

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

**CONFERENCE MEMORANDUM OF DEFENDANT CABLEVISION SYSTEMS  
CORP.**

Defendant Cablevision Systems Corp. (“Cablevision”) respectfully submits this Conference Memorandum in accordance with the Presiding Judge’s Order dated June 7, 2012,<sup>1</sup> the Addendum dated June 13, 2012<sup>2</sup> and the electronic Ruling of June 14, 2012, in advance of the conference scheduled for June 21, 2012.<sup>3</sup>

**Agreed Proposed Scheduling Order**

In accordance with the Presiding Judge’s June 14 Ruling, counsel for Cablevision and the Game Show Network (“GSN”) have conferred and reached an agreement upon a proposed schedule for the action encompassing pretrial proceedings through the opening of the Hearing. A proposed Scheduling Order agreed upon by both parties is attached hereto as Exhibit A. The schedule is consistent with the spirit of the

<sup>1</sup> *Game Show Network v. Cablevision Systems Corp.*, Order, MB Docket No. 12-122, File No. CSR-8529-P, FCC 12M-28 (Chief ALJ June 7, 2012) (“June 7 Order”).

<sup>2</sup> *Game Show Network v. Cablevision Systems Corp.*, Addendum, MB Docket No. 12-122, File No. CSR-8529-P, FCC 12M-29 (Chief ALJ June 13, 2012) (“June 13 Addendum”).

<sup>3</sup> *Game Show Network v. Cablevision Systems Corp.*, Hearing Designation Order, MB Docket No. 12-122, File No. CSR-8529-P, DA 12-739 (MB May 9, 2012) (“HDO”).

NO. 12-122-054  
LEAD BOOK

HDO while providing adequate time periods and deadlines for discovery, the exchange of expert reports, expert depositions, trial briefs and the exchange of Hearing Exhibits and written direct witness testimony. Under the proposal, the document admission session would commence on January 28, 2013, with the Hearing to begin the next day, January 29, 2013. Cablevision believes this schedule realistically strikes a balance between the goals of moving the proceeding forward as expeditiously as possible while enabling the parties to prepare for an efficient and effective trial before the Presiding Judge.<sup>4</sup>

### **Summary of Issues**

As set forth in the HDO, the issues to be resolved by the Presiding Judge are as follows:

“(a) To determine 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, in violation of Section 616(a)(3) of the Act and/or Section 76.1301(c) of the Commission’s rules; and

(b) In light of the evidence adduced pursuant to the foregoing issue, to determine 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 should be required to implement such other carriage-related remedial measures as are deemed appropriate.”<sup>5</sup>

Cablevision will adduce factual and expert evidence at the Hearing that will demonstrate that GSN cannot discharge its burden of proving both that (i) Cablevision discriminated against GSN on the basis of affiliation and (ii) Cablevision’s conduct has unreasonably

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<sup>4</sup> Cablevision acknowledges the reference in the HDO encouraging the Presiding Judge to release an initial decision within 240 calendar days after the parties have failed to resolve their dispute through ADR (here, June 6, 2012), as contemplated by the 2011 Program Carriage Rules. See HDO, ¶ 38, n.194. Although the 240 days would expire in early February 2013, both parties believe – as evidenced by their agreement on the schedule - that the additional short period of time built into the proposed schedule is necessary in light of the complexity of the issues and the need to prepare adequately for trial.

<sup>5</sup> HDO, ¶ 39(a)–(b).

restrained the ability of GSN to compete fairly. As a result, the evidence will establish that no relief is warranted with respect to Cablevision's carriage of GSN, obviating the need for the Presiding Judge to reach the issues outlined in paragraph (b) above.<sup>6</sup>

### **Fact Witnesses**

In the June 14 Ruling, the Presiding Judge directed the parties to provide the number of fact witnesses expected to testify, subjects of testimony, and relevant industry experience.<sup>7</sup> Although at this stage of the proceeding, prior to the commencement of discovery, Cablevision cannot specify the number of fact witnesses with precision, its best, good faith estimate is that it will call approximately six (6) fact witnesses, several who are senior programming executives at Cablevision, and others who are senior programming, advertising and research executives at AMC Networks and WE tv. These witnesses will testify to, among other things, the relationship between Cablevision and GSN, the legitimate business rationale underlying the decision by Cablevision to move GSN from an expanded basic tier to a different tier of service, the absence of any discrimination by Cablevision of GSN, and the stark differences between GSN and WE tv and Wedding Central plainly demonstrating that GSN and the two programming networks affiliated with Cablevision are not similarly situated and, therefore, that Cablevision's terms of carriage of WE tv or Wedding Central cannot form the basis of a claim of discrimination on the basis of affiliation.

As a result of discovery and additional factual development, Cablevision may decide to present testimony from additional (or fewer) witnesses and reserves all of

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<sup>6</sup> Cablevision also respectfully submits that the burden of proof on all issues rests with GSN, but it will address that issue in more detail at a subsequent time as contemplated by the June 14 Ruling.

<sup>7</sup> See also June 13 Addendum, at 2.

its rights to do so consistent with the Scheduling Order to be entered by the Presiding Judge.

### **Number of Fact Depositions**

In the June 14 Ruling, the Presiding Judge also directed the parties to state the expected number of fact depositions to be taken. Based upon Cablevision's conversations with GSN counsel, the parties appear to have a sharp disagreement. Cablevision's view is that, in a proceeding such as this in which direct testimony will be taken by written statement, there is little or no need for depositions of fact witnesses.<sup>8</sup> GSN, on the other hand, has informed Cablevision that it may seek to take ten (10) depositions and that it will not agree at this time even to limit the number to that.

Cablevision respectfully submits that the proper balance is to limit each side to no more than three (3) fact depositions. That will enable each side to depose the other's primary fact witnesses while avoiding the need for time-consuming depositions of additional witnesses who will likely testify, if at all, on discrete topics.<sup>9</sup> There is simply no reason for the excessive number of depositions GSN seeks. To the contrary, Cablevision's proposal is consistent with prior proceedings before the Presiding Judge; in the WealthTV case there were no fact depositions.

In the event that the Presiding Judge determined not to limit the number of fact depositions at the outset of the proceeding to no more than three (3) per side,

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<sup>8</sup> *Id.* The parties agree that all expert witnesses submitting reports will be deposed.

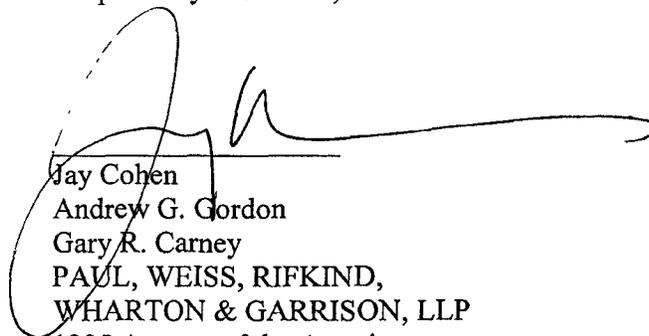
<sup>9</sup> For example, although Cablevision submitted declarations from six (6) business executives in connection with the Media Bureau proceeding, five of the six declarations were three pages or less. There is no need to depose witnesses offering such limited testimony.

Cablevision proposes that any depositions in excess of three (3) per side should be made only upon a specific showing of good cause.

### **June 21 Conference**

In view of the agreement on a proposed schedule, Cablevision is of the view that the June 21 conference may no longer be necessary. Based on discussions with GSN, we believe that the parties are in agreement on this point. Of course, Cablevision obviously defers to the Presiding Judge to determine whether the June 21 conference will be of assistance to him in dealing with the issues laid out in this Conference Memorandum or any other issue.

Respectfully submitted,



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## CERTIFICATE OF SERVICE

I, Darren J. Abernethy, hereby certify that on June 18, 2012, copies of the foregoing Conference Memorandum of Defendant Cablevision Systems Corp. were served by electronic mail and first-class mail upon:

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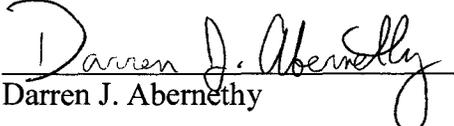
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# EXHIBIT A

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

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Game Show Network, LLC,	)	MB Docket No. 12-122
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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.

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

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<sup>1</sup> 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.

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

FEDERAL COMMUNICATIONS COMMISSION

Richard L. Sippel  
Chief Administrative Law Judge

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<sup>2</sup> 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.

<sup>3</sup> 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.