

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
HONORABLE DAVID O. CARTER, JUDGE PRESIDING

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ECHOSTAR SATELLITE)	
CORPORATION, et al.,)	
)	
Plaintiffs,)	
)	
vs.)	No. SACV 03-0950-DOC
)	
NDS GROUP PLC, et al.,)	
)	Day 7, Volume I
Defendants.)	
_____)	***Draft Copy***

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Jury Trial

Santa Ana, California

Friday, April 18, 2008

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Federal Official Court Reporter
United States District Court
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I N D E X

EXAMINATION

Witness Name	Direct	Cross	Redirect	Recross
ORBAN, PAUL				
By Ms. Willetts			4, 37	
By Mr. Stone				14, 38
MENARD, ALLEN (Video)				
By Mr. Hagan	40			
By Mr. Stone	**			
GUGGENHEIM, ALAN				
By Mr. Hagan	**			

EXHIBITS

Exhibit	Identification	Evidence
Defendants' No. 366		**
Defendants' No. 391		**
Defendants' No. 1585		22
Defendants' No. 1593		34
Plaintiffs' No. 2013		7
Plaintiffs' No. 2014		8
Plaintiffs' No. 2015		10
Plaintiffs' No. 2016		10

1 SANTA ANA, CALIFORNIA, FRIDAY, APRIL 18, 2008

2 DAY 7 - VOLUME I

3 (8:01 a.m.)

4 (The following proceedings is taken in the
5 presence of the jury.)

6 THE COURT: Morning.

7 THE WITNESS: Good morning.

8 THE COURT: Sir, if you'd please retake the stand.

9 PAUL ORBAN, PLAINTIFFS' WITNESS, RESUMED

10 THE COURT: Mr. Orban has returned to the witness
11 stand.

12 And Counsel, thank you very much for your
13 courtesy.

14 And Counsel, if you'd like to begin this morning
15 with questions on behalf of EchoStar.

16 MS. WILLETTS: Thank you, your Honor. It's
17 Christine Willetts for Plaintiffs EchoStar and NagraStar.

18 REDIRECT EXAMINATION (Continued.)

19 BY MS. WILLETTS:

20 Q Good morning, Mr. Orban. Thank you for rejoining us
21 today.

22 I want to first focus your attention on an exhibit we
23 talked about yesterday, Exhibit 402.

24 Do you have that?

25 A Yes.

1 Q And I just want to make sure that -- that the jury is
2 clear on exactly what we are calculating here in
3 Exhibit 402. We have a list of subscriptions. Can -- can
4 you explain for the jury how you got to the total
5 subscription cost in the first subsection.

6 A The 1,942 number?

7 Q Correct.

8 A Yes, what that is, if -- if the box is pirated, all
9 programming that we transmit is -- is able to be viewed by
10 the -- the pirate. So what we did is we took some of the
11 more common packages that people would see, which would be
12 America's Everything Packet, \$75, essentially, and
13 multiplied it times 12 to get an annual cost of \$900 in that
14 case, and we did it for all of the services that are shown
15 in that table.

16 Q So these are all the package that they would have been
17 available to see but they were not paying for --

18 A Correct.

19 Q -- is that correct?

20 A Correct.

21 Q And you are not purporting that this is, in fact,
22 actually what they're -- what one of the pirates is viewing;
23 is that correct?

24 A No, we -- we don't know what they actually viewed.

25 Q Because the pirates don't call in and tell you what

1 they're doing, right?

2 A No, they -- they clearly don't call us and tell us.

3 Q So just to be certain in the jury's mind, Exhibit 402,
4 the piracy cost calculation, that's a calculation of the
5 value of services that are actually being pirated, the
6 potential --

7 A Yes.

8 Q Now, Mr. Stone questioned you yesterday about a
9 purchase order for the card swap, cards that were exchanged
10 out, and he questioned you about one that was from
11 NagraStar. Do you have that exhibit in front of you?

12 A Would that be Exhibit 1584?

13 Q That is correct.

14 And I think that you had testified that the -- that the
15 "C" at the bottom of Exhibit 1584, that you thought that may
16 have been Charlie Ergen's signature?

17 A Yes.

18 Q If you'll turn to page 2 of 1584 and look at the
19 bottom, do you know whose signature is down on -- at the
20 bottom of that purchase order?

21 A Yeah, I was incorrect. That's Alan Guggenheim, there,
22 and on the front page, that's an "A" and a "G" put together
23 that sort of looks like a "C."

24 Q So that's consistent with this being a NagraStar
25 invoice, because Mr. Guggenheim was the CEO at the time?

1 A Yes.

2 Q I going to show you what we have labeled Exhibit 2013.

3 Can you get that to the witness.

4 Can you tell us what Exhibit 2013 is.

5 A Exhibit 2013 is EchoStar's PO to NagraStar for the
6 4 million cards that we just talked about on Exhibit 1584.

7 So EchoStar gives NagraStar PO for 4 million, and then
8 NagraStar has to give Nagra, who makes the cards, a PO, so
9 this is the first PO in that chain.

10 MS. WILLETTS: And your Honor, at this time,
11 plaintiffs would offer Exhibit 2030 into evidence.

12 THE COURT: Any objection?

13 MR. STONE: Is it 2013 or 2030?

14 MS. WILLETTS: 2013, I'm sorry.

15 MR. STONE: No objection.

16 THE COURT: Received.

17 (Plaintiffs' Exhibit No. 2013 is received in
18 evidence.)

19 BY MS. WILLETTS:

20 Q If we look up in the upper right-hand corner of
21 Exhibit 2013, what is the date on this purchase order?

22 A January 5th, 2004.

23 Q And you said this was a purchase order for 4 million
24 cards, and is that found on page 3?

25 A Yes, at the -- at the middle of the page.

1 Q And what is the price that EchoStar paid for those
2 cards?

3 A It's \$7.50.

4 Q And how does that total out for this purchase order?

5 A It's \$30 million.

6 Q Now, there are additional purchase orders; is that
7 correct, Mr. Orban?

8 A Yes.

9 Q Okay. I want to show you what we have marked as
10 Exhibit 2014.

11 Can you identify Exhibit 2014, please.

12 A Yes, that's another PO for the swap cards from EchoStar
13 to NagraStar.

14 MS. WILLETTS: Your Honor, at this time, we'd like
15 to offer Exhibit 2014 into evidence.

16 THE COURT: Any objection?

17 MR. STONE: No, your Honor.

18 THE COURT: Received.

19 (Plaintiffs' Exhibit No. 2014 is received
20 into evidence.)

21 BY MS. WILLETTS:

22 Q And can you tell us the date of this purchase order
23 that's identified, here, in Exhibit 2014?

24 A Yes, it's January 20th, 2004.

25 Q And how many cards being purchased are reflected in

1 Exhibit 2014?

2 A As it shows at the bottom of the PO, there, on page 1,
3 there were 11,000 swap cards on this PO.

4 Q Is it the same price that EchoStar paid on the -- on
5 the previous PO?

6 A Yes, it's \$7.50.

7 Q And what is the total amount that was paid in
8 connection with this purchase order by EchoStar?

9 A \$82,500.

10 Q I'd like to direct your attention now to Exhibit 2015.
11 Mr. Orban, can you identify Exhibit 2015 for the jury.

12 A Yes, this is another PO dated January 15th, 2005, for
13 4 million more swap cards at \$7.50.

14 MS. WILLETTS: Your Honor, we'd like to --
15 plaintiffs would offer Exhibit 2015 into evidence.

16 THE COURT: Any objection?

17 MR. STONE: I just need a clarification on the
18 date of that one, please.

19 MS. WILLETTS: January 15th, 2005.

20 THE COURT: Any objection?

21 MR. STONE: I don't believe we have a copy. I
22 have no objection, but if I can get a copy at some point.

23 THE COURT: You have a copy. Those were given out
24 last evening. In fact, the Court xeroxed them.

25 MR. STONE: Thank you, your Honor.

1 THE COURT: All right. Thank you.

2 Received.

3 (Plaintiffs' Exhibit No. 2015 is received
4 into evidence.)

5 BY MS. WILLETTS:

6 Q And I believe you said this is another PO for another
7 4 million cards; is that correct?

8 A Correct, another 4 million swap cards at \$7.50.

9 Q For -- what is the total amount that EchoStar paid in
10 connection with this purchase order?

11 A \$30 million.

12 Q I'll direct your attention to one more PO, and it's
13 Exhibit 2016.

14 Can you identify Exhibit 2016 for the jury.

15 A Yes, this is a -- another PO from EchoStar to NagraStar
16 dated April 8th, 2005 for 700,000 swap cards at \$7.50 each.

17 MS. WILLETTS: Your Honor, plaintiffs offer
18 Exhibit 2016 into evidence.

19 THE COURT: Any objection?

20 MR. STONE: No objection.

21 And that's April 8th?

22 THE COURT: Received.

23 (Plaintiffs' Exhibit No. 2016 is received
24 into evidence.)

25 MS. WILLETTS: Correct.

1 THE COURT: April 8th, 2005.

2 MR. STONE: Thank you.

3 BY MS. WILLETTS:

4 Q And can you tell the jury how much EchoStar paid,
5 total, in connection with the April 8th, 2005 purchase order
6 that's reflected in Exhibit 2016.

7 A Yes, it's \$5,250,000.

8 THE COURT: What was the rate per card?

9 THE WITNESS: \$7.50.

10 BY MS. WILLETTS:

11 Q So the card swap, the number of cards that's reflected
12 in Exhibit 406 that we talked about yesterday, the damage
13 summary, the purchase orders that we just discussed, the
14 four purchase orders, those reflect the total number of --
15 in the card swap that we discussed yesterday; is that
16 correct, Mr. Orban?

17 A Yes, these were the POs that we put in place to support
18 the swap.

19 Q I want to talk to you a little bit about what Mr. --
20 Mr. Stone referred to yesterday. I believe it was
21 Exhibit 1585-A. Do you have that exhibit in front of you?

22 A Yes.

23 Q And I believe that you said that this was more likely
24 than not a draft of the final damage summary that EchoStar
25 prepared?

1 A Yeah, to be clear, I have not seen this before, but it
2 appears to be a draft of the -- the damage summary.

3 Q And is that something typical that your accounting
4 department would do, is prepare drafts before preparing a
5 final version of -- of any accounting documentation?

6 A Yes, depending on what we're producing, there's
7 multiple drafts before I review and approve the final
8 version. And in fact, I may look at three or four versions
9 myself before, you know, I approve it, and there might have
10 been who knows how many drafts before I got it, even.

11 Q And if we'll look back at Exhibit 406, the damage
12 summary we discussed yesterday --

13 THE COURT: 15 -- what's the number?

14 MS. WILLETTS: 406, your Honor.

15 MR. WELCH: It's 406, your Honor.

16 THE COURT: Thank you.

17 BY MS. WILLETTS:

18 Q And we discussed on page 5 in Exhibit 406, and that
19 reflects the total damages that -- that your accounting
20 department came up with in connection with the card swap,
21 correct?

22 A Yes.

23 Q What did you --

24 THE COURT: Just a moment, Counsel.

25 Please continue, please continue.

1 BY MS. WILLETTS:

2 Q So we've talked about the -- the number of cards that
3 are exchanged and that those were reflected in the purchase
4 orders we just discussed. How did you derive or come up
5 with the other lines that are reflected on page 5 of
6 Exhibit 406?

7 A Well, like I described yesterday, in anticipation of
8 the swap, we put in -- things in place in our accounting
9 system to help track the costs that we incurred to do the
10 swap. And as costs were incurred, they were recorded to our
11 general ledger, which then ends up in our financial
12 statements.

13 In the case of this, what I did to verify all of the
14 EchoStar numbers, not the -- the IT or the engineering cost
15 numbers, because we received those from NagraStar, I
16 literally personally reviewed every calculation and saw how
17 it reconciled into our general ledger, which is part of our
18 audited financial statements that our auditors audit.

19 Q So in your mind -- withdrawn.

20 So how are you satisfied that Exhibit 406, the damage
21 summary that we're -- that's been reviewed here by the jury,
22 how are you satisfied that that's a final and accurate
23 number?

24 A Well, I'm satisfied, because I've literally reviewed it
25 and reconciled it to what's in our general ledger, which are

1 financial statements, which is our -- our -- you know, which
2 go into our 10-Qs and 10-Ks, and then are audited by our
3 auditors. So it's -- it's generally reflecting what our
4 expense was.

5 MS. WILLETTS: Pass the witness, your Honor.

6 THE COURT: Excuse me. Thank you.

7 Mr. Stone on cross-examination.

8 MR. STONE: Thank you, your Honor.

9 RE CROSS EXAMINATION

10 BY MR. STONE:

11 Q Good morning, Mr. Orban.

12 A Good morning.

13 Q If we could start off, first, and take a second and
14 look at Exhibit 402, please.

15 And looking at these various subscription services and
16 pay-per-view packages, can you tell us how many hours of
17 programming per day this represents?

18 A These would be services that were available all day
19 long in the top part section for the \$1,942. Those channels
20 are up 24 hours a day.

21 Q Well, I take it you can't watch Ecstasy and Playboy at
22 the same time, right?

23 A Correct, but you can switch between them all throughout
24 the day.

25 Q Well, how much total hours of programming are

1 represented by these monthly costs per day; do you know?

2 A Again, each one of those channels are up full-time, so
3 you can switch back and forth between them.

4 Q But this would represent more than 24 hours of
5 programming each day, correct?

6 A Yes. However, when someone orders a package from us,
7 whether they watch it one minute or 24 hours a day, they
8 have to pay the same price.

9 Q You can't watch two different movies at the same time
10 on your service, correct?

11 A If you have a DVR, yes, you can.

12 Q And is that revenue accounted for in the average
13 revenue per unit?

14 A Yes.

15 Q And that -- what's the average of that, again?

16 A Of ARPU for what period?

17 Q For 2001.

18 A ARPU was \$49.63 for 2001.

19 Q And that's the average of all subscribers and how much
20 they order on a monthly basis?

21 A Yes.

22 Q And this document, Exhibit 402, doesn't take into
23 account any costs of the programming, does it?

24 A No, it does not.

25 Q Okay. Now, let's go to Exhibit 406, page 5, I think it

1 is.

2 Okay. If you go to the top third of the page under
3 "subscriber equipment."

4 A Yes.

5 Q I know it's a little hard to read. It says
6 "replacement of able boxes," correct?

7 A Yes.

8 Q And those would be the set-top boxes that are on top of
9 the TV?

10 A It would be one of the models that we have, yes.

11 Q And those were replaced for what reason?

12 A The able boxes did not have enough memory, flash or RAM
13 memory, to be able to support the card swap, so in order to
14 secure the system, we literally had to replace that version
15 of set-top boxes.

16 Q So those boxes were obsolete at that point in time?

17 A They would be when we perform the swap, yes.

18 Q And so those boxes were upgraded, correct?

19 A Yes.

20 Q And did they have additional functionality that
21 EchoStar wanted?

22 A I believe we gave them the -- the -- a newer generation
23 box that had the same low-level or the baseline
24 functionality that our baseline receiver has.

25 Q Did it have any additional functionality beyond the

1 prior boxes?

2 A I don't believe it did.

3 Q And turning -- I'm sorry.

4 Turning back to the column that says "other direct
5 costs."

6 A Yes.

7 Q And am I correct, the only support for the
8 approximately 10 million or 9.5 million, I guess, of direct
9 costs is the printout that's attached to Exhibit 406?

10 A Yes, that's the support we gave.

11 Q So there are no underlying invoices; is that correct?

12 A This is a detail printout of our general ledger system
13 of the invoices that were paid. We could pull actual
14 invoices if you'd like for each one of those.

15 Q And do you know who made the decision that a particular
16 cost was related to the card swap?

17 A Like I stated earlier, I put in place coding and a
18 process in place that we could quantify all these costs. So
19 what I did is I only gave certain people in our organization
20 authority or signing authority over certain accounts so we
21 could restrict who could code things to this account. So
22 there was a handful of people, and it was only the people
23 working on the swap that could code to this account, so we
24 quantified it.

25 On top of it, my team went through and literally looked

1 at every invoice to make sure it was a swap related cost,
2 and if things were not included, they were taken out of
3 the --

4 Q And who was it who made that -- I'm sorry, who was it
5 who made that decision?

6 A That made what decision?

7 Q That a particular code belonged in the card swap
8 category.

9 A I looked at some, my team. We would review everything
10 on a monthly basis when we closed the books.

11 Q Was there any particular person on your team whose job
12 it was to determine whether a particular cost should be
13 coded for the card swap?

14 A There would have been a few different people, a few
15 different people do it. Barbara Alec (phonetic) and
16 probably Kristen Arnold (phonetic) did the majority of it.

17 Q And do you recall which ROM cards were to be used in
18 the new set-top boxes?

19 A In the new set-top boxes --

20 Q Correct.

21 A -- what do you mean by that?

22 Q Well, which cards worked in the able boxes; do you
23 recall?

24 A I'm not sure what -- it -- it would have been a -- one
25 of the pirated cards clearly were the ones that worked in

1 the able boxes.

2 Q Did the ROM 10 card work in the able box?

3 A I am not quite sure what the ROM 10 card is. If it --
4 if it was a swap card, no, it did not.

5 Q Was the ROM 10 card pirated as of 2001?

6 A I don't know what the ROM card is, so I can't answer
7 that.

8 Q All right. So you don't have any idea which ROM cards
9 could work in those able boxes; is that a fair statement?

10 A That -- that is a fair statement.

11 Q Now, if we could go back to Exhibit 1585-A, please.

12 Now, it's your testimony this was a draft?

13 A Like I stated earlier, I am not quite sure. I've never
14 seen this before. As it appears to have some of the same
15 descriptions and numbers of the final document, my
16 assumption, and again, it's my guess, that it was probably a
17 draft.

18 Q Well, on this document underneath "capital investment,"
19 it has a column "construction for the room." It's about the
20 top third of the page. There's an amount of 100,000 next to
21 it.

22 A Yes.

23 Q And it says "somewhat of a guess," correct?

24 A That's what this document says, yes.

25 Q And because it was somewhat of a guess, there are no

1 invoices relating to the room; is that correct?

2 A No.

3 Q And are those invoices attached to Exhibit 406?

4 A The actual invoices are not attached to 406. However,
5 if you'd like, I -- I'm more than able to get the -- the
6 invoices out of our fixed assets system that tied to the
7 hundred thousand dollars.

8 Q Now, where it says "IT costs, 2 million, complete
9 guess," do you know who was in charge of determining the IT
10 costs?

11 A Like I stated earlier, the IT costs and the engineering
12 costs that are on Exhibit 406, I believe 406, we received
13 those from the NagraStar accounting department.

14 Q And do you know who -- who in particular was in charge
15 of determining those IT costs?

16 A I believe Theresa Barnhard (phonetic) at NagraStar
17 prepared those.

18 Q And under "fulfillment costs," it says "\$740,000."
19 Would that be based on payroll records?

20 A Again, this is a draft. I know in Exhibit 406, that I
21 reviewed and approved, the rates that are used for the
22 salaries were based on us taking a look at the departmental
23 cost for the fulfillment group that was preparing this, and
24 on average, the rates were for the -- depending on whether
25 it was an employer or a manager, the rates were

1 approximately \$25,000 and 60,000.

2 Q Now, the 600,000 in IT support that's about in the
3 middle of the page, is that somewhat of a guess, or is that
4 part of the "complete guess" column; do you know?

5 A Again, sir, I have not seen this. The -- in
6 Exhibit 406, the IT costs of 600,000 was provided to us by
7 the NagraStar accounting department.

8 Q Now, if you go down to the bottom of the page of
9 1585-A, there is a Bates stamp number or production number.
10 And this copy's -- this document is a bit hard to read,
11 as you can see. Are you aware that we asked for a better
12 copy of this document?

13 A I have never seen this before, so no, I'm not aware of
14 that.

15 Q Okay. Well, if you could look at Exhibit 1585, please.
16 And this is entitled "Analysis of EchoStar damages,"
17 correct?

18 A That's what the title says, yes.

19 Q And this is something the folks in your department
20 would have prepared?

21 A Again, I'm not sure. I know that with Exhibit 406,
22 page 5, that's what my people prepared and I reviewed and
23 tied to our general ledger.

24 MR. STONE: Okay. Your Honor, I would move 1585
25 at this time.

1 THE COURT: Any objection?

2 MS. WILLETTS: No objection, your Honor.

3 THE COURT: Received.

4 (Defendants' Exhibit No. 1585 is received
5 into evidence.)

6 BY MR. STONE:

7 Q Looking at 1585, it looks like it has the same columns
8 as we saw on the version that was difficult to read, 1585-A,
9 correct?

10 A It would appear to be similar.

11 Q And if you go down to the -- the bottom of the page at
12 1585, there should be a production number.

13 And then if we could split screen with 1585-A, if
14 possible?

15 THE COURT: All right. Counsel, your next
16 question, please.

17 BY MR. STONE:

18 Q Sir, the -- the better copy that we asked for has the
19 same production number, but this document appears to be
20 missing all of the comments like "complete guess," "somewhat
21 guess," correct?

22 A There are no comments on the 1585 exhibit.

23 MR. STONE: And looking at Exhibit 1585 in full,
24 please.

25 MS. WILLETTS: Your Honor, objection. I think

1 Mr. Stone is mischaracterizing what's occurred here. The
2 Bates number appears just to be --

3 THE COURT: All right. Thank you very much,
4 Counsel. You'll have another opportunity. There are no
5 speaking objections.

6 MS. WILLETTS: Thank you.

7 BY MR. STONE:

8 Q All right. Looking at 1585, this has, for example, the
9 same amount for replacement of able boxes, 2 million, as we
10 saw on the hard to read copy with the comments, right?

11 A Again, that ties to this document, but that's nothing
12 that I've reviewed or approved. Our final document that
13 ties to our general ledger and is the right reflection of
14 our cost is on Exhibit 406. This was some draft or
15 something at some point in time. I've never seen it, and in
16 the world of accounting, when people do drafts and you have
17 low-level staff people starting to do calculations, there
18 could be, you know, like I said before, 5, 10 different
19 drafts of a final document. And -- and until I review it
20 and I approve it and I was able to tie it into our general
21 ledger, was I comfortable with it, which is what Exhibit 406
22 is. So I'm not quite sure where this came from, and I --
23 I've never seen it before.

24 Q To be clear, on 1585-A, where it says "total guess for
25 replacement set-top boxes," the amount is 2 million, right?

1 A Yeah, and that would be inaccurate. The number is
2 \$3,873,045.

3 Q And the same number is carried forward on this better
4 copy of 1585, which is now Exhibit 1585-A, correct?

5 A Well, I wouldn't characterize this as a better copy.
6 These are both inaccurate copies and inaccurate analyses.
7 The analyses on Exhibit 406 is the correct calculation.

8 Q All right. Is the -- are the IT costs the same as
9 between all three of those exhibits?

10 A It appears to be.

11 Q And what is FTE?

12 A Full-time equivalent.

13 Q Pardon?

14 A Full-time equivalent, full-time equivalent employee.

15 Q And that number is the same as between the three
16 exhibits, correct?

17 A Yes, it is.

18 Q Now, am I correct, you haven't seen or produced a
19 document that describes the reason for EchoStar's decision
20 to spend tens of millions of dollars to engage in a card
21 swap in 2004?

22 A We -- we did the swap, because we were hacked, and we
23 had to secure our system.

24 Q Have you seen any document that outlines the reasons
25 for that card swap?

1 A I believe you showed me a document yesterday that said
2 we had been hacked.

3 Q Have you seen any memo or report that says "We need to
4 do a card swap" for a particular reason?

5 A I'm sure I've seen a document, and it was discussed
6 many, many times that we were hacked, and we had to swap out
7 the Smart Cards to secure our system.

8 Q And you've seen multiple documents like that?

9 A I said I'm sure I've seen documents like that or been
10 in meetings where that has been discussed.

11 Q So it should exist, then, correct?

12 A (No audible response.)

13 Q Such a document should exist, correct?

14 A Well, if I was in meetings, there wouldn't be a
15 document of a meeting, but I can't recall if I actually
16 specifically saw a document or was given a document, but I
17 can assure you I've been in multiple meetings where it was
18 discussed that we had been hacked and we needed to swap out
19 our Smart Cards in order to secure our system and protect
20 our revenue stream.

21 Q Have you seen a single document that attributes the
22 card swap to any compromise of the ROM 3 cards?

23 A Again, I didn't get into the technicalities. I know
24 the -- our Smart Cards were hacked, and we had to replace
25 them, and I'm not sure what ROM version was hacked or not

1 hacked, but I know the swap cards, which we talked about in
2 the POs earlier were the ones that we used to replace all
3 our other cards that were hacked.

4 Q Okay. But my question is a little more focused. I
5 understand you don't understand the differences between all
6 the ROM versions. I am just asking you if you have any
7 recollection of seeing a document that attributed the card
8 swap to a compromise of the ROM 3 card, whether you
9 understood what a ROM 3 was from a ROM 10 or not?

10 A Ask that question again.

11 Q Sure.

12 Do you recall seeing any document that attributed the
13 reason for the card swap in 2004 to a compromise of
14 something called the ROM 3 card?

15 A I can't recall that I saw an actual document that said
16 that, but again, I was in numerous meetings where we
17 discussed as a company we had to replace the Smart Cards,
18 since we were hacked.

19 Q Did you see any document that attributed the reason for
20 the card swap in 2004 to anything that occurred on the
21 internet in December 2000?

22 A Can you rephrase that question again, please.

23 Q Sure.

24 Do you recall seeing any document that attributed the
25 reason for the card swap in 2004 to something that occurred

1 on the internet in December 2000?

2 A Yes, I can remember being in meetings where it was
3 discussed that the -- the way or the -- however you can hack
4 a card was out on the internet.

5 Q And -- and when did you first hear that?

6 A At some point in that general time frame.

7 Q You mean 2004?

8 A In general. I can't recall the specific conversations,
9 but yes.

10 Q Okay. And 2004 would be after the lawsuit was filed,
11 correct?

12 A Again, it was in the general time frame, so I'm not
13 sure when -- and I'm not sure even when the lawsuit was
14 filed, quite frankly.

15 Q You discussed yesterday a mass swap or a mass exchange;
16 do you recall that?

17 A Yes.

18 Q Are there other kinds of swaps that can be done other
19 than a mass swap?

20 A Yeah, we did a service swap like I talked about
21 yesterday. The mass swap is where we actually mailed the
22 cards and put them in the -- the mailers and mailed them to
23 people where they actually had to take out the card and
24 stick it in their set-top box and destroy the other card.
25 We, at the service swap, when we actually got a box that was

1 broken, we would actually do the swap at that point in time.

2 Q Have you ever heard of a soft swap?

3 A Yes, I've heard that -- that terminology used.

4 Q And what's a soft swap?

5 A I think it relates to at some point we had swapped out
6 some of the service set-top -- or the Smart Cards in some of
7 the service units.

8 Q And what are the business --

9 A We did that to just make sure that it would work and --
10 kind of like a beta test, if you will. We wanted to make
11 sure with the limited quantities --

12 THE COURT: Slower, slower.

13 THE WITNESS: We wanted to make sure that it would
14 work, so with limited quantities, we actually did swap with
15 service units that we got back to make sure they worked. I
16 mean, the last thing we wanted to do is put, you know,
17 8 million cards out there and have everyone's box blow up or
18 have a situation where they couldn't get programming, so
19 we -- we, with limited numbers, beta tested it.

20 BY MR. STONE:

21 Q Sir, if you could go to Exhibit 2013, please. This
22 is the first purchase order you saw from EchoStar.

23 A Exhibit --

24 Q 2013.

25 THE COURT: While you are doing that, will you

1 excuse me for just a moment. I'll be right back.

2 MR. STONE: Okay.

3 (Interruption in the proceedings.)

4 THE COURT: Thank you very much, Counsel. You may
5 proceed.

6 BY MR. STONE:

7 Q Okay. Sir, looking at Exhibit 2013 on the first page
8 just about smack-dab middle where it says "For four years,
9 NagraCard will replace for free the S01 cards," about the
10 fourth line down.

11 Thank you, sir.

12 A Yes.

13 Q And that's similar to the language we saw on the
14 NagraStar invoices, correct -- or purchase orders, I should
15 say?

16 A Yeah, it appears to be identical.

17 Q And then go to the second page, if you would, please,
18 of Exhibit 2013. And I'm focusing on the first sentence of
19 the second -- or the first full paragraph, there.

20 It says "EchoStar, NagraStar and NagraCard will, in
21 good faith, negotiate the terms of a new business model for
22 the rental of security modules and warranty conditions
23 before the release of the first Smart Card listed within";
24 do you see that?

25 A Yes.

1 Q And the Smart Card listed within would be the swapout
2 cards, correct?

3 A Correct.

4 Q And you -- you said that you now understand that
5 signature to be Mr. Guggenheim's on the other purchase order
6 for NagraStar?

7 A (No audible response.)

8 Q I think it's 1584.

9 A Yeah, just I want to be clear here.

10 Q Sure.

11 A Exhibit 1584, that is Alan Guggenheim's initials. It's
12 an "A" and a "G" that are overlaid each other. That kind of
13 looks like a "C," and then you can see on the very last
14 page, page 3, that it has his name, and clearly, that's Alan
15 Guggenheim's name on page 3.

16 Q And who did Mr. Guggenheim report to?

17 A Alan -- I'm not -- Alan Guggenheim, I guess to the
18 board of NagraStar. He was the CEO of NagraStar.

19 Q And the board members were comprised of EchoStar and
20 Kudelski?

21 A I'm not quite sure who was on the board, but it was
22 50 percent owned by EchoStar and 50 percent owned by
23 Kudelski.

24 Q And who do you understand to be having these good faith
25 negotiations about a new business model before the swapout

1 cards?

2 A I'm not sure who had those discussions, because I was
3 not privy to them; someone else would have. What I can say,
4 though, is we did not come to an agreement with a rental
5 model with NagraStar or Nagra.

6 Q Did you have an understanding that those negotiations
7 were taking place at the highest level?

8 A Again, I wasn't privy to those, so I'm not quite sure.
9 I know there was discussion that we had talked about that,
10 and since it did not happen, clearly, you know, we didn't
11 feel it was the right thing to do.

12 Q Do you know whether there were any other arrangements
13 made that were different from what was discussed in those
14 meetings?

15 A Since I was not in those meetings and was not privy to
16 those conversations, I'm not -- I can't opine one way or the
17 other.

18 Q So you don't know what the give-and-take was to end up
19 with free replacement cards as set forth in the purchase
20 order, do you?

21 A I believe this phrase, here, is referring to the
22 purchase of Smart Cards for new production going forward.
23 It had nothing to do with the actual swapout itself.

24 Q Right, and those would be free cards for the swapout
25 that's occurring in 2008, correct?

1 A It would be free swap cards for cards that were
2 purchased under these POs that were compromised.

3 Q And it's fair to say you don't know what all the
4 give-and-take was in those negotiations that occurred prior
5 to this purchase order, right?

6 A Correct, I was not privy to that.

7 Q Okay.

8 Sir, if you could look at Exhibit 828 again, very
9 briefly.

10 A What -- what did it look like?

11 Q It was a letter from EchoStar's counsel.

12 Your Honor, do you have a copy? If not, I have an
13 extra.

14 We talked a little bit yesterday about this letter, and
15 I'm not going to go through the whole thing, but the -- the
16 letter is dated July 2nd, 1999, correct?

17 A Correct.

18 Q And you'll notice in the second paragraph, first
19 sentence, there is a demand for a swapout of cards to be
20 completed in the next six months; do you see that?

21 A What paragraph was that, again?

22 Q The second paragraph, first sentence.

23 A Yes.

24 Q And it --

25 A Well, it says "We discussed involving a swapout."

1 Just to be clear, it says "Kudelski, NagraStar and
2 EchoStar have also discussed a fix involving the swapout of
3 Smart Cards to be completed in the next six months. I
4 wouldn't call that a demand, but --

5 Q Well, do you have any reason to doubt the accuracy of
6 the corporate counsel's next statement, which is "The fix,
7 of which the Smart Card swapout is only one piece, is
8 extremely important and must be accomplished as soon as
9 possible"? Do you have any reason to doubt those words?

10 A No. We -- we clearly would want it performed as -- as
11 fast as possible to secure our system and protect our
12 revenue stream.

13 Q Now, six months after July of 1999 would be, roughly,
14 early 2000, correct?

15 A Yes.

16 Q And in this case, there's been testimony that the
17 ROM 10 card was produced in February or March of 2000; were
18 you aware of that?

19 A No, again, I don't know the ROM or the versions.

20 Q If we could show you, please, Exhibit 1593, and this
21 document is entitled "Activation data by year"; do you see
22 that?

23 A Yes.

24 Q And can you tell us what activation means.

25 A This is the first time I've seen this document, and --

1 and our term "activation" means the turning on of the
2 subscriber to see programming.

3 MR. STONE: Your Honor, I would move 1593 subject
4 to connection.

5 THE COURT: Any objection?

6 MS. WILLETTS: No objection, your Honor.

7 THE COURT: Received --

8 MR. STONE: Thank you, your Honor.

9 THE COURT: Now, Counsel, we could receive that
10 document, but it could have a bearing on a lot of other
11 issues before the Court. So as long as that's understood by
12 all parties.

13 All right. It's received.

14 (Defendants' Exhibit No. 1593 is received
15 into evidence.)

16 MR. STONE: Thank you, your Honor.

17 BY MR. STONE:

18 Q Is there a department within EchoStar that you are
19 aware of that tracks when cards are activated?

20 A Specific cards are activated or when a subscriber
21 activates?

22 Q When a subscriber activates a card.

23 A Yes.

24 Q Okay. And is the company able to track which ROM
25 version of the card is activated?

1 A I'm not sure I know when a subscriber activates. We
2 can -- we have a billing system that says it's an active
3 subscriber, and they're -- we know what programming they're
4 receiving. So I'm not sure if it has that data in it or
5 not.

6 Q Okay. Well, looking at this Exhibit 1593, where it
7 says "DN10," would that refer to the DNASP ROM 10 version?

8 A Sir, like I said, I've never seen this before, and I'm
9 not an expert on versions or names, so I don't know.

10 Q All right. Did you ever become aware of a mass
11 shipment of ROM 10 cards in 2000 and 2001? Did that ever
12 come to your attention in performing your job duties?

13 A In what period?

14 Q 2000, 2001.

15 A No. First of all, I don't know what a ROM time -- ROM
16 10 card is, and if we -- we every year get many, many Smart
17 Cards shipped to us from NagraStar, so we -- we would have
18 orders coming in every month for new production. So yes,
19 there would have been shipments, but I have no idea if it
20 was ROM 10 or ROM whatever.

21 Q And if a card is compromised, is it your understanding
22 that EchoStar has the ability to stop activating those
23 cards?

24 A No. I think if it's compromised, we have no ability to
25 control that card anymore, and then the pirates get whatever

1 they want.

2 Q Now, as you were saying, an activation is when a
3 subscriber first activates a new service or new account?

4 A Yes, or it could be a reactivation, but yes, it's when
5 we provision in our billing system the right for them to see
6 the programming that they subscribe to, whether it's, you
7 know, our basic package like America Top 100 or HBO or
8 whatever the case may be.

9 Q And would your department have tracked the costs of
10 purchasing of ROM 10 cards?

11 A We track the purchase of all smart -- Smart Cards, so
12 we actually have to pay for them, and so we have details and
13 invoices of cards purchased and what we paid for them. So
14 I'm assuming that the ROM 10 is one of those, so we would
15 have that data.

16 Q And sir, I just want to be clear, are you aware of any
17 document that states that the reason for the card swap in
18 2004 was because of any internet postings in December 2000?

19 A Like I stated earlier, I was in numerous meetings where
20 we had discussed that as a management team.

21 Q These are meetings in 2004?

22 A In that general time frame.

23 Q Do you recall seeing any document?

24 A I don't recall exactly if I saw a document or not.

25 MR. STONE: Thank you, sir.

1 THE COURT: Okay. Questions, Counsel?

2 MS. WILLETTS: Brief redirect, your Honor.

3 THE COURT: By stipulation of both counsel, we've
4 reopened this to give each counsel two more rounds.

5 Is that correct for my record on behalf of
6 EchoStar?

7 MR. HAGAN: Yes, your Honor.

8 THE COURT: And NDS?

9 MR. STONE: Yes, sir.

10 THE COURT: All right. Thank you.

11 FURTHER REDIRECT EXAMINATION

12 BY MS. WILLETTS:

13 Q Mr. Orban, Mr. Stone had a -- a brief line of
14 questioning on one of the purchase orders, Exhibit 2013. Do
15 you have that in front of you?

16 A Yes.

17 Q And he alluded to a reference in here that talked about
18 a future swapout if the cards do not remain secure for at
19 least four years. You understood this provision to be a
20 forward looking provision; isn't that correct?

21 A Yeah, absolutely. It has nothing to do with the swap
22 that we performed a few years ago, yes.

23 Q So EchoStar doesn't get a refund for the \$94 million
24 that it spent on the card swap?

25 A Oh, absolutely not, no.

1 MS. WILLETTS: Thank you.

2 THE COURT: And recross?

3 MR. STONE: Just a few questions, sir.

4 FURTHER RECROSS EXAMINATION

5 BY MR. STONE:

6 Q Getting free swap cards is significantly better than
7 the warranty that we saw, the warranty agreement we saw
8 yesterday, correct, that provided for direct marginal
9 manufacturing costs?

10 A This was the agreement that the two parties bargained
11 for, for this agreement.

12 Q As part of the swapout in 2004, correct?

13 A Yes.

14 Q And you've never seen an agreement before like this
15 where the swapout cards are provided for free, have you,
16 sir?

17 A No, but we enter into new agreements with companies all
18 the time, and the terms are always different -- or usually
19 different.

20 Q Depending on the business conditions that exist at the
21 time of those negotiations?

22 A Yeah, two parties negotiate at arms' length, and terms
23 could be different, could be the same. It just depends on
24 how the two parties come to an agreement.

25 Q And am I correct, those negotiations took place after

1 this lawsuit was filed?

2 A I don't know when this lawsuit was filed --

3 Q Thank you.

4 A -- so I can't answer that question.

5 MR. STONE: Thank you.

6 THE COURT: And the exhibit you, once again,
7 referred to is which Exhibit Number?

8 MR. STONE: 2013.

9 THE COURT: 2013. Thank you very much.

10 Now, sir, we are going to place you on call, as we
11 are all of the other witnesses, at least within the
12 continental United States. From the time you receive notice
13 from the counsel through the court, we expect you to be back
14 in court within 48 hours.

15 Thank you very much, sir. You may step down.

16 THE WITNESS: Okay. Thanks.

17 THE COURT: Your next witness, please, Counsel.

18 MR. HAGAN: Thank you, your Honor. Plaintiffs
19 call Allen Menard by video deposition.

20 THE COURT: You are going to hear a video
21 deposition at this time. The next person being presented to
22 you would be Allen Menard.

23 And are you prepared to play that video?

24 MR. HAGAN: (No audible response.)

25 THE COURT: You are.

1 And if you'd please play the video.

2 MR. HAGAN: Thank you, your Honor.

3 ALLEN MENARD, PLAINTIFFS' WITNESS, VIDEO DEPOSITION

4 (Videotape played of Plaintiffs' witness,

5 Allen Menard, and inserted below.)

6 *****

7 Insert

8

9 *****

10 MR. HAGAN: That's the remainder of our clips,
11 your Honor. I believe the defense has their designation.

12 THE COURT: Thank you.

13 Each side has designated a portion of Mr. Menard's
14 deposition. These will be the portions presented by NDS,
15 the defendant.

16 (Videotape played of Plaintiffs' witness,

17 Allen Menard, and inserted below.)

18 *****

19 Insert

20 Page Range:254:18-254:21

21 254:18 Q Have you ever had the
22 experience where anyone has

23 254:19 posted pretending to be DR7 or

24 Allen Menard who

25 254:20 was not you?

1 254:21 A Yeah.

2 Page Range:254:24-257:13

3 254:24 Q MR. STONE: And how

4 many occasions has

5 254:25 that occurred?

6 255: 255

7 255: 1 A I'm not sure.

8 255: 2 Q Now, you also testified that

9 there I think

10 255: 3 two things were going on with

11 your website if I

12 255: 4 recall correctly after your

13 accident.

14 255: 5 A Mm-hmm.

15 255: 6 Q If I recall correctly you

16 injured your hip

17 255: 7 sometime in spring of 2000.

18 255: 8 A It was I believe May of 2000

19 when I had first

20 255: 9 moved to Vancouver I was

21 rollerblading and broke

22 255:10 off my femoral head.

23 255:11 Q Okay. And if I understand it

24 correctly

25 255:12 two things happened after that

1 point in time.

2 255:13 Your website was attacked by
3 people hacking into

4 255:14 it.

5 255:15 A Well, at that time I was on a
6 lot of medication.

7 255:16 At first I was prescribed a
8 drug called laratene

9 255:17 (phonetic). It's basically a
10 synthetic morphine,

11 255:18 then I was given Dilaudid. I
12 asked

13 255:19 Charles Perlman if he could
14 help out kind of

15 255:20 administer the site. He had
16 basically passwords

17 255:21 for all the administration.
18 He had my TELNET

19 255:22 passwords. He had my SQL
20 passwords.

21 255:23 So he
22 basically had

23 255:24 complete control of my
24 website. In some of the

25 255:25 evidence that me and Grant

1 have been given here,

2 256: 256

3 256: 1 Charles says that he ran my

4 website

5 256: 2 single-handedly for over a

6 year. So you know,

7 256: 3 he's admitted he ran it. He

8 got really mad when

9 256: 4 I finally started coming off

10 the drugs -- well, I

11 256: 5 temporarily came off the

12 drugs. I did have a bit

13 256: 6 of a drug addiction. I was on

14 these painkillers.

15 256: 7 Like, I got the first

16 operation in May and then I

17 256: 8 had to get the other one. My

18 hip started dying

19 256: 9 off, so I had to get another

20 operation.

21 256:10 So yeah,

22 Charles ran the

23 256:11 site. And while he was

24 running the site he got

25 256:12 Reg Scullion to help out.

1 256:13 Q Now, when you say "run the
2 site," am I correct to

3 256:14 understand that Charles
4 Perlman would have had

5 256:15 administrator privileges --

6 256:16 A Correct.

7 256:17 Q -- on DR7? Tell me exactly
8 what does that mean

9 256:18 to have administrator
10 privileges?

11 256:19 A Total control. He could
12 basically make up fake

13 256:20 user names. Another thing he
14 could do is he

15 256:21 could go in there and he could
16 take my name DR7

17 256:22 and he could change my mail to
18 address to an

19 256:23 address that he used, a
20 Hotmail address, send my

21 256:24 password to him and then he
22 can get my password

23 256:25 and then he could change it
24 back and I would

25 257: 257

1 257: 1 never know.

2 257: 2 Q And did Mr. Scullion also have

3 administrative

4 257: 3 privileges --

5 257: 4 A He did.

6 257: 5 Q And did that continue through

7 --

8 257: 6 A Charles Perlman, though, had

9 more control than

10 257: 7 Scullion. Perlman had all the

11 TELNET passwords,

12 257: 8 the FTP passwords. He had

13 full control. Reg as

14 257: 9 far as I knew only had

15 administration privileges,

16 257:10 where he could look at IPs and

17 he could edit

18 257:11 certain things within the

19 site, delete posts,

20 257:12 stuff like that. Charles

21 Perlman had direct

22 257:13 access to the database.

23 Page Range:258:9-258:12

24 258: 9 Q Now, was Mr. -- did Mr.

25 Perlman have

1 258:10 administrator rights all the
2 way up through the

3 258:11 end of 2000?

4 258:12 A To the best of my knowledge he
5 did. I don't know

6 Page Range:259:12-259:15

7 259:12 Q Now, is it correct, then, that
8 Mr. Perlman would

9 259:13 have had administrator rights
10 at the time of

11 259:14 these so-called Nipper
12 postings on December 23rd

13 259:15 and 24th, 2000?

14 Page Range:259:19-260:5

15 259:19 A As far as I know he would
16 have.

17 259:20 Q MR. STONE: And as an
18 administrator at

19 259:21 the instant those things were
20 posted, he would

21 259:22 have had the ability to see
22 whatever data related

23 259:23 to those postings, whether it
24 was an IP address

25 259:24 or something else, correct?

1 259:25 A I believe so.

2 260: 260

3 260: 1 Q And did you know who Mr.

4 Perlman was working for

5 260: 2 during the period from the

6 summer of 2000 to the

7 260: 3 end of 2000 when he had

8 administrator rights on

9 260: 4 DR7?

10 260: 5 A Best of my knowledge Charles

11 works for EchoStar.

12 Page Range:261:11-261:16

13 261:11 Q MR. STONE: Now, I

14 believe you

15 261:12 testified that you thought

16 that Mr. Ereiser and

17 261:13 Mr. Perlman had reasons to

18 either set you up or

19 261:14 get back at you, I can't

20 remember your exact

21 261:15 phrase, but it sounded as if

22 you had some dispute

23 261:16 with him.

24 Page Range:261:19-262:2

25 261:19 A Can I go ahead? The way it

1 all started with Ron

2 261:20 and me becoming enemies in the
3 beginning was Ron

4 261:21 was a commercial dealer. He
5 made his money off

6 261:22 DSS. Once Internet came
7 alive, and I started one

8 261:23 of the very first educational
9 sites dealing with

10 261:24 satellite. And once any files
11 were posted Ron

12 261:25 took offense to that. I was
13 taking part of his

14 262: 262

15 262: 1 money by giving files for free
16 to people he was

17 262: 2 losing money, so he didn't
18 like me.

19 Page Range:276:11-277:4

20 276:11 Q MR. STONE: Now, if I
21 understand it

22 276:12 correctly, in July of 2000 you
23 received a

24 276:13 threatening letter from NDS
25 and Direct TV about

1 276:14 your website.

2 276:15 A Yeah. That's correct. They

3 sent it to my ISP in

4 276:16 Vancouver.

5 276:17 Q And do you have a recollection

6 that attorneys for

7 276:18 NDS also took the deposition

8 of Mr. Ianello,

9 276:19 your --

10 276:20 A Yes, they did. I actually --

11 I believe I also

12 276:21 may have paid his legal fees.

13 276:22 Q And so in the early summer of

14 2000 NDS was

15 276:23 aggressively trying to shut

16 down your website?

17 276:24 A They were.

18 276:25 Q Did EchoStar ever send you any

19 letters demanding

20 277: 277

21 277: 1 you shut down --

22 277: 2 A Not that I'm aware of.

23 277: 3 Q Did they ever take any

24 depositions of any of your

25 277: 4 ISP providers?

1 Page Range:277:7-277:7

2 277: 7 A Not that I'm aware of.

3 Page Range:249:4-250:4

4 249: 4 Q MR. STONE: And you
5 understand that

6 249: 5 the allegation is is that you
7 established some

8 249: 6 network of piracy dealers at
9 the direction of

10 249: 7 NDS, you understand that's the
11 claim?

12 249: 8 A I understand that's the claim.

13 249: 9 Q Is there any truth whatsoever
14 to that claim?

15 249:10 MS. WILLETTS: Objection
16 to form.

17 249:11 OBJECTION TO QUESTION

18 249:12 A Sorry. The only truth is I
19 did post files on my

20 249:13 website, files that were
21 donated to me. People

22 249:14 may have taken them and
23 altered them, and they

24 249:15 may have went and
25 commercialized stuff. That's

1 249:16 what happened. Anything else
2 alleged in the

3 249:17 fourth amended complaint I
4 don't agree with at

5 249:18 all.

6 249:19 Q MR. STONE: So did
7 anyone from NDS

8 249:20 ever direct you to engage in
9 EchoStar piracy --

10 249:21 MS. WILLETTS:
11 Objection. Form.

12 249:22 OBJECTION TO QUESTION

13 249:23 A Never.

14 249:24 Q MR. STONE: Did Chris
15 Tarnovsky ever

16 249:25 try to recruit you to engage
17 in EchoStar piracy?

18 250: 250

19 250: 1 A No --

20 250: 2 MS. WILLETTS: Form.

21 250: 3 OBJECTION TO QUESTION

22 250: 4 A -- he did not.

23 Page Range:250:17-252:8

24 250:17 So did

25 Chris Tarnovsky

1 250:18 ever try to recruit you to
2 engage in EchoStar

3 250:19 piracy at any time?

4 250:20 MS. WILLETTS: Objection
5 to form.

6 250:21 OBJECTION TO QUESTION

7 250:22 A No.

8 250:23 Q MR. STONE: Did Chris
9 Tarnovsky ever

10 250:24 provide you with any money so
11 that you were

12 250:25 supposed to engage in EchoStar
13 piracy?

14 251: 251

15 251: 1 MS. WILLETTS: Same
16 objection.

17 251: 2 OBJECTION TO QUESTION

18 251: 3 A No.

19 251: 4 Q MR. STONE: Did NDS
20 ever provide you

21 251: 5 with money so that you would
22 engage in EchoStar

23 251: 6 piracy?

24 251: 7 MS. WILLETTS: Same
25 objection.

1 251: 8 OBJECTION TO QUESTION

2 251: 9 A No.

3 251:10 Q MR. STONE: Did Mr.

4 Tarnovsky ever

5 251:11 provide you with any black

6 boxes or other devices

7 251:12 to reprogram EchoStar access

8 cards?

9 251:13 MS. WILLETTS: Form.

10 251:14 OBJECTION TO QUESTION

11 251:15 A No.

12 251:16 Q MR. STONE: Did

13 anyone from NDS ever

14 251:17 provide you with any devices

15 to engage in

16 251:18 EchoStar piracy?

17 251:19 MS. WILLETTS: Form.

18 251:20 OBJECTION TO QUESTION

19 251:21 A No.

20 251:22 Q MR. STONE: Did you

21 ever send any

22 251:23 money to Chris Tarnovsky in

23 return for services

24 251:24 for engaging in EchoStar

25 piracy?

1 251:25 MS. WILLETTS: Form.

2 252: 252

3 252: 1 OBJECTION TO QUESTION

4 252: 2 A No.

5 252: 3 Q MR. STONE: Did you

6 ever send money to

7 252: 4 anyone for services for

8 engaging in EchoStar

9 252: 5 piracy?

10 252: 6 MS. WILLETTS:

11 Objection. Form.

12 252: 7 OBJECTION TO QUESTION

13 252: 8 A No.

14 Page Range:244:12-244:20

15 244:12 Q And has NDS or anyone from NDS

16 told you to

17 244:13 testify in any particular way

18 here today?

19 244:14 A No.

20 244:15 Q Has anyone from NDS promised

21 you anything in the

22 244:16 future?

23 244:17 A No.

24 244:18 Q And if I understand you

25 correctly, we might have

1 244:19 Exhibit 980 out there. It's
2 this consent order.

3 244:20 A Yeah.

4 Page Range:245:5-245:9

5 245: 5 Q MR. STONE: It looks
6 like as part of

7 245: 6 the consent order that
8 EchoStar has agreed to

9 245: 7 release you from any and all
10 claims as long as

11 245: 8 you come here and testify,
12 correct?

13 245: 9 A Yeah.

14 Page Range:245:23-246:2

15 245:23 Q MR. STONE: So you
16 understood that by

17 245:24 entering into that agreement
18 with EchoStar you

19 245:25 weren't admitting to liability
20 for anything,

21 246: 246

22 246: 1 right?

23 246: 2 A Exactly.

24

25 Page Range:246:10-246:16

1 246:10 Q And if I understand you
2 correctly is that as you

3 246:11 understand with your agreement
4 with EchoStar, no

5 246:12 matter what you say here
6 today, no matter how you

7 246:13 testify, there won't be any
8 adverse consequences

9 246:14 from EchoStar as a result of
10 your testimony. Is

11 246:15 that the way you understand
12 the deal?

13 246:16 A That's the way I understand
14 it.

15 Page Range:246:18-247:3

16 246:18 A And that includes, like, when
17 I mention that I

18 246:19 may have tried to program a
19 card or nothing, you

20 246:20 guys aren't going to come back
21 later and sue me,

22 246:21 right?

23 246:22 Q And so nobody's threatened you
24 to testified any

25 246:23 particular way here today; is

1 that a fair

2 246:24 statement?

3 246:25 A No. I'm here -- I came here
4 voluntarily.

5 247: 247

6 247: 1 Q What you have testified here
7 today is the truth,

8 247: 2 correct?

9 247: 3 A Yes, it is.

10 Page Range:10:15-11:12

11 10:15 Q So you decided you wanted to
12 go work for NDS?

13 10:16 A Yeah.

14 10:17 Q Why did you want to do that?

15 10:18 A Because I had some info that I
16 felt they might

17 10:19 want.

18 10:20 Q What information was that?

19 10:21 A It was some classified info
20 that was posted

21 10:22 online that I found, and it
22 seemed like they

23 10:23 didn't know where it was from
24 and I did.

25 10:24 Q This was information relating

1 to Direct TV; is

2 10:25 that correct?

3 11: 11

4 11: 1 A Yeah.

5 11: 2 Q How did you know where that
6 information came

7 11: 3 from?

8 11: 4 A I found the files online.
9 They were confidential

10 11: 5 files. I took them apart with
11 a hex editor. I found some info in there that
12 somebody didn't realize was in there, and I began
13 an investigation. From there I asked a lawyer to
14 set up a meeting with John Norris, and she said,
15 What would he want to talk to you about? And I
16 said, Let him know I have something he needs to
17 see.

18 Page Range:8:9-9:02

19 8: 9 Q What type of work did you do
20 for NDS during that 2003 to 2007 time frame?

21 8:11 A I was a consultant.

22 8:12 Q What did you do as a
23 consultant?

24 8:13 A I did online investigations.

25 8:14 Q Online investigations

1 concerning satellite

2 8:15 piracy?

3 8:16 A Correct.

4 8:17 Q Did you do anything else other
5 than online

6 8:18 investigations?

7 8:19 A I assisted various law
8 enforcement agencies,

9 8:20 US customs which I guess later
10 turned into the

11 8:21 DHS, secret service, Direct
12 TV.

13 8:22 Q How did you provide assistance
14 to the law enforcement agencies?

15 8:24 A Through John Norris, director
16 of special operations. He asked me to do work.
17 He passed on my work to them. Later on some of
18 them wanted to meet me.

19 Page Range:33:9-33:23

20 33: 9 Did NDS put any limits on --
21 limitations on how you were to perform your

22 33:11 job and how you were to
23 collect data for them?

24 33:12 A I don't know what you mean by
25 "limitations."

1 33:13 Q Were you free to go to any
2 site you wanted to go

3 33:14 to?

4 33:15 A Best of my recollection, yes.

5 33:16 Q Were you free to post on any
6 site you wanted

7 33:17 to --

8 33:18 A No, I wasn't.

9 33:19 Q Did that instruction come
10 specifically from NDS?

11 33:20 A I was told at the beginning of
12 my employment not

13 33:21 to post on any forums.

14 33:22 Q Who told you that?

15 33:23 A That came from John Norris.

16 Page Range:283:14-283:17

17 283:14 Q Now, when you worked at -- for
18 NDS as a

19 283:15 consultant, did they tell you
20 to obey all the

21 283:16 laws while you --

22 283:17 A Of course.

23 Page Range:284:5-284:16

24 284: 5 Q MR. STONE: Now, when
25 you worked with

1 284: 6 the folks at NDS did you find
2 them to be

3 284: 7 professional?

4 284: 8 A Very professional. And they
5 taught me a lot

6 284: 9 about, you know, like -- you
7 know, maybe in here

8 284:10 I'm getting a bit excited
9 today, but yeah, they

10 284:11 taught me, like, you know,
11 when you're going in

12 284:12 the meetings, Al, this is how
13 you want to dress,

14 284:13 this is how you want to act.
15 And you know, they

16 284:14 just slowly were, you know --
17 they did a lot for

18 284:15 me. I have a lot of respect
19 for them. They

20 284:16 treated me well over the
21 years, you know.

22 Page Range:278:20-280:1

23 278:20 Q Now, did you work directly
24 with some US

25 278:21 government agencies and Direct

1 TV on some
2 278:22 investigations?
3 278:23 A Yes, I did.
4 278:24 Q Did you ever meet with the
5 secret service in
6 278:25 Houston?
7 279: 279
8 279: 1 A Yes, I did.
9 279: 2 Q And was part of that meeting
10 so that you could
11 279: 3 explain your methods of
12 investigation?
13 279: 4 A Yeah, as long as I'm not going
14 to -- as long as
15 279: 5 the secret service ain't going
16 to come back on me
17 279: 6 or you are not going to ask
18 what this was all
19 279: 7 about or nothing or . . .
20 279: 8 Q No. No. I'm not going to go
21 into the details.
22 279: 9 A All right. Yeah. Basically I
23 was working on
24 279:10 some stuff, and they wanted to
25 know how I was

1 279:11 doing it. And then they ask
2 if I come down there

3 279:12 and show them what I was
4 doing. So I agreed to

5 279:13 go down to Houston, and we
6 went to, like, some

7 279:14 nondescript building and went
8 up there. And,

9 279:15 yeah, I met all these secret
10 service guys, and

11 279:16 they took me in their lab and,
12 yeah, had a sit

13 279:17 down. And they treated me
14 really well, you know.

15 279:18 It was great. It was -- it
16 felt good to meet

17 279:19 them, you know.

18 279:20 Q Now, did you also compile a
19 database of various

20 279:21 pirate websites?

21 279:22 A I did.

22 279:23 Q And was that also used in
23 investigations on

24 279:24 behalf of Direct TV?

25 279:25 A It was. I helped take down

1 probably over

2 280: 280

3 280: 1 approximately 230 websites

4 since working for NDS.

5 Page Range:188:24-189:19

6 188:24 Q MS. WILLETTS: Showing

7 you what's been

8 188:25 labelled Exhibit 988. An

9 email that appears to

10 189: 189

11 189: 1 be from

12 discsat@compusmart.ab.ca. You understood

13 189: 2 that to be Dave Dawson,

14 correct?

15 189: 3 MR. DUNLOP: Did you

16 say from?

17 189: 4 Q MS. WILLETTS: To

18 189: 5 discsat@compusmart.ab.ca.

19 189: 6 A I don't remember JD having

20 that address.

21 189: 7 Q Discsat, was that short for

22 Discount Satellite?

23 189: 8 A I don't know. I don't recall

24 that address.

25 189: 9 Another thing that seems very

1 odd about this

2 189:10 document is my PGP signature
3 isn't in there.

4 189:11 Q Do you typically send PGP --

5 189:12 A Yeah.

6 189:13 Q Did you always send things
7 with PGP?

8 189:14 A Not always, but when I sent to
9 JD I signed with

10 189:15 my PGP signature. That way if
11 any of the text

12 189:16 was edited here and you went
13 to verify later you

14 189:17 could tell. I notice his
15 signature isn't in

16 189:18 here. Is this an original
17 document? Do you have

18 189:19 a different one?

19 Page Range:189:22-190:2

20 189:22 A Okay. I'm just asking you
21 whether there is a

22 189:23 different document because
23 maybe there is with a

24 189:24 key and, you know, we'd have
25 verification that

1 189:25 this is a real email. As far
2 as I can tell this

3 190: 190

4 190: 1 is dr73.txt, which means it's
5 just a typed up

6 190: 2 text document.

7 Page Range:190:18-190:24

8 190:18 Q MS. WILLETTS: You
9 stated earlier that

10 190:19 you didn't always use your PGP
11 signature when you

12 190:20 emailed.

13 190:21 A Depended on who I emailed.

14 190:22 Q Can you exclude the
15 possibility that you may have

16 190:23 forgotten to include --

17 190:24 A I'd rather not exclude that.

18 Page Range:191:8-192:5

19 191: 8 Q Okay. Well, let's go through
20 the contents of the

21 191: 9 document and see if it
22 refreshes your

23 191:10 recollection whether you sent
24 it.

25 191:11 A Sure.

1 191:12 Q It says (quoted):
2 191:13 "This info has been
3 forwarded him and I
4 191:14 called von the phone
5 and mentioned the
6 191:15 problem...he told me
7 that he is sending
8 191:16 another box and we
9 should have it this
10 191:17 week...he's
11 happy...thinks i killed this
12 191:18 one from overuse
13 hehe."
14 191:19 You
15 referred to
16 191:20 Mr. Tarnovsky as Von; isn't
17 that correct?
18 191:21 A Well, we explained -- we
19 talked about that
20 191:22 earlier. I may have called
21 Von, Von on IRC. I
22 191:23 don't recall if I ever called
23 him that in email.
24 191:24 But like I said once again,
25 the PGP signature

1 191:25 isn't in here. There's a
2 reason why it's

3 192: 192

4 192: 1 missing. I never --

5 192: 2 Q Did you ever call Mr.
6 Tarnovsky to tell him you

7 192: 3 were having a problem with the
8 box he was

9 192: 4 providing you?

10 192: 5 A Not that I remember. What
11 box?

12 Page Range:192:8-192:12

13 192: 8 Q So it's your testimony that
14 this whole email is a

15 192: 9 fabrication?

16 192:10 A I've already stated to you
17 that I find something

18 192:11 very odd about this here, and
19 you really have no

20 192:12 explanation for it.

21 Page Range:193:9-193:15

22 193: 9 Q MS. WILLETTS: My
23 question is whether or

24 193:10 not you recall ever having any
25 conversation with

1 193:11 Mr. Dawson in an email or
2 otherwise in which you

3 193:12 told him that the box provided
4 to you by Von or

5 193:13 Tarnovsky was killed by
6 overuse and that

7 193:14 Mr. Tarnovsky would be sending
8 you a new one?

9 193:15 A Not that I remember.

10 Page Range:193:16-193:20

11 193:16 Q Did Mr. Tarnovsky ever send
12 you a box?

13 193:17 A Not that I recall.

14 193:18 Q What's your understanding of
15 what the box is

16 193:19 referred to here in this
17 email?

18 193:20 A How would I know?

19 Page Range:194:15-195:4

20 194:15 Q MS. WILLETTS: I'm
21 showing you what's

22 194:16 been labelled Exhibit 989. It
23 appears to be

24 194:17 another email from
25 dr7@mail.v-wave.com to the

1 194:18 same discsat@compusmart.ab.ca.

2 Is it your

3 194:19 position here that there's no

4 way to verify if

5 194:20 this email is a true and

6 correct copy as well?

7 194:21 A Once again I'll mention for

8 the record it's a

9 194:22 text file. It doesn't have a

10 PGP signature. I

11 194:23 can't verify that it's real.

12 I could type this

13 194:24 out on her laptop right now.

14 I also don't see an

15 194:25 IP in here.

16 195: 195

17 195: 1 Q Do you remember sending an

18 email to

19 195: 2 discsat@compusmart.ab.ca

20 containing the substance

21 195: 3 that's contained in this

22 Exhibit 989?

23 195: 4 A No, sorry. I don't remember.

24 Page Range:195:5-195:6

25 195: 5 Q Do you know what the

1 AVR2E3M.E3M file is?

2 195: 6 A No, I can't say I do.

3 Page Range:195:16-196:17

4 195:16 Q The exhibit states (quoted):

5 195:17 "Load this and will

6 run for about 1 week

7 195:18 or more, be sure to

8 tell them, 'when

9 195:19 this dies, you should

10 just load the

11 195:20 AVR2E3M.E3M again

12 until you hear from

13 195:21 us.' vonnie is on

14 the job so we should

15 195:22 be fine soon."

16 195:23 You

17 understood Vonnie to

18 195:24 be Christopher Tarnovsky,

19 correct?

20 195:25 A I don't believe I said that.

21 I believe I said I

22 196: 196

23 196: 1 heard the name Von before, but

24 I don't recall

25 196: 2 saying Vonnie. And once again

1 this is a text

2 196: 3 file. I don't see a PGP

3 signature here. Another

4 196: 4 thing I'd like to mention is

5 all --

6 196: 5 Q We --

7 196: 6 MR. REDMOND: Go ahead.

8 196: 7 THE WITNESS: Thank

9 you.

10 196: 8 A Another thing I'd like to

11 mention, all

12 196: 9 communication with Dave Dawson

13 back then were PGP

14 196:10 encrypted, I don't know. You

15 say this is the

16 196:11 evidence you have. I guess JD

17 would have had to

18 196:12 have decrypted it, correct?

19 196:13 Q MS. WILLETTS: Do you

20 have any copies of

21 196:14 these PGP encrypted emails

22 that you communicated

23 196:15 with Mr. Dawson with?

24 196:16 A Well, no. I already told you

25 I deleted all my

1 196:17 emails. You think Mr. Dawson
2 would have them.

3 Page Range:197:11-197:17

4 197:11 Q MS. WILLETTS: Handing
5 you what's been

6 197:12 labelled Exhibit 990. An
7 email from the same

8 197:13 DR7@mail.v-wave.com to the

9 197:14 discsat@compusmart.ab.ca
10 address. At the bottom

11 197:15 it lists X-Factor Web Design.
12 That was your

13 197:16 company, correct?

14 197:17 A That was my company name, yes,
15 it was.

16 Page Range:198:15-199:16

17 198:15 Q The file -- or the exhibit
18 states (quoted):

19 198:16 "things are ready for
20 you..install PGP

21 198:17 or call me
22 celly..also get come koin

23 198:18 together I gotta ship
24 to von this week

25 198:19 yet."

1 198:20 A I can't see I'd be telling JD
2 to install PGP. JD

3 198:21 used PGP all the time.

4 198:22 Q So typically you would
5 correspond with Dawson

6 198:23 using PGP?

7 198:24 A As far as I know all of our
8 communication for PGP

9 198:25 encrypted.

10 199: 199

11 199: 1 Q And the email states -- or the
12 person that's

13 199: 2 asking discsat to install PGP
14 so that you could

15 199: 3 communicate with them,
16 correct?

17 199: 4 A That's what it looks like. It
18 looks like whoever

19 199: 5 gave you these emails just
20 typed them up and

21 199: 6 said, Hey, look.

22 199: 7 Q They must have known your
23 practice of PGPing --

24 199: 8 A Or maybe they accepted a bribe
25 for these emails.

1 199: 9 Q Do you have any evidence that
2 someone accepted a

3 199:10 bribe to fabricate --

4 199:11 A Yeah, I do, actually. Not
5 these emails, but I do

6 199:12 know about some bribes.

7 199:13 Q I'm asking you whether or not
8 you have any

9 199:14 evidence --

10 199:15 A I don't have evidence of
11 bribes related to these

12 199:16 emails.

13 Page Range:199:19-199:21

14 199:19 Q Did you ever ask Mr. Dawson to
15 get koin together

16 199:20 because you had to ship to
17 Von?

18 199:21 A No. I don't recall doing
19 that.

20 Page Range:199:22-199:24

21 199:22 Q Are you certain of that?

22 199:23 A Yeah. I think every one of
23 these emails here is

24 199:24 fake.

25 Page Range:268:7-268:10

1 268: 7 Q Let me, if I could, have you
2 look at these --

3 268: 8 these text files that were
4 Exhibit 989, 990, and

5 268: 9 991. Yeah. It's 989, 990,
6 and 991 are the --

7 268:10 just the three that I picked
8 out.

9 Page Range:268:18-268:23

10 268:18 Q MR. STONE: Correct.
11 You testified

12 268:19 earlier these are text files
13 and --

14 268:20 A Yeah.

15 268:21 Q And it's your belief these are
16 not valid emails;

17 268:22 is that a fair --

18 268:23 A It's my opinion.

19 Page Range:269:1-269:6

20 269: 1 Q MR. STONE: Okay.
21 Now, one thing that

22 269: 2 I was noticing, if you look at
23 991 it has

24 269: 3 dr71.txt up at the top.

25 269: 4 A Yeah.

1 269: 5 Q This text file or whatever it
2 is appears to have

3 269: 6 a date of July of 2000 up at
4 the top.

5 Page Range:269:14-270:1

6 269:14 Q MR. STONE: Right now
7 it just says

8 269:15 dr71.txt, and says July 27,
9 2000, on it, right?

10 269:16 A Yeah.

11 269:17 Q Now, if you look at Exhibit
12 990, it's dr72.txt,

13 269:18 right?

14 269:19 A Yeah.

15 269:20 Q What's the date on that?

16 269:21 A The date I see further down
17 says March 1st, 2000.

18 269:22 Q So this text file is
19 supposedly several months

20 269:23 before --

21 269:24 A This other one.

22 269:25 Q -- Exhibit 991, but it says
23 dr72 versus dr71.txt,

24 270: 270

25 270: 1 correct?

1 Page Range:270:19-270:22

2 270:19 A One thing I do notice for sure
3 about these

4 270:20 documents is this very first
5 one here, 991 has

6 270:21 quite a significant chunk for
7 the header. This

8 270:22 one here you notice
9 something's missing.

10 Page Range:271:2-271:11

11 271: 2 Q Time out. Time out. When you
12 say "this here,"

13 271: 3 you are saying 991 has message
14 information in the

15 271: 4 header, correct?

16 271: 5 A Yeah. Like, look at the
17 message header. It's

18 271: 6 got IPs and stuff in here.

19 271: 7 Q Okay. Now what was the other
20 one you were

21 271: 8 pointing to?

22 271: 9 A 990 and 989 don't have the
23 same sort of IPs in

24 271:10 here. Why not?

25 271:11 Q What does that tell you?

1 Page Range:271:14-271:15

2 271:14 Q MR. STONE: What does

3 that indicate to

4 271:15 you?

5 Page Range:271:18-272:14

6 271:18 A I don't know, man. Something

7 funky's going on.

8 271:19 Like I said, there's no PGP

9 signatures on here.

10 271:20 Is there any -- all I'm asking

11 is somebody show

12 271:21 the EML files for these actual

13 -- let's see the

14 271:22 EML files.

15 271:23 Q MR. STONE: What's an

16 EML file? I'm

17 271:24 sorry.

18 271:25 A Like if you have got Outlook

19 and then you export

20 272: 272

21 272: 1 an email it should have the

22 EML file. It should

23 272: 2 be original. You think that

24 might prove that

25 272: 3 they are the original. Even

1 that could be

2 272: 4 edited. But it just seems
3 doesn't seem right

4 272: 5 here.

5 272: 6 Q Look at a document that says
6 dr74.txt, which is

7 272: 7 Exhibit 989.

8 272: 8 A Yeah.

9 272: 9 Q What's the date on that?

10 272:10 A October 1999.

11 272:11 Q And based on your practice,
12 had you sent an email

13 272:12 to Mr. Dawson during this time
14 period, one of

15 272:13 your emails should contain PGP
16 signature and an

17 272:14 IP return.

18 Page Range:272:18-273:11

19 272:18 A Basically the emails that I
20 sent to Dave Dawson

21 272:19 should have been encrypted
22 with PGP. If

23 272:20 Dave Dawson actually gave you
24 these emails he

25 272:21 would also be able to give you

1 the PGP encrypted
2 272:22 copy, not just the plain text
3 copy; he'll give
4 272:23 you the PGP copy.
5 272:24 There's
6 no reason Dave
7 272:25 would just have the
8 unencrypted copy; he would
9 273: 273
10 273: 1 also have the encrypted. Why
11 would he just keep
12 273: 2 the unencrypted copy all that
13 long and not the
14 273: 3 encrypted one. I have a
15 feeling that these
16 273: 4 emails came from somebody
17 else, and I have a
18 273: 5 feeling that they retyped them
19 up. And I think
20 273: 6 they removed my PGP signature
21 from here. That
22 273: 7 way they could edit this text
23 and put whatever
24 273: 8 they want. That's my thoughts
25 on the matter.

1 273: 9 I have
2 been using PGP, by
3 273:10 the way, since 1994. I know
4 quite a bit about
5 273:11 it.

6 Page Range:247:4-247:7

7 247: 4 Q Now, one thing I notice just
8 sitting here
9 247: 5 watching the testimony, I'll
10 be honest with you,
11 247: 6 sir, you seemed a bit upset
12 and angry as you were
13 247: 7 testifying. Is that a fair
14 statement?

15 Page Range:247:13-247:18

16 247:13 A Well, basically, yeah. I'm
17 choked.

18 247:14 Q MR. STONE: All
19 right. Why is that?

20 247:15 I mean I noticed you were kind
21 of angry

22 247:16 throughout the whole process.
23 I'm just curious,

24 247:17 why are you angry?

25 247:18 A I feel I'm being --

1 Page Range:248:17-249:1

2 248:17 A Okay. Basically, like, I feel
3 that this was set

4 248:18 up by a few people, Ron
5 Ereiser, Reg Scullion,

6 248:19 Charles Perlman. They all had
7 beefs against NDS,

8 248:20 Ron the biggest one. He was
9 out to get NDS, he's

10 248:21 always been out to get NDS.
11 He told me I was

12 248:22 going down. Whatever, you
13 know. I just kind of

14 248:23 laughed it off. I didn't
15 think it was serious

16 248:24 until I start getting, like,
17 threatened with

18 248:25 lawsuits. Like I said, I'm
19 pretty well bankrupt

20 249: 249

21 249: 1 now.

22 Page Range:263:10-263:13

23 263:10 Q MR. STONE: So was it
24 your impression

25 263:11 that Mr. Ereiser was trying to

1 pressure you to

2 263:12 make false statements --

3 263:13 A He was.

4 Page Range:263:16-263:20

5 263:16 Q MR. STONE: And am I

6 correct that you

7 263:17 told Mr. Ereiser that you

8 weren't aware of any

9 263:18 piracy activity by either

10 Chris Tarnovsky or

11 263:19 John Norris?

12 263:20 A I believe --

13 Page Range:263:23-263:23

14 263:23 A I believe I told him that

15 right away.

16 Page Range:266:12-267:6

17 266:12 Q MR. STONE: At some

18 point did that

19 266:13 fear turn into a bit of anger

20 about the process

21 266:14 and the lawsuit that you got

22 dragged into?

23 266:15 A I just -- this has been a long

24 time, seven years.

25 266:16 It's -- you know what I mean?

1 I started up that
2 266:17 website as a hobby. I made
3 money. But that's
4 266:18 not my calling in life.
5 That's not what I want
6 266:19 to do. I do graphic design,
7 stuff like that. I
8 266:20 went into consulting, doing
9 investigating stuff.
10 266:21 But, you know, I wasn't there
11 like looking to be
12 266:22 a criminal or nothing. I
13 don't want to be a
14 266:23 criminal. I just wanted to
15 run that website.
16 266:24 You know, it was -- I was new
17 to the web. But
18 266:25 they took me right away, and
19 they were like --
20 267: 267
21 267: 1 they made me out to be
22 somebody -- anybody that
23 267: 2 reads that fourth amended
24 complaint would think,
25 267: 3 like, you know, this is Tom

1 Clancy novel. It

2 267: 4 sounds like something almost

3 -- look on the net.

4 267: 5 Search for Allen Menard plus

5 piracy. My name's

6 267: 6 ruined for life.

7 Total Length - 00:26:10

8 (Videotape concluded.)

9 THE COURT: Why don't we take a recess.

10 You are admonished not to discuss this matter

11 amongst yourselves, nor form or express any opinion

12 concerning this case.

13 We'll see you in about 20 minutes.

14 (The following proceedings is taken outside

15 the presence of the jury.)

16 THE COURT: Counsel, then, 20 minutes, so about 25

17 after. Thank you.

18 (Recess.)

19 (The following proceedings is taken in the

20 presence of the jury.)

21 THE COURT: We are on the record. All counsel are

22 present, the parties are present, the jury is present.

23 And Counsel, if you'd like to call your next

24 witness, please.

25 MR. HAGAN: Certainly, your Honor. Plaintiffs

1 call Alan Guggenheim.

2 THE COURT: Thank you.

3 Thank you, sir. Would you be kind enough to raise
4 your right hand, please. The clerk will administer the oath
5 to you.

6 ALAN GUGGENHEIM, PLAINTIFFS' WITNESS, SWORN

7 THE WITNESS: I do.

8 THE COURT: Thank you, sir. If you'd please be
9 seated in the witness box to my left.

10 Thank you. And after you are comfortably seated,
11 would you state your full name to the jury, please.

12 THE WITNESS: My name is Alan Guggenheim.

13 THE COURT: I'm going to ask the clerk if you'd be
14 kind enough to move that microphone closer to Mr. Guggenheim
15 so we can hear you.

16 THE WITNESS: Okay.

17 THE COURT: Now, what's your name, sir?

18 THE WITNESS: My name is Alan Guggenheim.

19 THE COURT: And how do I spell your first name?

20 THE WITNESS: A-l-a-n.

21 THE COURT: And your last name, sir?

22 THE WITNESS: G-u-g-g-e-n-h-e-i-m.

23 THE COURT: Thank you, sir.

24 This is direct examination by Mr. Hagan on behalf
25 of EchoStar and NagraStar.

1 MR. HAGAN: Thank you, your Honor.

2 DIRECT EXAMINATION

3 BY MR. HAGAN:

4 Q Good morning, Mr. Guggenheim.

5 A Good morning.

6 Q Before we get started, can you tell the ladies and
7 gentlemen of the jury a little bit about yourself, where
8 you're from, a little bit about your family.

9 A I was born and raised in France, in Paris. I got an
10 engineering degree. My first job was an expatriate job in
11 Martinique in Guadeloupe, later in French Antilles. And
12 then in 1982, I came to the United States, became a citizen
13 about 10 years later.

14 Q Can you tell us a little bit about your educational
15 background?

16 A Yes, I got engineering degree from the -- one of the
17 top school in France.

18 Q And Mr. Guggenheim, have you had any military
19 experience?

20 A Yes, I was -- I was an officer in the French Army in
21 recon and intelligence training.

22 Q Now, have you assisted any government agencies or
23 provided any consulting work with government agencies --

24 THE COURT: Move the microphone closer to you and
25 speak slower.

1 BY MR. HAGAN:

2 Q -- here in the United States?

3 THE COURT: Start the question again; speak
4 slower.

5 MR. HAGAN: Thank you, your Honor.

6 BY MR. HAGAN:

7 Q Mr. Guggenheim, have you assisted any government
8 agencies or consulted with any government agencies here in
9 the United States?

10 A Yes. As a part of my CIS consulting business, I was a
11 consultant for an entity called the SGDN in France and --

12 (Interruption in the proceedings.)

13 THE WITNESS: SGDN. It -- translation would be
14 general secretary for national defense. It's about the
15 equivalent of the U.S. NSC. And I was working with the Rank
16 Corporation, for example, in Santa Monica, with Congress,
17 both the Senate and -- and the House committees, as well as
18 the government, helping on the transatlantic relations
19 between France and -- and the U.S., especially at the time
20 between the first Gulf War --

21 BY MR. HAGAN:

22 Q Have you attended any meetings at the White House here
23 in the United States?

24 A Yes, I did. Actually, one of the meeting with -- with
25 the then national security adviser Bob Gates, which is now

1 secretary of defense and --

2 Q Mr. Guggenheim, you are the former CEO of the
3 plaintiff, NagraStar; is that correct?

4 A That's correct, yes.

5 Q And when did you step down from that role?

6 A In March of '07.

7 Q And Mr. Lenoir became the new CEO at that time?

8 A Yes.

9 Q Now, I understand that you are going to come back later
10 in the trial and testify about a number of other issues, but
11 today we are focused just on a couple of things that you did
12 during your investigative work for NagraStar.

13 Prior to attaining the title of CEO, you provided
14 consultancy work for NagraStar; is that correct?

15 A Yes, that's correct.

16 Q And what was the name of the company that you worked
17 for providing those services?

18 A My company is called CIS.

19 Q And in fact, you still have a consultancy relationship
20 with NagraStar through CIS; is that correct?

21 A Yes, that's correct.

22 Q And can you describe for the ladies and gentlemen of
23 the jury what type of investigative work CIS engaged in for
24 NagraStar?

25 A At the beginning, we are talking of late '98, and we

1 set up what I call the "filibration" to gather technical
2 intelligence on hacking and piracy of the Nagra system.

3 Q Now, you also provided some of those services to some
4 of the Kudelski entities; is that correct?

5 A Yes, at the time, actually, in '98 and '99 and early
6 2000, I am -- CIS was actually in contract with Kudelski,
7 and I had very little contact at the beginning with -- with
8 EchoStar, yet I developed the field intelligence and
9 operation for all of NagraVision, NagraStar, as well as the
10 other entities to see what was happening in North America,
11 U.S. and especially Canada.

12 Q Now, as I understand it, you are currently suing
13 Kudelski. You're in a litigation dispute with him; is that
14 correct?

15 A Yes, that's correct.

16 Q Do you believe that your lawsuit against Kudelski will
17 impact your testimony in any way for purposes of this
18 litigation?

19 A No. I'm here to tell the truth about what I did and
20 what I heard and done in the last 10 years.

21 Q And any grudge that you may hold against Kudelski is --
22 is not going to reflect on the plaintiffs in this case?

23 A I will say right things.

24 Q Now, Mr. Guggenheim, turning back to your work for
25 NagraStar, was part of that work to investigate the piracy

1 and hacking of the plaintiffs' DNASP-II security system?

2 A Yes.

3 Q And can you describe for us, just in general terms,
4 what you did to investigate that piracy.

5 A So at the beginning, there was -- there was not much,
6 so I started by learning about piracy, in general. So I
7 started where I could -- I had my own contacts, obviously,
8 law enforcement, FBI, Secret Service, NSA, other people that
9 I had met through my other consulting. And I also contacted
10 DirecTV, because at the time when Nagra got hacked in -- in
11 late '98, the -- the big piracy in the U.S. was on DirecTV,
12 several people I knew, and a lot of people were starting to
13 pirate DirecTV. So I contacted John Norris at NDS, I
14 contacted Larry Reisler at DirecTV. I joined groups like
15 the NCTA, Anti-piracy Task Force and the SBCA to learn about
16 what was happening, and I got a little advice from these
17 people on how they were going about it, and I proposed,
18 then, to share information. And at the beginning, I was
19 very friendly with them, because I thought we were all
20 fighting pirates.

21 So one of the things that I did then was to set up
22 methods to listen to what the pirates were saying, and at
23 the time, they were mostly communicating on the ISC
24 channels, so we set up ISC monitoring in -- because we are
25 in California, it's almost in the garage. Actually, I had a

1 big -- a big utility room above my garage, so I set up there
2 several computers to do ISC monitoring, and I got Kudelski
3 to give me an increased budget. And I asked my wife to help
4 in the monitoring and -- and the bringing the monitoring
5 down to an acceptable size, because you get 99 percent
6 garbage and only 1 percent information, and produce reports
7 daily.

8 The second thing we did was to look for some
9 investigators, private investigators. So I had a good
10 friend at the rotary who was an ex-FBI, pretty high up in
11 the FBI, and he was running an investigation firm at the
12 time. So I talked to him, and I hired them, the Emerald
13 Group to start investigation, and he had two or three
14 investigators who started to -- to work for me and gather
15 intelligence and -- and information.

16 THE COURT: All right. Now, let me stop for just
17 a moment.

18 Counsel.

19 BY MR. HAGAN:

20 Q Now, Mr. Guggenheim, I understand that both you and
21 your wife, Suzanne Guggenheim, are going to be back later in
22 the trial, and we'll go through all of those issues then,
23 but today I want to focus just on one part of your
24 investigation, and that is the collection of certain
25 documents and evidence.

1 As part of your work for NagraStar and -- and CIS,
2 investigating this piracy, is it fair to say that you
3 gathered a -- a number of documents?

4 A Yes, sure.

5 Q And I want to talk just today about three categories of
6 those documents, the first being the Hays County Narcotics
7 Task Force, the second being documents from Giles Kaehlin
8 and Canal+ --

9 THE COURT: I'm sorry, from?

10 MR. HAGAN: Giles.

11 THE COURT: Spell it.

12 MR. HAGAN: G-i-l-e-s, Kaehlin, K-a-e-h-l-i-n.

13 THE COURT: And the third?

14 MR. HAGAN: And the third category of documents
15 were received from Mr. Ereiser.

16 THE WITNESS: Okay.

17 BY MR. HAGAN:

18 Q So let's -- let's start with the first category. Did
19 there come a point in your investigation that you received
20 documents from the Hays County Narcotics Task Force?

21 A Yes, we received them at NagraStar.

22 Q And can you tell the ladies and gentlemen of the jury
23 how you received those documents.

24 A I think NagraStar had to hire at that time an
25 investigator called JJ Gee, and he was in contact with both

1 the law enforcement, the AUSA and the task force, and he
2 requested every document. We were helping them with the
3 investigation, and we were giving them everything they
4 wanted, and they -- they send us these documents.

5 Q And as you understand it, those documents were turned
6 over to the lawyers and produced in this case?

7 A Yes.

8 Q Now, did there come a point in time where you received
9 documents in evidence from Canal+?

10 A Yes.

11 Q And can you tell the ladies and gentlemen of the jury
12 about those documents.

13 THE COURT: Now, is this -- are these the Giles
14 Kaehlin document?

15 MR. HAGAN: Yes, your Honor.

16 THE COURT: All right.

17 MR. HAGAN: And maybe let's lay some foundation.

18 BY MR. HAGAN:

19 Q Who is Mr. Kaehlin, Giles Kaehlin?

20 A Giles Kaehlin was the head of general services for the
21 Canal+ Group, and he was also in charge of the security for
22 the Canal+ Group.

23 Q And who is Canal+?

24 A Canal+ is -- is a large TV operator and movie producer
25 and media conglomerate in -- in Europe.

1 Q And can you tell us when the first time is you received
2 documents from Canal+?

3 A Sir, we had a meeting with Canal+'s lawyers and -- and
4 EchoStar lawyers, and I was invited at that meeting and
5 decided to do whatever shared defense agreement with them.
6 And they were investigating illegal conduct, which they
7 believed came from people like Chris Tarnovsky and NDS. And
8 they had a lot of investigation that was done in Europe
9 mostly, in Israel, and they disclosed that to us, and I
10 disclosed to them what we had done as an investigation
11 mostly in the U.S. and Canada. So there was a
12 complimentarity in the -- in the type of things we had done,
13 but each of us had only pieces of the puzzle.

14 Q And after this meeting that you attended -- well, let's
15 back up.

16 Where did this meeting take place?

17 A At EchoStar -- in EchoStar building in Inglewood where
18 the NagraStar building is, I mean, the same building.

19 Q The meeting wasn't secret or anything like that, right?

20 A No. It was in the boardroom of EchoStar.

21 Q Formal meeting?

22 A Yes.

23 Q Attended by attorneys?

24 A A lot of attorneys.

25 Q Some of the attorneys representing Canal+?

1 A Yes, absolutely. Jamie Diboise from Wilson Sonsini, I
2 think, was the lead attorney --

3 (Interruption in the proceedings.)

4 THE WITNESS: Jamie from Wilson, W-i-l-s-o-n. I
5 think it's -- Sonsini is -- I'm not sure. I think you will
6 have to check that. It's a big firm in California.

7 THE COURT: Do you want to spell it?

8 MR. WELCH: I think it's W-i-l-s-o-n, S-o-n-c-i --

9 MR. SNYDER: S-i.

10 THE COURT: S-i.

11 MR. WELCH: -- s-i-n-i.

12 THE COURT: S-i-n-i. Thank you.

13 BY MR. HAGAN:

14 Q Mr. Guggenheim, at the time that you attended this
15 meeting, did you understand that Canal was investigating the
16 defendants' involvement in piracy of their system?

17 A Yes, absolutely, yes.

18 Q And then after this meeting in Denver, did you have an
19 occasion to go meet with the representatives of Canal at
20 their offices?

21 A Yes, I did stay in contact with Giles Kaehlin, who was
22 driving the investigation and later driving the lawsuit of
23 Canal+ against NDS, and I -- I did go to their headquarters
24 in -- in Paris, and I met with Giles in Paris.

25 Q And that meeting was at their headquarters?

1 A Yes.

2 Q Nothing secretive about that meeting?

3 A No, no.

4 Q And during that meeting, did Canal+ and Mr. Kaehlin
5 provide you with evidence?

6 A Yes, he showed me some of the documents he had produced
7 himself like a big chart, a color chart with all the pirate
8 players, including NDS on one side and the Canadians and all
9 that.

10 THE COURT: I'm sorry, NDS on one side and the --

11 THE WITNESS: The Canadians.

12 THE COURT: Canadians.

13 THE WITNESS: Yeah, the Canadian pirates on -- on
14 the other, and Chris Tarnovsky and some of the other
15 pirates. And he had a -- his own internal report with
16 management and a lot of the evidence that he had collected
17 during the -- the -- either the trial or the investigation
18 before the trial for Canal+ that was very interesting to us.

19 BY MR. HAGAN:

20 Q As I understand it, you provided -- you turned those
21 documents and that evidence over to the lawyers?

22 A Yes.

23 Q And then, as you understand it, they were produced in
24 the course of this litigation?

25 A Yes, that's correct.

1 Q Now, did -- did you have any understanding how Canal+
2 got those documents and that evidence?

3 A I mean, there were investigation documents as well as
4 documents that they collected for their lawsuit and produced
5 in the lawsuit, so --

6 Q But they never told you specifically where they came
7 from?

8 A No.

9 Q You just -- it was your understanding that they came
10 through the lawsuit and investigation that Canal+ was doing?

11 A Absolutely.

12 Q Now, the third category of the documents and evidence
13 came to you from Mr. Ereiser; is that correct?

14 A Yes.

15 Q Do you recall approximately when that was?

16 A Yes, I think it was around the -- several years later,
17 I think, in 2005.

18 Q During the course of this litigation?

19 A Yes.

20 Q And you went with -- did you go with Mr. Gee up to --
21 to meet Mr. Ereiser?

22 A Yes, I did.

23 Q And did Mr. Ereiser provide you any documents or
24 evidence at that meeting?

25 A Yes, he did. These were on CDs.

1 Q Did you open those CDs at the meeting?

2 A No.

3 Q And that meeting took place where Mr. Ereiser lives up
4 in Canada; is that correct?

5 A Yes, I think it was in Vancouver.

6 THE COURT: Just a second.

7 (Interruption in the proceedings.)

8 THE COURT: Thank you, Counsel.

9 BY MR. HAGAN:

10 Q Now, Mr. Guggenheim, going back to the -- the CDs that
11 you received from Mr. Ereiser, did Mr. Ereiser tell you
12 generally what he believed was on those CDs?

13 A Yeah, I mean, we all knew what it -- it was, and maybe
14 I should explain.

15 When I saw Giles Kaehlin, he gave me his --

16 (Interruption in the proceedings.)

17 THE WITNESS: He gave me his documents. They were
18 specific to his lawsuit, which was Canal+ against NDS, and
19 they were related to the actions against his system. So I
20 ask Giles if he had more documents, and he told me, "Oh,
21 yes, I have tons of them."

22 And I said, "Well, did you look to see if there
23 were some that would be more specific to all action in the
24 U.S. against NDS," and he said, "No, I did not have time to
25 look for, but I will."

1 And after that, several facts happen that Giles
2 was not cooperating with us as much and was dragging and all
3 that, and he said, yes, he would give us the rest of the
4 documents, but he did not give them to us. So several of
5 the people who were working for Giles Kaehlin like -- like
6 Ron Ereiser or some others in the CK2 company, knew that I
7 needed these documents, if possible, and that Giles had said
8 he would give them to me, but was not coming. So when Ron
9 called me and said, "Oh, I finally got the rest of the
10 documents, I think that's what you were looking for, so" --

11 Q And you understood these to be documents to be used as
12 evidence in this case against the defendants?

13 A Yes, sure.

14 Q You didn't have any understanding that there were some
15 type of confidential documents or documents with technical
16 information about the defendants, correct?

17 A No.

18 Q Were you even interested in that type of information?

19 A No.

20 Q Now, when you spoke with Mr. Ereiser and he gave you
21 these CDs, did he tell you where he got the documents?

22 A No, he did not.

23 Q Did you have any understanding as to where those
24 documents may have come from?

25 A I mean, for me, they had the documents that -- where

1 the rest of the documents that were supposed to come from
2 Giles Kaehlin and the Canal+ investigation and lawsuit, so
3 that was obvious that I was hoping that's where they were.

4 Q And then once you got those CDs, did you ever open
5 them?

6 A I think JJ opened them, and we checked two or three
7 documents to see if it was indeed the kind of things that
8 was Giles Kaehlin cannot press lawsuit, and it looked like
9 it was, so I said, "That's great."

10 Q And then ultimately you turned those CDs over to the
11 lawyers?

12 A Yes, we did like everything else.

13 THE COURT: Excuse me. I want you to take a
14 breath in between questions, okay?

15 You mentioned JJ. Explain to the jury who JJ is;
16 give them a full name.

17 THE WITNESS: Okay. The name is JJ Gee, G-e-e,
18 and he was the investigator for NagraStar, the head of the
19 security investigation.

20 THE COURT: Thank you.

21 BY MR. HAGAN:

22 Q Now, once you and Mr. Gee determined that the documents
23 on the CD was the type of evidence that you were looking
24 for, you turned those CDs over to the attorneys, correct?

25 A Yes. Yes, we did.

1 Q And it's your understanding that the attorneys provided
2 that information to the defendants?

3 A Yes, that's what the attorneys told us.

4 Q And it's also your understanding that the attorneys
5 lodged those CDs with the Court under seal?

6 A Yes.

7 Q Now, Mr. Guggenheim, you understand that the defendants
8 have asserted some counterclaims in this case; is that
9 correct?

10 A Yeah, I've seen some statement which were kind of
11 outrageous to me.

12 Q And you understand that they are claiming that you
13 stole these documents?

14 A Yeah, that's ridiculous.

15 Q Did you ever steal any documents or information from
16 the defendants?

17 A No, absolutely not.

18 Q Did you ever have possession of any of the defendants'
19 computers that you accessed to try to get this evidence?

20 A No.

21 Q Did you ever ask Mr. Ereiser or Canal+ or anyone else
22 to steal any evidence or documents from the defendants?

23 A No, absolutely not.

24 Q Do you have any understanding as to why the defendants
25 would make these allegations about you?

1 A Well, I think the documents are the -- are the key
2 paper elements, you see, in this case, where there are a lot
3 of people talking a lot of things that were not that solid.
4 So these documents show clearly -- and the ones I saw in
5 more details were the one that Canal+ used in their lawsuit
6 against NDS, and they were clearly showing that NDS was
7 driving the whole piracy operation and the whole piracy
8 network a lot more than I even imagined myself. So they
9 were very strong evidence for me of their illegal
10 activities, and so -- and they were proofs, and it was very
11 important.

12 Q Now, Mr. Guggenheim, you had an opportunity to review
13 some of the Pleadings that were filed against the defendants
14 in this lawsuit, correct?

15 A Yes, I did.

16 Q And those Pleadings included the Complaints, the actual
17 lawsuit itself; is that right?

18 A Yes.

19 Q And you understood that some of the evidence that you
20 got from Canal+, that you got from Mr. Ereiser, and that you
21 got from the Hays County Narcotics Task force was cited to
22 or quoted from in the lawsuit against the defendant; is that
23 correct?

24 A Yeah.

25 MR. HAGAN: Pass the witness, your Honor.

1 THE COURT: Cross-examination by Mr. Stone on
2 behalf of NDS.

3 CROSS-EXAMINATION

4 BY MR. STONE:

5 Q Good morning, Mr. Guggenheim.

6 A Good morning, Mr. Stone.

7 Q I think we've met before, haven't we?

8 A I'm sorry, I did not get you.

9 Q We have met before, haven't we?

10 A Yes, we have.

11 Q You remember me?

12 A I sure do.

13 Q I thought you might.

14 I'd like to ask you a few questions just to sort of get
15 an understanding of the relationship to some of the players
16 here.

17 You mentioned Canal+, and at the time you met with
18 Canal+, it was part of Vivendi media conglomerate, correct?

19 A That's correct.

20 Q And do you recall that Vivendi was making a significant
21 investment with EchoStar to acquire DirecTV at that time?

22 A Yes, that's correct.

23 Q And how much money was that?

24 A \$1 billion.

25 Q Did you say 1 billion?

1 A 1 billion, yes, with a "b."

2 Q And did you testify that Mr. Ereiser worked for some
3 company affiliated with Canal+ at the time as well?

4 A I don't know at what time exactly, but I know at some
5 time he did, yes.

6 Q And then he -- then he worked for NagraStar, or was he
7 working for NagraStar at the same time he was working for
8 Canal+?

9 A He might have been working at the same time for both.

10 Q And was Mr. Ereiser an investigator?

11 A No.

12 Q Was Mr. Ereiser a satellite pirate as far as you knew?

13 A Yes.

14 Q And, sir, you testified that you have a consulting
15 arrangement currently with NagraStar?

16 A That's correct.

17 Q And that was after you began your legal proceedings
18 against Kudelski?

19 A No.

20 Q When was -- when did that consultancy relationship
21 begin?

22 A The contract was signed on the 1st of October, '07.

23 Q And that was before your last --

24 THE COURT: Excuse me, of '07?

25 THE WITNESS: '07.

1 THE COURT: 2007.

2 THE WITNESS: Yes.

3 THE COURT: Thank you.

4 BY MR. STONE:

5 Q And you worked for OpenTV after NagraStar, correct?

6 A Yes, that's correct.

7 Q And then you were terminated by Mr. Kudelski from
8 OpenTV, as I understand it?

9 A Yes, that's correct.

10 Q And then the -- the claims between you and Kudelski
11 began at that point?

12 A Yes.

13 Q And that was right around the time you entered into
14 this consulting arrangement, correct?

15 A Well, my -- I filed this -- a Complaint for
16 whistle-blower in late -- later in the year. I think it was
17 either October or November finally it was filed, so the
18 consulting agreement was actually before.

19 Q Okay. Well, I thought you said the consulting
20 agreement was October as well?

21 A 1st of October.

22 Q The 1st of October?

23 A Yes.

24 Q And then you entered into a consulting agreement with
25 NagraStar, correct?

1 A That's the one that was signed on the 1st of October.

2 Q Which is 50 percent owned by Kudelski, correct?

3 A And that's correct.

4 Q And how much have you been paid under that consulting
5 agreement up until the point of your testimony here today?

6 A I did not look at the exact total, but I would say
7 it's -- it's about \$300 an hour for the last six months.
8 It's probably around 80 or \$90,000, total, including some
9 reimbursement of expenses.

10 Q I looked at them. That's about 90,000; does that sound
11 right?

12 A Yeah.

13 Q And your invoices refer to -- well, what are you doing
14 for the \$90,000?

15 A I'm doing anti-piracy research and work, and
16 preparation and helping on the -- on preparation of the
17 case.

18 Q "The case" meaning you are doing litigation work?

19 A I -- I don't know, it's a technical, legal word. I
20 don't know it's litigation work, but no, it's more looking
21 for data, and I have a lot of history in that whole 10 years
22 of searching the truth.

23 Q Now, do you know how long after you got the documents
24 from Mr. Ereiser they were produced to defendant?

25 A No, I don't know for sure.

1 Q Can you tell the folks on the jury when you got the
2 documents from Mr. Kaehlin?

3 A From Mr. Kaehlin, I think it was late 2002 or 2003.

4 Q Would it surprise you to learn that defendants did not
5 receive those documents until April of 2007?

6 A All the evidence in all of the cases at NagraStar were
7 locked in the evidence room, and that's where we -- we put
8 the things, and they will turn to their lawyers at the time
9 when it was appropriate, as far as I understand.

10 Q Now, NagraStar was a competitor of NDS at the time you
11 obtained the documents, correct?

12 A NagraVision more than NagraStar, really, but --

13 Q And just to be clear, Mr. Ereiser was on the NagraStar
14 payroll at the time he provided the documents to you,
15 correct?

16 A Most likely. I know he was on and off, as I said
17 already, so most likely he was at least a consultant paid by
18 NagraStar to provide information on piracy, yes.

19 Q And am I correct that when NagraStar competes against
20 NDS in the marketplace, NagraStar doesn't share with NDS
21 documents regarding customer proposals?

22 A As I said, we are not really competing against NDS.
23 NagraVision is competing against NDS directly, but --

24 Q So are you telling this jury in this lawsuit that we've
25 got going that NagraStar doesn't compete with NDS?

1 A No, it's -- NagraStar's scope is more limited to DISH
2 Network, EchoStar, Bell ExpressVu and the affiliates of --

3 Q So if there were a claim for unfair competition by
4 NagraStar against NDS in this lawsuit, that wouldn't make
5 sense to you, because they don't compete, correct?

6 MR. HAGAN: Object to the extent it calls for a
7 legal conclusion.

8 THE COURT: Overruled.

9 THE WITNESS: So as I said, they compete to some
10 extent. NagraStar doesn't have the freedom to compete
11 everywhere in the world.

12 BY MR. STONE:

13 Q Well, they compete in the United States, don't they?

14 A Yes.

15 Q And in that competition, NagraStar doesn't typically
16 share documents with NDS about NagraStar's technology, does
17 it?

18 A No, that's correct.

19 Q It typically doesn't share documents with NDS about
20 weaknesses or possible hacks of the NagraStar system, right?

21 A Well, actually, at the beginning of the relationship
22 with DirecTV and NDS, we did exchange some information on --
23 on piracy and on -- on other things. I mean, we had
24 sometimes some friendly calls about an ECM that was
25 successful in one system or the other --

1 (Interruption in the proceedings.)

2 THE WITNESS: An ECM, sorry. Electronic
3 countermeasure.

4 BY MR. STONE:

5 Q Would you share with NDS technical information about
6 what's on the chip in the Smart Cards?

7 A No.

8 Q Would you share information about specific ways to hack
9 NDS or NagraStar cards with NDS?

10 A No, for sure not.

11 Q And what's the reason you wouldn't share those kind of
12 documents with NDS?

13 A Which document are you talking about sharing?

14 Q Regarding the technology of the Smart Cards?

15 A Sorry, I lost you there. I don't recall either you or
16 me saying that I shared technology documents regarding Smart
17 Cards with NDS.

18 Q No, I believe you were clear that you would not do
19 that. My question is, is there a reason why you would never
20 share those kinds of documents with NDS?

21 A Well, I mean, each company has to keep its own secrets.

22 Q Let me show you one of the documents you got from
23 Mr. Kaehlin, Exhibit 391.

24 And I'll represent to you, sir, based on the production
25 number, counsel has stipulated that this is one of the

1 documents obtained from Mr. Kaehlin, and it bears Bates
2 Stamp Number ESC32086 through 32115. And what's the title
3 of this document?

4 A It's DirectTV -- it looks like "DirectTV proprietary II."

5 Q Did you say "proprietary"?

6 A Yes.

7 Q Does Nagra ever use the words "proprietary" on its
8 confidential documents?

9 A They might, yes.

10 Q Was there ever any litigation between NagraStar and NDS
11 relating to the P3 card developed by NDS?

12 A I don't think so.

13 Q So no lawsuits between NagraStar and NDS relating to
14 the P3 technology; is that correct, sir?

15 A Yeah, that's correct.

16 MR. STONE: Your Honor, I would move at this time
17 391.

18 THE COURT: Any objection?

19 MR. HAGAN: No objection, your Honor.

20 THE COURT: 391 is received.

21 (Defendants' Exhibit No. 391 is received into
22 evidence.)

23 BY MR. STONE:

24 Q Okay. And if we could go to the top of the document,
25 it should show "DirectTV proprietary." Is that what you were

1 referring to?

2 A Yeah, that's -- that's probably the first time I see
3 the document, so that -- you told me -- you asked me to read
4 the top of the document. I read the top of the document.

5 Q And what's the title of the document?

6 A Below the logo, it says "DirectTV and NDS card history
7 and technical discussion."

8 Q And then down below, it says "DirectTV proprietary II"
9 near the bottom?

10 A Yes.

11 Q And I don't see -- well, if you turn to the next page,
12 391, page 2.

13 I don't see any --

14 A Okay.

15 Q -- production number at the bottom of this page that
16 relates to any other lawsuit, do you?

17 A It's becoming legally complicated for me. I don't know
18 what you mean by that.

19 Q Well, if NDS had produced this in some other
20 litigation, it should have an NDS production number. You
21 don't see that anywhere on this document, do you, sir?

22 A No, I don't.

23 Q Now, looking at just the table of contents on this
24 page, looking at item number 6.

25 A Okay.

1 Q What's the title of that portion of the document?

2 A It says "card technical details."

3 Q Card technical details are the kind of information you
4 would never share with NDS, correct?

5 A Well, probably, yes.

6 Q Probably, yes.

7 Do you have any doubt that that is information that you
8 would never voluntarily share with NDS when competing
9 against it?

10 A Well, I don't know what is in this document, so just a
11 title enough is not -- not enough to tell me, but most
12 likely that's correct.

13 Q Well, why don't we look at the introduction, which is
14 on the next page.

15 A Okay.

16 Q And looking at the first paragraph.

17 A Okay. Let me read it.

18 Q It says "This document was written to review the
19 security and integrity of the P3 card"; do you see that?

20 A Yes.

21 Q And that's the kind of information that you would not
22 share with NDS in the marketplace, right?

23 A That's correct.

24 Q And if you go to the fourth paragraph down that begins
25 with the second area.

1 A Okay.

2 Q And I'm focusing on what I think is the fourth sentence
3 if I counted correctly, beginning with "NDS has contracted."
4 It says "NDS has contracted with TNO to review the security
5 and integrity of the hardware aspects of the card. The
6 details of this report will be discussed in this document";
7 do you see that?

8 A Yeah, I see that.

9 Q And again, that's the kind of information NagraStar
10 would never divulge to NDS in the marketplace, right?

11 A Yeah, that's correct.

12 Q Now, if you could turn to page 391-7.

13 A Okay.

14 Q There is a paragraph that begins with "The DirecTV P3
15 card architecture"; do you see that?

16 A I'm reading it.

17 Q It says "It is the only NDS card produced by TI and has
18 different operational codes, op codes. Op codes of the TI
19 chip were modified to create a truly unique operating
20 environment for the P3 card"; do you see that?

21 A Yeah, and as I read that, that document now reminds me
22 if maybe it came also from the -- there is a lot of NDS
23 document that were made public on the internet at some
24 point; maybe that was one of them. That's --

25 Q So you flew to France to meet with Giles Kaehlin to get

1 documents that were available on the internet?

2 A Well, I did not know what documents he had, so there
3 was a lot of documents that he had used in these lawsuits.
4 I don't know if that was one of them or not.

5 Q Sir, you don't have any evidence this document was ever
6 on the internet, do you?

7 A I -- I have not searched. Maybe it is, maybe it is
8 not. We'll have to look.

9 Q Now, if you look at the last paragraph on this page,
10 391-07, it says "The P3 features several security techniques
11 not included in previous cards. The techniques used in P3
12 are far superior to those used in prior cards. These
13 measures make it extremely difficult to reverse engineer the
14 logic. The following provides a summary of these
15 techniques. Security measures and techniques will be
16 disclosed" -- excuse me -- "be discussed in detail later in
17 this document"; do you see that?

18 A Yeah, I see.

19 Q And then it goes on to mention as Item Number 1,
20 "Circuit camouflage, including hiding logic gates to trick
21 uneducated observers"; do you see that?

22 A Yeah.

23 Q Would you agree that if that kind of information fell
24 into the wrong hands, that could be harmful to NDS and
25 DirecTV?

1 A There is not much there, just the generic statement,
2 but --

3 Q Well, it would tell an attacker, wouldn't it, that
4 there was circuit camouflage being used that would be hard
5 to reverse engineer unless you knew it, correct?

6 A Yeah, and when you are on security, you know that you
7 have to do everything to protect your secrets, including
8 doing circuit camouflage, so just a statement saying that
9 it -- that they exist doesn't tell you much, actually.

10 Q Would certainly give a hacker a head start, wouldn't
11 it, sir?

12 A No. They are much more advanced than that.

13 Q Do you think this would be valuable to the DSS pirate
14 community if this information got out?

15 A I'm pretty sure it was already, because they were
16 talking about it on the internet, anyway.

17 Q Well, you said you got these documents in 2002,
18 correct?

19 A I said either late 2002 or 2003.

20 Q I believe your prior testimony was 2002; does that
21 sound about right?

22 A It -- it might be right, and I said at the time I was
23 not sure of the exact date.

24 Q Well, let's look at page 391-10, please.

25 By the way, do you know who the company TNO is?

1 A I've heard the name, yes.

2 Q And did you understand that this is a report of TNO's
3 attempt to break the P3 card?

4 A No, I -- I don't know that. I -- you are telling me
5 that. I thought it was a DirectTV report.

6 Q Well, who made the P3 card for DirectTV?

7 A The P3 card was an NDS card.

8 Q Okay. Looking at page 391-10, up at the top where it
9 says "TNO reported."

10 A Okay.

11 Q Where it says "TNO reported that manipulation of the
12 power supply voltage during a read cycle from ROM or EEPROM
13 could return fetch-op code of data to have all 1s on the
14 data bus. When descrambled, this could result in an illegal
15 jump instruction or other intended" -- "unintended action";
16 do you see that?

17 A Yes, I do.

18 Q Now, that would be an example of a way for an attacker
19 to use manipulation of the power supply to obtain valuable
20 op code data, correct?

21 A That's what it looks like, yes.

22 Q And sometimes that's referred to as glitching, correct?

23 A Yes.

24 Q This report reveals a vulnerability in the P3 card that
25 it was subject to glitching, right?

1 A Yeah, everybody knew that DirecTV's cards were weak and
2 very subject to glitching, yeah.

3 Q And if this information fell into the wrong hands, it
4 would be very harmful, correct, sir?

5 A Well, I think we knew that already. I mean, I don't
6 know what the date is of that report, but that was common
7 knowledge.

8 Q And this document relates to the lawsuit that we are
9 here on today; is that your testimony?

10 A No. I said I've never seen the document before. I
11 just got a lot of documents, and I turn them over to the
12 lawyers. I've never seen the document before.

13 Q Let's go to page 391-12, please.

14 I'm looking at the first full paragraph up at the top
15 of the paragraph.

16 A Okay.

17 Q It says "The P3.2 card is physically different than
18 the other cards and will be supplied only to the owners of
19 HNA" -- "HNS A-boxes"; do you see that?

20 A Yeah, I see that.

21 Q Now, did you understand that there were various
22 versions of the P3 card that were issued over time, P3.1,
23 P3.2, et cetera?

24 A I -- I don't recall knowing that detail.

25 Q Okay. Going down a few sentences where it says "The

1 P3.2 metal layer fix holds the reset low"; do you see that?

2 A Not yet.

3 Okay. Yeah, I found it.

4 Q "For a fixed number of clock cycles after voltage
5 starts to be applied. This protects against card failures
6 in HNS A-boxes, but this makes it easier for hackers to vary
7 voltage levels when trying to hack the card"; do you see
8 that?

9 A Yeah, I see that.

10 Q That would be valuable information to the DSS pirate
11 community; would it not?

12 A It's getting too -- too technical for me at that point,
13 so --

14 Q Well, do you understand that this information about the
15 metal layer in the chip is not something that can be seen
16 with the naked eye?

17 A Yeah, that's probably true.

18 Q You would agree that if this information fell into the
19 wrong hands, it could be harmful?

20 A Yes, depending on the timing. If it is after the fact,
21 that it's already hacked --

22 Q Well, do you know when the vulnerability identified on
23 this page was ever used against the P3 card?

24 A No, I have no idea.

25 Q And so you don't know whether it was after 2002, do

1 you?

2 A Correct.

3 Q Now, let's go to page 391-16, please.

4 Up at the top, we can see a heading, "Internal
5 analysis."

6 A Yes.

7 Q And this would be an internal analysis of the chip in
8 the P3 card, correct?

9 A I don't know.

10 Q Well, look at down at the very bottom where it says
11 "chip information."

12 Do you see where it says "NDS revealed the processor
13 type to TNO, although it's expected an attacker will have
14 trouble determining the manufacturer"?

15 A Yeah, I see that.

16 Q And it says "TNO confirmed that this information would
17 have been difficult to extract from the chip"; do you see
18 that?

19 A Okay.

20 Q So this report is identifying information that could be
21 used from an attacker that would be very difficult to
22 extract from the chip even using reverse engineering,
23 correct?

24 A I don't if -- here, they don't say which information,
25 so I don't know if it is in the report or not. They just

1 say that some information, if revealed, would be useful. I
2 don't know if it is in the report.

3 Q Yes, it does reveal that it's a Texas Instrument chip
4 with special op codes.

5 A Okay.

6 Q And that's something, according to this report, that
7 you could not even learn if you reverse engineered the chip,
8 correct?

9 A That's what it says here, yeah.

10 Q Do you agree that would be very valuable information to
11 the DSS pirate community?

12 A Yes, probably.

13 Q And it would be very harmful if that fell into the
14 wrong hands, correct?

15 A Yeah, sure.

16 Q Sir, if you could go to page 391-22.

17 There is a column entitled "Time manipulation."

18 A What column?

19 Q "Time manipulation."

20 A Okay.

21 Q It's near the top of the page, third paragraph. It
22 says "TNO reports the chip is susceptible to manipulation of
23 the power supply during read cycles of internal memories. A
24 dip in the power supply during a read cycle from ROM results
25 in incorrect data transfer from the memory to the bus"; do

1 you see that?

2 A Yeah, I see that.

3 Q Now, that's another example of a vulnerability that
4 could be used to attack the P3, correct?

5 A I guess it looks maybe like the same one they mentioned
6 before; I don't know.

7 Q And down below it says "TNO writes that this timing
8 attack was effective in reading ROM and EEPROM. RAM is not
9 affected. The consequences are different for each type of
10 memory"; do you see that?

11 A Yeah, I do see that.

12 Q And then it lays out the consequences for each type of
13 memory.

14 Now, if you'll recall, the prior vulnerability and
15 attack that we saw in this document was dropping the voltage
16 for a glitch. Do you understand that a timing manipulation
17 is different from that?

18 A Very high level only.

19 Q If you'd go to the next page, please, 391-23.

20 In the second -- excuse me, first paragraph, it
21 discusses "A manipulation of the power supply might also
22 cause instructions to be skipped, which can create
23 unforeseen instruction execution sequences and access to
24 protect a code"; do you see that?

25 A I see that.

1 Q Now, that's information that, if it fell into the wrong
2 hands, would be very harmful, right?

3 A Probably.

4 Q Next paragraph discusses in detail what happens on a
5 single power glitch, correct?

6 A Okay, yes.

7 Q It says "It is an issue with a ROM code, which cannot
8 be changed easily, because it is constructed with physical
9 transistors. Jumps to EEPROM can be solved more easily"; do
10 you see that?

11 A Not yet.

12 Q And is this the kind of information that NagraStar
13 would never disclose to NDS in the marketplace?

14 A NagraStar would not even have that information, so --
15 but that's correct.

16 Q Do you know, did anyone call up NDS after these
17 documents were obtained and inform NDS that card technical
18 details had been acquired?

19 A Nobody read these documents as far as I know, so -- the
20 first time I see that document. I know you are trying to
21 imply a lot of things, but --

22 Q So it's correct, nobody called up NDS and informed
23 them, not you, not the lawyers. Nobody called up and said,
24 "We have card technical details, here, in the year 2002"?

25 A Yeah, we did not know that.

1 Q Well, how many pages of documents did you get from
2 Mr. Kaehlin? The stipulation says it's a little over 400;
3 does that sound right?

4 A I -- yeah, that could be. I mean, I don't -- it was
5 some time ago. I mean, I know it was a pretty big pile,
6 yes.

7 Q Well, there is a bigger pile from Mr. Ereiser that I'm
8 going to get to, but the stack for Mr. Kaehlin --

9 A From Mr. Ereiser was a disk, so as you know, you can
10 have a lot more documents on a disk than on paper.

11 Q 26,000 pages to be exact, correct?

12 A That's what I've heard, yes.

13 Q Now, from Giles Kaehlin, however, it was a little over
14 400, correct?

15 A I did not count the pages.

16 Q And it's your testimony you didn't read those 400
17 pages?

18 A Yeah, that's correct.

19 Q Look at page 391-24, please, at the bottom.

20 Do you see at the bottom where it says "primary attack
21 scenarios"?

22 A Yes.

23 Q Have you ever heard that phrase before in the security
24 industry, "attack scenarios"?

25 A Yeah, I mean, it makes sense, yeah.

1 Q What's your understanding?

2 A It's different ways you could mount an attack.

3 Q Against the card?

4 A Yeah.

5 Q And that would be very harmful if that got out,
6 correct?

7 A Sure.

8 Q And that's not the kind of information Nagra or
9 NagraVision would ever share with a competitor, correct?

10 A Yeah, that's correct.

11 Q If you would go to 391, 26, please.

12 Your Honor, may we approach with a demonstrative?

13 THE COURT: (No audible response.)

14 MR. STONE: For the record, I've put before the
15 witness and the jury just a blowup of this page, 391-26.

16 BY MR. STONE:

17 Q Now, this is entitled "strong and weak aspects"; do you
18 see that?

19 A Yes, I do.

20 Q And it goes into some fairly detailed information about
21 the design of the P3 card, correct?

22 A I don't know. I have not read it, yet.

23 Q Well, you'll notice in the second paragraph under that
24 it says "The following have been identified as" --

25 THE COURT: Excuse me for just a moment. I -- I

1 think you're going to get a continuing -- he doesn't know
2 the technical answers. This is almost approaching argument.

3 MR. STONE: Okay.

4 THE COURT: This is going to be summarized very
5 quickly.

6 MR. STONE: Yes, sir.

7 THE COURT: And so under 403, I am going to find
8 that this is unduly consumptive of time.

9 MR. STONE: Okay.

10 THE COURT: You can either move along, or I'll
11 give you the chance to summarize those very quickly, and now
12 move along.

13 MR. STONE: Okay.

14 BY MR. STONE:

15 Q One thing you notice at the very bottom, it's the last
16 topic there, is this reference to an ASIC, the very bottom
17 where it say "defense is not uncovered"; A-S-I-C.

18 A Okay.

19 Q Now, an ASIC is something that Nagra had not started
20 developing as of 2002, correct?

21 A That's correct.

22 Q And that came later in, roughly, 2005 time frame; is
23 that your best recollection?

24 A Not even sure in 2005, actually. I've been pushing for
25 that for a long time.

1 Q What is your best recollection as to when Nagra first
2 began developing an ASIC for its cards?

3 A I think the first ASIC that Nagra sold was actually
4 what they acquired from Canal+ technology when they acquired
5 Canal+ technology with doing an ASIC in their own card,
6 so --

7 Q Now, let me understand the -- the process here. You
8 flew to France twice to meet Mr. Kaehlin to obtain
9 documents, correct?

10 A Yes.

11 Q And is there a reason Mr. Kaehlin did not simply FedEx
12 the 400 pages to you?

13 A Well, sure. I thought these were a lot of documents,
14 and they were confidential, and he also wanted to discuss
15 the case. I mean, it's always the same. He wanted to get
16 involved in pursuing NDS after he had pursued NDS and the
17 Canal+ technology and Canal+ Group. So he wanted to help
18 us, and at the same time help himself with a -- with a new
19 job or something like that. So he was very interested in
20 talking to me and to us about leading that new litigation
21 against NDS.

22 Q And you never asked Mr. Kaehlin how he obtained these
23 internal NDS documents, correct?

24 A That's correct.

25 Q And he didn't tell you; isn't that correct?

1 A That's correct.

2 Q And at the time you obtained these, you never called up
3 anyone at NDS and told them you had those documents,
4 correct?

5 A That's correct.

6 Q And I didn't see any mention of Canal+ in that
7 Exhibit 391 that we just went through, did you?

8 A I did not read the whole thing, but obviously this --
9 this one document is a DirectTV and NDS document. I don't
10 know why they would mention Canal+.

11 Q Now, am I correct that after your trips to France to
12 obtain these documents, you went to NagraVision in
13 Switzerland and shared some of the documents that
14 Mr. Kaehlin had provided?

15 A Yes.

16 Q And you gave some of the documents to Andre Kudelski,
17 correct?

18 A That's correct.

19 Q And copies were made of some of the documents, correct?

20 A Of the documents I gave to Andre Kudelski, you mean?
21 Are you trying to imply --

22 As far as I recall, there's two documents I gave to
23 Andre Kudelski, and he might have made a copy, because his
24 lawyer was there, which were the chart, the color chart with
25 all the pirating -- showing how NDS was driving the piracy

1 and -- and -- and driving the network, and the report that
2 Giles Kaehlin had prepared for his management for the
3 lawsuit, kind of a summary of his case.

4 Q Now, let me talk a little bit about how you obtained
5 documents from Mr. Ereiser.

6 A Okay.

7 THE COURT: Well, just a moment. Can we find out
8 what documents were given to Andre Kudelski.

9 MR. STONE: Yes. I thought he testified to that.
10 I'm sorry, your Honor.

11 THE COURT: What --

12 THE WITNESS: Yes.

13 THE COURT: -- documents?

14 THE WITNESS: The two documents. One was a color
15 chart showing all the pirating, including the NDS action in
16 the pirate network. And the second was a Giles Kaehlin
17 report to his management about his case, kind of a summary
18 of the case.

19 THE COURT: Okay. No technical documents were
20 given?

21 THE WITNESS: No, and --

22 THE COURT: I want to make sure.

23 THE WITNESS: Okay. So --

24 THE COURT: No, no. You haven't heard the
25 question yet, have you?

1 (Laughter.)

2 THE COURT: 391, was 391, this document presented
3 to you, given to Mr. Kudelski, Andre Kudelski?

4 THE WITNESS: No.

5 THE COURT: Okay. Thank you.

6 All right, Counsel?

7 MR. STONE: Thank you, your Honor.

8 THE WITNESS: Actually, if I --

9 THE COURT: No. Thank you very much, sir.

10 THE WITNESS: Okay.

11 BY MR. STONE:

12 Q Now, at the time you got the documents from
13 Mr. Ereiser, that was in early 2005?

14 A Yes, I think so.

15 Q And he was a paid consultant to NagraStar?

16 A I think so.

17 Q And how much was he being paid at that point in time?

18 A I would -- I would not be certain, but I would say it
19 was between 3 and 5 or 6,000 a month, in that range.

20 Q And you went to get these documents at the Vancouver
21 airport with JJ Gee?

22 A Yeah, I think so.

23 Q And did you get there by car, train or plane?

24 A No, we flew.

25 Q And did you take the corporate jet, commercial jet?

1 A There was no corporate jet. I don't know why you come
2 back with that all the time, but we flew commercial.

3 Q Well, I thought you testified you did take the
4 corporate jet at one point as part of your investigation?

5 A Okay. Maybe I did. First, there was no corporate jet
6 at EchoStar.

7 THE COURT: Just a moment. Before we get into
8 this long explanation, did you take a corporate jet or not
9 to fly to British -- Vancouver?

10 THE WITNESS: No.

11 THE COURT: Okay.

12 Counsel, your next question.

13 BY MR. STONE:

14 Q And so you, as the CEO of NagraStar, went, and did
15 anyone accompany you?

16 A You -- you just said several time, I think, that JJ Gee
17 was with me, so --

18 Q I haven't had an opportunity --

19 A Is that the same question or --

20 Q I haven't had an opportunity to ask you about that,
21 yet, sir.

22 A Okay. Well, I thought I remember that. So, yes, I
23 went there with JJ Gee.

24 Q And Mr. Ereiser handed you two CDs?

25 A As I remember, yes, he handed us two CDs.

1 Q And was there a reason why Mr. Ereiser couldn't have
2 FedExed those to you?

3 A I think for -- for one thing, there is always a risk of
4 losing. When it's critical evidence in -- in your trial in
5 your case, you'd much rather get it personally than put it
6 in the mail and lose it.

7 Q On how many occasions have you flown to Canada to
8 obtain documents?

9 A Many times. I would say dozens of times.

10 Q Now, at the time you met with Mr. Ereiser in the
11 airport, you understood that Mr. Ereiser had been pursued by
12 NDS as a satellite pirate, correct?

13 A Yeah, that's correct.

14 Q And you understood that Mr. Ereiser had pretty strong
15 feelings against NDS, correct?

16 A Yes.

17 Q He felt that he had been brutally treated by John
18 Norris while John Norris was pursuing him, correct?

19 A That's correct.

20 Q And you never asked Mr. Ereiser how he obtained the NDS
21 internal documents, correct?

22 A Well, these were the -- for me, these were the rest --

23 THE COURT: Sir, answer the question.

24 THE WITNESS: No, I did not.

25 THE COURT: Okay.

1 BY MR. STONE:

2 Q And Mr. Ereiser never told you how he got internal NDS
3 documents, correct?

4 A That's correct.

5 Q And I believe it's your testimony you never completely
6 trusted Mr. Ereiser; isn't that right?

7 A Yeah, that's right.

8 Q And you always had doubts about Mr. Ereiser's
9 truthfulness and trustworthiness, correct?

10 A Sure, they all are pirates.

11 Q Let me show you Exhibit 366, please.

12 And for the record, sir, this document has a production
13 number of ESC155785 through 155816.

14 A Okay.

15 Q And I'll represent to you that counsel have stipulated
16 that that means that this is one of the documents that
17 Mr. Ereiser provided.

18 A Okay.

19 Q And did you become aware at some point in time that the
20 CDs that Mr. Ereiser provided contained 26,000 pages of NDS
21 internal documents?

22 A The first time I saw a number was on your documents.

23 Q Did you ever become aware that that would fill almost
24 13 boxes?

25 A I did not do the math, yet, but --

1 THE COURT: We are going to strike the question
2 and strike the answer.

3 MR. STONE: Okay. Looking at Exhibit 366, your
4 Honor, I'd move it at this point in time.

5 THE COURT: Any objection?

6 MR. HAGAN: No objection.

7 THE COURT: Received.

8 (Defendants' Exhibit No. 366 is received into
9 evidence.)

10 BY MR. STONE:

11 Q And the title of the document is "NDS overview for a
12 digital ATV system."

13 A Yeah, I see that.

14 Q And it's dated January 25th, 2002, correct?

15 A Yeah.

16 Q And as far as you know, that's not a document that's
17 relevant to this litigation, correct?

18 A That's probably correct, yeah.

19 Q And right in the middle of the first page I think it
20 says "confidential"?

21 A Yeah.

22 Q And this is the type of document that NagraStar would
23 not share with NDS, correct?

24 A I don't know. Just the title "NDS overview of DirecTV
25 system" is typical of a proposal we give to customers, and

1 we are in a small business where just an overview of the TV
2 system might be or might not be very confidential.

3 Q Well, let's look at the bottom. There is a legend at
4 the bottom of the first page.

5 A Yeah.

6 Q It says "This document and the information contained in
7 it is the property of NDS, Limited, and may be the subject
8 of patents pending and granted. It must not be used for
9 commercial purposes, nor copied, disclosed, reproduced,
10 stored in a retrieval system or transmitted in any form or
11 by any means, electronic, mechanical, photocopying,
12 recording or otherwise, whether in whole or in part, without
13 NDS, Limited's prior written agreement"; do you see that?

14 A Yeah.

15 Q And it is correct that you never obtained NDS's written
16 agreement to possess this document?

17 A Sorry, can you repeat?

18 Q It is correct that you've never obtained NDS's written
19 permission to possess this document?

20 A Yeah, that's correct.

21 Q If you'd go to the next page, 366-2, under "Table of
22 Contents," please.

23 THE COURT: Now, Counsel, if we are going to go
24 through the same process, I'll certainly allow you to do
25 that, but it's too consumptive of time. My suggestion is

1 that we do this out of the presence of the jury, that you
2 show this gentleman all of these passages and paragraphs
3 that you believe would be confidential. This could be
4 easily summarized in literally a minute.

5 MR. STONE: No, I was just going to show the table
6 of contents, and that was it, your Honor.

7 THE COURT: Show the table of contents.

8 BY MR. STONE:

9 Q Let me show you one other document that I believe comes
10 from Mr. Ereiser, and that's Exhibit 1270, and we'll just --

11 THE COURT: I'm sorry, you can go back to the
12 table of contents. Go back and --

13 MR. STONE: Oh, okay, your Honor. I didn't know
14 if you wanted me to --

15 THE COURT: But if we are going to go through the
16 same process, I'm not precluding you --

17 MR. STONE: No, no, no.

18 THE COURT: -- we are just laboriously going
19 through --

20 MR. STONE: No, no --

21 THE COURT: -- this section.

22 MR. STONE: No, your Honor.

23 THE COURT: We can show these to these
24 witnesses --

25 MR. STONE: No --

1 THE COURT: No, I don't know, but listen very
2 carefully. We can show these to witnesses out in the
3 hallway before they come in or during a recess. I'm not
4 precluding you. We're just not walking through --

5 MR. STONE: I understand.

6 THE COURT: There are 26,000 documents.

7 MR. STONE: No, no.

8 (Laughter.)

9 MR. STONE: I understand, your Honor.

10 THE COURT: Here is the table of contents for 366.
11 Point out the sections.

12 MR. STONE: All right.

13 THE COURT: Ask him if he thinks that they are
14 confidential.

15 MR. STONE: Very well, your Honor.

16 BY MR. STONE:

17 Q Look at number 3, NDS system components.

18 A Okay.

19 Q Again, that's the type of information that NagraStar
20 maintains is confidential, correct?

21 A Just -- again, just reading the table of content, I
22 cannot tell how confidential it is.

23 THE COURT: Mr. Guggenheim, why don't you exit the
24 witness stand, sir; wait out in the hallway. We are going
25 to go through these documents, because apparently you --

1 THE WITNESS: Yeah.

2 THE COURT: -- don't know, and I'm not going to
3 preclude counsel.

4 So guess what we are doing tonight. We're going
5 over all these documents. We'll summarize these in about
6 five minutes on Tuesday, at which time you will be ordered
7 back --

8 THE WITNESS: Okay.

9 THE COURT: -- first thing in the morning.
10 We can do this outside the presence of the jury.
11 Thank you very much, Counsel.

12 MR. STONE: Thank you.

13 THE COURT: Your next witness, please.

14 MR. HAGAN: Your Honor, plaintiffs call Stanley
15 Frost by video deposition.

16 THE COURT: Thank you very much. Mr. Frost.
17 You may step down.

18 Counsel, remember, I am not precluding you from
19 this area, but this could be quickly summarized during the
20 recess if we have time, and I'll give the jury 20 minutes.
21 Mr. Guggenheim will remain available out in the hallway. If
22 we can quickly show him those documents, we'll go back over
23 those and then continue on. So thank you very much.

24 MR. STONE: Your Honor, I have one other -- two
25 other topics to cover when Mr. Guggenheim returns.

1 THE COURT: Certainly. I mean, we'll take all of
2 those, but --

3 MR. STONE: Thank you, your Honor.

4 THE COURT: -- if we're going through this in
5 summary fashion, I need to know. And you're not precluded,
6 but I think this could be easily summarized. It just has to
7 be shown to him outside the presence of the jury, and then
8 he can get on the stand and say that he's looked at these
9 sections. He can do it quickly. Otherwise, what he's doing
10 is taking our time by reading them in the presence of the
11 jury, and it could be easily accomplished another way.

12 Your next witness, please.

13 MR. HAGAN: Thank you, your Honor. These are the
14 video deposition clips of Stanley Frost.

15 THE COURT: All right. Thank you.

16 This would be Stanley Frost's video deposition you
17 are about to listen to.

18 (Videotape played of Stanley Frost,
19 Plaintiffs' witness.)

20 THE COURT: All right. Why don't we stop the tape
21 at that point. Just a moment.

22 MR. HAGAN: All right.

23 THE COURT: I am going to ask you to go take about
24 a 20-minute recess. Go take a bathroom break, or whatever.
25 We'll come back in 20 minutes. And you had to recess at

1 1:00, didn't you, today?

2 (No audible response.)

3 THE COURT: We'll see you about 12:20. Have a
4 nice recess. Please don't discuss this matter, nor form or
5 express an opinion.

6 And Counsel, if you'd remain for a moment
7 concerning Mr. Guggenheim. I think there is a way we can
8 approach this very quickly.

9 (The following proceedings is taken outside
10 the presence of the jury.)

11 THE COURT: The jury is no longer present.

12 Mr. Stone, let my record be clear. I'm not going
13 to preclude you in any way from this examination, but
14 there's a strong argument that this goes outside why
15 Mr. Guggenheim was presented in this area. This is really
16 part of your defense. Have a seat.

17 This is really part of your defense. This is
18 really part of the -- not the obtaining of the documents,
19 but the contents of the documents, and that's far different
20 than why, in my opinion, EchoStar called Mr. Guggenheim at
21 this point.

22 Now, what it does is -- is it is unduly
23 consumptive of time, but it's not a preclusion. If you wish
24 to proceed in this manner, I would suggest you do that
25 during your case. And I would also suggest, and I said

1 something, I think, last night about, you know, bringing
2 this case down to manageable size, but this can easily be
3 accomplished by showing Mr. Guggenheim those sections, all
4 26,000 if you want, you're in no way precluded, and we can
5 go through those documents very carefully.

6 Now, I gave you the first opportunity in Exhibit
7 Number 361, I believe. Let me turn to my notes.

8 MR. WELCH: 366, your Honor.

9 THE COURT: 366, to go through it laboriously, and
10 you can probably have one or two more documents to go
11 through the same type of methodical section by section
12 reading to the jury, but from that point, I expect a
13 summary.

14 MR. STONE: That was -- that was not my intent,
15 your Honor.

16 THE COURT: That -- that's fine. I am not
17 accusing you. I'm just telling you it's unduly consumptive
18 of time. It's going to be conducted in a different way.
19 Now, you can either continue on with Mr. Guggenheim after
20 we're done with the playing of Mr. Frost's tape, or you can
21 talk to Mr. Guggenheim during the recess, or we can do that
22 this afternoon or this evening, but he'll come back Tuesday
23 if you'd like to. I'd just suggest to you that this is
24 really part of your defense. This isn't a wise call.

25 Now, let me hear your thoughts.

1 MR. STONE: Your Honor, respectfully, I disagree.
2 They said they were calling him specifically to deal with
3 the stolen documents. They've obviously tried to front a
4 bad issue for their case, but I have a right to
5 cross-examine him when they have fronted like that.
6 Otherwise, it dissipates in front of the jury, which was the
7 intent of fronting the issue, so we're simply --

8 THE COURT: I respectfully disagree with you. I
9 think that he was called specifically to lay the foundation
10 of how these documents were obtained and from whom. The
11 contents about how -- and how dangerous those were to NDS is
12 really part of your counterclaim.

13 I think we've concluded this discussion, but I'll
14 still use my forbearance. I disagree with you.

15 MR. STONE: I understand --

16 THE COURT: But in an abundance of caution, if you
17 want to continue along this line, so be it, but you're going
18 to do that in a summary fashion at this point. And I don't
19 know that I'm going to let you come back to this in NDS's
20 case. That's what I'm trying to warn you about. I think
21 that this is really NDS's defense on the counterclaim, and
22 if you want to go after that methodically now, I'll probably
23 open the door, but we're not hearing this twice.

24 MR. STONE: Fair enough.

25 THE COURT: Think about that over the next 20

1 minutes. Mr. Guggenheim is at your disposal.

2 Counsel, 12:20, please.

3 MR. HAGAN: Thank you, your Honor.

4 (Recess.)

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CERTIFICATE

14

15 I hereby certify that pursuant to Section 753,
16 Title 28, United States Code, the foregoing is a true and
17 correct transcript of the stenographically reported
18 proceedings held in the above-entitled matter and that the
19 transcript page format is in conformance with the
20 regulations of the Judicial Conference of the United States.

21

22 Date: April 19, 2008

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JANE C.S. RULE, U.S. COURT REPORTER

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