

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA et al.,

Plaintiffs,

v.

AT&T INC. et al.,

Defendants.

Civil Action No. 11-01560 (ESH)

[PROPOSED] ORDER RE: TRIAL WITNESSES

It is hereby ORDERED:

1. The following schedule shall govern the identification of fact witnesses in this matter:

- | | |
|--------------------|--|
| November 15, 2011: | Plaintiffs provide an initial list of 15 potential fact witnesses |
| November 29, 2011: | Defendants provide an initial list of 15 potential fact witnesses |
| December 9, 2011: | Plaintiffs provide a supplemental list of an additional 15 potential fact witnesses |
| December 16, 2011: | Defendants provide a supplemental list of an additional 15 potential fact witnesses |
| January 12, 2012: | Plaintiffs and Defendants may provide supplemental lists of up to 5 potential fact witnesses |
| January 22, 2012: | The parties shall simultaneously file and serve final trial witness lists listing up to 20 potential fact witnesses, all of whom must have been previously identified. Each side (Plaintiffs and Defendants) may call up to 20 of those witnesses at trial, excluding expert witnesses and rebuttal witnesses. A witness shall count against a side's 20-witness limit regardless whether a witness is called live, submits direct testimony in writing, or is presented by deposition. The final lists shall include the witness information required by LCvR 16.5(b)(5). |

2. The foregoing dates may be modified for good cause shown in view of the fact that document discovery and depositions are ongoing and the discovery period does not end until January 10, 2012.
3. The obligation to submit direct testimony in writing does not depend on whether the witness is called live by the other side. Live cross-examination of witnesses who are called as adverse witnesses shall be limited to the scope of the direct, and any additional testimony shall be presented through pre-filed written testimony. Parties should submit written direct testimony for all trial witnesses from whom they reasonably can obtain written testimony. A witness who is called initially by written direct testimony may be cross examined live, and any re-direct shall be limited to the scope of the cross.
4. To ensure a fair opportunity for cross-examination of the opposing side's witnesses, each side is permitted to depose and to obtain relevant documents from any witness (including nonparty witnesses) on the opposing side's witness list prior to deposition of the potential witness, even if document productions and depositions must be conducted after the fact discovery cut-off of January 10, 2012. As set forth in Paragraph 7 of the Scheduling Order, the deposition of the parties' designated witnesses shall not count against the limit on depositions set forth in that paragraph.
5. Each side reserves the right to call a witness on the other side's witness list if the side designating that witness elects not to call the witness at trial, subject to any total trial witness limit set by the Court and the Court's requirements respecting the submission of pre-filed direct testimony.
6. Nonparties may be subpoenaed to testify live at trial under 15 U.S.C. § 23, unless both sides and the Court agree that a witness may be presented exclusively by deposition.

7. The Court defers consideration of the use of a “time clock” or other trial management tools until a later date.

SO ORDERED this _____ day of _____, 2011.

Hon. Ellen S. Huvelle
United States District Judge