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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

BROADBAND ITV, INC. * March 26, 2020
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*
VS. * CIVIL ACTION NOS.
*
AT&T SERVICES, INC., ET AL * W-19-CV-712
DIRECTV, LLC * W-19-CV-714
DISH NETWORK, LLC * W-19-CV-716

BEFORE THE HONORABLE ALAN D ALBRIGHT, JUDGE PRESIDING
TELEPHONIC SCHEDULING CONFERENCE

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1 (March 26, 2020, 3:42 p.m.)

03:42 2 THE COURT: Gentlemen, this is Alan Albright. Let me
03:42 3 start.

03:42 4 Mr. Hill, are you going to be speaking on behalf of
03:42 5 plaintiff?

03:42 6 MR. HILL: Yes, sir, Your Honor. I will be. And if I
03:42 7 need assistance with something, Mr. Kramer may speak up as
03:42 8 well.

03:42 9 THE COURT: Okay. And then I heard the warm, comforting
03:42 10 voice of Robert Fulghum in there, which I haven't heard in way
03:42 11 too long. Good -- good to hear from you and Mr. Durst again,
03:42 12 and so welcome aboard. Mr. Fulghum, who will speaking on
03:42 13 behalf of AT&T?

03:42 14 MR. FULGHUM: Judge, thanks for that warm welcome. And
03:42 15 I'll be speaking for AT&T and DirectTV.

03:42 16 THE COURT: And then, Mr. Palmer, will you or Mr. Roberts
03:42 17 be speaking?

03:43 18 MR. ROBERTS: I'll be speaking, Your Honor. This is
03:43 19 Mr. Roberts.

03:43 20 THE COURT: Mr. Roberts, you are the first person I've met
03:43 21 ever, I think, that has the same first name as my grandfather
03:43 22 did. So I just -- you know, I look forward to having you in my
03:43 23 court.

03:43 24 So I apologize. I'm going to -- did I get everyone who
03:43 25 might be speaking? I hope so.

03:43 1 Okay. I'll take that as a yes.

03:43 2 I'm looking at my cheat sheet that Josh prepared for me,
03:43 3 and it looks like in this case that if I'm correct -- good
03:43 4 gosh. Let me see just what we've got here. I apologize.
03:43 5 We've run over a little bit. So -- but what I have down here
03:43 6 is that there is some desire to have early discovery on behalf
03:43 7 of defendants; is that correct?

03:43 8 MR. HILL: Your Honor, Wesley Hill for the plaintiff.
03:44 9 Actually, it's some early discovery on behalf of the plaintiff.

03:44 10 THE COURT: Oh, okay. Then I misread Josh's notes.
03:44 11 Mr. Hill, if you would be so kind as to tell me what it is that
03:44 12 you need.

03:44 13 MR. HILL: Yes, Your Honor. What we're interested in is
03:44 14 pursuing some third-party document discovery related to the
03:44 15 operation of the accused products. These would -- this would
03:44 16 be material in the possession of third parties that we think
03:44 17 that in a case where it was in possession of a defendant would
03:44 18 be something that was responsive to their obligation to produce
03:44 19 materials sufficient to show the operation of an accused
03:44 20 product with their invalidity contentions.

03:44 21 In our case that material in some instances is going to be
03:44 22 in the possession of a third party. There's five of them in
03:44 23 particular. We provided a list of those to Mr. Yi before the
03:44 24 call and had discussed those with the defendants. And our
03:44 25 hope, Your Honor, was that we could take this third-party

03:44 1 document discovery regarding the technical operation of the
03:45 2 product in parallel with the defendants also producing that
03:45 3 information with their invalidity contentions or their portion
03:45 4 of that information and then we would have the full set of
03:45 5 information a plaintiff would normally have, pre-Markman,
03:45 6 post-invalidity contentions, to prepare for the claim
03:45 7 construction process and get ready to move forward with the
03:45 8 case thereafter. And so that is the discovery we seek.

03:45 9 THE COURT: Okay. And tell me -- help me out just a
03:45 10 little bit more about when you say you'd like third-party
03:45 11 discovery. What -- are you talking subpoenaing documents, or
03:45 12 are you talking depositions? What is it that you'd like to get
03:45 13 done?

03:45 14 MR. HILL: Yes, Your Honor. We're looking at document
03:45 15 subpoenas. So our focus is on the document subpoenas. Now,
03:45 16 you know, obviously there could -- a situation could arise
03:45 17 where a deposition became necessary, but in the first instance
03:45 18 we're looking for document subpoenas. And if there was any
03:45 19 bigger issue where a depo was necessary, we would raise that
03:45 20 with defendant and the third party and of course come back to
03:46 21 the Court if we couldn't resolve that by agreement.

03:46 22 THE COURT: Okay. Let me hear from Mr. Fulghum.

03:46 23 MR. FULGHUM: To start with, Mr. Roberts is going to start
03:46 24 for us.

03:46 25 THE COURT: Mr. Roberts.

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