

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, et. al.)	
)	
Plaintiffs,)	Civil No.: 1:02CV02138(ESH)
)	
v.)	
)	Filed: October 31, 2002
ECHOSTAR COMMUNICATIONS)	
CORP., HUGHES ELECTRONICS)	
CORP., GENERAL MOTORS CORP.,)	
and DIRECTV ENTERPRISES INC.)	
)	
Defendants.)	

SCHEDULING ORDER

In accordance with Fed. R. Civ. P. 16 and L. Civ. R. 16.4(b), the Court hereby ORDERS as follows:

1. Case Assignment. Due to the number of parties and the complexity of the legal and factual issues presented, this case is assigned to the Complex Track.
2. Initial Disclosure. The parties shall not be required to provide initial disclosure pursuant to Rule 26(f).
3. Discovery Period. The period for fact discovery shall begin upon the entry of this Order and shall be completed by March 3, 2003. All written discovery shall be served in a time frame that will permit timely responses to be served within the discovery period.
4. Outstanding Privilege Issues. The Court will designate a magistrate judge to review and resolve all outstanding privilege issues arising from the defendants' production of documents during plaintiffs' investigation of this matter. Should the resolution of

these issues impact the plaintiffs' ability to complete deposition discovery, the Court will entertain a motion to extend the deadlines contained in this Order.

5. Depositions. Absent good cause shown, depositions shall be limited to no more than 20 per side (excluding experts), plus those depositions of the parties' designated witnesses as set forth in paragraph 8 of this Order. Should the defendants raise a proposed remedy or fix for this transaction as one of its defenses, plaintiffs shall have the right to take additional depositions relating to this issue. If the parties are unable to agree to the number of depositions to be taken on this issue, plaintiff may petition the Court for a modification of this Order. For the purpose of this Order, a deposition of a party or third party taken pursuant to Rule

30(b)(6) of the Federal Rules of Civil Procedure shall count as one deposition. Depositions taken

for the sole purpose of establishing the authenticity and admissibility of documents produced by the parties and the completion of CID depositions left open during the investigation of the transaction that is the subject of this matter shall not count against the 20-deposition limit.

Depositions of party deponents may be up to two days in length. Depositions of third party witnesses shall be no more than one day in length. Depositions of expert witnesses shall be no more than two days in length. The parties and affected third parties may stipulate to additional time for individual depositions. Absent agreement of the parties, the length of depositions provided for in this Scheduling Order may only be modified by order of this Court for good cause shown.

The depositions of employees and former employees of the parties taken by the plaintiffs and defended by counsel for that defendant during plaintiffs' investigation of the transaction underlying this action may be used for all purposes for which party depositions may be used

under Rule 32 of the Federal Rules of Civil Procedure.

6. Written Discovery. Interrogatories shall be limited to ten per side including sub-parts. There will not be a limit on the number of requests for the production of documents or requests for admissions that may be served by the parties. Objections to any written discovery shall be served within 20 days of service of the written discovery request with complete responses (subject to any objections that have not been ruled upon) served within 30 days of service.

7. Confidential Information. Discovery and production of confidential information shall be governed by the attached Protective Order, a copy of which shall be included with any discovery requests, notices or subpoenas directed to third parties.

The Protective Order shall be provided by the United States to all third parties that produced documents during the United States' investigation of the transaction at issue in this matter. The third parties shall have 20 days after receipt of a copy of the Protective Order in which to review the Protective Order, designate previously produced materials as confidential under the Protective Order, and to seek additional relief from the Court if they determine that the Protective Order does not adequately protect their confidential materials. No third party materials shall be produced to the defendants by the United States until the passage of this 20-day period. If a third party seeks additional relief from the Court, materials for which additional protection has been sought will not be produced until the Court has ruled.

8. Witness Lists. No later than January 15, 2003, the parties will exchange preliminary lists of witnesses for trial. The parties shall exchange final witness lists no later than March 3, 2003. Notwithstanding the limitation on the number of depositions that a party may take set forth above, the parties shall have the right to subpoena documents from or

relating to and to depose any witness on the opposing party's preliminary and final witness lists. Notwithstanding the deadlines set forth in this Order, the parties shall have the right to subpoena documents from or relating to and to depose any witness appearing for the first time on the opposing party's final witness list.

9. Expert Witnesses. The parties shall designate the experts that they will call in their respective case in chief and case in defense no later than February 10, 2003. Rebuttal experts shall be designated by the parties' no later than February 20, 2003. The parties shall exchange reports conforming to the requirements of Rule 26(a)(2), Fed. R. Civ. P. Plaintiffs' report will be served on the defendants no later than March 3, 2003. Defendants' reports shall address all issues that will be addressed by defendants' experts at trial (including any claims that efficiencies would result from the proposed transaction and any claims that defendants have remedied the competitive harm) and will be served on the plaintiffs no later than March 15, 2003. Rebuttal reports prepared by each party's expert(s) shall be exchanged by March 30, 2003. Plaintiffs' rebuttal report shall address plaintiffs' responses to defendants' claim that certain efficiencies or synergies would arise from the proposed merger and defendants' claim that it has remedied any competitive harm.

Depositions of the parties' experts shall be conducted after the exchange of the above-referenced reports. Depositions of each party's experts shall be completed by May 1, 2003.

10. Deposition Designations. The parties shall exchange (page and line number) designations of deposition testimony to be offered at trial no later than April 15, 2003. Each party must provide counter designations of deposition testimony no later than April 30, 2003. Objections to any deposition designations shall be exchanged no later than May 7, 2003.

11. Exhibit Lists. No later than April 28, 2003, the parties will exchange lists of

exhibits that the parties anticipate introducing at trial as well as a marked set of these exhibits. The parties will exchange objections to the exhibits to be offered by the other party no later than May 7, 2003.

12. Stipulations of Fact. The parties shall exchange proposed stipulations of fact no later than May 1, 2003.

13. Pre-Trial Submission. On May 23, 2003, the parties shall file Pretrial Statements consistent with the requirements of Local Civil Rule 16.5.

14. Pretrial Conference. The Court will set dates and times for a Final Pretrial Conference and for Trial to begin June 2, 2003 or as soon thereafter as possible in a subsequent order.

15. Motions in Limine. Motions in limine shall be filed by the parties 15 days before the Final Pretrial Conference. Oppositions to any motions in limine shall be filed five days before the Final Pretrial Conference. Memoranda supporting the motions in limine shall be no more than 10 pages in length. Oppositions to any such motions shall be no more than 10 pages in length.

IT IS SO ORDERED.

DATED: November ____, 2002

ELLEN SEGAL HUVELLE
UNITED STATES DISTRICT JUDGE