

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FT. LAUDERDALE DIVISION

Case No. 98-2651-CIV-Dimitrouleas/Seltzer

CBS BROADCASTING INC., et al.,)
)
Plaintiffs,)
v.)
)
ECHOSTAR COMMUNICATIONS)
CORP., et al.,)
)
Defendants.)
)

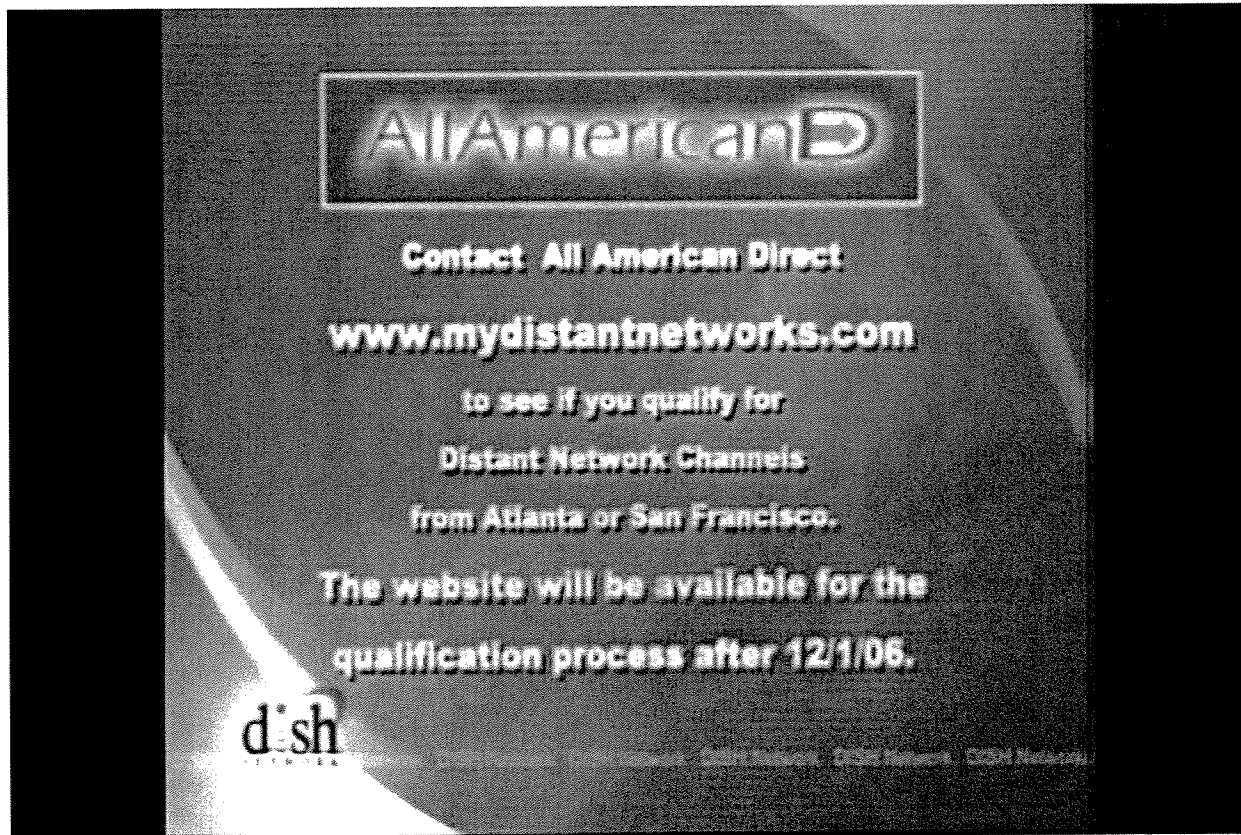
**SUPPLEMENTAL MEMORANDUM BY ALL PLAINTIFFS IN SUPPORT
OF EMERGENCY MOTION FOR ISSUANCE OF AN ORDER TO
SHOW CAUSE, AND IN SUPPORT OF ALTERNATIVE MOTION
FOR CLARIFICATION OF THE PERMANENT INJUNCTION**

EchoStar's Opposition -- and its last-minute stunt to neuter the Permanent Injunction -- have obviously been long in preparation. But the Opposition does nothing to rebut the conclusion, based on indisputable facts that EchoStar simply ignores, that EchoStar and NPS are acting in concert to thwart the Permanent Injunction entered by the Court on October 20, 2006.^{1/}

Specifically, there is no dispute that EchoStar and NPS (which also calls itself "All-American Direct") are collaborating for the precise and specific purpose of using *EchoStar* satellites, *EchoStar's* FCC-licensed frequencies, *EchoStar* satellite dishes, and *EchoStar* set-top boxes to provide *EchoStar* customers with precisely the programming (distant network signals) that EchoStar is flatly barred by the Permanent Injunction from providing. And as of Thursday night, EchoStar is now *specifically and expressly encouraging its subscribers who are losing*

^{1/} For simplicity, we refer to National Programming Service and Mr. Mountford collectively here as "NPS."

distant network signals to obtain them from NPS using their existing EchoStar dishes and receivers. Here is one of the graphics from a “Charlie Chat” presentation first aired by EchoStar for its customers on Thursday night, November 30:^{2/}



^{2/} All of the quotations here are transcribed from audio clips from the Charlie Chat or James DeFranco videos described in the text, and emphasis is added in all cases. These audio clips are posted at www.satelliteguys.us/showthread.php?p=737315#poststop, which also includes a summary of the Charlie Chat presentation. Exhibit 6A hereto is a printout from the www.satelliteguys.us web site showing links to several audio recordings from the Charlie Chat and the James DeFranco loop video. (We begin our numbering of exhibits here with 6A because plaintiffs filed Exhibits 1-6 with their initial brief.)

The Court can hear any of these audio recordings from the EchoStar videos by signing up (for free) to the www.satelliteguys.us web site. Plaintiffs have also stored copies of all of these recordings and will be happy to provide them to the Court.

Finally, the EchoStar PowerPoint slide reprinted in text above is likewise taken from the www.satelliteguys.us web site.

During the Charlie Chat presentation, EchoStar CEO Charlie Ergen specifically encourages EchoStar distant-signal customers to look to All-American Direct (*i.e.*, NPS) to continue obtaining distant network signals, using the identical equipment they use to receive EchoStar programming:

“There is a new company, that’s not associated with DISH Network. . . . *They are currently, starting tomorrow, uplinking Atlanta and San Francisco* to qualified DBS customers. *Now, one of the advantages to All-American Direct is that [you] do not need new equipment for the most part to receive the signals from your DISH Network system* The only possible negative is that broadcasters . . . are challenging the right of All-American Direct to actually broadcast that signal to you. . . . *What I would do is have you go to their web site, and contact All-American Direct, it’s www.mydistantnetworks.com, and go to their web site and that’s where the most current information will be about qualifying for distant networks there. . . .* [In later discussing a specific category of distant network subscribers, Mr. Ergen went on:] *All-American is also a possibility for you there, in fact a very good possibility.”*

In answering the first question from a viewer, Mr. Ergen again plugged NPS: “*Your only alternative today really would be to contact the new company [NPS], contact them and see if you do qualify, in fact, for that signal.*” In answering the second question, Mr. Ergen did the same: “*You can reach out to All-American Direct and it’s possible you would qualify there*” In answering the third question from viewers, Mr. Ergen said (to a viewer asking about a waiver): “*The only alternative company who may be able to accept that waiver, again, is All-American Direct. . . .*” In response to still another question, Mr. Ergen said, “your choices are an off-air antenna, lifeline cable, *or All-American Direct*, to contact them to get your channels.” And in response to a question from an EchoStar subscriber who drives an RV, Mr. Ergen made

one final pitch for NPS: “You really have two choices there . . . *[the first is] All-American Direct . . .*”

In a separate video running in a loop on an EchoStar channel, EchoStar executive James DeFranco assures EchoStar distant-signal customers that All-American Direct (*i.e.*, NPS) “may be able to provide you distant ABC, CBS, NBC, or Fox network channels, from Atlanta or San Francisco, *using your existing DISH Network satellite system.*” Mr. DeFranco goes on to tell EchoStar’s distant-signal customers precisely how to get distant network signals on their DISH Network satellite system: “*Just give [All-American Direct] your name and address*, and they will check to see if you are eligible to receive distant network channels from them. To see if you qualify, *you will need to contact All-American Direct, by visiting their web site, at www.mydistantnetworks.com.*”

The public record confirms that the DeFranco pitch to EchoStar customers to sign up for NPS is part of a coordinated plan between EchoStar and NPS. This morning (December 1), *Satellite Business News* published a story based on an interview with NPS’s CEO Mr. Mountford, in which he specifically discusses how the DeFranco video loop will push customers to NPS: “*A continuous loop video directing EchoStar subscribers who lost their distant stations to the NPS web site was slated to begin running last night, Mountford said.*” Jeffrey Williams, *Mountford Details NPS Distant Plans*, *Satellite Business News* (Dec. 1, 2006) at 2 (Exhibit 6B hereto) (emphasis added).

EchoStar’s shell game is outrageous, and it is flagrantly in violation of this Court’s Order. *See Regal Knitwear Co. v. N.L.R.B.*, 324 U.S. 9, 14 (1945) (“[D]efendants may not nullify a decree by carrying out prohibited acts through aiders and abettors, although they were not parties to the original proceeding.”); *Roe v. Operation Rescue*, 54 F.3d 133, 139 (3d Cir. 1995) (“[A]n

instigator of contemptuous conduct may not ‘absolve himself of contempt liability by leaving the physical performance of the forbidden conduct to others.’”) (citations omitted); *Mainstream Marketing Services, Inc. v. FTC*, 284 F.Supp.2d 1266, 1277 (D. Colo. 2003) (“a person enjoined cannot do indirectly through another what it is prohibited from doing directly”).

The Court should therefore issue the requested Order to Show Cause, giving EchoStar and NPS one business day to offer any additional reason they should not be held in contempt. Since EchoStar has failed (despite filling many pages in its Opposition) to rebut any of the dispositive facts, EchoStar and its collaborators will be unable to do any better in responding to an Order to Show Cause. The Court should then hold EchoStar and its collaborators in contempt.^{3/}

If the Court prefers, however, there is another option, set forth in plaintiffs’ motion (filed today) for alternative relief. Although there is no doubt that the Permanent Injunction as written prevents EchoStar’s latest round of gameplaying, the Court can eliminate any conceivable doubt about the matter -- and there is none -- by making the Permanent Injunction even clearer by expressly barring EchoStar from leasing or otherwise making available its satellite facilities for retransmission of distant network stations by third parties to EchoStar customers. The Eleventh Circuit yesterday emphatically upheld this Court’s imposition of the Permanent Injunction against an aggressive attack by EchoStar, and there is no doubt that the Eleventh Circuit will

^{3/} If the Court does not immediately clarify the Permanent Injunction, as discussed below, it should issue a TRO to preserve the status quo pending further proceedings on the matters now before the Court. For the reasons discussed herein, all of the elements needed to enter a TRO are plainly present: likelihood of success on the merits, irreparable injury, the balance of hardships, and the public interest. *Four Seasons Hotels & Resorts, B.V. v. Consorcio Barr S.A.*, 2003 WL 245593 (11th Cir. 2003). A TRO would prevent EchoStar and NPS from radically altering the status quo as hundreds of thousands of consumers -- unwitting participants in a scheme to defy the Court -- sign up for new services with NPS. *See Fernandez-Roque v. Smith*, 671 F.2d 426, 429 (11th Cir. 1982) (TRO “has the effect of . . . preserving the status quo . . .”).

stand squarely behind a prompt clarification designed to preserve the integrity of the Permanent Injunction and to prevent EchoStar from “granting itself” the reprieve that this Court and the Eleventh Circuit have denied. A proposed form of Order is attached at the back of this brief.

**The Undisputed Facts Demonstrate That
EchoStar and NPS Are in Contempt**

The dispositive facts are not subject to reasonable dispute. And they show that EchoStar is acting in concert with NPS to defy the Permanent Injunction. The facts are these:

1. **NPS and EchoStar have repeatedly stated that the purpose of the EchoStar/NPS deal is to provide distant network signals to EchoStar customers who are losing them under this Court’s Permanent Injunction.** EchoStar insults the Court’s intelligence by pretending (at 4-5, 9-10) that its deal with NPS is only slightly, if at all, related to distant signals. That is nonsense, as the Charlie Chat and DeFranco quotes above show. Nor have EchoStar and NPS ever said anything different. Here is what Mr. Mountford, the CEO of NPS, said on Wednesday, November 29, 2006 about the purpose of NPS’s deal with EchoStar:

“We wish to respectfully inform you that National Programming Service, LLC, of Indianapolis Indiana, an independent company in the satellite programming delivery business for some 23 years, and a C-Band Programming distributor, *plans to lease a transponder from Dish Network, that will allow legitimate consumers who are presently slated to be turned off by DISH Network pursuant to a court ordered injunction, to retain their network signals.*”

Letter from Michael Mountford, Exh. 1 to Plaintiffs’ Emergency Motion, at 1 (emphasis added).

NPS has confirmed this in other communications, such as an email to members of Congress on Wednesday, November 29, which begins as follows:

We wish to inform you of an alternative that will allow legitimate consumers *who are presently slated to be turned off by DISH Network pursuant to the court ordered injunction, to retain their distant network signals.*

Email from Mike Mountford (Nov. 29, 2006) (emphasis added) (attached hereto as Exhibit 7).

Further, in his letter to plaintiffs' counsel on Wednesday evening, Mr. Moskowitz said that NPS "approached EchoStar *regarding the possibility of offering distant network channels to DISH Network customers who will lose those services December 1.*" Exh. 2 (Moskowitz email) (emphasis added).

Accordingly, EchoStar's assertions (at 5) that "NPS can use the leased satellite capacity for whatever purpose it desires," and that "NPS has complete control to use the transponder . . . to provide distant network programming or not [to do so]" are utterly disingenuous. EchoStar's and NPS's own words show beyond doubt that EchoStar and NPS are collaborating not for some mysterious, generic reason, but for the specific purpose of emasculating the Permanent Injunction.

2. **EchoStar and NPS entered into a formal contract for NPS to lease satellite transponder space from EchoStar two days before the December 1 cutoff date.** The timing here -- a deal finalized just before the cutoff deadline set by this Court -- further confirms the transparent purpose of the deal.^{4/}

3. **The contract between EchoStar and NPS is overwhelmingly focused on distant network signals.** Further obliterating EchoStar's absurd suggestions in its Opposition, the EchoStar/NPS agreement is brimming with references to distant network signals. The

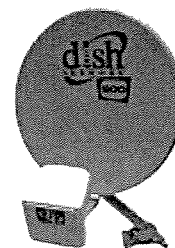
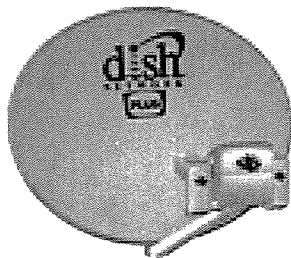
^{4/} EchoStar and NPS postponed making this announcement public until the last minute to try to outfox plaintiffs and the Court. As one EchoStar customer stated yesterday, "Charlie is a great poker player, and pulled out the Royal Flush at the last moment possible." See Exhibit 8 hereto.

provision about NPS's "Use of the Service," for example, uses the defined term "Distant Network Service" no fewer than 16 times. Exhibit 3, ¶ 3.A.

4. **NPS is using an EchoStar satellite to transmit distant signals.** Rather than leasing satellite capacity from an entity that is *not* subject to a court injunction, NPS is leasing a transponder on a satellite owned and operated by EchoStar. Ex. 1 (Letter from Michael Mountford) at 1 ("a transponder we will lease on satellite EchoStar VII").

5. **NPS is using frequencies licensed by the FCC to EchoStar to transmit distant signals.** The frequencies that NPS is leasing on the EchoStar VII satellite are licensed to EchoStar by the Federal Communications Commission. *See In the Matter of EchoStar Satellite Corporation; Application for Minor Modification of Direct Broadcast Satellite Authorization, Launch and Operating Authority for EchoStar 7*, 17 F.C.C.R. 894 (2002) (authorizing launch and operation of EchoStar VII satellite).

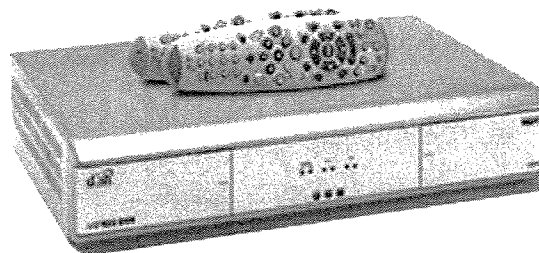
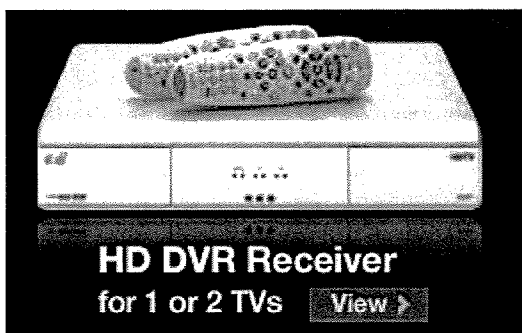
6. **Customers will use satellite antennas (or "dishes") designed and provided by EchoStar -- the same dishes the customers use to receive all other programming from EchoStar -- to receive distant signals from NPS.** To receive EchoStar programming, a consumer must obtain a special dish designed to receive signals from EchoStar's satellites. Here are pictures of two current models of EchoStar dishes:^{5/}



^{5/} See www.solidsignal.tv/cat_display.asp?main_cat=02&CAT=DISH%20Network%20Dishes (attached as Exhibit 9); see also www.radioshack.com/product/index.jsp?productId=2110408&cp=2032057.2032174&parentPage=family&allCount=4&allCount=4&fbn=Brand%2FRCA&fbc=1&parentPage=family (attached as Exhibit 10).

EchoStar's distant signal customers who participate in the evasion scheme concocted by EchoStar and NPS will continue to use their EchoStar dishes -- the same dishes they use to receive all other EchoStar programming. Otherwise, NPS would have to provide all of its distant-signal customers with costly new dishes (and arrange for them to be installed on its customers' homes), just to receive distant network programming. NPS does not and could not claim to have done so. And as quoted above, EchoStar's executive Charlie Ergen and James DeFranco are specifically reassuring their customers that the distant signals offered by NPS can be received *"using your existing DISH Network satellite system,"* and that *"one of the advantages to All-American Direct is that [you] do not need new equipment for the most part to receive the signals from your DISH Network system"*

7. Customers will use set-top boxes designed and provided by EchoStar -- the same set-top boxes they use to process all other programming from EchoStar -- to receive distant signals from NPS. To enable a TV set to display a picture from the signal provided by EchoStar, a consumer must have a receiver (or "set-top box") to decode and process the signal. EchoStar provides its customers with set-top boxes specially engineered by EchoStar to process signals from EchoStar's satellites. Here are examples of EchoStar receivers currently offered on EchoStar's web site:



EchoStar Web site, <www.dishnetwork.com/content/products/receivers/index.shtm> (visited Nov. 30, 2006).

EchoStar consumers who have been receiving distant signals from EchoStar will continue to use their EchoStar receivers to watch distant signals from NPS, just as they do to watch all other programming from EchoStar. Otherwise, NPS would have to provide all of its distant-signal customers with costly new receivers (and arrange for them to be hooked up to the consumers' other equipment), just to receive distant network programming. NPS does not and could not claim to have done so. And again, EchoStar executives Charlie Ergen and James DeFranco are reassuring EchoStar customers that distant signals from NPS (All-American Direct) can be viewed “*using your existing DISH Network satellite system*” and without any “*need [for] new equipment.*”

8. **EchoStar is overtly encouraging its distant-signal subscribers to switch to NPS to obtain distant signals using their existing EchoStar equipment.** Finally, as discussed above, EchoStar is -- with the knowledge and approval of NPS -- engaging in a relentless sales effort to push its distant signal customers to NPS (All-American Direct). As discussed in detail above, EchoStar's pitch focuses on the seamlessness of the transition between:

- **Before:** receiving all of one's TV programming (including distant signals) through one's EchoStar satellite system,
- and
- **After:** receiving all of one's TV programming (including distant signals) through one's EchoStar satellite system -- but with a third party (NPS) sending the bill for the distant signals.

To sum up: the words of EchoStar's own top executives show that *EchoStar is now affirmatively recommending that its customers switch to NPS and telling them they will be able to use their existing EchoStar equipment to view distant signals.*

9. **In none of the other "transponder lease" arrangements that EchoStar cites was there an existing court order barring the satellite company from providing the programming in question.** EchoStar pretends that its last-minute gambit to defeat the Permanent Injunction through a third party is a routine business arrangement, citing other examples in which satellite companies leased capacity to other parties. Opp. at 4 n.2. But in none of those cases was the satellite operator subject to a court order barring it from offering the programming in question, and in none was an express, central purpose of the agreement to evade such a court order. That satellite companies sometimes act in concert with other companies for *benign* purposes does not justify EchoStar's collaboration with NPS for a lawless purpose.

ARGUMENT

A. EchoStar and NPS Are Unquestionably Working Together to Enable NPS to Use EchoStar's Facilities to Thwart the Injunction

As contemplated by Rule 65(d), the Permanent Injunction applies not only to EchoStar but to anyone "in active concert or participation with" it. It is self-evident that NPS is in active concert or participation with EchoStar when (i) it has entered into an agreement to lease satellite capacity and frequencies from EchoStar, (ii) which it uses to transmit programming to EchoStar customers, (iii) which they will receive on their EchoStar satellite dishes and (iv) process with their EchoStar set-top boxes, (v) EchoStar is recommending NPS to its customers, with NPS's knowledge and approval, all (vi) for the acknowledged purpose of doing precisely what EchoStar is barred by the Permanent Injunction from doing.

The conclusion that the Permanent Injunction reaches this sham arrangement is wholly consistent with settled law about the scope of injunctions. See *Regal Knitwear Co. v. N.L.R.B.*, 324 U.S. 9, 14 (1945) (“In essence . . . defendants ***may not nullify a decree by carrying out prohibited acts through aiders and abettors***, although they were not parties to the original proceeding.”); *United States v. Barnette*, 129 F.3d 1179, 1182, n.5 (11th Cir. 1997) (“Nonparties that ***actively aid and abet a party in violating a court order*** may be held in contempt of court.”) (citing *Waffenschmidt v. Mackay*, 763 F.2d 711, 714-17 (5th Cir. 1985)); *Roe v. Operation Rescue*, 54 F.3d 133, 139 (3d Cir. 1995) (“an instigator of contemptuous conduct ***may not ‘absolve himself of contempt liability by leaving the physical performance of the forbidden conduct to others.’***”) (citations omitted); *Alemite Mfg. Corp. v. Staff*, 42 F.2d 832, 832 (2d Cir. 1930) (Hand, L.) (“a person who ***knowingly assists a defendant in violating an injunction*** subjects himself to civil as well as criminal proceedings for contempt. This is well settled law.”); *Mainstream Marketing Services, Inc. v. FTC*, 284 F.Supp.2d 1266, 1277 (D. Colo. 2003) (there is a “substantial body of case law to the effect that ***a person enjoined cannot do indirectly through another what it is prohibited from doing directly***”); *Hexacomb Corp. v. GTW Enterprises, Inc.*, No. 93 C 3107, 1994 WL 171533, *4 (N.D. Ill. May 2, 1994) (“The policy behind extending an injunction to nonparty agents of enjoined defendants is simply to ***prevent defendants from indirectly nullifying a decree by carrying out prohibited acts through aiders and abettors*** or successors in interest.”); *id.* at 4 (defendant violated injunction when it did “***through the back-door, that which it could not do itself as a result of the injunction***”) (emphasis added in all cases).

B. EchoStar's Scheme Would Make a Mockery of the "Pattern or Practice" Remedy

The purpose of the severe, pattern-or-practice remedy in Section 119 of the Copyright Act is to sanction -- and to deter -- egregious, deliberate violations of the Act. The last-minute scam devised by EchoStar would make a joke of the -- until now -- feared pattern-or-practice remedy.^{6/} An intentional nationwide infringer such as EchoStar could, after years of litigation, and faced with the most severe remedy provided by the Act, cheat justice by simply having the same customers receive the same programming using the same satellites, frequencies, satellite dishes, and receivers, but billed to a third party. In short, what EchoStar has called the "death knell" would become a wrist slap.

This would be a travesty. EchoStar has committed one of the most massive -- and premeditated -- copyright infringements in history. The Court of Appeals made these determinations about EchoStar, based on this Court's detailed findings after trial:

- "[W]e have found no indication that EchoStar was ever interested in complying with the Act." *CBS Broad., Inc. v. EchoStar Communications Corp.*, 450 F.3d 505, 526 (11th Cir. 2006).
- "[B]ased on the district court's findings, we seem to have discerned a 'pattern' and 'practice' of violating the Act in every way imaginable." (*Id.*)
- "EchoStar has disregarded the limitations of its statutory license and sought to avoid its obligations under the Act at every turn." (*Id.*)
- "[T]he record demonstrates that EchoStar knew what it was doing and knew it was not in compliance with the Act." (*Id.* at 517 n.22.)

^{6/} EchoStar repeatedly told this Court, and the Court of Appeals, that a pattern-or-practice remedy would cause vast numbers of EchoStar subscribers to lose access to network programming. *E.g.*, EchoStar Motion to Stay (11th Cir. filed Nov. 8, 2006) (Exhibit 11 hereto) ("Many of the over 850,000 subscribers who will lose their distant network programming as a result of the Permanent Injunction have no readily available option for network programming.").

Yet EchoStar now contends that, through an exercise in paper-shuffling, it can laugh at the mandatory “pattern or practice” requirements of the Act, at the Court of Appeals, and at this Court, just as it scoffed at the “unserved household” limitation for the past decade.^{7/} We respectfully ask the Court to halt this transparent sham by issuing a one-day Show Cause Order, and then by promptly holding both EchoStar and its collaborators in contempt.^{8/}

An Alternative: Clarification of the Permanent Injunction

In the alternative, plaintiffs request that the Court clarify the Permanent Injunction by adding a specific prohibition on EchoStar’s leasing or otherwise making available its satellite facilities for retransmission of distant network stations by third parties to EchoStar customers. Although the Permanent Injunction is already perfectly clear on that point, the Court could eliminate any conceivable doubt -- and there is no good faith basis for doubt -- by issuing a revised version of the Injunction that specifically addresses that issue. As the Eleventh Circuit has emphasized, “[i]nherent in the jurisdiction of a court of equity is the power ‘to modify an

^{7/} EchoStar’s reckless claim -- that a satellite carrier can ignore its legal obligations by setting up a third party to “borrow” the carrier’s facilities and serve the same customers -- would destroy another central premise of the 2004 Satellite Home Viewer Extension and Reauthorization Act: the principle of “if local, no distant.” See SHVERA, § 24 (“Replacement of Distant Signals with Local Signals”), Public Law 108-447, 118 Stat. 3416 (2004). Under that principle of SHVERA, a satellite carrier’s ability to offer distant signals in markets with local-to-local is strictly limited. But because a third party such as NPS does not itself offer local signals, the “if local, no distant” principle, like the sweeping pattern-or-practice injunction, would be meaningless in the face of EchoStar’s gameplaying. That is, if NPS’s status as a tool of EchoStar were ignored, NPS would be able to ignore the “if local, no distant” principle in the 170 markets in which EchoStar offers -- and “NPS’s” customers could readily receive -- local-to-local service.

^{8/} EchoStar’s view that law is a sport is perfectly captured in a quotation from Mr. Ergen in today’s issue of *Satellite Business News*: “Let’s get down in the mud and let’s go and let’s have a brawl. We win our fair share of these battles and if not, we have our fun no matter what.” Jeffrey Williams, *Ergen Defends NPS as Shutdown Proceeds*, *Satellite Business News* (Dec. 1, 2006) at 2 (Exhibit 6B hereto).

injunction in adaptation to changed conditions” *Hodge v. Dept. of Housing and Urban Dev., Housing Div., Dade County, Florida*, 862 F.2d 859, 861 (11th Cir.1989) (quoting *United States v. Swift & Co.*, 286 U.S. 106, 114 (1932)); *see also Cook v. The Birmingham News*, 618 F.2d 1149, 1151 (5th Cir. 1980) (“Courts of equity have long recognized and exercised a power to modify . . .their injunctive decrees in the light of changed circumstances.”). The Court can and should use its inherent equitable power to do so.

Conclusion

If NPS (or anyone else) wishes to offer distant network signals to consumers without collaborating with EchoStar -- for example, by offering distant network signals using C-band frequencies -- it is entirely free to do so. But NPS and EchoStar are not free to collaborate to make a sham of the Permanent Injunction by using EchoStar’s satellites, EchoStar’s licensed frequencies, EchoStar dishes, and EchoStar set-top boxes -- all pitched by EchoStar in a targeted sales message to the affected customers -- to deliver to EchoStar customers the very programming that EchoStar is forbidden by this Court’s Permanent Injunction to deliver. The Court should act swiftly and decisively to correct the extraordinary injustice that EchoStar and its allies seek to perpetrate.

Respectfully submitted,

Thomas P. Olson
E-mail: thomas.olson@wilmerhale.com
A. Stephen Hut, Jr.
E-mail: stephen.hut@wilmerhale.com
WILMER CUTLER PICKERING HALE AND DORR
1875 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
Telephone: (202) 663-6000
Facsimile: (202) 663-6363

Counsel for Plaintiffs

Wade H. Hargrove
E-mail: whargrove@brookspierce.com
David Kushner
E-mail: kushner@brookspierce.com
BROOKS, PIERCE, MCLENDON,
HUMPHREY & LEONARD, L.L.P.
1600 Wachovia Capitol Center
150 Fayetteville Street
Raleigh, NC 27601
(919) 839-0300
(919) 839-0304 (fax)

Counsel for ABC Television Affiliates
Association, CBS Television Network
Affiliates Association, FBC Television
Affiliates Association, and NBC Television
Affiliates

Neil K. Roman
E-mail: nroman@cov.com
Gerard J. Waldron
E-mail: gwaldron@cov.com
COVINGTON & BURLING
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2401
(202) 662-6000
(202) 662-6291 (fax)

Counsel for CBS Television Network
Affiliates Association and NBC Television
Affiliates

John F. O'Sullivan, Esq.
E-mail: jfosullivan@hhlaw.com
Hogan & Hartson LLP
Mellon Financial Center
1111 Brickell Avenue, Suite 1900
Miami, FL 33133

Counsel for Fox Broadcasting Co.

/s/David M. Rogero/

David M. Rogero (FL Bar No. 212172)

E-mail: dmrogero@dmrpa.com

DAVID M. ROGERO, P.A.

2600 Douglas Road, Suite 600

Coral Gables, Florida 33134-6100

Phone: (305) 441-0200

Fax: (305) 460-4099

December 1, 2006

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on December 1, 2006, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/David M. Rogero/

SERVICE LIST

CBS Broadcasting Inc. v. EchoStar Communications Corp.

Case No: 98-CIV-DIMITROULEAS / SELTZER

United States District Court, Southern District of Florida

Richard E. Brodsky
E-mail: rbrodsky@ssd.com
SQUIRE SANDERS & DEMPSEY LLP
200 S. Biscayne Blvd., Suite 4000
Miami, FL 33131-2398
Counsel for EchoStar Communications Corp.
By CM/ECF

Cynthia A. Ricketts
E-mail: cricketts@ssd.com
Squire Sanders & Dempsey, L.L.P.
40 North Central Avenue, Suite 2700
Phoenix, AZ 85004
Counsel for EchoStar Communications Corp.
By E-mail/PDF and U.S. Mail

R. Lawrence Bonner
E-mail: lbonner@homerbonner.com
Gregory J. Track
Howard S. Goldfarb
HomerBonner
1200 Four Seasons Tower
1441 Brickell Avenue
Miami, FL 33131
Counsel for National Programming Service LLC and Michael Mountford

Jeff Barron
Todd G. Vare
Barnes & Thornburg, LLP
11 South Meridian Street
Indianapolis, IN 46204-3535
Counsel for National Programming Service LLC and Michael Mountford

Law Offices of John D. Pellegrin, P.C.
E-mail: jp@lawpell.com
10515 Dominion Valley Drive
Fairfax Station, Virginia 22039
(703) 250-1595 (phone)
(703) 250-1597 fax
Counsel for National Programming Service LLC and Michael Mountford

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FT. LAUDERDALE DIVISION**

Case No. 98-2651-CIV-Dimitrouleas/Seltzer

CBS BROADCASTING INC., et al.,)
)
Plaintiffs,)
)
v.)
)
ECHOSTAR COMMUNICATIONS)
CORP., et al.,)
)
Defendants.)
_____)

**[PROPOSED] ORDER GRANTING PLAINTIFFS' ALTERNATIVE
MOTION FOR CLARIFICATION OF THE PERMANENT INJUNCTION**

On the Motion of plaintiffs filed on December 1, 2006,.in consideration of the relevant filings by other parties, and for good cause shown, it is hereby ORDERED that the Permanent Injunction dated October 20, 2006 is hereby CLARIFIED to the following effect: without limiting the generality of the prohibitions contained in the Permanent Injunction, the Injunction bars EchoStar from leasing or otherwise making available its satellite facilities for retransmission of distant network stations by third parties to EchoStar customers.

DONE AND ORDERED this _____ day of December 2006 in Chambers in Fort Lauderdale, Florida.

United States District Judge