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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.,)

11

Plaintiffs,)

12

vs.)

No. SACV-03-950-DOC
DAY 15, Vol. I

13

NDS GROUP PLC, et al.,)

14

Defendants.)

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

18

Santa Ana, California

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May 2, 2008

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SHARON A. SEFFENS
Federal Official Court Reporter
United States District Court
411 West 4th Street, Room 1-053
Santa Ana, California 92701
(714) 543-0870

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SHARON SEFFENS, U.S. COURT REPORTER

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07:52:17 1 SANTA ANA, CALIFORNIA; MAY 2, 2008, 8:00 A.M.
2 (Jury present.)
3 THE COURT: The jury is present. Counsel are
4 present. The parties are present.
5 This is cross-examination by EchoStar of
6 Mr. Maldonado.
7 ANTHONY MALDONADO, DEFENSE WITNESS, PREVIOUSLY SWORN
8 CROSS-EXAMINATION
9 BY MR. NOLL:
10 Q Good morning, Mr. Maldonado.
11 A Good morning.
12 Q You remember we met at your deposition earlier this
13 week?
14 A Yes.
15 Q Before we go into your cross-examination here, I want
16 to talk to you about your testimony that you gave yesterday.
17 You are asking the jury to take your word on certain
18 things that you testified to; is that right?
19 A Yes.
20 Q In fact, you are asking the jury to take your word on
21 everything you testified to?
22 A Yes.

23 Q Now, before we go through some of the things you gave
24 your word on, I think there is something that we need to
25 talk about that you failed to mention in your direct

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08:06:51 1 examination by your counsel.

2 what you failed to mention was that you were
3 incarcerated for the crimes of fraudulent schemes and
4 artifices and sexual exploitation of a minor. Isn't that
5 correct, sir?

6 MR. EBERHART: Objection 403 on the Court's prior
7 ruling.

8 THE COURT: Overruled. You can answer that
9 question.

10 THE WITNESS: I was incarcerated for the fraud,
11 not the latter.

12 BY MR. NOLL:

13 Q This is something you didn't bring up in your direct
14 examination; right?

15 MR. EBERHART: Objection. Misstates prior
16 testimony.

17 THE COURT: I think the priors is known to the
18 jury. Let's move along.

19 MR. NOLL: Thank you, Your Honor.

20 BY MR. NOLL:

21 Q Now, you want the jury to take your word that you
22 bought this black box; correct?

23 A Yes.

24 Q You don't have the black box so we have no way of
25 looking at it; is that right?

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08:07:59 1 A Yes.

2 Q You want the jury to take your word that you looked at
3 certain codes that were posted on the Internet under the
4 Nipper posting and compared them to the codes you had for
5 the black box; correct?

6 A Yes.

7 Q But you don't have those codes either; is that right?

8 A Yes.

9 Q We have to take your word on that as well; right?

10 A Yes.

11 Q You don't have any documentation supporting your
12 alleged activities in EchoStar piracy; is that correct?

13 A Yes.

14 MR. EBERHART: Objection. Misstates prior
15 testimony.

16 THE COURT: Overruled.

17 BY MR. NOLL:

18 Q You have one document, right, Exhibit 2501-A? That's
19 the little wire transfer that you allege you shifted \$6,000
20 via wire transfer to Jim Waters; is that correct?

21 A Yes.

22 Q And that wire transfer doesn't say it was sent to Jim
23 Waters, does it, sir?

24 A No.

25 Q So we have to take your word on that as well; is that

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08:08:49 1 right?

2 A Yes.

3 Q You testified that you looked at the code that was on
4 the Internet under the Nipper post, and you compared it to
5 codes that you had for your black book; correct?

6 A Yes.

7 Q And you believed that these codes were very similar and
8 that these codes may have been posted by Jim Waters;
9 correct?

10 A Yes.

11 Q Or they may have been posted by his silent partner whom
12 we don't know who that person is; right?

13 A Yes.

14 Q Mr. Waters, you testified, sold you this black box for
15 \$50,000; correct?

16 A Yes.

17 Q And it wasn't the only black box out there; is that
18 right?

19 A To my knowledge, it was the only one.

20 Q Mr. Waters sold five black boxes to your knowledge;
21 isn't that correct?

22 A By his word, yes.

23 Q Right. So you didn't have the only black box out
24 there; right?

25 A Yes.

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08:09:48 1 Q So Mr. Waters is selling these black boxes for \$50,000
2 each; correct?

3 A Yes.

4 Q And it's your testimony that Mr. Waters may have posted
5 the codes on the Internet to his black box? Is that what
6 you are saying?

7 A No.

8 Q Why would Mr. Waters post the codes on the Internet to
9 a black box that he was controlling?

10 A I can't answer that.

11 Q Why would he do it, because if he did, then he would no
12 longer be able to sell the black box to anybody because the
13 black box would be obsolete; isn't that correct?

14 A No, it would not be obsolete.

15 Q Well, how do you explain that, sir?

16 A The black box opened the hole to write to the card, and
17 as far as -- the only thing unique on there was the 3-M that
18 was able to be ECM'd, and I didn't need to use that 3-M on

19 that box any longer.

20 Q Would you agree, sir, that it doesn't make sense that
21 Mr. Waters would post the codes to his black box on the
22 Internet? Do you agree with that?

23 A Yes.

24 Q Now, at the time you purchased this black box from
25 Mr. Waters -- and we know that was in 2000. You testified

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08:11:30 1 that at the time you met with Mr. Waters was initially in
2 September 2000; correct?

3 A Yes, October -- late October 2000.

4 Q And then you purchased the black box in October 2000;
5 right?

6 A Yeah, toward the end of the month.

7 Q And up to that time, it's your testimony that EchoStar
8 cards were hard to get into; right?

9 A Yes.

10 Q The security for EchoStar's system was good; right?

11 A Yes.

12 Q And to your knowledge, there was no hack of the
13 EchoStar system; isn't that correct?

14 A Yes.

15 Q This is the first hack that you found out about; right?

16 A Yes.

17 Q This is further evidence of why Mr. Waters had no
18 incentive to post the codes from his black box on the
19 Internet; isn't that correct?

20 A Yes.

21 Q Now, when you saw the Nipper post, it's your testimony
22 that post was important; isn't that correct?

23 A Yes.

24 Q I mean, it angered you when you saw it; right?

25 A Yes.

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08:12:40 1 Q And it angered you because at first you thought these
2 were the codes that you had in your black box that had been
3 posted on the Internet?
4 A Yes.
5 Q And you looked at the codes, as we have talked about
6 here today, and then -- but you didn't study them in depth;
7 is that right?
8 A Yes.
9 Q You are not an engineer? You're not an expert, sir?
10 A No, I'm not.
11 Q So you can't sit here and tell this jury that the codes
12 that were on the Internet were the exact same codes that
13 were in the black box; isn't that correct, sir?
14 A They were similar, but exactly, no.
15 Q I am going to focus your attention back on Exhibit
16 511-A.
17 Do you recall looking at this exhibit yesterday?
18 A Yes.
19 Q You testified that this is what you saw on the dr7
20 website; correct?
21 A Yes.
22 Q Now, if you look to the left, do you see that it says
23 "xbr21" where the Nipper post is?
24 A Yes.
25 Q Do you know who xbr21 is?

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08:14:00 1 A No.
2 Q Do you know whether xbr21 is a man named Marco Pizzo?
3 A No.
4 Q Do you know whether this Exhibit 511-A is just a repost
5 of something somebody else posted on the Internet?
6 A No.

7 Q Do you know whether Jim Waters used the alias xbr21?
8 A No.
9 Q Do you know whether Jim Waters' partner used the alias
10 xbr21?
11 A No.
12 Q A man named Marco Pizzo testified in this case already
13 that he used the alias xbr21 and that he posted this on the
14 Internet. Do you have any reason to disagree with that,
15 sir?
16 A No.
17 Q I am going to hand you what has been marked Exhibit 40.
18 It's already been admitted into evidence.
19 Have you ever seen this document, sir?
20 A No.
21 Q You never went to piratesden.com?
22 A I didn't frequent piratesden, no.
23 Q Do you know who used the alias Nipper 2000?
24 A No.
25 Q Do you know who used the alias Nipper in any shape or

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08:15:24 1 form?
2 A No.
3 Q In fact, your testimony yesterday was that you
4 suspected that Mr. Waters or his partner may be behind the
5 Nipper alias; correct?
6 A Yes.
7 Q And that's all there was, mere suspicion; correct?
8 A Yes.
9 Q Not based on fact; right?
10 A Yes.
11 Q Yes, it is or, no, it's not?
12 A It was based on -- it was not based on fact, yes.
13 Q Now, you also testified that you were involved in
14 DirecTV piracy; correct?

15 A Yes.

16 Q I believe you were involved in DirectTV piracy from 1997
17 up to the time you were raided in March 2001, correct?

18 A Yes.

19 Q And you said you met Mr. Waters in the 1997 or 1998
20 time frame; correct?

21 A I met him in late 2000.

22 Q That's the first time you met him?

23 A Yes.

24 Q Mr. Waters didn't provide you code for the DirectTV hack
25 in the late '90s?

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08:16:29 1 A Yes, he provided me code, but I never met him.

2 Q How did he provide you that code? Over the Internet?

3 A E-mail.

4 Q And you knew that Mr. Waters was involved in DirectTV
5 piracy in the late '90s; correct?

6 A Yes.

7 Q And the first time you came to know that Mr. Waters was
8 involved in EchoStar piracy was in September 2000; correct?

9 A Yes.

10 Q In fact, it's true to your knowledge that he didn't
11 have anything to do with the EchoStar system before that
12 time; correct?

13 A Yes.

14 Q Are you aware that the defendants developed a hack
15 methodology for EchoStar's system in November 1998?

16 A Rephrase that.

17 Q Are you aware that the defendants in this case, NDS,
18 developed a hack methodology for EchoStar's system that was
19 completed in November 1998?

20 A I am not aware of that, no.

21 Q Are you aware that only days after that hack
22 methodology was completed the first postings under the
23 Nipper alias showed up on the Internet?

24 A I am not aware of that.

25 Q Are you aware that Nipper postings were used from

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08:17:43 1 1998 -- Nipper aliases were used from 1998 all the way up to
2 the time the postings of EchoStar's code were made in
3 December 2000?

4 A I am not aware of that either, no.

5 Q So if Mr. Waters started in on the EchoStar hack in
6 October of 2000, do you know who was using the Nipper
7 aliases from 1998 all the way through that time in 2000?

8 A No.

9 Q Now, you went to visit Mr. Waters when you bought the
10 black box, and you went up to Barrie, Ontario; correct?

11 A Yes.

12 Q You say you went out to -- you were out in the woods in
13 what you believe was behind his house; right?

14 A Yes.

15 Q You didn't see any focused ion beam at Mr. Waters'
16 house did you?..

17 A No.

18 Q You didn't see any microscopes?

19 A No.

20 Q You didn't see any laser cutters?

21 A No.

22 Q You didn't see any loggers or sniffing devices?

23 A No.

24 Q You didn't see anything involving piracy except a black
25 box; correct?

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08:18:50 1 A Yes.

2 Q As far as you know, Mr. Waters wasn't extracting these

3 codes himself; is that correct?
4 A Yes.
5 Q As far as you knew, he was getting -- he could have
6 been getting the code from somebody else; correct?
7 A Yes.
8 Q And Mr. Waters had a partner that you never met?
9 A Yes.
10 Q Mr. Waters wouldn't tell you the name of this partner;
11 right?
12 A Yes.
13 Q He kept it very secret, didn't he?
14 A Yes.
15 Q And as to Mr. Waters, as you sit here today, you don't
16 know whether Mr. Waters' name was even his real name; is
17 that right?
18 A Yes.
19 Q In fact, you now believe that Mr. Waters is a fake
20 name; right?
21 A Yes.
22 Q In fact, you don't even know whether Mr. Waters lived
23 in Barrie, Ontario, or not; isn't that correct?
24 A He lived in Barrie, Ontario.
25 Q How do you know that?

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08:19:44 1 A All his -- his post office box was Barrie, Ontario.
2 The addresses to the banks were Barrie, Ontario. I believe
3 that he lived in Barrie, Ontario.
4 Q It's your belief that he lived in Barrie, Ontario, but
5 you don't know for a fact that Mr. Waters did live in
6 Barrie, Ontario; is that correct?
7 A Not for a fact, no.
8 Q Now, you said you had a conversation with Mr. J.J. Gee
9 when you got raided. Do you recall that?
10 A Yes.

- 11 Q You never told Mr. Gee that Jim Waters was Nipper;
12 correct?
13 A Specifically, no.
14 Q And you never told Mr. Gee that Jim Waters' partner was
15 Nipper; correct?
16 A No.
17 Q If anything, you told Mr. Gee -- you may have said you
18 suspected that Mr. Waters or his partner could be behind the
19 Nipper alias; correct?
20 A Yes.
21 Q And you say you offered to help Mr. Gee by going back
22 to Barrie to investigate Mr. Waters; correct?
23 A Yes.
24 Q Then you hired an attorney?
25 A Yes.

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- 08:20:54 1 Q And you say you never heard from Mr. Gee again;
2 correct?
3 A Yes.
4 Q As far as you knew, Mr. Maldonado, Mr. Gee had already
5 figured out who Nipper was and didn't need your help; isn't
6 that correct?
7 A I have no idea.
8 MR. NOLL: Pass the witness.
9 THE COURT: Redirect by Mr. Eberhart on behalf of
10 NDS.
11 REDIRECT EXAMINATION
12 BY MR. EBERHART:
13 Q Mr. Maldonado, you testified a few minutes ago that you
14 were aware that Jim Waters sold other black boxes; is that
15 correct?
16 A Yes.
17 Q would you tell the jury what you know about those other
18 black boxes?
19 A The boxes he sold -- they were basically boxes to

20 activate subscribed systems only. Then once the person
21 subscribed they can unsubscribe, and as long as the card was
22 matched to the IRD, you can program it. That was the only
23 functionality that those boxes had.

24 Q Was your box different?

25 A Yes.

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08:22:02 1 Q How was it different?

2 A I was able to do line commands to it. I was able to
3 write to it. I was able to change the zip codes, time
4 zones. I was able to send different commands to do tests,
5 and I could actually look at the card in real-data time.

6 Q Did Mr. Waters tell you whether he sold a box like
7 yours to anyone else?

8 A No.

9 Q He didn't tell you, or he said that he didn't?

10 A No, he didn't sell anybody the type of software he gave
11 me.

12 Q Did he tell you that you had an exclusive in the United
13 States?

14 A Yes.

15 Q Did Mr. Waters tell you how much he sold those other
16 boxes for?

17 A Yes.

18 Q What did he tell you?

19 A Between \$2,500 and \$5,000 apiece.

20 Q And did the people who required those other boxes have
21 the code that was loaded into these different black boxes
22 that Mr. Waters sold?

23 A Yes. They were loaded with a specific 3-M that they
24 call it, Three-Musketeers code.

25 Q Did those boxes have the loader code that was required

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08:23:08 1 to put that code into the card?

2 A Yes.

3 Q Why do you know that?

4 A Just by his word. He told me how they worked.

5 Q He told you they worked the same way your box worked?

6 A No, they didn't work the same way. All it could do was
7 load the 3-M or unload it. That's all they were able to do.

8 Q Did he tell you that the loading process worked the
9 same way as yours?

10 A He didn't say about how it worked.

11 MR. EBERHART: Show the witness Exhibit 511-A,
12 please.

13 BY MR. EBERHART:

14 Q How did you conclude, as you testified yesterday, that
15 you thought the code posted in Exhibit 511-A came from the
16 black box made by Jim Waters?

17 A First of all, it says clearly on top this is from a
18 ROM-3 megacam, and you can see the byte count on the
19 right-hand side, and they match the byte count on mine.
20 This is not a program. This is just a program to open the
21 hole on the card to write to it. You can't activate a card
22 with this code.

23 Q Now, you testified yesterday about postings by Nipper
24 during the DirectTV hacking days. Do you remember that?

25 A Yes.

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08:24:43 1 Q Why don't you remind the jury of what you observed when
2 you were -- when you saw a post by Nipper following
3 conversations you had with Mr. Waters in the DirectTV hacking
4 day.

5 A Well, DirectTV hackings were pretty basic. They had
6 jump codes. Some of the jump codes were the same that me

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7 and Jim talked about. Basically, you know, copying the
8 cards and cloning the cards, stuff that we had talked about
9 was posted.

10 Q So you talked to Mr. Waters about technology for
11 hacking DirecTV, and then you saw the same technology posted
12 by Nipper after those conversations?

13 A Yes.

14 Q When you called Mr. Waters following the post that you
15 saw on the Internet in December 2000 -- that's Exhibit
16 511-A -- did he know about the post already when you called
17 him?

18 A Yes, he already knew about it.

19 Q Did Mr. Waters deny that he was responsible for that
20 post when you called him in December of 2000?

21 A No.

22 Q Now, in December 2000, was there ever an ECM that
23 affected the black box that Mr. Waters sold to you?

24 A Yes. It happened in December. It affected the 3-M
25 code that was built into the box.

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08:26:18 1 Q And did that happen before or after the posting by
2 xbr21 on December 23, 2000?

3 A About the same time frame. I don't recall.

4 THE COURT: Counsel, what's up on the screen?

5 MR. EBERHART: would you take that down?

6 Your Honor, at this time, we move into evidence
7 Exhibit 1696, which was the subject of the motion for
8 judicial notice and the stipulation reached last night
9 regarding that notice.

10 THE COURT: Is there a stipulation to this?

11 MR. HAGAN: Yes, Your Honor.

12 THE COURT: All right. would you step over with
13 counsel and propose the stipulation to the jury?

14 MR. EBERHART: The parties stipulate that Exhibits
15 1696, 1697, and 1699 are corporate records that were

16 obtained from the province of Ontario, Canada, and that
17 these are true and correct copies of those Ontario, Canada,
18 records.

19 THE COURT: Is that stipulated to by EchoStar?

20 MR. HAGAN: Yes, sir, Your Honor.

21 (Exhibits 1696, 1697, and 1699 received.)

22 THE COURT: A stipulation is a binding agreement
23 between the parties. These are corporate records from
24 Ontario, Canada.

25 MR. EBERHART: Please hand the witness

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08:28:24 1 Exhibit 1696. Please also give the witness Exhibit 2501-A.

2 Q Mr. Maldonado, Exhibit 2501-A is the wire transfer
3 record that you have testified about yesterday; correct?

4 A Yes.

5 Q And you testified that this wire transfer was credited
6 to a company named 1431916 Ontario, Inc.?

7 A Yes.

8 Q And that's shown about halfway down the page of Exhibit
9 2501-A?

10 A Yes.

11 Q Please look at Exhibit 1696.

12 would you read, please, the name of the corporation
13 that's listed on this article of incorporation from the
14 province of Ontario?

15 A 1431916 Ontario, Inc.

16 Q Is that the same name as the company that's shown on
17 your wire transfer record that is Exhibit 2501?

18 A Yes.

19 Q And what is the address shown for 1431916 Ontario,
20 Inc., on the Ontario corporate record?

21 A It says 521 Dunlap Street West, Unit 8, Barrie, Ontario
22 L4M4S4.

23 Q And looking down at the bottom of the first page of

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24 Exhibit 1696, who is listed as the director of 1431916
25 Ontario, Inc.?

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08:30:40 1 A Michael Meniari.
2 Q What address is listed for Mr. Meniari?
3 A 8 Sommerset Boulevard, Box 21, Oro Station, Ontario,
4 OOL2E0.
5 Q Looking up at the top of that first page, Exhibit 1696,
6 what is the date that this article of incorporation bears?
7 A July 26, 2000.
8 Q Do you know where Oro Station is in relation to Barrie,
9 Ontario?
10 A No.
11 Q So if it's about 11 miles away, you don't know one way
12 or the other?
13 A No.
14 Q Did Jim Waters ever tell you his real name was Michael
15 Meniari?
16 A No.
17 Q Are you sure Jim Waters told you his real name?
18 A I am not positive it was his real name, no.
19 Q You always knew him as Jim Waters; correct?
20 A Yes.
21 Q Now, Mr. Gee was present when the FBI raided you in
22 March of 2001; correct?
23 A Yes.
24 Q In fact, why don't you describe for the jury Mr. Gee's
25 role during that raid.

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08:32:13 1 A He seemed to facilitate everything. As they were
2 gathering evidence from my house, they would come and ask

3 him about it, what it was, and then they would characterize
4 it and put it in boxes.

5 Q So the FBI was asking Mr. Gee for advice on what the
6 evidence was?

7 A Yes.

8 Q Why was that?

9 A I believe he was an expert -- probably an expert or a
10 facilitator, something. I wasn't sure.

11 Q He was an expert in satellite piracy?

12 A Yes.

13 Q And that's because he worked for NagraStar; right?

14 A Yes.

15 MR. EBERHART: Hand the witness Exhibit 374,
16 please.

17 BY MR. EBERHART:

18 Q Please turn to page six of Exhibit 374. In the second
19 paragraph, it states as follows:

20 "Investigator Gee asked Mr. Maldonado if he was
21 familiar with the nick Nipper. He said that he was and also
22 knew him by the name of NipperClause 2. Investigator Gee
23 asked him if he knew who Nipper was. Mr. Maldonado believed
24 it was either Jim or Jim's engineer, but he was not sure."

25 Does that accurately reflect what you told Mr. Gee at

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08:33:52 1 the raid in March 2001?

2 A Yes.

3 Q Turn to page 12 of Exhibit 374, please. Take a look at
4 the bottom of the page where Mr. Gee testified earlier that
5 these were his notes of the raid.

6 On the bottom right, the last thing that is written
7 after the dash, could you read that for the jury, please?

8 A It says something about a black box and got code. I
9 can't read before -- something "in black box and got code."

10 Q It's your testimony that you told Mr. Gee about the
11 black box; right?

12 A Yes. It says "EEPROM in black box and got code."
13 Q Why don't you have the black box today, Mr. Maldonado?
14 A Because the FBI seized all of that stuff.
15 Q Did Mr. Gee tell the FBI what items to seize from your
16 house?
17 A He was directing them, yes, making sure it was part of
18 the satellite. He even had them take the inside of my TV.
19 Q Going back to those notes you looked at in Mr. Gee's
20 report on page 12 of Exhibit 374 for a moment, what does
21 "EEPROM in black box and got code" mean? Do you understand
22 what Mr. Gee meant when he wrote that?
23 A I believe the black box had an EEPROM as a whole
24 menu-driven system, and then the code I had was another
25 addition to that that had further application, further codes

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08:36:03 1 and further stuff, the development.
2 Q Did Mr. Gee -- during the raid, did Mr. Gee discuss
3 with you an ECM that was performed against the black boxes
4 being sold by Mr. Waters?
5 A Yes.
6 Q What did Mr. Gee tell you?
7 A Well, he turned on my television, and I had a DISH
8 Network satellite system hooked up to it. He was going
9 through the channels, and he was, like, this is not supposed
10 to be on. He asked me why was it on. He thought that they
11 were all shut down.
12 Q What did you tell him?
13 A I told him how I did it. I used virgin cards, and I
14 talked about using a TSOP off the IRD. I was pulling those
15 chips off and reading them, pulling the box codes off of
16 there and marrying the card manually to the system so I
17 could read and write to it.
18 Q What is a TSOP?
19 A That was a chip that held all the commands that the box

20 used. It had IRD information. It had box code information.
21 It had menu-driven systems on there. Everything that -- all
22 the menus that you pull up on the screen on your television,
23 it's all in that TSOP, along with ways to directly
24 communicate with the Smart Card.
25 Q Why were you pulling the information from the TSOP?

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08:37:56 1 A I needed a box code off of there. There is a box code
2 in that TSOP that marries to the card to activate -- so that
3 you can read and write to that card.
4 Q In 2001, were you involved in programming pirate
5 EchoStar systems?
6 A Yes.
7 Q What kind of systems were you programming?
8 A All of them.
9 Q Were you programming systems that were already
10 subscribed?
11 A Yes.
12 Q Were you programming systems that were not already
13 subscribed?
14 A Yes.
15 Q How were you obtaining the box information from the
16 set-top-box in order to reprogram the pirate code?
17 A I would pull a TSOP off with some rework equipment. I
18 would put it in an EEPROM reader. I would tell the EEPROM
19 reader -- on the back of the receiver, I believe there is a
20 serial number. If you put that serial number into the
21 reader, right next to the serial number in the TSOP there is
22 a box code, and I would write that box code down and use
23 that box code to activate the card, marry the card to that
24 receiver.
25 Q You testified a few minutes ago that you were selling

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08:39:16 1 complete systems as well as reprogrammed cards.
2 where did you obtain those complete systems that you
3 were programming?
4 A Paul is the one that handled all of that. He got me
5 the systems, and I did the work.
6 Q Did you obtain any of the systems from Canada?
7 A Yes. By his recollection, yes, he got quite a few from
8 Canada.
9 Q Do you remember anything about where those systems were
10 obtained from Canada?
11 A I don't know where. He just told me they were from
12 Canada.
13 Q Do you know who they were obtained from in Canada?
14 A He told me he was in communication with a woman there.
15 Q Does that stick out in your mind for any particular
16 reason?
17 A Yes. I thought that was odd. We hadn't run into a
18 woman involved in this line of work.
19 Q Now, when you talked to J.J. Gee during the raid, did
20 you talk to him at all about the ROM-10 or 288-09 cards?
21 A Yes, I did.
22 Q What did you tell him?
23 A I said that they were working on a way to get into that
24 card also, and if I could -- Jim said if I wanted to I could
25 come back up, and we could discuss it further.

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08:40:29 1 Q To your knowledge, was the ROM-10 or 288-09 card --
2 were they hacked at the time of the raid?
3 A No, they weren't.
4 Q Do you have an understanding whether the 288-09 card
5 and the ROM-10 card are the same thing?
6 A Yes, they are the same.
7 Q So you told Mr. Gee that Jim Waters was working on a

8 hack of the ROM-10 card as of March 2000?
9 A Yes.
10 Q Was any of the evidence that was seized during the raid
11 ever returned to you?
12 A No.
13 Q If Mr. Gee had followed up on the leads that you gave
14 him, would we have that solid evidence today?
15 A Yes.
16 Q If Mr. Gee had obtained that evidence seized from you
17 from the FBI, would we have the evidence of your box and the
18 code that was in that box to show this jury today?
19 A Yes.
20 Q Turn to page 11 of Exhibit 374, please.
21 I would like you to look at the upper left portion of
22 the page. This looks like four pages of notes that have
23 been photocopied from a small pad. I would like you to read
24 the bottom two sentences on the left side of the page,
25 please.

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08:42:41 1 A "Code from developer in Canada." I can't read the word
2 before that.
3 Q Does it say, "Stole code from developer in Canada"?
4 A Yes, "Stole code from developer in Canada."
5 Q What is the next sentence there?
6 A "Pissed. System" -- I can't read that.
7 Q Does it look like it says, "Pissed. System went down"?
8 A Yes.
9 Q Is this something you told Mr. Gee during the raid in
10 March 2001?
11 A No, I don't recall that statement.
12 Q To your knowledge, did Mr. Gee have the ability to
13 request the evidence seized from you from the FBI?
14 A I don't know. I can't tell you that.
15 Q But all of the evidence that you had, the hard physical

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16 evidence that you had -- other than the wire transfer you
17 recovered from your bank in 2008, all that evidence was
18 seized from you by the FBI under the direction of J.J. Gee?
19 A Yes.

20 MR. EBERHART: Nothing further.

21 THE COURT: Recross.

22 MR. NOLL: Yes, Your Honor.

23 THE COURT: Mr. Noll on behalf of EchoStar.

24 RECCROSS-EXAMINATION

25 BY MR. NOLL:

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08:44:09 1 Q Mr. Maldonado, you were just looking at Exhibit 374
2 that counsel showed you?

3 A Yes.

4 Q This is the first time you have ever seen this
5 document; is that correct?

6 A Yes, it is.

7 Q These aren't your handwritten notes; is that right,
8 sir?

9 A No, they are not.

10 Q You don't know who took those notes down; isn't that
11 true, sir?

12 A Yes.

13 Q So you're just reading from notes that you didn't take
14 down and that you don't really have any idea what are about;
15 is that right?

16 A I don't know who wrote them. I know what they are
17 about.

18 Q You don't know who wrote them?

19 A I don't remember -- I don't know who -- I mean, there
20 was a lot of people there at my house.

21 Q And you have never seen them before today?

22 A I have never seen them before.

23 Q Now, you were talking about the multiple black boxes
24 with counsel that were provided by Jim Waters to others, not

25 just you. Do you recall that?

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08:45:10 1 A Yes.

2 Q You said you believed your box was unique?

3 A Yes.

4 Q But you have no actual way of knowing that; isn't that
5 true, sir?

6 A Well, nobody else had EchoStar systems that I know of.

7 Q Well, you didn't analyze the other five or six black
8 boxes that you knew were out there; correct?

9 A Yes.

10 Q So when you say that you believe you had a unique black
11 box, you don't know that to be a fact; is that right?

12 A Yes.

13 Q Now, when you got your black box in October 2000 from
14 Mr. Waters, it was not capable of programming virgin
15 EchoStar cards; is that correct?

16 A It was capable of programming virgin cards.

17 Q It already was?

18 A Yes.

19 Q Now, you testified that Mr. Waters did not deny that he
20 was behind the Nipper post. Do you recall that?

21 A Yes.

22 Q But when you talked to Mr. Waters, he never admitted
23 that he was behind the Nipper post either; correct?

24 A Yes.

25 Q And we know from your testimony here today that it

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08:46:25 1 would be against Mr. Waters' interest to be behind the
2 Nipper post; correct?

3 A Yes.

4 Q It was against his interest to post his own codes on
5 the Internet; correct?

6 A Yes.

7 Q When you met with Mr. Gee, you believed him to be an
8 expert in satellite piracy?

9 A Yes.

10 Q Because in your opinion Mr. Gee was an expert, you
11 would expect that Mr. Gee knew what he was doing in his
12 investigation of who was behind Nipper; isn't that correct?

13 A Why did he ask me about him then?

14 Q Because he was investigating; right?

15 A Yes.

16 Q Because you believe he was an expert, it's your
17 testimony that he would be performing his job in an adequate
18 way to try to find who was behind the Nipper postings;
19 correct?

20 A Yes.

21 Q And you didn't see anything that was done by Mr. Gee
22 that led you to believe that he was not somehow performing
23 his job in a diligent and adequate way; isn't that correct?

24 A Yes.

25 MR. NOLL: No further questions.

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08:47:31 1 THE COURT: Sir, we are going to put you on 48
2 hours call. I do not believe you will be recalled to court.
3 I believe the case will conclude next Tuesday or Wednesday,
4 but if we need you, we will be courteous. We will call you
5 immediately.

6 Counsel, your next witness, please.

7 MR. EBERHART: The defendants call Raynold Kahn,
8 Your Honor.

9 Your Honor, I remind you that this is an oath that
10 must be administered by the Court.

11 THE COURT: Mr. Kahn, would you step forward,

12 please.

13 would you raise your right hand, please.

14 Do you affirm that the testimony you are about to
15 give in the matter now before this court shall be the truth,
16 the whole truth, and nothing but the truth?

17 THE WITNESS: I do.

18 RAYNOLD MICHAEL KAHN, DEFENSE WITNESS, AFFIRMED OATH

19 THE COURT: would you state your full name for the
20 record.

21 THE WITNESS: Raynold Michael Kahn.

22 THE COURT: would you spell your last name for the
23 jury.

24 THE WITNESS: K-a-h-n.

25 THE COURT: If you could speak directly into that

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08:48:50 1 microphone, we would appreciate it.

2 This is direct examination by Mr. Eberhart.

3 DIRECT EXAMINATION

4 BY MR. EBERHART:

5 Q Good morning, Dr. Kahn.

6 A Good morning.

7 Q what is your current position?

8 A I am a senior director of engineering for DirectTV.

9 Q How long have you been employed by DirectTV?

10 A I have been employed directly by DirectTV since '94. I
11 have been working together with DirectTV since '91.

12 Q when did DirectTV launch their satellite service to the
13 public?

14 A June 17, 1994.

15 Q Have you been employed by DirectTV since that time up
16 until today?

17 A Yes.

18 Q what are your responsibilities as a senior director of
19 engineering for DirectTV?

20 A well, my responsibilities have to do with evaluating

21 technology, developing requirements for systems and
22 interacting with vendors to provide that. More
23 specifically, my focus is in the conditional access area.
24 Q would you briefly tell the jury what your educational
25 background is?

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08:50:28 1 A well, I have an engineering background. I have a Ph.D
2 in Electrical Engineering from Stanford in 1979. I also
3 have a Master's in Statistics from Stanford. Then I have a
4 Master's in Engineering from Stanford University and a
5 Bachelor's of Engineering from the University of Capetown.
6 Q Are you familiar with NDS Group and NDS Americas?
7 A Yes, I am.
8 Q How are you familiar with those companies?
9 A I have worked very closely with them since I have been
10 involved with DirectTV starting at the end of 1991.
11 Q What was the focus of your work with NDS on behalf of
12 DirectTV?
13 A Well, starting in 1991, I worked closely with NDS to
14 develop the requirements for the conditional access system
15 that they were developing, to evaluate their technology that
16 the DirectTV business required -- that has been the focus --
17 and to a large extent throughout the years of the
18 relationship with DirectTV as a technical advisor to
19 engineering management.
20 Q Now, does NDS provide technology to -- does NDS provide
21 Smart Card technology to DirectTV?
22 A Yes, they do.
23 Q Does NDS provide other types of conditional access
24 technology to DirectTV?
25 A Well, NDS provides the entire conditional access

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08:52:39 1 technology, which includes not only the Smart Cards but the
2 software and the set-top-boxes that interacts and interfaces
3 with the Smart Cards and accepts messages from the satellite
4 that are sent by conditional access headend systems, which
5 are responsible for maintaining the database of subscriber
6 information that our current system interacts with, and that
7 also produces the television-viewing requirement conditional
8 access information. So the conditional access system is
9 almost a backbone that has pieces throughout our system that
10 our other business entities have -- technical systems have
11 to interact with.

12 Q So it's fair to say that the conditional access system
13 is a lot more than just a Smart Card?

14 A That's correct.

15 Q When did NDS first begin providing conditional access
16 services and technology to DirectTV?

17 A Well, we entered into a contractual relationship with
18 NDS or NDC at the time in the beginning of 1992, which
19 involved the development of the conditional access system
20 for DirectTV, and then NDS was providing conditional access
21 systems to the official DirectTV system from the start of
22 servicing in June of '94.

23 Q Did there come a time when that original agreement
24 between DirectTV and NDS for conditional access services was
25 going to expire?

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08:54:51 1 A Well, the contract had a limited lifetime. I think it
2 may have been six years. Also, the contract as
3 originally -- the original contract was for a start-up
4 situation, and after about six years of operation, we needed
5 to -- DirectTV needed to have different financial terms
6 relating to the relationship, so there was a need to update
7 that contract.

8
9 a minute?

10 Ladies and gentlemen, I am going to have you step
11 back in the jury room. I promise you this has nothing to do
12 with you, Mr. Kahn.

13 (Jury not present.)

14 THE COURT: Counsel, I want to discuss this issue
15 that came up with Dr. Peled. I was told informally when I
16 came into court that Dr. Peled had returned to England. I
17 would like to hear what's occurring concerning Dr. Peled
18 between the two of you because he was supposed to be a
19 witness today. It was clear that if I have the opportunity
20 for a live witness for cross-examination that was the
21 Court's preference. I have been working very hard to ensure
22 that this jury had live testimony.

23 So is Dr. Peled going to testify for NDS or not?

24 MR. SNYDER: No, Your Honor.

25 THE COURT: I certainly can't force Dr. Peled or

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08:58:20 1 Henri Kudelski or anybody else to come to court. I
2 understand it's not in my jurisdiction.

3 who was originally going to call Dr. Peled?

4 MR. SNYDER: We were, Your Honor.

5 THE COURT: There was a statement made to the
6 Court by EchoStar -- and I want to make certain this is
7 memorialized. You seemed concerned this morning that
8 Dr. Peled wasn't here, and you said you were going to play a
9 portion of his deposition, and you want an adverse
10 inference -- have you ever subpoenaed Dr. Peled?

11 MR. WELCH: No.

12 THE COURT: Have you ever made an effort to
13 subpoena Dr. Peled?

14 MR. WELCH: No.

15 THE COURT: What do you believe you need from
16 Dr. Peled's testimony? What depositions testimony are you

17 depending upon that's of value to you?

18 MR. WELCH: Your Honor, he discusses various
19 topics. First, he describes the hierarchy related to his
20 corporation and the relationship between HarperCollins, NDS
21 Group, and NDS Americas.

22 THE COURT: News Corp., HarperCollins, but he is
23 the president of NDS.

24 MR. WELCH: He is also on the News Corp. Executive
25 Management Committee, and during his deposition he discussed

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09:00:06 1 that he reported to Greg Clark of News Corporation. He was
2 the chief technical officer. He reported to Mr. Clark
3 between '95 and '98. From that point forward, he reported
4 to a gentleman by the name of Chase Carey from '98 until the
5 end of 2001. Mr. Carey was in charge of satellite
6 operations for News Corporation. Mr. Murdoch was also on
7 the News Corp. Executive Committee, as well as Anthea
8 Disney.

9 THE COURT: Do you have this in depositions form?

10 MR. WELCH: Yes, sir, we do, and I assume they
11 have no reason to object to us reading in the deposition or
12 portions of it.

13 THE COURT: Was this the deposition taken during
14 the evening hours?

15 MR. WELCH: Yes, sir. It was the deposition
16 Wednesday evening that we sat here between 5:30 and possibly
17 9:00.

18 MR. SNYDER: We would be willing to stipulate to
19 those facts. There is no controversy as to that.

20 MR. WELCH: I didn't complete all the facts in the
21 deposition.

22 THE COURT: My preference is always going to be if
23 I can get witnesses to court in front of the jury -- to
24 maintain a very consistent pattern.

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09:02:08 1 with the additional areas?

2 THE COURT: Please.

3 MR. WELCH: He also would testify about
4 conversations he had -- he could put more flesh on the bones
5 than Mr. Hassak did as it relates to the conversations he
6 had with Oliver Kommerling. He had three conversations that
7 he testified about. One was in July 2001.

8 THE COURT: Dr. Peled had conversations with --

9 MR. WELCH: Oliver Kommerling.

10 THE COURT: what did he say concerning Oliver
11 Kommerling? I want specificity.

12 MR. WELCH: Oliver Kommerling was retained by NDS
13 to design and assist in the development of the Haifa lab.
14 That was done in '96. Mr. Kommerling was a consultant or
15 employee of NDS for the period '96 through 2000 at which
16 point NDS entered into a joint venture with Mr. Kommerling
17 called ADSR. Mr. Kommerling was retained by NDS because of
18 his knowledge related to attacking Smart Cards.

19 THE COURT: Did Dr. Peled state in the deposition
20 that he had knowledge of why Kommerling was retained?

21 MR. WELCH: Yes, sir.

22 THE COURT: And that Kommerling was in fact
23 retained by NDS?

24 MR. WELCH: Yes, sir.

25 THE COURT: And that he had knowledge from Hassak

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09:03:49 1 or from whom?

2 MR. WELCH: He was -- I don't know the exact -- if
3 he got the knowledge from Hassak or if he had it

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4 independently, the deposition would flush that out. As I
5 understand the testimony, he knew that Mr. Kommerling had
6 been arrested or he was investigated by NDS, and the reason
7 that they retained him is he was one of the foremost experts
8 as it relates to attacking Smart Cards.

9 At that point, he was instrumental in assisting
10 them in developing the Haifa lab, and that includes the
11 engineers that they were hiring.

12 THE COURT: So in other words, the end result of
13 this -- I don't mean to cut you off. You can go on in just
14 a moment. My concern about different corporate entities
15 segmenting themselves or choosing to call lower-level
16 managerial people or engineers who don't know where
17 directions came from -- from either EchoStar or NDS -- are
18 somewhat negating when we get people of Mr. Ergen's stature,
19 Mr. Kudelski's stature, and Dr. Peled's stature, or Rupert
20 Murdoch's stature. How high this extends or doesn't extend
21 to the corporate entities makes a tremendous difference in
22 terms of potential damages.

23 MR. WELCH: What Mr. Peled testified about was
24 that he basically set up this lab and that he essentially
25 turned a blind eye to it. They only had six to seven

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09:05:34 1 employees. The only names he can remember were Mordinson
2 and Skhedy. He claims that he never saw Exhibit 98 until
3 after the litigation -- the motion to intervene was filed in
4 September 2002, and he never wanted to see the results of
5 it. But when I showed him Exhibit 98 in the deposition and
6 Section 4 that talks about a DISH Network hack in practice
7 that he would have liked to have known what those contents
8 were.

9 Then going back to the Oliver Kommerling issue,
10 Your Honor, in July 2001, Oliver Kommerling reported to
11 Dr. Peled --

12 THE COURT: Reported personally?

13 MR. WELCH: Yes. They were at a dinner. This was
14 while they were in the joint venture with ADSR --

15 THE COURT: Kommerling reported to Dr. Peled.
16 That sounds like they have a weekly meeting, and then you
17 say no, they were at a dinner.

18 MR. WELCH: They were at a dinner discussing the
19 ADSR business. One of things that ADSR was involved in was
20 reverse engineering chips. ADSR was the lab that was
21 basically run by Mr. Kommerling. During this dinner meeting
22 when they were discussing business, Mr. Kommerling told
23 Dr. Peled that Chris Tarnovsky admitted that he was involved
24 in piracy of the Canal+ system, as well as posting of the
25 Canal+ codes on the Internet.

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09:07:25 1 In addition, he testified about an August 2001
2 telephone conference --

3 THE COURT: Just a minute. I don't know what I am
4 going to do in relation to this motion. There is no need to
5 make a statement on behalf of NDS. If Mr. Peled hasn't left
6 the ground yet, you might make a call and just ask him --

7 MR. SNYDER: Mr. Peled has left, Your Honor.

8 MR. WELCH: In August 2001, Mr. Ray Adams
9 contacted Dr. Peled and told him that it was urgent that
10 Dr. Peled have a telephone conversation with Mr. Oliver
11 Kommerling. This conversation lasted approximately five
12 minutes. Dr. Peled contacted Mr. Kommerling where
13 Mr. Kommerling again reiterated that Chris Tarnovsky
14 admitted the posting and the hacking relating to --

15 THE COURT: Christopher Tarnovsky -- I am going to
16 say that again, so I am sure I understand this because I am
17 not privy to the deposition. Ray Adams contacts Dr. Peled
18 and urges him to contact --

19 MR. WELCH: Oliver Kommerling.

20 THE COURT: And Kommerling tells Dr. Peled that

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21 Christopher Tarnovsky --

22 MR. WELCH: Christopher Tarnovsky was involved in
23 the piracy and hacking of the Canal+ system, and that
24 Christopher Tarnovsky also told Mr. Kommerling that he had
25 posted the Canal+ codes on the Internet.

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09:09:17 1 THE COURT: Therefore, from your perspective, this
2 wrongdoing should have led to termination, and certainly
3 there is an inference that at the highest levels of NDS --

4 MR. WELCH: They turned a blind eye.

5 I have one other. In September 2001 at another
6 dinner at Trader Vic's in London --

7 THE COURT: This is a dinner.

8 MR. WELCH: This is yet another conversation.

9 THE COURT: Dinner reporting.

10 MR. WELCH: While they were still in the
11 relationship with ADSR -- NDS in a relationship with ADSR --
12 Mr. Kommerling informed Dr. Peled that Christopher Tarnovsky
13 had admitted that he was involved in EchoStar piracy and had
14 posted the EchoStar codes on the Internet.

15 THE COURT: So Tarnovsky also admits to Kommerling
16 who tells Peled --

17 MR. WELCH: Yes, sir.

18 THE COURT: -- that Tarnovsky has posted --

19 MR. WELCH: EchoStar codes, and this was in
20 September 2001.

21 THE COURT: And, of course, at that time, from
22 your perspective, Tarnovsky is not fired. He is not fired
23 until just before the lawsuit.

24 MR. WELCH: Yes, sir.

25 THE COURT: From your perceptiveness, it's given to

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09:10:43 1 top management.

2 MR. WELCH: Top management knows. They don't do
3 anything about it.

4 THE COURT: Let me turn to NDS. That's the basic
5 outline. I certainly recognize that I can't force either
6 one of you to bring a witness to court beyond an 150-mile
7 radius, but everybody's expectation was Dr. Peled was going
8 to testify. He was deposed, and I think I was introduced to
9 him on Wednesday at 10:30.

10 MR. SNYDER: Yes.

11 THE COURT: He seemed like a very nice gentleman.
12 I said hello. I think everyone was here.

13 MR. SNYDER: Let me make a couple of points, Your
14 Honor. As I informed the Court last night, the defense
15 would like very much to rest today and get this case to the
16 jury. We made some decisions about the witnesses we were
17 going to call and not call.

18 THE COURT: I wasn't aware of this last night,
19 though.

20 MR. SNYDER: We did not -- we had not made the
21 decision which witnesses we were going to drop.

22 THE COURT: When did Dr. Peled leave?

23 MR. SNYDER: I believe on the last flight last
24 night. I believe it was after 9:00.

25 THE COURT: What time were we here last night?

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09:12:13 1 MR. SNYDER: We were here relatively late. I
2 don't remember exactly what time we left.

3 THE COURT: I got home at 11:00. You were here I
4 know until after 10:00, and I am pretty certain unless I was
5 awfully kind to both of you that you were here until at
6 least 9:30.

7 MR. SNYDER: I believe that's right.

8 THE COURT: Mr. Eberhart was here.

9 MR. EBERHART: No.
10 MR. SNYDER: I was here, Your Honor.
11 THE COURT: Mr. Stone?
12 MR. STONE: I was here.
13 THE COURT: Mr. Klein?
14 MR. KLEIN: I was here.
15 THE COURT: I think I had all the other attorneys.
16 What this means is that -- I am going to speak outloud.
17 What this means is that I certainly wasn't informed that
18 Dr. Peled was leaving. The decision had to have been made
19 to have Dr. Peled leave to catch the 10:00 flight -- and I
20 am going to get verification of when that flight was -- to
21 go back to London which excludes the Court now from
22 jurisdiction and the very live testimony it's seeking, and
23 the dependency again upon depositions testimony, which I
24 don't think is appropriate from my standpoint.
25 MR. SNYDER: Your Honor, may I?

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09:13:47 1 THE COURT: I want to make sure I have the time
2 frame down. So to catch that 10:00 flight, the decision had
3 to have been made at a substantial time earlier. When was
4 the reservation made? It's a direct question. I want a
5 direct answer.
6 MR. SNYDER: Sometime before 7:00. I don't think
7 I can narrow it down.
8 THE COURT: You are to bring me that
9 documentation. I want to see it.
10 MR. SNYDER: Which documentation?
11 THE COURT: His reservation. I want to know what
12 time his reservation was made.
13 MR. SNYDER: Plaintiffs never requested that
14 Mr. Peled appear as a witness. The defendants were going to
15 call Mr. Peled. The Court I believe had always made it
16 clear that it would like to see senior managers, senior

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17 executives, appear at trial, but that was a choice left to
18 the parties.

19 THE COURT: No, I think I was more direct. I
20 wanted to see Mr. Kudelski, Mr. Ergen, Mr. Murdoch, and
21 Mr. Peled. I thought the responsibility lay at the highest
22 levels. I thought I was very clear that as the corporations
23 segmented themselves there were really four key players.

24 MR. SNYDER: You were very specific with those
25 names. I understood it was the parties' decision whether

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09:15:39 1 they were going to bring those people, and we intended until
2 yesterday to have Dr. Peled testify, but we wanted to end
3 our case and to make a decision.

4 Our defense is not one of the corporation not
5 being responsible for the acts of its employees. Our
6 defense is we did not do what we are accused of doing. We
7 thought that evidence was the evidence we needed to get in
8 front of the jury, and that's the evidence that we have put
9 and intend to put in front of the jury before we rest.

10 The topics that plaintiffs have identified that
11 they want Dr. Peled to testify about are either issues that
12 are already in the record, or it's an excuse to get in
13 damaging hearsay. All the other aspects of that have
14 already been discussed at some length in Mr. Hassak's
15 testimony and cross-examined at some length.

16 THE COURT: From EchoStar's position, you can
17 understand that that act is rather low level compared to
18 Dr. Peled, but that's your tactical choice. My decision is
19 whether I draw an adverse inference from that.

20 I think that's enough discussion for right now. I
21 think that -- I hate to hold up Mr. Kahn's testimony, but if
22 Dr. Peled hadn't left, and if I was going to draw an adverse
23 inference, I wanted you to have the option to hold him. I
24 know he is not.

25 I don't know why I want to be inconsistent with my

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09:18:38 1 literal demand that people testify in person if there is
2 some nexus to the corporate entity. I don't know what I am
3 going to do. You both can establish your record. I would
4 be concerned in resting my case not knowing what the Court
5 is going to do. I think I need to tell you what I am going
6 to do before you rest your case.

7 MR. SNYDER: Thank you, Your Honor. I would just
8 like to make -- at the risk of repeating myself, plaintiffs
9 never requested Mr. Peled. He was designated a defendants'
10 witness, and I believe we have the option to identify who
11 our witnesses are. He was never requested -- aside from
12 being subpoenaed, he just wasn't requested. The testimony
13 they are describing is not proper rebuttal testimony.
14 Therefore, I don't think that it would be appropriate to
15 draw an adverse inference from Dr. Peled's failure to
16 appear.

17 THE COURT: Perhaps, I won't. Maybe I'll just
18 explain the facts --

19 MR. WELCH: We have two things. Mr. Hagan will
20 address the issue of Dr. Peled being requested. Had we
21 known they were going to send him home, then we would have
22 requested the Court to allow us to subpoena him before he
23 left, but the issues that he would also testify about were
24 directly against their claims on the documents. Dr. Peled
25 discussed --

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09:21:01 1 THE COURT: That's potentially a declaration
2 against penal interest. There are a lot of arguments
3 whether these statements are hearsay or not, but the Court
4 hasn't even had an opportunity to be aware of this until

5 this morning with the expectation that Dr. Peled was here to
6 testify. I can't force NDS to bring Dr. Peled or
7 Dr. Murdoch or to force you to bring Kudelski.

8 Frankly, this is peculiar. Dr. Peled was here.
9 He knew on such and such a date he was deposed until quite
10 late on Wednesday and has now chosen to take a flight which
11 now calls for depositions testimony.

12 MR. WELCH: Do I need to continue with the areas
13 he discussed?

14 THE COURT: You can, but he has already --

15 MR. WELCH: Mr. Hagan will address the issue of
16 our request for him to testify.

17 MR. HAGAN: Two quick points, Your Honor. First,
18 I believe that it's disingenuous for Mr. Snyder to say we
19 never requested Dr. Peled's testimony. That is absolutely
20 not the case. During the discovery process -- early on in
21 discovery both parties requested the depositions of the CEO.
22 They wanted Charlie Ergen's deposition. I wanted Mr.
23 Peled's depo. We reached an agreement at that stage that we
24 would hold off unless one side was going to offer them at
25 trial at which point the other side got to depose them. We

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09:22:48 1 put Mr. Ergen up and they deposed him.

2 The critical issue of why we need Peled is because
3 Mordinson and Skhedy, the engineers that did this -- they
4 had no idea who ordered the hack. Now, Mr. Hassak testified
5 he has no idea.

6 THE COURT: That was my point before. When we
7 start with these lower-level people, they never know where
8 the orders come from.

9 Counsel, I think everybody has been forewarned. I
10 once again repeat I don't have jurisdiction.

11 (Proceedings were adjourned.)

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CERTIFICATE

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

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12 Date: May 2, 2008

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Sharon A. Seffens May 2, 2008

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