

**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	)	

**PARTIES’ JOINT STATUS REPORT**

Pursuant to the order of the Chief Administrative Law Judge dated September 25, 2012, Game Show Network, LLC (“GSN”) and Cablevision Systems Corp. (“Cablevision”) (collectively, the “parties”) submit the following joint status report in the above-captioned action.

**A. Status of Document Production**

The parties have been producing documents on a rolling basis and expect to complete their productions by October 19, 2012, as indicated in their Joint Notice Regarding Production Status, filed October 3, 2012. Through numerous meet-and-confer discussions, the parties have managed to resolve their respective objections to one another’s document requests. To date, each party has produced over 130,000 pages. If any issues arise concerning the completeness of either party’s document production, the parties will work in good faith to resolve those issues and present to the Presiding Judge as expeditiously as possible any disputes the parties are unable to resolve.

**B. Request for Extension of Hearing Schedule**

To accommodate the additional time required to produce and review documents, and to ensure each parties’ respective experts have sufficient time to prepare their expert reports,

the parties have agreed that a reasonable extension in the hearing schedule is both desirable and necessary. The parties have conferred and propose the following revised schedule for the Presiding Judge's approval:

<b>October 19, 2012</b>	Document production ends.
<b>November 19, 2012</b>	Complainant's Final Expert Reports filed.
<b>December 14, 2012</b>	Defendant's Final Expert Reports filed; parties may serve Expert Deposition Notices.
<b>December 14, 2012</b>	Exchange of Witness Lists.
<b>February 1, 2013</b>	<b>DISCOVERY ENDS.</b>
<b>March 1, 2013</b>	Trial Briefs exchanged by 12:00 noon.
<b>March 1, 2013</b>	Direct Case document exhibits and written direct testimony exchanged by 12:00 noon.
<b>March 8, 2013</b>	Objections filed to Direct Case exhibits and/or written testimony.
<b>March 13, 2013</b>	Responses filed to Objections.
<b>March 18, 2013</b>	Target date for Presiding Judges <i>Order</i> ruling on Exhibit Objections, and Rulings.
<b>March 19, 2013</b>	Hearing commences at 10:00 a.m., thereafter hearing days begin at 9:30 a.m. unless ordered otherwise.

The parties believe the above schedule better reflects the time required to review documents, prepare expert reports, conduct depositions, draft and prepare trial filings and exhibits, and prepare for trial in a manner that will allow the parties to present their evidence to the Presiding Judge in the most efficient manner. Specifically, the schedule allows for additional time between the close of document production and the submission of expert reports. Both parties are producing a substantial volume of documents that will need to be reviewed by their

respective experts so that they may prepare and present opinions that assist the Presiding Judge in evaluating the evidence and that make the trial of the case more efficient and effective. The parties have also endeavored to account for intervening holidays in proposing the schedule above.

**C. Status of Unresolved Issues From Previous Status Report**

In the August 20, 2012 Joint Status Report, the parties identified three discovery issues that they had yet to resolve: (1) the number of fact depositions; (2) the inclusion of Cablevision's CEO James Dolan as a document custodian whose files will be searched for responsive documents; and (3) the appropriate sampling of GSN programming that GSN will produce to Cablevision. The latter two of these issues have been resolved and the first one remains open:

**1. Open Issue**

(a) The number of fact depositions to which each party is entitled.

The parties have been unable to resolve this issue. Their respective positions are as follows:

- Statement of GSN's Position

To ensure a full and fair presentation of the evidence, GSN believes that the parties are entitled to depose each witness who will be called at trial and an additional limited number of witnesses who possess knowledge of relevant facts. This approach avoids unreasonable burdens on the parties while also allowing fair and reasonable discovery in line with what has been allowed in prior proceedings under Section 616. Pre-hearing depositions also streamline the hearing, by focusing questions and allowing targeted trial examinations.<sup>1</sup>

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<sup>1</sup> As the Presiding Judge may recall, in *The Tennis Channel v. Comcast Cable Communications* proceeding, eight fact witnesses were deposed in advance of the hearing. The parties' submitted transcript designations for two

Consistent with this view, on October 8, 2012, GSN provided to Cablevision a list of the fact witnesses GSN seeks to depose. Of that group of potential witnesses, Cablevision has preliminarily identified three it intends to call at trial and would submit to deposition: Tom Montemagno, Senior Vice President for Programming and Acquisition for Cablevision; Robert Broussard, President, Network Sales, AMC Networks, Inc.; and Elizabeth Doree, Senior Vice President, Scheduling & Acquisitions for WE tv. Beyond that group, however, Cablevision has imposed a limit of only one additional fact deposition, which it will allow only of an individual Cablevision elects to call as a fourth trial witness.

This limitation arbitrarily restricts deposition discovery on core issues in the case. Based upon their job responsibilities and/or involvement in relevant events, GSN also seeks to depose the following four witnesses, all of whom have been identified as document custodians by Cablevision:

- **James Dolan, CEO of Cablevision:** In addition to his overall operational knowledge as the Chief Executive Officer of Cablevision, Mr. Dolan likely has specific knowledge concerning Cablevision's carriage of GSN and its decision to reposition GSN to the sports tier. According to a sworn declaration submitted by GSN as part of its complaint, Mr. Dolan participated in a meeting with GSN executives in which Mr. Dolan explained Cablevision's purported justifications for repositioning the network. *See* Program Carriage Complaint, *Game Show Network, LLC v. Cablevision Sys. Corp.*, Declaration of David Goldhill, ¶ 18.
- **Thomas Rutledge, Former Chief Operating Officer of Cablevision<sup>2</sup>:** Mr. Rutledge likely has knowledge regarding the internal operations of Cablevision, specifically with respect to the interaction and relationship between its programming and distribution businesses. Mr. Rutledge also has specific knowledge regarding the GSN-Cablevision carriage negotiations. According to sworn declarations submitted by GSN, Mr. Rutledge participated in the meeting referenced above in which Cablevision explained its purported reasons for repositioning GSN. *Id.*

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of those witnesses, eliminating the need for them to offer testimony live at trial.

<sup>2</sup> Mr. Rutledge was Chief Operating Officer of Cablevision in late 2010 and early 2011 when Cablevision announced its decision to reposition GSN to the sports tier. He now works at Charter Communications, another cable company.

He separately discussed the carriage decision with Derek Chang, a member of GSN's Management Committee. *Id.* at Declaration of Derek Chang, ¶ 5.

- **Mac Budill, Executive Vice President, Programming for Cablevision:** GSN understands Mr. Budill is in charge of the Cablevision department that engages in carriage negotiations with programming networks. By virtue of this position, Mr. Budill should have been involved in the decision to reposition the network to the sports tier. In addition, based on his title and job responsibilities, Mr. Budill should have knowledge regarding the history of the GSN-Cablevision relationship, Cablevision's distribution practices more broadly, its carriage of other networks, and its strategies for launching, promoting and expanding the sports tier.
- **Kim Martin, President and General Manager of WE tv:** Ms. Martin serves as President and General Manager of WE tv. In this role, she should have operational knowledge and overall authority over the network's programming, marketing, advertising, and distribution. In addition, Ms. Martin served as President and General Manager of the now-defunct Wedding Central, one of the affiliated networks at issue in this litigation. By virtue of her position, she should have knowledge of the decisions surrounding the launch and subsequent cancellation of the network, the network's programming and target audience, and the network's inability to secure carriage from distributors other than Cablevision.

Because the parties have only recently exchanged the majority of their document productions, GSN would reserve its right to notice additional witnesses for deposition based on its review of the documents produced by Cablevision.

- Statement of Cablevision's Position

Cablevision respectfully submits that each side should be limited to a total of four (4) fact depositions. GSN, by contrast, has notified Cablevision that it currently intends to seek depositions of at least seven (7) people, including one former Cablevision executive who is no longer employed by the company. In addition, GSN has advised Cablevision that it reserves the right to seek additional depositions pending the completion of its review of Cablevision's documents. For the reasons set forth below, GSN's request is excessive in the circumstances.

As Cablevision advised the Presiding Judge in its Conference Memorandum of June 18, 2012, Cablevision believes that in a proceeding such as this in which direct testimony will be provided by written statement, there is little or no need for depositions of fact witnesses. The parties may draw upon the written testimony and documents to conduct a thorough cross-examination at trial. Further, the parties already have made voluminous submissions to the Media Bureau and therefore, as the Presiding Judge has noted, will not be “learning” the case in discovery. (See Order, FCC 12M-31, rel. June 19, 2012, at 2).

In the prior WealthTV case before the Presiding Judge, the parties tried the case in an orderly and efficient manner without any fact depositions whatsoever. Here, particularly in light of the complicated expert discovery (including multiple depositions) that must be completed before trial, Cablevision respectfully submits that the pre-trial efforts of the parties should be primarily devoted to that expert discovery and preparing written direct testimony of fact and expert witnesses. Nonetheless, in the spirit of compromise, Cablevision is prepared to have four fact depositions per side in addition to the depositions of the expert witnesses that each side intends to call.

Cablevision has already advised GSN of its current intention to call as trial witnesses three of the seven individuals reflected on GSN’s list: Ms. Doree, Mr. Broussard and Mr. Montemagno. The proposed schedule calls for identification of trial witnesses sufficiently far in advance of the close of discovery for GSN to determine whether it wants to depose each of these witnesses or other trial witnesses (if Cablevision determines to call any, a decision that cannot be made until document production and a review of those documents is complete). But in any circumstances, four depositions should suffice. Both sides are represented by counsel who are experienced in these proceedings and are capable of cross-examining trial witnesses without

the aid of deposition testimony.

## 2. Resolved Issues

- (a) The inclusion of Cablevision's CEO as a custodian of files whose files will be searched for responsive documents.

Following the Presiding Judge's August 23, 2012 Order, FCC 12M-41, requiring that "[r]elevant documents retained by either Parties' CEO that fall within the scope of the Parties' document requests should mutually be sought out, negotiated, and produced, except for privileged terms," the parties again conferred on the inclusion of Cablevision's CEO, James Dolan, as a custodian for discovery purposes. After further negotiation, Cablevision agreed to include Mr. Dolan as a custodian for its searches, but only as to the period of August 1, 2009 to June 1, 2011. Based on their current understanding, the parties believe this issue is now resolved.

- (b) The appropriate sampling of hours and types of GSN programming that GSN will produce to Cablevision.

As noted in the parties' first submission, GSN objected to Cablevision's initial request for DVDs of GSN programming on burden grounds. Cablevision proposed a revised request. Upon considering the revised request, GSN agreed to produce the requested DVDs programming and, as of the filing of this report, has completed its production of the same. Based on their current understanding, the parties believe this issue is now resolved.

Game Show Network, LLC

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October 10, 2012

## CERTIFICATE OF SERVICE

I, Neema D. Trivedi, hereby certify that on October 10, 2012, copies of the foregoing were served by electronic mail upon:

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