

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

DISH NETWORK L.L.C., a Colorado limited liability company,

Plaintiff,

NBCUniversal Media, LLC, a Delaware limited liability company,

Defendant.

Case No.

COMPLAINT FOR BREACH OF CONTRACT

JURY TRIAL DEMANDED

Plaintiff DISH Network L.L.C. ("DISH"), by their undersigned counsel, files this Complaint for breach of contract and alleges against NBCUniversal Media, LLC ("NBCU") as follows:

NATURE OF ACTION

1. DISH provides satellite television programming services to subscribers throughout the United States. DISH generally does not own the television programming that it distributes to its subscribers but instead licenses the rights to distribute programming. As of the end of 2015, DISH had approximately 13.897 million pay-TV subscribers.¹

2. NBCU, through its NBCUniversal Content Distribution division, licenses the right to distribute cable channels such as Bravo, CNBC, MSNBC, Syfy, Telemundo, Universal HD, USA, and others, as well as the NBC owned and operated broadcast network stations, including WMAQ, (collectively, the "NBC Programming").

¹ This figure includes subscribers to DISH's Sling TV and Sling International services, which provide television programming via the Internet.

3. DISH, through contractual agreements with NBCU, has the right to distribute NBC Programming to its subscribers throughout the country. These agreements, among other things, prohibit NBCU from engaging in certain public communications and/or messaging that relate to the expiration of these agreements.

4. NBCU has ignored its contractual obligation not to engage in these types of public communications and has instead decided to bombard DISH subscribers with prohibited messages, including, among other things, warnings that DISH is going to "drop" the NBC Programming, and has included "calls to action" in direct violation of the contracts. These prohibited messages appear, among other places, as a banner crawl on subscribers' television screens, advertisements that air during television programming, as well as on NBCU's Facebook accounts and twitter feeds. NBCU has even created a new website to inform DISH customers that DISH may "drop" NBC Programming.

5. The parties agreed to prohibit NBCU from engaging in these kinds of public communications because they cause actual harm to DISH. Among other things, DISH's subscribers flood DISH's customer services lines with questions about the NBCU messages, some subscribers cancel their DISH subscriptions, and DISH's goodwill as a reliable service provider is eroded. These material breaches of the contacts are not capable of being cured, among other reasons, because once a customer changes service providers, DISH cannot get them back. DISH has incurred and will continue to incur substantial damages as a result of these prohibited messages.

PARTIES

6. DISH is a Colorado limited liability company with its principal place of business in Englewood, Colorado. DISH's sole member is DISH DBS Corporation, a Colorado corporation with its principal place of business in Englewood, Colorado.

7. DISH is informed and believed, and thereon alleges, that NBCU is a Delaware limited liability company with its principal place of business in New York. The sole member of NBCU is NBCUniversal, LLC, which is a Delaware limited liability company and has its principal place of business in New York. Fifty-one percent of NBCUniversal, LLC is indirectly owned by Comcast Corporation, a Pennsylvania corporation with its principal place of business in Pennsylvania. Forty-nine percent of NBCUniversal, LLC is owned by Navy Holdings, Inc., which is a Delaware corporation with its principal place of business in Connecticut.

JURISDICTION AND VENUE

8. The Court has jurisdiction under 28 U.S.C. § 1332(a), because the parties are citizens of different states and because the amount in controversy exceeds \$75,000.

9. Venue is proper in this Court because DISH and NBCU (collectively, the "Parties") agreed to it. Any and all disputes arising from the agreements at issue in this Complaint are to be litigated solely and exclusively in this Court, and both Parties have consented to the *in personam* jurisdiction of this Court and have waived any objections to this venue.

FACTUAL BACKGROUND

The Parties' Agreements Prohibit NBCU's Messages

10. DISH and NBCU are parties to two agreements—the Retransmission Consent Agreement, dated March 13, 2013, and the Affiliation Agreement, dated March 13, 2013—that govern the terms under which DISH has the right to distribute NBC Programming. The

Retransmission Consent Agreement ("Retransmission Agreement") governs DISH's distribution of certain NBC owned and operated broadcast network stations, while the Affiliation Agreement governs DISH's distribution of certain NBCU cable networks. The Retransmission Agreement and the Affiliation Agreement are referred to collectively in this Complaint as the "Agreements."

11. The Parties have agreed that the Agreements should be governed by and construed in accordance with the laws of the State of New York.

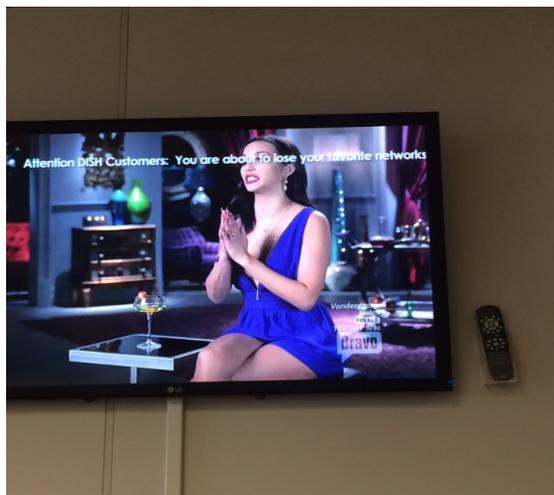
12. Under the terms of the Agreements (which are identical in this respect), NBCU is prohibited from "engag[ing] in any public communications and/or messaging that...relates to the negotiation or expiration" of the Agreements (a "Prohibited Message"). An exception permits such messages in the event the Agreements are set to expire in less than seventy-two hours and provided the messages do not include negative language about DISH, a call to action, or any information regarding the negotiation or expiration of the Agreements. This limited exception does not apply to the current messaging, which, among other things, began and is continuing more than seventy-two hours from the date of the expiration.

13. On or about March 11, 2016, DISH sent NBCU a letter reminding it of the Agreements' Prohibited Message provisions.

NBCU Is Bombarding DISH's Subscribers With Hostile Messages And Calls To Action

14. Notwithstanding DISH's express reminder, beginning on or around March 14, 2016, NBCU decided to engage in a campaign of Prohibited Messages with respect to the expiration of the agreements, including, among other things:

- a. NBCU has added a text crawl on several of its channels, including Bravo, Telemundo, and USA. The crawls on these channels appear substantially similar to the crawl shown on Bravo, as follows:



- b. NBCU has advertised to DISH subscribers that NBC Programming may soon no longer be available on DISH. Below is a screenshot from an advertisement concerning the Bravo channel:



- c. NBCU has released a flurry of twitter messages, like the ones below, which included prohibited "calls to action":



- d. NBCU has created a website: makedishdeliver.com specifically to inform DISH subscribers that they are about to lose access to NBC Programming. The website includes 15-second long advertisements as well as links to send DISH messages demanding that DISH keep NBC Programming, a list of shows DISH subscribers will miss, and frequently asked questions designed to leave DISH subscribers with the impression DISH is about to drop NBC

Programming from its channel lineup. Below is a screenshot from the website:



**Dish Doesn't Mean
Everything. They Mean
Everything Except.**

**Everything EXCEPT the best shows
on your favorite networks. Favorites**

15. As shown in the exemplars above, NBCU provides a phone number that, following the caller's entry of his or ZIP code, plays a warning message identifying the caller's channels at risk, encourages the caller to demand that DISH keep his or her favorite networks, and then transfers the call to DISH. The telephone number that NBCU supplies, 844-987-DISH (3474), uses the alpha-numeric "DISH" to create the false impression that it is a DISH telephone number, which is misleading for consumers. NBCU presumably is using this ruse, among other reasons, to harvest data on the response to its Prohibited Messages campaign.

16. As a result of these Prohibited Messages, which are in direct violation of the Agreements, many subscribers have called DISH, and will continue to call DISH, to ask questions or seek reassurance that the channels will not disappear. The Prohibited Messages

greatly increase the volume of phone calls that DISH's customer service agents manage in a given day and require DISH to increase its staffing levels in order to manage the call volume. DISH is informed and believes, and thereon alleges, that NBCU's reason for providing what appears to be a DISH telephone number so prominently in its messages is to ensure that DISH subscribers will overload DISH's customer service representatives with telephone calls.

17. The Prohibited Messages do not just increase DISH's costs related to customer service calls, they also cause subscribers to cancel DISH services. Subscribers who particularly enjoy NBC Programming may view the Prohibited Messages and conclude that the safest course of action is to switch to a different television provider. And after a customer changes service providers, it is too late for DISH to save them or get them back.

18. DISH is one of several television providers that a subscriber can choose from. As a result, DISH's reputation and goodwill are crucial to its efforts to obtain new subscribers and retain current subscribers. The Prohibited Messages damage DISH's reputation and goodwill, and lead potential and current subscriber wondering whether DISH will provide ongoing access to NBC Programming.

19. The Prohibited Messages are intended to confuse and anger DISH subscribers. NBCU's sole purpose in orchestrating the effort to distribute the Prohibited Messages is to gain an upper hand in its contract renewal negotiations with DISH.

FIRST CLAIM
Breach of the Retransmission Agreement

20. DISH incorporates the allegations in Paragraphs 1-19 as though fully set forth herein.

21. DISH and NBCU are parties to a contract—the Retransmission Agreement—under which NBCU provides DISH with the right to distribute NBC Programming subject to

express terms and conditions. DISH has performed all its material obligations under the Retransmission Agreement.

22. Under Section 21(a) of the Retransmission Agreement, NBCU is prohibited from engaging in any public communications and/or messaging that relates to the expiration of the Retransmission Agreement, unless such messages are made less than seventy-two hours before the expiration of the Retransmission Agreement, and even then, subject to further restrictions.

23. The Retransmission Agreement is set to expire more than seventy-two hours from the date of the filing of this Complaint.

24. NBCU has released a torrent of Prohibited Messages related to the expiration of the Retransmission Agreement, including, among other things, through screen crawls, television advertisements, Facebook posts, Twitter messages, and through its own, specially developed website. These messages inform DISH subscribers, among other things, that DISH is going to "drop" the NBC Programming, and include a call to action for consumers to contact DISH.

25. As a result of the Prohibited Messages, DISH has suffered actual damages, including, but not limited to, increased costs associated with staffing additional customer service representatives, lost revenue from subscribers who have decided to cancel their subscriber agreements with DISH out of concern raised by the Prohibited Messages, and damage to DISH's goodwill and reputation.

26. NBCU's distribution of the Prohibited Messages constitutes breaches of Section 21(a) of the Retransmission Agreement, which cannot be cured.

SECOND CLAIM
Breach of the Affiliation Agreement

27. DISH incorporates the allegations in Paragraphs 1-26 as though fully set forth herein.

28. DISH and NBCU are parties to a contract—the Affiliation Agreement—under which NBCU provides DISH with the right to distribute NBC Programming subject to express terms and conditions. DISH has performed all its material obligations under the Retransmission Agreement.

29. Under Section 7(e) of the Affiliation Agreement, NBCU is prohibited from engaging in any public communications and/or messaging that relates to the expiration of the Affiliation Agreement, unless such messages are made less than seventy-two hours before the expiration of the Affiliation Agreement, and even then, subject to further restrictions.

30. The Affiliation Agreement is set to expire more than seventy-two hours from the date of the filing of this Complaint.

31. NBCU has released a torrent of Prohibited Messages related to the expiration of the Affiliation Agreement, including, among other things, through screen crawls, television advertisements, Facebook posts, Twitter messages, and through its own, specially developed website. These messages inform DISH subscribers, among other things, that DISH is going to "drop" the NBC Programming, and include a call to action for customers to contact DISH.

32. As a result of the Prohibited Messages, DISH has suffered actual damages, including, but not limited to, increased costs associated with staffing additional customer service representatives, lost revenue from subscribers who have decided to cancel their subscriber agreements with DISH out of concern raised by the Prohibited Messages, and damage to DISH's goodwill and reputation.

33. NBCU's distribution of the Prohibited Messages constitutes breaches of Section 7(e) of the Affiliation Agreement, which cannot be cured.

PRAYER FOR RELIEF

WHEREFORE, DISH prays for relief on its First and Second Claims as follows:

1. Monetary damages, including damage arising from DISH's increased expenditures, lost revenue, and damages to DISH's goodwill and reputation, in an amount in excess of \$75,000;
2. Costs of suit; and
3. Any other such relief as the Court deems just and proper.

DATED: March 15, 2016

By: /s/Richard R. Patch

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**Application for *Pro Hac Vice* pending

Attorneys for Plaintiff

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