

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

\_\_\_\_\_) )  
) )  
UNITED STATES OF AMERICA, ) )  
) )  
Plaintiff, ) Civil No.: 1:98CV01193 (JLG)  
) )  
v. ) )  
) )  
PRIMESTAR, INC., et al. ) )  
) )  
Defendants. ) )  
\_\_\_\_\_)

**REPLY MEMORANDUM IN SUPPORT OF  
PLAINTIFF’S MOTION FOR AN EXPEDITED  
RULE 16 SCHEDULING CONFERENCE AND ORDER**

Plaintiff United States of America (“the Government”) hereby submits this reply memorandum in further support of its motion for an early scheduling conference and Order, pursuant to Fed. R. Civ. P. 16, setting an expedited schedule for discovery, pretrial proceedings, and trial of this case.

Defendants’ Memorandum in Opposition to Plaintiff’s Motion (“Defendants’ Opp.”) advances several arguments which purport to justify defendants’ position that an expedited scheduling conference and trial of this matter is unreasonable. The basis for plaintiff’s request for an expedited trial is clear: until there is a final resolution of plaintiff’s claims, the scarce and valuable DBS assets at issue will remain idle, and competition in multichannel video program distribution markets will be stifled. Moreover, American consumers will continue to be denied the benefits of competition, including lower prices, better service, and enhanced options.

Accordingly, this Court should reject defendants' arguments and impose an expedited schedule for trial of this matter at its earliest convenience.

Defendants' arguments about the timing of plaintiff's motion under Local Rule 206 (Defendants' Opp. at 2-4) miss the point. The exact timing of the scheduling conference is not the crux of plaintiff's concern here -- establishing a workable discovery schedule leading to the earliest possible trial date is. The Court has the authority under Rule 16 to order the parties to appear for a scheduling conference whenever the Court deems appropriate. Given the importance of this case, plaintiff merely seeks to initiate this dialogue between the Court and the parties as soon as possible. Defendants' other principal contention is that plaintiff's proposed schedule is "unrealistic and unfair." (Defendants' Opp. at 4). As discussed in plaintiff's opening memorandum, plaintiff's proposed schedule, which allows for a full five months between the filing of the complaint and the beginning of trial, is entirely consistent with the schedules typically imposed by District Courts in the District of Columbia in merger cases comparable to the one at bar. Defendants disingenuously suggest that the proposed schedule is unfair because plaintiff benefitted from a headstart in this litigation. To the contrary, defendants have had access to virtually all of the probative information, documents and witnesses relevant to this case from day one of the Justice Department investigation. The third-party documents which defendants use as an excuse for delay amount to less than 1% of the total documents in the Department's possession -- the other 99% came directly from defendants themselves.<sup>1</sup>

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<sup>1</sup> Likewise, defendants' efforts to criticize particular aspects of the proposed schedule are misguided. For example, defendants argue that plaintiff's schedule calls for third party depositions to begin one day after defendants receive their initial discovery from plaintiff. (Defendants' Opp. at 5). In point of fact, plaintiff's proposed schedule simply sets forth the beginning and end of what is at minimum almost a two month period for third party depositions (June 17 - Aug. 14), with further allowance for additional depositions on an appropriate "need shown" basis. This provides more than enough time for defendants

In reality, it is the facts uncovered in this investigation and the ongoing competitive harms flowing from them that require an expeditious resolution of this matter. Plaintiff is and has been committed to bringing this case to a speedy and just resolution as promptly as possible. The fact that defendants are unwilling to stand behind their expressed desire to “expeditiously” resolve this matter highlights the issues presently before the Court. Every day that passes without steps being taken to deploy the contested assets in a fully competitive fashion harms millions of American consumers.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES:

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/s/

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DATED: June 12, 1998

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to conduct whatever third party depositions they deem necessary.

## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing REPLY MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR AN EXPEDITED RULE 16 SCHEDULING CONFERENCE AND ORDER were served by hand and/or first-class U.S. mail, postage prepaid, this 12th day of June 1998 upon each of the parties listed below:

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