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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

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HONORABLE DAVID O. CARTER, JUDGE PRESIDING

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EHOSTAR SATELLITE CORP., )  
et al., )

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Plaintiffs, )

12

vs. )

No. SACV-03-950-DOC  
DAY 14, Vol. IV

13

NDS GROUP PLC, et al., )

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Defendants. )

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

18

Santa Ana, California

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May 1, 2008

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Federal Official Court Reporter  
United States District Court  
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Santa Ana, California 92701  
(714) 543-0870

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May 1, 2008 Volume 4 Hasak Maldonado.txt  
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1 SANTA ANA, CALIFORNIA; MAY 1, 2008; 3:00 P.M.

2 (Jury present.)

3 REUVEN HASSAK, DEFENSE WITNESS, PREVIOUSLY SWORN

4 CROSS-EXAMINATION (Continued)

5 BY MR. HAGAN

6 Q At the bottom right hand-corner, it has an NDS Bates  
7 stamp 103028.

8 Now, at the bottom of this e-mail, it says, "These are  
9 the people that can make or break the case. I am assuming  
10 that NDS has already talked with and made a deal with  
11 Menard."

12 At the time that this was sent to you in 2004, isn't it  
13 true, sir, that NDS had made a deal with Mr. Menard, and he  
14 was a consultant for the company at that time?

15 A I cannot tell you at that time. I don't remember.

16 MR. HAGAN: That's all. Thank you very much.

17 THE COURT: Sir, are you within the continental  
18 United States as of next Tuesday or will you be in Israel?

19 THE WITNESS: I prefer to be in Israel than in the  
20 States.

21 THE COURT: You may, but if any party needs you  
22 back, I want to inform you that there will be a close

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23 turnaround time. We believe this case will conclude  
24 actually Tuesday of next week. If you are needed, we are  
25 only giving the party 72 hours to return, so I will leave

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5

14:24:00 1 that to your choice, but if counsel informs you over the  
2 weekend, you will be expected back in this court on Tuesday,  
3 but I doubt you will be returning.

4 THE WITNESS: Tuesday at the latest?

5 THE COURT: Tuesday -- well, I am going to say  
6 next Friday just in an abundance of caution because I'm  
7 never quite certain, but I think the parties are agreeing.

8 THE WITNESS: Thank you very much.

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

10 MR. EBERHART: We call Anthony Maldonado, Your  
11 Honor.

12 THE COURT: Counsel, if he is not available --

13 MR. SNYDER: I know he was right out there.

14 THE COURT: Mr. Maldonado, if you would step  
15 forward, please, and raise your right hand.

16 ANTHONY MALDONADO, DEFENSE WITNESS, SWORN

17 THE COURT: Sir, if you would please be seated  
18 into the witness box to my left.

19 Please state your name and spell your last name  
20 for the record.

21 THE WITNESS: Anthony Joseph Maldonado.

22 THE COURT: Would you pull that microphone just a  
23 little closer to you.

24 would you spell your last name for the jury,  
25 please.

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14:28:57 1 THE WITNESS: M-a-l-d-o-n-a-d-o.

This is Mr. Eberhart on behalf of NDS.

DIRECT EXAMINATION

BY MR. EBERHART:

Q Good afternoon, Mr. Maldonado.

Where did you live in the year 2001?

A In 2001, I lived in Cave Creek, Arizona.

MR. EBERHART: Mike, would you hand the witness Exhibit 374, please? Charlie, this is in evidence, page one.

BY MR. EBERHART:

Q And is the address shown on this report of investigation for Anthony Maldonado -- was that your address in 2001?

A Yes.

Q This report shows a date of March 23, 2001.

Were you raided by the FBI in March 2001?

A Yes.

Q Does that raid relate to satellite piracy?

A Yes.

Q When did you first become involved in satellite piracy?

A Around late '97, 1997.

Q How did you first become involved in satellite piracy?

A It was mostly a hobby at first, and it developed from

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7

14:30:11 1 there.

2 Q And at the time you became involved in satellite  
3 piracy, did you have a full-time job?

4 A Yes.

5 Q What was that job?

6 A I worked for Motorola.

7 Q And what did you do for Motorola in your job for them  
8 back when you became involved in satellite piracy?

9 A I was an engineering technician for a satellite group,  
10 Motorola Satellite Group on McDowell and Scottsdale Road.

11 Q And did you hold that job from 1997 until at least the  
12 time you were raided by the FBI in 2001?

13 A Yes.

14 Q And in your job for Motorola, did you ever work with  
15 Smart Cards?

16 A No.

17 Q Did you ever work with embedded systems?

18 A No.

19 Q Did you ever work with testing electronic equipment?

20 A Yes.

21 Q what did you do in testing electronic equipment?

22 A I hooked up -- I used electronic equipment mostly for  
23 testing existing systems, RF frequency analyzation and  
24 things to do with LNA uploads, downloads.

25 Q what are LNA uploads and downloads?

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14:31:23 1 A Low noise amplifiers for satellites and for antennas.

2 Q Did you ever write software when you worked for  
3 Motorola?

4 A No.

5 Q When you were first involved in satellite piracy, what  
6 system were you involved in pirating?

7 A At first it was the DirectTV system.

8 Q Where did you obtain the technology to pirate the  
9 DirectTV system?

10 A Most of it was on-line, satellite websites.

11 Q Did you obtain technology for pirating the DirectTV  
12 system from any source other than on-line postings?

13 A Yes.

14 Q Where?

15 A A man by the name of Jim Waters from Barrie, Ontario.

16 Q When did you first become acquainted with Jim Waters of  
17 Barrie, Ontario?

18 A Late '97, early '98.

19 Q And did you -- you testified that you obtained  
20 technology from Mr. Waters for DirectTV piracy. What did you  
21 obtain from him?

22 A I obtained software code for programming the Smart  
23 Cards.

24 Q And that was software code that would allow the  
25 creation of pirate DirectTV Smart Cards?

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9

14:32:44 1 A Yes.

2 Q Did you ever become involved in EchoStar piracy?

3 A Yes.

4 Q When did you become involved in EchoStar piracy?

5 A That was late 2000, November -- October/November time  
6 frame.

7 Q How did you first become involved in EchoStar piracy?

8 A I got a phone call from the same man, Jim Waters, in  
9 Barrie, Ontario, who wanted me to fly down there and discuss  
10 the opportunity to purchase code for satellite -- for the  
11 DISH Network system.

12 Q When did that phone call take place?

13 A The phone call was around September 2000.

14 Q Did Mr. Waters tell you anything else during that phone  
15 conversation?

16 A No. Just to come to Ontario to discuss pricing and the  
17 code itself.

18 Q Did you accept his invitation and go to Ontario?

19 A Yes.

20 Q Where did you meet Mr. Waters in Ontario?

21 A I met him at first in a Starbucks. He met me there,  
22 and then we proceeded from there to go to a local bar.

23 Q And what town was that Starbucks in?

24 A Barrie, Ontario.

25 Q What did Jim Waters look like?

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14:34:11 1 A He had dark hair, brown eyes, mustache, about  
2 five-eight, a little balding.  
3 Q And this was in -- do you recall when this first  
4 in-person meeting with Mr. Waters took place?  
5 A A month later, so about October 2000.  
6 Q And approximately how old was Mr. Waters in  
7 October 2000?  
8 A He appeared to be in his mid-30s.  
9 Q What did you discuss with Mr. Waters at that meeting?  
10 A I discussed the opportunity to purchase a hack for DISH  
11 Network and the pricing and future development that may be  
12 needed.  
13 Q Did Mr. Waters explain to you any of the technology  
14 that he was offering to sell you for DISH Network hacking?  
15 A He didn't go into details about the technology itself.  
16 Q Did you accept Mr. Waters' offer to sell you DISH  
17 Network hacking technology?  
18 A Yes.  
19 Q What did you do next?  
20 A We flew back home to Phoenix, and I discussed it with  
21 my partner.  
22 Q You say, "we flew back home." Who else was with you?  
23 A A man by the name of Paul St. James.  
24 Q Who was Paul St. James?  
25 A He was a friend of mine and colleague who I had known

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14:35:45 1 for three years that I helped start a business with.  
2 Q And did you -- in your discussions with Mr. St. James  
3 after you returned to the United States, did you reach any  
4 decision about whether to proceed with Mr. Waters' offer?  
5 A Yes. We decided to go ahead with the offer, and then I  
6 contacted Jim and said it was a go, and we proceeded from



7 there.

8 Q And how did you proceed to -- well, what did you do  
9 next in terms of your interactions with Mr. Waters?

10 A We made arrangements for payment. Half the money was  
11 wired, and the other half I took up to Barrie, Ontario, on  
12 the second visit.

13 Q The money that was wired, was that wired from a single  
14 account or from multiple accounts?

15 A Multiple accounts.

16 MR. EBERHART: Mike, would you hand the witness  
17 Exhibit 2501-A, please?

18 BY MR. EBERHART:

19 Q Mr. Maldonado, what is Exhibit 2501-A?

20 A This is a wire transfer receipt from my bank at the  
21 Motorola Credit Union dated 10/17/2000 from Scottsdale to  
22 Barrie, Ontario.

23 MR. EBERHART: The defendants move Exhibit 2501-A  
24 into evidence.

25 MR. WELCH: No objection.

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14:37:26 1 THE COURT: Received.

2 (Exhibit 2501-A received.)

3 BY MR. EBERHART:

4 Q Mr. Maldonado, does this indicate from what bank this  
5 money is being wired?

6 A It's indicated from -- yeah, MECU West wire transfer  
7 form, Motorola Credit Union.

8 Q What does MECU West mean?

9 A I believe Motorola Credit Union. I don't recall what  
10 the "E" stands for.

11 Q And near the top of the page, it lists under "Name:  
12 Anthony Maldonado/Baud Father"?

13 A Yes.

14 Q What was Baud Father as of the time of this wire

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15 transfer in October 2000?

16 A That was my computer business. I had a side computer  
17 business, you know, servers and server maintenance.

18 Q And what was the amount of this wire transfer?

19 A This wire transfer is 6,000 U.S. dollars.

20 Q And to what bank were you wiring this money?

21 A Canadian Imperial Bank of Commerce.

22 Q And does the wire transfer indicate a location for the  
23 Canadian Imperial Bank of Commerce?

24 A Yes.

25 Q what is that location?

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13

14:38:39 1 A 38 Molson Park, Barrie, Ontario LN 945, Canada.

2 Q And does this wire transfer record indicate the account  
3 to which the wire amount is to be credited?

4 A Yes.

5 Q And what is that account?

6 A It just shows an account number of -- I believe it's  
7 7200412.

8 Q why don't you look on the receiving party, which is  
9 about halfway down the page.

10 A The receiving party is 1431916. That was the name of  
11 the receiving party.

12 Q And it says ,"1431916, Ontario, Inc."?

13 A Yes, Ontario, Inc.

14 Q who provided you with that name of the account to which  
15 the monies were to be credited?

16 A Mr. Jim Waters.

17 Q Have you attempted to recover any additional wire  
18 transfer records relating to your transfer of monies to Jim  
19 Waters?

20 A Yes.

21 Q Have you been able to recover those records?

22 A Not at this time, no.

23 Q Am I correct, though, that there was an additional wire

24 transfer in addition to what's shown in Exhibit 2501-A?

25 A Yes.

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14:40:20 1 Q Did you provide additional monies to Mr. Waters other  
2 than the additional wire transfer and the wire transfer  
3 shown in Exhibit 2501-A?

4 A Yes.

5 Q How did you provide those monies?

6 A I took -- on the second visit, I took \$25,000 cash with  
7 me to Ontario.

8 Q Did you provide that money to Mr. Waters?

9 A Yes.

10 Q Where did you obtain -- withdrawn.

11 what was the total amount of money that you provided to  
12 Mr. Waters for his EchoStar hack technology?

13 A A total of 50,000 U.S. dollars.

14 Q Where did you obtain that money?

15 A That was obtained from -- I received the money from  
16 Mr. Paul St. James.

17 Q Why did Mr. St. James provide you that money?

18 A He was able to -- he was able to provide the funds  
19 because of his business. He had the extra funds to pay for  
20 it.

21 Q What was Mr. St. James' business as of October 2000?

22 A He was in eBay retail. He sold merchandise on eBay.

23 Q You mentioned a second trip to meet Mr. Waters.

24 Did that meeting also occur in Barrie, Ontario?

25 A Yes.

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14:41:51 1 Q And approximately how long after the wire transfer that  
2 we just looked at did that second meeting occur?

3 A One week later.

4 Q And did you -- did Mr. James come with you or did you  
5 travel alone?

6 A I went by myself.

7 Q And describe for the jury what happened in that meeting  
8 with Mr. Waters.

9 A I got off the plane, drove to Barrie, Ontario, to a  
10 hotel where Mr. Waters met me at the hotel, picked me up.  
11 We proceeded to a field. He said it was behind his house,  
12 and he showed me the technology. He had it all set up. He  
13 showed me how the box worked, and I exchanged money for the  
14 box. Then he said he would e-mail me the software to run  
15 the box. It would be there when I got home.

16 Q And was that software there when you got home?

17 A Yes.

18 Q Now, you mentioned a moment ago that Mr. Waters showed  
19 you how the box worked. What exactly did he do?

20 A He took a subscribed system and showed me that the card  
21 wasn't active. He put the card in the system and proceeded  
22 to boot-up a computer and activate the card -- reactivate it  
23 from an unsubscribed state.

24 Q And what did this device that Mr. Waters possessed look  
25 like?

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14:43:21 1 A It was small black box, not very big.

2 Q Did it have any features on it that you could see?

3 A Yes. It had one LED light, a power light, small switch  
4 and a reader on top of it.

5 MR. EBERHART: Michael, would you hand the witness  
6 Exhibit 1698, please?

7 BY MR. EBERHART:

8 Q Mr. Maldonado, can you identify Exhibit 1698?

9 A Yes.

10 Q What is Exhibit 1698?

11 A It looks to be an exact duplicate similar to the box I  
12 purchased from Jim Waters in Barrie, Ontario.

13 MR. EBERHART: Your Honor, at this time, the  
14 defendants offer Exhibit 1698.

15 MR. WELCH: No objection.

16 THE COURT: Received.

17 (Exhibit 1698 received.)

18 BY MR. EBERHART:

19 Q Now, Mr. Maldonado, you mentioned that there was a  
20 switch on the black box that you purchased from Mr. Waters.

21 What was the functioning of that switch?

22 A Power on and off.

23 Q And just to be clear, did you provide this picture of  
24 the black box to us?

25 A No.

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14:44:44 1 Q Now, you mentioned that there was a slot for the card.  
2 Can you describe where on this picture the slot for the card  
3 resides?

4 A It's glued right on top of the box, the little black  
5 raised area.

6 Q Can you see a card sticking out of that slot in this  
7 picture?

8 A Yes.

9 Q Can you recognize any other details in this picture  
10 that cause you to believe that this is a box just like the  
11 one you purchased from Jim Waters?

12 A I notice the epoxy over the screws, the RST-32 port in  
13 the back of the box.

14 Q You mentioned the epoxy over the screws. What do you  
15 mean by that exactly?

16 A Upon purchase of the box, Jim had told me that the  
17 whole box was filled with epoxy and not to try to open it up  
18 and basically reveal the contents.

19 Q Did you have any understanding of why Mr. Waters had

20 put epoxy in the box?

21 A To keep the box from being reduplicated.

22 Q Would the black box that you purchased from Mr. Waters  
23 operate without being connected to a computer?

24 A No.

25 Q Why not?

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14:46:09 1 A It needs an RST-32 port and a DOS program to run it.

2 Q Describe for the jury how you operated the black box  
3 after you had purchased it from Mr. Waters?

4 A I operated it in the same manner he showed me. I would  
5 take a subscribed card and plug the box into the computer,  
6 and it had a power that I plugged into a regular AC outlet.  
7 It allowed me to activate the card line by line, which is a  
8 tier application, so it basically looked like a real  
9 subscribed card.

10 Q You mentioned earlier that Mr. Waters told you that he  
11 would e-mail you software for the black box, correct?

12 A Yes.

13 Q And you testified that that software had arrived when  
14 you returned from Barrie, Ontario, to the United States.

15 A Yes.

16 Q To the best you can recall, exactly what software was  
17 contained in that e-mail from Mr. Waters?

18 A There was some test software to test the code, and  
19 there was also -- to test, you know, the cards when you  
20 activated them and also code to get into the card, to open  
21 the hole and to actually write to it, and there were some  
22 commands to change -- you know, open tiers to change  
23 addresses, to change the zip codes and stuff, mainly, basic  
24 activation commands.

25 Q And when you say there was code to test the card, you

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14:47:51 1 mean there was some sort of pirate code that would allow the  
2 card to operate as a pirate card?

3 A Yes.

4 Q And when you say there was code to get into the card,  
5 what do you mean by that?

6 A There was a separate code that had to be sent to the  
7 card to open it before you could even write to it.

8 Q And did Mr. Waters send you any ROM or EEPROM code for  
9 EchoStar?

10 A Yes, he did.

11 Q what did he send you?

12 A He just sent me activation code basically, and he sent  
13 me some schematics of the code. He also sent me a schematic  
14 of the code that it takes to open the card just so I could  
15 take a look at it because he was teaching me some stuff.

16 Q Do you recall seeing in December 2000 any postings on  
17 the Internet related to the EchoStar system?

18 A Yes.

19 MR. EBERHART: Would you hand the witness Exhibit  
20 511-A, Michael?

21 BY MR. EBERHART:

22 Q Do you recognize the posting by xbr21 on the first page  
23 of Exhibit 511-A?

24 A Yes, I do.

25 Q what is it?

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14:49:25 1 A It seemed to me at the time to be an exact duplicate of  
2 the code that you needed to open the card to write to it.

3 Q And that was the code that Jim Waters had provided to  
4 you?

5 A Yes.

6 Q How did you determine that this was a duplicate of the

7 code that Jim waters had provided to you?

8 A The CRC signatures matched, which means that the byte  
9 line count matched.

10 Q And what is a CRC, sir?

11 A Cyclic redundancy check. It just checks to see if the  
12 byte count is the same -- make sure the byte count is  
13 accurate for each line, that nothing got changed.

14 Q Did you see this posting in Exhibit 511-A on or about  
15 the date listed for the posting which is December 23, 2000?

16 A Yes.

17 Q And did you take steps to compare that to the code that  
18 Jim waters had provided to you?

19 A Yes.

20 Q And other than having the same CRC, did you notice any  
21 other similarities or identical features between the code  
22 Mr. waters provided to you and the code that was posted by  
23 xbr21?

24 A No, I didn't. I just -- it was -- I didn't notice  
25 anything else.

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14:50:47 1 Q After you saw the posting in Exhibit 511-A, what did  
2 you do?

3 A I called Mr. waters and asked him what this was all  
4 about. He didn't really respond. He just told me he would  
5 take care of it and that everything was going to be all  
6 right.

7 Q Did Mr. waters deny that he was the source of the  
8 posting that is shown in Exhibit 511-A?

9 A No.

10 Q Exhibit 511-A indicates, "There will be no boxes  
11 anymore. There will be no more fighting amongst us."

12 Did you have any understanding at the time this was  
13 posted of what those words meant?

14 A well, it referred to the box that was sold to me. When  
15 I asked Jim about it, he didn't deny it, but he said, yeah,



16 it -- he agreed it was part of our box.

17 Q And when you called Jim Waters after you saw this  
18 posting on December 23, 2000, was he aware that this posting  
19 had taken place?

20 A Yes.

21 Q This posting indicates in Exhibit 511-A at the end --  
22 the posting indicates at the end "NIPPERCLAUSE 00." Do you  
23 see that?

24 A Yes.

25 Q Have you ever met a man named J.J. Gee?

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22

14:52:33 1 A Yes.

2 Q Did you ever tell Mr. Gee that you believed that Jim  
3 Waters or Jim's engineer was Nipper or NipperClause?

4 A Yes.

5 Q Did the fact that this posting, which you understood  
6 was the code that Jim Waters had sold you -- did that lead  
7 you to believe that Jim or Jim's engineer was Nipper or  
8 NipperClause?

9 A Yes.

10 Q Were there any other facts that led you to believe that  
11 Jim or Jim's engineer was Nipper or NipperClause?

12 A Well, as recent years passed, there were discussions  
13 between Jim and I, and I noticed that once in a while those  
14 discussions pretty close would end up on the dr7 website or  
15 other websites.

16 Q So you had discussions with Jim.

17 Were these e-mails, IRC, on the phone?

18 A Some IRCS and some on the phone.

19 Q Did those discussions relate to EchoStar piracy or to  
20 DirectTV piracy?

21 A Prior to late 2000, they had related to DirectTV.

22 Q And describe for the jury what you mean by you had  
23 discussions with Mr. Waters, and then similar or the same

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24 information was posted by Nipper.

25 A We would discuss junk code locations and, you know,

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14:53:57 1 cloning cards and how to do it, and some of those  
2 instructions came up on the sites.

3 Q And those instructions were posted on the sites shortly  
4 after you had your conversations with Mr. Waters?

5 A Yes.

6 Q Are you familiar with something called a stack overflow  
7 or buffer overflow?

8 A I'm just familiar with the term. I don't exactly know  
9 the meaning of it.

10 Q Did Mr. Waters ever use that term?

11 A Once in passing, yes.

12 Q What did he tell you about a stack overflow or buffer  
13 overflow?

14 A He didn't say much about it. He just told me that that  
15 was the main way to get into the DISH Network card.

16 Q And do you recall when Mr. Waters told you this?

17 A This was at our first meeting in Canada.

18 Q And so that was sometime before the wire transfer on  
19 October 17, 2000?

20 A Yes.

21 Q Was Mr. Waters technically skilled at all?

22 A Yes. That was the main reason I went there to find  
23 out.

24 Q Now, Mr. Maldonado, you were convicted in 2003 of two  
25 felonies: attempted fraudulent schemes and artifices, and

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14:55:19 1 attempted sexual exploitation of a minor?

2 A Yes.

3 Q And you were also convicted in approximately 1990 of a  
4 felony for burglary, correct?

5 A Yes.

6 Q Now, when you were raided by the FBI in 2001, did you  
7 have an occasion to talk to J.J. Gee during that raid?

8 A Yes.

9 Q And did you tell Mr. Gee about the black box that you  
10 purchased from Jim Waters?

11 A Yes.

12 Q Did you show Mr. Gee the black box you purchased from  
13 Jim Waters?

14 A I wasn't able to show him, but I am sure he saw it when  
15 they took it.

16 Q So you weren't able to show the black box to Mr. Gee  
17 because the FBI had already seized it before you spoke to  
18 Mr. Gee?

19 A Yes.

20 Q Did you tell Mr. Gee about Jim Waters?

21 A Yes.

22 Q Did you tell -- what did you tell Mr. Gee?

23 A I told him who I had been working with and -- the  
24 whole -- you know, the whole time, and I told him about the  
25 DISH Network hack. I told him how I did it. I explained to

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14:56:26 1 him in detail how it was done. I explained to him, you  
2 know, the cost and -- basically just everything that had  
3 happened up to that point.

4 Q Did you tell Mr. Gee that Jim Waters was located in  
5 Barrie, Ontario?

6 A Yes.

7 Q Did you offer to help Mr. Gee in any way in  
8 investigating or apprehending Jim Waters?

9 A He offered, and I accepted. I said, yes, I would help  
10 him.

11 Q What did Mr. Gee say to you?

12 A He asked me if I would wear a wire back up to Barrie,  
13 Ontario, to get more information and to try and lure Jim  
14 across to the United States.

15 Q What did you say?

16 A I said yes.

17 Q Now, after you said yes to Mr. Gee that you would wear  
18 a wire and attempt to lure Mr. Waters across the border, did  
19 Mr. Gee say anything else to you about that proposed  
20 investigation or cooperation?

21 A He said that I wouldn't be charged if I would help  
22 them.

23 Q Now, when you were having this conversation with  
24 Mr. Gee about wearing a wire or luring Mr. Waters across the  
25 border, was anyone else present?

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14:57:46 1 A Yes.

2 Q Who else was present?

3 A The head detective, Belonia.

4 Q And when you told Mr. Gee that you would agree to wear  
5 a wire, did the head detective say anything to you?

6 A No. He just -- I believe he was silent.

7 Q During that meeting did anyone advise you to get a  
8 lawyer?

9 A Yes. After they were ready to leave, they advised me  
10 to seek counsel and to pursue the offer that was made to me.

11 Q So is it correct that Mr. Gee and the head detective  
12 instructed you to have the lawyer pursue the cooperation  
13 offer that Mr. Gee had made to you and that you had said you  
14 would do?

15 A Yes.

16 Q Now, did your lawyers contact Mr. Gee in an effort to  
17 follow up on your offer to cooperate with him?

18 A Yes.

19 Q Did you ever hear from Mr. Gee?

20 A After March 23rd, no.  
21 Q Did you ever hear from anyone from NagraStar or  
22 EchoStar taking you up on your offer to cooperate?  
23 A No.  
24 Q Did anyone ever take you up on your offer to wear a  
25 wire and lure Mr. Waters across the border?

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14:59:06 1 A No.  
2 Q Now, you mentioned a few minutes ago that certain  
3 materials had been seized from you in the raid. What was  
4 seized from you?  
5 A I had a main laptop with all my schematics and notes  
6 and software. Everything was on this laptop. And there  
7 were several computers and disks and lots of manuals that  
8 were taken.  
9 Q Did the FBI leave any information that related to your  
10 activities in satellite piracy?  
11 A None.  
12 Q Was any of that material ever returned to you?  
13 A No.  
14 Q You were deposed earlier this week, correct, sir?  
15 A Rephrase.  
16 Q You sat for a deposition earlier this week, correct?  
17 A Yes.  
18 Q Before your deposition, had you ever heard of Chris  
19 Tarnovsky?  
20 A No.  
21 Q Before your deposition, had you ever heard of Allen  
22 Menard?  
23 A No.  
24 Q Now, when you spoke to Mr. Gee, did you ever talk to  
25 him about the wire transfer records that would show where

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15:00:24 1 you had wired money to Jim Waters?  
2 A I told him about the money. I don't remember telling  
3 him about the actual records.  
4 Q Now, Mr. Maldonado, do you have an indemnity agreement  
5 with NDS?  
6 A Yes.  
7 Q Is NDS paying your attorneys' fees?  
8 A Yes.  
9 Q Is NDS paying your expenses here today?  
10 A Yes.  
11 Q Is NDS paying you for your missed time from work?  
12 A Yes.  
13 Q Other than that, is NDS paying you anything?  
14 A No.  
15 Q Has NDS hired you as a consultant?  
16 A No.  
17 Q Has NDS hired you as an employee?  
18 A No.  
19 Q Has NDS told you that in the future they will hire you  
20 as a consultant or an employee?  
21 A No.  
22 Q Has NDS told you that they will give you anything in  
23 the future?  
24 A Nothing.  
25 Q So why are you here today, sir?

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15:01:20 1 A It was a chance to do the right thing like I was  
2 offered seven years ago by Mr. Gee.  
3 MR. EBERHART: Pass the witness.  
4 THE COURT: I am going to let the jury go at 3:15  
5 today.  
6 Do you want to start your cross-examination today,  
7 or do you want to reserve that for tomorrow?

8 MR. NOLL: Reserve it.

9 THE COURT: I might as well let you go now. You  
10 are admonished not to discuss this matter amongst yourselves  
11 nor to form or express any opinion concerning the case.  
12 Have a nice weekend.

13 (Jury not present.)

14 THE COURT: Counsel, if you will have a seat.

15 Mr. Maldonado, we will see you tomorrow morning at  
16 8:00.

17 we have gone through a series of formal  
18 discussions and a significant amount of informal discussion  
19 concerning some of the jury instructions. The Court is  
20 prepared to hand down rulings at this time which will be  
21 final rulings concerning the territorial application of  
22 plaintiffs' California Penal Code claims, as well as the  
23 applicability of California Penal Code to out-of-state  
24 damages.

25 I certainly want to pay the courtesy to either

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15:03:33 1 side of having the last word or to state anything you'd like  
2 to. I'll begin with EchoStar.

3 MR. HAGAN: Your Honor, we rest on our briefing  
4 and the arguments that have previously been advanced with  
5 the Court.

6 THE COURT: Let me turn to NDS.

7 MR. SNYDER: Submitted, Your Honor.

8 THE COURT: Concerning the territorial  
9 applications of Plaintiffs' California Penal Code claims,  
10 defendants seek a jury instruction on the territorial  
11 application of plaintiffs' claims under Penal Code Sections  
12 593d(a) and 593e(b).

13 Under California Penal Code Section 27, three  
14 categories of persons may be liable for punishment under  
15 California criminal law:

16  
17 any crime within this state.

18 (2) All who commit any offense without this state,  
19 which if committed within the state, would be larceny,  
20 carjacking, robbery or embezzlement under the laws of this  
21 state, and bring the property stolen or embezzled, or any  
22 part of it, or are found with it, or any part of it, within  
23 this state.

24 (3) All who, being without this state, cause or  
25 aid, advise or encourage, another person to commit a crime

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15:05:04 1 within this state and are afterwards found therein.

2 In addition, California Penal Code Section 778a(a)  
3 states the following:

4 whenever a person with intent to commit a crime  
5 does any act within this state in execution or part  
6 execution of that intent, which culminates in the commission  
7 of a crime, either within or without this state, the person  
8 is punishable for that crime in this state in the same  
9 manner as if the crime had been committed entirely within  
10 this state.

11 As explained by the Supreme Court of California,  
12 "the latter cited statute, Section 778(a)(a), is by its  
13 terms broader in scope than the former Section 27." Citing  
14 People versus Morante, 20 Cal.4th 403, 436 (1999). Under  
15 the latter, California has jurisdiction to punish a  
16 defendant where "preparatory acts (coupled with the  
17 requisite intent) clearly constitute more than de minimis  
18 acts towards the eventual completion of the offenses," even  
19 when the offenses were completed elsewhere. Citing People  
20 versus Brown at 91 Cal.App.4th 256, 266 (2001). ("It is  
21 necessary only that in this state there be non de minimis  
22 preparatory acts done with the intent of completing the  
23 crime.")

24 Thus, this Court holds that Defendants are not



25 entitled to an instruction setting forth as restrictive a

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15:06:48 1 geographic location or limitation as they seek. However,  
2 Defendants are entitled to an instruction limiting liability  
3 under California Penal Code Sections 593d(a) and 593e(b) to  
4 acts within California in execution or part execution of  
5 intent to commit a violation, which culminate in the  
6 commission of a violation, either within California or  
7 outside California. There must be more than de minimis acts  
8 towards the eventual completion of the violation.

9 Therefore, the Court will set forth the following  
10 as the instruction:

11 California Penal Code Section 593d(a) -  
12 multi-channel video or information services; unauthorized  
13 connections; descramblers.

14 Territorial application:

15 In order to find a violation of California Penal  
16 Code Section 593d(a), you must find by a preponderance of  
17 the evidence that defendants engaged in any act inside  
18 California in execution or part execution of intent to  
19 commit a violation of 593d(a), which resulted in the  
20 commission of a violation, either inside or outside  
21 California. Part execution means more than de minimis acts  
22 towards the eventual completion of the violation.

23 That pertains to Claim 4.

24 As to Claim 5, the instruction will read:

25 California Penal Code Section 593e(b) - unauthorized cable

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15:08:39 1 television connections, devices, decoders.

2 Territorial application:

3 In order to find a violation of California Penal

4 Code Section 593e(b), you must find by a preponderance of  
5 the evidence that defendants engaged in any act inside  
6 California in execution or part execution of intent to  
7 commit a violation of 593e(b), which resulted in the  
8 commission of a violation, either inside or outside  
9 California. Part execution means more than de minimis acts  
10 toward the eventual completion of the violation.

11 Concerning applicability of California Penal Code  
12 to out-of-state damages:

13 Defendants seek to limit plaintiffs' damages  
14 stemming from any violations of California Penal Code  
15 sections 593d(a) and 593e(b) to harm that occurred only  
16 within the State of California. Defendants argue this point  
17 on the basis that "Plaintiffs failed to cite any case law in  
18 their brief that addresses the extraterritorial application  
19 of these statutes to damages occurring outside of the State  
20 of California." However, regardless of whether there is  
21 case law that has allowed out-of-state damages under  
22 sections 593d(a) and 593e(b), it is clear that the  
23 California Penal Code and California civil jurisprudence  
24 contemplate recovery of damages from conduct occurring  
25 within California that causes injury outside of California.

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15:10:09 1 Plaintiffs seek a civil remedy for defendants'  
2 alleged violations of the California Penal Code. Under  
3 California Civil Code Section 3281, "Every person who  
4 suffers detriment from the unlawful act or omission of  
5 another may recover from the person in fault a compensation  
6 therefore in money which is called damages."

7 The Supreme Court of California explains that the  
8 presumption against extraterritorial application of  
9 California statutes, "has never been applied to an injured  
10 person's right to recover damages suffered as a result of an  
11 unlawful act or commission committed in California." Citing

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12 Diamond Multimedia Systems, Inc., versus Superior Court, 19  
13 Cal.4th 1036, 1059 (1999).

14 One example noted by the Supreme Court of  
15 California was the ability to bring product liability claims  
16 for damages incurred outside of California by a defective  
17 product manufactured in California. Cited at 1059 through  
18 1060 of the opinion.

19 The Court then went on to conclude that it saw,  
20 "No reason to conclude that the legislature intended a  
21 different result for actions based on" the relevant  
22 California Corporations Code statute in Digital Multimedia.  
23 Accordingly, the Court allowed any person inside or outside  
24 California affected by acts of market manipulation occurring  
25 in California to recover damages from the violator.

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15:11:48 1 Similarly, under the California Penal Code,  
2 defendants can be criminally liable for harm occurring  
3 outside of California where there are in California "non de  
4 minimus preparatory acts done with the intent of completing  
5 the crime." Citing People versus Brown, 91 Cal.App.4th 256,  
6 266 (2001).

7 Similar to the reasoning in Diamond Multimedia,  
8 the Court here sees no reason to conclude that the  
9 legislature intended a different result for actions based on  
10 sections 593d(a) and 593e(b) of the California Penal Code.  
11 Defendants have pointed to nothing in these statutes or the  
12 legislative history to indicate that the legislature  
13 intended to apply an extraterritorial limitation to damages  
14 arising from a violation of the statutes.

15 Accordingly, plaintiffs are entitled to all  
16 damages incurred as a result of any violations of sections  
17 593d(a) and 593e(b) of the California Penal Code.

18 The instruction that this Court will give as to  
19 Claim 4 is as follows:

20 California Penal Code Section 593d(a) -

21 multi-channel video or information services; unauthorized  
22 connections; descramblers.

23 Actual Damages:

24 If you find for Plaintiffs on this claim, you must  
25 determine the plaintiffs' damages. Plaintiffs have the

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15:13:16 1 burden of proving damages by a preponderance of the  
2 evidence. Plaintiffs are entitled to recover actual damages  
3 incurred inside or outside the State of California as a  
4 result of any violation of the California Penal Code Section  
5 593d(a). Actual damages mean the amount of money that will  
6 reasonably and fairly compensate the plaintiffs for an  
7 injury that was caused by defendants.

8 As to Claim 5, California Penal Code Section  
9 593e(b) - unauthorized cable television connections,  
10 devices, decoders.

11 Actual damages and Defendants' revenues  
12 attributable to violations:

13 If you find for Plaintiffs on this claim, you must  
14 determine the plaintiffs' damages. Plaintiffs have the  
15 burden of proving damages by preponderance of the evidence.  
16 Plaintiffs are entitled to recover actual damages incurred  
17 inside or outside the State of California as a result of any  
18 violation of California Penal Code Section 593e(b), plus any  
19 of defendants' revenues attributable to violations of  
20 California Penal Code Section 593e(b).

21 Actual damages means the amount of money that will  
22 reasonably and fairly compensate the plaintiffs for an  
23 injury that was caused by defendants. For the purposes of  
24 this claim, revenues which have been obtained by the  
25 defendants as a result of any violations of California Penal

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15:14:44 1 Code section 593e(b) shall not be included in computing  
2 actual damages.

3 I am still deciding that last sentence, Counsel.

4 Finally, I am going to incorporate those into the  
5 jury instructions this evening that we are working with.

6 Now I will turn back to EchoStar. My question is  
7 once again I need an idea of how badly or narrowly you wish  
8 to attempt to define the conspiracy.

9 MR. HAGAN: Your Honor, it is EchoStar's position  
10 that the conspiracy is broad enough to include the acts that  
11 began in 1998 when the defendants after hiring Chris  
12 Tarnovsky and Al Menard reverse engineered EchoStar's  
13 microprocessor, developed a hack to circumvent EchoStar's  
14 security system, memorialized those instructions in the  
15 written report, Exhibit 98, the Headend Report, and then  
16 ultimately transferred that information to pirate employees  
17 or otherwise allowed it to leak out of the NDS organization.

18 That information was then used by Mr. Tarnovsky  
19 and Mr. Menard to create a reprogramming device and then  
20 distributed pirated EchoStar Smart Cards.

21 Ultimately, that information was posted on  
22 Mr. Menard's website in December 2000, and EchoStar's  
23 damages flow therefrom.

24 So given the Court's guidance this morning, the  
25 conspiracy that has been pled in the complaint and which we

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15:16:25 1 have presented evidence on at trial includes all of those  
2 acts going back to 1998.

3 For the record, it is still our position that the  
4 defendants' affirmative defense of unclean hands --

5 THE COURT: We will get to that in a moment,  
6 Counsel. I just needed an answer to that. It gives me then  
7 some work that I want to do this evening.

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Counsel, it's 6:00. Go have dinner. I will have

8  
9 EchoStar or NDS respond at that time. Of course I'll pay  
10 you the courtesy, and then work informally with both of you  
11 tonight and then make a further record tomorrow, but that  
12 will give me guidance about how broad you wish --

13 MR. EBERHART: Your Honor, one very brief item.  
14 May we have a written order requiring Mr. Maldonado's  
15 attendance tomorrow? It will help with his probation  
16 officer just to clear that. If we can just have a written  
17 order saying he's required to appear. Thank you.

18 THE COURT: Do you want to draft such an order?

19 MR. EBERHART: We will submit it, yes, Your Honor.  
20 (Proceedings were adjourned.)

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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: May 1, 2008

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