

**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: Chief Administrative Law Judge Richard L. Sippel

**CABLEVISION SYSTEMS CORP.’S UNOPPOSED MOTION
TO PERMIT THE INTRODUCTION INTO EVIDENCE OF LIMITED
VIDEOTAPED DEPOSITION TESTIMONY AT HEARING**

Pursuant to 47 C.F.R. § 1.291, Cablevision Systems Corp. (“Cablevision”) respectfully submits this Unopposed Motion to Permit the Introduction into Evidence of Limited Videotaped Deposition Testimony at Hearing (the “Motion to Permit”). The parties have conferred and Game Show Network, LLC (“GSN”) does not oppose the requested relief.

As explained below, the parties believe that the introduction into evidence of limited excerpts from two videotaped depositions—those of Cablevision’s chief executive officer James Dolan and GSN’s former Senior Vice President of Distribution Dennis Gillespie¹—at the hearing scheduled to begin on April 2, 2013, rather than written deposition designations, will be of assistance to the Presiding Judge in making his

¹ Cablevision will defer filing a motion to obtain a trial subpoena for Mr. Gillespie pending ruling on the Motion to Permit.

determination in this case. Because Cablevision is mindful of the Presiding Judge's rulings in prior proceedings with respect to audiovisual aids, it is requesting permission only with respect to these two depositions and the parties will take steps to ensure that the introduction of such videotaped depositions streamlines rather than disrupts the trial proceedings.

Background

Pursuant to the Presiding Judge's October 15, 2012 schedule order (the "October 15 Order"), the parties exchanged witness lists on December 14, 2012.

Cablevision included on its witness list Mr. Gillespie, who, as Senior Vice President of Distribution at GSN between February 2007 and February 2011, oversaw GSN's sales efforts to multichannel video program distributors ("MVPDs"), including Cablevision.

Cablevision took Mr. Gillespie's videotaped deposition on December 11, 2012.

GSN took the videotaped deposition of Cablevision's chief executive officer, James Dolan, on January 25, 2013. The deposition occurred pursuant to the Presiding Judge's Memorandum and Opinion dated December 11, 2012 directing Cablevision to produce Mr. Dolan for deposition.

Cablevision believes that Mr. Gillespie's testimony with respect to carriage negotiations between Cablevision and GSN, descriptions of GSN's programming and target and actual audience in presentations to MVPDs, and terms of GSN's carriage on other MVPDs, among other topics, is critical to this proceeding. Given the substantial documentary evidence to be introduced into evidence at trial, Cablevision believes that this important evidence is better heard and seen than read. The only alternative is to issue

a trial subpoena on Mr. Gillespie, a former GSN employee who, as we understand it, no longer has any formal relationship with GSN.

GSN has no objection to the introduction of excerpts of Mr. Gillespie's testimony by video provided that it is permitted to introduce Mr. Dolan's testimony in like manner. The use of Mr. Dolan's videotaped deposition would also avert a potential dispute between the parties as to whether GSN may call Mr. Dolan as a trial witness. Because the dispute it is not ripe, we do not go into the parties' disagreement as to whether GSN may call Mr. Dolan as a live witness at trial. In the event this motion is denied, Cablevision will likely file a motion for a protective order if GSN seeks to subpoena Mr. Dolan's testimony.

Argument

A. Videotaped Deposition Testimony is Routinely Presented in State and Federal Court Proceedings.

State and federal courts routinely allow the presentation of witness testimony via videotaped deposition.² Indeed, Federal Rule of Civil Procedure 32 explicitly provides that deposition testimony may be presented in "nontranscript form."³ As the Advisory Committee Notes make clear, under this rule, a party may offer deposition testimony in any of the forms authorized under Rule 30(b), which include "audiovisual" means.⁴

² Christina L. Dixon & Jennifer K. Hohnstein, *Rockstars, Lies, and Videotape: Using Videoed Deposition Testimony at Trial*, http://apps.americanbar.org/litigation/litigationnews/trial_skills/trialevidence_video.html (last visited Feb. 28, 2013) ("The introduction of videoed deposition testimony at trial is increasingly common").

³ FED. R. CIV. P. 32(c).

⁴ *Id.*, 1993 Advisory Committee Notes; *see also* FED. R. CIV. P. 30(b); *Weiss v. Wayes*, 132 F.R.D. 152, 154-55 (M.D. Pa. 1990) ("The use of videotaped testimony should be encouraged and not impeded because it permits the [factfinder] to make credibility evaluations . . .").

B. The Limited Use of Videotaped Deposition Testimony Would Be of Assistance to the Presiding Judge and Would Not Disrupt the Proceedings.

The use of limited excerpts from the videotaped depositions, a common means of presenting testimony in court, would assist the Presiding Judge in evaluating the deposition testimony of these two witnesses. As compared to stenographic transcript, the presentation of limited excerpts of videotaped testimony would allow the Presiding Judge to see the witnesses' demeanors, and thus assess credibility.

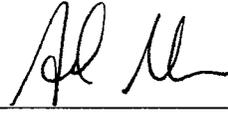
Additionally, as compared to live testimony, the use of limited excerpts from the videotaped depositions would streamline the proceedings and save trial time.

To allay any concerns the Presiding Judge may have that the presentation of videotaped deposition testimony would be disruptive to the Hearing, the parties will take it upon themselves to set up and take down the technology required for the limited purposes of showing these excerpts. The parties do not intend to play any videotapes during the proceedings other than the excerpts from these depositions.

Conclusion

For all of the reasons stated above, Cablevision's request to permit the introduction into evidence of limited excerpts from the videotaped depositions of Mr. Dolan and Mr. Gillespie should be granted.

Respectfully submitted,



Jay Cohen
Andrew G. Gordon
Gary R. Carney
PAUL, WEISS, RIFKIND,
WHARTON & GARRISON, LLP
1285 Avenue of the Americas
New York, NY 10019-6064
(212) 373-3000

Howard J. Symons
Tara M. Corvo
Ernest C. Cooper
MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY AND POPEO, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004
(202) 434-7300

Dominic J. Picca
Scott A. Rader
MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY AND POPEO, P.C.
Chrysler Center
666 Third Avenue
New York, NY 10017
(212) 935-3000

March 7, 2013

CERTIFICATE OF SERVICE

I, Ernest C. Cooper, hereby certify that on this 7th day of March 2013, the attached Unopposed Motion to Permit the Introduction into Evidence of Limited Videotaped Deposition Testimony at Hearing was served by electronic mail on the following as indicated:

Richard L. Sippel
Chief Administrative Law Judge
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Austin K. Randazzo
Attorney-Advisor/Law Clerk
Federal Communications Commission
Office of Administrative Law Judges
445 12th Street, S.W.
Washington, D.C. 20554

Mary L. Gosse
Administrative Officer
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Office of Administrative Law Judges

P. Michele Ellison
Chief
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Gary Schonman
Special Counsel
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

William Knowles-Kellett
Investigations and Hearings Division,
Enforcement Bureau
Federal Communications Commission
1270 Fairfield Road
Gettysburg, PA 17325

Pamela Kane
Deputy Chief
Investigations and Hearings Division,
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Counsel to the Enforcement Bureau

Stephen A. Weiswasser
Paul W. Schmidt
Elizabeth H. Canter
Neema D. Trivedi
COVINGTON & BURLING LLP
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2401

C. William Phillips
Laura Flahive Wu
COVINGTON & BURLING LLP
620 Eighth Avenue
New York, NY 10018-1405

Counsel to Game Show Network, LLC

/s/ Ernest C. Cooper
Ernest C. Cooper