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REPORTER'S RECORD
VOLUME 1 OF 1 VOLUME
TRIAL COURT CAUSE NO. 2001-32094

JOE SHIELDS) IN THE DISTRICT COURT OF
)
vs.) HARRIS COUNTY, TEXAS
)
KENNITH DALE HENSLEY) 280TH JUDICIAL DISTRICT

REPORTER'S RECORD

On the 3rd day of April, 2002, the following proceedings came on to be held in the above-titled and numbered cause before the Honorable Tony Lindsay, Judge Presiding, held in Houston, Harris County, Texas.

Proceedings reported by computerized stenotype machine.

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VOLUME 1

REPORTER'S RECORD

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1 THE COURT: Thank you. Please be
2 seated.

3 Okay. Tell me who all is here. Do it
4 slow enough I can write it down beginning with
5 plaintiff's counsel.

6 MR. KAYE: Kenneth Kaye, K-A-Y-E,
7 representing Joe Shields, the plaintiff.

8 THE COURT: Thank you.

9 MR. MEYER: Jeff Meyer for DIRECT TV,
10 Inc.

11 THE COURT: How do you spell Meyer?

12 MR. MEYER: M-E-Y-E-R.

13 MR. WILSON: Larry Wilson, David
14 Froneberger, All American Alarms and Star-Sat of
15 Houston, Inc.

16 THE COURT: Okay. David, how do I
17 spell it?

18 MR. FRONEBERGER: That's
19 F-R-O-N-E-B-E-R-G-E-R.

20 THE COURT: Thank you.

21 MR. WOOTEN: Ross Wooten and Joe Boyle
22 for EchoStar.

23 THE COURT: Okay. Wooten,
24 W-O-O-T-E-N?

25 MR. WOOTEN: Yes, ma'am.

1 THE COURT: And Boyle?

2 MR. BOYLE: B-O-Y-L-E.

3 THE COURT: And is that all my
4 lawyers?

5 MR. KAYE: There's one lawyer, Judge,
6 who's not here and that's --

7 THE COURT: Ms. Barnes?

8 MR. KAYE: -- Ms. Juanita Barner.

9 THE COURT: Barner. Do we know why
10 she's not here or where she is?

11 MR. BOYLE: I haven't heard anything.

12 MR. MEYER: I spoke with her yesterday
13 with regard to the continuance issue and -- I mean,
14 she -- I'm not sure that she got a -- a call from the
15 Court. I assume she did but -- I assume that she
16 knew about the setting.

17 THE COURT: I would think so.

18 Okay. The folks in the bleachers,
19 none of you guys are attorneys, I guess?

20 Okay. Are any of you pro se parties?

21 No? Okay.

22 All right. Then about the motion for
23 continuance, tell me.

24 MR. KAYE: Most respectfully, Your
25 Honor, out of order from what the Court has

1 indicated, I have reached -- on behalf of the
2 plaintiff, we have reached a settlement with two of
3 the defendants, specifically Kenneth Dale Hensley and
4 Richard Dean Jones, individually and d/b/a All Star
5 Communications of Texas and Jimmy Ray LeTulle,
6 Kenneth Dale Hensley and Richard Dean Jones,
7 individually and d/b/a All Star Communications, and I
8 have here a proposed agreed permanent injunction
9 signed by both counsel, Your Honor.

10 *THE COURT:* Okay. Is it your
11 understanding that this agreed permanent injunction
12 would be a partial final judgment as to those
13 defendants?

14 *MR. KAYE:* As to those defendants, it
15 would -- it is final. It is over with. Now, it is
16 an interlocutory order. We certainly understand that
17 because we've got this.

18 *THE COURT:* Right. But you originally
19 were suing them for some money.

20 *(Short recess.)*

21 *MR. KAYE:* The Court is correct. We
22 did sue for money and they did pay us some money. I
23 have a final settlement agreement which reflects that
24 and also reflects the temporary injunction. I was
25 not intending to file that with the Court but if the

1 Court wishes me to do so, I will.

2 THE COURT: No, I don't particularly
3 wish that, but what I do wish for is something in
4 this order that says that all other relief requested
5 as to these parties is denied and that this is a
6 partial final judgment as to these defendants only so
7 that it's clear.

8 Is there any reason not to put that in
9 there?

10 MR. KAYE: There is not, Your Honor.
11 Mr. Humphreys is not here. Yesterday, at least, he
12 was in trial so we can't call to see if that would be
13 all right.

14 THE COURT: I'm presuming that --

15 MR. KAYE: I cannot imagine why he
16 would object to that but --

17 THE COURT: I can't either.

18 MR. KAYE: But I don't think that I --
19 I don't think that I can write that in without his
20 authority.

21 THE COURT: Okay. But I figure I can
22 if you don't object.

23 MR. KAYE: I do not object, Your
24 Honor.

25 THE COURT: Okay. Then I'm going to

1 write that in before I sign it. In fact, I'll
2 probably type it so it will be a little more readable
3 and stick it on the end there.

4 MR. KAYE: Yes, ma'am. That will be
5 great.

6 Okay. Then is everybody else that's
7 left?

8 MR. MEYER: Your Honor, one house --
9 quick housekeeping matter as far as the settlement.
10 We would ask that the amount, the monetary portion of
11 it be read into the record and stipulated for the
12 purpose of calculating a settlement credit.

13 MR. KAYE: I have no --

14 THE COURT: Do any of these phone
15 calls overlap?

16 MR. KAYE: No, these are only phone
17 calls by All Star. We are not seeking those
18 moneys -- we had sought effective indemnity or --
19 from DIRECT.

20 I have assured Mr. Meyer that we are
21 not -- with regard to this money which has been paid,
22 Your Honor -- I mean, the check is -- I don't know
23 that it's cleared. It went into the bank, though,
24 and it comes out of Mr. Humphreys' trust account.
25 I'm sure that it will clear. We're not seeking that

1 money from DIRECT. I don't think that there is any
2 settlement credit allowed but I will, if the Court
3 asks me to, indicate to the Court into the record how
4 much money it is that they paid.

5 *THE COURT:* Okay. I'm not sure I'm
6 interested in that. I think what might be more
7 appropriate is to indicate which phone calls it is
8 because I think in your petition you probably listed
9 several phone calls and if you're saying that some of
10 those are totally over and done with and you're not
11 suing anybody else for them, we can say that.

12 *MR. KAYE:* They are totally over and
13 done with, Your Honor, and we are not proceeding on
14 that at all. These are the phone calls made on
15 October 21, 1999 and October 22, 1999.

16 *MR. MEYER:* Your Honor, there is no --
17 there's no -- oh, at least with respect to DIRECT TV,
18 there's no October 22, 1999 phone call in the
19 plaintiff's live petition.

20 *THE COURT:* Well, good. Then you're
21 not affected, I guess, right?

22 *MR. MEYER:* Correct.

23 *THE COURT:* Okay.

24 *MR. KAYE:* And those are the two calls
25 that are gone away and there will be no -- I would

1 propose that there be no evidence about those
2 whatsoever and no discussion of those whatsoever.

3 *THE COURT:* Okay.

4 *MR. KAYE:* Again, Judge, that's
5 October 21 and 22, both of 1999.

6 *THE COURT:* And you're representing to
7 the Court that any money that was paid was paid for
8 those two phone calls only?

9 *MR. KAYE:* And that is all.

10 *THE COURT:* Okay.

11 *MR. MEYER:* Your Honor, I'm not sure
12 that that necessarily takes care of the settlement
13 credit issue. *DIRECT --*

14 *THE COURT:* How could it not?

15 *MR. MEYER:* *DIRECT TV* has been sued in
16 this case for joint and several liability presumably
17 for all the phone calls that have been made.

18 *THE COURT:* I didn't think those phone
19 calls were even on behalf or alleged to be on behalf
20 of *DIRECT TV*. Are they?

21 *MR. MEYER:* Well, one was.

22 *THE COURT:* Okay. Well, if it was,
23 then your liability is all gone. It has been totally
24 wiped out. You can't ask for a settlement credit any
25 better than that.

1 All right. I think I'm up to this
2 continuance again. Who wants to talk about it?

3 MR. MEYER: I'm happy to, Your Honor,
4 although I think certainly the other lawyers are
5 welcome to.

6 Several days ago we started having
7 what I thought were fruitful settlement discussions
8 that really have -- have gotten short-circuited not
9 because of any fundamental disagreement or any lack
10 of desire on the parties but primarily because we all
11 had to focus on getting ready for trial.

12 The monetary component of it
13 technically -- let me take a step back. This case
14 has two -- two primary areas of requested relief.
15 One is monetary and one is nonmonetary injunctive
16 relief.

17 The monetary portion, I think, can
18 work itself out fairly quickly. The nonmonetary
19 portion, although everybody I think wants to get to
20 the same place, is complicated by the details of how
21 do we get there. And at least from our standpoint, I
22 think that we'd like to get to the same place. I
23 think that it's going to involve agreement by not
24 just DIRECT TV and -- and EchoStar and our positions
25 but also the individual retailers whom we still

1 believe and contend and -- and it's true don't have
2 any control over it. They're separate businesses.

3 We cannot agree to an injunction that
4 would prohibit us from doing something that we cannot
5 control. And all the parties in this case have
6 agreed that we don't have the control over those
7 parties. There's no common ownership. There's no
8 right to control in our independent contractor
9 agreements with them and so if we're going to work
10 something out globally, we're going to have to get
11 everybody's agreement.

12 THE COURT: You could control them by
13 saying, We won't accept your -- any applications that
14 you send in to get our services --

15 MR. MEYER: The --

16 THE COURT: -- if you do this kind of
17 thing.

18 MR. MEYER: We could -- we could
19 terminate their contracts for a variety of reasons
20 and I'm speaking about DIRECT TV. I'm not sure about
21 EchoStar but with respect to specifically how a
22 customer signs up for DIRECT TV subscription services
23 and how these independent contractors are paid, the
24 only way that you can sign up for DIRECT TV
25 subscription services is by calling 1-800 DIRECT TV.

1 I don't even -- it's possible that you could go
2 through their website but I don't believe that's the
3 case. I think the only way you can sign up is by
4 calling that number, dealing with DIRECT TV itself.

5 While these independent contractors
6 are authorized to promote DIRECT TV subscription
7 services and while these independent contractors have
8 their own separate business where they sell DIRECT TV
9 compatible equipment which they buy from folks other
10 than DIRECT TV, that the -- the nexus of being able
11 to say we're not going to accept a customer that was
12 signed up through you I think would be a very
13 difficult thing because oftentimes when a customer
14 might call DIRECT TV, they may not say who installed
15 the equipment and -- and in many cases DIRECT TV may
16 not know.

17 So that's troublesome, but in terms of
18 the ultimate goal of no one is going to call Joe
19 Shields anymore and -- and we're going to comply with
20 the law, and DIRECT TV believes it has, I mean in
21 terms of complying with the law, everybody wants that
22 to happen but there has been some -- because of some
23 of the issues that the Court has just raised, there's
24 some complicating issues about how do we get there
25 and I think everybody in good faith wants to see that

1 happen. But with preparing for trial and everything
2 else, I think that -- I think it's just been a
3 difficult thing to accomplish before now.

4 *THE COURT:* Okay. Mr. Boyle. Well --

5 *MR. KAYE:* No, this is Mr. Meyers most
6 respectfully, Your Honor.

7 *THE COURT:* I know but I wanted to
8 hear from Mr. Boyle.

9 *MR. KAYE:* Oh, okay. Sorry.

10 *THE COURT:* What do you say?

11 *MR. WOOTEN:* Well, actually, I agree
12 with most of what Mr. Meyers said. The situation
13 between EchoStar and DIRECT TV is a little different
14 because we do make the equipment ourselves and for
15 most of the retailers in the country, we just sell
16 them the equipment, but as he said, for DIRECT TV,
17 the same is true for EchoStar, if you want to order
18 EchoStar programming, you have to call EchoStar and
19 so, anyway, I think we do both want to get to the
20 same place to figure out a way to structure this that
21 all parties can live with and we would like to have
22 discussions with the plaintiff. We actually have not
23 been able to even start any. We've been trying to
24 contact him and Mr. Kaye has been in trial, I think,
25 for the last three or four weeks and it has been

1 impossible. We haven't even talked in a month so we
2 wouldn't -- you know, we join DIRECT TV's motion to
3 try to have time to work this out.

4 *THE COURT:* Okay. And Mr. Wooten,
5 you're on the same bunch with -- with him?

6 *MR. WOOTEN:* Ma'am?

7 *THE COURT:* I thought you were
8 Mr. Wooten.

9 *MR. WOOTEN:* I am Mr. Wooten, Your
10 Honor.

11 *THE COURT:* Then how come I didn't get
12 Mr. Boyle?

13 *MR. WOOTEN:* I'm sorry. I was -- I'm
14 speaking for EchoStar.

15 *THE COURT:* Okay.

16 *MR. WOOTEN:* I -- we represent the
17 same company.

18 *THE COURT:* Anyway, y'all are on the
19 same bunch?

20 *MR. WOOTEN:* Yes, ma'am.

21 *THE COURT:* Okay. Then what about
22 Mr. Froneberger and Mr. Wilson?

23 *MR. WILSON:* I'll speak for us, Judge.
24 We intended to enter some settlement negotiations but
25 because of a possible counterclaim against us that

1 arose, I felt my hands were tied. It wouldn't help
2 us to --

3 *THE COURT:* I'm sorry. What do you
4 mean counterclaim? How can you have a counterclaim
5 from plaintiff?

6 *MR. WILSON:* I guess it's a
7 cross-action, I guess, it is.

8 *THE COURT:* Okay.

9 *MR. WILSON:* Third party action that
10 was filed against us by DIRECT TV. I felt, well, our
11 hands are -- what was it going to help us to get out
12 of here and then have to fight a trial for indemnity
13 and that has since been dismissed earlier this week,
14 which I didn't know.

15 Once I got served with it, I said no
16 reason to -- to even discuss settlement with them.
17 If we're in for a trial, we might as well sit through
18 it and try it. If we're going to get paid, we might
19 as well get paid for the whole trial.

20 Now that that has been dismissed, it
21 kind of puts us in a position to discuss settlement,
22 which our clients want to do, but I felt we couldn't
23 discuss it. Our hands were tied. So I would like a
24 little bit of time to discuss, see if something could
25 be worked out and I represent All American -- All

1 American Alarms and Star-Sat of Houston.

2 THE COURT: Okay. Thank you.

3 MR. WILSON: All right.

4 THE COURT: Okay. If something has
5 been dismissed, I haven't signed the order on it yet,
6 right?

7 MR. MEYER: I think a -- the -- the
8 cross-claim for indemnity was filed on the -- exactly
9 seven days before April 1st, which is the first day
10 of trial.

11 THE COURT: The cross-claim was filed
12 then?

13 MR. MEYER: Yes, and it was nonsuited
14 shortly thereafter.

15 THE COURT: Okay. Well, if it was --

16 MR. MEYER: I can't recall if I
17 submitted an order along with the notice of nonsuit.
18 I'll get that to the Court. It's our intention to
19 voluntarily dismiss that without prejudice.

20 THE COURT: Okay. All right. Now,
21 Mr. Kaye, what do you say?

22 MR. KAYE: Judge, Mr. Wooten is
23 correct. I have been in trial and we're on a
24 two-week recess down in Galveston for the last three
25 to four weeks. We're always happy to talk

1 settlement.

2 The concern that I had, Judge, and I
3 expressed this to Mr. Meyer when he -- we began these
4 settlement talks and when we talked about possibly
5 asking the Court jointly for a continuance. The
6 Court may recall that at the temporary injunction
7 hearing, we discussed the possibility of how can we
8 move this case very, very fast and I had suggested to
9 the Court that one possibility was that the Court
10 order us to an immediate mediation. Before any
11 discovery was done, let's go to mediation, see if we
12 can work this out.

13 The Court may recall that Ms. Barner,
14 who is not here today but is still in the case,
15 indicated at that time to the Court that under no
16 circumstances would she participate in any mediation.
17 She indicated on -- which was true that she and I had
18 another TCPA case together and that it had gone to
19 mediation and it had settled but that her clients
20 after the settlement, I guess, were unhappy with it.
21 So I mentioned that to Mr. Meyer and he assures me,
22 and I take his representation as -- as truthful, that
23 Ms. Barner is now saying that she will go to
24 mediation, her clients will go to mediation, and I
25 assume by that, although I didn't ask Mr. Meyer for

1 some kind of assurance, that she and her clients will
2 work in good faith. Obviously, the Court cannot
3 order that but if she's willing to go with her
4 clients, then at least we can go to mediation.

5 What I might suggest -- what I
6 suggested to Mr. Meyer but he -- he and I had talked
7 about it and it's not in the formal motion for
8 continuance is that the Court -- if the Court grants
9 the continuance and orders us to mediation, that the
10 Court give the parties a short period of time to try
11 to reach an agreement on an acceptable mediator and
12 in failing to reach that agreement within this short
13 period of time that might be set by the Court, that
14 the Court then order -- you know, you pick the
15 mediator and say, This is your mediator, Attorneys,
16 and please contact him promptly.

17 We're ready for trial. We're ready
18 for a continuance. We're ready to do anything. I --
19 I suspect the same is true with us all. Obviously,
20 if we can resolve this in mediation instead of
21 spending a week up here, it will just be a day or so.

22 THE COURT: Okay. You said you -- is
23 it Varner or Barner?

24 MR. KAYE: Barner with a B, Your
25 Honor.

1 THE COURT: B. Okay. You said you
2 talked to her. I already forgot what you said she
3 said.

4 MR. MEYER: I spoke to Ms. Barner
5 yesterday. I feel at a little bit of a disadvantage
6 having enough difficulty as it is speaking for myself
7 and the client I actually represent than to speak for
8 some other lawyer and their client who I don't
9 represent. But I did talk to her yesterday. She was
10 agreeable to the continuance. I signed her name by
11 permission. She said that she would be very
12 interested in -- in engaging in these kinds of
13 settlement discussions that we were having.

14 THE COURT: Okay. Do you agree with
15 Mr. Kaye's suggestion that so many days to agree on a
16 mediator and then I pick?

17 MR. MEYER: That's -- that sounds
18 reasonable to me, Your Honor.

19 THE COURT: Is that okay with
20 everybody?

21 MR. WOOTEN: I agree, Your Honor.

22 MR. WILSON: That's fine with us,
23 Judge.

24 THE COURT: A week?

25 MR. KAYE: That would be great, Judge.

1 THE COURT: Okay. And if I were going
2 to reset the case, when do you think it ought to be
3 reset to?

4 MR. KAYE: May I grab my calendar,
5 Judge? Judge, looking at my calendar, to give us
6 time to actually set up the mediation, might I
7 suggest perhaps early June for a resetting but
8 obviously everybody gets to look.

9 THE COURT: Yes. Actually, if I were
10 going to put it off that long, which it's okay with
11 me, I would really reset it to July the 15th since
12 I'm not setting any cases for June.

13 MR. KAYE: Most respectfully, Your
14 Honor, I have a vacation letter on file for that week
15 along with some others. I would not be available
16 again until the week of August the 12th.

17 THE COURT: Okay. What we do on the
18 15th -- do you have a vacation letter for the week
19 before?

20 MR. KAYE: I do not have a vacation
21 letter, Your Honor, for the week of June the 8th.

22 THE COURT: Okay. How about the
23 week --

24 MR. KAYE: I'm sorry, July 8.

25 THE COURT: Okay. And how about -- I

1 guess what I really should be asking about is July
2 the 4th, the day before we'll be having a holiday --
3 July the 3rd, the day before we have a holiday for
4 July the 4th.

5 MR. KAYE: July the 3rd is a
6 Wednesday, Your Honor.

7 THE COURT: Right.

8 MR. KAYE: Obviously, I do not have a
9 vacation letter that week at all.

10 THE COURT: Okay. The reason I'm
11 asking is because even if he's got a vacation letter
12 for July the 15, that's fine with me, but I'm not
13 sure the rest of you know or may not be prepared to
14 tell me right this minute when your vacation letters
15 are.

16 So what I usually do is say, That's
17 fine. We set it for July the 15th. We understand
18 that if anybody has a vacation letter, you don't go
19 to trial that week. But what we do at the docket
20 call on July the 3rd is say, Okay. Now all your
21 vacation letters are set in stone. You can't change
22 them and -- and when is there a week that you don't
23 have a vacation letter, and it might be his August
24 the 12th or actually it might not be the rest of the
25 summer, which any of that is fine, but if we find a

1 space, we reset it to then.

2 Is that okay more or less with
3 everybody?

4 MR. KAYE: That's fine with me, Judge.

5 THE COURT: Okay.

6 MR. MEYER: That's fine.

7 THE COURT: Anybody want to fuss about
8 that?

9 MR. MEYER: No.

10 THE COURT: All right. Okay. Then
11 I'll reset it to July the 15th with the understanding
12 that whenever we go, it's not going to be then unless
13 Mr. Kaye decides to waive his vacation letter for
14 some reason.

15 MR. KAYE: I will have to talk to the
16 boss about that, Judge.

17 THE COURT: Okay. And tell her that
18 I'm not putting any pressure on you for -- to do
19 that.

20 MR. KAYE: Very well, Judge.

21 THE COURT: Okay. Then what I'm going
22 to do is my own order in a minute and we'll fax it to
23 you. It's going to reset and it's going to say
24 you're assigned to mediation. Mediate by a certain
25 time and it's also going to say that on such and such

1 a date, I will sign an order appointing a mediator
2 unless you bring to the Court's attention the day
3 before -- and the day before would be a week from
4 today. What is today? Today is the 3rd. Okay. On
5 the 10th. On the 10th unless you file and have
6 brought to the Judge's attention on that day that
7 you've already agreed on a mediator. And if all you
8 do is file something downstairs, I'll never know it
9 for another week or if you just send it up here by
10 courier and the Judge -- or the clerk puts it in the
11 file, I won't know it. You've got to make sure I
12 know it. But I don't think you'll have any trouble
13 with that.

14 Okay. Anything else I need to put in
15 this order? Oh, well, when do we want to agree that
16 we're going to mediate by?

17 *MR. MEYER:* On that one, Your Honor,
18 I'm -- I think everybody wants to do it as quickly as
19 we possibly can do it. The only potential problem I
20 see out there is for mediators that are good
21 mediators that we would all like to mediate in front
22 of, that their calendars may be pretty booked solid.

23 *THE COURT:* Well, they may and I
24 figure you can find another mediator.

25 *MR. MEYER:* True.

1 THE COURT: You know, for a month,
2 okay, work with a mediator, maybe even two months
3 work with a mediator. After that, find another
4 mediator.

5 MR. MEYER: Agreed.

6 THE COURT: So can we say 60 days, 90
7 days? If you're going to have it done by July, you
8 don't have 90 days.

9 MR. MEYER: I think 60 days will be
10 sufficient, Your Honor. I just wondered if there was
11 a consensus to have a shorter time limit.

12 THE COURT: Shorter?

13 MR. MEYER: No, I think 60 --

14 THE COURT: I mean, I'm asking the
15 others. Any shorter?

16 MR. KAYE: The only problem that I
17 have is that I'm going back into that same old trial
18 and we've got another two to three weeks to go. It's
19 not fun, Judge.

20 THE COURT: Okay.

21 MR. KAYE: Not fun.

22 THE COURT: All right. Well, if I
23 said 60 days from today, that gets you up to about
24 May the -- or June the 3rd and we ought to be able to
25 do something by then, shouldn't we?

1 MR. KAYE: Yes, I think so.

2 THE COURT: Okay. So mediate. Agree
3 on a mediator. I'll pick one if you don't. Mediate
4 by June 3rd. Reset trial to July 15th. I'm not
5 going to put the date of the docket call in there but
6 I'm pretty sure that that's going to be July the 3rd,
7 which you'll receive a blue reset order with that in
8 it and when you come on July the 3rd, you bring your
9 vacation letter information with you.

10 MR. MEYER: The --

11 MR. KAYE: Your Honor, the only
12 thing -- I'm sorry, Jeff.

13 MR. MEYER: No, go ahead.

14 MR. KAYE: The only thing that
15 Mr. Meyer, and I believe everyone has agreed to, in
16 addition to what the Court has mentioned, is that I
17 think we have all agreed that there is to be no more
18 discovery; no more supplementation of discovery;
19 nothing else. Discovery is -- discovery, pleadings,
20 etcetera, etcetera, etcetera is frozen in accordance
21 with -- help me out here, Jeff -- the prior docket
22 control order of the Court and the Court's prior
23 orders.

24 MR. MEYER: I think it makes sense to
25 leave all the -- the previous deadlines in place,

1 Your Honor. I mean, if some --

2 THE COURT: Okay.

3 MR. MEYER: -- if some surprise
4 information comes up or discovery needs to be
5 supplemented by anyone, you know, I don't want to
6 absolutely prohibit that but I would say that the --
7 that the -- the dates in the scheduling order that's
8 already in effect should remain in place.

9 THE COURT: Okay. Now, the scheduling
10 order that's in effect was that discovery was to
11 cease on February the 4th and I don't even see the
12 amendment deadline in here but I nearly always have
13 one. Maybe I didn't.

14 MR. KAYE: I thought we had said,
15 Judge, seven days before trial, I believe.

16 THE COURT: Okay. Maybe we had.
17 Okay. The -- the order -- okay. Looks like we
18 didn't have a date for -- or at least not in the
19 order. Y'all might have had an agreement but I don't
20 see it in the order.

21 All right. Then after that, I reset
22 the trial to April the 1st but that didn't change any
23 pretrial deadlines and so the deadline that I'd be
24 talking about that we're not changing is already
25 passed for discovery and according to you would not

1 be passed for amended pleadings but y'all are
2 agreeing that we say it's passed for amended
3 pleadings?

4 MR. KAYE: That's fine with me, Judge.

5 MR. MEYER: That makes sense.

6 MR. WOOTEN: That's fine with us, Your
7 Honor.

8 THE COURT: All right. Then I had
9 said that defendant EchoStar had to answer certain
10 discovery by yesterday at noon. Did they do it?

11 MR. KAYE: They did, Your Honor.

12 THE COURT: Good. All right. Were
13 there any other motions pending that I didn't rule on
14 at all that I ought to rule on?

15 MR. KAYE: I know of none, Judge.

16 THE COURT: Okay. Well, good. Then
17 I'm done if y'all are done. Are we done?

18 Okay. In that case, y'all are excused
19 until the next time we have a hearing.

20 MR. MEYER: Your Honor, just -- on
21 behalf of myself and DIRECT TV, and I think I'm
22 speaking for everybody, we didn't know, you know,
23 given the Court's such short notice on the
24 continuance and we apologize for that but very much
25 appreciate the Court's patience and consideration to

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this.

THE COURT: You welcome.

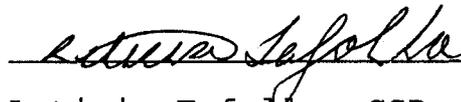
(Proceedings concluded.)

1 STATE OF TEXAS

2 COUNTY OF HARRIS

3
4 I, Leticia Tafolla, Deputy Court Reporter in and
5 for the 280th District Court of Harris, State of
6 Texas, do hereby certify that the above and foregoing
7 contains a true and correct transcription of all
8 portions of evidence and other proceedings requested
9 in writing by counsel for the parties to be included
10 in this volume of the Reporter's Record in the
11 above-styled and numbered cause, all of which
12 occurred in open court or in chambers and were
13 reported by me.

14 WITNESS MY OFFICIAL HAND this the 29th day of
15 September, 2003.

16
17 

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Expiration: 12/31/04

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280TH DISTRICT COURT