumulated earnings (deficit)	(459,171)	(841,010)
Treasury stock, at cost	(1,361,053)	(1,361,053)
Total stockholders' equity (deficit)	226,410	(219,383)
Total liabilities and stockholders' equity (deficit)	\$ 9,394,385	\$ 9,768,696

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

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ECHOSTAR COMMUNICATIONS CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS

(In thousands, except per share amounts)

(Unaudited)

	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
	2007	2006	2007	2006
Revenue:				
Subscriber-related revenue	\$ 2,676,230	\$ 2,332,227	\$ 5,228,293	\$ 4,527,337
Equipment sales	77,348	114,742	153,615	199,471
Other	6,430	19,186	23,085	38,738
Total revenue	2,760,008	2,466,155	5,404,993	4,765,546
Costs and Expenses:				
Subscriber-related expenses (exclusive of depreciation shown below - Note 11)	1,354,265	1,190,313	2,682,886	2,297,640
Satellite and transmission expenses (exclusive of depreciation shown below - Note 11)	40,759	33,623	75,678	72,365
Cost of sales - equipment	59,418	84,456	119,764	153,253
Cost of sales - other	657	1,931	3,067	3,295
<i>Subscriber acquisition costs:</i>				
Cost of sales - subscriber promotion subsidies (exclusive of depreciation shown below - Note 11)	35,555	46,100	63,529	79,138
Other subscriber promotion subsidies	294,232	273,691	616,964	552,191
Subscriber acquisition advertising	46,621	53,448	97,000	100,865
Total subscriber acquisition costs	376,408	373,239	777,493	732,194
General and administrative	142,915	143,818	300,202	273,265
Litigation expense (Note 10)	-	14,243	-	88,235
Depreciation and amortization (Note 11)	343,932	274,891	664,051	521,462
Total costs and expenses	2,318,354	2,116,514	4,623,141	4,141,709
Operating income (loss)	441,654	349,641	781,852	623,837
Other Income (Expense):				
Interest income	28,411	31,501	61,843	53,470
Interest expense, net of amounts capitalized	(96,662)	(111,960)	(216,162)	(241,567)
Other	(16,139)	(11,256)	(17,975)	53,004
Total other income (expense)	(84,390)	(91,715)	(172,294)	(135,093)
Income (loss) before income taxes	357,264	257,926	609,558	488,744
Income tax (provision) benefit, net	(133,065)	(89,147)	(228,219)	(172,684)
Net income (loss)	\$ 224,199	\$ 168,779	\$ 381,339	\$ 316,060
Denominator for basic and diluted net income (loss) per share:				
Denominator for basic net income (loss) per share -weighted-average common shares outstanding	447,217	444,597	446,750	444,263

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Denominator for diluted net income (loss) per share -weighted-average common shares outstanding	456,282	453,126	455,815	452,733
Net income (loss) per share:				
Basic net income (loss)	\$ 0.50	\$ 0.38	\$ 0.85	\$ 0.71
Diluted net income (loss)	\$ 0.50	\$ 0.38	\$ 0.85	\$ 0.71

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

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ECHOSTAR COMMUNICATIONS CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS

(In thousands)

(Unaudited)

	For the Six Months Ended June 30,	
	2007	2006
Cash Flows From Operating Activities:		
Net income (loss)	\$ 381,339	\$ 316,060
<i>Adjustments to reconcile net income (loss) to net cash flows from operating activities:</i>		
Depreciation and amortization	664,051	521,462
Equity in losses (earnings) of affiliates	2,649	1,937
Realized and unrealized losses (gains) on investments	12,901	(61,713)
Non-cash, stock-based compensation recognized	11,258	7,766
Deferred tax expense (benefit)	183,887	148,044
Other, net	5,200	5,177
Change in noncurrent assets	4,684	5,188
Change in long-term deferred revenue, distribution and carriage payments and other long-term liabilities	(21,462)	43,676
Changes in current assets and current liabilities, net	(55,041)	161,638
Net cash flows from operating activities	1,189,466	1,149,235
Cash Flows From Investing Activities:		
Purchases of marketable investment securities	(1,753,924)	(880,993)
Sales and maturities of marketable investment securities	1,554,864	620,706
Purchases of property and equipment	(740,095)	(611,716)
Change in restricted cash and marketable investment securities	2,271	(37,901)
FCC authorizations (Note 7)	(57,463)	-
Purchase of non-marketable investments included in noncurrent assets and other	(51,906)	(17,013)
Other	198	2,298
Net cash flows from investing activities	(1,046,055)	(924,619)
Cash Flows From Financing Activities:		
Redemption of 9 1/8% Senior Notes due 2009	-	(441,964)
Redemption of 5 3/4% Convertible Subordinated Notes due 2008	(999,985)	-
Proceeds from issuance of 7 1/8% Senior Notes due 2016	-	1,500,000
Deferred debt issuance costs	-	(7,500)
Class A common stock repurchases	-	(11,677)
Repayment of capital lease obligations, mortgages and other notes payable	(20,245)	(21,950)
Net proceeds from Class A common stock options exercised and Class A common stock issued under the Employee Stock Purchase Plan	26,570	4,695
Tax benefits recognized on stock option exercises	4,020	1,694
Net cash flows from financing activities	(989,640)	1,023,298
Net increase (decrease) in cash and cash equivalents	(846,229)	