

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

**PARTIES' JOINT RULE 206(d) REPORT
AND PROPOSED SCHEDULING ORDERS**

Plaintiff United States of America and defendants PRIMESTAR, Inc., Tele-Communications, Inc., TCI Satellite Entertainment, Inc., Time Warner Entertainment Company, L.P., MediaOne Group, Inc., Comcast Corporation, Cox Communications, Inc., GE American Communications, Inc., Newhouse Broadcasting Corporation, The News Corporation Limited, MCI Communications Corporation and Keith Rupert Murdoch respectfully submit this joint Rule 206(d) report describing the results of a meeting the parties held on June 4, 1998. Because the parties were unable to reach agreement on proposed schedules for discovery and trial of this matter, both plaintiff and defendants are submitting proposed scheduling orders for the Court's consideration.

1. Case Tracking Category.

The parties agree that this case should be placed on the Complex Track pursuant to Local Rule 206.1 and that the initial disclosure requirements of Fed. R. Civ. P. 26 shall not apply.

2. Date for Pleadings Amendments.

Plaintiff's position: All parties should be joined, and all pleadings amended, by July 1, 1998, or such other time as the Court may allow.

Defendants' position: All parties should be joined, and all pleadings amended, by July 1, 1998.

3. Assignment to Magistrate Judge.

The parties agree that this case should not be assigned to a magistrate judge for all purposes.

4. Settlement.

Defendants have presented the elements of a potential restructuring of PRIMESTAR, Inc., and plaintiff has provided its preliminary reaction to the potential restructuring. Defendants continue to explore ways to resolve plaintiff's concerns, but it remains unclear whether there is a realistic possibility of settling the case.

5. Alternative Dispute Resolution (ADR).

The parties agree that the case would not benefit from alternative dispute resolution procedures.

6. Dispositive Motions.

Plaintiff's position: The case cannot be resolved by dispositive motions.

Defendants' position: The case can be resolved by dispositive motions. Defendant GE American Communications, Inc. filed a Rule 12(b)(6) motion on June 17, 1998. At the conclusion of discovery, however, all other defendants intend to file motions for summary judgment. Defendants propose that dispositive motions should be submitted no later than March 15, 1999.

7. Discovery.

The parties have reached some agreement as to discovery of third party materials. Defendants have served on plaintiff a Rule 34 request for production of documents received or developed by plaintiff during its Hart-Scott-Rodino Act investigation of the proposed transaction. Plaintiff has filed a response to the request and said that it will comply, at least as to certain requested documents, as soon as the Court enters a protective order to govern the treatment of confidential and proprietary discovery materials. The parties have negotiated the terms of such an order, and plaintiff submitted that order for the Court's approval on June 5, 1998. Plaintiff has notified the third parties from whom plaintiff received documents and information of the provisions of the agreed upon order. Plaintiff requests that the Court's scheduling order provide for a date certain by which third parties will be required to object to the production of CID documents and seek any additional protections to the stipulated protective order they deem necessary.

In general, however, the parties disagree as to the appropriate schedule for discovery and trial of this case. Plaintiff has proposed a discovery schedule leading to a trial date in November 1998, while defendants have proposed a discovery schedule leading to a trial date in May 1999. (Plaintiff's and defendants' proposed scheduling orders are attached as Exhibits 1 and 2, respectively.) On May 29, 1998, plaintiff filed its "Motion for an Expedited Rule 16 Scheduling Conference" seeking an expedited scheduling conference and trial date. Defendants have opposed that motion, advocating instead compliance with the provisions of this Court's Local Rule 206.1(b).

Plaintiff's position is that Rule 206.1(b) specifies that a scheduling conference will be held after the filing of the joint scheduling report unless the Court deems it unnecessary, but does not otherwise

specify the timing of the scheduling conference. Plaintiff's position is that an immediate conference should be held to allow for an orderly and efficient approach to the scheduling of this matter.

Defendants further stated that they need an opportunity to review the documents received and generated by plaintiff during plaintiff's Hart-Scott-Rodino Act investigation of the proposed transaction in order to be able to determine what depositions may be required in this case. Plaintiff does not believe that the establishment of a discovery schedule should be deferred until after the defendants' review of these documents.

The parties discussed, but reached no agreement about, the potential impact on the discovery schedule in this case from third-party discovery and other activities in a separate private breach of contract action¹ relating to an earlier transaction involving some of the assets at issue in the proposed transaction at issue in this case. Defendants believe that activities in the EchoStar private litigation are likely to overlap with and distract from efforts in this case and will require additional time to carry out the discovery necessary in this case. Plaintiff believes that the time allotted for discovery in plaintiff's proposed schedule is more than adequate for the completion of third-party discovery, and that defendants have not offered any reason why counsel cannot adequately address any potential conflicts.

Plaintiff's and defendants' proposals as to the remaining discovery and pretrial issues are as follows:

Plaintiff's Proposals:

Discovery and Trial Schedule

¹See EchoStar Communications Corp. v. The News Corporation, Ltd., Civ. Action No. 97-2-960 (D. Colo.).

- a. June 18 -- parties submit joint Rule 206 report to Court.
- b. June 24 - July 1 -- Court holds scheduling conference; entry of stipulated protective order; entry of scheduling order.
- c. June 30 -- Date for third parties to object to production of CID documents.
- d. September 1-- Fact discovery cutoff, except that on need shown parties may take deposition of any witness not previously taken until September 15, 1998.
- e. September 8 -- Plaintiff's expert report(s) (other than efficiencies) and accompanying documents due; defendants' expert report(s) on efficiencies and accompanying documents due.
- f. September 14 -- Plaintiff's expert report(s) on efficiencies and accompanying documents due; defendants' expert report(s) (other than efficiencies) and accompanying documents due.
- g. September 15 -- Deadline for filing dispositive motions.
- h. September 21 - October 2 -- Time period for parties to conduct depositions of experts.
- i. October 16 -- Pretrial Conference.
- j. November 2 -- Trial begins.

Discovery Provisions

- a. Interrogatory Limits -- each side collectively shall be limited to a total of 50 interrogatories, including subparts.
- b. Deposition Limits -- plaintiff shall be permitted to conduct 15 additional depositions; defendants collectively shall be permitted to conduct 30 depositions.

- c. Timing of Discovery Responses -- responses to interrogatories, requests for documents, and requests for admissions shall be served no later than 20 days after receipt.

Defendants' Proposals:

- a. Third parties must object to production of CID documents by June 12, 1998.
- b. The stipulated protective order shall be entered by June 19, 1998.
- c. Plaintiff shall provide third-party documents to defendants no later than June 22, 1998.
- d. The Rule 16 Scheduling Conference shall be held and the scheduling order entered between July 1 and July 10, 1998.
- e. Plaintiff's and defendants' initial interrogatories and requests for party documents shall be served on or before July 15, 1998. The parties shall respond to the interrogatories by August 21, 1998. Responses to the requests for party documents are due by September 11, 1998.
- f. The number of interrogatories shall be governed by Local Rule 207(b).
- g. The period for conducting fact depositions shall be 5 months, beginning August 1, 1998 and ending December 31, 1998.
- h. Plaintiff shall be permitted to conduct 15 additional depositions. Defendants collectively shall be permitted to conduct 50 depositions.
- i. The parties shall serve requests for admissions by October 2, 1998. Responses to the requests for admissions are due by October 23, 1998.

j. Any additional interrogatories and document requests shall be served by November 13, 1998. Responses to any additional interrogatories and document requests are due by December 4, 1998. Discovery motions shall be filed by December 14, 1998.

k. All parties shall exchange First Expert Reports by January 4, 1999. Second Expert Reports shall be exchanged by January 25, 1999. Expert depositions shall begin on February 1, 1999 and shall be completed by February 27, 1999.

8. Bifurcation.

The parties agree that this case should not bifurcated.

9. Pretrial Conference and Other Pretrial Matters.

Plaintiff's position: The pretrial conference should be held October 16, 1998.

Defendants' position: The pretrial conference should be held, if necessary, following the Court's ruling on dispositive motions, which must be filed by March 15, 1999. The dates for other pretrial filings should be determined at the pretrial conference.

10. Trial Date.

Plaintiff's position: This case should proceed to trial in early November 1998.

Defendant's position: This case should proceed to trial in May 1999.

The parties agreed that any further discussion of particular aspects of their proposed schedules was unnecessary given the fundamental disagreement on the proposed trial date. Accordingly, the parties adjourned the meeting.

* * *

Plaintiff believes that the Court should now hold a Scheduling Conference pursuant to Local Rule 206.1(b) to consider the parties' proposed schedules. Defendants recognize the requirement for such a conference but believe that it would not be efficient and productive to hold it before defendants have received and reviewed the documents received and generated by plaintiff during plaintiff's Hart-Scott-Rodino Act investigation of the proposed transaction, which will enable defendants to estimate with greater confidence the likely scope of third-party discovery they will need in this case. Defendants would be prepared to participate in a Scheduling Conference ten days after receipt of the requested materials.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES:

/s/
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DATED: June 18, 1998

EXHIBIT 1

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.)	
)	

**PLAINTIFF'S PROPOSED SCHEDULING
ORDER PURSUANT TO LOCAL RULE 206**

The Court, having considered the submissions of the parties and the requirements of Rule 206 of the Rules of the United States District Court for the District of Columbia, hereby issues the following Order to govern all scheduling and discovery matters in this case:

1. Case Tracking Category.

The case shall be placed on the Complex track. There shall be modifications to the presumptive limits on interrogatories and depositions as stated below.

2. Date For Pleadings Amendments.

All parties shall be joined, and all pleadings amended, by July 1, 1998, or such other time as the Court may allow.

3. Assignment to Magistrate.

This case shall not be assigned to a magistrate for all purposes.

4. Alternative Dispute Resolution (ADR).

This case shall not be assigned to ADR.

5. Dispositive Motions.

Dispositive motions shall be filed no later than September 15, 1998.

6. Discovery.

Discovery shall proceed as follows:

- d. June 17 -- defendants answer Complaint; parties submit joint Rule 206 report to Court.
- e. June 24 - July 1 -- Court holds scheduling conference; entry of stipulated protective order; entry of scheduling order.
- f. June 30 -- Date for third parties to object to production of CID documents.
- g. September 1 -- Fact discovery cutoff, except that on need shown parties may take deposition of any witness not previously taken until September 15, 1998.
- h. September 8 -- Plaintiff's expert report(s) (other than efficiencies) and accompanying documents due; defendants' expert report(s) on efficiencies and accompanying documents due.
- i. September 14 -- Plaintiff's expert report(s) on efficiencies and accompanying documents due; defendants' expert report(s) (other than efficiencies) and accompanying documents due.
- j. September 21 - October 2 -- Time period for parties to conduct depositions of experts.

- k. Interrogatory Limits -- each side collectively shall be limited to a total of 50 interrogatories, including subparts.
- l. Deposition Limits -- plaintiff shall be permitted to conduct 15 additional depositions; defendants collectively shall be permitted to conduct 30 depositions.
- m. Timing of Responses to Discovery Requests -- responses to interrogatories, requests for documents and requests for admissions shall be served no later than 20 days after receipt.

7. Bifurcation.

The case shall not be bifurcated.

8. Pretrial Conference and Other Pretrial Matters.

- a. The pretrial conference shall be held on October 16, 1998.
- b. The dates for any other pretrial filings shall be established at the pretrial conference.

9. Trial Date.

The trial shall commence on November 2, 1998.

Date

United States District Judge

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
v.)	Civil No.: 1:98CV01193 (JLG)
)	
PRIMESTAR, INC, <i>et al.</i> ,)	
)	
Defendants.)	
)	

**DEFENDANTS' PROPOSED SCHEDULING
ORDER PURSUANT TO LOCAL RULE 206**

The Court, having considered the submissions of the parties and the requirements of Rule 206 of the Rules of the United States District Court for the District of Columbia, hereby issues the following Order to govern all scheduling and discovery matters in this case:

1. Case Tracking Category.

The case shall be placed on the Complex Track. There shall be modifications to the presumptive limits on depositions as stated below.

2. Date For Pleadings Amendments.

All parties shall be joined, and all pleadings amended, by July 1, 1998.

3. Assignment to Magistrate Judge.

This case shall not be assigned to a magistrate judge for all purposes.

4. Alternative Dispute Resolution (ADR).

This case shall not be assigned to ADR.

5. Dispositive Motions.

Dispositive motions shall be filed no later than March 15, 1999.

6. Discovery.

Discovery shall proceed as follows:

- a. Third parties were required to object to production of CID documents by June 12, 1998.
- b. Plaintiff shall provide third-party documents to defendants no later than June 22, 1998.
- c. The parties shall serve their first set of interrogatories and requests for party documents no later than July 15, 1998. Plaintiff and defendants shall respond to the first set of interrogatories no later than August 21, 1998. The parties shall respond to the requests for party documents no later than September 11, 1998.
- d. The parties shall begin fact depositions on August 1, 1998. Fact depositions will end on December 31, 1998.
- e. The parties shall serve requests for admissions no later than October 2, 1998. Responses to the requests for admissions are due by October 23, 1998.
- f. The parties shall serve any additional interrogatories and document requests no later than November 13, 1998. Responses to those requests are due by December 4, 1998. Discovery motions shall be filed by December 14, 1998.

g. The parties shall exchange their First Expert Reports no later than January 4, 1999.

The parties shall exchange their Second Expert Reports no later than January 25, 1999. Expert discovery shall begin on February 1, 1999 and shall be completed by February 27, 1999.

h. Defendants collectively shall be limited to 50 depositions. Plaintiff shall be limited to 15 additional depositions.

i. The number of interrogatories shall be governed by Local Rule 207(b).

7. Bifurcation.

This case shall not be bifurcated.

8. Pretrial Conference and Other Pretrial Matters.

a. The pretrial conference shall occur at a time to be set by the Court, to take place, if necessary, following the Court's ruling on dispositive motions.

b. The dates for any other pretrial filings shall be established at the pretrial conference.

9. Trial Date.

The trial shall occur in May 1999.

Date

United States District Judge

LOCAL RULE 108(k) SERVICE LIST

In compliance with Local Rule 108(k) of the United States District Court for the District of Columbia, the following persons should be served upon entry of the proposed Order:

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