

Appeals court gives Dish a chance in TiVo case

May 14 2010, By DEBORAH YAO , AP Business Writer

(AP) -- A federal appeals court Friday granted Dish Network Corp. a full-court review of a ruling that threatened to force the satellite TV company to disable millions of its customers' digital video recorders because of a patent dispute with TiVo Inc.

The U.S. Court of Appeals for the Federal Circuit in Washington gave Dish a surprise chance for a better outcome in patent litigation that Dish has consistently lost to TiVo. Dish had asked for an "en banc" review of the case while CEO Charlie Ergen resisted paying TiVo damages that have mounted to about \$400 million. Ergen had even said the appeals court was unlikely to grant the review.

TiVo shares fell \$6.54, or 38 percent, to \$10.85 in afternoon trading. Dish rose \$1.19, or 5.4 percent, to \$23.15.

But it's uncertain whether Dish will eventually turn its loss into a victory, given that TiVo has prevailed in a series of other court rulings. "It just gives (Dish) another chance to come up to bat," Sanford Bernstein analyst Craig Moffett wrote in an e-mail. "But that doesn't mean that Dish will or won't win."

Standard & Poor's analyst Tuna Amobi said Ergen still is likely to have to settle with TiVo.

Ergen gambled that Dish, which has more than 14 million customers and is the nation's second-largest satellite TV company, would prevail in a

lawsuit that now has stretched on for six years. On Monday, Ergen told analysts during a conference call that he was prepared to remotely disable his customers' DVRs. DVRs let people record shows and pause, rewind and replay live TV.

TiVo said in a statement that it remains confident of prevailing in the case but is "disappointed that we do not yet have finality in this case despite years of litigation."

The case goes back to 2004, when TiVo, a pioneer in digital video recorders, sued Dish for patent infringement over a technology that stored and retrieved video on DVRs that Dish leased to its customers. Dish lost the case, paid TiVo \$104.6 million in damages and interest and was barred from using the technology.

While the case was going on, Dish redesigned its DVR software so that, it said, the technology did not infringe on TiVo's patent. But U.S. District Judge David Folsom in Marshall, Texas, disagreed and said Dish violated his order of a permanent injunction. He ordered Dish to pay TiVo additional damages - \$103 million plus interest, along with about \$200 million in contempt sanctions.

Dish appealed the ruling finding it in contempt, but lost March 4. Friday's ruling vacates that decision.

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