

EchoStar CORP
Form S-8
October 05, 2009

As filed with the Securities and Exchange Commission on October 5, 2009

Registration No. 333-_____

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM S-8
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

ECHOSTAR CORPORATION
(Exact name of issuer as specified in its charter)

Nevada
(State or Other Jurisdiction of
Incorporation)

26-1232727

(I.R.S. Employer
Identification No.)

100 Inverness Terrace E.
Englewood, Colorado 80112

(Address of principal executive offices)

EchoStar Corporation 2008 Employee Stock Purchase Plan
(Full title of Plan)

R. Stanton Dodge

Executive Vice President, General Counsel and Secretary
EchoStar Corporation

100 Inverness Terrace E.
Englewood, Colorado 80112

(303) 706-4000

(Name, address and telephone number of agent for service)

CALCULATION OF REGISTRATION FEE

| Plans/Title of Securities to be Registered(1) | Amount to be Registered(2) | Proposed Maximum Offering Price Per Share(3) | Proposed Maximum Aggregate Offering Price | Amount of Registration Fee |
|---|----------------------------------|---|--|----------------------------------|
|---|----------------------------------|---|--|----------------------------------|

| | | | | |
|---|---------------------|----------|--------------|------------|
| Class A Common Stock, par value \$0.001 per share | 2,140,000 shares | \$17.935 | \$38,380,900 | \$2,141.65 |
|---|---------------------|----------|--------------|------------|

- (1) This Registration Statement (the “Registration Statement”) registers an additional 2,140,000 shares of Class A Common Stock, par value \$0.001 per share, of EchoStar Corporation, a Nevada corporation (“Shares”) that may be issued pursuant to the EchoStar Corporation 2008 Employee Stock Purchase Plan.
 - (2) Pursuant to Rule 416 under the Securities Act of 1933, as amended (the “Securities Act”), the amount registered hereunder includes an indeterminate number of Shares that may be issued in accordance with the provisions of the above-referenced plan in connection with any anti-dilution provisions or in the event of any change in the outstanding Shares, including a stock dividend or stock split.
 - (3) The price is estimated in accordance with Rule 457(c) and Rule 457(h) under the Securities Act, solely for the purpose of calculating the registration fee and is \$17.935, the average of the high and low prices of the Company’s Shares as reported by the NASDAQ Global Select Market on October 2, 2009.
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EXPLANATORY NOTE

EchoStar Corporation (the "Company," "we" or "us") has prepared this Registration Statement in accordance with the requirements of Form S-8 under the Securities Act, to register an additional 2,140,000 shares of our Class A Common Stock, that may be issued pursuant to the EchoStar Corporation 2008 Employee Stock Purchase Plan, as amended.

INCORPORATION OF CONTENTS OF REGISTRATION STATEMENT
BY REFERENCE

A registration statement on Form S-8 (File No. 333-148416) (the "Prior Registration Statement") was filed with the Securities and Exchange Commission ("SEC") on December 31, 2007 registering the issuance of (i) 16,000,000 shares of Class A Common Stock, par value \$0.001 per share, of EchoStar Corporation, a Nevada corporation ("Shares") that may be issued pursuant to the EchoStar Corporation 2008 Stock Incentive Plan; (ii) 360,000 Shares that may be issued pursuant to the EchoStar Corporation 2008 Employee Stock Purchase Plan; (iii) 250,000 Shares that may be issued pursuant to the EchoStar Corporation 2008 Nonemployee Director Stock Option Plan; and (iv) 4,000,000 Shares that may be issued upon conversion of shares of Class B Common Stock, par value \$0.001 per share, of EchoStar Corporation, a Nevada corporation, that may be issued pursuant to the EchoStar Corporation 2008 Class B CEO Stock Option Plan. Pursuant to General Instruction E of Form S-8, the contents of such earlier registration statement are incorporated by reference into this Registration Statement, except that the provisions contained in Part II of such earlier registration statement are modified as set forth in this Registration Statement. This Registration Statement is being filed to register an additional 2,140,000 shares pursuant to the EchoStar Corporation 2008 Employee Stock Purchase Plan, as amended. These additional shares are additional securities of the same class as the Prior Registration Statement.

PART II
INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents, which have heretofore been filed by the Registrant with the SEC pursuant to the Securities Exchange Act of 1934, as amended (the "Exchange Act"), are incorporated by reference into this Registration Statement:

- (a) The Registrant's Annual Report on Form 10-K for its fiscal year ended December 31, 2008;
- (b) The Registrant's Annual Report on Form 10-K/A for its fiscal year ended December 31, 2008;
- (c) The Registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 2009;
- (d) The Registrant's Quarterly Report on Form 10-Q for the quarter ended June 30, 2009; and
- (e) The Registrant's Current Reports on Form 8-K filed on February 12, 2009, March 31, 2009, June 4, 2009, July 2, 2009 and September 18, 2009.

All documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act after the date of this Registration Statement on Form S-8 and prior to such time as the Registrant files a post-effective amendment to this Registration Statement on Form S-8 that indicates that all securities offered hereby have been sold, or which deregisters all such securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be a part hereof from the date of filing such reports and documents.

Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained in any subsequently-filed document that also is deemed to be incorporated by reference herein modifies or supersedes such statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement on Form S-8.

Item 8. Exhibits

| Exhibit Number | Description |
|----------------|--|
| 4.1 | EchoStar Corporation 2008 Employee Stock Purchase Plan, as amended (incorporated by reference to the Definitive Proxy Statement on Schedule 14A filed on March 31, 2009, Commission File No. 001-33807). |
| 5.1 | Opinion of R. Stanton Dodge (opinion re: legality) |
| 23.1 | Consent of R. Stanton Dodge (included in Exhibit 5.1 hereto) |

23.2 Consent of KPMG LLP

23.3 Consent of Friedman LLP

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SIGNATURES

Pursuant to the requirements of the Securities Act, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Englewood, State of Colorado on October 5, 2009.

ECHOSTAR CORPORATION

By /s/ R. Stanton Dodge
 Name: R. Stanton Dodge
 Title: Executive Vice President,
 General Counsel and
 Secretary

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints R. Stanton Dodge as the true and lawful attorney-in-fact and agent of the undersigned, with full power of substitution and re-substitution, for and in the name, place and stead of the undersigned, in any and all capacities, to sign any and all amendments (including without limitation, post-effective amendments) or supplements thereto and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, and hereby grants unto the attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith as fully as to all intents and purposes as the undersigned might or could do in person, thereby ratifying and confirming all that the attorney-in-fact and agent, or his substitute, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the date indicated.

| Signature | Title | Date |
|--|---|-----------------|
| /s/ Charles W. Ergen Charles W. Ergen | President, Chairman of the Board and Chief Executive Officer (Principal Executive Officer) | October 5, 2009 |
| /s/ Bernard L. Han Bernard L. Han | Executive Vice President and Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer) | October 5, 2009 |
| /s/ David K. Moskowitz David K. Moskowitz | Director | October 5, 2009 |
| /s/ Michael T. Dugan Michael T. Dugan | Director | October 5, 2009 |
| /s/ R. Stanton Dodge | Director | |

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R. Stanton Dodge

October 5,
2009

/s/ Tom A. Ortolf
Tom A. Ortolf

Director

October 5,
2009

/s/ C. Michael Schroeder
C. Michael Schroeder

Director

October 5,
2009

/s/ Joseph P. Clayton
Joseph P. Clayton

Director

October 5,
2009

EXHIBIT INDEX

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None.

Item 8A. Controls and Procedures

As of the end of the period covered by this report, we carried out an evaluation, under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of our disclosure controls and procedures as defined in Exchange Act Rule 13a-15(e). Based upon that evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that our current disclosure controls and procedures are effective as of December 31, 2003.

The design of any system of controls and procedures is based in part upon certain assumptions about the likelihood of future events. There can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions, regardless of how remote.

Item 9. Directors, Executive Officers, Promoters and Control Persons; Compliance with Section 16(a) of the Exchange Act

The information contained under the section captioned Certain Relationships and Related Transactions in the company's definitive proxy statement for the 2003 Annual Meeting of Shareholders (the Proxy Statement) is incorporated herein by reference.

Item 10. Executive Compensation

The information contained under the section captioned Compensation of Directors and Executive Officers in the Proxy Statement is incorporated herein by reference.

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Item 11. Security Ownership of Certain Beneficial Owners and Management

The following table sets forth equity compensation plan information at December 31, 2003.

Equity Compensation Plan Information

| <u>Plan Category</u> | <u>Number of securities to be issued upon exercise of outstanding options, warrants and rights (a)</u> | <u>Weighted-average exercise price of outstanding options, warrants and rights (b)</u> | <u>Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a))</u> |
|--|--|--|--|
| Equity compensation plans approved by security holders | 134,500 | \$ 8.27 | 15,500 |
| Equity compensation plans not approved by security holders (1) | 90,000 | \$10.00 | None |
| Total | 224,500 | \$ 8.96 | 15,500 |

(1) See Note 13 to the consolidated financial statements for a description of the material features of the plan.

Additional information required by this item is incorporated herein by reference to the section captioned Security Ownership of Certain Beneficial Owners and Management in the Proxy Statement.

Item 12. Certain Relationships and Related Transactions

The information contained under the section captioned Certain Relationships and Related Transactions in the Proxy Statement is incorporated herein by reference.

Item 13. Exhibits, List and Reports on Form 8-K

(a) The following documents are filed as part of this report:

- 3.1. Articles of Incorporation, as amended (incorporated by reference to Exhibit 3.1 of the Registration Statement on Form SB-2, File No. 333-70589).
- 3.2. Bylaws (incorporated by reference to Exhibit 3.2 of the Registration Statement on Form SB-2, File No. 333-70589).
- 4.1. See Exhibits 3.1 and 3.2 for provisions in New Commerce BanCorp's Articles of Incorporation and Bylaws defining the rights of holders of the common stock (incorporated by reference to Exhibits 3.1 and 3.2 of the Registration Statement on Form SB-2, File No. 333-70589).
- 4.2. Form of certificate of common stock (incorporated by reference to Exhibit 4.2 of the Registration Statement on Form SB-2, File No. 333-70589).
- 10.1 Data Processing Services Agreement and Contract Modification dated December 1, 1998 between New Commerce BanCorp and Jack Henry & Associates, Inc. (incorporated by reference to Exhibit 10.7 of the Registration Statement on Form SB-2, File No. 333-70589).

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- 10.2 Form of Stock Warrant Agreement for Warrants issued in 1999 (incorporated by reference to Exhibit 10.8 of the Registration Statement on Form SB-2, File No. 333-70589).
 - 10.3 New Commerce BanCorp 1999 Stock Incentive Plan (incorporated by reference to Exhibit 10.10 of the Form 10-K for the year ended December 31, 1999, File No. 333-70589).
 - 10.4 Employment Agreement with Frank W. Wingate
 - 10.5 Employment Agreement with R. Lamar Simpson
 - 10.6 Data Processing Services Agreement, Contract Modification and Addendums dated December 30, 2003 between New Commerce BanCorp and Jack Henry & Associates, Inc.
 - 10.7 New Commerce BanCorp Amended 1999 Stock Incentive Plan.
 - 13.1 The Company's 2003 Annual Report
 - 21.1 Subsidiaries of the company
 - 24.1 Power of Attorney (contained on the signature page hereof).
 - 31.1 Certification of the Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
 - 31.2 Certification of the Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
 - 32 Certifications of Chief Executive Officer and Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. This exhibit is not filed for purposes of Section 18 of the Securities Exchange Act of 1934 but is instead furnished as provided by applicable

rules of the Securities and Exchange Commission.

(b) Reports on Form 8-K

The following reports were filed on Form 8-K during the fourth quarter ended December 31, 2003.

The Company filed a Form 8-K on November 4, 2003 to disclose the issuance of a press release announcing its financial results for the third quarter ended September 30, 2003.

Item 14. Principal Accountant Fees and Services.

The information required by this item is set forth under "Audit Fees" on page 11 of the 2004 Proxy Statement, which information is incorporated herein by reference.

SIGNATURES

In accordance with Section 13 or 15(d) of the Securities Exchange Act of 1934 (the Exchange Act), the registrant caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

NEW COMMERCE BANCORP

By: /s/ Frank W. Wingate
 Frank W. Wingate
 President and Chief Executive Officer

Date: March 25, 2004

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Frank W. Wingate, his true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments to this Annual Report on Form 10-KSB, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite or necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that attorney-in-fact and agent, or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

In accordance with the Exchange Act, this report has been signed below by the following persons on behalf of the registrant in the capacities and on the dates indicated.

| <u>Signature</u> | <u>Title</u> | <u>Date</u> |
|---|--------------|----------------|
| <u>/s/ Richard W. Baily</u> Richard W. Baily | Director | March 25, 2004 |
| <u>/s/ Timothy A. Brett</u> Timothy A. Brett | Director | March 25, 2004 |
| <u>/s/ Ralph S. Crawley</u> Ralph S. Crawley | Director | March 25, 2004 |
| <u>/s/ Mitchell Gault</u> Mitchell Gault | Director | March 25, 2004 |

| <u>Signature</u> | <u>Title</u> | <u>Date</u> |
|---|--|----------------|
| <u>/s/ Tommy D. Greer</u> Tommy D. Greer | Director | March 25, 2004 |
| <u>/s/ Bobby L. Johnson</u> Bobby L. Johnson | Director | March 25, 2004 |
| <u>/s/ Robert T. Kellet</u> Robert T. Kellet | Director | March 25, 2004 |
| <u>/s/ Dennis O. Raines</u> Dennis O. Raines | Director | March 25, 2004 |
| <u>/s/ Frank W. Wingate</u> Frank W. Wingate | Director | March 25, 2004 |
| <u>/s/ R. Lamar Simpson</u> R. Lamar Simpson | Principal Accounting Officer and Chief Financial Officer | March 25, 2004 |

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