

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	CV No. 17-2511
	)	
vs.	)	Washington, D.C.
	)	December 21, 2017
AT&T, INC. ET AL.,	)	3:00 p.m.
	)	
Defendants.	)	
	)	

---

TRANSCRIPT OF STATUS CONFERENCE  
BEFORE THE HONORABLE RICHARD J. LEON  
UNITED STATES SENIOR DISTRICT JUDGE

APPEARANCES:

For the Government:	Craig W. Conrath
	Eric D. Welsh
	Alvin Chu
	Peter J. Schwingler
	Lisa Scanlon
	Don Kempf
	Jared Hughes
	U.S. DEPARTMENT OF JUSTICE
	Antitrust Division
	450 Fifth Street, NW
	Washington, D.C. 20530
	(202) 532-4560
	craig.conrath@usdoj.gov
	eric.welsh@usdoj.gov
	Peter.schwingler@usdoj.gov

APPEARANCES CONTINUED

For Defendant AT&T  
and DirecTV Group  
Holdings, LLC:

Randall Oppenheimer  
Katrina M. Robson  
O'MELVENY & MYERS LLP  
1625 Eye Street, NW  
Washington, D.C. 20006  
(202) 220-5052  
Krobson@omm.com

Daniel M. Petrocelli  
M. Randall Oppenheimer  
O'MELVENY & MYERS LLP  
1999 Avenue of the Stars  
8th Floor  
Los Angeles, CA 90067  
(310) 553-6700  
dpetrocelli@omm.com  
roppenheimer@omm.com

Michael L. Raiff  
Robert C. Walters  
GIBSON, DUNN & CRUTCHER LLP  
2100 McKinney Avenue  
Suite 1100  
Dallas, TX 75201  
(214) 698-3350  
mraiff@gibsondunn.com  
rwalters@gibsondunn.com

Court Reporter:

William P. Zaremba  
Registered Merit Reporter  
Certified Realtime Reporter  
Official Court Reporter  
U.S. Courthouse  
333 Constitution Avenue, NW  
Room 6511  
Washington, D.C. 20001  
(202) 354-3249

Proceedings recorded by mechanical stenography; transcript  
produced by computer-aided transcription

1 P R O C E E D I N G S

2 DEPUTY CLERK: All rise. The United States  
3 District Court for the District of Columbia is now in  
4 session, the Honorable Richard J. Leon presiding. God save  
5 the United States and this Honorable Court. Please be  
6 seated and come to order.

7 The matter before the Court is  
8 United States of America versus AT&T, Inc., et al., DirecTV  
9 Group Holdings, Time Warner, Inc., versus Walt Disney  
10 Company.

11 Counsel, please come forward and identify  
12 yourselves for the record.

13 MR. CONRATH: Good afternoon, Your Honor.  
14 Craig Conrath for the United States.

15 THE COURT: Welcome.

16 MR. CONRATH: Thank you.

17 MR. WELSH: Good afternoon, Your Honor.  
18 Eric Welsh with the United States.

19 THE COURT: Welcome.

20 MR. CHU: Alvin Chu representing the  
21 United States.

22 THE COURT: Welcome.

23 MS. SCANLON: Lisa Scanlon for the United States.

24 THE COURT: Welcome.

25 MR. KEMPF: Good afternoon, Your Honor. Don Kempf

1 for the United States.

2 THE COURT: Welcome.

3 MR. HUGHES: Good afternoon. Jared Hughes for the  
4 United States.

5 THE COURT: Welcome.

6 MR. SCHWINGLER: Good afternoon. Peter Schwingler  
7 for the United States.

8 MR. PETROCELLI: Good afternoon, Your Honor.  
9 Daniel Petrocelli for defendants, Time Warner, AT&T, and  
10 DirecTV.

11 THE COURT: Welcome.

12 MS. ROBSON: Good afternoon, Your Honor. Katrina  
13 Robson of O'Melveny & Myers for Defendants AT&T, DirecTV,  
14 and Time Warner.

15 THE COURT: Welcome.

16 MR. OPPENHEIMER: Your Honor, good afternoon.  
17 Randy Oppenheimer for AT&T DirecTV and Time Warner.

18 THE COURT: Welcome.

19 MR. WALTERS: Good afternoon, Your Honor.  
20 Rob Walters here for AT&T and DirecTV.

21 THE COURT: Welcome.

22 MR. BARBUR: Good afternoon, Your Honor.  
23 Peter Barbur from Cravath, Swaine & Moore LLP representing  
24 Time Warner.

25 THE COURT: Welcome.

1 MR. RAIFF: Good afternoon, Your Honor.

2 Mike Raiff of Gibson Dunn for AT&T and DirectTV.

3 THE COURT: Welcome.

4 Welcome back, everyone. I hope your house  
5 survived, Mr. Petrocelli.

6 Well, first of all, let me compliment the counsel  
7 for their hard work on the case management order and the  
8 joint scheduling order. It bore productive fruit and has  
9 made my job easier and I think everyone's job easier,  
10 frankly, here.

11 I have a few comments, questions, and suggestions  
12 that I think will be necessary to amend, but not really very  
13 many at all, frankly.

14 Before I do that, though, I also want to comment  
15 on how extraordinary it is to have only one objector to the  
16 protective order. Well, if you want to count Disney and Fox  
17 as one. They're joint in their feelings on the subject.  
18 But I think that's actually rather extraordinary and very  
19 commendable also.

20 I've reviewed the pleadings that Fox submitted and  
21 government submitted. And I agree with the government, and  
22 I'm going to deny the motion. So I'll issue an order to  
23 that effect later today.

24 But it really is, I think, a testament to the  
25 lawyers here that you're able to get it down to a point

1 where there's only really one objector. So I think that's  
2 very good. My compliments to everyone.

3 Now, on the case management order, I had two  
4 changes, actually one is not really a change; it's an  
5 addition that I told you about. It will be paragraph 10,  
6 and it will be the duty to confer and have a pre-motion  
7 conference before you file any motions.

8 And then the procedures by which you must follow  
9 before you submit a letter to the Court bringing to the  
10 Court's attention that you tried to resolve the matter and  
11 weren't able to and now you feel -- well, the party seeking  
12 to bring the motion is informing me that, notwithstanding  
13 their efforts to try to resolve the matter, they feel they  
14 need to file a motion and why they need to file a motion,  
15 what the reason is on the other side. So I'll add a  
16 paragraph to that effect, nothing -- I assure you, nothing  
17 extraordinary or unusual about it, to be honest with you.  
18 So I think you'll find that to be very straightforward.

19 I already told you last week I was going to come  
20 up with something, and you'll see that there. So you won't  
21 be surprised that I'm going to get that out by -- I'm told,  
22 the witching hour is 4:30 today. So I'll get it out by 4:30  
23 today, Eastern Time.

24 I made a slight modification, but I think it's  
25 consistent with the scheduling order on your existing draft.

1 And on page 16, paragraph C, you refer to the Court's  
2 schedule allows for an opening and a rebuttal. I think it  
3 makes -- it's clearer to say, "The Court's schedule allows  
4 for an initial and a rebuttal expert report."

5 So that's a slight modification that has no  
6 substantive impact whatever on your proposal. So I just  
7 want you to know that I've made that change.

8 All the other changes, with the exception of the  
9 last paragraph, are just numbers, to accommodate  
10 paragraph 10, the one I've added for the conference  
11 requirement.

12 The other modification is to the final paragraph,  
13 25, modification of case management order. And I've  
14 decided, after looking at other case management orders and  
15 talking with colleagues, that it should be modified as  
16 follows:

17 "Any party may seek modification of this order for  
18 good cause. The Court maintains the right to modify this  
19 order as is necessary to address the issues presented in  
20 this case and to accommodate its obligation to resolve other  
21 time-sensitive legal matters on its docket."

22 So it's basically a slight modification that  
23 requires you to seek leave of the Court to modify for good  
24 cause. And that's all.

25 So I will input all of that. You should have that

1 be, like I say, 4:30 this afternoon and it will be done.

2 Now, on the scheduling order, I had some  
3 questions. And I think we can go through this pretty  
4 quickly.

5 And I would suggest, at least initially, that we  
6 just have one counsel for each side. So let's start with  
7 Mr. Conrath and Mr. Petrocelli. And then if others feel  
8 they really need to jump in -- these are not trick questions  
9 in any way, shape, or form. I'm just trying to get your  
10 thoughts on the subject while you have certain things here  
11 the way you have them.

12 Let's start with the preliminary fact witness list  
13 on January 3rd, okay? This case has been around a while and  
14 both parties have been looking at this. The government  
15 particularly has been looking at it for quite a while, and  
16 I'm sure the defense has been looking at their situation for  
17 quite a while too.

18 I'm wondering why we need -- why it's preliminary  
19 at that point. I appreciate that's prior to the experts'  
20 reports and whatever; but why does it need to be, from your  
21 point of view, why do you need it to be preliminary as  
22 opposed to a final?

23 MR. CONRATH: Sure.

24 THE COURT: Because there's a whole month between  
25 January 3rd and February 2nd, basically. And what is it

1 you're anticipating or you think might happen that we would  
2 have two different deadlines for that?

3 MR. CONRATH: Depositions, Your Honor. So we will  
4 be deposing during that month employees and officers of the  
5 defendant, some of whom we think may be trial witnesses who  
6 we would call on an adverse basis, and some --

7 THE COURT: How many do you have in mind, just  
8 roughly? I'm trying to get some idea of the enormity of the  
9 number of depositions you're thinking you might be needing  
10 to do. As opposed to wanting to do, say needing to do.

11 MR. CONRATH: Right.

12 So we've been, on this schedule, we're very much  
13 limited to need, Your Honor. But this is the kind of thing  
14 that consumes a bunch of time.

15 I want to be careful speaking off the top of my  
16 head.

17 THE COURT: No. I don't want to hold you to it.

18 MR. CONRATH: But I think it's -- I think it's  
19 between 40 and 50. And I think that is -- that may be  
20 under, probably not overselling at that point. That is a  
21 number lower than the *Anthem* case, for example, which is on  
22 a similar schedule so it's not out of the realm of  
23 possibility.

24 THE COURT: Sure.

25 MR. CONRATH: Obviously part of what we're looking

1 for is to learn facts. We think we know who are the right  
2 people to ask about facts, about data, about documents;  
3 doesn't always turn out we're right.

4 THE COURT: That's true.

5 MR. CONRATH: Sometimes people have very poor  
6 memories and they can't help us out on things that they seem  
7 to have written. That happens in life. So we have to leave  
8 open the possibility of having a deposition that turns into  
9 a funnel to get to what is a final witness list, which we,  
10 in agreement with defendants, but at that date, thinking  
11 that it's close enough to trial that we'll both feel that's  
12 where we're headed.

13 THE COURT: So it's unexpected or unanticipated  
14 parties that might arise in the course of the deposition?

15 MR. CONRATH: Yeah.

16 I should leave -- I should add one other thing.  
17 We will include on our preliminary witness list some third  
18 parties. Presumably there will be depositions and discovery  
19 of them. And so there's always some uncertainty there as  
20 well.

21 And, of course, we know that part of our task over  
22 this time is to, both to learn new facts and to find a way  
23 to narrow our presentation so we can make a cogent and  
24 efficient presentation during a trial that will enable the  
25 Court to come to a decision.

1 THE COURT: Will the third parties -- just  
2 speaking generally, would the third parties be people you've  
3 already at least had a chance to talk to and interview but  
4 not depose?

5 MR. CONRATH: Yes.

6 THE COURT: Okay.

7 And so probably you'll have had the opportunity to  
8 get a preview of what they have to offer --

9 MR. CONRATH: Yes.

10 THE COURT: -- under the circumstances and who  
11 else they might feel you might need to talk to or whatever.

12 MR. CONRATH: That's right.

13 THE COURT: To what extent do you anticipate that  
14 they will be hostile or less desirable to participate in  
15 this process.

16 MR. CONRATH: Well, no one we're -- it's our lot  
17 in life to be dealing with people who don't really want to  
18 talk to us, but they also recognize their responsibility.

19 So I don't think I would characterize them as  
20 hostile, in the sense of being aligned with the other side.  
21 I mean, everyone wishes, I wish it weren't me; but they  
22 understand that they have information that is relevant to a  
23 decision the Court has to make as a generalization.

24 THE COURT: Okay. Very good. Thank you.

25 Mr. Petrocelli, how does that sound to you?

1 MR. PETROCELLI: Your Honor, from your standpoint,  
2 the structure of the schedule is that we received the  
3 government's investigative materials, which largely but not  
4 entirely has already happened. And I think we're going to  
5 get the remaining materials very, very promptly.

6 Those materials are the materials the government  
7 has received from third parties over the course of its  
8 yearlong investigation. We've had no visibility into that  
9 process. We haven't seen those materials. We didn't have  
10 access to them during the investigation. And we were not,  
11 under the Rules, permitted to attend their interviews or  
12 even their depositions.

13 So for us, our depositions will consist of  
14 selected third parties once we review these materials and we  
15 see which ones seem to be more important than others, we're  
16 going to want to take some depositions.

17 I mean, my view is --

18 THE COURT: Does the number 40 sound about right  
19 to you too?

20 MR. PETROCELLI: No.

21 THE COURT: Or fewer?

22 MR. PETROCELLI: I was just going to say, my  
23 overriding philosophy in trying cases is less is more.

24 THE COURT: Well, that's mine too.

25 MR. PETROCELLI: And we're going to the aim to

1 take fewer than that. I would be surprised if we took 20.  
2 I'm guessing it will be fewer than 20, and maybe lot fewer.  
3 We just don't know yet. We're in the process of reviewing  
4 that material right now.

5 There is one issue that I would like to address to  
6 the Court. And it has to do with what'll happen when we, or  
7 for that matter, the United States, serves a subpoena on a  
8 third party to take a deposition and seek documents relevant  
9 to the examination.

10 Under Rule 45, if the deponent seeks to object to  
11 either the deposition entirely or the production of  
12 documents, that issue typically gets litigated in the local  
13 jurisdiction; but it can be transferred to this Court on a  
14 motion.

15 And if this Court were to have a preference to  
16 have those matters decided here more expeditiously and to  
17 better and more uniformly coordinate the proceedings,  
18 it would be helpful for us to be able to tell other judges  
19 that that's this Court's preference.

20 THE COURT: Sure.

21 And it would be, although I'd like to get some  
22 sense from both you and the government as to -- that's kind  
23 of where I was going with that prior question. How many of  
24 these witnesses are you anticipating are going to be hostile  
25 and not want to speak, not want to respond to a subpoena?

1 I mean, the companies and the individuals in  
2 question here obviously are public companies. They're  
3 individuals who are professionals, who have been in this  
4 industry probably for many years. I don't have a sense,  
5 from personal knowledge as you do, as to the likelihood that  
6 a large number or a very small number of people are going to  
7 contest a subpoena under these circumstances.

8 This obviously is a case of national prominence  
9 and national significance, and they're all well-aware of it.  
10 They've all been contacted -- well, not all, but many of  
11 them contacted by the government as part of its  
12 investigation. They're well-aware the trial is coming up in  
13 a matter of a few months.

14 Are you expecting, like, a large number of people  
15 to contest it?

16 MR. PETROCELLI: I don't, Your Honor.

17 I think you're absolutely correct. And I'd be  
18 surprised if there are many people objecting to the  
19 deposition.

20 I do believe there may be some selected objections  
21 to document issues.

22 THE COURT: Yes.

23 MR. PETROCELLI: And we're going to work hard to  
24 try to avoid and resolve them if they occur. But there may  
25 be circumstances where we may pass on Your Honor's

1 preference to other judges to --

2 THE COURT: Well, I would certainly encourage both  
3 sides, and I would feel very comfortable with you telling  
4 them that I would prefer that the other courts just send  
5 them here and we'll deal with it expeditiously. I mean,  
6 I can assure you of that. So feel free to make that  
7 recommendation.

8 MR. PETROCELLI: Thank you, Your Honor.

9 THE COURT: Very good.

10 All right. Let me ask you -- oh, go ahead,  
11 Mr. Conrath.

12 MR. CONRATH: Just to put on the record, we agree  
13 with that, with the concept of encourage parties to transfer  
14 here.

15 THE COURT: Very good.

16 Well, I think it's hopeful that we won't have a  
17 lot of this. I'm sure there will be maybe a little bit, but  
18 not a lot.

19 The next question I had related to -- well, it's  
20 not a question. It's more as a comment. On the next line  
21 was the, again, a February 2nd line. It talks about initial  
22 expert reports on economic and efficiency and/or synergy  
23 issues, reserving the right to serve rebuttal reports  
24 pursuant to the order -- to this order or for any disclosure  
25 contained in the initial reports.

1           And then it goes on. It has a parenthetical  
2 with -- I don't think that's really appropriate to have that  
3 in there, what's been agreed to by the parties. I mean, the  
4 parties have -- understand that. I don't think we need that  
5 in a scheduling order. I mean, I think we can just strike  
6 that out. I don't think that's necessary.

7           The trial procedure order raised a question in my  
8 mind as to, this was the February 16th line here. I just  
9 wanted to hear a little bit from each side on what why you  
10 think it's necessary.

11           I mean, obviously, your goal is to streamline  
12 things, but are you anticipating that there's going to be  
13 some special need in this case, that this case will pose a  
14 special need to have a trial procedure order? What do you  
15 think, Mr. Conrath?

16           MR. CONRATH: Sure, Your Honor. Thank you.

17           What we were thinking among the things we were  
18 thinking there, in particular, is the question of dealing  
19 with confidential information.

20           THE COURT: Okay.

21           MR. CONRATH: So you may recall in our first  
22 draft --

23           THE COURT: Right.

24           MR. CONRATH: -- the CMO, we included a bunch of  
25 those procedures.

1 THE COURT: Yes.

2 MR. CONRATH: And defendants, if I remember right,  
3 suggested that really belongs in a trial procedure order.  
4 And we're envisioning making proposals along that line.

5 THE COURT: Okay.

6 MR. CONRATH: Based on experience in prior cases,  
7 thinking of some pretrial procedures that'll help us avoid  
8 the situation when we're in court, in trial trying to ask a  
9 question and there's a problem.

10 THE COURT: Okay.

11 MR. CONRATH: So that's the principal thing. I  
12 guess our proposal would include anything else we can think  
13 of that will help streamline the trial, but that's a  
14 principal reason.

15 THE COURT: So you anticipate it will be helpful  
16 and necessary?

17 MR. CONRATH: Okay. Thanks.

18 THE COURT: All right.

19 Mr. Petrocelli.

20 MR. PETROCELLI: Your Honor, on this one,  
21 you know, one thought is that really the purpose of this is  
22 not only to deal with the third-party material but really  
23 how best to make this trial work efficiently for the Court,  
24 for Your Honor. And one thought is we might have either an  
25 initial pretrial conference or we maybe move up the pretrial

1 conference so we can hear from Your Honor how you want  
2 material presented from basic mechanics of exhibits to how  
3 you want deposition excerpts designated.

4 Do you want them all in one packet? Do you want  
5 them separately? Do you want videotaped designations if  
6 some of these depositions are videotaped?

7 And all those sorts of issues to make the trial  
8 not only run smoothly but according to Your Honor's  
9 preferences. And so one thought might be maybe we can meet  
10 with the Court at some point, and we can work out what the  
11 procedures are in conjunction with the Court.

12 THE COURT: Well, like I said last time, that  
13 I was hoping to have a status hearing every couple weeks  
14 just to be on top of whatever new developments or issues  
15 have arisen. And perhaps one of those status hearings we  
16 could devote a portion of the time to talking about issues  
17 that, as a result of the discovery you're conducting, you're  
18 anticipating issues and problems that might arise,  
19 especially if it deals with confidential information, some  
20 kind of protective-order-type materials, that kind of thing.

21 MR. PETROCELLI: Okay. Thank you.

22 THE COURT: That's fine.

23 The next one was March 9th, pretrial motions.  
24 I mean, obviously, other than *Daubert* motions -- we'll get  
25 to that one in a second. Pretrial motions, I mean,

1 obviously, there's not going to be dispositive motions. So  
2 are you thinking mostly motions in limine? Or are there  
3 other kinds of motions you have in mind that I'm trying to  
4 think a little bit, anticipate a little bit the kinds of  
5 motions you're thinking you might need to be filing that you  
6 can't work out in advance?

7 MR. CONRATH: Right.

8 We potentially could include motions in limine,  
9 I guess.

10 I think -- I mean, I don't think sitting here  
11 today on our side we have something particular in mind, but  
12 it seemed like the kind of thing for which we needed a date  
13 in the schedule. But that's the sort of thing we would  
14 envision.

15 THE COURT: Right.

16 Because, I mean, obviously, we're trying to keep  
17 motions to a small number. We don't want to get sidetracked  
18 or in some way inundated with a blizzard of paper around  
19 here. We've got plenty of paper as it is.

20 MR. CONRATH: Right. I think zero would be an  
21 acceptable number for pretrial motions.

22 THE COURT: That would be wonderful.

23 I have to be realistic, though.

24 MR. PETROCELLI: We agree. That's a placeholder,  
25 Your Honor. It's a bench trial. Motions in limine are not

1 that common or necessary. Maybe there's something that  
2 might come up, but we don't anticipate a flurry of motions.

3 THE COURT: I can practice the phrase "I'll take  
4 it for what it's worth."

5 MR. PETROCELLI: Okay.

6 THE COURT: I can use that very frequently, if  
7 necessary.

8 MR. PETROCELLI: We'll remember that, Your Honor.

9 THE COURT: All right. Well, then that gets me to  
10 the, obviously, *Daubert*. Although I'm not from Louisiana, I  
11 pronounce it "Daubert." I'm sorry, guys. Some people like  
12 "Daubert" or "Daubert," but I think "Daubert" is a much  
13 smoother way to say it, frankly. I'm not trying to trick  
14 you in any way.

15 So you all know this case. Obviously I'm trying  
16 to learn a lot about it. I would assume, starting off from  
17 where I start, that there wouldn't be much, if any, need for  
18 *Daubert* motions, because I would assume that the experts  
19 both sides are looking to are, first of all, prominent in  
20 their field and that the topics that they would be talking  
21 about are clearly beyond the kin of average folks and even  
22 average judges, and you need the expertise that they bring  
23 to the table.

24 So when I saw it, I was trying to think about,  
25 well, what kind of -- I mean, realistically, are we going to

1 have a lot of *Daubert* motions? Do we have to have hearings  
2 on that? Is that likely to happen.

3 I mean, you know the kind of experts you're both  
4 looking at. I would think that they would be almost above  
5 question in terms of credentials and the types of things  
6 they'll be talking about. But tell me what your thoughts  
7 are.

8 MR. CONRATH: I think this might be another area  
9 in which the correct number is zero. And the --

10 THE COURT: That would be awesome.

11 MR. CONRATH: Well, and the phrase, which I'll try  
12 to put in my mind -- I'll take it for what it's worth -- is  
13 also a complete response to many such motions.

14 I think -- you know, look, we have to include that  
15 possibility as well.

16 THE COURT: Sure.

17 MR. CONRATH: There may be questions about --  
18 I can imagine questions about a methodology or something  
19 that would fit here.

20 THE COURT: Yeah, if it was like a novel economic  
21 model that no one had ever seen before. I'm just being  
22 hypothetical here. I have no knowledge.

23 But if either side had come up with an expert  
24 who's come up with some brand-new thing that nobody's ever  
25 really seen before, that might be the kind of --

1 MR. CONRATH: I mean, we anticipate presenting  
2 experts who fit the description, Your Honor, by blue chip,  
3 competent, very capable, experienced people presenting  
4 sound, normal analysis that we think explains what's going  
5 on in this case and hope that -- you know, there may be  
6 questions that come up that can be dealt with in  
7 cross-examination. We don't think there's likely to be a  
8 need for a *Daubert* motion, but that's -- there is a  
9 possibility.

10 THE COURT: All right.

11 MR. PETROCELLI: Your Honor, this, too, is  
12 probably a placeholder. And I would agree with Your Honor's  
13 observations that this would be, perhaps, reserved for  
14 something that courts have not seen before or some new,  
15 novel approach to economic modeling.

16 We have not seen any of the government's modeling.

17 THE COURT: You're not aware of anything like that  
18 on the horizon at this moment?

19 MR. PETROCELLI: Right now I'm not, but we will  
20 know one way or the other on February 2 when the expert  
21 reports come in, Your Honor.

22 THE COURT: Okay.

23 MR. PETROCELLI: Okay. Thank you.

24 THE COURT: All right.

25 Well, I couldn't help but notice that the, under

1 your schedule as it exists, which is, to say the least,  
2 aggressive, in a positive, that's a compliment, actually.  
3 You've got the *Daubert* motion filed on March 12th and the  
4 opposition on March 15th. So those will be busy days, to  
5 say the least, if there's more than one of those motions  
6 that are being filed.

7 But hopefully, you're right; it will be more in  
8 the zero-to-one category than anything beyond that.

9 Final trial exhibits the 15th, that sounds  
10 realistic and certainly good, because I'd like to have those  
11 handy.

12 Pretrial conferences. In civil cases, I usually  
13 do pretrial conferences weeks in advance. We won't have  
14 that luxury in this case, obviously. So I'm glad you left  
15 it to be determined, and I think, as we go along, we'll just  
16 figure it out, frankly. If we keep on a schedule of having  
17 a status every couple of weeks, I think it will start to  
18 emerge through the fog when we're going to get together to  
19 really talk through any of these issues that are anticipated  
20 by both sides in this particular case. So I think that will  
21 take care of itself in that regard.

22 I was heartened to see the proposed findings of  
23 fact and conclusions of law seven days after the trial ends.  
24 That's very aggressive. And if you can pull that off, I tip  
25 my cap to both of you. I think that's really great. I

1 really do.

2 All right. So that answers most of my questions  
3 and at least my initial concerns about the scheduling order.  
4 I hope to have that out at 4:30 as well. It may not be  
5 quite as time-sensitive as the other, but certainly -- and  
6 I've modified paragraph 2 at the bottom of that page to be  
7 consistent with paragraph 25 that I already told you about,  
8 about changes.

9 Everyone has leave to seek leave of the Court to  
10 make modifications, but you've got to seek leave of the  
11 Court to do it. And I reserve the right to be protective of  
12 other burdens, in addition to this particular case.

13 So I should be able to get you that out by 4:30.  
14 At least that's my goal.

15 Next hearing would be Friday, January 5th, status  
16 hearing at 3:00, counsel. And hopefully, you all can make  
17 that work with your schedules. I certainly hope you can.

18 It occurred to me after the last hearing that I  
19 forgot to mention this, but I think I should mention it. It  
20 kind of goes without saying, but sometimes it's worth saying  
21 it anyway.

22 The Court is fully appreciative of the public  
23 nature of this case and fully appreciative of the extensive  
24 and hardworking communications departments of the Department  
25 of Justice and the various companies involved here.

1           Let's just start with the obvious comment that  
2 this case will be tried in the court. And it will be tried  
3 and litigated through pleadings that are public, to the  
4 extent that they can be.

5           And I want to keep the chatter, so to speak, in  
6 the press to an absolute minimum. I'm not issuing any gag  
7 order or anything. That's not necessary certainly and  
8 wouldn't be appropriate at this point. There hasn't been  
9 any transgressions of any kind that I'm aware of, certainly.  
10 But I just wanted to emphasize to the parties the importance  
11 of keeping that kind of chatter to a minimum.

12           The case will be tried right here. It will be an  
13 open courtroom, and the press will be here. They'll have  
14 reserved seats. And they'll see everything unfold to the  
15 extent it's not protected by a protective order.

16           So let's encourage those who are in our  
17 hardworking communications departments to chill out and just  
18 let the case unfold, as it unfolds. We've got a few more  
19 months of this, so...

20           Other than that, any issues that you want to raise  
21 today, counsel, for either side?

22           MR. CONRATH: We may submit -- we're looking at a  
23 couple of tweaks that may relate to the protective order  
24 that we will submit promptly. I just didn't want you to be  
25 surprised if those come in. And they're not ripe yet,

1 but --

2 THE COURT: Well, I'm going to issue --

3 MR. CONRATH: The protective order.

4 THE COURT: Oh, the protective order. Okay. All  
5 right. Well, if you've got some proposed tweaks to that  
6 that both sides agree to, I'm sure that will be not a  
7 problem.

8 Any issues from your side, Mr. Petrocelli?

9 MR. PETROCELLI: No, Your Honor.

10 Thank you very much.

11 THE COURT: Happy holidays, Counsel.

12 DEPUTY CLERK: All rise.

13 This Honorable Court will now adjourn.

14 (Proceedings concluded at 3:42 p.m.)

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

I, William P. Zaremba, RMR, CRR, certify that the foregoing is a correct transcript from the record of proceedings in the above-titled matter.

Date: December 21, 2017      /S/ William P. Zaremba

William P. Zaremba, RMR, CRR