

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 98-2651-CIV-DIMITROULEAS

CBS BROADCASTING, INC. et al.,

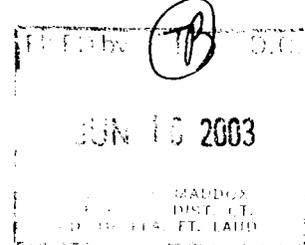
Plaintiffs,

vs.

ECHOSTAR COMMUNICATIONS
CORPORATION, et al.,

Defendants.

Magistrate Judge Seltzer



FINAL JUDGMENT FOR PLAINTIFFS

THIS CAUSE is before the Court upon the non-jury trial on April 11, 14, 15, 16, 17, 21, 22, 23, 24, and 25, 2003. For the reasons expressed in this Court's Findings of Fact and Conclusions of Law, separately entered today, it is **ORDERED AND ADJUDGED** as follows:

1. EchoStar's Motion for Judgment Pursuant to Rule 52(c) of the Federal Rules of Civil Procedure [DE 807] is hereby **DENIED**;
2. EchoStar's Sealed Request for Declaratory Ruling is hereby **DENIED**;
3. Judgment is hereby entered in favor of the plaintiffs, CBS Broadcasting, Inc., Fox Broadcasting, Inc., ABC Television Affiliates Association, CBS Television Network Affiliates Association, FBC Television Affiliates Association and NBC Television Affiliates Association, and against the defendants, EchoStar Communications Corp., EchoStar Satellite Corp., Satellite Communications Operating Corp. and DirectSat Corp., on Plaintiffs' Complaint for copyright infringement;
4. Judgment is hereby entered in favor of counter-defendants, CBS Broadcasting, Inc., Fox

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Broadcasting, Inc., ABC Television Affiliates Association, CBS Television Network Affiliates Association, FBC Television Affiliates Association and NBC Television Affiliates Association, and against counter-plaintiffs, EchoStar Communications Corp., EchoStar Satellite Corp., Satellite Communications Operating Corp. and DirectSat Corp., on Count I for declaratory relief of Defendants' counterclaim brought in this case;

5. ILLR analysis of current subscriber list. For the purposes of this Order, EchoStar shall run each of its distant network subscribers, as of the date of this Order, through the ILLR propagation model. In running this ILLR analysis and any future ILLR analyses of potential subscribers, EchoStar is prohibited from applying the "DMA rule" and using interference; similarly, EchoStar must chose one vendor to run all ILLR analyses of its subscribers, including the analysis for the purposes of this Order.
6. Compliance with the Copyright Act. EchoStar shall not deliver ABC, CBS, Fox, or NBC television network programming to any customer that does not live in an "unserved household" as defined in 17 U.S.C. § 119(d)(10), to any business or to any customer for other than "private home viewing," unless permitted to do so pursuant to a specific exception provided for in 17 U.S.C. § 119 which does not conflict with this Order. EchoStar shall also strictly comply with the monthly reporting requirements of 17 U.S.C. § 119(a)(2)(C).
7. To ensure compliance with this Order, EchoStar shall not provide ABC, CBS, Fox, or NBC network programming by satellite to:
 - a. Any customer predicted by the ILLR propagation model, run for the purposes of this Order in the manner specified in Paragraph 5, to be served by an ABC, CBS,

Fox or NBC primary network station, without first either (i) obtaining the written consent of the affected station(s) as described in Paragraph 8 below, or (ii) providing the affected station(s) with copies of signal strength intensity tests showing that the household cannot receive an over-the-air signal of grade B intensity as defined by the FCC from any station of the relevant network, as described in Paragraph 9 below.

b. Any business or other non-household entity.

8. Waivers. If EchoStar wishes to provide ABC, CBS, Fox or NBC programming to a particular household by written consent, it must obtain and maintain records of such consent from each affected station. With respect to a particular household, the term “affected station” shall mean any television station of the relevant network that is predicted by the ILLR model, run for purposes of this Order, to serve the household. If EchoStar contends that it is serving a particular subscriber through written consent of the affected stations it shall so indicate on any subscriber list provided to any plaintiff pursuant to Section 119, and provide any affected station on request, within 10 business days, with a copy of such written consent.
9. Signal intensity test procedures. Before conducting any signal intensity test for purposes of establishing that a household cannot receive an over-the-air signal of Grade B intensity with a conventional outdoor rooftop receiving antenna, EchoStar shall give each affected station (as defined in Paragraph 8) at least 15 business days written advance notice of its intention to conduct the test and of the time and place at which the test will be conducted, along with any instructions, chart, form or other documents that EchoStar or its designee

intends to use in carrying out or recording such test. For purposes of determining eligibility under this paragraph, the signal of each affected station must be tested. EchoStar shall not provide ABC, CBS, Fox or NBC network programming to any subscriber otherwise ineligible to receive such programming under this Order based on any signal intensity test that has not been conducted in accordance with the requirements set forth in this Paragraph. EchoStar shall not represent to any person that any signal intensity test conducted other than in compliance with this Paragraph enables it to provide network programming to any person.

10. Testing by stations. With respect to households predicted by the ILLR model as not likely to receive a signal of Grade B intensity: if an ABC, CBS, Fox or NBC network station, after giving 15 business days written advance notice to EchoStar of its intention to conduct a test and of the time and place at which the test will be conducted, conducts a signal strength test in the manner described in Paragraph 9 showing that the household can receive a signal of Grade B intensity, EchoStar shall terminate service of the pertinent network to the affected subscriber with 60 days of receiving the test results.
11. Termination of service to existing subscribers predicted to receive Grade B or better signals. With respect to any EchoStar subscriber to whom EchoStar delivered ABC, CBS, Fox or NBC network programming by satellite as of the date of this Order and who is predicted by the ILLR model to receive a signal of Grade B intensity or better from at least one station of the relevant network, EchoStar shall come into compliance with Paragraphs 6 and 7 above no later than August 11, 2003.
12. EchoStar subscribers are no longer entitled to grandfather status pursuant to 42 U.S.C. §

119(e) due to EchoStar's failure to create a list of subscribers receiving distant network programming on October 31, 1999. Because no such list exists, it is impossible to determine which subscribers are properly receiving grandfather status.

13. Provision of post-turnoff subscriber lists. For purposes of monitoring EchoStar's compliance with this Final Judgment and Permanent Injunction, EchoStar shall provide ABC, CBS, Fox and NBC, no later than November 14, 2003, with a list, in standard electronic format, of the names and street addresses, including county and zip code, along with predicted dBu levels using the ILLR model, of each subscriber to whom EchoStar provides programming of that network as of October 1, 2003. For any subscriber pursuant to Paragraph 8 (waivers) and Paragraph 9 (signal intensity testing), EchoStar shall so indicate on the list and thereafter provide necessary documentation within 10 days after receiving a request by an affected station. These lists shall be used for the sole purpose of determining EchoStar's compliance with this Final Judgment and Permanent Injunction and/or determining whether to grant consent to delivery of network programming to the listed subscribers.
14. Compliance reporting. EchoStar shall file and serve on Plaintiffs an initial report, within 15 days of the entry of this Final Judgment and Permanent Injunction, setting forth in detail the manner in which EchoStar is complying with this Final Judgment and Permanent Injunction. EchoStar shall file and serve similar compliance reports, containing updated information, on the first day of every other month thereafter until June 1, 2006, or such other time as the Court may hereafter order.
15. Local-to-local re-transmissions. Nothing in this Final Judgment and Permanent

Injunction shall prevent EchoStar from engaging in otherwise lawful secondary transmissions of a network station to customers in that station's local market (as defined in 17 U.S.C. § 122(j)). EchoStar shall provide each network (separately as to each station carried) with accurate subscriber names and addresses pursuant to 17 U.S.C. § 122(b) of all subscribers receiving local-to-local re-transmissions of network stations affiliated with that network, and shall not accept subscriber names or addresses that it has reason to believe have been falsified to make the customer appear eligible to receive network programming by satellite on a local-to-local basis.

16. RV and commercial truck exception. Notwithstanding any other provision of this Final Judgment and Permanent Injunction, EchoStar shall not be prohibited by this Order from re-transmitting an ABC, CBS, Fox or NBC network station to a recreational vehicle or commercial truck (as defined by 17 U.S.C. § 119(d)(11)) as to which EchoStar has strictly complied with the requirements of Section 119(d)(11). EchoStar shall not re-transmit a network station to any person based on information or documentation that it has reason to believe has been falsified to make the customer appear eligible to receive network programming pursuant to Section 119(d)(11).
17. Persons bound. This Final Judgment and Permanent Injunction shall be binding on each of the EchoStar defendants, their officers, agents, servants, employees and attorneys, and on all those in active concert or participation with them who receive actual notice of this order by personal service or otherwise.
18. Any pending motions are denied as moot;
19. The Clerk shall close this case, however, the Court retains jurisdiction to hear any

appropriate post-judgment motions.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida,

this 10 day of June, 2003.


WILLIAM P. DIMITROFF
United States District Judge

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