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E-FILED 11/12/08

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ECHOSTAR SATELLITE LLC, et al.

NO. C 07-6124 JW (RS)

Plaintiffs,

**ORDER DENYING MOTION FOR
CERTIFICATION AND FOR
RECONSIDERATION**

v.

FREETECH, INC., et al.,

Defendants.

On September 29, 2008, the Court granted Freetech's motion for a protective order. Echostar now moves for certification for appeal to the Ninth Circuit under 28 U.S.C. § 1292(B), and in the alternative, for reconsideration of that order. At a hearing on November 12, 2008, on a related motion to compel, the Court stated that it would deny Echostar's motion for certification and reconsideration, and vacate the hearing date set for December 10, 2008.

Echostar's motion is procedurally deficient. The motion to certify should be filed before the presiding district judge. This Court does not have the authority to certify a question for Circuit Court review where the Court's jurisdiction is to act as the referral judge only. The motion to reconsider was not filed in accordance with Civil L.R. 7-9 as the Rule requires Echostar to seek leave to file such a motion. In any event, had Echostar sought leave to file the motion, that motion would have been denied as it fails to identify any one of the enumerated bases under the Rule whereby such a motion could be granted. The motion, therefore, is denied.

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IT IS SO ORDERED.

Dated: November 12, 2008



RICHARD SEEBORG
United States Magistrate Judge

1 **THIS IS TO CERTIFY THAT NOTICE OF THIS ORDER HAS BEEN GIVEN TO:**

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16 Counsel are responsible for distributing copies of this document to co-counsel who have not
17 registered for e-filing under the Court's CM/ECF program.

18 **Dated: 11/12/08**

Richard W. Wieking, Clerk

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By: Chambers

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