

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 98-2651-CIV-DIMITROULEAS

CBS BROADCASTING INC., et al.,

Plaintiffs,

vs.

ECHOSTAR COMMUNICATIONS
CORPORATION, et al.,

Defendants.

**ORDER DENYING MOTION FOR MODIFICATION; GRANTING SUPPLEMENTAL
MOTION FOR EXPEDITED CONSIDERATION; AND DENYING , AS MOOT,
PLAINTIFFS' MOTION FOR LEAVE TO FILE SURREPLY**

THIS CAUSE is before the Court upon Echostar's Motion for Modification of the Court's October 20, 2006 Order of Permanent Injunction [DE-1023], Echostar's Supplemental Motion for Expedited Consideration [DE-1030], and Plaintiffs' Motion for Leave to File Surreply [DE-1064]. The Court has carefully considered the Motions, the Affiliate Associations' Response in Opposition to the Motion for Modification [DE-1027], Fox Broadcasting Company's Opposition to the Motion to Modify [DE-1028], Echostar's Sealed Corrected Reply¹, filed herein on November 20, 2006, and is otherwise fully advised in the premises.

Defendant Echostar filed the instant Motion for Modification seeking an extension of time to comply with the Court's October 20, 2006 Order of Permanent Injunction [DE-1020], which set an effective date for entry of the injunction of December 1, 2006. Both the Affiliate

¹Echostar files its Reply under seal, contending that the Court's April 15, 2002 Protective Order [DE-236] provides a basis for preventing public access to this document. The Court will require by separate Order that Echostar show cause why the Reply should remain sealed from the public's access.

Associations and Fox Broadcasting Company (“Fox”) oppose the instant motion.

The Court has carefully considered the Motion for Modification and does not find sufficient cause to modify the October 20, 2006 Order of Permanent Injunction or extend the effective date. Echostar has been aware since May 23, 2006, when the Court of Appeals for the Eleventh Circuit issued its Opinion remanding the case for entry of a nationwide permanent injunction, that such an injunction would likely be entered, and should have prepared for the contingency that a settlement agreement would not resolve the impending injunction. The time to prepare for such an outcome was months ago, when Echostar first learned of the likelihood of entry of a nationwide injunction, not weeks before the injunction would take effect. Moreover, this Court could have entered its injunction on August 18, 2006 upon receipt of the Eleventh Circuit’s mandate but delayed entry in order to consider the issues raised by the parties in their Joint Stipulation to Enter Consent Judgment and Approve Settlement Agreement, and then on October 20, 2006 instead of imposing the injunction immediately, gave Echostar until December 1, 2006 before the injunction would become effective. Therefore, no further extension of time is warranted. Any unfortunate interruption of service to Echostar’s clients continues to be the responsibility of Echostar.

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. Echostar’s Motion for Modification of the Court’s October 20, 2006 Order of Permanent Injunction, filed herein on November 3, 2006 [DE-1023], is hereby **DENIED**.
2. Echostar’s Motion for Expedited Consideration [DE-1030] is hereby **DENIED AS**

MOOT.²

3. Plaintiffs' Motion for Leave to File Surreply [DE-1064] is hereby **DENIED AS**

MOOT.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this
20th day of November, 2006.


WILLIAM P. DIMITROULEAS
United States District Judge

Copies furnished to:

David M. Rogero, Esq.
Wade H. Hargrove, Esq.
Thomas P. Olson, Esq.
John F. O'Sullivan, Esq.
Cynthia Ricketts, Esq.
Neil Roman, Esq.
Richard Brodsky, Esq.

²The Court notes that although Echostar moved this Court to expedite its ruling on the Motion for Modification, it originally filed its sealed Reply to the Motion for Modification in the Miami Division, contrary to Southern District of Florida Local Rule 5.1(B), thereby further delaying the Court's receiving and ruling on the Motion.