

FEDERAL ELECTION COMMISSION

In the matter of:

Charles Ergen,
individually and in his
capacity as Chairman of
DISH Network
Corporation;
DISH Network
Corporation;
Echostar Corporation
and DISH Network
Corporation PAC

MUR No. _____

COMPLAINT

1. Cause of Action brings this complaint before the Federal Election Commission (FEC), requesting an immediate investigation and enforcement action against Charles Ergen, both individually and in his capacity as Board Chairman of DISH Network Corporation; DISH Network Corporation (DISH); and Echostar Corporation and DISH Network Corporation PAC (DISH Network PAC) for direct and serious violations of the Federal Election Campaign Act of 1971 (FECA), 2 U.S.C. § 431 *et seq.*

Complainant

2. Cause of Action is a nonprofit, nonpartisan organization that uses investigative, legal and communications tools to educate the public on how government accountability and transparency protects taxpayer interests and economic opportunity. In furtherance of its mission, Cause of Action investigates and exposes federal government corruption, waste, cronyism and fraud. These investigations fuel strategic legal efforts to attack federal government overreach and unaccountability, as well as fight against fraud committed by recipients of American taxpayer monies.

3. Cause of Action also investigates matters brought to its attention by inside sources alleging legal or ethical violations. In this case, Cause of Action received information from an anonymous source regarding a potential violation of FECA and its implementing regulations. Because the public has an interest in the fair enforcement of campaign finance laws and in knowing the identities of those who violate these laws, Cause of Action requests the FEC investigate the allegations presented in this complaint and the supporting exhibits.

4. Campaign contributions are a necessary feature of political life and without private contributions to political committees, civic discourse would be impeded. The objective of campaign finance laws is to regulate the influence of money on politics. These laws serve to fill a gap in the coverage of federal laws addressing corrupt payments to federal officials that are disguised as campaign contributions. However, when federal campaign finance turns from a private civic act to public corruption, federal enforcement is necessary.¹ Cause of Action's mission is to contribute to accountable government and fight public corruption.

5. In order to assess whether an individual, candidate, political committee or other regulated entity is complying with federal campaign finance law, Cause of Action needs the information contained in receipts and disbursements reports that political committees must file pursuant to the FECA, 2 U.S.C. § 434(a)(2); 11 C.F.R. § 104.1. Cause of Action is hindered in its programmatic activity when an individual, candidate, political committee or other regulated entity fails to disclose campaign finance information in reports of receipts and disbursements required by the FECA.

6. Cause of Action relies on the FEC's proper administration of the FECA's reporting requirements because the FECA-mandated reports of receipts and disbursements are the only source of information Cause of Action can use to determine if a candidate, political committee or

¹ *McCormick v. United States*, 500 U.S. 257 (1991); *Evans v. United States*, 504 U.S. 255 (1992).

other regulated entity is complying with the FECA. The proper administration of the FECA's reporting requirements includes mandating that all reports of receipts and disbursements required by the FECA are properly and timely filed with the FEC. Cause of Action is hindered in its programmatic activity when the FEC fails to properly administer the FECA's reporting requirements.

7. Complainant Daniel Epstein is the executive director of Cause of Action, a citizen of the United States and a registered voter and resident of the District of Columbia. As a registered voter, Mr. Epstein is entitled to receive information contained in reports of receipts and disbursements required by the FECA, 2 U.S.C. § 434(a)(2); 11 C.F.R. § 104.1. Mr. Epstein is harmed when a candidate, political committee or other regulated entity fails to report campaign finance activity as required by the FECA.² Mr. Epstein is further harmed when the FEC fails to properly administer the FECA's reporting requirements, limiting his ability to review campaign finance information.

Respondents

8. DISH is a United States satellite broadcaster with its principal place of business in Englewood, Colorado.

9. Charles Ergen is the co-founder and current Board Chairman of DISH.

10. DISH Network PAC is the separate segregated fund of DISH, which is a type of political action committee.³

² See *FEC v. Akins*, 524 U.S. 11, 19 (1998) (quoting *Buckley v. Valeo*, 424 U.S. 1, 66-67 (1976)) (holding that political committees must disclose contributors and disbursements to help voters understand who provides which candidates with financial support).

³ 11 C.F.R. § 100.5(b); *Int'l Ass'n of Machinists & Aerospace Workers v. FEC*, 678 F.2d 1092, 1096 (D.C. Cir.) (en banc), *aff'd mem.*, 459 U.S. 983 (1982).

Factual Allegations

11. Cause of Action recently received information from an anonymous source regarding DISH executives reportedly being compelled to make political campaign contributions. The insider stated that Charles Ergen⁴ “forced” Bernard Han, DISH’s Chief Operating Officer and Executive Vice President, “to donate to a Democratic candidate and/or party in 2009/2010” and “encouraged” Han to attend Democratic functions and fundraisers.⁵ Ergen allegedly made similar statements to other C-level executives.⁶ The insider explained that Ergen insinuated to Han that “you still have your job,” but would suffer consequences if he failed to follow Ergen’s orders. Further, according to the insider, Ergen appeared unconcerned whether employees “wanted to donate or agreed with who/what they were donating to.”⁷ Such evidence implies that if Han or other C-level executives wanted to keep their jobs at DISH, they were to make contributions at the corporation’s direction, regardless of their own political views.

12. FEC filings indicate that in 2009, 2010, 2011 and 2012 Bernard Han contributed to DISH Network PAC through bi-weekly payroll deductions in the amount of \$192.30.⁸ In fact, the filings indicate that all of DISH’s upper-management made similar payroll deductions to DISH Network PAC, corroborating the insider’s statement that other DISH executives made

⁴ It is unclear whether Ergen’s alleged actions regarding mandatory employee contributions were made in his personal capacity or in his capacity as an officer of DISH, particularly because he has significant ownership and control of DISH. See DISH ANNUAL REPORT: YEAR ENDING DECEMBER 31, 2011, at 6, 28, 45 (Dec. 31, 2011), available at http://files.shareholder.com/downloads/DISH/2152137596x0x559869/E30F5101-7D84-4A18-B893-C0AEF4758549/DISH_Annual_Report_Web_Posting.pdf (stating that “a substantial majority [approximately 90.4%] of the voting power of the shares of both DISH Network and EchoStar is owned beneficially by Charles W. Ergen” and that Ergen also owns 53.2% of DISH’s total equity securities).

⁵ Ex. 1 (containing redacted e-mail).

⁶ In business parlance, “C-level executives” describes the highest-level executives in a company and refers to the three-letter initials starting with “C” and ending with “O.” Marianne DelPo Kulow, *Legislating a Family-Friendly Workplace: Should It Be Done in the United States?*, 7 NW. J. L. & SOC. POL’Y 88, 112 n.151 (2012).

⁷ Ex. 1.

⁸ Ex. 2.

campaign contributions and strongly suggesting that these contributions may have been compelled.⁹

13. The evidence also shows that Han and other executives made contributions to political parties, committees and PACs that receive contributions from DISH Network PAC, potentially indicating that the executives were forced to contribute to whatever fund the corporate PAC chose. For example, Han contributed to ED-PAC on March 28, 2011,¹⁰ a PAC that likewise received a donation from DISH Network PAC on March 29, 2011.¹¹ Further, in September 2010, both Han and R. Stanton Dodge (Dodge), Executive Vice President, General Counsel and Secretary of DISH, contributed to the principal campaign committee of Debbie Wasserman Schultz,¹² to which DISH Network PAC contributed \$5,000 on May 2, 2011.¹³

14. Another example of cross-over donations between DISH Network PAC and DISH executives can be seen with America Forward, a fund which received a \$5,000 donation from DISH Network PAC on December 31, 2007.¹⁴ Four executives—Tom Cullen, W. Erik Carlson, James DeFranco and Dodge—subsequently donated to this fund on June 13, 2008.¹⁵

15. Dodge also contributed to the Democratic Senatorial Campaign Committee in 2009 and the campaign committee for Diana DeGette in 2011.¹⁶ James DeFranco, DISH co-founder and Executive Vice President, contributed to the Colorado Democratic Party in 2012.¹⁷ All of these funds have received a contribution from DISH Network PAC within the previous two

⁹ Ex. 3. DISH management consists of Joseph P. Clayton, James DeFranco, Bernard L. Han, Tom Cullen, Robert E. Olson, R. Stanton Dodge, W. Erik Carlson, Michael Kelly, Stephen Wood and Roger Lynch. *Management*, DISH, <http://dish.client.shareholder.com/management.cfm> (last visited Dec. 12, 2012).

¹⁰ Ex. 4.

¹¹ Ex. 5.

¹² Ex. 6.

¹³ Ex. 7.

¹⁴ Ex. 8.

¹⁵ Ex. 9.

¹⁶ Ex. 10.

¹⁷ Ex. 11.

years, therefore lending corroboration to the anonymous source's allegation that DISH executives were compelled to make political donations at the corporate PAC's direction.¹⁸

COUNT I

16. In 1976, Congress amended FECA to permit a corporate PAC to solicit contributions from a corporation's "executive or administrative personnel."¹⁹ FECA nevertheless places limitations on a PAC's ability to solicit this "restricted" class of employees.²⁰ For instance, under 2 U.S.C. § 441b(b)(3)(A), it is unlawful for a "separate segregated fund to make a contribution or expenditure by utilizing money or anything of value *secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination, or financial reprisal.*"²¹ Separate segregated funds are commonly referred to as political action committees, or PACs.²² Thus, under FECA, a corporate PAC cannot compel a contribution from a corporate employee by threatening that employee's job security.

17. Cause of Action does not contest Ergen's legal right to solicit Han, an executive employee, for campaign contributions under FECA. Han is an executive employee as the term is defined in 2 U.S.C. § 441b(b)(7): "individuals employed by a corporation who are paid on a salary, rather than hourly, basis and who have policymaking, managerial, professional, or supervisory responsibilities." As Chief Operating Officer and Executive Vice President, Han clearly exercises significant responsibility. Rather, the allegation is that Ergen's solicitation ran afoul of the limitations set forth in § 441b(b)(3)(A), which require all executive contributions to a corporate PAC to be voluntary.

¹⁸ Ex. 12.

¹⁹ See 2 U.S.C. § 441b(b)(4); *Int'l Ass'n of Machinists & Aerospace Workers v. FEC*, 678 F.2d 1092, 1101 (D.C. Cir.) (en banc), *aff'd mem.*, 459 U.S. 983 (1982).

²⁰ "A corporation's restricted class is its stockholders and executive or administrative personnel, and their families, and the executive and administrative personnel of its subsidiaries, branches, divisions, and departments and their families." 11 C.F.R. § 114.1(j).

²¹ (emphasis added); see also 11 C.F.R. § 114.5(a)(1).

²² 11 C.F.R. § 100.5(b); *Int'l Ass'n of Machinists*, 678 F.2d at 1096.

18. Based on the anonymous source's information, Ergen allegedly communicated to Han sometime between 2009 and 2010 that his job was contingent upon his making political donations, or that, at a minimum, his work environment would become hostile if he did not contribute. Han likely perceived Ergen's statement as a legitimate threat, upon which Han acted, repeatedly, by making the maximum allowable bi-weekly contributions to DISH's PAC for four years. Further, Han and other executives made donations to funds receiving contributions from DISH Network PAC, suggesting that the corporate PAC may have been directing DISH executives to donate to particular funds. From these facts, it appears Ergen used his position as Board Chairman to compel Han and other executives to make political contributions by threatening them with financial reprisal—namely, the loss of their jobs. In sum, Ergen, individually and/or in his capacity as Board Chairman; DISH; and DISH Network PAC all likely violated 2 U.S.C. § 441b(b)(3)(A).

COUNT II

19. FECA specifically prohibits any person from “soliciting an employee for a contribution to [a separate segregated] fund²³ to fail to inform such employee, at the time of [the] solicitation, of his right to refuse to so contribute without any reprisal.”²⁴ Thus, FECA limits the solicitation practices of corporate PACs by requiring that “a contribution to a PAC . . . be wholly voluntary” and made after the political contributor is informed that there is no risk of reprisal.²⁵ The employer's duty to inform employees of the right to refuse furthers the purpose of FECA, which is to “strike[] a balance between the organizational rights [of corporations] and

²³ See 2 U.S.C. § 441b(b)(2) (discussing separate segregated funds).

²⁴ § 441b(b)(3)(C).

²⁵ *Int'l Ass'n of Machinists*, 459 U.S. at 1096; see also *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209, 234-35 (1977).

the rights of those who wish to retain their shareholding interest . . . but who disagree with the majority's political views.”²⁶

20. The information Cause of Action received contains no indication that, at the time of solicitation, Ergen explained to Han that Han could freely refuse to contribute without any repercussion to his career at DISH. In fact, Ergen's alleged statements suggest the contrary—that Han would lose his job if he failed to contribute. As the anonymous source explained, it was of no concern to Ergen whether an employee desired to make any particular contribution. Because it does not appear that Ergen explained to Han or other executives that there would be no negative implications on their positions at DISH if they refused to contribute, Ergen, in his individual capacity and/or as Board Chairman; DISH; and DISH Network PAC likely violated the requirements of 2 U.S.C. § 441b(b)(3)(C).

COUNT III

21. FEC regulations state that “[c]orporations and labor organizations are prohibited from facilitating the making of contributions to candidates or political committees, other than to the separate segregated funds of the corporations and labor organizations.”²⁷ Thus, while a corporation may not facilitate making contributions to individual candidates or external PACs, it may facilitate contributions to the corporation's own PAC.

22. It is unclear under the facts of this case known to us whether Ergen's alleged compulsory employee contributions were to be directed to DISH Network PAC, DISH's own PAC, or other candidates or PACs. The insider lacked information on this specific point, stating that the alleged donations were directed to “a Democratic candidate and/or party . . . could be Colorado or National – not sure.” While it is unclear whether the mandatory contributions were

²⁶ 117 CONG. REC. 43379 (1971).

²⁷ 11 C.F.R. § 114.2(f)(1).

directed to DISH's PAC, Cause of Action nevertheless believes that sufficient evidence exists to prompt further investigation into the matter to determine whether Ergen, in his individual capacity and/or as Board Chairman; DISH; or DISH Network PAC violated 11 C.F.R. § 114.2(f)(1).

COUNT IV

23. FECA places limits on contributions by individuals and groups to candidates, party committees and PACs.²⁸ In limiting contributions, FECA regulations distinguish between single candidate PACs and multicandidate PACs, defining multicandidate PACs as having been registered for over six months, having more than fifty contributors and having made contributions to five or more federal candidates.²⁹ DISH Network PAC falls within the definition of a multicandidate PAC as FEC filings indicate it was formed in 1997, has over fifty contributors and has made contributions to more than five federal candidates since its inception.³⁰

24. Pursuant to the FEC's contribution limits, a multicandidate PAC can donate a maximum amount of \$5,000 per calendar year to another PAC.³¹ DISH Network PAC made a \$5,000 donation on May 1, 2007 to Rocky Mountain PAC and allocated the disbursement to a primary election.³² On May 24, 2007, it donated another \$893.60, allocating the contribution to a general election.³³ As such, DISH Network PAC met the maximum statutory contribution amount on May 1, 2007 and subsequently exceeded the limit on May 24, 2007 with its \$893.60 donation.

²⁸ See 2 U.S.C. § 441a *et seq.*

²⁹ 11 C.F.R. § 100.5(e)(3).

³⁰ Ex. 13.

³¹ See Ex. 14 (containing the FEC contribution limit chart for 2011-2012).

³² Ex. 15.

³³ Ex. 16.

25. Based on FEC filings, it would appear that DISH Network PAC attempted to allocate the two donations to different elections—primary and general—in order to avoid contribution limits. While a contributor may donate the maximum amount per election when donating to a candidate or candidate committee under 2 U.S.C. § 441a(a)(2)(A), contributions to PACs are based on the *calendar year* and therefore cannot be allocated per election.³⁴ In fact, no other committee contributions to Rocky Mountain PAC were distributed in such a way. Also of interest is the absence of Rocky Mountain PAC records indicating DISH Network PAC's second donation of \$893.60.³⁵ Rocky Mountain PAC records only display a donation from DISH Network PAC on June 5, 2008.³⁶

26. Considering the excessive campaign contribution to Rocky Mountain PAC, Cause of Action is concerned that by allegedly compelling executives like Han to donate to particular funds, DISH is attempting to skirt federal contribution limits for multicandidate PACs. For example, On March 28, 2011, Han contributed \$5,000 to ED-PAC,³⁷ which represents the maximum amount that an individual may donate to a PAC.³⁸ DISH Network PAC then contributed the maximum amount of \$5,000 to ED-PAC on March 29, 2011.³⁹ Similarly, DISH Network PAC contributed \$5,000 to Feinstein for Senate on August 8, 2011⁴⁰—the same day that Han contributed the maximum individual amount of \$2,500.⁴¹ The close proximity in time between the donations, taken in conjunction with the anonymous source's allegation of compelled contributions, suggests a scenario in which DISH Network PAC either exceeds the

³⁴ 2 U.S.C. § 441a(a)(2)(B).

³⁵ Ex. 17.

³⁶ *Id.*

³⁷ Ex. 4.

³⁸ Ex. 14.

³⁹ Ex. 5.

⁴⁰ Ex. 11.

⁴¹ Ex. 4.

contribution limit or meets it and then aggressively solicits further maximum donations from executives.

27. Other examples of this potential scenario occurred in 2011. For instance, on June 2, 2011, DISH donated \$6,000 to Whitehouse for Senate, thereby exceeding the maximum contribution to a candidate committee by \$1,000.⁴² Whitehouse for Senate subsequently issued a refund for \$3,500 on June 13, 2011.⁴³ Han, however, donated the maximum individual amount of \$2,500 on May 30, 2011.⁴⁴ Dodge also donated \$500 one month later on June 3, 2011.⁴⁵ Therefore, despite the issuance of a refund to DISH Network PAC, potentially compelled contributions from Han and Dodge compensated for the corporate PAC's inability to donate more than \$5,000 to the candidate committee.

28. Contributions in 2010 also raise concerns. For example, on February 17, 2010, DISH Network PAC contributed the maximum amount of \$5,000 to both the primary and general elections for Boucher for Congress Committee.⁴⁶ Less than a week later, Dodge gave \$2,000 to the committee for the primary election.⁴⁷ Later that year, on October 12, 2010, Dodge contributed the maximum amount of \$2,400⁴⁸ to the committee for the general election.⁴⁹ Han also contributed to the general election on October 10, 2012, again giving the maximum amount.⁵⁰ This evidence suggests significant overlap between executive and corporate PAC donations.

⁴² Ex. 18.

⁴³ Ex. 19.

⁴⁴ Ex. 20.

⁴⁵ Ex. 21.

⁴⁶ Ex. 22.

⁴⁷ Ex. 23.

⁴⁸ Ex. 24.

⁴⁹ Ex. 25.

⁵⁰ Ex. 26.

29. Another instance of executive and corporate PAC donations made in close proximity to one another can be seen in 2010. On August 12, 2010, Han and Dodge contributed the 2009-2010 statutory maximum amount of \$2,400 to the Friends of Schumer candidate committee.⁵¹ The following day, DISH Network PAC contributed the maximum amount of \$5,000 to that same fund.⁵²

30. Another peculiar instance involves donations of \$2,400 on June 23, 2009 from Dodge and DeFranco to Hoyer for Congress, allocated to the primary election.⁵³ Around the same time DISH Network PAC made its maximum donation on September 30, 2009 in the amount of \$5,000 to the primary election and \$5,000 to the general election,⁵⁴ Dodge and DeFranco contributed another \$2,400 to the primary election—Dodge on September 29, 2009 and DeFranco on September 28, 2009.⁵⁵ Another executive, Cullen, also contributed \$2,400 to the primary election on September 28, 2009.⁵⁶ Both Dodge and DeFranco were subsequently issued refunds in the amount of \$2,400 since they twice donated the maximum amount to the primary election.⁵⁷ Their excessive donation, however, may be an example of DISH Network PAC exerting excessive pressure on executives to give to particular candidates and elections.

31. Therefore, it is likely that Ergen, in his individual capacity and/or as Board Chairman; DISH; or DISH Network PAC violated 2 U.S.C. § 441a(a)(2).

⁵¹ Ex. 27.

⁵² Ex. 28.

⁵³ Ex. 29.

⁵⁴ Ex. 30.

⁵⁵ Ex. 31.

⁵⁶ Ex. 32.

⁵⁷ Ex. 33.

CONCLUSION

WHEREFORE, Cause of Action and Daniel Epstein request that the Federal Election Commission conduct an investigation into these allegations, declare the respondents to have violated the Federal Election Campaign Act and applicable Federal Election Commission regulations and impose sanctions appropriate to these violations.

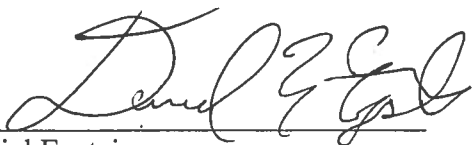


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Verification

Cause of Action through its Executive Director Daniel Epstein hereby verifies that the statements made in the attached Complaint are, upon information and belief, true.

Sworn pursuant to 18 U.S.C. § 1001.



Daniel Epstein

Sword to and subscribed before me this 19 day of December, 2012.



HENRY DANIEL MOLINA
District of Columbia Notary Public
My Commission Expires April 14, 2017

