EchoStar CORP
Form 10-Q
November 06, 2012
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UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form 10-Q

(Mark One)

T QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the Quarterly Period Ended September 30, 2012

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: 001-33807

EchoStar Corporation

(Exact Name of Registrant as Specified in Its Charter)

Nevada (State or Other Jurisdiction of Incorporation or Organization)	**26-1232727** (I.R.S. Employer Identification No.)
100 Inverness Terrace East **Englewood, Colorado** (Address of Principal Executive Offices)	**80112-5308** (Zip Code)

(303) 706-4000

(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 x No o

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 x No o

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 x	Accelerated filer o
Non-accelerated filer o (Do not check if a smaller reporting company)	Smaller reporting company o

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

As of November 1, 2012, the registrant s outstanding common stock consisted of 39,691,808 shares of Class A common stock and 47,687,039 shares of Class B common stock.

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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:

General Risks Affecting Our Business

- We currently derive a substantial portion of our revenue from our two primary customers, DISH Network and Bell TV. The loss of, or a significant reduction in, orders from, or a decrease in selling prices of digital set-top boxes, transponder leasing, provision of digital broadcast services, and/or other products or services to DISH Network or Bell TV would significantly reduce our revenue and adversely impact our results of operations.

- Economic weakness, including high unemployment and reduced consumer spending, may adversely affect our ability to grow or maintain our business.

- If we are unable to properly respond to technological changes, our business could be significantly harmed.

- Certain of our sales to DISH Network could be terminated or substantially curtailed on short notice, which would have a detrimental effect on us.

- We may be required to raise and refinance indebtedness during unfavorable market conditions.

- We may experience significant financial losses on our existing investments.

- We may pursue acquisitions and other strategic transactions to complement or expand our business, which may not be successful and we may lose up to the entire value of our investment in these acquisitions and transactions.

- We may not be aware of certain foreign government laws or regulations or changes to them which could have a significant adverse impact on our business.

- Our international sales and operations are subject to applicable laws relating to trade, export controls and foreign corrupt practices, the violation of which could adversely affect our operations.

- Our business depends on certain intellectual property rights and on not infringing the intellectual property rights of others. The loss of or infringement of our intellectual property rights could have a significant adverse impact on our business.

- Any failure or inadequacy of our information technology infrastructure or those of our third-party service providers could harm our business.

- We are party to various lawsuits which, if adversely decided, could have a significant adverse impact on our business, particularly lawsuits regarding intellectual property.

- We have not been an independent company for a significant amount of time and we may be unable to make, on a timely or cost-effective basis, the changes necessary to operate as an independent company.

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

- We have substantial debt outstanding and may incur additional debt.

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Risks Affecting Our EchoStar Technologies Segment

- We depend on sales of digital set-top boxes for a substantial portion of our revenue and a decline in sales of our digital set-top boxes would have a material adverse effect on our financial position and results of operations.

- Our business may suffer if our customer base does not compete successfully with existing and emerging competition.

- Our future financial performance depends in part on our ability to penetrate new markets for digital set-top boxes.

- Component pricing may remain stable or be negatively affected by inflation, increased demand, decreased supply, or other factors, which could have a material adverse effect on our results of operations.

- The average selling price and gross margins of our digital set-top boxes has been decreasing and may decrease even further, which could negatively impact our financial position and results of operations.

- Our ability to sell our digital set-top boxes to other operators depends on our ability to obtain licenses to use the conditional access systems utilized by these other operators.

- Growth in our EchoStar Technologies segment likely requires expansion of our sales to international customers, and we may be unsuccessful in expanding international sales.

- If we are successful in growing sales of our digital set-top boxes to international customers, we may be subject to additional risks including, among other things, trade barriers and political instability abroad.

- The digital set-top box industry is extremely competitive.

- We expect to continue to face competition from new market entrants, principally located in Asia, that offer low cost set-top boxes.

- Our digital set-top boxes are highly complex and may experience quality or supply problems.

- If significant numbers of television viewers are unwilling to pay for pay-TV services that utilize digital set-top boxes, we may not be able to sustain our current revenue level.

- Our reliance on a single supplier or a limited number of suppliers for several components used in our digital set-top boxes could restrict production, result in higher digital set-top box costs and delay deliveries to customers.

- Our future growth depends on growing demand for advanced technologies.

- If the encryption and related security technology used in our digital set-top boxes is compromised, sales of our digital set-top boxes may decline.

Risks Affecting Our EchoStar Satellite Services and Hughes Segments

- We currently face competition from established competitors in the satellite service business and may face competition from others in the future.

- Our owned and leased satellites in orbit are subject to significant operational and environmental risks that could limit our ability to utilize these satellites.

- Our satellites have minimum design lives ranging from 12 to 15 years, but could fail or suffer reduced capacity before then.

- Our satellites under construction are subject to risks related to construction and launch that could limit our ability to utilize these satellites.

- Our business is subject to risks of adverse government regulation.

- Our business depends on Federal Communications Commission (FCC) licenses that can expire or be revoked or modified and applications for FCC licenses that may not be granted.

- Our use of certain satellites is often dependent on satellite coordination agreements, which may be difficult to obtain.

- Our dependence on outside contractors could result in delays related to the design, manufacture and launch of our new satellites, which could in turn adversely affect our operating results.

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- We generally do not have commercial insurance coverage on the satellites we use and could face significant impairment charges if one of our uninsured satellites fails.

- We currently have unused satellite capacity in our EchoStar Satellite Services segment, and our results of operations may be materially adversely affected if we are not able to lease more of this capacity to third parties.

- The enterprise network communications industry is highly competitive. We may be unsuccessful in competing effectively against other terrestrial and satellite-based network providers in our enterprise groups.

- The consumer network communications market is highly competitive. We may be unsuccessful in competing effectively against fiber, Digital Subscriber Line (DSL), cable service providers and other satellite broadband providers in the consumer market.

- We are dependent upon third-party providers for components, manufacturing, installation services, and customer support services, and our results of operations may be materially adversely affected if any of these third-party providers fail to appropriately deliver the contracted goods or services.

- The failure to adequately anticipate the need for transponder capacity or the inability to obtain transponder capacity for our Hughes segment could harm our results of operations.

- If our products contain defects, we could be subject to significant costs to correct such defects and our product and network service contracts could be delayed or cancelled, which could adversely affect our revenues.

- We may face difficulties in accurately assessing and collecting contributions towards the Universal Service Fund.

- Our foreign operations expose us to regulatory risks and restrictions not present in our domestic operations.

- Although we expect that the Hughes Acquisition (as defined below) will benefit us, those expected benefits may not occur because of the complexity of integration and other challenges.

Other Risks

- We may have potential conflicts of interest with DISH Network due to our common ownership and management.

- We cannot assure you that there will not be deficiencies leading to material weaknesses in our internal control over financial reporting.

- It may be difficult for a third party to acquire us, even if doing so may be beneficial to our shareholders, because of our capital structure.

- We are controlled by one principal stockholder who is our Chairman.

- 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. 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 Corporation and its subsidiaries, unless the context otherw requires. DISH Network refers to DISH Network Corporation and its subsidiaries, unless the context otherwise requires.

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PART I FINANCIAL INFORMATION

Item 1. FINANCIAL STATEMENTS

ECHOSTAR CORPORATION

CONDENSED CONSOLIDATED BALANCE SHEETS

(Dollars in thousands, except share amounts)

(Unaudited)

	As of			
		September 30, 2012		December 31, 2011
Assets				
Current Assets:				
Cash and cash equivalents	$	694,464	$	614,035
Marketable investment securities		862,230		1,082,407
Trade accounts receivable, net of allowance for doubtful accounts of $15,530 and $18,484, respectively		227,136		212,960
Trade accounts receivable - DISH Network, net of allowance for doubtful accounts of zero		264,664		229,852
Inventory		74,122		68,707
Deferred tax assets		37,992		23,492
Other current assets		106,652		76,284
Total current assets		2,267,260		2,307,737
Noncurrent Assets:				
Restricted cash and marketable investment securities		26,868		24,286
Property and equipment, net of accumulated depreciation of $2,247,522 and $2,003,875, respectively		2,571,130		2,453,546
Orbital rights, net		565,727		469,810
Goodwill		514,536		533,018
Other intangible assets, net		369,562		466,452
Marketable and other investment securities		178,221		140,439
Other noncurrent assets, net		163,361		148,449
Total noncurrent assets		4,389,405		4,236,000
Total assets	$	6,656,665	$	6,543,737
Liabilities and Stockholders Equity (Deficit)				
Current Liabilities:				
Trade accounts payable	$	229,247	$	250,366
Trade accounts payable - DISH Network		16,149		16,374
Current portion of long-term debt and capital lease obligations		65,450		64,475
Deferred revenue and other		42,684		54,090
Accrued royalties		16,201		23,590
Accrued interest		41,407		6,353
Accrued expenses and other		177,616		168,474
Total current liabilities		588,754		583,722
Noncurrent Liabilities:				
Long-term debt and capital lease obligations, net of current portion		2,431,894		2,464,180

Deferred tax liabilities		382,055		373,391
Long-term deferred revenue and other long-term liabilities		94,667		70,818
Total noncurrent liabilities		2,908,616		2,908,389
Total liabilities		3,497,370		3,492,111
Commitments and Contingencies (Note 12)				
Stockholders Equity (Deficit):				
Preferred Stock, $.001 par value, 20,000,000 shares authorized, none issued and outstanding				
Class A common stock, $.001 par value, 1,600,000,000 shares authorized, 45,159,775 and 44,500,440 shares issued, and 39,627,457 and 38,968,122 shares outstanding, respectively		45		45
Class B common stock, $.001 par value, 800,000,000 shares authorized, 47,687,039 shares issued and outstanding		48		48
Class C common stock, $.001 par value, 800,000,000 shares authorized, none issued and outstanding				
Class D common stock, $.001 par value, 800,000,000 shares authorized, none issued and outstanding				
Additional paid-in capital		3,389,024		3,360,301
Accumulated other comprehensive income (loss)		59,960		165,771
Accumulated earnings (deficit)		(200,663)		(385,487)
Treasury stock, at cost		(98,162)		(98,162)
Total EchoStar stockholders equity (deficit)		3,150,252		3,042,516
Noncontrolling interests		9,043		9,110
Total stockholders equity (deficit)		3,159,295		3,051,626
Total liabilities and stockholders equity (deficit)	$	6,656,665	$	6,543,737

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

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ECHOSTAR CORPORATION

CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS

AND COMPREHENSIVE INCOME (LOSS)

(In thousands, except per share amounts)

(Unaudited)

	For the Three Months Ended September 30, 2012	For the Three Months Ended September 30, 2011	For the Nine Months Ended September 30, 2012	For the Nine Months Ended September 30, 2011
Revenue:				
Equipment revenue - DISH Network	$ 256,935	$ 339,272	$ 748,650	$ 882,027
Equipment revenue - other	143,764	151,613	487,097	325,192
Services and other revenue - DISH Network	129,842	124,941	387,479	374,366
Services and other revenue - other	234,180	247,337	712,279	345,637
Total revenue	764,721	863,163	2,335,505	1,927,222
Costs and Expenses:				
Cost of sales - equipment	342,230	415,784	1,046,423	1,026,462
Cost of sales - services and other	175,346	173,973	513,208	328,228
Selling, general and administrative expenses	93,871	102,790	282,357	190,505
General and administrative expenses - DISH Network	1,168	5,669	4,406	12,397
Research and development expenses	17,448	14,561	50,416	34,502
Depreciation and amortization (Notes 7 and 8)	110,778	128,120	339,472	256,193
Total costs and expenses	740,841	840,897	2,236,282	1,848,287
Operating income (loss)	23,880	22,266	99,223	78,935
Other Income (Expense):				
Interest income	2,697	2,394	8,864	7,206
Interest expense, net of amounts capitalized	(33,840)	(33,061)	(109,258)	(45,381)
Realized gains (losses) on marketable investment securities and other investments	21,216	4,169	149,443	13,875
Unrealized/realized gains (losses) on investments accounted for at fair value, net		2,483		10,281
Hughes Acquisition costs	7	(730)		(35,230)
Other, net	7,900	(2,504)	35,244	18,430
Total other income (expense)	(2,020)	(27,249)	84,293	(30,819)
Income (loss) before income taxes	21,860	(4,983)	183,516	48,116
Income tax (provision) benefit, net	409	(13,864)	704	(31,230)
Net income (loss)	22,269	(18,847)	184,220	16,886
Less: Net income (loss) attributable to noncontrolling interests	(285)	270	(604)	357
Net income (loss) attributable to EchoStar	$ 22,554	$ (19,117)	$ 184,824	$ 16,529
Weighted-average common shares outstanding - Class A and B common stock:				
Basic	87,279	86,507	87,031	86,100
Diluted	87,998	86,507	87,752	87,171

Earnings per share - Class A and B common stock:				
Basic net income (loss) per share attributable to EchoStar	$ 0.26	$ (0.22)	$ 2.12	$ 0.19
Diluted net income (loss) per share attributable to EchoStar	$ 0.26	$ (0.22)	$ 2.11	$ 0.19
Comprehensive Income (Loss):				
Net income (loss)	$ 22,269	$ (18,847)	$ 184,220	$ 16,886
Other comprehensive income (loss), net of tax:				
Foreign currency translation adjustments	2,868	(11,067)	(667)	(11,511)
Unrealized holding gains (losses) on available-for-sale securities	6,536	(67,934)	42,318	(43,474)
Recognition of previously unrealized (gains) losses on available-for-sale securities in net income (loss)	(19,088)	(4,168)	(147,093)	(6,617)
Total other comprehensive income (loss), net of tax	(9,684)	(83,169)	(105,442)	(61,602)
Comprehensive income (loss)	12,585	(102,016)	78,778	(44,716)
Less: Comprehensive income (loss) attributable to noncontrolling interests	192	270	(235)	357
Comprehensive income (loss) attributable to EchoStar	$ 12,393	$ (102,286)	$ 79,013	$ (45,073)

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

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ECHOSTAR CORPORATION

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS

(In thousands)

(Unaudited)

	For the Nine Months Ended September 30, 2012	2011
Cash Flows From Operating Activities:		
Net income (loss)	$ 184,220	$ 16,886
Adjustments to reconcile net income (loss) to net cash flows from operating activities:		
Depreciation and amortization	339,472	256,193
Equity in losses (earnings) of affiliates	(5,029)	(8,536)
Realized losses (gains) on marketable investment securities and other investments	(149,443)	(13,875)
Unrealized/realized losses (gains) on investments accounted for at fair value, net		(10,281)
Non-cash, stock-based compensation	14,361	11,558
Deferred tax expense (benefit)	(3,153)	17,264
Other, net	9,940	(227)
Change in noncurrent assets	(7,079)	(36)
Changes in current assets and current liabilities, net	(32,948)	(30,755)
Net cash flows from operating activities	350,341	238,191
Cash Flows From Investing Activities:		
Purchases of marketable investment securities	(698,738)	(1,578,463)
Sales and maturities of marketable investment securities	929,179	1,749,278
Purchases of property and equipment	(371,385)	(261,196)
Change in restricted cash and marketable investment securities	(2,582)	2,046
Acquisition of Hughes Communications, net of cash acquired of $98,900		(2,075,613)
Acquisition of orbital rights	(82,477)	
Purchase of strategic investments included in marketable and other investment securities	(954)	(72,774)
Proceeds from sale of strategic investments		567,303
Other, net	(3,215)	2,963
Net cash flows from investing activities	(230,172)	(1,666,456)
Cash Flows From Financing Activities:		
Proceeds from issuance of long-term debt	317	2,000,000
Repayment of long-term debt and capital lease obligations	(49,654)	(43,010)
Debt issuance costs	(229)	(57,597)
Net proceeds from Class A common stock options exercised and issued under the Employee Stock Purchase Plan	10,022	27,118
Other	(633)	1,693
Net cash flows from financing activities	(40,177)	1,928,204
Effect of exchange rates on cash and cash equivalents	437	(947)
Net increase (decrease) in cash and cash equivalents	80,429	498,992
Cash and cash equivalents, beginning of period	614,035	141,814
Cash and cash equivalents, end of period	$ 694,464	$ 640,806
Supplemental Disclosure of Cash Flow Information:		
Cash paid for interest (including capitalized interest)	$ 110,131	$ 31,988

Capitalized interest	$	39,637	$	31,777
Cash received for interest	$	22,551	$	8,957
Cash paid for income taxes	$	8,754	$	3,637
Employee benefits paid in Class A common stock	$	4,282	$	4,046
Satellites and other assets financed under capital lease obligations	$	30,263	$	27,279
In-orbit incentive obligation for Echostar XVII	$	24,950	$	
Reduction of capital lease obligations for AMC-16	$	12,599	$	6,616
Changes in capital expenditures included in accounts payable	$	(30,767)	$	22,605
Orbital rights obligation included in accrued liabilities	$	16,000	$	

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

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ECHOSTAR CORPORATION

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

(Unaudited)

Note 1. Organization and Business Activities

Principal Business

We were organized in October 2007 as a corporation under the laws of the State of Nevada. EchoStar Corporation is a holding company (together with its subsidiaries, EchoStar, the Company, we, us and/or our). On June 8, 2011, we acquired all of the outstanding equity of Hughes Communications, Inc. (the Hughes Acquisition). Following the Hughes Acquisition, we operate three primary business segments.

- ***EchoStar Technologies*** which designs, develops and distributes digital set-top boxes and related products and technology, including our Slingbox placeshifting technology, primarily for satellite TV service providers, telecommunication and international cable companies and, with respect to Slingboxes, directly to consumers via retail outlets. Our EchoStar Technologies segment also provides digital broadcast operations including satellite uplinking/downlinking, transmission services, signal processing, conditional access management and other services primarily to DISH Network.

- ***EchoStar Satellite Services*** which uses 9 of our 11 owned and leased in-orbit satellites and related Federal Communications Commission (FCC) licenses to lease capacity on a full-time and occasional-use basis primarily to DISH Network, and secondarily to Dish Mexico, S. de R.L. de C.V. (Dish Mexico), United States government service providers, state agencies, Internet service providers, broadcast news organizations, programmers and private enterprise customers.

- ***Hughes*** which provides satellite broadband Internet access to North American consumers and broadband network services and systems to the domestic and international enterprise markets. The Hughes segment also provides managed services to large enterprises and networking systems solutions to customers for mobile satellite and wireless backhaul systems. Hughes became a new segment as a result of the Hughes Acquisition and the operating results of Hughes Communications, Inc. and its subsidiaries (Hughes Communications) are included in our results effective June 9, 2011. See Note 11 for further discussion of the Hughes Acquisition.

Effective January 1, 2008, DISH Network completed its distribution to us (the Spin-off) of its digital set-top box business and certain infrastructure and other assets, including certain of its satellites, uplink and satellite transmission assets, real estate and other assets and related liabilities. Since the Spin-off, we and DISH Network have operated as separate publicly-traded companies, and neither entity has any ownership interest in the other. However, a substantial majority of the voting power of the shares of both companies is owned beneficially by Charles W. Ergen, our Chairman, or by certain trusts established by Mr. Ergen for the benefit of his family.

Note 2. Basis of Presentation and Summary of Significant Accounting Policies

Basis of Presentation

The accompanying (a) condensed balance sheet as of December 31, 2011, which has been derived from our audited financial statements, and (b) unaudited interim condensed financial statements have been prepared in accordance with accounting principles generally accepted in the United States (GAAP) and with the instructions to Form 10-Q and Article 10 of Regulation S-X for interim financial information. Accordingly, these financial statements do

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NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued

not include all of the information and notes required for complete financial statements prepared under GAAP. In our opinion, all adjustments (consisting of normal recurring adjustments) considered necessary for a fair presentation have been included. Our results of operations for the interim periods presented are not necessarily indicative of the results that may be expected for the full year. For further information, refer to the Consolidated Financial Statements and notes thereto included in our Annual Report on Form 10-K for the year ended December 31, 2011. Certain prior period amounts have been reclassified to conform to the current period presentation.

Our Condensed Consolidated Statements of Operations and Comprehensive Income (Loss) for the nine months ended September 30, 2011 include the operating results of Hughes Communications after June 8, 2011, the date of the Hughes Acquisition.

Principles of Consolidation

We consolidate all majority owned subsidiaries, investments in entities in which we have controlling influence and variable interest entities where we are the primary beneficiary. Non-majority owned investments are accounted for using the equity method when we have the ability to significantly influence the operating decisions of the investee. When we do not have the ability to significantly influence the operating decisions of an investee, the cost method is used. All significant intercompany accounts and transactions have been eliminated in consolidation.

Use of Estimates

The preparation of financial statements in conformity with GAAP requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expense for each reporting period. Estimates are used in accounting for, among other things, deferred revenue and deferred subscriber acquisition cost amortization periods, percentage-of-completion related to revenue recognition, allowances for doubtful accounts, allowances for sales returns/rebates, warranty obligations, self-insurance obligations, deferred taxes and related valuation allowances, uncertain tax positions, loss contingencies, fair value of financial instruments, fair value of options granted under our stock-based compensation plans, fair value of assets and liabilities acquired in business combinations, capital leases, asset impairments, useful lives of property, equipment and intangible assets, and royalty obligations. Weakened economic conditions may increase the inherent uncertainty in the estimates and assumptions indicated above. We base our estimates and assumptions on historical experience and on various other factors that we believe to be reasonable under the circumstances. Due to the inherent uncertainty involved in making estimates, actual results may differ from previously estimated amounts, and such differences may be material to our Condensed Consolidated Financial Statements. Estimates and assumptions are reviewed periodically, and the effects of revisions are reflected prospectively in the period they occur.

Fair Value Measurements

We determine fair value based on the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants. Market or observable inputs are the preferred source of values, followed by unobservable inputs or assumptions based on hypothetical transactions in the absence of market inputs. We apply the following hierarchy in determining fair value:

- Level 1, defined as observable inputs being quoted prices in active markets for identical assets;

- Level 2, defined as observable inputs other than quoted prices included in Level 1, including quoted prices for similar assets and liabilities in active markets; quoted prices for identical or similar instruments in markets that are not active; and model-derived valuations in which significant inputs and significant value drivers are observable in active markets; and

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NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued

- Level 3, defined as unobservable inputs for which little or no market data exists, consistent with reasonably available assumptions made by other participants therefore requiring assumptions based on the best information available.

As of September 30, 2012 and December 31, 2011, the carrying value of our cash and cash equivalents, current marketable investment securities, trade accounts receivable, net of allowance for doubtful accounts, and accrued liabilities were equal to or approximated fair value due to their short-term nature or proximity to current market rates.

Fair values for our publicly traded debt securities are based on quoted market prices. The fair value of our private debt and orbital incentive obligations is estimated at their carrying value based on current rates (Level 2). See Note 9 for the fair value of our long-term debt. As of September 30, 2012 and December 31, 2011, the fair values of our orbital incentive obligations, based on measurements categorized within Level 2 of the fair value hierarchy, approximated their carrying values of $30 million and $6 million, respectively. We use fair value measurements from time-to-time in connection with impairment testing and the assignment of purchase consideration to assets and liabilities of acquired companies. Those fair value measurements typically include significant unobservable inputs and are categorized within Level 3 of the fair value hierarchy.

Note 3. Basic and Diluted Net Income (Loss) Per Share

We present both basic earnings per share (EPS) and diluted EPS. Basic EPS excludes potential dilution and is computed by dividing Net income (loss) attributable to EchoStar by the weighted-average number of common shares outstanding for the period. Diluted EPS reflects the potential dilution that could occur if stock awards were exercised.

The potential dilution from stock awards was computed using the treasury stock method based on the average market value of our Class A common stock. The following table presents EPS amounts for all periods and the basic and diluted weighted-average shares outstanding used in the calculation.

	For the Three Months Ended September 30, 2012	For the Three Months Ended September 30, 2011	For the Nine Months Ended September 30, 2012	For the Nine Months Ended September 30, 2011
	(In thousands, except per share amounts)			
Net income (loss) attributable to EchoStar	$ 22,554	$ (19,117)	$ 184,824	$ 16,529
Weighted-average common shares outstanding - Class A and B common stock:				
Basic	87,279	86,507	87,031	86,100
Dilutive impact of stock awards outstanding	719		721	1,071
Diluted	87,998	86,507	87,752	87,171

Earnings per share - Class A and B common stock:								
Basic net income (loss) per share attributable to EchoStar	$	0.26	$	(0.22)	$	2.12	$	0.19
Diluted net income (loss) per share attributable to EchoStar	$	0.26	$	(0.22)	$	2.11	$	0.19

As of September 30, 2012 and 2011, there were stock awards to purchase 5.0 million and 3.9 million shares, respectively, of our Class A common stock outstanding, not included in the weighted-average common shares outstanding above, as their effect is anti-dilutive.

Vesting of options and rights to acquire shares of our Class A common stock granted pursuant to a performance-based stock incentive plan (Restricted Performance Units) is contingent upon meeting a certain company goal which was not probable of being achieved as of September 30, 2012 and 2011. As a result, the following awards were outstanding and were not included in the diluted EPS calculation.

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NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued

	As of September 30, 2012	2011
	(In thousands)	
Performance-based options	632	673
Restricted Performance Units	65	90
Total	697	763

Note 4. Other Comprehensive Income (Loss) and Related Tax Effects

We have not recognized any tax effects on foreign currency translation adjustments because they are not expected to result in future taxable income or deductions. We have not recognized any tax effects on unrealized gains or losses on available-for-sale securities to the extent the gains or losses would affect the amount of existing capital loss carryforwards for which the related deferred tax asset has been fully offset by a valuation allowance.

Note 5. Marketable Investment Securities, Restricted Cash and Cash Equivalents, and Other Investment Securities

Our marketable investment securities, restricted cash and cash equivalents, and other investment securities consisted of the following:

	As of September 30, 2012	As of December 31, 2011
	(In thousands)	
Marketable investment securities current:		
VRDNs	$ 52,895	$ 218,665
Strategic	103,423	216,090
Other	705,912	647,652
Total marketable investment securities current	862,230	1,082,407
Restricted marketable investment securities (1)	6,729	3,939
Total	868,959	1,086,346
Restricted cash and cash equivalents (1)	20,139	20,347
Marketable and other investment securities noncurrent:		
Cost method	26,192	26,193
Equity method	152,029	114,246
Total marketable and other investment securities noncurrent	178,221	140,439
Total marketable investment securities, restricted cash and cash equivalents, and other investment securities	$ 1,067,319	$ 1,247,132

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(1) Restricted marketable investment securities and restricted cash and cash equivalents are included in Restricted cash and marketable investment securities on our Condensed Consolidated Balance Sheets.

Marketable Investment Securities

Our marketable investment securities portfolio consists of various debt and equity instruments, all of which are classified as available-for-sale.

Variable rate demand notes (VRDNs)

VRDNs are long-term floating rate municipal bonds with embedded put options that allow the bondholder to sell the security at par plus accrued interest. All of the put options are secured by a pledged liquidity source. Our VRDN portfolio is comprised of investments in municipalities and corporations, which are backed by financial institutions

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NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued

or other highly rated companies that serve as the pledged liquidity source. While they are classified as marketable investment securities, the put option allows VRDNs to be liquidated generally on a same day or on a five business day settlement basis.

Strategic

Our strategic investment portfolio consists of investments in shares of common stock of public companies, which are highly speculative and have experienced and continue to experience volatility. The value of our investment portfolio depends on the value of such shares of common stock.

Other

Our other current marketable investment securities portfolio includes investments in various debt instruments including corporate and government bonds.

Restricted Cash and Marketable Investment Securities

As of September 30, 2012 and December 31, 2011, our restricted marketable investment securities, together with our restricted cash, included amounts required as collateral for our letters of credit or surety bonds.

Marketable and Other Investment Securities Noncurrent

We have several strategic investments in certain equity securities that are accounted for using either the equity or the cost method of accounting. Our ability to realize value from our strategic investments in companies that are not publicly traded depends on the success of those companies businesses and their ability to obtain sufficient capital to execute their business plans. Because private markets are not as liquid as public markets, there is also increased risk that we will not be able to sell these investments, or that when we desire to sell them we will not be able to obtain fair value for them.

As of September 30, 2012, our equity method investments included a $32 million investment in DISH Digital Holding L.L.C. (DISH Digital), a joint venture between us and DISH Network. The carrying amount of our investment reflects the $37 million aggregate carrying amount of certain noncash assets that we contributed to DISH Digital upon its formation on July 1, 2012 in exchange for a one-third equity interest in

DISH Digital, less $5 million for our equity in the net loss of DISH Digital for the three months ended September 30, 2012. See Note 14 for additional information about our investment in DISH Digital.

Realized Gains on Marketable Investment Securities and Other Investments

We recognized realized gains on our marketable investment securities and other investments of $21.2 million and $4.2 million for the three months ended September 30, 2012 and 2011, respectively, and $149.4 million and $13.9 million for the nine months ended September 30, 2012 and 2011, respectively.

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NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS - Continued

Unrealized Gains (Losses) on Marketable Investment Securities

The components of our available-for-sale investments are summarized in the table below.

		As of		
September 30, 2012				December 31, 2011
Marketable Investment	Unrealized		Marketable	