

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

- - - - -

ECHOSTAR SATELLITE CORPORATION,	)	
et al.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	No. SACV 03-950 DOC
	)	Day 11, Volume II
NDS GROUP PLC, et al.,	)	
	)	
Defendants.	)	
_____	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Jury Trial

Santa Ana, California

Friday, April 25, 2008

Debbie Gale, CSR 9472, RPR  
Federal Official Court Reporter  
United States District Court  
411 West 4th Street, Room 1-053  
Santa Ana, California 92701  
(714) 558-8141

EchoStar 2008-04-25 D11V2

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## I N D E X

WITNESSES                      DIRECT    CROSS    REDIRECT    RECROSS

PELUSO, Ernest F. (Tony)

By Mr. Klein                      5

MCGUIRE, Thomas

By Mr. Klein                      21                      37

By Mr. Noll                      28

JACKSON, Mark

By Mr. Stone                      40

By Mr. Welch                      60

## EXHIBITS

EXHIBIT NO.                      IDENTIFICATION                      IN EVIDENCE

2500                      Documents                      26

1 SANTA ANA, CALIFORNIA, FRIDAY, APRIL 25, 2008

2 Day 11, Volume II

3 (10:22 a.m.)

4 (In the presence of the jury.)

5 THE COURT: All right. We're back on the record.  
6 All counsel are present. The parties are present. The jury  
7 is present.

8 Counsel, would you call your next witness, please.

9 MR. KLEIN: Yes, Your Honor, Kenneth Klein  
10 representing the defendants.

11 And we call Mr. Tony Peluso, Your Honor.

12 THE COURT: Thank you, sir.

13 Would you step forward and raise your right hand.  
14 Kristee, our clerk, will administer an oath to you.

15 ERNEST F. PELUSO, DEFENSE WITNESS, SWORN

16 THE WITNESS: I do.

17 THE COURT: Thank you, sir.

18 Would you please be seated in the witness box to  
19 my left.

20 When you're comfortably seated, would you be kind  
21 enough to face the jury and state your full name and spell  
22 your last name.

23 THE WITNESS: My real first name is  
24 Ernest F. Peluso, P-E-L-U-S-O, Your Honor, but I'm known as  
25 Tony for the last 40 years.

1 THE COURT: This is direct examination by  
2 Mr. Klein on behalf of NDS.

3 MR. HAGAN: Thank you.

4 DIRECT EXAMINATION

5 BY MR. KLEIN:

6 Q. Good morning, Mr. Peluso.

7 A. Good morning, sir.

8 Q. Could you please tell us about your educational and  
9 professional background?

10 A. I have a bachelors degree from Arizona State University  
11 in history from 1972. I have a law degree from  
12 St. Mary's University in 1974. It's a small school in  
13 San Antonio, Texas. And then 10 years later, in 1984, I got  
14 a masters of law, something called an LLM, from  
15 George Washington University in Washington, DC.

16 Q. Did you serve in the military?

17 A. Yes, I did. I'm a retired soldier. Retired from the  
18 Army in 1992.

19 Q. Tell us a little bit about your military career.

20 A. I started -- I dropped out of college in 1967, joined  
21 the Army, went airborne, went to Vietnam as a paratrooper.  
22 Served a tour in Japan after that. Then I got out, finished  
23 up at Arizona State University, went to law school, and in  
24 1974 I got a reserve commission as a JAG officer after law  
25 school.

1           Then I served another 17 years in the Army as a JAG  
2 officer, various assignments all over the United States  
3 including the 82nd Airborne Division.

4           And then in 1990, while I was still on active duty, I  
5 was sent to Tampa at the beginning of Operation Desert  
6 Shield to prosecute some procurement fraud cases. As a  
7 Lt. Colonel, I was a Special Assistant U.S. Attorney. And  
8 then when I retired in 1992, I just stayed with that office  
9 until 2006 when I retired again. And now I'm deputy chief  
10 legal counsel for the Hillsborough County Sheriff's Office.

11 Q.   So there was a period of time in there after the Army  
12 and before the sheriff's office where you were working for  
13 the United States Attorney?

14 A.   I actually was working for the United States Attorney  
15 while I was on active duty for my last two years. So from  
16 1990 until 2006, I was a Special Assistant or a Regular  
17 Assistant U.S. Attorney.

18 Q.   And which U.S. Attorney's Office did you work in?

19 A.   The Middle District of Florida, the Tampa Division.

20 Q.   What was your title when you worked with the  
21 U.S. Attorney's Office?

22 A.   Everything. I was an Assistant U.S. Attorney for most  
23 of that time, for about three and a half years. I was also  
24 the chief of the organized crime section until we did away  
25 with the organized crime section in approximately 2001,

1 right around the time of 9/11.

2 Q. Now, when you were with the U.S. Attorney's Office, did  
3 you receive any awards?

4 A. Yes. I have received some superior achievement awards.  
5 But in 2001, I received the Attorney General's award for  
6 exceptional service.

7 Q. Now, when you were in the U.S. Attorney's Office, were  
8 you a trial attorney?

9 A. Yes.

10 Q. So you would be the person here, and you'd be asking  
11 the questions, correct?

12 A. Yes.

13 Q. Now, I'd like to direct your attention to the 1998/'99  
14 time period. Were you working at the U.S. Attorney's Office  
15 at that time?

16 A. Yes, sir.

17 Q. And what were your duties?

18 A. Pardon me?

19 Q. What were your duties at that time?

20 A. Somewhere during that time I became the chief of the  
21 organized crime section. So I had duties as investigating  
22 and prosecuting organized crime-type cases, but I was also  
23 responsible for doing complex white-collar crime cases  
24 including satellite piracy cases after 1998.

25 Q. Now, I'm gonna ask you some questions relating to the

1 work that you did in the U.S. Attorney's Office, and I  
2 understand you've been out of that office for a couple of  
3 years.

4 Have you had a chance to review your files from the  
5 U.S. Attorney's Office since you left?

6 A. No, I have not.

7 Q. Why not?

8 A. I'm not permitted. I'm no longer a federal employee.  
9 I'm not permitted access to those files.

10 Q. Now, with that in mind -- well, let me ask you another  
11 question.

12 Are some of the cases that you worked on confidential?

13 A. Oh, virtually every one of them is.

14 Q. So if -- during the course of the examination, if I ask  
15 you a question that --

16 THE COURT: Counsel, counsel, if it is relevant,  
17 by putting him on the stand, I'll override any agency, FBI,  
18 or anybody else, and direct him to answer the question.

19 MR. KLEIN: I understand that, Your Honor.

20 THE COURT: So shape your questions appropriately  
21 and vice versa on cross so we don't put you in that  
22 situation.

23 THE WITNESS: Thank you, Your Honor.

24 THE COURT: If I direct you, you can answer.

25 THE WITNESS: Very well, Your Honor.



1 THE COURT: Counsel.

2 BY MR. KLEIN:

3 Q. Did there come a time in 1998, '99 when you began  
4 working on a case involving satellite piracy?

5 A. Yes.

6 Q. Tell us a little about how that came about.

7 A. The first one I did involved a Canadian citizen and a  
8 Mexican citizen, and they were involved in a sting where  
9 they were buying basically a shoebox full, hundreds of  
10 access cards, from an undercover customs agent, and I ended  
11 up handling that case. That was my very first one.

12 Q. And after that, did you again handle other satellite  
13 piracy cases?

14 A. Yeah. It was my fortune to be the duty officer when  
15 the customs agents came in and wanted to do a search warrant  
16 on a company called Blue Skies Technology in Tampa. And  
17 whenever you are the duty officer and you handle the initial  
18 proceedings, they usually assign the case to you, regardless  
19 of what your discipline is or what section you're in. And  
20 that ended up being a satellite TV case, the Blue Skies  
21 Technology case. We called it The United States v.  
22 Paul Maxwell King.

23 Q. In subsequent years between when you got that first  
24 case and when you eventually left the office in 2006, can  
25 you give us some idea of how many satellite piracy cases you

1 worked on?

2 A. I worked on many cases, scores of cases.

3 Q. And during that time period -- again, 1998, 1999, to  
4 2006 -- to your knowledge, was there any  
5 United States Attorney in your office who handled more  
6 satellite piracy cases than you?

7 A. No, there were not.

8 Q. During that same period of time, to your knowledge, was  
9 there any United States Attorney in the entire country who  
10 handled more satellite piracy cases than you?

11 A. Not to my knowledge.

12 Q. Did there come a time when you heard the name  
13 John Norris?

14 A. Yes.

15 Q. And were you aware at some point that he was the head  
16 of security over at NDS?

17 A. Yes.

18 Q. And did there come a time when you met with Mr. Norris?

19 A. Yes, there was.

20 Q. And do you recall approximately when that was?

21 A. Sometime in late 2001 or early 2002.

22 Q. Did Mr. Norris aid you in your efforts to investigate  
23 and prosecute satellite pirates?

24 A. Yes, he did.

25 Q. During what time period?

1 A. From the time I first met him through sometime where he  
2 was assisting me, sometime very late in 2005 when I was  
3 getting ready to leave the U.S. Attorney's Office. So until  
4 I left -- until I retired, essentially.

5 Q. And it began somewhere around 2001?

6 A. Or late -- or early 2002, yes.

7 Q. And could you tell us in general terms what were the  
8 kind of things Mr. Norris and NDS did to aid you in  
9 investigating and prosecuting satellite pirates?

10 A. Well, he helped me in basically three ways. Probably  
11 the most important to me was that he provided technical or  
12 what I would call forensic support.

13 Q. What's the word? What is "forensic"? What do you mean  
14 by that?

15 A. Scientific. The access cards and the programming  
16 devices that were used to reprogram the access cards had  
17 just a boatload of technical information associated with  
18 them. And I learned after I got involved in these cases the  
19 fraud aspect of them; that the FBI labs couldn't support me,  
20 and the customs lab, such as it was, couldn't support me.

21 I even looked into getting the Florida Department of  
22 Law Enforcement to try to help. They had no analyst or  
23 technicians who understood the science involved, and  
24 frankly, there was intellectual property involved by both  
25 the major vendors, EchoStar and DirecTV NDS. So it was

1 impossible for me to use the normal technical or what I call  
2 forensic support. So Mr. Norris made his technical people  
3 at NDS available.

4 He also helped explain the technology to me to the  
5 extent -- I don't pretend to be an expert on it, but to the  
6 extent I could then explain it to a jury if it ever came to  
7 that. So that was one way. That was a major way.

8 Another thing that he did for us was that he  
9 helped provide us with what I call investigative slash  
10 intelligence support. We were interested in a lot of  
11 individuals up in Canada, for example, and he had  
12 investigators or agents or private investigators, if you  
13 will, who were operating up there, and they would provide me  
14 with intelligence about several individuals who were of  
15 interest to us.

16 And then another important thing he did for us,  
17 the third major area was, there was a business associated  
18 with a provision of this direct home satellite transmission,  
19 and it's a unique sort of business. They go out and buy  
20 intellectual property like movie rights from the people who  
21 own them, and then they provide those services to people in  
22 their homes. And you have to understand that.

23 And also associated with that, there's a loss  
24 associated with this pirating business. And he provided me  
25 with witnesses who would be able to explain in court if we

1 needed to what the loss would be.

2 Q. Now, I want to get a little specific. Did you  
3 investigate and prosecute an individual named  
4 Paul Maxwell King?

5 A. Yes, I did.

6 Q. And what period of time did you investigate and  
7 prosecute Mr. King?

8 A. Somewhere around 2000. I haven't seen the files in  
9 three years. Somewhere around 2000, and I continued  
10 prosecuting him until I retired, and he eventually pled  
11 guilty after I retired.

12 Q. What was the general nature of the crimes for which he  
13 pled guilty?

14 A. Mr. King was a British subject. He was living in York  
15 in England, and he had a manufacturing facility where he  
16 built what would be described, I think, generally as a card  
17 reader/writer, which they called a programmer or  
18 reprogrammer. And what that did is, it allowed you to put  
19 an access card into the programmer, plug the programmer into  
20 a computer. If you had the right software on your computer,  
21 then you could read the card and rewrite over it, changing  
22 whatever the software was on it so that when you took the  
23 card out of the programmer, you could put it in the receiver  
24 of either the EchoStar system or the DirectTV system. And  
25 then you could decrypt the entire transmission, the entire

1 signal. So he built those programmers.

2 He also built something called an unlooper. An  
3 unlooper was a device that was able to counteract the  
4 electronic countermeasures that both EchoStar and NDS and  
5 DirecTV were using to keep people from using pirated cards.  
6 So he sold those devices as well.

7 Q. Did Mr. Norris and NDS provide any help to you with  
8 respect to the prosecution of Mr. King?

9 A. Oh, absolutely. Yes.

10 Q. Can you give us some idea of what they did?

11 A. Well, aside from all the things I told you generally,  
12 Mr. King's case was the single biggest one I had because it  
13 involved three British subjects in England, a British  
14 subject in the United States, and two American citizens. So  
15 I had sort of learned the business or cut my teeth on this  
16 whole technology, with Mr. Norris' help, through the  
17 Maxwell King case. So that was the first thing he did.  
18 That was a very important part, but specifically to  
19 Maxwell King.

20 Mr. King, his solicitors contacted me through the  
21 process and basically told me it would be impossible for me  
22 to extradite him from Britain based on the kinds of charges  
23 that I was contemplating, and they were close to being  
24 right, but ultimately they were wrong.

25 Mr. Norris helped me during the extradition process

1 because at one point Mr. King fled to Tunisia, where he knew  
2 we could not -- it was impossible to extradite him. And so  
3 we stopped the process, which is very lengthy and cumbersome  
4 and has to be done within a certain time period or it won't  
5 work by treaty. And Mr. Norris alerted us to when Mr. King  
6 returned to Britain, and then, frankly, he had people in  
7 England who took pictures -- first picture I ever saw of  
8 Mr. King was a picture that Mr. Norris' agents in London  
9 actually took of him.

10 And he kept me apprised. And frankly, the day that we  
11 won the extradition hearing in Britain, Mr. Norris called me  
12 on the telephone from Europe. I was driving with my family,  
13 and I got a call on my cell phone, so that kind of thing.

14 Q. Now, did you prosecute an individual named Stephen  
15 Frazier?

16 A. Yes, I did.

17 THE COURT: I'm sorry. Stephen who?

18 MR. KLEIN: Frazier.

19 THE COURT: Okay. Thank you.

20 BY MR. KLEIN:

21 Q. Was he convicted?

22 A. Yes, he was, sir.

23 Q. Do you recall what his sentence was?

24 A. Five years.

25 Q. What was the general nature of the crimes for which he

1 was convicted?

2 A. Mr. Frazier had been a subject of ours during the  
3 Paul Maxwell King case. He had brought a programmer and  
4 unlooper from Mr. King. He agreed to cooperate with us and  
5 basically commit no more crimes, so we let him go back to  
6 Sacramento -- someplace around Sacramento where he lived.  
7 And then later we learned that he had violated his promise  
8 to us and linked up with an individual named Stephen  
9 Lamothe, L-A-M-O-T-H-E, and we had been looking at  
10 Mr. Lamothe because he was running a business in the Tampa  
11 area in a place called Holiday Florida called -- three  
12 words -- Kick Ass Clones.

13 And we'd stopped looking at Mr. Lamothe because  
14 DirecTV, through their civil lawyers, had worked out a civil  
15 arrangement with Mr. Lamothe.

16 But Mr. Norris gave us intelligence that these two  
17 individuals, one who I had essentially given a bye to -- he  
18 didn't have immunity, but I decided not to prosecute him --  
19 and one that we weren't gonna prosecute because DirecTV had  
20 worked it out civilly with him. We had plenty of other  
21 people to look at. We didn't need to do double duty.

22 But they had gone to Canada, and they were involved  
23 with, I know for sure, a guy named Lloyd and I think a guy  
24 named Love.

25 THE COURT: Excuse me.



1 Ladies and gentlemen, could I excuse you for just  
2 a moment.

3 My apologies.

4 (Jury exits the courtroom proceedings.)

5 (Outside the presence of the jury.)

6 THE COURT: Mr. Peluso, this conversation out of  
7 the presence of the jury has nothing to do with your  
8 testimony.

9 THE WITNESS: Yes, Your Honor.

10 THE COURT: Counsel, what is this being offered  
11 for? I'll let you lay a brief foundation, but this is  
12 nothing more than character evidence bolstering Mr. Norris  
13 as, quote/unquote, a good person who helped law enforcement.  
14 This was not your representation to me.

15 Counsel, I'm speaking.

16 This is nothing more than character evidence.  
17 Unless you step in, I'm going to step in. This was not the  
18 representation that was given to this Court concerning this  
19 gentleman's testimony. I never heard that we were going to  
20 go through a detailed explanation of case by case and what  
21 you've worked on.

22 So Mr. Peluso, this is not your fault.

23 THE WITNESS: Yes, Your Honor.

24 THE COURT: You and I both know that this is  
25 character evidence to bolster Mr. Norris, his goodness in

1 terms of helping you, and it has a scintilla of that  
2 relationship with Mr. Norris.

3 Counsel, how are we going to resolve this other  
4 than Mr. Peluso stepping down and off the stand?

5 MR. KLEIN: If I may respond.

6 What I said was, Mr. Peluso, after he talks about  
7 this prosecution --

8 THE COURT: You're forewarned, Counsel. Get to  
9 the point. How are we going to resolve this?

10 MR. KLEIN: This is exactly what I told the Court,  
11 Your Honor.

12 THE COURT: Mr. Peluso, you may step down.

13 Thank you very much, sir.

14 (Witness steps down subject to recall.)

15 THE COURT: Call your next witness.

16 MR. KLEIN: Your Honor, may I respond for the  
17 record. I'd like to make a record.

18 THE COURT: When you mislead this Court --

19 MR. KLEIN: That's why I'd like to make a record  
20 so it will be clear what I was going to do and there'll  
21 never be a question.

22 THE COURT: No. Counsel, this is improper  
23 character evidence. It's as simple as that. You can put  
24 the gentleman on the stand for the limited basis. His  
25 contact -- I've let you lay a brief foundation. We are not

1 going through that case after case.

2 You can say he's the foremost person in the  
3 United States. I've let you do that. And now you're going  
4 through a whole series of fact situations. This only  
5 serves, frankly, to bolster Mr. Norris' credibility as a  
6 good person.

7 MR. KLEIN: Your Honor, if I may respond.

8 I will explain exactly what relevance this has and  
9 why it ties into exactly what I told the Court yesterday.

10 What Mr. Peluso would testify is that -- and I was  
11 going to mention the next person was Mr. Mullen -- is that  
12 he went and told people from EchoStar, among them Mr. Gee,  
13 about these people he was prosecuting. And he told them,  
14 "I'm prosecuting these people," and he wanted to get them --  
15 he wanted to get their help.

16 They told him, "We don't have any problem with  
17 these people." And that's what I told the Court, that they  
18 were gonna tell him, "We don't know anything about these  
19 people. They're not problems for us."

20 THE COURT: I offered you the opportunity last  
21 night to have a hearing outside the presence of the jury  
22 about 8:00 o'clock.

23 The Court was here with you and all counsel until  
24 about 11:00. I did have court reporters available. Two  
25 came up.

1           You declined that offer, begged the Court on an  
2 offer of proof that the following would happen.

3           I will let Mr. Peluso have a hearing outside the  
4 presence of the jury, as I offered before. But he will not  
5 testify now until I hear exactly what he's going to say on  
6 the witness stand. This is improper character evidence.

7           Call your next witness.

8           Kristee, get --

9           MR. KLEIN: Your Honor, I just want to state for  
10 the record -- I think Mr. Peluso has to leave now. I just  
11 want to make it clear for the record --

12          THE COURT: No. He's ordered to remain. You  
13 don't have a choice.

14          MR. KLEIN: Well --

15          THE COURT: Kristee, get the jury.

16          MR. KLEIN: Thank you, Your Honor.

17          THE COURT: Call Mr. Peluso back into court,  
18 please, for just a moment.

19          Mr. Klein, get Mr. Peluso.

20          Mr. Peluso, no discourtesy by this Court towards  
21 you. You are ordered to remain, sir. We'll come back to  
22 you as soon as we can.

23          THE WITNESS: Yes, sir.

24          THE COURT: You can wait outside. Thank you very  
25 much.

1 (In the presence of the jury.)

2 THE COURT: Thank you. Pardon me for the  
3 interruption.

4 Mr. Peluso may be rejoining us shortly, but  
5 counsel will call another witness.

6 Counsel, call another witness.

7 MR. KLEIN: Mr. Tom McGuire, Your Honor.

8 THE COURT: Thank you.

9 Mr. McGuire, if you'd step between the double  
10 doors. And, sir, would you please raise your right hand.

11 THOMAS W. MCGUIRE, DEFENSE WITNESS, SWORN

12 THE WITNESS: Yes.

13 THE COURT: Thank you, sir. Would you please be  
14 seated in the witness box to my left. And after you're  
15 comfortably seated, would you state your full name for the  
16 jury, please.

17 THE WITNESS: Thomas W. McGuire.

18 THE COURT: Would you spell your last name.

19 THE WITNESS: M-C, capital G-U-I-R-E.

20 THE COURT: And this is direct examination by  
21 Mr. Klein on behalf of NDS.

22 MR. KLEIN: Thank you, Your Honor.

23 DIRECT EXAMINATION

24 BY MR. KLEIN:

25 Q. Good morning, Mr. McGuire.

1 A. Good morning.

2 Q. Where are you employed?

3 A. M and M Forwarding.

4 Q. Are you one of the owners of M and M Forwarding?

5 A. Yes, I am.

6 Q. How long have you been an owner of M and M Forwarding?

7 A. I've been an owner since 1990.

8 Q. Can you tell us what the business is of M and M  
9 Forwarding?

10 A. We do cross-border transportation services at the  
11 Canadian border between Buffalo and Canada.

12 Q. Do you do mail forwarding?

13 A. Yes, we do.

14 Q. Now, what part of your business is the mail forwarding?

15 A. Mail forwarding is a very small part of our business.  
16 Less than 1 percent of our revenues are generated from it.

17 Q. Do you have -- you or your business have any connection  
18 to NDS or to News Corporation?

19 A. No, we do not.

20 Q. Now, we've heard evidence about an Exhibit 191, which  
21 is a December 24th posting, and a password -- none of which  
22 involves you, sir -- but we have an address of an EchoStar  
23 subscriber at 600 Main Street, Tonawanda, New York. Do you  
24 recognize that address?

25 A. Yes, sir. It's the address of my business.

1 Q. So your business, M and M Forwarding, is at 600 Main  
2 Street, Tonawanda, New York?

3 A. Correct.

4 Q. Now, does M and M Forwarding have a customer named  
5 Tech Electronics?

6 A. Yes, we do.

7 Q. How long has Tech Electronics been a customer of  
8 M and M Forwarding?

9 A. Since 1995.

10 Q. Are they still a customer?

11 A. Yes, they are.

12 Q. Now, what services has M and M Forwarding been  
13 providing for Tech Electronics?

14 A. We provide consolidation services for packages and  
15 shipments coming in from the US going to Canada, and we also  
16 provide mail forwarding service for them.

17 Q. When you say you provide "mail forwarding," what do you  
18 mean by that? What do you do?

19 A. We allow them to use our address to receive mail, and  
20 then we will forward that mail to them in their offices in  
21 Canada.

22 Q. Now, over the years that Tech Electronics has been a  
23 customer, has there been a particular sender that you have  
24 observed to frequently be sending mail to M and M to be  
25 forwarded to Tech Electronics?

1 A. Yes.

2 Q. And who was that sender?

3 A. DISH Network.

4 Q. And how do you know that DISH Network has been sending  
5 mail to Tech Electronics -- to M and M to be forwarded to  
6 Tech Electronics?

7 A. I observed the mail coming in during the day, and there  
8 would be stacks of envelopes from the DISH Network.

9 Q. And how do you know it was from DISH Network?

10 A. Because of the logo on the envelope coming in.

11 Q. Now, beginning in approximately 2000 -- and let's go  
12 through to about through to 2005 -- can you give us some  
13 understanding as to the amount of envelopes that M and M  
14 would typically receive from DISH and then forward to  
15 Tech Electronics?

16 A. I don't have an exact count, but every day there would  
17 be a stack of -- could have been 50, could have been a  
18 hundred, just a sizeable number of envelopes.

19 Q. And they would be from DISH?

20 A. From the DISH Network, yes.

21 Q. And they would all be forwarded to Tech Electronics?

22 A. Correct.

23 Q. In fact, at some point did the volume of mail from DISH  
24 to Tech Electronics become an annoyance for you?

25 A. It became kind of an annoyance simply because of the



1 volume of it. It would -- common sense would tell me that  
2 nobody was really opening each of those envelopes and going  
3 through them, and it was -- it was obvious -- there was more  
4 mail than they needed forwarded to them.

5 MR. KLEIN: Your Honor, I would ask that  
6 Exhibit 2500 be shown to the witness, please.

7 THE COURT: 2500. Thank you.

8 (Exhibit shown to witness.)

9 BY MR. KLEIN:

10 Q. Now, did there come a time when you received a subpoena  
11 for documents?

12 A. Yes, there was.

13 Q. And if you look at Exhibit 2500 -- and I'll direct your  
14 attention to the third page, which is 2500-002 through  
15 2500-006.

16 Can you tell us, are those documents belonging to  
17 M and M Forwarding?

18 A. Yes, they are.

19 Q. And were these documents prepared in the regular course  
20 of business?

21 A. Yes, they were.

22 Q. And were these the documents you provided pursuant to  
23 the subpoena?

24 A. Yes.

25 MR. KLEIN: Your Honor, I would ask that

1 Exhibit 2500 be received into evidence.

2 THE COURT: Any objection?

3 MR. NOLL: No objection.

4 THE COURT: All right. Received.

5 (Exhibit No. 2500 received in evidence.)

6 THE COURT: And once again, where was  
7 Tech Electronics located, sir?

8 THE WITNESS: They were located in Lindsay,  
9 Ontario.

10 THE COURT: Lindsay, Ontario.

11 Just a moment, counsel.

12 And Counsel, could you help the Court and the  
13 jury. How far is Lindsay, Ontario from this gentleman's  
14 address at M and M --

15 THE WITNESS: Correct.

16 THE COURT: -- in Tonawanda?

17 If you could look at Tonawanda. How close is it  
18 to the border?

19 BY MR. KLEIN:

20 Q. As best you can, tell us where is Tonawanda.

21 A. Tonawanda, New York is a suburb of Buffalo.

22 Q. How far is it from the Canadian border?

23 A. It's right at the Canadian border. The ridges across  
24 the Niagara River come right into Buffalo.

25 Q. Are you familiar with Lindsay?

1 A. Not really. It's pretty far north in Canada.

2 Q. Now, do your records indicate what town you were  
3 forwarding all these letters from DISH?

4 A. We were sending them to Lindsay, Ontario.

5 Q. And that's where Tech Electronics is?

6 A. Correct.

7 Q. And do your records indicate -- and I'll direct your  
8 attention to 2500-003 -- do they indicate the name  
9 Dawn Branton?

10 A. Yes, they do.

11 Q. And what do your records tell you with respect to  
12 Dawn Branton?

13 A. Dawn Branton would have been our contact at  
14 Tech Electronics.

15 THE COURT: Which is in Lindsay.

16 THE WITNESS: In Lindsay, Ontario.

17 BY MR. KLEIN:

18 Q. So that was a person that, as far as you knew, worked  
19 for Tech Electronics?

20 A. Correct.

21 MR. KLEIN: Thank you.

22 Your Honor, no further questions.

23 THE COURT: Thank you.

24 Cross-examination.

25 MR. NOLL: Yes. Cross-examination, Your Honor.

## CROSS-EXAMINATION

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BY MR. NOLL:

Q. David Noll on behalf of the plaintiffs, EchoStar and NagraStar.

We met last night; is that correct, Mr. McGuire?

A. Yes.

Q. I want to talk to you about some of the things that Mr. Stone -- I mean, Mr. Klein just asked you questions about. I want to make sure it's clear to the jury what was going on here.

As I understood it, at present you have about 200 customers that you do business with; is that correct?

A. That's correct.

Q. And about 10 of those customers ask you for a service that you call mail forwarding; is that right?

A. That's correct.

Q. And what you do for those 10 customers is, packages are mailed to your address in Tonawanda, New York, and then you forward those packages on to customers in Canada; is that right?

A. Correct.

Q. And you do that through one of two ways. One way is, you load that mail on with freight, and it's driven across the border to your customers in Canada; is that right?

A. That's correct.

1 Q. And there's another way you would do it, which is the  
2 way you were doing with Tech Electronics. All these  
3 DISH Network envelopes were coming to you, and you'd compile  
4 them all and put 'em in a UPS box, and then you'd UPS them  
5 to the location in Canada; is that right?

6 A. That's correct.

7 Q. And you say you've been doing this since approximately  
8 2000; is that right?

9 A. Yes.

10 Q. And to make sure I understand this correctly, the  
11 amount of invoices that was coming was a substantial amount;  
12 is that right?

13 A. That is correct.

14 Q. I mean, according to you, it could have been 2- or 300  
15 invoices a month; is that right?

16 A. Yes.

17 THE COURT: Once again, remind the jury. Who are  
18 these coming from?

19 THE WITNESS: The invoices were coming from the  
20 DISH Network.

21 BY MR. NOLL:

22 Q. And you were sending all these invoices to this company  
23 called Tech Electronics in Canada, right?

24 A. That's correct.

25 Q. And that's part of the service that you'd provide,

1 right?

2 A. Yes.

3 Q. And you say you were charging Tech Electronics 50 bucks  
4 a month to do this; is that correct?

5 A. That's correct.

6 Q. Did anything seem odd to you about sending 2- or 300  
7 DISH Network invoices in a UPS to a location in Canada?

8 A. It would seem like a lot of invoices, but not  
9 necessarily odd.

10 Q. Now, did those invoices from DISH Network have  
11 anybody's name on them?

12 A. They had each individual name on it that it was being  
13 directed to.

14 Q. In other words, they weren't all directed to  
15 Tech Electronics, right?

16 A. No, no, they were not.

17 Q. They had -- and they weren't directed to businesses  
18 either. It was to individuals' names; is that right?

19 A. As far as I know they were individual names, yes.

20 Q. Okay. And you approved this process as the president  
21 of M and M; is that right?

22 A. That's correct.

23 Q. And then at some point it started to get ridiculous, to  
24 use your words, correct?

25 A. Correct.

1 Q. I mean, there was tons of mail coming in, and you had  
2 your office forwarding it to Canada until you decided to put  
3 a stop to it in 2006; is that right?

4 A. I put a stop to the paper invoice part of it, yes.

5 Q. And just so the jury knows, the way it would work is,  
6 you had a woman named Patricia Plummer, who would sort all  
7 the mail for you, and then she will put it in the envelopes  
8 and send it to Tech Electronics, correct?

9 A. At the time these envelopes were coming, Trisha was not  
10 an employee of ours. We had a guy by the name of  
11 Tom Pendleton that was doing it.

12 Q. And do you know why Tech Electronics didn't just  
13 receive the mail directly in Canada?

14 A. From my understanding, that -- they had to be a U.S.  
15 address where they had the envelopes coming to.

16 Q. And while we're talking about Tech Electronics, you've  
17 been in business with them since 1995, right?

18 A. Correct.

19 Q. And in that time frame, you've had occasion to send  
20 them satellite equipment, correct?

21 A. Yes.

22 Q. In other words, it showed up at your office in  
23 Tonawanda, New York, and you loaded it from your docks onto  
24 trucks, and it was driven into Canada; is that right?

25 A. That's correct.

1 Q. And that satellite equipment would be DISH Network  
2 equipment, DirectTV equipment, or any other satellite  
3 provider in the U.S., right?

4 A. Correct.

5 Q. Now, you talked a little bit about Dawn Branton, right?

6 A. Yes.

7 Q. And it's your testimony you've never met Dawn Branton?

8 A. No.

9 Q. You've never spoken to Dawn Branton?

10 A. Not that I recall, no.

11 Q. But your company's been in business with  
12 Dawn Branton -- in a business relationship for the last 10  
13 years, right?

14 A. That's correct.

15 Q. Now, when you decided to stop this mailing process, how  
16 did you do that?

17 A. We had one of the -- one of our entry data entry clerks  
18 that would be working with Tech Electronics on their  
19 shipments ask them if they could have it stopped.

20 Q. And so the jury has a picture of this, you don't have  
21 like mailbox slots at M and M in Tonawanda. In other words,  
22 all this mail was coming to the same address. It just had  
23 different people's names on it; is that right?

24 A. That's correct.

25 Q. And that address is 600 Main Street, Box 888,



1 Tonawanda, New York 14151, correct?

2 A. That's correct.

3 Q. So you told one of the people that works for you to  
4 call Tech Electronics and to have this mail stop coming; is  
5 that correct?

6 A. To ask if they could get it stopped, yes.

7 Q. And then eventually a month or two later, the mail  
8 stopped -- the DISH Network mail stopped coming; is that  
9 correct?

10 A. Yes.

11 Q. Now, these -- the mail -- the DISH Network mail and the  
12 satellite equipment -- you would deliver that to  
13 Tech Electronics, but from where it went from there, you  
14 have no idea; is that correct?

15 A. I don't know; that's correct.

16 Q. And you would describe this mail as -- I mean, it's  
17 voluminous. This was a lot of mail, 2- to 300 envelopes a  
18 month, right?

19 A. Correct.

20 Q. You don't know whether the satellite equipment or the  
21 mail that was delivered by you to Tech Electronics went back  
22 to the United States, to Europe, to California -- you have  
23 no idea where it went, right?

24 A. I don't know where it went, no.

25 Q. And you have no way of tracking that --

1 A. No, I --

2 Q. Cause you didn't keep any records of this stuff, right?

3 A. No, our transaction ended when Tech Electronics would  
4 sign for the shipment that we turned over to 'em.

5 Q. You don't know whether any of the satellite equipment  
6 or any of the things that were in the DISH Network envelopes  
7 were ever provided to individuals such as Zvi Shkedy or  
8 David Mordinson; is that correct?

9 A. I would not know that, no.

10 Q. You don't know whether any of this information ended up  
11 in Chris Tarnovsky's or Al Menard's hands?

12 A. I don't now that.

13 THE COURT: Let's find out also if he's aware of  
14 any of these people.

15 BY MR. NOLL:

16 Q. Have you ever heard of Chris Tarnovsky?

17 A. No, I have not.

18 Q. Al Menard?

19 A. No.

20 Q. A man named Zvi Shkedy?

21 A. No.

22 Q. How about Dave Mordinson?

23 A. No.

24 Q. In other words, there were so many bills and invoices  
25 that came from DISH Network you don't even know what they

1 were for; is that right?

2 A. I don't know specifically what they were for, no.

3 Q. Now, do you know anybody that's ever been involved in  
4 satellite piracy, sir?

5 A. No.

6 Q. Do you know whether Tech Electronics was involved in  
7 satellite piracy?

8 A. No.

9 Q. You ever heard that Tech Electronics was involved in  
10 satellite piracy?

11 A. No.

12 Q. As far as you know, Tech Electronics was running a  
13 legitimate business, correct?

14 A. Correct.

15 Q. I mean, you wouldn't stay in a business relationship  
16 for 10 years with a company that was illegitimate, correct?

17 A. That's correct.

18 Q. Do you know if Tech Electronics is still in business  
19 today?

20 A. Yes, they are.

21 Q. And you have no knowledge as to whether or not  
22 Tech Electronics was involved in DISH Network satellite  
23 piracy; is that right?

24 A. I have no idea if they were.

25 Q. As far as you knew, they might have been forwarding the

1 mails to somebody else once they received it?

2 A. As far as I know.

3 Q. You ever heard of a man name Anthony Maldonado?

4 A. No.

5 Q. You ever heard of a group called the Barrie group?

6 A. No.

7 Q. You ever heard of a lab in Thunder Bay, Ontario?

8 A. No.

9 Q. You ever heard of a man named Jim Waters?

10 A. No.

11 Q. You ever heard of a man named Laurent Pilon?

12 A. No.

13 Q. You ever heard of Don Nance?

14 A. No.

15 Q. Bill Osborne?

16 A. No.

17 Q. You ever heard of DISH Plex?

18 A. No.

19 Q. You ever heard of anybody using the alias Nipper?

20 A. No.

21 Q. You ever hear of Nipper?

22 A. No.

23 Q. You involved in satellite piracy, sir?

24 A. No.

25 Q. You ever been involved in satellite piracy?

1 A. No.

2 Q. You ever been investigated by the government, to your  
3 knowledge?

4 A. No.

5 Q. And you've never been convicted of a felony, correct?

6 A. That's correct.

7 MR. NOLL: All right. No further questions. Pass  
8 the witness.

9 THE COURT: Redirect, Mr. Klein, on behalf of NDS.

10 MR. KLEIN: Thank you, Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. KLEIN:

13 Q. Just a few questions.

14 Counsel asked what you don't know. Let's see if we can  
15 see what you do know.

16 Am I correct you know that all of the envelopes came  
17 from DISH, correct?

18 A. Yes.

19 Q. And once you received all the envelopes, they all were  
20 sent to Tech Electronics?

21 A. That is correct.

22 Q. Did Mr. Gee, a man named Mr. Gee, did he ever come and  
23 visit you and discuss the fact that all of these envelopes  
24 were being sent from DISH to Tech Electronics?

25 A. No.

1 Q. Did anybody from EchoStar ever come and visit you to  
2 discuss all of these DISH envelopes that you were receiving  
3 and forwarding to Tech Electronics?

4 A. No.

5 MR. KLEIN: Thank you.

6 No further questions.

7 THE COURT: Recross, please.

8 MR. NOLL: No further questions, Your Honor.

9 THE COURT: Sir, thank you very much.

10 We've been asking all of the witnesses to remain  
11 on call. I can't imagine your returning to this Court.

12 Do you have any planned vacation, though, anything  
13 of that nature in the next, let's say, two weeks?

14 THE WITNESS: I don't have anything planned, no.

15 THE COURT: Well, do me a favor. Don't plan one,  
16 okay?

17 Would you remain available for us until May 15?

18 THE WITNESS: That's fine.

19 THE COURT: Just so counsel can contact you. If,  
20 by any stretch of the imagination, we need you back, we'd  
21 ask you to come back.

22 THE WITNESS: I'll be available.

23 Thank you.

24 (Witness steps down subject to recall.)

25 THE COURT: Counsel, your next witness, please.

1 MR. STONE: Thank you, Your Honor.

2 Defendants call Mark Jackson.

3 THE COURT: Thank you, sir.

4 If you would be kind enough to step forward and if  
5 you would be kind enough to raise your right hand, sir.

6 Kristee, who is our clerk, will administer an oath  
7 to you.

8 Thank you, sir.

9 MARK JACKSON, DEFENSE WITNESS, SWORN

10 THE WITNESS: I do.

11 THE COURT: Thank you, sir.

12 Would you please be seated in the witness box to  
13 my left, and after you're seated, please state your full  
14 name for the jury.

15 THE WITNESS: I'm Marcus Wayne Jackson.

16 THE COURT: And how do you spell your last name,  
17 sir?

18 THE WITNESS: J-A-C-K-S-O-N.

19 THE COURT: And they introduced you previously as  
20 Mark, but your true name is Marcus?

21 THE WITNESS: That's correct, sir.

22 THE COURT: Do you go by the name of Mark?

23 THE WITNESS: Yes, sir.

24 THE COURT: This is direct examination by  
25 Mr. Stone on behalf of NDS.

1 MR. STONE: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY MR. STONE:

4 Q. Good morning, Mr. Jackson.

5 A. Good morning.

6 Q. You were president of EchoStar Technologies  
7 Corporation, correct?

8 A. That's correct.

9 Q. And when did you become president?

10 A. I'm not quite for sure, but I would say around five  
11 years ago.

12 Q. And prior to becoming president of EchoStar  
13 Technologies Corporation, did you having a position with  
14 EchoStar?

15 A. Yes, sir.

16 Q. And what was that?

17 A. I've had numerous positions. I've been senior vice  
18 president of engineering. I've been senior vice president  
19 of satellite services. I've been vice president of  
20 engineering and director of engineering.

21 Q. And what was your position in December of 2000?

22 A. In December of 2000 I was probably senior vice  
23 president of engineering at that time.

24 Q. And what were your responsibilities as senior vice  
25 president of engineering?



1 A. I was responsible for the development of our set-top  
2 box product line.

3 Q. And can you tell us a little bit about what EchoStar  
4 Technologies Corporation does within the EchoStar companies?

5 A. EchoStar Technologies is the developer for all of our  
6 set-top boxes, a lot of different services that we have on  
7 our platform. We manage the uplink facilities which  
8 broadcast all of our service to the satellite. We're in  
9 charge of all the manufacturing logistics for ordering our  
10 product and getting them out to our distribution centers.  
11 We also have the system engineering group within that which  
12 ties everything together, you know, like our conditional  
13 access system, our subscriber management system, and our  
14 set-top box --

15 THE COURT: We're going to strike the answer.  
16 Counsel, you can reask the question: Can you tell us a  
17 little bit about EchoStar Technologies Corporation --

18 MR. STONE: And what it does within the EchoStar  
19 companies, briefly.

20 THE COURT: You can be long, just slow.

21 THE WITNESS: So we develop all of the hardware,  
22 software, services, for DISH Network, and we also manage the  
23 uplink facilities which broadcast all of our television  
24 programming. And we also oversee the manufacturing of all  
25 the products and pieces of gear that we need to install a

1 satellite receiver in a home.

2 BY MR. STONE:

3 Q. Now, in the 2000 and 2001 time frame, to whom did you  
4 report?

5 A. I believe I reported in that time frame to Mike Dugan.

6 Q. And what was Mike Dugan's position?

7 A. I believe he was either the president of EchoStar  
8 Technologies or the president of DISH Network.

9 Q. And then you became president of EchoStar Technologies  
10 in roughly 2002?

11 A. That sounds correct.

12 Q. There's been a concept that we've talked about before  
13 you came here, with Mr. Orban, of ARPU, A-R-P-U.

14 A. Yes.

15 Q. Are you familiar with that concept?

16 A. Yes.

17 Q. And it stands for average revenue per unit?

18 A. Yes.

19 Q. And that's the average revenue per subscriber?

20 A. Yes.

21 Q. But just to be clear, that's not profit, correct?

22 A. Correct.

23 Q. That's simply a revenue figure?

24 A. Yes.

25 Q. So there would have to be expenses and costs deducted

1 from that to arrive at any kind of a profit number?

2 A. Yes.

3 Q. Thank you for clarifying that.

4 Now, you're familiar with the Signal Integrity Group at  
5 EchoStar?

6 A. Yes.

7 Q. And that's the group responsible for combating piracy  
8 of the system?

9 A. I wouldn't say they're necessarily responsible for  
10 combating. They're basically an investigation arm, in my  
11 opinion, predominantly.

12 Q. And that group began reporting to you in April of 2000,  
13 correct?

14 A. Yes.

15 Q. And Mr. Kummer was one of the employees in that group?

16 A. No, sir.

17 Q. What group was Mr. Kummer employed by?

18 A. He was part of overall ETC, kind of our chief  
19 architect.

20 Q. What about Mr. Kilaru?

21 A. That group reported to Mr. Kilaru?

22 Q. "That group" being the Signal Integrity Group?

23 A. Yes.

24 Q. So the Signal Integrity Group reported up to  
25 Mr. Kilaru?

1 A. Yes.

2 Q. And Mr. Kilaru reported to you?

3 A. Yes.

4 Q. And was Mr. Kilaru in the engineering department, or  
5 was he in signal integrity?

6 A. He was part of the engineering group.

7 Q. And did you receive most of your information about the  
8 conditional access system from either Mr. Kummer or  
9 Mr. Kilaru?

10 A. Predominantly those two, but also Mr. Guggenheim.

11 Q. And what was Mr. Guggenheim's position at the time?

12 A. I believe he was in charge of our NagraStar division.

13 Q. And as of the date that you were deposed, you were, as  
14 far as you knew, kept up to date by Mr. Kummer and  
15 Mr. Kilaru regarding the status of the security system,  
16 correct?

17 A. Predominantly.

18 Q. And Mr. Guggenheim kept you updated, as far as you  
19 knew, as well, correct?

20 A. He also had input, yes.

21 Q. Now, you understand what the term "outright  
22 destruction" means, correct?

23 A. I think we've been through this before. I -- I'm not  
24 quite clear on that, no, sir.

25 Q. Well, is it correct that neither Mr. Kummer nor

1 Mr. Kilaru ever informed you in late 2000 or early 2001 that  
2 there had been outright destruction and full compromise of  
3 the conditional access system?

4 A. Well, I think they certainly informed me that we had  
5 been hacked and we had been compromised in a large way.

6 Q. Well, isn't it true that no one told you that, in late  
7 2000 or early 2001, something had been posted on the  
8 Internet that allowed every ROM 3 card to be compromised?

9 A. I was told that there was a posting on the Internet.

10 Q. But you were not informed that it led to the outright  
11 destruction of the system, correct?

12 A. All I was informed of was that it really compromised  
13 our system and that the keys to the kingdom had been put out  
14 on the Internet and we had no more secrets.

15 Q. And Mr. Guggenheim never told you that the security  
16 system had been destroyed; is that correct?

17 A. Again, they all told me that we had been severely  
18 hacked and compromised.

19 Q. Well, didn't you learn that there were instructions on  
20 the Internet in 1999 that compromised the system?

21 A. I think in 1999 we had heard rumors that we had been  
22 compromised, but that's all I recall.

23 Q. You don't recall learning of something called "The  
24 Beginner's Guide to Hacking" posted on the Internet in early  
25 1999?

1 A. No, sir.

2 MR. STONE: If you could show the witness  
3 Exhibit 524, please, which is in evidence.

4 MR. O'DONNELL: (Complies.)

5 BY MR. STONE:

6 Q. And had you heard the term -- that the system had been  
7 hacked prior to December of 2000?

8 A. Again, I think we had heard rumors that we had possibly  
9 been compromised in 1999, but we weren't able to  
10 substantiate those rumors, as far as I can recall.

11 Q. So nobody had ever told you that there was sufficient  
12 evidence of anything prior to 2000 that might require a card  
13 swap?

14 A. Not that I recall.

15 Q. And no one had ever told you there were instructions  
16 posted on the Internet that allowed an emulation hack of the  
17 EchoStar Smart Cards in early 1999?

18 A. Not that I recall, sir.

19 Q. Looking at Exhibit 524, does that refresh your  
20 recollection at all --

21 A. No, sir.

22 Q. -- about --

23 THE COURT: I'm sorry. Wait for the question.  
24 Finish your question, please, Mr. Stone.

25 MR. STONE: Thank you, Your Honor.

1 BY MR. STONE:

2 Q. Does this refresh your recollection that something  
3 called "Unleash Your Power of EchoStar and Beginner's Guide  
4 to Hacking EchoStar" was posted on the Internet in January  
5 of 1999?

6 A. No, sir.

7 Q. What was your position with the company in January of  
8 1999?

9 A. I believe I was senior vice president of satellite  
10 services.

11 Q. And when did you become senior vice president of  
12 engineering?

13 A. It's been a while, but my recollection is probably  
14 mid-2000.

15 Q. April 2000, roughly?

16 A. Again, I would be speculating.

17 Q. Did you ever become aware of any demand for a parts  
18 lock that occurred prior to your becoming senior vice  
19 president of engineering?

20 A. At what time frame?

21 Q. When you became senior vice president of engineering,  
22 did you ever become aware of a demand for a card swap that  
23 had occurred prior to your becoming senior vice president of  
24 engineering?

25 A. No.

1 Q. And who was in that position before you took it over?

2 A. I believe it would be Mike Dugan.

3 Q. Were you involved in the decision to swap the cards in  
4 2004?

5 A. Not in the decision, just in the execution of.

6 THE COURT: Counsel, you can ask him if he  
7 attended meetings, et cetera.

8 BY MR. STONE:

9 Q. Were you ever told about the decision-making process  
10 for the card swap that began in 2004?

11 A. No.

12 Q. Were you provided with any memos or documents of the  
13 decision-making process?

14 A. No, sir.

15 Q. Do you know who made the decision to engage in the card  
16 swap in 2004?

17 A. I believe it was Mr. Ergen.

18 Q. Did Mr. Ergen ever tell you the reason for that card  
19 swap?

20 A. Well, I think I told him that, you know, and made  
21 recommendations that we probably needed to do it along with  
22 others, such as Mr. Kilaru and Mr. Dugan -- that we probably  
23 needed to do it because all of our efforts had become  
24 ineffective in combating piracy.

25 Q. Had you ever seen a report on free-to-air piracy prior



1 to 2004?

2 A. Not that I recall.

3 Q. Did you ever have any discussions with the engineering  
4 department about the free-to-air piracy?

5 A. We had lots of discussions about piracy of many  
6 different forms and factors, but I -- at that time frame, I  
7 don't believe free-to-air was a big factor.

8 Q. Didn't free-to-air become a big factor beginning in  
9 2003?

10 A. I don't know. It's a big factor today for us.

11 Q. But do you recall it becoming a big factor in 2003 as  
12 well?

13 A. No, sir.

14 Q. And who would have been responsible for monitoring the  
15 state of free-to-air piracy in 2003?

16 A. Mr. Kilaru for the ETC side and Mr. Guggenheim on the  
17 NagraStar side.

18 Q. Mr. Guggenheim and his team?

19 A. Mr. Guggenheim. I'm not sure who-all on his team.

20 Q. Have you ever heard the name J.J. Gee?

21 A. Yes.

22 Q. And what do you understand Mr. Gee's position to be in  
23 the organization?

24 A. I'm not sure. I know he's one of the staffers at  
25 NagraStar.

1 Q. Did you ever have a discussion with Mr. Gee about the  
2 state of free-to-air piracy in 2003?

3 A. No.

4 Q. Have you ever attended any meetings where there were  
5 presentations about free-to-air piracy in 2003?

6 A. No, sir.

7 Q. When did you first learn that there was going to be a  
8 card swap?

9 A. We probably started planning it sometime in '03 or '04.

10 THE COURT: I'm sorry. The word "probably."  
11 We speak like that in your everyday life  
12 oftentimes. But from my perspective, those are hedge words.  
13 Words like "it may have been," "could," "to the best of my  
14 recollection."

15 If you know the answer, then just state you do.  
16 Or if you don't or if you don't know, state you don't know.

17 "Probably" doesn't leave the jury with any  
18 indication whether you do or not.

19 THE WITNESS: Okay. Thank you very much.

20 THE COURT: We need the accuracy.

21 THE WITNESS: Do my best, sir.

22 So in 2003, I couldn't say for sure, so no.

23 BY MR. STONE:

24 Q. Did you ever gain an understanding that free-to-air  
25 piracy was not very susceptible to electronic

1 countermeasures?

2 A. Well, as it stands today, there are no secrets. They  
3 are very hard to combat.

4 Q. "They are" meaning free-to-air?

5 A. Free-to-air, yes.

6 Q. All right. So free-to-air piracy is not susceptible to  
7 electronic countermeasures is your testimony?

8 A. No. That's not my testimony. I guess what I'm trying  
9 to say, it's a complex issue in the fact that we try  
10 electronic countermeasures, but they can see everything that  
11 we do because there's no secrets in our security system. So  
12 it's effective for a period of time. It can be short, it  
13 can be a little longer. We measure it in days, weeks,  
14 months, and then they figure out a way around it, and then  
15 we're back to where we started from.

16 And sometimes it takes us six, eight months to come up  
17 with an electronic countermeasure that they can get around  
18 in a matter of days or weeks.

19 Q. Do you recall that the cards that were used in the card  
20 swap were immediately hacked?

21 A. I believe they were hacked within three months of the  
22 swap being finished.

23 Q. And do you recall that when you became president of  
24 EchoStar Technologies you had a lot of hard talks with  
25 Kudelski about the fact their cards were subject to glitch

1 attacks?

2 A. Yes.

3 Q. And do you recall testifying that while the card swap  
4 was going on, nobody at Kudelski informed you that the new  
5 cards were susceptible to a glitch attack?

6 A. Well, we certainly had a lot of hard talks about why  
7 the card swap did not last very long and what the problem  
8 was. I can't say that we knew at that time it was a glitch  
9 attack that caused our problem, but we knew we had a  
10 problem, and we were pretty upset about why we had a  
11 problem.

12 Q. Did anyone from Kudelski tell you while the card swap  
13 was going on that they knew the new cards were susceptible  
14 to that attack?

15 A. No, sir.

16 THE COURT: Is that the free-to-air attack or the  
17 ROM 3? "That attack" -- which attack?

18 BY MR. STONE:

19 Q. The attack being the new cards that were swapped out --  
20 the Aladdin system, correct?

21 A. We swapped out with the Aladdins, and they were  
22 compromised fairly quickly. Yes, that is correct. And we  
23 didn't know why.

24 Q. So you're aware there's no claim in this lawsuit that  
25 NDS is somehow responsible for those card swap cards being

1 hacked, right?

2 THE COURT: "Those" referring once again --  
3 because there's been ROM 3, 10, 11, 2, Aladdin --

4 MR. STONE: The Aladdin, which I think is the  
5 ROM 101 through 104.

6 THE COURT: And the approximate year of that is?

7 MR. STONE: 2004.

8 THE COURT: All right.

9 THE WITNESS: I would say currently we don't know  
10 who's behind the current problems that we're having with our  
11 security system. We're trying to find out who that is.

12 BY MR. STONE:

13 Q. And that would be the folks at NagraStar?

14 A. NagraStar, my own internal group.

15 Q. And did you ask for any price adjustments from Kudelski  
16 after you learned that the cards that were swapped in 2004  
17 were susceptible to a glitch attack?

18 A. We're currently under negotiations for what possible  
19 compensation we would get.

20 Q. And that would be current negotiations with Kudelski?

21 A. Yes.

22 Q. And about how long have those negotiations been going  
23 on?

24 A. For over a year.

25 Q. And do you know who's involved in those negotiations?

1 A. Mr. Kudelski himself, the president of the company,  
2 Pierre Roy, and the president of NagraStar, Pascal.

3 THE COURT: Now, is that Andre Kudelski or  
4 Henri Kudelski?

5 THE WITNESS: Andre Kudelski, sir.

6 THE COURT: Okay.

7 BY MR. STONE:

8 Q. I believe your complaint with NagraStar was the cost of  
9 the access cards was too high, correct?

10 A. Well, we're always working with our vendors to get the  
11 best possible price. That is correct.

12 Q. Well, wasn't that your testimony, that one of the  
13 complaints you had was that the cards cost too much?

14 A. Well, again, we're always just trying to get the best  
15 price that we can out of our vendors.

16 Q. Didn't you ask for price adjustments numerous times  
17 from Kudelski?

18 A. Yes.

19 Q. And no price adjustment was offered until these current  
20 negotiations, correct?

21 A. We're currently entering negotiations on how we're  
22 going to move forward and what the cost will be.

23 Q. Is there a new card swap that is in the works  
24 currently?

25 A. Yes.

1 Q. And are those cards being provided for free?

2 A. No.

3 Q. Are those new cards part of the current negotiations,  
4 as far as you understand it?

5 A. Yes.

6 Q. Has a price been settled upon for the new cards that  
7 will be swapped out in 2008?

8 A. Not yet. We're negotiating that right now.

9 Q. And I'm sorry. I forgot, sir. Those negotiations  
10 began when?

11 A. Over a year ago, sir.

12 Q. Do you recall having discussions with NDS in 2006 about  
13 NDS becoming a conditional access supplier to EchoStar?

14 A. Well, I remember discussions with NDS, yes.

15 Q. Well, and you met with them to discuss the potential of  
16 NDS becoming the supplier of either all or part of  
17 EchoStar's conditional access system, correct?

18 A. Well, no. I mean, the reason we met with NDS was that  
19 my biggest customer, which is ExpressVu -- which is part of  
20 Bell Canada -- they're a clone of the DISH Network system --  
21 they were having security problems also with the Nagra  
22 system. And their new president, Gary Smith, had come from  
23 a company in England called BSkyB, and BSkyB uses NDS, and  
24 he had had a good relationship with NDS. And as the new  
25 president of ExpressVu and the problems that they were

1 having with their security at the Nagra, he was leaning  
2 towards switching to NDS, away from Nagra, and we would have  
3 to do all the engineering and development work to do that.  
4 And he asked me to start talking to them to figure out what  
5 it was gonna cost and take and what the effort was going to  
6 be to do that. So that was the main reason that we met with  
7 NDS at that time frame.

8 Q. But my question was, the reason you had the meeting was  
9 to consider NDS as a potential conditional access supplier,  
10 correct?

11 A. No, not really. Like I just testified, that was the  
12 main reason.

13 MR. STONE: Michael, could you show the witness  
14 Page 55, Lines 9 through 14 of his deposition, and his Honor  
15 as well, please.

16 MR. O'DONNELL: (Complies.)

17 THE WITNESS: Which pages?

18 MR. STONE: 55, Lines 9 through 14.

19 THE WITNESS: Okay.

20 BY MR. STONE:

21 Q. Does that refresh your recollection that you testified  
22 that you met with NDS to discuss the potential of NDS  
23 becoming the supplier of all or part of a conditional access  
24 system?

25 A. Well, I say that it was initiated by a customer of



1 mine, so they initiated it, like I said, and NDS certainly  
2 was there to try to sell me their system to DISH Network.

3 MR. STONE: Your Honor, I would ask permission to  
4 read Page 55 or play Page 55, Lines 9 through 14.

5 THE COURT: You may.

6 (Video deposition played as follows.)

7 "QUESTION: When did you meet with NDS to discuss  
8 the potential of NDS becoming the supplier of all or part of  
9 a conditional access system?

10 "ANSWER: I'd say over the last 18 months.

11 "QUESTION: When was the first time? 2006?

12 THE WITNESS: I would say, yes."

13 BY MR. STONE:

14 Q. And you've testified that you initiated those  
15 discussions because you'd received a recommendation from  
16 your largest customer, Bell ExpressVu, correct?

17 A. Yes.

18 Q. And currently EchoStar supplies the Smart Cards to Bell  
19 ExpressVu in Canada, right?

20 A. Yes.

21 Q. And you had several meetings with NDS after they were  
22 recommended by your customers, correct?

23 A. Yes.

24 Q. And those were meetings to consider switching the  
25 business to NDS, correct?

1 A. They were certainly working me to look at them hard on  
2 that, yes.

3 Q. Well, and you're the one who invited NDS to these  
4 meetings, correct?

5 A. Yes.

6 Q. They didn't initially approach you. You asked them to  
7 come in and present, correct?

8 A. Yes.

9 Q. And you had more than one meeting to discuss with NDS  
10 becoming a conditional access supplier, correct?

11 A. A conditional access supplier -- it was part of those  
12 discussions as well as what it would take to transition  
13 Nagra off of Bell ExpressVu.

14 Q. Well, do you recall that at the first meeting between  
15 EchoStar and NDS that the main issue to be discussed was  
16 economics?

17 A. Economics were a factor in both switching out -- what  
18 it would cost us to support ExpressVu -- to switch over from  
19 Nagra to NDS, and then also we asked them what the costs  
20 would be for DISH Network also.

21 Q. And the purpose of the second meeting you had with NDS  
22 was haggling over price, correct?

23 A. Well, we were certainly haggling over price, and it's  
24 always good to get competitive information of -- of, you  
25 know, so you can negotiate with your current supplier, new

1 suppliers. It's just negotiation.

2 Q. So, I'm sorry. Was your answer, yes, that this purpose  
3 was to haggle over price at the second meeting?

4 A. Yes.

5 Q. Thank you. And then you asked NDS for price quotes for  
6 the conditional access system, correct?

7 A. Yes.

8 Q. And you received those price quotes, correct?

9 A. I received verbal quotes, yes.

10 Q. And nobody at the organization told you not to meet  
11 with NDS to discuss with them serving as a conditional  
12 access supplier, correct?

13 A. Yes.

14 Q. And when you asked for price quotes from NDS, you asked  
15 for those in good faith, correct?

16 A. Yes.

17 Q. And as of the date of your deposition, August 2007,  
18 there was not an official end to the talks between EchoStar  
19 and NDS concerning EchoStar converting to the NDS system,  
20 correct?

21 A. I don't think I understand that question. I'm sorry.

22 Q. Well, as of August of 2007, there had been no official  
23 end to those talks with NDS, correct?

24 A. Well, I would have to say that, you know, we ran into  
25 an issue in our discussions, that's for sure.

1 Q. But you had not officially called off the talks with  
2 NDS as of August 2007, correct?

3 A. Well, I told Dov that we would have to get this lawsuit  
4 issue resolved if they wanted to move forward with us.

5 Q. And this followed a meeting where you got price quotes  
6 from NDS, correct?

7 A. I got a very general verbal quote.

8 Q. Well, you had asked for a price quote, hadn't you, sir?

9 A. Yes.

10 Q. And this followed the meeting where you were haggling  
11 over price, correct?

12 A. Yes.

13 Q. And despite all the accusations in this lawsuit, nobody  
14 directed you not to negotiate with NDS in good faith,  
15 correct?

16 A. No.

17 MR. STONE: Thank you. No further questions.

18 THE COURT: Thank you. Cross-examination?

19 MR. WELCH: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. WELCH:

22 Q. Good morning, Mr. Jackson.

23 A. Mr. Wade, how are you?

24 Q. I'm hanging in there. It's been a while.

25 First thing I'd like to do: Could you tell the jury

1 where are you from?

2 A. I'm from Plainview, Texas.

3 Q. And how long did you stay in Texas?

4 A. Until I finished up with the university, which was  
5 probably '83.

6 Q. And where do you currently live, Mr. Jackson?

7 A. I live in Castle Rock, Colorado.

8 Q. Do you have family?

9 A. I do.

10 Q. Can you tell us about Lisa and the kids?

11 THE COURT: Well, Counsel.

12 MR. WELCH: Ms. Jackson and the kids.

13 THE COURT: Okay.

14 THE WITNESS: My wife -- I have a wife who I met  
15 at EchoStar, and we have two young girls. I have a  
16 four-year-old and a one-year-old who keep me quite busy.

17 BY MR. WELCH:

18 Q. Could you briefly tell the jury about your work history  
19 prior to joining EchoStar?

20 A. Prior to joining EchoStar, I worked at Texas  
21 Instruments when I went to the University of Texas Tech at  
22 the same time under a student development program, and I  
23 developed educational products like speak-and-spells, and  
24 calculators and stuff.

25 And then I went to work for a company called

1 Franklin Computer up in Pennsauken, New Jersey, and we  
2 developed Apple clones and spellcheckers.

3 And then I went to work for a company called Integrated  
4 Circuit Systems, and I was a hired gun, so to speak, and I  
5 developed integrated circuits or chips that go into a  
6 variety of different consumer electronics and products.

7 And then I went to work for a company called Tandy  
8 Computers in Simi Valley, California, and we developed  
9 personal computers during the start-up and heyday of  
10 personal computers, 46's and such.

11 And then I was recruited to come to EchoStar in  
12 probably '93, April of '93, and as director of engineering  
13 to help them get into the small satellite service, small  
14 dish satellite service and develop that system from scratch,  
15 way back when EchoStar had only about 300 employees. Just  
16 to put it in perspective, today we have about 27,000  
17 employees.

18 Q. Now, the small satellite system that you became  
19 involved in, is that the system we're talking about today?

20 A. Yes, sir.

21 Q. Can you generally tell the jury what your role was in  
22 helping to develop that direct broadcast system?

23 A. Charlie, at the time recruited me --

24 THE COURT: Is that Charlie Ergen?

25 THE WITNESS: Yes, sir, I'm sorry. Charlie Ergen.

1 THE COURT: Thank you.

2 THE WITNESS: Recruited me to develop the small  
3 satellite system. At the time, as I said, EchoStar was  
4 probably around 300 people and, you know, I interviewed with  
5 him, and I said, "Well, what does it take to do this?"

6 And he said, "We got to launch two satellites."

7 "How much does a satellite cost?"

8 "\$250 million each."

9 I go, "How much money you got in the bank?"

10 And he goes, "60 million."

11 I was like, "How are we going to do this?"

12 He goes, "Don't worry. I'll find the money."

13 Which he did. And we were able to successfully  
14 launch our first satellite system against all the odds.  
15 Nobody thought we'd be successful because we were competing  
16 against General Motors, which owned DirecTV at the time,  
17 which at the time was the largest corporation in America.  
18 And we were a little start-up, so to speak.

19 And we had to do it all from scratch and develop  
20 all the technology and infrastructure because nobody  
21 believed in us and wouldn't help us.

22 So I led the engineering team that kind of  
23 developed all the product in the system and the  
24 infrastructure for the DISH Network as it stands today.

25

1 BY MR. WELCH:

2 Q. Mr. Jackson, we've spent a lot of time in the trial  
3 talking about conditional access. I don't think we've ever  
4 backed up and explained satellites, the uplink facility, and  
5 how the satellite transmits the signal and how it's  
6 received. So what I want to do is walk through those things  
7 for you.

8 When was the first satellite launched for DISH Network?

9 A. Very late '95.

10 Q. Okay. And could you explain to the jury basically how  
11 the process goes about putting the satellite up in the sky?

12 A. Well, we will go and get a contract for the  
13 manufacturer for the satellite, give 'em a spec of what we  
14 want it to do. At that time, it was Lockheed Martin.

15 And then we go and find a rocket manufacturer, and we  
16 tell them we want to do it, we write them a check, and they  
17 put it all together.

18 We launched -- our first satellite launch was on a  
19 Long March Chinese rocket, only because it was cheap. It  
20 was \$60 million, and everybody else was charging  
21 120 million.

22 We were only one of two successful launches from the  
23 Chinese. They've never been successful since '96 in  
24 launching a commercial payload, so we got very lucky.

25 We also launched with U.S. manufacturers, French,



1 Russian, and conglomerate now called C-Launch, which is  
2 Russian and American and Swedish.

3 So we are the only company that's done the round robin  
4 of launching, and there's a 20 percent failure rate on  
5 launches, so it's interesting business.

6 So anyway, so we launch it up, and we have to put it in  
7 Geosynchronous order, which is about 34,000 miles over the  
8 equator, and it stays put, or it follows the spin of the  
9 earth. So you can lock it over one point in space, and then  
10 you point a dish at it.

11 And the new technology that came about in this time  
12 allowed us to use very small dishes -- 20-, 13-inch-type  
13 dishes instead of very large dishes in the old days, which  
14 were 6, 8 feet.

15 The other thing we were able to do is, digital  
16 compression came along, and we were able to put a lot of  
17 channels on this satellite. So, you know, when we first  
18 launched, we were selling 60 channels. Just so you know,  
19 today we broadcast about 3,000 channels.

20 But we were able to put a package together to compete  
21 effectively against cable. And at the time people  
22 fundamentally hated their cable company, and they were  
23 looking for choices. So we were able to give 'em good  
24 choice, good value with the product.

25 And then we invented a lot of other technology along

1 the way. Like you see digital video recorders that, instead  
2 of a VCR with a blinking "12," you can press a button with  
3 an electronic guide and record things and watch them later.  
4 And we invented a lot of this technology at our company to  
5 just make it an easiest experience to watch television.  
6 You're not locked into a certain time. You can watch what  
7 you want to watch.

8 And then we also invented a thing to skip commercials,  
9 which people find very useful in their lives.

10 Think of it as a microwave oven. A microwave saves you  
11 time in your household life, and we do the same thing with  
12 television today, and we give you a lot of choice for good  
13 value, we believe.

14 Q. Now, we talked about an uplink facility. Could you  
15 explain to the jury what an uplink facility is?

16 A. We have nine uplink facilities. Our major one is  
17 located in Cheyenne, Wyoming. And it's there because  
18 electricity is cheap. Again, trying to give you good value.  
19 And what it does is, it has these big 13-meter dishes that  
20 we broadcast and we shoot a signal up to the satellite, but  
21 we aggregate a lot of channels, again, through satellite,  
22 like HBO, Showtime. We aggregate those, we get them down.  
23 We aggregate 'em, digitize them, and we squirt 'em back up  
24 to the satellite.

25 The Cheyenne facility is the length of two U.S.

1 football fields. One is two stories tall, a football field  
2 size. One's three stories tall, and there is no room in  
3 these buildings. They're completely packed with  
4 electronic -- they're technological monstrosities. And  
5 that's fundamentally what a broadcast center is.

6 Q. We talked about the set-top box, or IRDs.

7 Were you actually involved in the development of these  
8 set-top boxes?

9 A. Intimately involved in the development of all of our  
10 set-top boxes.

11 Q. Could you tell the jury what goes into developing one  
12 of these set-top box boxes?

13 A. Our engineering group at ETC is 1600 people. So  
14 there's hundreds of hardware, software, mechanical engineers  
15 who develop these products. We develop our contract to get  
16 developed integrated circuits or chips to keep the cost  
17 down, so they put a lot of functionality in a piece of  
18 silicon. And we manage and design all the functionality in  
19 the software that goes into making your television viewing  
20 experience very easy and simple at home in this product.

21 And we design towards the lowest common denominator,  
22 which is my mom, to try to make it really easy. 'cause if  
23 my mom can't use it, you know, lots of other people can't  
24 use it. So we try really hard to make it easy to use and  
25 simple. And there's a lot of thought that goes behind all

1 those types of things, right?

2 Q. Okay. Now, I would want to kind of get into the meat  
3 and potatoes of this lawsuit.

4 Are you generally aware of the allegations that the  
5 plaintiffs have brought against the defendants?

6 A. Generally.

7 Q. Okay. And what's your understanding in a general  
8 fashion?

9 A. In a general fashion, I believe that we allege that  
10 they have hacked our system, and then they published the  
11 software or the keys to the kingdom out on the Internet.

12 Q. Now, how do pirates or hackers benefit from activities  
13 like that?

14 A. Well, once they get all the code inside the Smart Card  
15 and they learn how it works, they can do workarounds on  
16 that, or they can emulate it and work around all of our  
17 security methodologies. And when they have this code and we  
18 try to broadcast electronic countermeasures or fixes, they  
19 can see 'em. And then we -- we try to hide them in the  
20 code; but, you know, they can record the code as it comes  
21 down from the satellite 'cause that's how we try to fix it.  
22 We broadcast new software via the satellite to the set-top  
23 box or to the Smart Card, and because they know all the  
24 secrets, they can see what we're doing. And then they see  
25 what we did, and they go off and think about it, and then

1 they work around it. And you get television for free  
2 because, you know, our average ARPU, as we talked about, is  
3 like \$65 a month. So, you know, we're talking \$800 a year  
4 that people can get stuff for free.

5 Q. So they're getting this pay TV that you're trying to  
6 provide, and they're getting that for free?

7 A. Yes.

8 Q. Okay. How many channels is it today that you  
9 broadcast?

10 A. Around 3,000.

11 Q. And now within these 3,000 programs, is some of it DISH  
12 Network original programming itself?

13 A. No.

14 Q. I mean, do you have channels where you have your own  
15 commercials?

16 A. Yes, we do do some of that, but it's predominantly HBO,  
17 pay TV.

18 THE COURT: And, Counsel, would you, either party,  
19 remind the jury once again of what DISH Network is. We have  
20 EchoStar, NagraStar, NDS. But just the innerplay -- because  
21 that word has been frequently thrown around the courthouse.

22 MR. WELCH: Sorry about that, Your Honor.

23 BY MR. STONE:

24 Q. Mr. Jackson, tell us what the relationship is between  
25 DISH Network and the plaintiffs?

1 THE COURT: And who DISH Network is.

2 THE WITNESS: We just split our companies apart.  
3 We were all one company called EchoStar up until the end of  
4 this year. And at the end of this year, we split into two  
5 pieces. There's DISH Network, which is the seller of  
6 programming, and they do install customer service. Like  
7 when you call and say, "I'd like HBO," we have 9,000 people  
8 that answer the phone. So that's all DISH Network. They're  
9 the service provider. They're customer-facing.

10 EchoStar is the equipment and engineering and  
11 manufacturing side of the business where we build all the  
12 equipment and supply it to DISH Network.

13 But prior to this year, we were all one company  
14 called EchoStar. And DISH Network is what we always  
15 referred to the service side of the business.

16 THE COURT: Did you refer to that service side  
17 clear back when you were EchoStar as DISH Network also?

18 THE WITNESS: Yes, sir.

19 BY MR. WELCH:

20 Q. Now, these 3,000 channels: Was that copyrighted  
21 programming?

22 A. Yes.

23 Q. And the conditional access system: Does that protect  
24 the copyright revenues?

25 A. Yes.

1 Q. Now, we've had some -- we've talked to the jury --  
2 we've had various witnesses talk about card swap. I want to  
3 focus you on that right now. Okay?

4 A. Okay.

5 Q. Did you have involvement in the actual card swap?

6 A. I was in charge of the logistics and execution of  
7 physically executing on the swap.

8 Q. And could you tell what you mean by "the logistics of  
9 executing on the card swap"?

10 A. Well, at the time I think we had 20 million active  
11 set-top boxes in the field, and we have to send new cards  
12 out to each customer. And customers have typically more  
13 than one set-top box in their home. And we had to come up  
14 with all the methodologies of telling the customer, "Take  
15 this card, put it in this box; take the old one out," and  
16 matching that up correctly. How to handle all their phone  
17 calls 'cause people get confused, so we had to write scripts  
18 and stuff for our call center. And we had to get 20 million  
19 cards and mail 'em out. That's a huge process. We had  
20 specialized equipment and a team of people that would print,  
21 address, put 'em in an envelope, and ship 'em out to  
22 everybody. And we can only do so many a month, so just that  
23 whole process of getting that completed.

24 Q. Did you have to purchase new equipment to do that?

25 A. Yes, we did.

1 Q. Do you have to hire additional support to do that?

2 A. Yes.

3 Q. Now, we've talked about piracy in general. How does  
4 the pirate-free world -- the world free from conditional  
5 access hackers -- how does that benefit consumers?

6 A. It's to the detriment of consumers.

7 Q. No. But a pirate-free world, not having hackers and  
8 pirates.

9 A. I'm sorry. I didn't understand the question.

10 Well, when you got everybody paying, you spread the  
11 cost over a wider group of people, obviously. You got to  
12 pay the producers, actors, everybody in that whole food  
13 chain of making content, right? So the less people are  
14 paying for it, the more it costs; and the more people are  
15 paying for it, the more you spread that cost over a wider  
16 group of people, so the less it costs. If that makes sense.

17 Q. Now, the defendants made certain allegations about  
18 stolen documents, 26,000 pages worth of proprietary DirecTV  
19 or NDS documents.

20 Do you have any knowledge about that?

21 A. No.

22 Q. Did you ever commission anybody to go out and get any  
23 documents from them?

24 A. No.

25 Q. Now, one of their contentions is that EchoStar somehow



1 engages in hacking competitors such as DirecTV or NDS. Does  
2 EchoStar Technologies or EchoStar engage in any type of  
3 activities like that?

4 A. No.

5 Q. Now, one of things that Mr. Stone talked to you about  
6 was a meeting that you had with Mr. Dov Rubin in 2006. And  
7 that's Mr. Rubin there?

8 A. Yes, I didn't recognize him over this. Hi, Dov.

9 Q. Now, what was the reason for that meeting, again?

10 A. Again, one of our big customers, which was our biggest  
11 customer at the time, which was ExpressVu, which again is a  
12 clone of DISH Network up in Canada, they were very unhappy  
13 with the Nagra system because it was compromised. And their  
14 new president had a good dealing and good relationship with  
15 NDS, and he wanted us to look at switching from a NagraStar  
16 security system for ExpressVu to an NDS security system.

17 And he asked us to start talking about, you know, how  
18 we would execute on that, which was a really big job. So we  
19 wanted to do that, and then at the same time we wanted to  
20 get competitive pricing information so I would know if I  
21 could get a better price from NDS, maybe I could get a  
22 better price from Nagra.

23 Q. Why were you trying to do that?

24 A. We make our living on trying to be the low-cost  
25 provider at DISH Network, and our programming costs are the

1 lowest, our system costs are the lowest. So we were working  
2 trying to get the lowest possible cost across the board on  
3 everything to -- to be that. So we sell on cost, and then  
4 we like to try to up-sell you over time. But we try to get  
5 you hooked on it's cheap up front.

6 Q. And I think one of the things we talked about was, you  
7 brought up this lawsuit would have to be resolved before you  
8 could do anything like that?

9 A. That's correct.

10 Q. What was Mr. Rubin's response?

11 A. I think he responded back, "Are you kidding me?"

12 MR. WELCH: I think I'm almost done, Your Honor.

13 BY MR. WELCH:

14 Q. One of the areas that Mr. Stone talked to you about was  
15 ARPU. Okay? The average revenue per unit or the average  
16 revenue per sub.

17 A. Okay.

18 Q. Do you understand what a thing called "margin" is?

19 A. I think so.

20 Q. Okay. And if we wanted to find what actually you lost  
21 in profits, how do we do that? Would we take the ARPU and  
22 multiply that by the margin?

23 A. Well, say this again, Mr. Welch?

24 Q. Okay. I'll start over.

25 How would you use ARPU and margin to determine your

1 lost profits? We've had Mr. Orban testify about both ARPU  
2 and margin.

3 A. Well, we take our ARPU, and then we take our  
4 programming costs, and we subtract that out, and then we get  
5 what we call our gross margins. And then we have to go and  
6 take all of our variable costs, like all of our people --  
7 what it costs to run the business -- and then subtract it  
8 from that, and luckily sometimes you're making a profit, and  
9 sometimes you're not.

10 Q. Okay. And we can -- we can look back at Mr. Orban's  
11 testimony and get those. I just wanted to get the jury  
12 acclimated --

13 THE COURT: Slower, Counsel, slower.

14 BY MR. WELCH:

15 Q. Now, going back to the card swap issue. We talked  
16 about the card swap beginning in approximately 2003. If the  
17 posting was done in 2000, late 2000, why didn't you  
18 immediately begin a card swap?

19 A. Well, it's really detrimental at that point to your  
20 business to do a card swap. There's a lot of reasons for  
21 this. One is, A, it costs a lot of money to go out and do a  
22 swap.

23 But the really bigger reason is that -- we just talked  
24 about how we had to send all these cards off to our  
25 customers, and they have to go in there, and they have to

1 match up the right card with the right box. And it's a  
2 hassle.

3 And anytime time you hassle your customer, they think  
4 about "Do I really want to be hassled?" And they think  
5 about what their options are. And our customers get  
6 bombarded weekly, as you guys probably do, with offers in  
7 the mail about here's a great new video offer, and here's a  
8 deal for you.

9 And when they get that card in the mail, they start  
10 thinking about those offers, and we get higher churn. And  
11 that's really detrimental to us because, remember, we give  
12 our systems away, or we subsidize them heavily, and it costs  
13 us on average \$700 to get us a customer. And if they churn  
14 on you, you just wasted that \$700. And on top of that, you  
15 don't get money on an ongoing basis from the customer.

16 So churn is what really, really hurts us a lot when we  
17 do a card swap besides just the cost. And on top of that,  
18 we have to spend a lot of resources, so you've got what's  
19 called opportunity cost. Like I can have my engineers  
20 design new products instead of working on how we're going to  
21 do a swap and keep our system secure.

22 So those are some of the issues why you want to  
23 postpone doing a swap as long as possible, in general.

24 MR. WELCH: I have no further questions,  
25 Your Honor.

1 THE COURT: Mr. Stone, how long will you be on  
2 redirect?

3 I want to provide all the time you need. I'm just  
4 curious.

5 MR. STONE: Five, ten minutes I would imagine,  
6 Your Honor.

7 THE COURT: Okay. Then we'll go to lunch.

8 You're admonished not to discuss this matter among  
9 yourselves nor form or express any opinion concerning this  
10 case.

11 We'll see you. Have a nice lunch.

12 Sir, you may step down.

13 THE WITNESS: Certainly.

14 (Witness steps down.)

15 (Outside the presence of the jury.)

16 THE COURT: (To the reporter:) I want to stay on  
17 the record, Debbie.

18 Mr. Klein, why don't you have Mr.-- why don't you  
19 and I have our discussion first outside Mr. Peluso's -- I  
20 think in a few moments I want to provide you the opportunity  
21 to continue as long as you'd like in this discussion to set  
22 your record.

23 Just be very expectant that I'm also going to set  
24 a record. So I leave that first decision to you. And if  
25 you want to have a colloquy with the Court, I'm providing

1 you all that opportunity to protect the record.

2           Expect a response from the Court, though, so I  
3 want you to consult with your co-counsel for just a moment  
4 because I have some very strong things to say. But I'll let  
5 you take the first opportunity.

6           Now, second, your client -- or your witness -- is  
7 not being precluded. But he will not be taking the stand  
8 until we have that hearing out of the presence of the jury.  
9 I'm going to try to create a neutral record. None of my  
10 comments have been in front of the jury.

11           At this time I'm finding no fault with you. I'm  
12 going to simply leave it as a misunderstanding. But that  
13 misunderstanding comes on top of another misunderstanding.

14           So I leave whatever you want to do to you first in  
15 your decision-making process, and I'll take my lead from  
16 you. Why don't you talk to your co-counsel.

17           (Brief pause in the proceedings.)

18           MR. KLEIN: Your Honor, the only point I want to  
19 make is that what I was asking Mr. Peluso was intended to  
20 lead up to the fact that these same pirates about whom he  
21 was testifying were the ones who he then went to the  
22 EchoStar people, talked to them about these people, and they  
23 said that they weren't concerned about pirates like these.  
24 They were concerned about Mr. Tarnovsky. And I was trying  
25 to lay the foundation to get there.

1           THE COURT: I take that in good faith, at least  
2 for my record, and indicate to you once again that I had  
3 previously believed that the discussion that NDS had  
4 complained about involving former United States Attorney  
5 James Spertus was really caused by this Court's allowing NDS  
6 to previously ask that witness or a witness about the  
7 United States Attorney's Office and investigation. That was  
8 my effort to have a broad lawsuit.

9           There is a strong argument that this testimony is  
10 completely irrelevant; that what happens in Florida has no  
11 occasion in terms of what happens in California, that this  
12 gentleman is only a part of the satellite United States  
13 Attorneys, and he may be the best down in Florida, but this  
14 is nationwide, just as much centered in Los Angeles  
15 potentially, as -- Los Angeles, and perhaps more strongly so  
16 when you take the whole office as a coordinated body over  
17 one criminal head of a section in Florida.

18           Frankly, without denigrating Bill Flock, who's a  
19 wonderful chief judge down in Florida and a good friend,  
20 they're volume -- not in the narcotics field -- but it  
21 doesn't match the Central District with 19 million people,  
22 frankly.

23           So this gearing up or whatever happened in  
24 California now leads to a whole set of collateral issues.  
25 In other words, if I let you get into this, then I see no

1 reason why I'm not going to really reopen the door, and I'm  
2 not going to hear complaints from NDS about you're in  
3 California. And it's perhaps going to go far beyond what  
4 counsel for NDS envisions. I just don't know where the  
5 questions lead.

6 The difficulty is that I really did want to hear  
7 last evening, you know, in an out-of-the-presence hearing of  
8 the jury, and you saw me call not only a reporter up, I had  
9 two available at 8:00 o'clock. I'm finding no fault with  
10 you, again, so I protect exemplary counsel.

11 This was not the representation. The whole flavor  
12 of this leading up, as you say -- and you can make an  
13 argument this eventually will get to your point -- the whole  
14 flavor of this is character evidence. The inference of this  
15 is, if you believe the relationship and goodness of a former  
16 United States attorney and his association with Mr. Norris,  
17 it makes Mr. Norris a more virtuous person in the eyes of  
18 the jury.

19 I think my effort to provide each of you a full  
20 lawsuit on each side is well-taken in some accounts. I'm  
21 not sure it's well-taken on this account.

22 Therefore, I don't wish to inconvenience the  
23 gentleman. I don't wish to strike his testimony at this  
24 time until we have that hearing, because if I turn out to be  
25 wrong, I will humbly back off our conversation today and let



1 it go forward. But if you can't get him back -- I'm not  
2 working on his convenience. You're working on this jury's  
3 convenience. So I think we ought to pay him the courtesy of  
4 asking him when he can return, if you choose to do so. If  
5 you don't, then I'm going to choose to strike his testimony.

6 But my record's clear. He's not foreclosed in any  
7 way from testifying about those points and in the manner  
8 that you indicated to me last evening.

9 And I frankly don't find the initial questions to  
10 be within the spirit of the Court's ruling last evening. So  
11 we can argue about that, but I will prevail on it.

12 Why don't you go out and talk to your witness and  
13 see when he can return; and if he can't, then his testimony  
14 will be stricken. But that's your choice.

15 MR. STONE: When you say --

16 MR. KLEIN: Your Honor, when you say "he can  
17 return," should I take that to mean that he won't be able to  
18 testify today?

19 THE COURT: Well, we're going to finish this  
20 witness, and then we're going to have a hearing outside the  
21 presence of the jury. And how long that takes or how long  
22 Mr. Stone is on redirect or counsel on recross, I don't  
23 know.

24 MR. KLEIN: What I would be willing to do that  
25 maybe would --

1 THE COURT: I can take him out of order as the  
2 next witness. Glad to do so. But what I'm not going to do  
3 now is quibble about your schedule and when Mr. Kudelski's  
4 available or Suzanne Guggenheim. That's your problem,  
5 Counsel.

6 MR. KLEIN: Thank you, Your Honor.

7 THE COURT: So talk to him.

8 MR. SNYDER: Would you like us to get an answer  
9 right now?

10 THE COURT: Right now. 'Cause he said he had a  
11 flight to catch, recognizing he can certainly return. But  
12 you have to provide me the time to have that hearing now,  
13 which I offered last evening, and you apparently didn't want  
14 to do.

15 MR. SNYDER: Thank you, Your Honor.

16 (Pause in the proceedings at 12:05 p.m.)

17 (Proceedings resumed at 12:11 p.m.)

18 MR. KLEIN: Can we tell you at 1:00 o'clock what  
19 our decision is, Your Honor?

20 THE COURT: Absolutely.

21 You wanted to voice an objection?

22 MR. HAGAN: I can do it at the hearing,  
23 Your Honor.

24 THE COURT: Well, we can do it right now. We're  
25 still on record. All counsel and all the parties are

1 present.

2 And, Counsel, your objection on behalf of  
3 EchoStar.

4 MR. HAGAN: Your Honor, real briefly, my objection  
5 would be that we don't believe there's any relevant  
6 testimony from Mr. Peluso under 402, and any probative value  
7 would be substantially outweighed by the prejudice that  
8 they're trying to imply with respect to the AUSA  
9 investigation under 403.

10 THE COURT: After having given the admonition to  
11 the jury concerning the inferences that they could draw  
12 based upon the decisions of the United States Attorney's  
13 Office, this seems to be along the same vein, at least the  
14 lead-up.

15 I thought that this was going to be a discussion  
16 about NDS, in a sense, working with Mr. Norris, but not a  
17 litany of all the cases and the home phone calls, et cetera.  
18 And I thought that that would be brief and succinct leading  
19 into the relationship with Mr. Gee and the offer of Mr. Gee  
20 to come to the -- if not the defense, but the character of  
21 apparently Mr.-- was it Mullen -- Mr. Marty Mullen.

22 In addition, that would have led, then, to the  
23 collateral area that I would allow you to, of course, get  
24 into: What was occurring in California, what U.S. Attorneys  
25 you were dealing with, what was said during those

1 conversations. And at the time, initially I had thought  
2 that NDS's evidence might possibly be probative because of  
3 Mr. Gee's position.

4 And I think that what it does is potentially  
5 undermine the Court's decision that the United States  
6 Attorney's Office and their activities and amended  
7 complaints should have absolutely no bearing on this case.

8 And that's why I was reluctant last evening and  
9 had indicated clearly to all counsel I didn't want  
10 Mr. Peluso on the stand until we'd had the hearing. I  
11 offered that at 8:00 o'clock.

12 It was represented to me, though, that this was --  
13 or at least I had the impression -- finding no fault with  
14 you, Mr. Klein -- let me take the full burden so that this  
15 remains neutral and none of this is in front of the jury, so  
16 it doesn't impact the jury in having this discussion with  
17 you -- I thought it best that this would be a very brief  
18 presentation about the actions concerning Mr. Gee in  
19 relationship to the Florida office, not what seems to be  
20 unwinding in terms of literally 20 minutes of a background  
21 involving Mr. Norris' character. And, quite frankly, it's  
22 improper character evidence.

23 And so, therefore, I'm going to go back to my  
24 original position, and that is Mr. Peluso is not taking the  
25 stand until we have a hearing and I hear every single

1 potential question that could be asked and I hear his  
2 answer. Right now the prejudicial effect does outweigh the  
3 probative value until that hearing takes place, and I'm  
4 prepared to strike his entire testimony up to this point.  
5 That can be harmful for NDS, so hopefully that doesn't have  
6 to be stricken.

7           Hopefully I'm wrong, Mr. Klein, and hopefully  
8 you'll give me the time to find out I'm wrong. If you don't  
9 give me that time and keep applying this "they've got to be  
10 on a plane, boat, train" -- I'm kidding -- then if their  
11 time schedule is more important than the Court's, then you  
12 place yourself in jeopardy.

13           Finally, let me sort out one other thing over the  
14 recess. I'm prepared to give a series of instructions that  
15 are fairly finite about this cross-examination and what came  
16 in for the truth of the matter asserted and what came in as  
17 nonhearsay.

18           Here's the difficulty for both of you to decide:  
19 Mr. Snyder, on some occasions the Court is saying concerning  
20 witness so-and-so, these statements are -- like Ereiser --  
21 "These statements are for the truth of the matter asserted."  
22 I'm not going to cite 804(b)(3), for instance. But I would  
23 think from your side that highlights -- although, from the  
24 Circuit's side, they'd like to see the record. As a trial  
25 judge, it highlights that these are for the truth. It has a

1 special meaning. And on other occasions, they're not for  
2 the truth of the matter asserted.

3 Now, you and I know that, for the Circuit, that  
4 means a tremendous amount, and it should. But as a  
5 practical matter down here in the trial courts, I think we  
6 both recognize, Mr. Hagan, that although that works for  
7 Circuit, that can have, you know, a devastating impact.

8 For instance, as I go through a litany of four or  
9 five witnesses and pick out certain sections and state to  
10 the jury, "This was introduced for the truth of the matter  
11 asserted; you can view this as truthful." And on other  
12 occasions I turn to the jury and say, "This is not for the  
13 truth of the matter asserted." Equally devastating to one  
14 or both of your sides, depending upon what's being said.

15 Now, I'm not suggesting this, but I must give that  
16 instruction or I can't protect myself in terms of this  
17 record on appeal.

18 But you two might get together for the first time  
19 in this case and decide if it's not in your mutual interest  
20 to stipulate that that instruction not be given. Because  
21 depending upon the way that that works out -- remember, the  
22 majority of these did come in for the truth of the matter  
23 asserted, but there's a lot of information that did not.  
24 And how you sort that out for the jury, you know that this  
25 is really for the record and for the Circuit.

1           So I'll wait for your wisdom concerning that. But  
2 it would be quite an instruction. And all of us know that  
3 as far as the jury is concerned, it's going to be almost, in  
4 the real world, impossible to follow.

5           MR. SNYDER: And you're referring specifically to  
6 Mr. Gee's testimony?

7           THE COURT: I'm referring to all of their  
8 testimony. You have to remember I made rulings just to  
9 begin with concerning Love, Scullion, certain parts of  
10 Scullion -- I don't know.

11          MR. SNYDER: I'm sorry, Your Honor. My --

12          THE COURT: Was Mr. Gee's testimony about each of  
13 those?

14          MR. SNYDER: About each of those people, yes.

15          THE COURT: And we can go through Ereiser or --

16          MR. SNYDER: But it's Mr. Gee's testimony about  
17 conversations about all those people.

18          THE COURT: All the things we did last evening,  
19 you can imagine what that instruction would look like. And  
20 then the Court, in doing the right thing legally, ends up  
21 with now you're to consider this for the truth of the matter  
22 asserted. It gives it added impetus concerning  
23 corroboration.

24                 And then I say at different times, "You're not to  
25 assume that this is for the truth of the matter asserted; it

1 is only meant to show the actions or activities by the  
2 person." In a practical sense, we know that the jury can't  
3 sort that out.

4 MR. SNYDER: I understand the issue, Your Honor.

5 THE COURT: And the end result means that each of  
6 you, quite frankly, equally get gored in looking at this.  
7 And looking at the instruction I'm starting to prepare,  
8 there's harm to both sides.

9 So the only way I know to resolve that is by  
10 stipulation, because otherwise I don't protect my record,  
11 and I have to give that instruction. And unless I have a  
12 stipulation from both of you, that instruction is going to  
13 be given.

14 MR. SNYDER: May I have the lunch hour to review  
15 my notes?

16 THE COURT: Absolutely.

17 MR. SNYDER: I understand the Court's request.

18 THE COURT: Frankly, one of you might think it's a  
19 60 percent/40 percent win for you. Be careful, because the  
20 case is a long way from being done. Once we start that  
21 process, we go through that process potentially again with  
22 another witness. And this time it may be the reverse of  
23 what Counsel thought. So we set the precedent here in terms  
24 of that instruction being given.

25 I'm just -- So I thank you.



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I don't know how that gets resolved, but I would suggest the two of you ought to talk about it after you talk internally.

MR. HAGAN: Thank you.

MR. SNYDER: 1:00 o'clock, Your Honor?

THE COURT: 1:00 o'clock.

(Lunch recess held at 12:19 p.m.)

(Further proceedings reported by Jane Rule in Volume III.)

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2  
3 CERTIFICATE

4  
5 I hereby certify that pursuant to Section 753,  
6 Title 28, United States Code, the foregoing is a true and  
7 correct transcript of the stenographically reported  
8 proceedings held in the above-entitled matter and that the  
9 transcript page format is in conformance with the  
10 regulations of the Judicial Conference of the United States.

11  
12 Date: April 26, 2008

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16 DEBBIE GALE, U.S. COURT REPORTER

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