

**IN THE UNITED STATES COURT OF APPEALS**

**FOR THE ELEVENTH CIRCUIT**

<p><b>FILED</b>  U.S. COURT OF APPEALS  ELEVENTH CIRCUIT</p> <p>NOV 30 2006</p> <p>THOMAS K. KAHN  CLERK</p>
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No. 06-15875-BB  
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CBS BROADCASTING INC.,  
FOX BROADCASTING COMPANY,  
ET AL.,

Plaintiffs-Counter-Defendants-Appellees,

ABC, INC.,

Plaintiff-Appellee,

versus

ECHOSTAR COMMUNICATIONS CORPORATION,  
d.b.a. DISH Network,  
ECHOSTAR SATELLITE CORPORATION,  
ET AL.,

Defendants-Counter-Claimants-Appellants.

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On Appeal from the United States District Court for the  
Southern District of Florida  
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BEFORE: TJOFLAT and HILL, Circuit Judges, and MILLS,\* District Judge.

BY THE COURT:

Appellants have filed a motion asking this Court to stay the permanent

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\* Honorable Richard H. Mills, United States District Judge for the Central District of Illinois, sitting by designation.

injunction issued by the District Court in compliance with our mandate in No. 03-13671. Alternately, to the extent that this Court finds that the permanent injunction was issued in compliance with our mandate, Appellants ask that we modify our mandate in No. 03-13671 in recognition of post-mandate changes in circumstances, to vacate the permanent injunction and to remand for entry of a limited permanent injunction.

Appellees Fox Broadcasting Company ("Fox") and the Affiliated Associations Plaintiffs ("Plaintiffs") have filed responses to this motion.

In order to obtain a stay pending appeal, Appellants must show that they have a substantial likelihood of success on the merits of this appeal, that they will suffer irreparable harm and that the balance of harms and the public's interest favors a stay. See In re Federal Grand Jury Proceedings, 975 F.2d 1488, 1492 (11th Cir. 1992). This Court has also granted a stay pending appeal upon a showing by the movant of a substantial case on the merits, where the remaining factors weigh heavily in favor of a stay. See Garcia-Mir v. Meese, 781 F.2d 1450, 1453 (11th Cir. 1986).

We find that Appellants have neither a substantial likelihood of success on the merits nor a substantial case on the merits. The permanent injunction issued by the District Court was in full compliance with our mandate. See Litman v.

Mass. Mut. Life Ins. Co., 825 F.2d 1506, 1508 (11<sup>th</sup> Cir. 1987)(en banc). We decline Appellants' request to modify or clarify our mandate in No. 03-13671.

Because we find that Appellants do not have a substantial likelihood of success on the merits nor a substantial case on the merits, we do not discuss the remaining factors in this Order except to note that we find that none of those factors weigh in favor of a stay.

Therefore, Appellants' motion for stay pending appeal and its alternate request to modify our mandate in No. 03-13671 is DENIED.