

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
Miami Division

Case Number: 06-61564-CIV-MARTINEZ-BANDSTRA

PAETEC COMMUNICATIONS, INC.,

Plaintiff,

vs.

BELLSOUTH TELECOMMUNICATIONS,
INC., a Georgia corporation,

Defendant.

**ORDER REQUIRING PARTIES TO MEET AND FILE
JOINT SCHEDULING REPORT AND PROPOSED ORDER AND
DIRECTING PARTIES TO FILE CERTIFICATES OF INTERESTED PARTIES**

THIS MATTER came before the Court upon a *sua sponte* review of the file. To efficiently, expeditiously, and economically resolve this dispute, it is hereby:

ORDERED:

1. Plaintiff shall forward a copy of this Order to all Defendants, upon notice or appearance of defense counsel or *pro se* Defendant.
2. Discovery in this case shall be conducted in accordance with the Federal Rules of Civil Procedure and Southern District of Florida Local Rules (effective April 15, 2003), except the deadlines under Local Rules 16.1.D., E., H., J., K., and L., may be modified by further order of the Court.
3. **WITHIN FORTY FIVE (45) DAYS OF THE APPEARANCE OF A DEFENDANT**, counsel and *pro se* litigants shall file a Joint Scheduling Report and Joint Proposed Scheduling Order pursuant to Local Rule 16.1B.2, with a complete service list containing the name, address, phone number, **fax number**, and party represented by each counsel or *pro se* litigant.
4. Counsel for the parties and *pro se* litigants shall meet in person for a scheduling conference at least **twenty one (21) days** prior to the date the above Joint Proposed Scheduling

Order is due. At this conference, the parties **shall** accomplish the following: (1) determine the appropriate case management track for the action; (2) exchange documents and witness lists in compliance with Local Rules 16.1.D; (3) develop a case management plan which sets deadlines in compliance with paragraphs A, B, and C of this Order; and (4) discuss settlement, in good faith, after reviewing the opposing parties' disclosed documents and witness lists in compliance with Local Rule 16.1.B.1.

A. The Joint Scheduling Report shall include all information required by the eleven subsections, (a) through (k), of Local Rule 16.1.B.2. **IN ADDITION TO THE INFORMATION REQUIRED BY THAT RULE, THE REPORT SHALL INCLUDE THE FOLLOWING:** (1) whether the trial will be jury or non-jury; (2) an outline of the legal elements of each claim and defense raised by the pleadings (the parties are advised that this section shall not be a summary of allegations, but should be modeled on pattern substantive jury instructions applicable in this Court); (3) a good faith estimate of the specific dollar valuation of actual damages and other relief at issue; and (4) the need for variance from the discovery limitations imposed by Local Rule and/or the Federal Rules of Civil Procedure, including the grounds supporting the requested variance. In total, the Joint Scheduling Report shall have fifteen numerical sections containing the above required information (eleven to comply with the Local rule, and four to comply with the additional requirements of this Order). **Unilateral submissions are prohibited.**

B. As an attachment to the parties' Joint Scheduling Report, and in Compliance with Local Rule 16.1.B.2, the parties shall jointly complete **Attachment A** to this Order. The parties shall insert the specific day, month, and year for each listed deadline that applies to the parties' case management plan. In completing **Attachment A**, the parties shall take into consideration the suggested pretrial deadlines for a case set out in **Attachment B** to this Order (attachment B contains suggested deadlines for the standard case management track; attachment C contains suggested deadlines for the expedited case management track. See Local Rule 16.1.A.2). If the parties agree that one or more of the proposed deadlines (such as "expert witness deadlines") is not appropriate for this action, they may strike the language and omit that proposed deadline on **Attachment A**. The parties' proposed dates **shall** include: (1) **at least eight (8) weeks** between the deadline for all pretrial dispositive motions and the proposed trial

date; and (2) **at least two (2) weeks** between the deadline for the pretrial stipulation and the proposed trial date.

C. As part of the Joint Scheduling Report, the parties shall jointly complete and file with the Court the Magistrate Judge Jurisdiction Election Form appended to this Order as **Attachment D**. The Court will not accept unilateral submissions in this regard; thus, a "Yes" should be checked only if all parties agree. If the parties consent to a full disposition of the case by the Magistrate Judge, including trial and entry of final judgment, the parties shall jointly file the election form appended to this Order as **Attachment E**.

5. The foregoing information will aid the Court in its management of this case, including the expeditious resolution of any discovery disputes, and help the parties focus on the key issues of the case at an early stage in the proceedings. Accordingly, **the parties' failure to file a joint scheduling report or otherwise comply with this Order shall result in dismissal, default, or the imposition of other appropriate sanctions, including attorney's fees and costs.**

IT IS FURTHER ORDERED:

6. **The parties are to submit Certificates of Interested Parties and Corporate Disclosure Statements.** The Plaintiff, Defendant, Intervenors, and *Amicus Curiae*, including governmental parties SHALL FILE a Certificate of Interested Persons and Disclosure Statement, which shall contain a **complete** list of persons, associated persons, firms, partnerships or corporations that have a financial interest in the outcome of this case, including **ALL** subsidiaries, conglomerates, affiliates, parent corporations, and other identifiable legal entities related to a party. The parties shall have **fifteen (15) days** from the date of this Order to file the original Certificate. Throughout the pendency of this action, the parties shall be under a continuing duty to amend, correct, and update the Certificate. **The parties SHALL NOT include the names of the assigned District Judge and Magistrate Judge, merely by virtue of this case being assigned to them.**

7. Every motion filed in this case shall be accompanied by **one proposed original order** granting the motion. The order shall contain the **up-to-date service list** (names and facsimile numbers or addresses) of all counsel or pro se litigants in the case.

8. In light of the court's "fax-back" program, additional copies of the proposed order

and self-addressed stamped envelopes SHALL NOT be provided. Further, the parties shall be under a continuing duty to ensure the Clerk of the Court is provided with the up-to-date service information.

9. The parties SHALL NOT provide courtesy copies to Chambers, unless requested, in accordance with Local Rule 5.1.D.

DONE AND ORDERED in Chambers at Miami, Florida, this 19th day of October, 2006.



JOSE E. MARTINEZ
UNITED STATES DISTRICT JUDGE

Copies provided to:
Magistrate Judge Bandstra
All Counsel of Record

Pretrial Deadlines and Trial Date

DATE

month/day/year

- _____ Joinder of Additional Parties and motions for class certification.
- _____ Parties shall exchange expert witness summaries and reports as required by Local Rule 16.1.K.
- _____ Parties shall exchange written lists containing the names and addresses of all witnesses intended to be called at trial and only those witnesses listed shall be permitted to testify.
- _____ Parties exchange rebuttal expert witness summaries and reports as required by Local Rule 16.1.K. Note: These provisions pertaining to expert witnesses do not apply to treating physicians, psychologists or other health providers (if a Daubert or Markman hearing may be necessary, the parties are to add that as an additional deadline at the bottom of Attachment A).
- _____ All discovery, including expert discovery, shall be completed.
- _____ A mediator must be selected.
- _____ All summary judgment, *Daubert*, and other dispositive motions must be filed. A **minimum of eight (8) weeks** is required for the Court to review dispositive motions prior to filing of the joint pretrial stipulation. **If no dispositive motions will be filed, clearly note this fact in the Joint Scheduling Report.**
- _____ Mediation shall be completed.
- _____ All Pretrial Motions and Memoranda of Law must be filed.
- _____ Joint Pretrial Stipulation must be filed.
- _____ Proposed jury instructions and/or proposed findings of fact and conclusions of law must be filed.
- _____ Deposition designations must be filed.
- _____ Beginning of Trial Period.
- _____ Additional deadlines (please specify).

SUGGESTED PRETRIAL DEADLINES
STANDARD CASE MANAGEMENT TRACK

**Days Before
Beginning of
Trial Period**

- | | |
|----------|---|
| 240 days | Joinder of Additional Parties and motions for class certification. |
| 210 days | Parties shall exchange expert witness summaries and reports as required by Local Rule 16.1.K. |
| 200 days | Parties shall exchange written lists containing the names and addresses of all witnesses intended to be called at trial and only those witnesses listed shall be permitted to testify. |
| 180 days | Parties exchange rebuttal expert witness summaries and reports as required by Local Rule 16.1.K. <u>Note</u> : These provisions pertaining to <u>expert</u> witnesses do not apply to treating physicians, psychologists or other health providers (if a <u>Daubert</u> or <u>Markman</u> hearing may be necessary, the parties are to add that as an additional deadline at the bottom of Attachment A). |
| 130 days | All discovery, including expert discovery, shall be completed. |
| 120 days | A mediator must be selected. |
| 100 days | All summary judgment, <i>Daubert</i> , and other dispositive motions must be filed. A <u>minimum of eight (8) weeks</u> is required for the Court to review dispositive motions prior to filing of the joint pretrial stipulation. If <u>no</u> dispositive motions will be filed, clearly note this fact in the Joint Scheduling Report. |
| 60 days | Mediation shall be completed. |
| 45 days | All Pretrial Motions and Memoranda of Law must be filed. |
| 30 days | Joint Pretrial Stipulation must be filed. |
| 7 days | Proposed jury instructions and/or proposed findings of fact and conclusions of law must be filed. |
| 1 day | Deposition designations must be filed. |

SUGGESTED PRETRIAL DEADLINES
EXPEDITED CASE MANAGEMENT TRACK

**Days Before
Beginning of
Trial Period**

- | | |
|----------|---|
| 130 days | Joinder of Additional Parties and motions for class certification. |
| 120 days | Parties shall exchange expert witness summaries and reports as required by Local Rule 16.1.K. |
| 110 days | Parties shall exchange written lists containing the names and addresses of all witnesses intended to be called at trial and only those witnesses listed shall be permitted to testify. |
| 100 days | Parties exchange rebuttal expert witness summaries and reports as required by Local Rule 16.1.K. <u>Note</u> : These provisions pertaining to <u>expert</u> witnesses do not apply to treating physicians, psychologists or other health providers (if a <u>Daubert</u> or <u>Markman</u> hearing may be necessary, the parties are to add that as an additional deadline at the bottom of Attachment A). |
| 75 days | All discovery, including expert discovery, shall be completed. |
| 70 days | All summary judgment, <i>Daubert</i> , and other dispositive motions must be filed. A <u>minimum of eight (8) weeks</u> is required for the Court to review dispositive motions prior to filing of the joint pretrial stipulation. <u>If no dispositive motions will be filed, clearly note this fact in the Joint Scheduling Report.</u> |
| 60 days | A mediator must be selected. |
| 30 days | Mediation shall be completed. |
| 30 days | All Pretrial Motions and Memoranda of Law must be filed. |
| 10 days | Joint Pretrial Stipulation must be filed. |
| 7 days | Proposed jury instructions and/or proposed findings of fact and conclusions of law must be filed. |
| 1 day | Deposition designations must be filed. |

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Defendant.

_____ /

**ELECTION TO JURISDICTION BY A UNITED STATES
MAGISTRATE JUDGE FOR FINAL DISPOSITION OF MOTIONS**

In accordance with the provisions of 28 U.S.C. §636(c), the undersigned parties to the above-captioned civil matter hereby jointly and voluntarily elect to have a United States Magistrate Judge decide the following motions and issue a final order or judgment with respect thereto:

- 1. Motions for Costs Yes _____ No _____
- 2. Motions for Attorney's Fees Yes _____ No _____
- 3. Motions for Sanctions Yes _____ No _____
- 4. Motions to Dismiss Yes _____ No _____
- 5. Motions for Summary Judgment Yes _____ No _____
- 6. Other (specify) _____

(Date)

(Signature--Plaintiff's Counsel)

(Date)

(Signature--Plaintiff's Counsel)

(Date)

(Signature--Defendant's Counsel)

(Date)

(Signature--Defendant's Counsel)

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_____ /

**ELECTION TO JURISDICTION BY A
UNITED STATES MAGISTRATE JUDGE FOR TRIAL**

In accordance with the provisions of 28 U.S.C. §636(c), the undersigned parties to the above-captioned civil matter hereby jointly and voluntarily elect to have a United States Magistrate Judge conduct any and all further proceedings in the case, including TRIAL, and entry of final judgment with respect thereto.

(Date)

(Signature--Plaintiff's Counsel)

(Date)

(Signature--Plaintiff's Counsel)

(Date)

(Signature--Defendant's Counsel)

(Date)

(Signature--Defendant's Counsel)