

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

TiVo Inc., a Delaware corporation,  
Plaintiff,

v.

1. Dish Network Corporation, a Nevada corporation; 2. EchoStar DBS Corporation, a Colorado corporation; 3. EchoStar Technologies Corporation., a Texas corporation; 4. Echosphere L.L.C., a Colorado limited liability company; 5. EchoStar Satellite L.L.C., a Colorado limited liability company; and 6. EchoStar Corporation, a Nevada corporation.

Defendants.

No. 2-04cv01 DF  
(Judge Folsom)

**ECHOSTAR'S UNOPPOSED  
MOTION FOR APPROVAL OF  
SUPERSEDEAS BOND**

**I. INTRODUCTION**

Defendants Dish Network Corporation, EchoStar DBS Corporation, EchoStar Technologies Corporation, Echosphere L.L.C., EchoStar Satellite L.L.C. and EchoStar Corporation (collectively "EchoStar") file this Unopposed Motion for Approval of Supersedeas Bond. EchoStar respectfully requests that the Court approve the supersedeas bond, a copy of which is filed herewith, and thereby stay the judgment pending appeal pursuant to Rule 62(d) of the Federal Rules of Civil Procedure. The June 2, 2009 judgment was in the amount of \$103,068,836 against EchoStar. EchoStar's appeal to the Federal Circuit of the Court's money judgment was filed on June 2, 2009, and has been assigned Appeal No. 09-1374. The parties

have jointly moved to extend the deadline set by Rule 62(d) to June 29, 2009. (Joint Motion to Further Extend 10-Day Period, filed 6/19/09.)

## II. ARGUMENT

EchoStar respectfully requests that the Court approve the supersedeas bond, a copy of which is attached hereto. Under Fifth Circuit law, the purpose of a supersedeas bond is to preserve “the status quo while protecting the non-appealing party’s rights pending appeal.” *Poplar Grove Planting & Refining Co. v. Bache Halsey Stuart, Inc.*, 600 F.2d 1189, 1190 (5th Cir. 1979); *Herbert v. Exxon Corp.*, 953 F.2d 936, 938 (5th Cir. 1992). Rule 62 “entitles a party appealing a money judgment to an automatic stay upon posting a supersedeas bond.” *Herbert*, 953 F.2d at 938.

Pursuant to Local Rule CV-62, the amount of a supersedeas bond shall be in the amount of the judgment, plus 20% of that amount to cover interest and any award of damages for delay, plus \$250.00 to cover costs. Attached to this motion as Exhibit 1 is a true and correct copy of a bond for \$123,682,853.20 – the amount required by local rule. Upon the grant of this motion, the original bond will be presented for filing at the Clerk’s Office for the United States District Court for the Eastern District of Texas, Tyler Division (in accordance with instructions from the Clerk’s Office for the Marshall Division).

EchoStar understands the form and bond of surety to be acceptable to the Clerk’s office because (1) the surety, the Fidelity and Deposit Company of Maryland, is approved by the United States Department of the Treasury, Bureau of Financial Management; and (2) the agent of the surety resides in the District and may execute the bond as attorney-in-fact. The bond provides TiVo with protection while EchoStar pursues its right to appellate review. *See Herbert*, 953 F.2d at 938. The bond should therefore be approved immediately to effect the automatic stay relief provided by Federal Rule of Civil Procedure 62(d).

**III. PRAYER**

For the foregoing reasons, EchoStar respectfully requests that the Court grant this Unopposed Motion for Approval of Supersedeas Bond, approve the supersedeas bond attached hereto, and order the District Clerk to file the supersedeas bond, thereby effecting immediate and automatic stay relief under Rule 62(d) of the Federal Rules of Civil Procedure.

Dated: June 26, 2009

MORRISON & FOERSTER LLP

By: \_\_\_\_\_ /s/  
Rachel Krevans

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