

**JAN 6 2005**

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**CONFIDENTIAL** 

**GENERAL COUNSEL  
OF COPYRIGHT**

**Agreement of Settlement Concerning Satellite Carrier Royalty Rate**

This "Agreement of Settlement Concerning Satellite Carrier Royalty Rate" ("Settlement Agreement") is made as of the 8th day of October 2004, by and among DIRECTV, Inc. and EchoStar Satellite L.L.C. (hereinafter collectively referred to as "Satellite Carriers") and the Motion Picture Association of America, Inc. (on behalf of the Program Suppliers) and the Office of the Commissioner of Baseball (on behalf of the Joint Sports Claimants) (hereinafter collectively referred to as "Copyright Owners.")

**Article 0 Preamble**

WHEREAS the compulsory license of 17 U.S.C. § 119, which affords satellite carriers the right to retransmit certain broadcast signals for "private home viewing," is currently scheduled to expire on December 31, 2004;

WHEREAS legislation is pending to reauthorize 17 U.S.C. § 119;

WHEREAS, while such a reauthorization may contain few if any substantive changes to current legislation, it may also contain a "Substantive Reauthorization," as defined below in Article 1;

WHEREAS a Substantive Reauthorization would afford a compulsory license for the retransmission of superstations to Commercial Establishments as defined below in Article 2.2.1;

WHEREAS a Substantive Reauthorization would permit Satellite Carriers and Copyright Owners to enter into voluntary agreements concerning the rates payable under 17 U.S.C. § 119 ("Voluntary Agreements") as an alternative to a Copyright Arbitration Royalty Proceeding to adjust those rates ("2005 Adjustment Proceeding"); and

WHEREAS, Satellite Carriers and Copyright Owners wish to respond to Congress' request to resolve existing controversies over the pending legislation through a negotiated settlement and in the event Congress enacts legislation containing a Substantive Reauthorization, Satellite Carriers and Copyright Owners will wish to avoid the costs, uncertainties and delays of litigation of a 2005 Adjustment Proceeding;

THEREFORE, Satellite Carriers and Copyright Owners have entered into this Settlement Agreement concerning the 2005 Adjustment Proceeding and each acknowledge the receipt and sufficiency of good and valuable consideration therefor, to be effective only if a Substantive Reauthorization is enacted into law prior to January 1, 2005. The complete terms of this Settlement Agreement are as follows:

**Article 1 Substantive Reauthorization**

Within two (2) business days following execution of this Settlement Agreement by all Parties, the Parties will execute the letter attached as Exhibit 1 hereto, which (a) informs Congress that the Parties have entered into a Voluntary Agreement as an alternative to the 2005 Adjustment Proceeding, effective upon enactment into law of legislation containing a Substantive Reauthorization prior to January 1, 2005; and (b) advises Congress that specific legislative provisions are required for the effectiveness of this Settlement Agreement. For purposes of this Settlement Agreement, "Substantive Reauthorization," shall mean provisions that: (1) reauthorize 17 U.S.C. § 119 through December 31, 2009; (2) provide for Voluntary Agreements as defined in Article 0 above; (3) provide for the convening, if necessary, of a "2005 Adjustment Proceeding," as defined in Article 0 above, provided that such provisions require the Librarian of Congress and any copyright arbitration royalty panel to adjust any fees set by arbitration to account for the obligations of the parties under any applicable voluntary agreements filed with the Copyright Office, including this Settlement Agreement; and (4) extend the 17 U.S.C. § 119 compulsory license to secondary transmissions of superstations to Commercial Establishments, as defined in Article 2.2.1 below. This Settlement Agreement shall be effective only upon enactment of the Substantive Reauthorization into law prior to January 1, 2005.

**Article 2 Royalty Rates**

If and only if a Substantive Reauthorization is enacted into law prior to January 1, 2005, the royalty rates applicable to the Satellite Carriers' retransmission of broadcast signals containing copyrighted programming and associated works owned and/or controlled by the Copyright Owners pursuant to Section 119 for the years 2005-2009 shall be as set forth in Articles 2.1, 2.2 and 2.3 below, and shall not be adjusted based on the changes to the cost of living or any other factor other than as described herein. In each case, "per subscriber per month" shall mean "for each subscriber subscribing to the station in question (or to a package including such station) on the last day of a given month."

**Article 2.1 Superstation Rates (Private Home Viewing)**

The rates applicable to Satellite Carriers' carriage of each superstation (as defined by 17 U.S.C. § 119) for private home viewing shall be as follows:

2005:	\$0.20 per subscriber per month
2006:	\$0.215 per subscriber per month
2007:	\$0.23 per subscriber per month

- 2008: the 2007 rate for superstations, adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers from January, 2007, to January, 2008, payable as set forth above.
- 2009: the 2008 rate for superstations, adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers from January, 2008, to January, 2009, payable as set forth above.

**Article 2.2 Superstation Rates (Viewing in Commercial Establishments)**

The rates applicable to Satellite Carriers' carriage of each superstation (as defined by 17 U.S.C. § 119) for viewing in commercial establishments shall be as follows:

- 2005: \$0.40 per subscriber per month
- 2006: \$0.43 per subscriber per month
- 2007: \$0.46 per subscriber per month
- 2008: the 2007 rate for viewing in commercial establishments, adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers from January, 2007 to January, 2008, payable as set forth above.
- 2009: the 2008 rate for viewing in commercial establishments, adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers from January, 2008 to January, 2009, payable as set forth above.

**Article 2.2.1 Definition of Commercial Establishment.** The term "commercial establishment" as used in this Settlement Agreement shall mean an establishment used for commercial purposes, such as bars, restaurants, private offices, fitness clubs, oil rigs, retail stores, banks and financial institutions, supermarkets, auto and boat dealerships, and other establishments with common business areas; provided that the term *commercial establishment* shall not include a multi-unit permanent or temporary dwelling where private home viewing occurs, such as hotels, dormitories, hospitals, apartments, condominiums and prisons, all of which shall be subject to the rates applicable to private home viewing.

**Article 2.3 Network Station Rates (Private Home Viewing)**

The rates applicable to Satellite Carriers' carriage of each network station (as defined by the current provisions of 17 U.S.C. § 119) for private home viewing shall be as follows:

- 2005: \$0.17 per subscriber per month
- 2006 \$0.20 per subscriber per month
- 2007 \$0.23 per subscriber per month
- 2008 the 2007 rate, adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers from January, 2007, to January, 2008, payable as set forth above.
- 2009: the 2008 rate, adjusted for the amount of inflation as measured by the change in the Consumer Price Index for all Urban Consumers from January, 2008, to January, 2009, payable as set forth above.

**Article 3 Proceedings Before Copyright Office And CARP**

Satellite Carriers and Copyright Owners will (a) within two (2) business days of the notice of initiation of voluntary negotiation proceedings by the Librarian of Congress or at such earlier time as is required by law or regulation, file this Settlement Agreement as a Voluntary Agreement binding on the Copyright Owners and Satellite Carriers that are parties hereto; and (b) use their best efforts to persuade the Librarian of Congress to adopt the terms of this Settlement Agreement for all satellite carriers, distributors and copyright owners; provided that, if this Settlement Agreement is not adopted for all satellite carriers, distributors and copyright owners, even though it has become effective, it shall nevertheless be binding on the Copyright Owners and Satellite Carriers that are parties hereto. If the Librarian of Congress does convene a CARP proceeding at the request of any copyright owners, satellite carriers or distributors who are not a party to this Settlement Agreement, Copyright Owners and Satellite Carriers may urge the CARP to adopt rates different than those set forth in this Settlement Agreement only for those satellite carriers, distributors or copyright owners who are not a party hereto.

**Article 4 Lack Of Precedential Value**

This Settlement Agreement is made upon the express understanding that it constitutes a negotiated settlement. No person shall be deemed to have accepted as precedent, or approved, accepted, agreed to, or consented to any principle underlying, or which may be asserted to underlie, it. Taking into account all circumstances, including without limitation the facts that this Settlement Agreement is being negotiated in the context of a compulsory license, and in response to Congressional requests for negotiated settlements of Section 119 rate issues, the parties agree that the rates set forth in Article 2

above should not be regarded as evidence of the fair market value of the copyrighted programming and associated copyrighted works retransmitted by satellite carriers pursuant to 17 U.S.C. § 119. If a Substantive Reauthorization is not enacted into law prior to January 1, 2005, the Parties will be free to seek Section 119 royalty rates that are different from those set forth in Article 2 above.

The terms of Article 4 shall be effective without regard to whether a Substantive Reauthorization is enacted into law prior to January 1, 2005, and shall survive the expiration of this Settlement Agreement.

**Article 5 Severability**

The various provisions of this Settlement Agreement are not severable.

**Article 6 Counterparts**

This Settlement Agreement may be executed in any number of counterparts, all of which taken together shall constitute one agreement, and a party may execute this Settlement Agreement by signing any such counterpart.

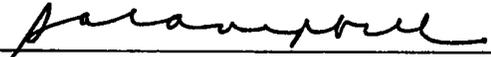
**Article 7 Complete Agreement**

This Settlement Agreement sets forth the entire and complete agreement of the Parties with respect to the subject matter contained herein, and no oral or written prior or contemporaneous statement or representations not contained herein shall have any force or effect. This Settlement Agreement may be modified only by mutual agreement in writing subscribed to by the Parties.

In Witness Whereof, the parties to this Settlement Agreement have caused it to be executed by their authorized representatives as of the day and year first above written.

**SATELLITE CARRIERS**

**DIRECTV, INC.**

By:   
Stephanie Campbell  
Executive Vice President, Programming  
DIRECTV, Inc.  
2230 E. Imperial Highway  
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**ECHOSTAR SATELLITE L.L.C.**

By: \_\_\_\_\_  
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**COPYRIGHT OWNERS**

**PROGRAM SUPPLIERS**

By: \_\_\_\_\_  
Fritz Attaway  
Executive Vice President and Washington Counsel  
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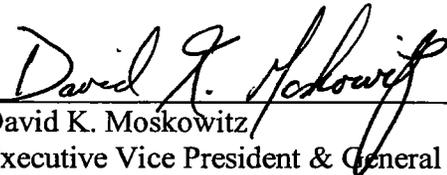
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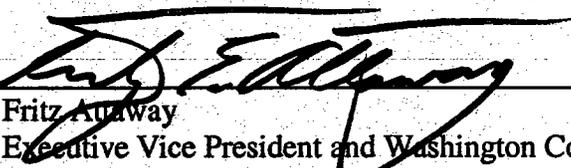
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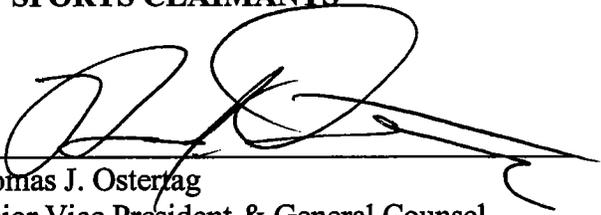
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**JOINT SPORTS CLAIMANTS**

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



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