

UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

In re )  
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 )  
Cases Filed by DIRECTV, INC., )  
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O R D E R

CASE MANAGEMENT ORDER NO. 6

This Order Pertains to  
the Following Related Cases:

CV 03-00884-PHX (HRH); CV 03-00967-PHX (HRH); CV 03-00968-PHX (HRH);  
~~CV 03-00969-PHX (HRH);~~ CV 03-00970-PHX (HRH); CV 03-00971-PHX (HRH);  
~~CV 03-00972-PHX (HRH);~~ CV 03-00973-PHX (HRH); CV 03-00975-PHX (HRH);  
CV 03-00976-PHX (HRH); CV 03-00977-PHX (HRH); CV 03-00978-PHX (HRH);  
~~CV 03-00979-PHX (HRH);~~ CV 03-00981-PHX (HRH); CV 03-00982-PHX (HRH);  
~~CV 03-00984-PHX (HRH);~~ ~~CV 03-00985-PHX (HRH);~~ CV 03-00989-PHX (HRH);  
~~CV 03-00991-PHX (HRH);~~ ~~CV 03-00992-PHX (HRH);~~ CV 03-00993-PHX (HRH);  
CV 03-00995-PHX (HRH); ~~CV 03-00997-PHX (HRH);~~ ~~CV 03-00998-PHX (HRH);~~  
CV 03-00999-PHX (HRH); CV 03-01000-PHX (HRH); ~~CV 03-01001-PHX (HRH);~~  
CV 03-01002-PHX (HRH); ~~CV 03-01424-PHX (HRH);~~ CV 03-01774-PHX (HRH);  
~~CV 03-01775-PHX (HRH);~~ CV 03-01776-PHX (HRH); ~~CV 03-01777-PHX (HRH);~~  
~~CV 03-01778-PHX (HRH);~~ CV 03-01794-PHX (HRH); CV 03-02147-PHX (HRH);  
CV 03-02148-PHX (HRH); ~~CV 03-02149-PHX (HRH);~~ CV 03-02181-PHX (HRH);  
CV 03-02182-PHX (HRH); CV 03-02352-PHX (HRH); CV 03-02450-PHX (HRH);  
CV 04-00172-PHX (HRH); ~~CV 04-00173-PHX (HRH);~~ CV 04-00174-PHX (HRH);  
CV 04-00175-PHX (HRH); ~~CV 04-00176-PHX (HRH);~~ CV 04-00177-PHX (HRH);  
~~CV 04-00178-PHX (HRH);~~ ~~CV 04-00179-PHX (HRH);~~ CV 04-00180-PHX (HRH);  
CV 04-00182-PHX (HRH); ~~CV 04-00183-PHX (HRH);~~ CV 04-00184-PHX (HRH);  
CV 04-00185-PHX (HRH); ~~CV 04-00191-PHX (HRH);~~ ~~CV 04-00192-PHX (HRH);~~  
CV 04-00193-PHX (HRH); CV 04-00195-PHX (HRH); ~~CV 04-00196-PHX (HRH);~~  
CV 04-00501-PHX (HRH); CV 04-00502-PHX (HRH); CV 04-00503-PHX (HRH);  
CV 04-00504-PHX (HRH); CV 04-00505-PHX (HRH); CV 04-00506-PHX (HRH);  
CV 04-00507-PHX (HRH); CV 04-00508-PHX (HRH); CV 04-00509-PHX (HRH);  
CV 04-00510-PHX (HRH); CV 04-00511-PHX (HRH); CV 04-00664-PHX (HRH);  
CV 04-00665-PHX (HRH); CV 04-00804-PHX (HRH); CV 04-00805-PHX (HRH);

CV 04-00806-PHX (HRH); CV 04-00807-PHX (HRH); CV 04-00808-PHX (HRH);  
CV 04-00809-PHX (HRH); CV 04-00810-PHX (HRH); CV 04-00811-PHX (HRH);  
CV 04-00812-PHX (HRH); CV 04-00813-PHX (HRH); CV 04-00814-PHX (HRH);  
CV 04-00815-PHX (HRH); CV 04-00816-PHX (HRH); CV 04-00817-PHX (HRH);  
CV 04-00818-PHX (HRH); CV 04-00819-PHX (HRH); CV 04-00820-PHX (HRH);  
CV 04-00821-PHX (HRH); CV 04-00822-PHX (HRH); CV 04-00828-PHX (HRH);  
CV 04-00829-PHX (HRH); ~~CV 04-00830-PHX (HRH);~~ CV 04-00831-PHX (HRH);  
CV 04-00832-PHX (HRH); CV 04-00833-PHX (HRH); CV 04-00834-PHX (HRH);  
CV 04-00835-PHX (HRH); CV 04-00836-PHX (HRH); CV 04-00837-PHX (HRH);  
CV 04-00838-PHX (HRH); CV 04-00839-PHX (HRH); CV 04-00840-PHX (HRH);  
CV 04-00842-PHX (HRH); CV 04-00843-PHX (HRH); CV 04-00844-PHX (HRH);  
CV 04-00849-PHX (HRH); CV 04-00850-PHX (HRH); CV 04-00851-PHX (HRH);  
CV 04-00852-PHX (HRH); CV 04-00853-PHX (HRH); CV 04-00854-PHX (HRH);  
CV 04-00856-PHX (HRH); CV 04-00857-PHX (HRH); CV 04-01041-PHX (HRH);  
CV 04-01106-PHX (HRH); CV 04-01107-PHX (HRH);  
[and]  
CV 03-02180-PCT (HRH); CV 04-00181-PCT (HRH); CV 04-00194-PCT (HRH);  
CV 04-00841-PCT (HRH); CV 04-00845-PCT (HRH); CV 04-00846-PCT (HRH);  
CV 04-00847-PCT (HRH); CV 04-01157-PCT (HRH);  
[and]  
~~CV 03-00593-TUC (HRH); CV 03-00618-TUC (HRH); CV 04-00043-TUC (HRH);~~  
CV 04-00044-TUC (HRH); CV 04-00045-TUC (HRH); ~~CV 04-00046-TUC (HRH);~~  
CV 04-00153-TUC (HRH); CV 04-00202-TUC (HRH); CV 04-00203-TUC (HRH);  
CV 04-00204-TUC (HRH); CV 04-00205-TUC (HRH); CV 04-00206-TUC (HRH);  
CV 04-00207-TUC (HRH)

Case Management Order for All Cases  
and Calendar for 2003 Cases

Introduction

By Case Management Order No. 4, the court called upon plaintiff and defendants to provide the court with information for use in constructing a scheduling and planning order for the jointly managed cases (JMC).<sup>1</sup> The court has received and reviewed the report received from plaintiff as well as reports from some, but by no means all, of the defendants.

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<sup>1</sup> CMO-4 was filed on or about May 7, 2004, in the 2003 cases, and has been served upon defendants in the 2004 DirecTV cases as they appear or answer the 2004 DirecTV complaints. Service of CMO-4 on appearing defendants is no longer necessary. This order shall be served on appearing defendants as provided in this order.

There has not emerged from the initial planning process any useful substantive basis for classifying or grouping the JMC.<sup>2</sup> Procedurally, the 2003 cases are ready to go forward. The 2004 cases are at various stages of development. The planning needs of all of the JMC are relatively clear. This Case Management Order No. 6 (CMO-6) shall serve as the planning document for all of the JMC and contains a calendar for the 2003 cases. A separate calendar for the 2004 cases will be established once the bulk of the 2004 cases are ready to go forward. As additional defendants appear or answer in the JMC, plaintiff shall cause a copy of this CMO-6 to be served upon such defendants.

I.

Planning and Management Concepts

A.

General Case Management

(1) Unless and until otherwise ordered by the court, all of the above-numbered cases (the JMC) as well as any subsequently

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<sup>2</sup> The court has given serious consideration to (and one or more defendants have suggested) a separate group for defendants who claim that they have been mistaken for someone else. The court's review of the defendants' answers leads the court to believe that creating such a discrete class or subclass would not be helpful. Defining such a subclass would likely lead to unhelpful disagreements about who is and who is not fairly within an "I didn't do it" class. Plaintiff suggests that defendants might be grouped on the basis of the equipment purveyor that each defendant is alleged to have dealt with in acquiring devices that might intercept and unscramble DirecTV signals. The foregoing concept (and possibly others) will surely prove useful to the plaintiff in undertaking discovery and may be useful in motion practice. However, the court does not perceive that a subgrouping for general case management purposes based upon the identity of an equipment purveyor would have any useful, overall effect.

filed, related cases will be managed by the court as a group, but are not consolidated pursuant to this CMO-6.

(2) Judge Holland of Alaska has been designated by the Ninth Circuit Court of Appeals to the District of Arizona for purposes of managing the JMC. The JMC remain pending in the District of Arizona. Case management and decision-making will be carried on from chambers in Alaska. Trials will be scheduled in the District of Arizona.

(3) Judge Holland does not have easy access to the original case files of the clerk of court and must therefore construct a chambers file for each of the JMC. Each party shall be responsible for providing chambers in Anchorage with copies of documents generated and filed with the court in Arizona by the party.<sup>3</sup>

(4) Communications with the court, except as to routine administrative matters, shall be in writing in an appropriate pleading, served upon the opposing party and Judge Holland, and filed with the court in Arizona. Parties should not communicate with the court by letter and shall not copy the court with correspondence exchanged between counsel. Facsimile transmission of documents to Judge Holland is discouraged and shall be accepted only when prearranged with chambers based upon a clear need for expedited delivery.<sup>4</sup>

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<sup>3</sup> See Paragraph I.D, pages 7-8 herein.

<sup>4</sup> Prior authorization for each transmission is required.

(5) The court has set up a DirectTV site on the Arizona District Court internet page by which the court may informally advise parties of recent developments in the JMC, i.e., the entry of an order on some subject.<sup>5</sup>

(6) Beginning with the entry of this CMO-6, the court will be setting compliance dates. The court will always endeavor to provide a reasonable amount of time within which parties are to act or respond. In order that the JMC may proceed smoothly and expeditiously, it is absolutely necessary that priority attention be given to obligations in the JMC. Not returning telephone calls or "I'm busy with something else" will not be tolerated. Except where the court has expressly stated otherwise, parties are at liberty to stipulate for an extension of time so long as such extension of time does not adversely impact other obligations on some party in this case and so long as the extension of time is brief and reasonable. A stipulation for an extension of more than seven calendar days in duration shall state the reason for the stipulation, and multiple extensions of the same obligation will, except for compelling circumstances, be rejected.

B.

Organization of Defense Counsel

The court continues to believe that this case will proceed more efficiently and economically if there is some organization

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<sup>5</sup> Counsel may access the internet web page for the District Court of Arizona at <http://www.azd.uscourts.gov>, then accessing "**Cases of Interest**" for the DirectTV listing.

amongst defense counsel. However, defense counsel have shown little interest in this proposition.

Because these cases are quite fact-specific for each defendant, the court is disinclined to force organization upon defense counsel except in limited areas to be discussed hereinafter and including motion practice and some aspects of discovery.

C.

Statement of Issues

The court continues to believe that the issues raised in the JMC are presented in a straightforward fashion by the complaints.

Input from the parties has suggested two broad "issue" matters that already have been resolved in the JMC:

- (1) Judge Martone has ruled<sup>6</sup> that 18 U.S.C. § 2512 creates a viable, private cause of action; and
- (2) Judge Martone has ruled<sup>7</sup> that, under Arizona law, DirecTV does not have a cause of action for conversion.

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<sup>6</sup> Order (Nov. 17, 2003), filed at Clerk's Docket No. 51 in DirectTV v. Humrich, No. 2003-0986-PHX. The order holds that "once a person has intercepted a communication, the aggrieved party may recover for the interceptor's possession of a device to intercept." Id. at 2-3. See also 1 Causes of Action (Second) 499, also available on "Book Line" (1-800-973-8733) for a comprehensive discussion of causes of action under 18 U.S.C. § 2520.

<sup>7</sup> Judge Martone concluded that, "Arizona would not recognize a conversion action for intangible property." Id. at 4.

Unless, on or before July 30, 2004, a party to the 2003 JMC shall show cause why the court should do otherwise, there will be entered in all of the 2003 JMC an order adopting the foregoing holdings for purposes of all of the 2003 JMC. The court will not after July 30, 2004, entertain motion practice in any of the 2003 JMC as regards the two above numbered issues.

D.

Filings Submitted to the Court

Ordinarily, counsel are required to submit to the clerk of court a copy of any document tendered for filing for the use of the Arizona judge to whom the case is assigned. Commencing upon receipt of a copy of this order, the parties in the JMC shall accomplish the following with respect to any document that is to be filed in the JMC:

- (1) The originals only of all documents shall be presented to the clerk of court as usual.<sup>8</sup>
- (2) A legible, complete copy shall be mailed by priority mail to:

Judge H. Russel Holland  
United States District Court  
222 West 7th Avenue - No. 54  
Anchorage, Alaska 99513

concurrent with the filing of the original with the clerk of court.

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<sup>8</sup> Do not send extra copies to the clerk's office or a previously assigned judge. Doing that causes confusion and needless work.

(3) Counsel shall incorporate into their certificate or affidavit of service a certification or affirmation that:

**A complete, duplicate copy of this document has been forwarded directly to Judge Holland.**

E.

Settlements and  
Alternative Dispute Resolution

The court shall be promptly notified when parties to a JMC have reached a settlement. The court will acknowledge such notices and will call upon the parties to consummate their settlement and effect a dismissal of the settled case within 30 days following the court's receipt of notice of the settlement.

It is the court's best judgment that court annexed arbitration is not likely to be useful in the JMC. The court urges counsel to consider private or court assisted mediation when, in their judgment, a particular case is ready for a negotiated settlement but will require assistance.

F.

Pro Se Defendants

A number of defendants have, as is their right, chosen to act as their own attorney. Pro se parties are subject to the same rules, the same scheduling and planning processes, and the same obligations to be familiar with and to comply with court rules and

orders as are parties represented by counsel.<sup>9</sup> There are only very limited circumstances under which pro se parties receive any kind of "special treatment."<sup>10</sup> By and large, the court is not in a position to assist or advise pro se defendants.

Because of the large number of JMC and the substantial similarities between them, there will be significant opportunities for pro se defendants to "follow the lead" of represented parties. However, doing that will take some effort on the part of pro se parties. They will have to monitor what is going on in other of the JMC by consulting the court's internet page, the clerk's dockets,<sup>11</sup> and other case files.

G.

#### Defaults

The taking of defaults as to defendants who do not timely answer plaintiff's complaints and the seeking of default judgment will be governed by CMO-5.<sup>12</sup>

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<sup>9</sup> When, in its orders, the court makes reference to "counsel," that term should be understood to include pro se parties.

<sup>10</sup> Responding to motions for summary judgment is the only example that readily comes to mind. The court will prompt pro se defendants as to their obligations in responding to a motion for summary judgment.

<sup>11</sup> The clerk's docket is a schedule of each and every paper filed in a particular case, arranged by date of filing. The docket contains a summary description of each document.

<sup>12</sup> Filed in the JMC then pending on May 12, 2004.

II.

Case Development Plan

A.

Parties and Pleadings

Based upon its review of the pleadings in this case, the court has identified no immediate need for amendments to pleadings or addition of parties. But see Paragraph III.B(1), page 18.

B.

Discovery / Disclosures

Discovery/disclosures shall be conducted in accordance with Rules 26 through 37, Federal Rules of Civil Procedure, except as expressly otherwise provided in this order.<sup>13</sup> Discovery/disclosures in the 2004 JMC is stayed pending development of a calendar for same. Discovery/disclosures in the 2003 JMC shall be accomplished as follows:

(1) Disclosures.

(a) Counsel for each party shall contemporaneously prepare and maintain a written record of all disclosures and supplementation of disclosures under Rule 26(a) and (e), Federal Rules of Civil Procedure. Unless required in support of a motion or by order of the court, disclosures and supplemental disclosures need not be filed with the court.

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<sup>13</sup> See 1 Causes of Action (Second) 499, IV Practice Checklists, § 24 Plaintiff's Discovery and § 25 Defendant's Discovery.

(b) Initial disclosures as required by Rule 26(a)(1), Federal Rules of Civil Procedure, by plaintiff and defendants in the 2003 JMC, shall be exchanged on or before July 30, 2004.<sup>14</sup>

(c) Disclosures and responses to discovery requests shall be supplemented as required by Rule 26(e), Federal Rules of Civil Procedure, within 30 days of discovering the necessity of such supplementation or correction of disclosures or responses to discovery.

(d) Expert witness disclosures (reports) in accordance with Rule 26(a)(2) shall be made by plaintiff on or before March 1, 2005, in the 2003 JMC, and by defendants on or before March 31, 2005, in the 2003 JMC.

(2) Phasing of Discovery.

The court finds that it will likely be more economical and efficient to place some restrictions upon the timing of various modes of discovery. Accordingly, discovery for the 2003 JMC shall be divided into three phases:

(a) Paper discovery.<sup>15</sup> Paper discovery may be undertaken in the 2003 JMC commencing August 2, 2004. All parties' initial paper discovery shall be served upon opposing parties in each of the JMC no later than August 13, 2004. Plaintiff's combined

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<sup>14</sup> The disclosures required by Rule 26(a)(3), Federal Rules of Civil Procedure, will be addressed by the court in an order for pretrial proceedings and final pretrial conference, which the court will issue concurrent with setting one or more cases for trial.

<sup>15</sup> Exchange of information through requests for admissions (Rule 26), interrogatories (Rule 33), and requests for production (Rule 34).

responses to defendants' paper discovery shall be served on or before September 30, 2004. Unless otherwise stipulated by the parties, defendants' several responses to plaintiff's initial paper discovery shall be served in accordance with applicable rules.

(b) Depositions of fact witnesses. Fact witness depositions in the 2003 JMC may be taken commencing September 16, 2004. Depositions shall not be noticed until after counsel have conferred as to scheduling of the deposition.

(c) Depositions of experts. Expert depositions in the 2003 JMC may be taken commencing March 31, 2005.

(3) Final Witness Lists / Close of Discovery.

(a) On or before December 10, 2004, each party in the 2003 JMC shall serve and file a final, revised fact witness list. Only those witnesses so disclosed will be permitted to testify at trial. The final, revised witness list shall include the name as well as the current address and telephone number for each witness whom the party expects to call at trial.

(b) All fact witness discovery in the 2003 JMC shall be commenced so as to be completed by January 14, 2005.

(c) All expert witness discovery in the 2003 JMC shall be commenced so as to be completed by June 30, 2005.

(d) The deadlines for completion of discovery are applicable to all forms of discovery and to all depositions, including what some lawyers call "perpetuation" depositions. A deposition may be taken after the close of discovery only by leave

of court obtained upon a showing of good cause why the deposition was not taken prior to the close of discovery.

Deposition discovery or last-minute responses to paper discovery may disclose the need for follow-up discovery, and the court does not mean to preclude such follow-up discovery in fixing the time parameters for paper discovery or deposition discovery. However, the court will consider it to be an abusive discovery practice for a party to defer what should be undertaken in the initial paper or deposition discovery until after the closing date fixed above. What is permitted is "true" follow-up discovery that could not reasonably have been anticipated during the specified discovery period.

Counsel in each of the 2003 JMC are at liberty to agree between themselves and without need of submitting a formal stipulation to the court with respect to: additional time to respond to paper discovery and the initiation<sup>16</sup> of or postponement of fact witness depositions. Counsel are not at liberty to change discovery close dates established in this order without the presentation of an appropriate motion or stipulation. The court is unlikely to alter discovery scheduling dates except for good cause shown.

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<sup>16</sup> It occurs to the court that there may be cases in which it would be to everyone's advantage for plaintiff to depose a defendant as the first order of business.

C.

Conditions and Limitations  
on Discovery

(1) Paper Discovery. During the period fixed for paper discovery, a party may serve upon an opposing party discovery requests by means of requests for admissions, requests for production of documents, and/or interrogatories. However, the cumulative total of such discovery requests shall be limited as follows:

- (a) Requests for Production of Documents. No limit.<sup>17</sup>
- (b) Requests for Admissions. 30 per side in each case.
- (c) Interrogatories. 40 per side in each case.

With respect to paper discovery, it shall not be a basis for defense objections that plaintiff has employed standard interrogatories, requests for admissions, or requests for production or things as to some or all of the defendants. However, plaintiff shall take care in using these modes of discovery to craft standard paper discovery so as to make it as case-specific as reasonably possible in light of the fact that, despite broad similarities between many of the cases, most of the cases appear to depend upon defendant-specific facts.

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<sup>17</sup> Plaintiff has suggested a limit of 50 requests for production of documents. The court does not know how to interpret that suggestion, for the service of 50 separate requests for production of classes of documents is deemed by the court to be excessive; and, on the other hand, it is conceivable that there could be more than 50 ways to describe documents which would be relevant to this case. The court expects both plaintiff and defendants to fully and completely identify and make available for inspection and copying all of their respective records and things which have relevance to plaintiff's claims and defendants' defenses.

Counsel will have observed that the court has fixed a relatively narrow time window for defendants to make use of paper discovery. This is necessitated by the fact that defense counsel have evidently opted to "go it alone" without any defense organization. As a consequence, and lest paper discovery become unmanageable, it simply must be undertaken by all of the defendants promptly and within a short period of time in order that the process of responding can be accomplished efficiently. Once the time for defendants' initial paper discovery requests has passed, plaintiff shall have until September 30, 2004, to assemble a joint response to all defendants who have submitted overlapping discovery requests and to make individual responses to defendants who have submitted requests that do not overlap others. Defendants who do not submit paper discovery requests during the initial paper discovery period shall be deemed to have waived their right to employ these modes of discovery.<sup>18</sup>

(2) Depositions. The number of depositions of non-party<sup>19</sup> fact witnesses shall be limited to five per side per case. Unless counsel agree otherwise, non-party fact witness depositions shall not exceed three hours in duration, named defendant depositions shall not exceed five hours in duration, and expert depositions shall not exceed five hours in duration. Plaintiff (employee) fact witnesses' depositions shall be of reasonable duration in relation

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<sup>18</sup> "Calendaring errors" or the "press of other business" or the like will not be acceptable excuses upon which to avoid this waiver provision.

<sup>19</sup> Officers and employees of plaintiff are "party" witnesses.

to the number of examining defense counsel who must coordinate their examinations to avoid repetition.

Defendants absolutely must coordinate deposition scheduling as between themselves and plaintiff as regards depositions of plaintiff's fact witnesses. Except for good cause shown, the court will not permit multiple depositions of any witness, whether a party, party representative, expert, or totally unrelated individual.<sup>20</sup> The court will not permit this restriction to become an impediment to effective deposition scheduling. Counsel will be required to work and cooperate with one another and deponents. Compromises as regards who can be available when will simply have to be made. The court will not tolerate arbitrary noticing of depositions without consultation with opposing counsel, nor will the court tolerate the delaying of depositions because all interested counsel (or pro se parties) cannot be available. Again, counsel are going to have to communicate and work with one another in scheduling depositions, scheduling them at times when the most interested parties can be available, and permitting others to submit written questions to be asked in the course of the deposition on behalf of parties who are unavailable.

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<sup>20</sup> The court does not mean to exclude the possibility of counsel agreeing amongst themselves for multiple depositions of a given witness who has information on multiple subjects of interest to differing groups of defense counsel.

III.

Motion Practice

A.

Status of Motion Practice

(1) By CMO-1, the court stayed all motion practice in the JMC. Subject to the provisions of this CMO-6, the stay on motion practice in the 2003 JMC is now lifted.

(2) Motion practice in the 2004 JMC is stayed pending the development of a discrete calendar for the development of the 2004 JMC. Excepted from this stay are the following:

- (a) applications for pro hac vice status by counsel;
- (b) applications for the entry of default for failure to answer;
- (c) motions for additional time to answer;
- (d) stipulations for orders in lieu of motion practice;
- (e) joinders in motion practice commenced in one of the 2003 JMC (see Paragraph III.F(1)(c), page 23); and

(f) the court will consider, ex parte, applications<sup>21</sup> to lift the stay on motion practice for purposes of considering emergency matters. A party wishing expedited consideration of a matter not otherwise permitted by a case management order shall serve and file an application for relief from the stay on motion practice and shall serve and lodge the proposed motion. The

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<sup>21</sup> Objections or responses to such applications will not be considered.

application shall be supported by a brief memorandum of reasons explaining why the matter should be taken up on an expedited basis.

(3) The court reserves the right to closely manage motion practice. If it should become apparent that there is reason to expedite certain motion practice, the court will do that. If it should become apparent that there is reason to defer certain motion practice that has been initiated, the court may, on its own motion, deny motions that have been filed, with leave to the parties to summarily renew a motion or motions at some later date.<sup>22</sup>

B.

#### Preliminary Motions

(1) Motions to Amend or Add Parties. Motions to add other parties or to amend pleadings in the 2003 JMC subsequent to the date of this order shall be served and filed on or before October 15, 2004. Up to the latter date, motions to amend or add parties will be allowed as a matter of course unless good cause is shown why such a motion should not be granted. Thereafter, parties may amend or add parties only upon leave of court and for good cause shown.

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<sup>22</sup> Of particular concern in this area is the premature filing of motions for summary judgment. The court is well aware of the fact that many defendants are anxious to extricate themselves from this litigation at the earliest possible time. Sometimes motions for summary judgment provide an avenue for early relief; but the court cannot grant any party summary judgment where there is a genuine dispute as to facts which are material to a disposition. Summary judgment is possible where the material facts are not in dispute and a party demonstrates that he, she, or it is entitled to judgment as a matter of law. Moreover, where facts are critical to a motion for summary judgment, the court must give all parties a reasonable opportunity to develop the facts through discovery before ruling on a motion for summary judgment. Fed. R. Civ. P. 56(f).

(2) Other Preliminary Motions. Rule 12 motions by defendants in the 2003 JMC shall be filed on or before August 31, 2004. The court encourages, but does not require, parties to file as preliminary matters motions raising pure issues of law. Such early motion practice might very well limit issues and thereby reduce the discovery load for everyone.

Prior to filing a preliminary motion, counsel contemplating such a motion shall contact opposing counsel for the purpose of providing a brief description of the proposed preliminary motion in order to ascertain whether or not opposing counsel will concede the matter. Opposing counsel shall respond no later than the close of business on the day following receipt of the motion proposal. If the matter is conceded, an appropriate stipulation of counsel shall be filed. If the party proposing such a motion receives no response, the motion may be filed, reciting compliance with this requirement in the lead paragraph of the motion.

C.

#### Discovery Motions

Unless counsel stipulate otherwise, motions under the discovery rules shall be filed on or before 30 days following an occurrence which is the basis for a discovery motion.<sup>23</sup> Discovery motions will be stricken if the parties have failed to comply with Rule 37(a)(2), Federal Rules of Civil Procedure, which compliance

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<sup>23</sup> This means, for example, that counsel are not at liberty to wait until the close of all discovery to raise questions about the sufficiency of responses to interrogatories. Motions to compel as regards paper discovery are due 30 days after responses are received or due.

shall be recited in the opening paragraph of any discovery motion.<sup>24</sup> The court expects counsel to confer promptly once a discovery problem has been identified. The court expects counsel to resolve routine discovery matters amongst themselves.

The court declines to authorize plaintiff to defer responding to all discovery motions by defendants until 30 days after the deadline for filing such motions. Rather, the court desires and expects that discovery motions will not be left until the end of the motion period except where exigent circumstances so require. If counsel become aware of the fact that a number of discovery motions are likely to be filed at about the same time and covering overlapping matters, the court urges counsel to coordinate, by stipulation, both the filing of the motions and the joining of opposition if the matters are not resolved; but the emphasis shall be upon the prompt filing of motions and individual disposition of them unless otherwise ordered by the court.

D.

#### Dispositive Motions

Motions for summary judgment in the 2003 JMC may be filed at any time,<sup>25</sup> and shall be filed no later than 30 days following the completion of all discovery. Motions for summary judgment that do not conform to Rule 56, Federal Rules of Civil Procedure, and/or Arizona Local Rule 1.10(1) will be summarily denied.

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<sup>24</sup> See also the requirements of Arizona Local Rule 1.10(j).

<sup>25</sup> But see note 22, supra.

E.

Motions in Limine

Motions in limine will not be considered by the court until after all potentially dispositive motions have been ruled upon.

F.

Procedures for Motion Practice

In addition to the requirements of the Federal Rules of Civil Procedure and Arizona Local Rules, the following general procedures shall be employed in motion practice in the JMC.<sup>26</sup>

(1) While the facts of individual JMC may vary considerably, and while discovery matters will likely have to be addressed on a case-by-case basis, matters of law are likely to have application in many if not all of the JMC. Except for good cause shown, legal issues involved in the JMC will be addressed only once. Accordingly, the following procedures shall be employed by party where initiating a motion raising legal issues:<sup>27</sup>

(a) Motions initiated by plaintiff raising a legal issue applicable to multiple cases shall be served upon all potentially affected defendants in all of the JMC simultaneously and filed with

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<sup>26</sup> Judge Holland has access to the Arizona District Court computerized case data and is therefore able to track the progress of motion practice from Alaska.

<sup>27</sup> The intent here is to deal with disputed legal matters, not matters such as statutes of limitations where the law is likely undisputed and the question to be decided is fact-dependent.

proof of service in the oldest, lowest-numbered file affected by the motion.<sup>28</sup>

(b) Motions initiated by a defendant raising a legal issue applicable to multiple defendants shall be served upon all defendants and plaintiff simultaneously and filed with proof of service in the case file of the moving defendant.<sup>29</sup> Plaintiff has prepared and shall provide to defense counsel upon request a master list of defendants in all of the JMC for use by defense counsel in serving such motions. Plaintiff shall update this master list regularly as necessary to keep the list current.

(c) All defendants in all of the JMC wishing to join in a defense motion shall serve upon all of the parties affected by the motion and file with the court (in the case in which the motion was

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<sup>28</sup> Plaintiff shall employ the case caption for the oldest (lowest-numbered) case and shall, in addition, and as part of the case caption, state as applicable:

"This motion applies to all cases."

*[or]*

"This motion applies to the following numbered cases: *[list all relevant cases by number only]*"

<sup>29</sup> The moving defendant shall append to his/her case caption, as applicable:

"This motion applies to all cases."

*[or]*

"This motion applies to the following numbered cases: *[list all relevant cases by number only]*"

filed) his or her notice of joinder no later than ten days from the service of the motion.

(d) Plaintiff's response to multi-case defense motions shall be served upon the initiating defendant as well as any joining defendant(s) within twenty days following the service of the motion; provided, however, that if joinders have added substantive arguments to those made by the initiating defendant, plaintiff's opposition to the motion shall be served and filed upon the initiating defendant and all joining defendants within twenty days following service of the last timely joinder that makes additional arguments.

(e) Defendants' responses to a plaintiff's motion affecting multiple defendants shall be served upon plaintiff and the other affected defendants and filed within twenty days following service of the motion.

(f) Replies (not required) may be filed as to multi-case motions within ten days following service of a response. Except with leave of court for good cause shown, only the party initiating a motion is entitled to serve and file a reply.

(g) The foregoing time requirements apply only to multi-case motions. The time requirements of Arizona Local Rules apply to single-case motions.<sup>30</sup>

(h) Defendants in all of the JMC who are served with a multi-case motion are bound by the court's decision on all defense motions, irrespective of whether or not they have joined in or opposed the motion. The court will file its decision on multi-case

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<sup>30</sup> See Paragraph III.F(2), below.

motions in all affected cases. Except for good cause shown,<sup>31</sup> the court will not entertain a second motion on a subject once it has ruled upon that subject. Having once ruled upon a subject, the court will abide by its initial ruling absent a clear showing that the initial ruling was wrong or that it is inapplicable to another party.

(2) The parties shall strictly comply with the presumptive page limitations specified by Arizona Local Rules. See Ariz. L.R. 1.10(e). The court will be disinclined to permit departures from these limitations except for exceptional circumstances and good cause shown. Counsel shall familiarize themselves with the response (ten days) and reply (five days) times for most motion practice.<sup>32</sup>

(3) Motions of all classes filed by any party shall be limited to one specific subject, except that matters which are logically or necessarily interrelated may be addressed in a single motion. Subject to the time constraints imposed by Paragraph III.C, page 19-20, multiple discovery compliance matters may be raised by a single motion.

(4) The court will not entertain "run-on" motion practice. That is, a party opposing a motion shall not incorporate another motion into an opposition document.

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<sup>31</sup> A relevant factor here will be whether or not a party had appeared or answered at the time a motion was filed.

<sup>32</sup> See Arizona Local Rule 1.10(c) and (d). Times allowed for response and reply on motions for summary judgement are 30 and 15 days. See Arizona Local Rule 1.10(1)(2).

(5) Oral argument on procedural and discovery motion practice will not be entertained except for good cause shown. Oral argument on potentially dispositive motions will routinely be granted upon request. A party desiring oral argument on a motion should so state in the title of their motion or response to a motion. When oral argument is deemed appropriate and useful, the court will, after it has examined the moving papers, initiate arrangements for oral argument, which will ordinarily be accomplished by telephone.

#### IV.

##### Further Pretrial Proceedings

Status, discovery, settlement, or other pretrial conferences will be scheduled on a case-by-case basis upon showing of a reasonable need for such procedures.<sup>33</sup> Should any significant number of defendants be of a view that a mass meeting with the court would be useful, the court will be in Phoenix and available during some or all of the day of November 10, 2004. Out of a concern for costs, the court would not entertain a request for a mass meeting of counsel except for specifically defined purposes and upon a

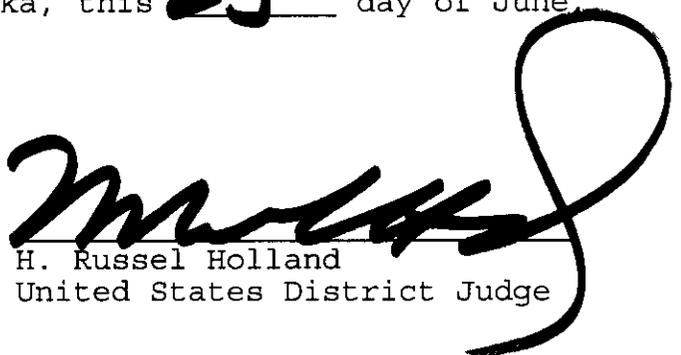
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<sup>33</sup> The number of parties in this case and the lack of any organization amongst the defendants will make any but small group conferences very difficult. Nevertheless, the court will endeavor, to the greatest extent possible, to make itself available to the parties to these cases. However, the parties must be on notice that Judge Holland will be on annual leave from June 25 through August 4, 2004. During that period, Chief Judge Sedwick of the District of Alaska (who also has an open designation to the District of Arizona) will be available to approve routine procedural orders which are unopposed or are not reasonably susceptible to disagreement. Other matters will have to be deferred from June 25 until after August 5.

showing that such a gathering would be more useful than other, less costly management procedures.

Upon the expiration of the time specified for discovery and motion practice, and after dispositive motions have been ruled upon, the court will call upon counsel to certify the respective cases to be ready for trial. By that time, if not sooner, the court expects that one or more bases for grouping cases for trial will have emerged. The court will, at that time, take input from the parties as to how the cases should be grouped for trial and as to how a trial with multiple defendants should be carried out. In each of cases grouped for trial, the court will enter an order for pretrial proceedings and final pretrial conference fixing final pretrial procedures including provision for motions in limine, pretrial disclosures (Rule 26(a)(3)), exchange and management of exhibits, and trial briefs, etc. A final pretrial conference will be held shortly prior to trial. A discrete amount of time for trial will be estimated by the court in its order for pretrial proceedings and final pretrial conference and will be fixed at the final pretrial conference. The parties will not be at liberty to exceed those time limits.

DATED at Anchorage, Alaska, this 25 day of June, 2004.

  
H. Russel Holland  
United States District Judge

In re Cases Filed by DIRECTV, INC.

APPENDIX TO  
CASE MANAGEMENT ORDER NO. 6

Summary of Calendar for 2003 JMC

Preliminary Motion Practice / Start	06.30.04
Show Cause re Adoption of Prior Holdings	07.30.04
Initial Disclosures Due	07.30.04
Initial Paper Discovery / Start	08.02.04
Initial Paper Discovery / Close	08.13.04
Preliminary Motion Practice / Close	08.31.04 <sup>1</sup>
Deposition Discovery (Fact Witness) / Start	09.16.04
Plaintiff's Combined Response to Defense Paper Discovery	09.30.04
Motion Practice to Amend or Add Parties / Close	10.15.04
Final Witness Lists	12.10.04
Close of All Fact Witness Discovery	01.14.05 <sup>2</sup>
Plaintiff's Expert Disclosures	03.01.05
Defendants' Expert Disclosures	03.31.05
Expert Deposition Discovery / Start	03.31.05
Close of All Expert Witness Discovery	06.30.05 <sup>2</sup>
Dispositive Motion Practice / Close	08.01.05

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<sup>1</sup>This date does not apply to motions to amend or add parties.

<sup>2</sup>Final discovery motions are due no later than 30 days following the close of all discovery; however, see paragraph III.C (pages 19-20) of CMO-6 for further time requirements as regards the filing of discovery motions.