

Enforcement Administration, Department of Veteran Affairs, the Small Business Administration, Department of Defense, and the Department of the Air Force.

3. In 2018, OFCCP initiated a compliance review for a DISH Network establishment located in Roseland, New Jersey (“the Roseland establishment”), with the issuance of an Office of Management and Budget (“OMB”) approved scheduling letter (“the Scheduling Letter”). The Scheduling Letter required submission of DISH Network’s Affirmative Action Program and support data (“AAPs”) with respect to the Roseland establishment within 30 days from the date of its receipt.
4. After DISH Network failed to comply with the Scheduling Letter, OFCCP issued a Show Cause Notice (“SCN”) to the Roseland establishment the following year pursuant to 41 CFR 60-1.28.
5. Since the issuance of the Scheduling Letter, and despite years of efforts by OFCCP to obtain voluntary compliance, DISH Network’s Roseland establishment has continued to violate its legal obligations while deriving benefits from its status as a federal Contractor.
6. As such, OFCCP brings this action to enforce the contractual obligations imposed by Executive Order 11246, as amended by Executive Orders 11375, 12086, 13279, 13672 and 13665 (“Executive Order 11246” or the “Executive Order”), Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 793 (“Rehabilitation Act”), and the rules and regulations issued pursuant thereto at 41 C.F.R. Chapter 60.

JURISDICTION

7. This Court has jurisdiction of this action under Sections 208 and 209 of Executive Order 11246, 41 C.F.R. §§ 60-1.26, 60-741.65, and 41 C.F.R. Part 60-30.

FACTUAL ALLEGATIONS

The Parties

OFCCP

8. Pursuant to 41 C.F.R. § 60-120(a), the Office of Federal Contract Compliance Programs, United States Department of Labor (“OFCCP”) is authorized to investigate federal contractors’ compliance with the provisions of Executive Order 11246 as amended, and the Rehabilitation Act of 1973

DISH Network

9. DISH Network is a television and wireless service provider company with its headquarters located at 9601 S. Meridian Boulevard, Englewood, Colorado 8011.
10. DISH Network maintains the Roseland establishment at 3 ADP Boulevard, Roseland, New Jersey.

Defendant is a Government Contractor within the Executive Order and Rehabilitation Act

11. DISH Network has 50 or more employees.
12. DISH Network has held at least one contract with the federal government of \$50,000 or more.
13. Defendant held a contract with the Department of Veterans Affairs (Contract VA24916C0065), which began on January 1, 2016, with an estimated completion date of September 30, 2020.
14. Contract VA24916C0065 was valued at \$73,368.07.
15. Defendant held another contract with the Department of Veterans Affairs (Contract VA24717C0047), which began on February 23, 2018, with an estimated completion date of February 29, 2020.

16. Contract VA24717C0047 was valued at \$63,361.08.
17. It is our information and belief that Defendant is currently working as a sub-contractor on a contract between Hughes Network Systems LLC and the Federal Acquisition Service (Contract GS35F0907P), which began on September 29, 2019, with an estimated completion date of September 28, 2024.
18. Contract GS35F0907P is valued at \$138,978.72.
19. As such, Defendant has engaged as a government Contractor within the meaning of the Executive Order, the Rehabilitation Act, and has been subject to the contractual obligations imposed on Government contractors by the Executive Order, the Rehabilitation Act, and the regulations issued pursuant thereto.

Defendant Failed to Comply with the Executive Order and Rehabilitation Act

20. The Executive Order and Rehabilitation Act regulations require, *inter alia*, that within 120 days of entering into a Government contract, every Government contractor holding a contract or subcontract of \$50,000 or more and having 50 or more employees develop, maintain and implement a written Affirmative Action Program (“AAP”) for each of its establishments. 41 C.F.R. §§ 60-2.1 and 60-741.40.
21. The regulations implementing the Executive Order and the Rehabilitation Act, provide that, upon request, Government contractors submit to OFCCP documents required by the Executive Order, the Rehabilitation Act and their regulations. 41 C.F.R. § 60-1.4(a)(6).
22. Specifically, Government contractors must submit their AAPs within 30 days of a request from OFCCP. 41 C.F.R. §§ 60-1.20(e), and 60-741.40(c).
23. At all times pertinent hereto, Defendant has been required to comply with the affirmative action program requirements set forth in 41 C.F.R. 60-1.40 and 41 C.F.R. Part 60-2 (the

“Executive Order regulations”) and 41 C.F.R. Part 60-740, Subpart C (the “Rehabilitation Act regulations”).

24. On May 17, 2018, OFCCP sent a Scheduling Letter to the Roseland establishment. This letter notified Defendant of its selection for a compliance review under Executive Order 11246 and the Rehabilitation Act.
25. In the Scheduling Letter, OFCCP required that, within 30 days from the date of its receipt of the letter, Defendant proffer their AAPs and supporting data, which was itemized in an attachment to the Scheduling Letter (“Itemized Listing”). OFCCP stated in the Scheduling Letter that the AAPs and supporting data were needed to conduct the desk audit phase of its compliance review.
26. Defendant failed to submit the AAPs or supporting data in response to the Scheduling Letter.
27. OFCCP made numerous status inquiries and follow-up requests for Defendant’s AAPs after the issuance of the Scheduling Letter.
28. OFCCP attempted to secure voluntary compliance through means of conciliation and persuasion, yet Defendant has refused to provide any of the documents or information required by the Scheduling Letter.
29. In accordance with 41 C.F.R. §§ 60-1.28, and 60-741.64, OFCCP issued a Show Cause Notice to the Defendant on or about October 23, 2019, to the Roseland establishment at 3 ADP Boulevard, Roseland, New Jersey 07068. See EXHIBIT A.
30. In the Show Cause Notice, OFCCP again required Defendant to proffer their AAPs and supporting data within 30 days from the date of its receipt of the letter.

31. On August 31, 2020, OFCCP sent DISH Network correspondence to notify them of the agency's decision to hold the reviews in abeyance, thus declining to pursue enforcement for 24 months, based on information that DISH Network had either terminated or declined to continue work on its federal contracts. See EXHIBIT B.
32. In this same correspondence, OFCCP stated that it would take further action if DISH Network reengaged as a covered federal contractor within 24 months of August 31, 2020.
33. By August 31, 2022, DISH Network had reengaged as a covered federal subcontractor subject to the Executive Order, the Rehabilitation Act, and the regulations issued pursuant thereto.
34. DISH Network reengaged as subcontractor on a federal contract held by Hughes Network Systems LLC ("Hughes Network").
35. The Hughes Network contract covers the period between September 29, 2019, to September 28, 2024.
36. On August 31, 2022, OFCCP notified DISH Network that the agency would keep the pending reviews open and evaluate DISH Network's status as covered contractor. See EXHIBIT C.
37. On December 22, 2022, OFCCP reissued the 2018 OMB-approved Scheduling Letter seeking the outstanding AAP submissions and support data and requested a response by the end of January 2023. See EXHIBIT A.
38. As of the date of this complaint, Defendant continues to deny access to the required information.

39. The acts and practices described above, violate the Executive Order, the Rehabilitation Act, and the regulations pursuant thereto, and violate the Defendant's contractual obligations to the federal Government.

40. All procedural requirements prior to the filing of this Complaint have been met. OFCCP attempted unsuccessfully to secure voluntary compliance through means of conciliation and persuasion, as set forth in paragraphs 24-34, above.

WHEREFORE, Plaintiff OFCCP requests a decision and order pursuant to 41 C.F.R.

§§ 60-30.35 and 60-30.37:

- a) Permanently enjoining Defendant DISH Network, its successors, officers, agents, servants, employees, divisions, subsidiaries and all persons in active concert or participation with them from failing and refusing to comply with the requirements of the Executive Order, the Rehabilitation Act, and the regulations issued pursuant thereto; and
- b) Directing Defendant to provide to OFCCP all documents and information requested in the Scheduling Letter and Itemized Listing for the Roseland establishment.
- c) In the event Defendant fails to comply with the relief as ordered, pursuant to E.O. 11246, Section 209(a)(5), as implemented through 41 C.F.R. § 60-1.27, and 41 C.F.R. § 60-741.66, Defendant will be subject to the following: (1) An Order canceling all of its Government contracts and subcontracts and those of its officers, agents, successors, divisions, subsidiaries and those persons in active concert or participation with them, declaring said persons and entities ineligible for the extension or modification of any such existing Government contract or subcontract; and (2) an Order debaring Defendant and its officers, agents, servants, successors, divisions and subsidiaries and those persons in active concert or participation with them from entering into future Government contracts and

subcontracts until such time as Defendant satisfies the Director for Federal Contract Compliance Programs that it has undertaken efforts to remedy its prior noncompliance and is currently in compliance with the provisions of the Executive Order and the Rehabilitation Act, and the regulations issued pursuant thereto.

d) Plaintiff further prays for such other relief as justice may require.

Respectfully submitted,

Mailing Address:

UNITED STATES DEPARTMENT OF
LABOR

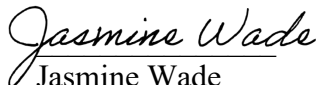
U.S. Department of Labor
Office of the Regional Solicitor
201 Varick Street, Room 983
New York, NY 10014

Seema Nanda
Solicitor of Labor


Jeffery S. Rogoff
Regional Solicitor

(646) 264-3682 (voice)
(646) 264-3660 (fax)

wade.jasmine.n@dol.gov


Jasmine Wade
Trial Attorney

Date: August 21, 2023


Andrew Karonis
Senior Trial Attorney

Attorneys for Plaintiff

EXHIBIT A

U.S. Department of Labor

Office of Federal Contract Compliance Programs
New Jersey District Office
200 Sheffield Street, Room 102
Mountainside, NJ 07092



VIA CERTIFIED MAIL & E-MAIL
7018 2290 0000 9194 2145 2145
RETURN RECEIPT REQUESTED

October 23, 2019

W. Erick Carlson
President and CEO
Dish Network
3 ADP Boulevard
Roseland, NJ 07068

Dear Mr. Carlson:

The U.S. Department of Labor, Office of Federal Contract Compliance Programs (OFCCP), by letter dated May 17, 2018, requested that you submit to this office within 30 calendar days a copy of your establishment's Affirmative Action Programs (AAPs) and supporting documentation prepared in accordance with our regulations implementing:

- Executive Order 11246, as amended (41 CFR Part 60-2) (Executive Order)
- Section 503 of the Rehabilitation Act of 1973, as amended (41 CFR Part 60-741) (Section 503)
- The Vietnam Era Veteran's Readjustment Assistance Act of 1974, as amended (41 CFR Part 60-300) (Section 4212).

In our letter dated August 29, 2019, OFCCP addressed the jurisdiction issues that were raised by DISH Network (DISH). OFCCP's research found that DISH is required to submit their Executive Order and Section 503 AAPs along with applicable support data. We have yet to receive your Executive Order or Section 503 AAPs. Due to your organization's failure to submit the requested AAPs required under Executive Order, Section 503, we are issuing this Notice to Show Cause. Within 30 calendar days of receiving this Notice, you must either submit the AAPs and support data specified in our original request or demonstrate, in writing, why enforcement proceedings should not be initiated pursuant to Sections 208 and 209 of the Executive Order, as implemented by 41 CFR 60-1.26 and 41 CFR 60-741.65 (Section 503). A copy of our original request and our August 29, 2019 letter are enclosed.

The submission of the AAPs and support data does not preclude the identification of further violations, based either upon a finding during the desk audit or subsequent onsite review, that your AAPs do not meet the requirements of 41 CFR Part 60-2 or Part 60-741 or that your establishment is not in compliance with one or more of the requirements of the Executive Order or Section 503 and their implementing regulations.

Notice to Show Cause
Dish Network LLC, Roseland, NJ
(R00207603)

Should you have any questions or wish to discuss a resolution to the issues raised herein, please contact Compliance Officer Wileta Sweet or her supervisor, Assistant District Director Toxi Roane, at 908-317-6969 to schedule a meeting or telephone conference.

Sincerely,



Diana Sen
Regional Director
OFCCP - NE Region

Enclosures: Scheduling Letter
August 29, 2019 Letter

cc: Scott Pechaitis, Esq., Jackson Lewis P.C. via email at Scott.Pechaitis@jacksonlewis.com

EXHIBIT B



08/31/2020

Mr. Scott Pechaitis
 Jackson Lewis P.C.
 950 17th Street, Suite 2600
 Denver, CO 80202

RE: Compliance Evaluations of DISH Network LLC

OFCCP CASE	OFCCP REGION	Address	City	State	Zip
		4811 THISTLE LANDING DRIVE	PHOENIX	AZ	85044
R00207056	Pacific	3 ADP BOULEVARD	ROSELAND	NJ	07068
R00207603	Northeast	3315 MILL MEADOW DR	HILLIARD	OH	43026
R00208195	Midwest	294 MAJESTIC PLACE	BLUEFIELD	WV	24701
R00208830	Mid-Atlantic	1285 JOE BATTLE DRIVE	EL PASO	TX	79936
R00208851	Southwest	5701 S SANTA FE DRIVE	LITTLETON	CO	80120
R00208887	Southwest	400 TECHNOLOGY DRIVE	CHRISTIANSBRG	VA	24073
R00208958	Mid-Atlantic	1285A JOE BATTLE DRIVE	EL PASO	TX	79936
R00209891	Southwest	2809 E GRIMES AVE	HARLINGEN	TX	78550
R00209893	Southwest	1950 E 71ST STREET	TULSA	OK	74136
R00209981	Southwest	215 SATELLITE BLVD	SUWANEE	GA	30024
R00300473	Southeast				
R00302303 (CMCE)	Southwest	9601 S MERIDIAN BLVD	ENGLEWOOD	CO	80112

Dear Mr. Pechaitis:

The Department of Labor’s Office of Federal Contractor Compliance Programs (OFCCP) scheduled the above-listed DISH Network establishments for compliance reviews. DISH Network refused to comply with OFCCP’s scheduling letters. Accordingly, OFCCP issued Notices to Show Cause (SCN) which listed specific violations of Executive Order 11246 (EO 11246), Section 503 of the Rehabilitation Act of 1973 (Section 503), and the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA).¹ DISH Network sent identical responses to these SCNs, disputing OFCCP’s jurisdiction over these establishments. OFCCP evaluated DISH Network’s response, finding it unpersuasive. After receiving DISH Network’s response to OFCCP’s SCNs, OFCCP sent DISH Network its detailed legal position, reasserting that each scheduled DISH Network establishment was covered by

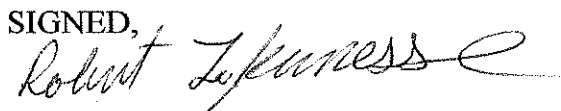
¹ On July 5, 2018, OFCCP issued a Show Cause Notice to DISH Phoenix, Arizona; On November 9, 2018, OFCCP issued a Show Cause Notice to DISH Hilliard, Ohio; On January 24, 2020, OFCCP issued a Show Cause Notice to Dish Network LLC-El Paso, TX (Building A), Dish Network LLC - Littleton, CO, Dish Network LLC -Harlingen, TX, Dish Network LLC -El Paso, TX (Building B), Dish Network LLC-Tulsa, OK, Dish Network LLC - Englewood, CO; On January 14, 2020 OFCCP issued a Show Cause Notice to DISH Christiansburg, VA; On January 14, 2020 OFCCP issued a Show Cause Notice to DISH Bluefield, WV.

OFCCP's jurisdiction and each DISH Network establishment was obligated to develop and maintain affirmative action programs (AAPs) under each of OFCCP's three laws. See 41 C.F.R. § 60-1.40(a)(1)(i); 41 C.F.R. § 60-2.1(b)(1)(i); 41 C.F.R. § 60-741.40(b)(1).²

In 2020, OFCCP learned that DISH Network had either terminated or declined to continue work on its Federal contracts. Because DISH Network is not currently a covered Federal contractor, OFCCP is declining at this time to pursue enforcement actions against these scheduled establishments for violations of all three of OFCCP's laws – EO 11246, Section 503, and VEVRAA. OFCCP will not, however, close these compliance evaluations. Rather, OFCCP will hold these compliance reviews open and in abeyance. DISH Network is hereby on notice that OFCCP's position has not changed: at the time the above-listed establishments were scheduled, DISH Network was a covered Federal contractor, subject to all of OFCCP's requirements – including the obligation that each establishment develop and maintain AAP requirements. DISH Network's refusal to comply with OFCCP's scheduling letters constitutes violations of OFCCP's three laws.

Should DISH Network decide to re-engage with the Federal government as a covered Federal contractor within twenty-four (24) months of the signing of this letter, OFCCP will evaluate the status of these current compliance reviews and take appropriate action to enforce the requirements of OFCCP's laws. These reviews will remain pending in abeyance for twenty-four (24) months and then be subject to administrative closure at the discretion of the agency if Dish Network does not become a covered federal contractor again during that time.

SIGNED,



Robert M. LaJeunesse, PhD.
Director of Enforcement

Copied:

Craig Leen- OFCCP Director

Patricia Davidson- OFCCP Deputy Director

Diana Sen- Northeast Regional Director

Jane Suhr- Pacific Regional Director

Melissa Speer- Southwest and Rocky Mountain Regional Director

Carmon Navarro- Midwest Regional Director

Michelle Hodge- Mid-Atlantic Regional Director

Sam Maiden- Southeast Regional Director

²On October 2, 2018, AAD, Veronica Minnefield from the OFCCP Regional Office in Columbus, OH provided DISH attorney, Scott Pechaitis, a written response explaining why the Agency had jurisdiction over DISH Hilliard, Ohio. On June 7, 2019, Michelle Hodge from the OFCCP Mid-Atlantic Regional Office in Philadelphia, PA provided DISH attorney, Scott Pechaitis, a written response explaining why the Agency had jurisdiction over DISH Bluefield, WV.

EXHIBIT C



08/31/2022

Mr. Scott Pechaitis
 Jackson Lewis P.C.
 950 17th Street, Suite 2600
 Denver, CO 80202

RE: Compliance Evaluations of DISH Network LLC

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R00300473	Southeast	215 SATELLITE BLVD	SUWANEE	GA	30024
R00302303 (CMCE)	Southwest	9601 S MERIDIAN BLVD	ENGLEWOOD	CO	80112

Dear Mr. Pechaitis:

As provided in prior correspondence, dated August 31, 2020, the Department of Labor’s Office of Federal Contractor Compliance Programs (OFCCP) scheduled the above-listed DISH Network establishments for compliance reviews. DISH Network refused to comply with OFCCP’s scheduling letters. Accordingly, OFCCP issued Notices to Show Cause (SCN) that listed specific violations of Executive Order 11246 (EO 11246), Section 503 of the Rehabilitation Act of 1973 (Section 503), and the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA).¹ DISH Network sent identical responses to these SCNs, disputing OFCCP’s jurisdiction over these establishments. OFCCP evaluated DISH Network’s response, finding it unpersuasive. After receiving DISH Network’s response to OFCCP’s SCNs, OFCCP sent DISH Network its detailed legal position, reasserting that

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each scheduled DISH Network establishment was covered by OFCCP's jurisdiction and that each DISH Network establishment was obligated to develop and maintain affirmative action programs (AAPs) under each of OFCCP's three legal authorities. See 41 C.F.R. § 60-1.40(a)(1)(i); 41 C.F.R. § 60-2.1(b)(1)(i); 41 C.F.R. § 60-741.40(b)(1).²

In 2020, OFCCP learned that DISH Network had either terminated or declined to continue work on its Federal contracts. Because at that time DISH Network was no longer a covered Federal contractor, OFCCP declined to pursue enforcement actions against these scheduled establishments for violations of all three of OFCCP's legal authorities – EO 11246, Section 503, and VEVRAA. However, as set forth in OFCCP's August 31, 2020 letter, OFCCP did not close these compliance evaluations. Rather, OFCCP held these compliance reviews open and in abeyance. DISH Network was put on notice that OFCCP's position had not changed: at the time that OFCCP scheduled the above-listed establishments, DISH Network was a covered Federal contractor, subject to all of OFCCP's requirements – including the obligation that each establishment develop and maintain AAP requirements. DISH Network's refusal to comply with OFCCP's scheduling letters constitutes violations of OFCCP's three legal authorities.

In the August 31, 2020 letter, OFCCP explained that if DISH Network decided to re-engage with the Federal government as a covered Federal contractor within 24 months of the signing of this letter, OFCCP would evaluate the status of these current compliance reviews and take appropriate action to enforce the requirements of OFCCP's laws.

Based on its recent review of Federal contract awards and transactions, OFCCP has reason to believe that DISH Network may be working as a sub-contractor on covered Federal contracts held by Hughes Network Systems LLC that exceed \$50,000. In light of this information, OFCCP is notifying DISH Network that OFCCP will keep these pending reviews open so that the agency may thoroughly evaluate DISH Network's status as a sub-contractor on covered Federal contracts.

SIGNED,



Robert M. LaJeunesse, PhD.
Director of Enforcement

Copied:

W. Erik Carlson, CEO- Dish Network, 9601 South Meridian Boulevard, Englewood, Colorado 80112

Paul Parisi, Legal Director & Senior Counsel, Paul.parisi@dish.com

²On October 2, 2018, AAD, Veronica Minnefield from the OFCCP Regional Office in Columbus, OH provided DISH attorney, Scott Pechaitis, a written response explaining why the Agency had jurisdiction over DISH Hilliard, Ohio. On June 7, 2019, Michelle Hodge from the OFCCP Mid-Atlantic Regional Office in Philadelphia, PA provided DISH attorney, Scott Pechaitis, a written response explaining why the Agency had jurisdiction over DISH Bluefield, WV.

David Scott, Executive Vice President, and Chief Human Resources Officer,
Dave.scott@dish.com

Jenny R. Yang- OFCCP Director

Michelle Hodge- OFCCP Deputy Director

Diana Sen- Northeast Regional Director

Jane Suhr- Pacific Regional Director

Melissa Speer- Southwest and Rocky Mountain Regional Director

Carmen Navarro- Midwest Regional Director

Sam Maiden - Mid-Atlantic Regional Director

Aida Collins Southeast Regional Director