

DISH Network CORP
Form 10-Q
August 08, 2012
[Table of Contents](#)

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form 10-Q

(Mark One)

x **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 FOR THE QUARTERLY PERIOD ENDED JUNE 30, 2012.**

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)

Edgar Filing: DISH Network CORP - Form 10-Q

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 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 ☒ No ☐

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.

Large accelerated filer ☒

Accelerated filer ☐

Non-accelerated filer ☐
(Do not check if a smaller reporting company)

Smaller reporting company ☐

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

As of August 1, 2012, the registrant's outstanding common stock consisted of 268,329,291 shares of Class A common stock and 238,435,208 shares of Class B common stock.

Table of Contents

TABLE OF CONTENTS

PART I FINANCIAL INFORMATION

	<u>Disclosure Regarding Forward-Looking Statements</u>	i
--	--	---

<u>Item 1.</u>	<u>Financial Statements</u>	
	<u>Condensed Consolidated Balance Sheets June 30, 2012 and December 31, 2011 (Unaudited)</u>	1
	<u>Condensed Consolidated Statements of Operations and Comprehensive Income (Loss) For the Three and Six Months Ended June 30, 2012 and 2011 (Unaudited)</u>	2
	<u>Condensed Consolidated Statements of Cash Flows For the Six Months Ended June 30, 2012 and 2011 (Unaudited)</u>	3
	<u>Notes to Condensed Consolidated Financial Statements (Unaudited)</u>	4
<u>Item 2.</u>	<u>Management's Discussion and Analysis of Financial Condition and Results of Operations</u>	45
<u>Item 3.</u>	<u>Quantitative and Qualitative Disclosures About Market Risk</u>	65
<u>Item 4.</u>	<u>Controls and Procedures</u>	67

PART II OTHER INFORMATION

<u>Item 1.</u>	<u>Legal Proceedings</u>	68
<u>Item 1A.</u>	<u>Risk Factors</u>	74
<u>Item 2.</u>	<u>Unregistered Sales of Equity Securities and Use of Proceeds</u>	74
Item 3.	Defaults Upon Senior Securities	None
Item 4.	Mine Safety Disclosures	None
Item 5.	Other Information	None
<u>Item 6.</u>	<u>Exhibits</u>	75
	<u>Signatures</u>	76

Table of Contents

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), you 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:

Competition and Economic Risks Affecting our Business

- We face intense and increasing competition from satellite television providers, cable companies and telecommunications companies, especially as the pay-TV industry matures, which may require us to increase subscriber acquisition and retention spending or accept lower subscriber activations and higher subscriber churn.
- Competition from digital media companies that provide or facilitate the delivery of video content via the Internet may reduce our gross new subscriber activations and may cause our subscribers to purchase fewer services from us or to cancel our services altogether, resulting in less revenue to us.
- Economic weakness, including higher unemployment and reduced consumer spending, may adversely affect our ability to grow or maintain our business.
- Our competitors may be able to leverage their relationships with programmers to reduce their programming costs and offer exclusive content that will place them at a competitive advantage to us.
- We face increasing competition from other distributors of foreign language programming that may limit our ability to maintain our foreign language programming subscriber base.

Operational and Service Delivery Risks Affecting our Business

Edgar Filing: DISH Network CORP - Form 10-Q

- If we do not continue improving our operational performance and customer satisfaction, our gross new subscriber activations may decrease and our subscriber churn may increase.
- If our gross new subscriber activations decrease, or if subscriber churn, subscriber acquisition costs or retention costs increase, our financial performance will be adversely affected.
- Programming expenses are increasing and could adversely affect our future financial condition and results of operations.
- We depend on others to provide the programming that we offer to our subscribers and, if we lose access to this programming, our gross new subscriber activations may decline and subscriber churn may increase.
- We may be required to make substantial additional investments to maintain competitive programming offerings.
- Any failure or inadequacy of our information technology infrastructure could harm our business.
- We depend on EchoStar Corporation and its subsidiaries, or EchoStar, to design, develop and manufacture all of our new set-top boxes and certain related components, and to provide transponder capacity, digital broadcast operations and other services to us. Our business would be adversely affected if EchoStar ceases to provide these products and services to us and we are unable to obtain suitable replacement products and services from third parties.
- We operate in an extremely competitive environment and our success may depend in part on our timely introduction and implementation of, and effective investment in, new competitive products and services, the failure of which could negatively impact our business.

Edgar Filing: DISH Network CORP - Form 10-Q

Table of Contents

- Technology in our industry changes rapidly and our inability to offer new subscribers and upgrade existing subscribers with more advanced equipment could cause our products and services to become obsolete.
- We rely on a single vendor or a limited number of vendors to provide certain key products or services to us such as information technology support, billing systems, and security access devices, and the inability of these key vendors to meet our needs could have a material adverse effect on our business.
- Our sole supplier of new set-top boxes, EchoStar, relies on a few suppliers and in some cases a single supplier, for many components of our new set-top boxes, and any reduction or interruption in supplies or significant increase in the price of supplies could have a negative impact 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 services that represent a significant percentage of our total gross new subscriber activations.
- Our local programming strategy faces uncertainty because we may not be able to obtain necessary retransmission consent agreements at acceptable rates from local network stations.
- We have limited owned and leased satellite capacity and failures or reduced capacity could adversely affect our business.
- Our owned and leased satellites are subject to construction, launch, operational and environmental risks that could limit our ability to utilize these satellites.
- We generally do not have commercial insurance coverage on the satellites we use 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.

Edgar Filing: DISH Network CORP - Form 10-Q

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

Acquisition and Capital Structure Risks Affecting our Business

- We made a substantial investment to acquire certain wireless spectrum licenses and other assets from DBSD North America and TerreStar. These licenses are subject to a pending Federal Communications Commission (FCC) proposed rule making proceeding, the outcome and timing of which we cannot predict. Depending, among other things, upon the outcome and timing of this regulatory proceeding, we will be required to make significant additional investments or partner with others to commercialize these assets.
- We made a substantial investment to acquire certain 700 MHz wireless spectrum licenses and will be required to make significant additional investments or partner with others to commercialize these licenses.
- Our Blockbuster business, and retail stores in particular, face risks, including, among other things, operational challenges and increasing competition from video rental kiosk, streaming and mail order businesses that may negatively impact the business, financial condition or results of operations of Blockbuster.
- We may pursue acquisitions and other strategic transactions to complement or expand our business that may not be successful and we may lose up to the entire value of our investment in these acquisitions and transactions.
- We may need additional capital, which may not be available on acceptable terms or at all, 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 and may not be immediately accessible to support our financing needs.
- We have substantial debt outstanding and may incur additional debt.

Table of Contents

- It may be difficult for a third party to acquire us, even if doing so may be beneficial to our shareholders, because of our ownership structure.
- We are controlled by one principal stockholder who is also our Chairman.

Legal and Regulatory Risks Affecting our Business

- If Voom prevails in its breach of contract suit against us, we could be required to pay substantial damages, which would have a material adverse affect on our financial position and results of operations.
- Our business depends on certain intellectual property rights and on not infringing the intellectual property rights of others.
- We are party to various lawsuits which, if adversely decided, could have a significant adverse impact on our business, particularly lawsuits regarding intellectual property.
- Increased distribution of video content via the Internet could expose us to regulatory risk.
- We depend on the Cable Act for access to programming from cable-affiliate programmers at non-discriminatory rates.
- The injunction against our retransmission of distant networks, which is currently waived, may be reinstated.
- We are subject to significant regulatory oversight, and changes in applicable regulatory requirements, including any adoption or modification of laws or regulations relating to the Internet, could adversely affect our business.
- Our business depends on FCC licenses that can expire or be revoked or modified and applications for FCC licenses that may not be granted.

Edgar Filing: DISH Network CORP - Form 10-Q

- We are subject to digital high-definition (HD) carry-one, carry-all requirements that cause capacity constraints.
- There can be no assurance 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.

Unless otherwise required by the context, in this report, the words DISH Network, the Company, we, our and us refer to DISH Network Corporation and its subsidiaries, EchoStar refers to EchoStar Corporation and its subsidiaries, and DISH DBS refers to DISH DBS Corporation and its subsidiaries, a wholly-owned, indirect subsidiary of DISH Network.

[Table of Contents](#)**Item 1. FINANCIAL STATEMENTS**

DISH NETWORK CORPORATION
CONDENSED CONSOLIDATED BALANCE SHEETS

(Dollars in thousands, except share amounts)

(Unaudited)

	June 30, 2012	As of	December 31, 2011
Assets			
<i>Current Assets:</i>			
Cash and cash equivalents	\$ 2,595,694	\$	609,108
Marketable investment securities (Note 5)	2,243,493		1,431,745
Trade accounts receivable - other, net of allowance for doubtful accounts of \$14,633 and \$12,350, respectively	814,686		778,443
Trade accounts receivable - EchoStar, net of allowance for doubtful accounts of zero	16,140		16,374
Inventory	647,222		707,151
Deferred tax assets	44,417		73,014
Other current assets	135,376		131,988
Total current assets	6,497,028		3,747,823
<i>Noncurrent Assets:</i>			
Restricted cash and marketable investment securities (Note 5)	133,970		132,435
Property and equipment, net of accumulated depreciation of \$2,964,479 and \$2,862,626, respectively (Note 7 and 8)	4,347,672		3,169,891
FCC authorizations (Note 7 and 8)	3,272,665		1,391,441
Marketable and other investment securities (Note 5)	106,518		112,132
Investment in DBSD North America (Note 8)			1,297,614
TerreStar Transaction (Note 8)			1,345,000
Other noncurrent assets, net	163,310		273,895
Total noncurrent assets	8,024,135		7,722,408
Total assets	\$ 14,521,163	\$	11,470,231
Liabilities and Stockholders Equity (Deficit)			
<i>Current Liabilities:</i>			
Trade accounts payable - other	\$ 209,429	\$	225,556
Trade accounts payable - EchoStar	255,829		229,852
Deferred revenue and other	841,370		832,390
Accrued programming	1,172,777		1,067,625
Litigation accrual (Note 11)	70,999		65,580
Other accrued expenses	930,795		763,863
Current portion of long-term debt and capital lease obligations (Note 9)	34,498		35,645
Total current liabilities	3,515,697		3,220,511
<i>Long-Term Obligations, Net of Current Portion:</i>			
Long-term debt and capital lease obligations, net of current portion (Note 9)	9,364,972		7,458,134
Deferred tax liabilities	1,259,928		974,414

Edgar Filing: DISH Network CORP - Form 10-Q

Long-term deferred revenue, distribution and carriage payments and other long-term liabilities	208,188	236,175
Total long-term obligations, net of current portion	10,833,088	8,668,723
Total liabilities	14,348,785	11,889,234

Commitments and Contingencies (Note 11)

Stockholders' Equity (Deficit):

Class A common stock, \$.01 par value, 1,600,000,000 shares authorized, 268,243,361 and 264,732,074 shares issued, 212,125,101 and 208,613,814 shares outstanding, respectively	2,682	2,647
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	2,380,686	2,274,005
Accumulated other comprehensive income (loss)	(19,063)	82,043
Accumulated earnings (deficit)	(625,948)	(1,211,990)
Treasury stock, at cost	(1,569,459)	(1,569,459)
Total DISH Network stockholders' equity (deficit)	171,282	(420,370)
Noncontrolling interest	1,096	1,367
Total stockholders' equity (deficit)	172,378	(419,003)
Total liabilities and stockholders' equity (deficit)	\$ 14,521,163	\$ 11,470,231

The accompanying notes are an integral part of these condensed consolidated financial statements.

[Table of Contents](#)

DISH NETWORK CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
AND COMPREHENSIVE INCOME (LOSS)

(In thousands, except per share amounts)

(Unaudited)

	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
	2012	2011	2012	2011
Revenue:				
Subscriber-related revenue	\$ 3,295,831	\$ 3,311,340	\$ 6,520,296	\$ 6,510,439
Equipment and merchandise sales, rental and other revenue	270,257	270,018	620,994	286,019
Equipment sales, services and other revenue - EchoStar	5,678	8,803	12,345	17,834
Total revenue	3,571,766	3,590,161	7,153,635	6,814,292
Costs and Expenses (exclusive of depreciation shown separately below - Note 7):				
Subscriber-related expenses	1,825,808	1,728,959	3,588,561	3,422,654
Satellite and transmission expenses:				
EchoStar	107,082	115,358	216,936	224,271
Other	9,178	9,819	20,857	20,019
Cost of sales - equipment, merchandise, services, rental and other	130,061	89,403	272,323	111,670
<i>Subscriber acquisition costs:</i>				
Cost of sales - subscriber promotion subsidies - EchoStar	51,580	62,868	133,854	117,294
Other subscriber promotion subsidies	234,300	211,949	460,689	438,790
Subscriber acquisition advertising	118,619	67,984	207,993	141,616
Total subscriber acquisition costs	404,499	342,801	802,536	697,700
General and administrative expenses - EchoStar	14,790	13,190	26,872	25,130
General and administrative expenses	312,877	312,072	676,970	461,916
Litigation expense (Note 11)		23,728		(316,949)
Depreciation and amortization (Note 7)	299,119	237,049	507,817	466,746
Total costs and expenses	3,103,414	2,872,379	6,112,872	5,113,157
Operating income (loss)	468,352	717,782	1,040,763	1,701,135
Other Income (Expense):				
Interest income	20,204	8,601	27,293	14,887
Interest expense, net of amounts capitalized	(109,301)	(143,564)	(247,314)	(263,743)
Other, net	(7,448)	(19,794)	102,834	(8,161)
Total other income (expense)	(96,545)	(154,757)	(117,187)	(257,017)
Income (loss) before income taxes	371,807	563,025	923,576	1,444,118
Income tax (provision) benefit, net	(146,211)	(228,187)	(337,854)	(559,954)
Net income (loss)	225,596	334,838	585,722	884,164
Less: Net income (loss) attributable to noncontrolling interest	(136)	78	(320)	10
Net income (loss) attributable to DISH Network	\$ 225,732	\$ 334,760	\$ 586,042	\$ 884,154

Edgar Filing: DISH Network CORP - Form 10-Q

Weighted-average common shares outstanding - Class A and B common stock:

Basic	450,292	445,579	448,791	444,475
Diluted	453,077	447,297	451,425	445,794

Earnings per share - Class A and B common stock:

Basic net income (loss) per share attributable to DISH Network	\$	0.50	\$	0.75	\$	1.31	\$	1.99
Diluted net income (loss) per share attributable to DISH Network	\$	0.50	\$	0.75	\$	1.30	\$	1.98

Comprehensive Income (Loss):

Net income (loss)	\$	225,596	\$	334,838	\$	585,722	\$	884,164
<i>Other comprehensive income (loss), net of tax:</i>								
Foreign currency translation adjustments		(1,965)		(6,900)		1,288		(6,900)
Unrealized holding gains (losses) on available-for-sale securities		(69,393)		25,269		(18,372)		93,069
Recognition of previously unrealized (gains) losses on available-for-sale securities included in net income (loss)		(3,135)		4,658		(84,022)		(1,638)
Deferred income tax (expense) benefit								
<i>Total other comprehensive income (loss), net of tax</i>		(74,493)		23,027		(101,106)		84,531
Comprehensive income (loss)		151,103		357,865		484,616		968,695
Less: Comprehensive income (loss) attributable to noncontrolling interest		(136)		78		(320)		10
Comprehensive income (loss) attributable to DISH Network	\$	151,239	\$	357,787	\$	484,936	\$	968,685

The accompanying notes are an integral part of these condensed consolidated financial statements.

Table of Contents**DISH NETWORK CORPORATION****CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**

(In thousands)

(Unaudited)

	For the Six Months Ended June 30,	
	2012	2011
Cash Flows From Operating Activities:		
Net income (loss)	\$ 585,722	\$ 884,164
<i>Adjustments to reconcile net income (loss) to net cash flows from operating activities:</i>		
Depreciation and amortization	507,817	466,746
Realized and unrealized losses (gains) on investments	(101,638)	7,776
Non-cash, stock-based compensation	30,199	18,895
Deferred tax expense (benefit)	68,683	405,185
Other, net	7,841	3,535
Change in noncurrent assets	27,230	(92,723)
Change in long-term deferred revenue, distribution and carriage payments and other long-term liabilities	(29,170)	(12,555)
Changes in current assets and current liabilities, net	251,380	(422,678)
Net cash flows from operating activities	1,348,064	1,258,345
Cash Flows From Investing Activities:		
Purchases of marketable investment securities	(1,996,257)	(3,635,968)
Sales and maturities of marketable investment securities	1,221,341	3,297,028
Purchases of property and equipment	(420,185)	(402,744)
Change in restricted cash and marketable investment securities	(1,535)	19,861
DBSD North America Transaction, less cash acquired of \$5,230 (Note 8)	(40,015)	(1,115,960)
TerreStar Transaction (Note 8)	(36,942)	(68,750)
Purchase of Blockbuster assets, net of cash acquired of \$107,061		(126,523)
Purchase of other strategic investments		(9,275)
Proceeds from sale of strategic investments		11,327
Other	(15,867)	4,973
Net cash flows from investing activities	(1,289,460)	(2,026,031)
Cash Flows From Financing Activities:		
Proceeds from issuance of long-term debt	1,900,000	2,000,000
Debt issuance costs	(9,564)	(27,167)
Repayment of long-term debt and capital lease obligations	(18,949)	(17,600)
Net proceeds from Class A common stock options exercised and stock issued under the Employee Stock Purchase Plan	49,852	23,897
Other	5,770	3,930
Net cash flows from financing activities	1,927,109	1,983,060
Effect of exchange rates on cash and cash equivalents	873	(796)
Net increase (decrease) in cash and cash equivalents	1,986,586	