

NOTE: This order is nonprecedential.

United States Court of Appeals for the Federal Circuit

2009-1374

TIVO, INC.,

Plaintiff-Appellee,

v.

EHOSTAR CORPORATION,
EHOSTAR DBS CORPORATION,
EHOSTAR TECHNOLOGIES CORPORATION,
ECHOSPHERE LIMITED LIABILITY COMPANY,
EHOSTAR SATELLITE LLC,
and DISH NETWORK CORPORATION,

Defendants-Appellants.

Appeal from the United States District Court for the Eastern District of Texas
in case no. 2:04-CV-01, Judge David Folsom.

ON MOTION

Before MICHEL, Chief Judge, LOURIE and BRYSON, Circuit Judges.

BRYSON, Circuit Judge.

ORDER

EchoStar Corporation et al. (EchoStar) move for a stay, pending appeal, of the order of the United States District Court for the Eastern District of Texas (1) holding EchoStar in contempt of its previous injunction, (2) enjoining EchoStar, and (3) requiring that EchoStar take certain steps in light of its contempt holdings. TiVo, Inc. opposes. EchoStar replies. The Association for Competitive Technology, Inc. moves for leave to file a brief amicus curiae in support of TiVo regarding the motion. EchoStar opposes. The Association replies.

In deciding whether to stay an injunction, pending appeal, this court "assesses the movant's chances of success on the merits and weighs the equities as they affect the parties and the public." E.I. Dupont de Nemours & Co. v. Phillips Petroleum Co., 835 F.2d 277, 278 (Fed. Cir. 1987); see also Standard Havens Prods. V. Gencor Indus., 897 F.2d 511 (Fed. Cir. 1990). To prevail, a movant must establish a strong likelihood of success on the merits or, failing that, must demonstrate that it has a substantial case on the merits and that the harms factors militate in its favor. Hilton v. Braunskill, 481 U.S. 770, 778 (1987).

Without prejudicing the ultimate disposition of this case by the merits panel, we determine based upon the arguments raised in the motions papers that EchoStar has met its burden of demonstrating the requisites for a stay of the order, pending appeal.

Accordingly,

IT IS ORDERED THAT:

- (1) The motion for a stay of the order is granted.
- (2) The motion for leave to file an amicus brief is granted.
- (3) The briefing schedule is expedited. EchoStar's opening brief is due no later than July 17, 2009. TiVo's brief is due no later than August 25, 2009. EchoStar's reply brief and the joint appendix are due no later than September 4, 2009. The case will be placed on the November calendar, if practicable.

FOR THE COURT

JUL 01 2009

Date

/s/ Jan Horbaly

Jan Horbaly
Clerk

cc: Seth P. Waxman, Esq.
Donald R. Dunner, Esq.

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FILED
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

JUL 01 2009

JAN HORBALY
CLERK