

**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.)
)
EHOSTAR COMMUNICATIONS)
CORP., et al.,)
)
Defendants.)
_____)

**EMERGENCY MOTION OF ALL PLAINTIFFS FOR ISSUANCE OF
AN ORDER TO SHOW CAUSE WHY EHOSTAR AND TWO PARTIES ACTING
IN CONCERT WITH EHOSTAR SHOULD NOT BE HELD IN CONTEMPT^{1/}**

Plaintiffs bring this Emergency Motion to halt a flagrant contempt of the Permanent Injunction entered by the Court on October 20, 2006.

As the Court knows, the Permanent Injunction sets a December 1 deadline for EchoStar to shut down its delivery of distant network stations. EchoStar asked the Court to postpone that deadline, but the Court declined to do so. Unable to persuade the Court to change its mind, EchoStar has decided to defy the Court.

Instead of doing so directly, however, EchoStar is engaging in the transparent sham of arranging for a third party -- National Programming Service LLC ("NPS"), and its CEO, Michael Mountford -- to do, with enormous technical and other assistance from EchoStar, precisely what the Permanent Injunction prohibits.

^{1/} For simplicity, plaintiffs include their memorandum of points and authorities in this Motion.

EchoStar's scheme with NPS is flatly barred by the Permanent Injunction. As contemplated by Fed. R. Civ. P. 65(d), the Permanent Injunction applies not only to EchoStar, but to all "persons in active concert or participation with" EchoStar. Thus, the actions of EchoStar, NPS, and its CEO (Mr. Mountford) are all in violation of the Permanent Injunction.

Plaintiffs have demanded that EchoStar, NPS, and Mr. Mountford cease and desist this flagrant contempt, but they have refused to comply. Plaintiffs have therefore been forced to file this motion to halt EchoStar's (and its confederates') planned defiance of this Court's authority.


DISCUSSION

On October 20, 2006, this Court entered a Permanent Injunction. The operative language of the Permanent Injunction is as follows:

ORDERED, ADJUDGED AND DECREED that, effective December 1, 2006,

Defendants Echostar Communications Corporation (d/b/a DISH Network), EchoStar Satellite Corporation, Satellite Communications Operating Corporation and DirectSat Corporation (collectively "Echostar"), their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with Echostar are hereby **PERMANENTLY ENJOINED AND RESTRAINED** from the secondary transmission, pursuant to the statutory license set forth in Section 119, Title 17, United States Code, of a performance or display of a word embodied in a primary transmission of any network station affiliated with ABC, Inc., CBS Broadcasting, Inc., Fox Broadcasting Company, or National Broadcasting Co. For the purposes of this permanent injunction, the terms "secondary transmission," "primary transmission," "primary network station," and "network station" shall have the meanings given those terms in Section 119, Title 17, United States Code.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 20th day of October, 2006.


WILLIAM P. DIMITROULEAS
United States District Judge

By order dated November 20, 2006, the Court denied EchoStar's motion to postpone the December 1 deadline set forth in the Permanent Injunction.

Instead of complying with the utterly clear requirements of the Permanent Injunction, however, EchoStar has decided to enter into a scheme with two third parties -- NPS and its CEO Mr. Mountford -- to defy it. The scheme is laid out in detail in a letter from Mr. Mountford to counsel for plaintiffs (Exhibit 1 hereto), an email from Mr. Moskowitz to counsel for plaintiffs (Exhibit 2 hereto), and a written contract between EchoStar and NPS (Exhibit 3 hereto).^{2/}

The scheme is simple: *EchoStar is leasing transponders on its satellites to NPS to enable NPS to deliver distant network signals to "consumers who are presently slated to be turned off by DISH Network pursuant to a court ordered injunction."* Exh. 1 (Letter from NPS) at 1. In other words, under this scheme, EchoStar customers will continue to be able to receive distant network signals, delivered by satellites owned by EchoStar, using satellite frequencies licensed by the FCC to EchoStar, and using satellite dishes provided by EchoStar.

The Permanent Injunction covers all persons "in active concert or participation with" EchoStar. A party that has entered into a written contract to use EchoStar's satellites, EchoStar's licensed frequencies, and EchoStar-supplied satellite dishes to do precisely what EchoStar may not do is plainly "in active concert or participation with" EchoStar. EchoStar's leasing of its own satellite capacity and licensed frequencies for the avowed purpose of enabling delivery of distant network signals to its own customers is an act of contempt, as is the active participation by NPS and Mr. Mountford in this flagrantly contumacious scheme.

^{2/} EchoStar has also issued a press release about NPS's leasing of EchoStar's satellite capacity (Exhibit 4 hereto), although the press release does not disclose that NPS will use the capacity to deliver distant network signals.

EchoStar, NPS, and Mr. Mountford are fully on notice of the requirements of the Permanent Injunction. EchoStar has had a copy since October 20, and NPS and Mr. Mountford have almost certainly had a copy for weeks. To eliminate any doubt about the matter, counsel for plaintiffs sent Mr. Mountford another copy today. *See* Exhibit 5 hereto.

By letter today (Exhibit 6 hereto), plaintiffs have demanded that EchoStar, Mr. Mountford, and NPS halt this flagrant scheme. As of this writing, plaintiffs have received no response.

Accordingly, plaintiffs request that the Court enter the enclosed Order to Show Cause. Because the deadline for EchoStar's cessation of distant network service is Friday, December 1, 2006, plaintiffs request that the Court require EchoStar and its allies to file their response no later than 9 a.m. on December 1.

Respectfully submitted,

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November 29, 2006

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on November 29, 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.

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United States District Court, Southern District of Florida

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**[PROPOSED] ORDER TO SHOW CAUSE WHY ECHOSTAR AND TWO PARTIES
ACTING IN CONCERT WITH ECHOSTAR SHOULD NOT BE HELD IN CONTEMPT**

On the Emergency Motion of Plaintiffs filed electronically on November 29, 2006,. And for good cause shown, it is hereby ORDERED that EchoStar, National Programming Service LLC, and Michael Mountford shall show cause, no later than 9 a.m. on December 1, 2006, why they should not be held in contempt of the Permanent Injunction entered by this Court on October 20, 2006.

DONE AND ORDERED this 30th day of November 2006 in Chambers in Fort Lauderdale, Florida.

United States District Judge