

Dish Network faces DVR shutdown, 1Q profit falls

10 May 2010, By DEBORAH YAO , AP Business Writer



In this Jan. 10, 2009 file photo, a Dish Network turner and remote control device is shown at the Consumer Electronics Shows in Las Vegas. Dish Network Corp. said Monday, May 10, 2010, that its first-quarter net income fell 26 percent even as it gained new subscribers with promotions. The results managed to top Wall Street's expectations. (AP Photo/Paul Sakuma)

(AP) -- Dish Network Corp. reported a 26 percent drop in first-quarter net income as the satellite TV company stepped up promotions to reel in customers. Its CEO also warned the company may shut down millions of digital video recorders in a dispute with TiVo Inc.

Dish CEO Charlie Ergen said Monday that he's prepared to shut down the DVRs if a court sides with TiVo in a patent-infringement case. The alternative is to pay TiVo, a pioneer in DVR technology, licensing fees.

"The only thing we can control is to shut down boxes, so we have to, obviously, if we were to lose in the court procedures," he told analysts during a

conference call on the company's earnings. "We're prepared to do that. That obviously will have a material negative effect on our business."

Sanford Bernstein analyst Craig Moffett said that 7.3 million DVRs could be affected and that the cost to replace and shut down the boxes could run close to \$3 billion.

Moffett noted that \$3 billion is significant given Dish's market value of \$10 billion. He also said that Dish could lose millions of customers in weeks if the DVRs were disabled.

TiVo sued Dish in 2004 for infringement of its real-time TV pausing and rewinding features. A three-judge federal appeals panel in Washington sided with TiVo in March. Dish, the nation's second-largest satellite TV provider, has asked the full appeals court to review the case. But Dish has acknowledged that a review is unlikely.

If the appeals court doesn't grant the review, the case would return to a federal court in Texas for enforcement of an injunction on Dish's DVR boxes that infringe TiVo's patent. A federal judge would have to decide whether redesigned software for Dish's DVRs still infringe on TiVo's patents.

Moffett doesn't believe Dish will agree to pay TiVo "modest monthly fees" of \$2 to \$3 per subscriber to settle the case.

Meanwhile, Dish has been working on turning around operations. It has positioned itself as the low-cost option in subscription TV, and its aggressive discounting snagged 237,000 net subscribers in the quarter. That's a solid rebound from a year ago when it lost customers to DirecTV Inc. and phone companies that offer video.

But that turnaround has been costly. Dish's earnings have fallen for four quarters in a row as promotions and higher advertising costs took a big

bite. Its promotions included offering one year of free service in a few cities to customers who switch from DirecTV.

In the quarter, Dish earned \$230.9 million, or 52 cents per share, for the January-March period. That compares with \$312.7 million, or 70 cents per share, a year ago. The cost to acquire subscribers rose by 41 percent to \$412 million.

Revenue rose 5 percent to \$3.06 billion from \$2.91 billion.

Analysts polled by Thomson Reuters had forecast a smaller profit of 50 cents per share on revenue of \$3.05 billion.

Shares of Dish, which is based in the Englewood, Colo., rose by 45 cents, or 2.1 percent, to \$21.75 in afternoon trading. The stock rose as high as 6.2 percent in earlier trading Monday.

Dish Network's latest results show that it is gaining some ground on its rivals.

DirecTV, which has about 18.7 million subscribers to Dish's 14.3 million, added only 100,000 U.S. customers in the first quarter. Cablevision Systems Corp. gained just 900 video subscribers in the period, while Comcast Corp. lost 82,000 and Time Warner Cable Inc. lost 42,000.

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