STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
ECHOSTAR SATELLITE CORP.	:	DECISION DTA NO. 821465
for Revision of a Determination or for Refund of Sales and Use Taxes under Articles 28 and 29 of the Tax Law for the Period March 1, 2000 through February 29, 2004.	:	

Petitioner, EchoStar Satellite Corp., filed an exception to the determination of the Administrative Law Judge issued on August 28, 2008. Petitioner appeared by Ryan and Company (Mark Weiss, Esq., and Charles Rice, Jr., Esq., of counsel). The Division of Taxation appeared by Daniel Smirlock, Esq. (Lori P. Antolick, Esq., of counsel).

Petitioner filed a brief in support of its exception. The Division of Taxation filed a brief in opposition. Petitioner filed a reply brief. Oral argument, at petitioner's request, was heard on February 11, 2009 in Troy, New York.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

ISSUE

Whether the resale exclusion of section 1101(b)(4)(i)(A) of the Tax Law applied to parts and equipment purchased by a satellite television provider, which were used by its customers in order to receive satellite television programming.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge and make an additional finding of fact. The Administrative Law Judge's findings of fact and the additional finding of fact are set forth below.

Petitioner, a provider of satellite television programming, conducts business under the name Dish Network. After a lengthy audit, with time charged to the case of 301.5 hours, the Division of Taxation ("Division") calculated additional sales and use tax due from petitioner on its purchases of parts and equipment it used to provide satellite television programming. The Division increased the amount of "purchases subject to tax" from the $136,393.00 reported by petitioner to an after-audit amount of $23,565,926.82, resulting in additional sales and use tax due of $1,776,165.18.

The Division issued a Notice of Determination, dated February 28, 2005, asserting sales and use tax due of $1,776,165.18 plus interest for the period March 1, 2000 through February 29, 2004. Petitioner paid this amount in full by a check dated December 7, 2006. Consequently, the petition, filed on December 15, 2006, seeks a refund of such payment plus interest.

Petitioner supplies the following parts and equipment to its customers in order to provide satellite television programming: (i) a satellite dish, (ii) a low-noise block feedhorn (LNBF), (iii) a switch, (iv) a receiver (a/k/a set-top box) and (v) a remote control. These items cannot be utilized to receive service from any other provider of satellite television programming. Rather, they can be utilized *only* to receive petitioner's Dish Network satellite television programming. Further, petitioner repossesses and refurbishes the items listed above, except for the satellite dish, for reuse on subsequent programming contracts as detailed in the finding of fact above. Although all of the parts and equipment are designed and engineered by petitioner, their

manufacture is outsourced to other companies, including Sanmina-SCI. At issue is sales tax imposed by the Division on petitioner's purchases of the parts and equipment from such manufacturers.

The receiver accepts data from the satellite dish, which is mounted on the roof of a house. The data is processed by the receiver into a format that can be projected onto a television. The LNBF is the component located at the end of the arm projecting from the satellite dish, and it receives the signals sent by the satellite and converts them to a lower frequency that can be accepted by a receiver. Petitioner has multiple satellites in various orbital positions, and a separate LNBF is needed to access each satellite position. The switch is the device that is used at a location where a customer has more than one receiver. The switch directs the satellite signal from the dish to the receivers and allows the customer to watch different programs at each receiver. For example, a twin-switch handles two receivers, while a quad-switch handles four receivers.

In May of 2000, petitioner adopted a new policy concerning the parts and equipment it supplies to its customers in order to provide satellite television programming. Rather than sell the parts and equipment to its customers, petitioner decided to recoup its cost for the parts and equipment as part of its monthly fee for programming. In this way, there would not be an excessive up-front expense to a customer since there would be no need to purchase outright the parts and equipment necessary to receive the satellite television programming. Petitioner, which apparently never sold satellite dishes to its customers, presumably built into the monthly charges for satellite television programming the cost of its own purchases of satellite dishes, which in turn it provided to its customers.

During the period at issue, petitioner collected and remitted New York State sales and use taxes in an amount slightly over $2,000,000.00 on its rental and sales of satellite television parts and equipment, which is greater than the amount asserted due of $1,776,165.18 on its purchases of such items.

In calculating the amount of tax asserted due, the Division performed a detailed review of petitioner's capitalized parts[1] reports, which were maintained by petitioner as electronic files. These files, consisting of over 350,000 line items, contained detailed information on all of petitioner's purchases of satellite television parts and equipment. The Division's position was that all the parts and equipment that petitioner had located in New York that it had not actually sold to its customers were furnished as part of its satellite television programming, a nontaxable service. Accordingly, the auditor calculated sales and use tax due on petitioner's purchases of its capitalized parts and equipment, which were not actually *sold* to customers.

Petitioner's senior accounting manager explained that satellite dishes were not capitalized (and therefore not included in the capitalized parts reports) because, "The dish is weathered. It's on the top of a roof." In contrast, petitioner expects to "recover and be able to refurbish and redeploy" the receivers, LNBFs, switches and remote controls, which were capitalized and listed on the capitalized parts reports.

The capitalized parts reports contain much detail and are difficult to decipher due to the variation in model type and the coded description of particular parts and equipment. Included in the record is a sample of these files, which consists of 116 line items of parts purchased by

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[1] Although petitioner introduced the reports as capitalized "equipment" reports, the term "parts" and not "equipment" is used on the column headings of the reports, and the terminology of "parts" has been used in referencing the reports.

petitioner and placed in service at customer locations in Albany County during the audit period. A careful review of these 116 line items of capitalized parts show 12 types of parts as follows:

Part Description	Model Number	Part Number	Capitalized Cost[2]
(1) Unknown	2700	6-AA	$126.40
(2) Unknown	3822	9-AA	136.08
(3) RCVR IR [receiver]	2800	102456	126.00
(4) IR 3922	3922	103953	134.86
(5) IR 3922T	3922T	103954	134.70
(6) Accessory	TWIN	0-AA	42.50
(7) RCVR IR	301	103631	145.63
(8) Accessory	QUAD	105842	72.41
(9) IR 301T	301T	103475	135.04
(10) IR 301D	301D	103491	110.68
(11) UHF 4922	4922	102647	146.45
(12) UHF 501T	501T	103680	286.11

Petitioner's "DISH Network Residential Digital Home Plan Customer Lease Agreement" is a complex consumer contract, in fine print, which is not easily deciphered or understood. For example, the agreement lists 14 different equipment lease packages, which include four upgrade options. There are six programing packages, with each particular programming package having varying monthly fees depending on the number of receivers. For example the America's Top 50 package costs $29.99/month for one receiver, $34.99/month for two receivers and $39.99/month for three receivers. This pricing structure is explained later in the agreement in a section labeled

[2] These amounts vary to some degree for the same type of part, which may relate to the variation in the date when the particular item is placed in service. For example, an item with the part description of RCVR IR, which appears on a line later in the sample reviewed, shows a capitalized cost of $110.68 instead of $126.00 as shown in the table.

"Total Payments," where it is noted that "for each additional receiver add a total payment of $60.00" for the 12-month agreement, which equates to an extra $5.00 per month for each added receiver. In the words of petitioner's senior accounting manager, this $5.00 charge for each receiver (and related parts and equipment) is "baked" into the monthly charge for a programming package. The agreement, in a section labeled "equipment return," requires the return of the parts and equipment at issue within 15 days if the agreement is terminated:

> If you elect to terminate this Agreement or not subscribe . . . , disconnect your Programming, or your service is otherwise disconnected for any reason at any time, you must return all Receivers, Smart Cards, remote controls, LNBFs and switches in good operating condition, normal wear and tear excepted, to DISH Network within 15 days of such event.

Earlier in the agreement in a section labeled Notice to the Consumer, a similar requirement concerning the return of equipment is noted:

> All receivers, smart cards, remote controls, LNBFs and switches must be returned to DISH Network within 15 days of downgrading below minimum programming, expiration or termination of this lease. If you fail to do so, you agree to pay the applicable equipment charges (minimum of $100 per receiver and $50 per LNBF).

A close review of the customer agreement *does not* disclose the use of the terminology "rent" or "rental" or "lease" with regard to the $5.00 monthly charge noted above. Further, a close review of the two invoices or billing statements introduced into evidence by petitioner discloses that the terminology "rent" or "lease" is not utilized. Rather, the invoice with a payment due date of December 22, 2001 references a "$10.00 equipment fee."

The parties entered into a stipulation of facts dated November 27, 2007, relevant portions of which were incorporated into the determination.

We find the following additional finding of fact:

> Petitioner's "Lease Agreement" provides, inter alia, that a customer will be provided satellite television programming and charged fees (variously

denominated) based on the "programming packages" the customer selects, delivered to one or more receivers. As noted above, there is no "rental fee," as such, set forth in the agreement. There is, inter alia, an "activation fee," "equipment fee," "upgrade fee" and "termination fee." Timothy Beggs, petitioner's witness, testified at hearing, and was asked on direct if he could explain to the Administrative Law Judge where the lease charge was "set out" in the Lease Agreement. Mr. Beggs testified that:

> Okay. Because we want to simplify things for our customers, we bundle the programming package for the first unit with the $5 lease fee. So when we say one receiver on page one [of the lease agreement] is $29.99 per month, that's the programming plus a $5 lease fee. It's clarified a little bit more clearly in the total payment section on page two (Tr. p. 28).

Although the term "lease fee" was used by Mr. Beggs in his testimony, such term was not expressly set forth or defined in the agreement. In fact, the fee is subsumed under the programming fee. Contrary to Mr. Beggs' assurances, page two of the agreement did not clarify the issue. The Lease Agreement in evidence (Exhibit 1) was not in effect prior to November of 2003 and Mr. Beggs did not know whether the agreements in use prior to that date had the same format, i.e, as a "Lease Agreement" (Tr., p. 43).

Prior to May, 2000, which is two months into this audit period, all of petitioner's customers had to purchase their equipment (***see***, Tr., p. 39). After May, 2000, the business model changed to the one used at present. Mr. Beggs testified that today he thinks over 90 percent of petitioner's customers lease their equipment, but he could not give an exact percentage (***see***, Tr., p. 40). Petitioner offered no evidence as to its purchases of non-capitalized parts and equipment, which it claims to have resold outright to its customers during the audit period; nor does petitioner offer specifics as to the tax it claims in dispute on said purchases and sales.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

After first reviewing the relevant law, the Administrative Law Judge found that the parts and equipment purchased by petitioner are *not* used by it in a manner that they become "physical component parts of tangible personal property" (***see***, ***Matter of Automatique, Inc.***, Tax Appeals Tribunal, March 4, 1993). Rather, the Administrative Law Judge found that they are used by

petitioner to provide the *service* of satellite television programming to its Dish Network customers.

The Administrative Law Judge next addressed whether petitioner purchased the parts and equipment from its suppliers for the purpose of "resale as such." The Administrative Law Judge found that petitioner established that its customer agreements do impose a charge of $5.00 per month for each receiver and related parts and equipment provided to a customer.

With respect to petitioner's contention that its purchases from its manufacturers were for resale "as such," the Administrative Law Judge concluded, based on his review of the record, that petitioner did not purchase the parts and equipment at issue for the purpose of "resale as such," to its Dish Network customers. Rather, the Administrative Law Judge found that petitioner furnishes such parts and equipment to its customers as an incident of providing its satellite television programming service. The Administrative Law Judge found that the provision of such equipment is merely *incidental* to the provision of satellite television programming service. The Administrative Law Judge held, based on the Tribunal's decision in ***Matter of Baker Protective Servs.*** (Tax Appeals Tribunal, November 1, 2001), that just as the alarm equipment in that case was essential to its providing of a central station alarm monitoring service, Echostar could not provide its service unless it first installed the disputed parts and equipment here. Moreover, the Administrative Law Judge determined that this petitioner's parts and equipment are of *no use* to petitioner's customers apart from satellite television programming services received from petitioner, since the parts and equipment cannot be used to receive service from another provider. The Administrative Law Judge also found since petitioner repossesses and refurbishes the subject parts and equipment at issue for future use in providing its service, its purchases of the subject parts and equipment are not purchased exclusively for resale, as such.

Petitioner attempted to distinguish ***Baker Protective Services*** on the basis that, in ***Baker***, the invoices did not indicate a separate charge for the alarm equipment provided. The Administrative Law Judge rejected this argument noting that separately stating the charge for an item was only one factor in the Tribunal's decision in ***Baker***, which emphasized the more critical point for the Tribunal, that the central station alarm monitoring service could not be provided unless Baker first installed alarm equipment, which the Tribunal held was "incidental to provision of that service."

Similarly, in this case, the Administrative Law Judge found that petitioner could not provide its satellite television programming service unless it furnished the items at issue. Thus, the parts and equipment at issue were furnished as part and parcel of this service.

The Administrative Law Judge noted that while the equities may favor petitioner since it erroneously collected and remitted sales tax in an amount slightly over $2,000,000.00 on its rental and sales of parts and equipment provided to its Dish Network customer,[3] he lacked equitable jurisdiction (***see, Matter of Eisenstein***, Tax Appeals Tribunal, March 27, 2003), and in any event, Tax Law § 1139(a) provides, "[n]o refund *or credit* shall be made to any person of tax which he collected from a customer until he shall first establish . . . that he has repaid such tax to the customer (emphasis added)."

Finally under the facts of this case, the Administrative Law Judge found that the Division's claim that petitioner's provision of satellite television programming was a *nontaxable* service, in order to justify the imposition of sales tax on petitioner's purchases of parts and equipment used to provide such *nontaxable* service, is irrelevant.

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[3] An amount greater than what has been asserted due here ($1,776,165.18) on its purchases of such parts and equipment.

ARGUMENTS ON EXCEPTION

Petitioner does not take exception to the findings of fact of the Administrative Law Judge but argues, as it did below, that it purchased the equipment at issue in order to sell or lease it to customers. Petitioner argues that its billing methods support its contention that it rented the equipment to its customers.

Petitioner argues that the Administrative Law Judge's reliance on ***Matter of Baker Protective Servs. (supra)*** is misplaced.

Petitioner disagrees with the Division's reliance on memoranda issued by the Taxpayer Services Bureau, as well as an advisory opinion that concluded that "cable television equipment is incidental to providing cable television services even if a cable company separately charges its customers for equipment." According to petitioner, if the equipment was inconsequential, petitioner would not have bothered selling the equipment to customers or entering into lease agreements for the equipment. Petitioner argues that the equipment was equal in importance to the services, and petitioner sought to at least recover the cost of the equipment through its lease charges. Petitioner claims that its sale or lease of equipment to its customers was not incidental to providing its television programming services.

The Division, relying on ***Baker Protective Services***, argues that petitioner is not renting equipment to its customers since it retains ownership and title of the equipment at all times. The Division also argues that the equipment is an "integral" or "component" part of the satellite television service provided to petitioner's customers. According to the Division, the equipment is of no use to customers if they do not receive satellite television programming services from petitioner since the equipment cannot be used to receive service from another provider. The Division also argues that tangible personal property must be purchased *exclusively* for the

purpose of resale in order to qualify for the resale exclusion, which the Division maintains was not the case here. Rather, the Division states, the parts and equipment were merely "incidental" to the provision of the satellite television service. Accordingly, the Division maintains that petitioner was required to pay sales and use tax on the dishes, receivers, remotes and any other equipment and parts it purchased, which it then used in order to provide the nontaxable service to its customers of satellite television programming.

Petitioner attempts to distinguish ***Baker Protective Services*** on the basis that in ***Baker*** "invoices . . . did not indicate a separate charge for the alarm equipment provided." The Division agrees with the Administrative Law Judge that this is only one factor considered by the Tribunal in ***Baker***. The Division urges that more critical to the Tribunal's ***Baker*** decision was that petitioner could not provide its central station alarm monitoring service unless it first installed alarm equipment, and that the alarm equipment was incidental to provision of that service in ***Baker.***

Finally, petitioner argues that the Administrative Law Judge only addressed petitioner's claimed leases of equipment, and completely failed to address its arguments regarding a tax asserted on purchases of parts and equipment, which were resold outright to its customers.

OPINION

Petitioner argues that the Administrative Law Judge failed to address the issue regarding the equipment that petitioner claims it sold outright to its customers. Petitioner urges that it should not be charged tax on these purchases, since they were clearly for resale. The Administrative Law Judge erred, petitioner argues, in only deciding that the resale issue for the capitalized parts and equipment provided to its customers under its purported lease agreements.

We will summarily address this issue.

We note that petitioner did not take an exception to any of the facts determined by the Administrative Law Judge. Specifically, finding of fact "7" of the Administrative Law Judge states, in relevant part:

> In calculating the amount of tax asserted due, the Division performed a detailed review of petitioner's capitalized parts reports, which were maintained by petitioner on electronic files . . . . Accordingly, the auditor calculated sales and use tax due on petitioner's purchases of its capitalized parts and equipment, which were *not actually sold to its customers*."

In other words, the Division's audit did not assert tax on petitioner's purchases of parts and equipment, which it claims were sold outright to customers. Use tax was calculated only upon petitioner's capitalized parts and equipment that petitioner claims to have leased to its customers. Therefore, we find that the Administrative Law Judge did not properly address this issue, and we also decline petitioner's invitation to do so. We note, in passing, that were we to decide this issue, our decision would not inure to petitioner's benefit based on the evidence presented. Petitioner has presented arguments, but no specific evidence into this record, to show the amount of such claimed sales or the amount of tax it disputed or when these alleged sales occurred, i.e. within or without the audit period.

We now address whether petitioner has established by clear and convincing evidence that it is entitled to the use tax exemption on its purchases of capitalized parts and equipment, which it provides to its Dish Network customers under its so-called lease agreements.

The sales tax is imposed upon "[t]he receipts from every retail sale of tangible personal property" except as otherwise provided by Article 28 of the Tax Law (Tax Law § 1105[a]). A "retail sale" is defined, in pertinent part, as a "sale of tangible personal property to any person for any purpose, other than (A) for *resale as such* . . . ." (Tax Law § 1101[b][4][i][A], emphasis added).

There is a statutory presumption that all receipts for property or services are subject to tax and the burden to prove otherwise rests with the taxpayer (Tax Law § 1132[c]; ***see, Matter of Savemart, Inc. v. State Tax Commn.***, 105 AD2d 1001 [1984], ***appeal dismissed*** 64 NY2d 1039 [1985], ***lv denied*** 65 NY2d 604 [1985]).

Petitioner claims that it purchased the capitalized parts and equipment in question and leased same to its customers; as such, petitioner argues that these purchases of parts and equipment were for resale and therefore not subject to tax.

In order to establish entitlement to the resale exclusion and thereby avoid use tax, petitioners must show that the parts and equipment were "purchased for one and only one purpose: resale" (***see, Matter of Savemart, Inc. v. State Tax Commn., supra***). Since the use tax, like its Article 28 counterpart, the sales tax, is a transaction tax, it is petitioner's *intent at the time of purchase* of the parts and equipment that determines whether the resale exclusion applies (***see***, ***Datascope v. Tax Appeals Tribunal***, 196 AD2d 35 [1994]).

Any resale that is purely incidental to the primary purpose of the business is not a purchase for resale as such (***see, Matter of Baker Protective Servs., supra***; ***see also, Matter of Upstate Farms Coops.***, 290 AD2d 896 [2002]). Thus, in order to qualify for the resale exemption, petitioner must prove that (in this case), the subject parts and equipment were leased to its customers for a rental fee and that such parts and equipment were not provided to its customers as an incident of providing its satellite television programing service.

Section 1101(b)(5) of the Tax Law defines "Sale, selling or purchase," in pertinent part, as "[a]ny transfer of title or possession or both . . . rental, lease or license to use or consume . . . by any means whatsoever *for a consideration* . . ." (emphasis added). The Tax Law does not separately define a resale. "It appears then that the Legislature does not consider a sale and resale

as discrete concepts and thus a purchaser who acquires an item for the purpose of sale or rental . . . purchases it for resale within the meaning of the statute" (***Matter of Albany Calcium Light Co. v. State Tax Commn.***, 44 NY2d 986, 987 [1978], ***rearg denied*** 45 NY2d 839 [1978]).

The Division's regulations state that:

> The terms *rental, lease and license to use* refer to all transactions in which there is a transfer for a consideration of possession of tangible personal property without a transfer of title to the property. Whether a transaction is a "sale" or a "rental, lease or license to use" shall be determined in accordance with the provisions of the agreement (20 NYCRR 526.7[c]).

In ***Albany Calcium Light***, the petitioner used cylinders to deliver gas to its customers and charged a demurrage fee when customers retained gas cylinders beyond a certain time period. The Court of Appeals found that petitioner did not acquire the cylinders with the expectation of collecting these fees, which were purely *incidental to its primary business of selling gas* to its customers, and held that the petitioner's original purchase of metallic cylinders was not for resale as such, and not exempt from sales tax as a purchase for resale (***Matter of Albany Calcium Light Co. v. State Tax Commn., supra***).

We affirm the determination of the Administrative Law Judge.

We find that: (i) petitioner uses the subject parts and equipment to deliver its satellite television programming service to its customers; ii) these parts and equipment are carried on petitioner's books as capitalized items; iii) petitioner retains ownership of the capitalized parts and equipment in the hands of its customers; and (iv) these capitalized parts and equipment are recovered by petitioner for reconditioning and re-use in providing services to future customers.

Petitioner argues that the equipment is "significant" and not incidental to the service. We agree that the equipment is significant, even essential, to the service provided by petitioner, but we are also persuaded that petitioner's primary business is not selling or leasing the subject parts

and equipment. Rather, its primary business purpose is to provide satellite television programming and, in that context, the equipment is incidental to that business purpose.

The Appellate Division, in confirming our decision in ***Matter of Helmsley Enters.***, came to a similar conclusion when it stated that:

> [A] hotel such as petitioner's is not in the business of buying and then reselling the use of guest room furniture, furnishings and guest consumables. Rather, it is in the business of providing a service, the overnight accommodation of its patrons, 'and the items at issue were furnished to the hotel's guests as part of its services' (***Matter of Helmsley Enters. v. Tax Appeals Tribunal***, 187 AD2d 64 [1993], ***lv denied*** 81 NY2d 710 [1993]).

Certainly, petitioner is providing parts and equipment and charging a fee, variously denominated; but that is not dispositive. In these cases, we must consider the totality of the circumstances; particularly, we look to the nature of petitioner's business. In this case, petitioner is not in the business of selling the subject parts and equipment; it is in the business of selling its satellite television programming service. In the absence of petitioner's being able to offer a satellite television programming service, would anyone buy the parts and equipment? We think the answer is self evident.

Petitioner sells satellite television programming packages, and charges its customers based primarily on the "programming package" the customer selects. It also "bundles" within its programing charge, a fee to cover the cost of equipment. That fee, to the extent that some portion of it is allocated on petitioner's books as relating to parts and equipment, does not change the underlying nature of this service transaction (***cf., Matter of Baker Protective Servs., supra; see also***, ***Matter of Upstate Farms Coops., supra***, ***Matter of Albany Calcium Light Co., supra***).

We find that petitioner has failed to carry its burden of showing that the subject parts and equipment were not purchased for the purpose of and as an incident to, providing its satellite programming business. We also find, based on this record, that it cannot be concluded that

petitioner purchased the subject parts and equipment with the exclusive intent that said parts and equipment be resold to its customers. We also conclude that the subject parts and equipment provided to petitioner's customers were purely *incidental to petitioner's primary business of selling satellite television programming services* to its customers. Accordingly, we hold that petitioner's original purchase of the capitalized parts and equipment were not for resale as such, and not exempt from tax as a purchase for resale as such.

For all of the above reasons, we find petitioner's reliance on ***Matter of Galileo Intl. Partnership v. Tax Appeals Tribunal*** (31 AD3d 1072 [2006]) misplaced. In ***Galileo***, the Division argued that petitioner leased equipment and licensed software and that the rental payments on those leases were subject to sales tax. This case is distinguishable from ***Galileo***, since here, the Division is not attempting to tax petitioner's receipts from its customers, but rather, is arguing that petitioner's purchase of equipment used in providing its programming service is subject to use tax. In this case, sales tax is not being asserted on petitioner's monthly charges to its customers. This is a use tax based upon petitioner's purchases.

Accordingly, it is ORDERED, ADJUDGED, and DECREED that:.

1. The exception of EchoStar Satellite Corp.is denied;

2. The determination of the Administrative Law Judge is affirmed;

3. The petition of EchoStar Satellite Corp. is denied; and

4. The Notice of Determination dated February 28, 2005 is sustained.

DATED:Troy, New York
August 6, 2009

/s/ Charles H. Nesbitt
Charles H. Nesbitt
President

/s/ Carroll R. Jenkins
Carroll R. Jenkins
Commissioner