

FILED/ACCEPTED

JUN 18 2012

Federal Communications Commission
Office of the Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Game Show Network, LLC,)	MB Docket No. 12-122
Complainant,)	File No. CSR-8529-P
)	
v.)	
)	
Cablevision Systems Corp.,)	
Defendant)	

TO: Marlene H. Dortch, Secretary
ATTN: Chief Administrative Law Judge Richard L. Sippel

PREHEARING CONFERENCE MEMORANDUM OF GAME SHOW NETWORK, LLC

Game Show Network, LLC (“GSN”) hereby responds to the Presiding Judge’s June 7, 2012 order, which requests that the parties file and submit *Conference Memoranda* “estimating time to complete routine discovery, exchange expert witness opinions, depose experts, and otherwise prepare for trial.”¹ GSN’s counsel have conferred with counsel for defendant Cablevision Systems Corporation (“Cablevision”) and, based on that discussion, we include in this memorandum a mutually agreeable proposed schedule intended to allow the parties the time needed to develop a complete record while complying with the statutory requirement, reinforced by the Hearing Designation Order,² that this case be given “expedited review.”³ As discussed

¹ *Game Show Network, LLC v. Cablevision Systems Corp.*, Order, MB Docket No. 12-122, File No. CSR-8529-P, FCC 12M-28, at 1 n.2 (Chief ALJ Jun. 7, 2012).

² *Game Show Network, LLC v. Cablevision Systems Corp.*, Hearing Designation Order & Notice of Opportunity for Hearing for Forfeiture, No. 12-122, File No. CSR-8529-P, DA 12-729 (MB May 9, 2012), at ¶ 38 [hereinafter “HDO”] (directing the Presiding Judge to issue a decision “on an expedited basis”).

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below, the parties have not agreed on the number of depositions, but they have agreed to discuss that issue further once it ripens through ongoing document discovery.

Procedural Background

On October 12, 2011, GSN filed a complaint with the FCC challenging Cablevision's decision to move GSN from a basic tier to a premium sports tier while maintaining favorable carriage for its similarly situated programming networks, in violation of Section 616 of the Communications Act.⁴ On May 9, 2012, the Media Bureau issued a Hearing Designation Order ("HDO"), finding that GSN had made a *prima facie* case that the channel is (i) similarly situated to and competitive with Cablevision-affiliated networks such as WE tv and Wedding Central; (ii) given less favorable carriage by Cablevision than it gives to its own networks; and (iii) unreasonably restrained in its ability to compete fairly as a result of Comcast's discriminatory conduct.⁵

The HDO directed the Presiding Judge to hold a hearing and issue an Initial Decision on the following issues:

- (a) . . . whether Cablevision has engaged in conduct the effect of which is to unreasonably restrain the ability of GSN to compete fairly by discriminating in video programming distribution on the basis of the complainant's affiliation or non-affiliation in the selection, terms, or conditions for carriage of video programming provided by GSN . . . ; and
- (b) . . . whether Cablevision should be required to carry GSN on its cable systems on a specific tier or to a specific number or percentage of Cablevision subscribers and, if so, the price, terms, and conditions thereof; and/or whether Cablevision

³ 47 U.S.C. § 536(a)(4).

⁴ 47 U.S.C. § 536(a)(3); *see also* 47 C.F.R. § 76.1301(c).

⁵ HDO ¶¶ 9, 17, 28, 29.

should be required to implement such other carriage-related remedial measures as are deemed appropriate.⁶

The Hearing Designation Order also summarily rejected, on the basis of binding legal precedent, certain defenses raised by Cablevision and directed the Presiding Judge to resolve the remaining factual disputes.⁷

Estimated Time to Complete Discovery & Prepare for Trial

Pursuant to Section II of the ALJ's June 13, 2012 Addendum to FCC Order 12M-28,⁸ GSN and Cablevision have conferred and agreed to the following procedural dates:

July 6, 2012	Document requests served; proposed protective order submitted for entry.
July 20, 2012	Responses and objections to document requests served.
August 6, 2012	Document production begins; parties may serve fact deposition notices.
October 5, 2012	Document production ends.
October 22, 2012	Complainant's final expert reports filed.
November 5, 2012	Defendant's final expert reports filed; parties may serve expert deposition notices.
December 14, 2012	Deadline for completing depositions; discovery ends.
January 14, 2013	Trial briefs exchanged by 12:00 noon.
January 14, 2013	Hearing exhibits and written direct testimony exchanged by 12:00 noon.

⁶ *Id.* ¶ 39.

⁷ *See e.g., id.* ¶¶ 2, 12-16, 38.

⁸ *Game Show Network, LLC v. Cablevision Systems Corp.*, Addendum, MB Docket No. 12-122, File No. CSR-8529-P, FCC 12M-29, at 2 (Chief ALJ Jun. 13, 2012) [hereinafter "Addendum"].

January 28, 2013 Document Admissions Session commencing at 10:00 a.m.

January 29, 2013 Hearing commences at 9:30 a.m.

To complete discovery in the five-month timetable proposed above, GSN respectfully requests that the Presiding Judge allow tailored document discovery and limited depositions that are focused on the factual issues surrounding Cablevision's 2010 decision to reposition GSN while maintaining favorable carriage for its affiliated networks.⁹ GSN also anticipates conducting tailored discovery concerning certain defenses that Cablevision has raised in its Answer. With the Presiding Judge's permission, GSN expects that the parties will be able jointly to establish limitations on discovery and will seek the Presiding Judge's intervention in discovery only to the extent necessary to resolve disputes.

The scope of discovery in this matter is limited by the Media Bureau's determination that GSN's complaint was timely filed under the program carriage statute of limitations.¹⁰ The Bureau expressly stated that the timeliness of GSN's complaint was a matter "not designated for the ALJ to resolve."¹¹ This matter, therefore, should be excluded from discovery.

GSN and Cablevision have agreed to complete the discovery process and be prepared for a hearing the week of January 28, 2013, should that fit with the Presiding Judge's calendar.

⁹ Specifically, the parties should be ordered to exchange a limited number of document requests that are narrowly tailored to result in the production of relevant and admissible evidence.

¹⁰ See HDO ¶¶ 12-16. See also *id.* ¶ 38 ("we direct the Presiding Judge to . . . conduct a *de novo* examination of all *relevant* evidence in order to make an Initial Decision on each of the *outstanding* factual and legal issues" — but not on the issues already decided) (emphasis added).

¹¹ *Id.* ¶ 2 n.5 (noting that to the extent Cablevision seeks Commission review of the Bureau's decision on its statute of limitation argument, "such review, if any, shall be deferred until exceptions to the Initial Decision in this proceeding are filed).

Estimated Number of Fact Witnesses & Expected Number of Depositions To Be Taken

The Addendum, as modified by the Presiding Judge's June 14 ruling,¹² requires the parties to provide an estimate of (1) the number of fact witnesses expected to testify and (2) the number of depositions expected to be taken.¹³ In response, and subject to revision on the basis of information gathered through discovery, GSN states as follows:

Item No. 6: At this stage of the proceeding, GSN has not determined which fact witnesses it intends to call as part of its affirmative case. However, GSN notes that it has submitted as exhibits to its Complaint declarations from the following fact witnesses:

- David Goldhill, President and Chief Executive Officer of GSN, provided an initial declaration on matters relating to GSN's programming and programming strategy; GSN's audience and advertiser base; GSN's distribution (both by Cablevision and other distributors), including communications with Cablevision in connection with Cablevision's discriminatory conduct; and the impact of Cablevision's discriminatory conduct on GSN. Mr. Goldhill has more than 20 years of experience in the media industry. Prior to joining GSN, he served as President and Chief Operating Officer of Universal Television Group, where he oversaw program and asset development and distribution activities for the company's domestic and international cable networks. Prior to that, he served as Executive Vice President and Chief Financial Officer of Act III Communications, a privately-owned holding company with interests in television stations, movie theaters, magazines, and film/television production.

¹² E-mail from The Honorable Richard L. Sippel, Chief Judge to Gary R. Carney, June 14, 2012.

¹³ Addendum, at 2.

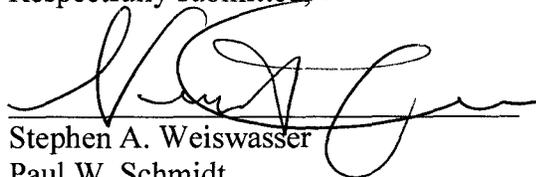
- Derek Chang, Vice President of Content Strategy and Development for DIRECTV, provided an initial declaration on matters relating to the carriage of Cablevision-affiliated networks on DIRECTV and the carriage of GSN on Cablevision. Mr. Chang is also a member of GSN's Management Committee. Mr. Chang has held a number of other executive positions in the media industry. Prior to his work at DIRECTV, Mr. Chang served as executive Vice President, Finance and Strategy and as interim Co-Chief Financial Officer for Charter Communications.
- Dennis Gillespie, former Senior Vice President of Distribution for GSN, provided an initial declaration on matters relating to GSN's distribution (both by Cablevision and other distributors), including communications with Cablevision in connection with Cablevision's discriminatory conduct. Mr. Gillespie has more than 25 years of experience in the media industry. Prior to joining GSN, he served as the Senior Vice President of Affiliation Sales for Tribune Broadcasting. Prior to that, he served as Vice President, Affiliate Sales and Marketing at Viacom for such networks as MTV, VH1, Nickelodeon, TVLand, and Comedy Central.

Item No. 7: The parties have not agreed upon the number of depositions that should occur but have discussed revisiting this issue after some initial document discovery is conducted. GSN notes its position, however, that it should be given an opportunity to depose every witness that will be called to testify at trial. GSN presently estimates that it may need to conduct approximately 10 fact witness depositions, in addition to expert witness depositions, but GSN will re-assess this estimate as document discovery ensues.

* * *

GSN notes its belief that the agreed-upon schedule resolves any issues regarding which the parties would need guidance at this stage and thus obviates the need for a prehearing conference. In any event, GSN would be pleased to supply any additional information that would be helpful to the Presiding Judge in advance of the prehearing conference scheduled for June 21, 2012 should the Presiding Judge decide the need for a conference still exists.

Respectfully submitted,



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June 18, 2012

CERTIFICATE OF SERVICE

I, Neema D. Trivedi, hereby certify that on this 18th day of June, 2012, I caused a true and correct copy of the foregoing Prehearing Conference Memorandum to be served by electronic mail upon:

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Cablevision Systems Corp.,)	
Defendant)	

[PROPOSED] ORDER

Issued: June ____, 2012

Released: June ____, 2012

IT IS ORDERED that incident to the Prehearing Conference held on June 21, 2012, the following procedural and hearing dates governing the above-captioned action ARE ADOPTED and SET.

July 6, 2012	Document requests served; ¹ proposed protective order submitted for entry.
July 20, 2012	Responses and objections to document requests served.
August 6, 2012	Document production begins; parties may serve fact deposition notices.
October 5, 2012	Document production ends.
October 22, 2012	Complainant's final expert reports filed.
November 5, 2012	Defendant's final expert reports filed; parties may serve expert deposition notices.

¹ The parties may serve all papers in this action upon each other and the FCC Enforcement Bureau via electronic mail rather than by hard-copy.

December 14, 2012	Deadline for completing depositions; discovery ends.
January 14, 2013	Trial briefs exchanged by 12:00 noon .
January 14, 2013	Hearing exhibits and written direct testimony exchanged by 12:00 noon . ²
January 28, 2013	Document Admissions Session commencing at 10:00 a.m.
January 29, 2013	Hearing commences at 9:30 a.m. ³

FEDERAL COMMUNICATIONS COMMISSION

Richard L. Sippel
Chief Administrative Law Judge

² Hearing exhibits and written direct testimony must be received by all parties and the Presiding Judge not later than this date. Exhibits are to be serially numbered and assembled in binders. The name of the party introducing the exhibits must be shown on each exhibit (*e.g.*, GSN Exh. 1). All pages within each exhibit must be consecutively numbered and internal numbering by hand is accepted. Tabbed dividers indicating exhibit numbers shall be used. If official notice of documents is requested, they must be assembled, identified by source, given an exhibit number, and exchanged on the date set. Index with descriptive title of each exhibit, number of pages in each exhibit, and identification of the sponsoring witness(es) of each exhibit shall be included.

³ Each party has the option of conducting a direct examination of each of its witnesses to address any factual issues raised for the first time in the opposing party's written direct testimony and to briefly summarize the witness's written direct testimony before the witness is subject to cross-examination and redirect.