

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

Judge David Folsom

TIVO

V.

ECHOSTAR

§
§
§
§
§

CIVIL ACTION NO. 2:04CV1

ATTORNEY FOR PLAINTIFFS:

Andrei Iancu; Morgan Chu; Laura Brill; Nick
Patton; Perry Goldberg; Garret Chambers;

ATTORNEY FOR DEFENDANTS:

Harold McElhinny; Rachel Krevans; John Pickett;
Charles Barquist; Scott Llewellyn

LAW CLERK:

Michael Bittner and Lon Outland

COURTROOM DEPUTY:

Mel Martin

COURT REPORTER:

Libby Crawford

CONTEMPT MOTION HEARING

February 17, 2009 @ 9:00 a.m.

OPEN: 9:10

ADJOURN: 10:33, 2/19/09

9:10 ct opens; ct/ Tivo's contempt motion; 7.5 hrs each side;

9:10 ptys announce ready;

9:11 Chu/ housekeeping matters; move all exhibits into evidence, with a few objections;

9:11 McElhinny/ reached stipulation this morning;

9:12 Chu/ would like to mention 2 categories very briefly;

9:12 ct/ will ask ptys to order transcript and then set schedule for filing of FFCL (Findings of
Fact and Conclusions of Law), these arguments can be addressed by that document;

9:13 Chu/ address' the ct;

9:13 Patton/ good faith defense;

9:14 ct/ will allow them to develop the record;

9:15 McElhinny/ housekeeping; preference, 3 witness' that will be appearing by deposition; our is 43 mins;

9:15 ct/ what is Tivo's offer;

9:15 Chu/ ours is 40 mins; and they can be read;

9:16 ct/ any particular preference for Echostar

9:16 McElhinny/ you can read them;

9:16 ct/ then you can submit them and I will read them;

9:16 McElhinny/ protective order;

9:16 ct/ bring to my attention if you need those not subject to protective order to step out;

9:17 Chu/ opening;

9:37 Krevans/ opening;

10:05 ct/ call first witness;

10:05 Iancu/ calls **James Storer**; sworn; direct; offers as an expert;

10:18 Krevans/ objection;

10:18 Iancu/ responds;

10:18 ct/ overruled;

10:18 Iancu/ continues with direct;

10:40 recess;

10:56 ct resumes;

10:56 Iancu/ continues with direct;

11:05 room is cleared to cover schematic exhibit;

11:05 Iancu/ continues with direct of **James Storer**;

11:54 recess;

1:21 ct resumes;

1:21 Iancu/ continues with direct;

1:22 Krevans/ objection

1:25 ct/ will note objection;

1:25 Iancu/ continues with direct;

2:07 Krevans/ cross of **James Storer**;

3:09 recess;

3:24 ct resumes;

3:24 Krevans/ continues with cross;

3:33 Chu/ rest

3:34 McElhinny/ we are ready to go;

3:34 Krevans/ calls **Dan Minnick**; sworn; direct;

5:02 recess;

2nd DAY OF HEARING, WEDNESDAY, 2/18/09

8:41 ICC with Chu and McElinny; ct/ both CEO's in the courthouse, would it be helpful to chat with them; McElhinny/ agrees; Chu/ responds, CEO not here; ct/ if Mr. Barton can deliver msg well and fine; how can Judge Faulknor be of help; McElhinny/ 2 general counsel are here; Chu/ this is great; ct/ can meet at end of the day; discuss with them and if they feel it won't be of help that is fine; 8:48 recess

9:00 ct resumes

9:00 Krevans/ continues with direct of **Dan Minnick**;

9:28 Iancu/ cross;

10:14 Krevans/ re-direct;

10:16 McElhinny/ calls **Lawrence Aaronson**; sworn; direct;

10:29 recess;

10:49 ct resumes

10:49 McElhinny/ continues with direct of **Lawrence Aaronson**;

10:54 Chu/ cross;

11:23 McElhinny/ calls **Robert Hillman**; sworn; direct;

11:36 Chu/ cross

11:58 McElhinny/ re-direct;

11:59 recess

1:30 McElhinny/ calls **Charles Ergen**; sworn; direct

1:40 Chu/ cross;

2:24 McElhinny/ re-direct;

2:28 Chu/ re-cross

2:30 McElhinny/ re-direct

2:30 McElhinny/ calls **Thomas Rhyne**; sworn;

2:30 Barquist/ direct;

3:57 ct/ step out briefly if not subject to protective order;

3:57 Barquist/ continues with direct;

4:01 recess;

4:15 ct resumes;

4:15 Barquist/ continues with direct;

4:48 ct/ any other witness after cross and re-direct

4:48 McElhinny/ no but we do have an offer of proof;

4:49 Chu/ responds;

4:49 ct/ let's take up some cross;

4:50 Chu/ cross of **Thomas Rhyne**;

5:00 McElhinny/ do you anticipate closing arguments tomorrow;

5:00 ct/ no;

5:00 recess;

5:06 ICC w/ Chu and McElhinny; ct/ do we have any realistic expectation of this being helpful; McElhinny/ responds; ct/ don't mind taking a few minutes initially, want you two present; 2 general counsel and Mr. Barton and Mr. Ergen; McElhinny/ would also like to include John Pickett; Chu/ responds; 5:10 recess; 5:15 ICC w/ Chu, Jim Barton (rep), Matt Zinn (gen. counsel), Stanton Dodge (gen. counsel), McElhinny, Pickett, Charles Ergen (rep); ct/ address' pty; anything I can do to help the process, if any possible way to bridge whatever bridge there is; Chu/ Judge Faulknor has been working very hard; Pickett/ we have talked and continue to have discussions; ct/ any suggestions on how we might go forward to resolve this; Zinn/ last discussion; ct/ should make serious efforts to resolve this before I enter a ruling; encouraging you to do so; Zinn/ would like to have a deal done; ct/ you should be meeting with Mr. Rogers; Ergen/ maybe; ct/ I think everybody has my message; 5:26 recess;

3rd DAY OF HEARING, THURSDAY, 2/19/09

9:00 ct opens;

9:00 McElhinny/ requests to seal all exhibits;

9:00 Chu/ that is for convenience;

9:00 ct/ they will be sealed;

9:01 Chu/ cross of **Thomas Rhyne**;

9:32 Barquist/ re-direct;

9:50 Barquist/ would like to file an offer of proof;

9:51 ct/ could we make that part of the report a part of the record;

9:51 McElhinny/ that is the offer of proof;

9:51 Chu/ responds;

9:51 ct/ will make that a part of the record; any rebuttal

9:51 Iancu/ yes sir, we will re-call mr. Storer;

9:52 recess;

10:05 ct resumes;

10:05 Iancu/ rebuttal, calls **James Storer**;

10:21 Krevans/ cross;

10:28 Iancu/ re-direct;

10:29 ct/ any additional rebuttal

10:29 Chu/ no, we rest;

10:29 ct/ as soon as transcript is filed; I will enter a time table when FFCL are due; have I ruled on all exhibit issues;

10:30 Chu/ respond

10:31 ct/ can be admitted over the objection as long as objection is not waived;

10:31 McElhinny/ objection to 2 sets of exhibits that were not used in the hrg;

10:32 ct/ general practice is not to admit the expert report; but will need to look at report for a limited purpose;

10:32 McElhinny/ the other class;

10:32 ct/ don't think that will be a part of my decision; from dft have you offered any exhibits that have objections;

10:33 McElhinny/ responds;

10:32 Goldberg/ responds, good faith;

10:33 ct/ anything else;

10:33 adjourned