

# EXHIBIT 3

Transcript of the Motions Hearing Before the  
Honorable Ellen Segal Huvelle, United States District Judge  
*United States of America, et al vs. Echostar Communications  
Corp, et al*  
Civil Action No. 02-2138 (D.D.C.)

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, et al,	.	Docket No. CA 02-2138
	.	
Plaintiffs,	.	Washington, D. C.
	.	November 5, 2002
vs.	.	1:00 p.m.
	.	
ECHOSTAR COMMUNICATIONS CORP.,	.	
et al,	.	
	.	
Defendants	.	
	.	
.....	.	

TRANSCRIPT OF MOTIONS HEARING  
BEFORE THE HONORABLE ELLEN SEGAL HUVELLE  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiffs:

R. HEWITT PATE,  
Deputy Assistant Attorney  
General  
Department of Justice  
Antitrust Division

ANNE SCHNEIDER  
Assistant Attorney General  
State of Missouri

JAY HIMES, Bureau Chief  
RICHARD E. GRIMM, Assistant  
Attorney General  
Attorney General's Office  
State of New York

BRADY JOHNSON,  
Attorney General's Office  
State of Washington

JULIE BRILL,  
Assistant Attorney General  
Office of the Attorney  
General of Vermont

*TEL*  
*12-30-02*

## APPEARANCES (Continued)

PATRICIA NAGLER,  
Deputy Attorney General  
Office of the California  
Attorney General

TERESA BROWN,  
Assistant Attorney General  
Office of the Attorney  
General of Arkansas

BRIAN MORRIS,  
Assistant Attorney General  
Office of the Attorney  
General of Montana

RODNEY I. KIMURA,  
Deputy Attorney General  
Office of the Attorney  
General of Hawaii

FRANCIS ACKERMAN,  
Assistant Attorney General  
Maine Office of Attorney General

BRETT T. DE LANGE,  
Deputy Attorney General  
Office of the Attorney General  
of Idaho

TODD A. SATTLER,  
Assistant Attorney General  
Office of the Attorney General  
of North Dakota

DAVID MONAHAN,  
Assistant Attorney General  
Office of the Attorney General  
of Massachusetts

JOHN BERGEN,  
Office of the Attorney General  
of Iowa

DAVID J. GILLES,  
Assistant Attorney General  
Office of the Attorney General  
of Wisconsin

## APPEARANCES (Continued)

ANTONIA CONTI,  
Assistant Attorney General  
Office of the Attorney General  
of Connecticut

MARIE MARTIN-KERR,  
Assistant Attorney General  
Office of the Attorney General  
of Nevada

MARK TOBEY,  
Assistant Attorney General  
KIM VAN WINKLE,  
Assistant Attorney General  
Office of the Attorney General  
of Texas

ANDREW AUBERTINE,  
Assistant Attorney General  
Office of the Attorney General  
of Oregon

LINDA DAVIS,  
Office of the Attorney General  
of Mississippi

DON ALLEN RESNIKOFF,  
Assistant Corporation Counsel,  
Antitrust  
Office of the Corporation  
Counsel,  
District of Columbia

ROGER REYNOLDS,  
Assistant Attorney General  
Attorney General, State of  
Connecticut

JAMES DONAHUE,  
Chief Deputy Attorney General  
JOSEPH S. BETSKO,  
Deputy Attorney General  
Office of Attorney General  
Commonwealth of Pennsylvania

For the Defendants:

DONALD FLEXNER, ESQUIRE  
Boies, Schiller & Flexner, LLP  
530 Wisconsin Avenue, N.W.  
Washington, D.C. 20015

For the Defendants:

HELENE D. JAFFE, ESQUIRE  
Weil, Gotshal & Manges, LLP  
767 Fifth Avenue  
New York, New York 10153

Official Court Reporter:

SANTA THERESA ZIZZO  
Room 4800C U. S. Courthouse  
Washington, D. C. 20001  
(202) 289-1160

Computer-Aided Transcription of Stenographic Notes

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1 permanent injunction to emergency relief?

2 MR. PATE: Well, if by some occurrence the FCC  
3 immediately gave a green light, then, sure, we would need to  
4 seek preliminary relief so that the anti-trust laws would then  
5 stand between the parties' consummation of a merger. We would  
6 do that, as always, on an expedited schedule. But, again, the  
7 schedule we proposed was one that was not picked as a situation  
8 where there was no urgency at all because of an FCC proceeding.  
9 Rather we think it is the best analogy that the Court can look  
10 to, to figure out what a very aggressive schedule would be.

11 THE COURT: Where was the Lockheed-Martin case tried?

12 MR. SCOTT: I'm sorry, Your Honor, I believe that case  
13 was resolved before it actually went all the way to trial.

14 MR. PATE: The schedule is the point we were making.  
15 Not the time to try it. The schedule for trial.

16 THE COURT: Okay. The Court will take a short recess.

17 (Recess)

18 THE COURT: I apologize to the people on the phone.

19 Are they still on the conference call?

20 THE DEPUTY CLERK: Yes, Your Honor.

21 THE COURT: I also apologize for the temperature in  
22 here. I don't control the temperature in the courtroom.

23 The Court has heard the argument, has read all of the  
24 papers that have been submitted to me, and I hear Mr. Flexner  
25 telling me that the schedule they propose is essential to the

1 parties for their agreement.

2 I am one of the few people who have actually tried to  
3 conclusion an anti-trust case in less than four weeks, and  
4 certainly this case doesn't compare with that case. That was  
5 an \$825,000,000 merger, three live witnesses, 12 affidavits and  
6 457 exhibits total. And the issue there was that the company  
7 would lose substantial value with respect to the bankruptcy if  
8 the decision was not issued by just about this time last year.  
9 Mid-November. Because the Bankruptcy Court had issued drop  
10 dead deadlines. It was not the parties' doing, it was the  
11 Bankruptcy Court. And there was an issue regarding the  
12 company's value if the transaction wasn't ruled on in a timely  
13 manner, but there was really only one issue there on how you  
14 define the relevant market, and I can say that that was a  
15 backbreaking experience for everybody concerned.

16 Both parties agreed to that schedule. They asked for  
17 it. They wanted it. They moved together. And the Court  
18 bought into the schedule and committed itself to meeting the  
19 deadlines but it was certainly not something that anyone would  
20 consider the ordinary or desirable way for a judicial  
21 proceeding to proceed.

22 The Court is not willing to abide by the schedule  
23 proposed by the defendants here. This is a -- they're asking  
24 basically to put the entire case on in less than six weeks.  
25 This case has been under consideration by the FCC and the

1 Department of Justice for some 11 months. This deal was  
2 proposed, as far as I understand, in October, 2001. And now  
3 through no fault of anyone I suppose they're asking this Court  
4 to do what no one else has done so far, which is to try this  
5 case, decide this case and provide for time for appellate  
6 review in six weeks. And this is a self-created deadline, if  
7 you don't mind me saying so. This is within the discretion of  
8 Hughes. They may or may not trigger the transaction date.  
9 They can decide to change this if they want to, if it's such a  
10 valuable and important transaction. It is not something that  
11 the Bankruptcy Court is saying has to happen or the whole  
12 transaction will fall apart.

13 And I think the case I cited before, the FCC versus  
14 A.J. Heinz makes it perfectly clear if the merger is prevented,  
15 nothing stops it from being resurrected. If it's so important  
16 to the companies and so pro-competitive there would be  
17 tremendous incentive for the companies doing something.

18 There is a major thing here which Mr. Flexner has  
19 basically said they are interested in this Court's decision  
20 because it would be persuasive to the FCC. The FCC who had 11  
21 months to review this matter and issued a 130-page decision  
22 rejecting the merger.

23 The companies are now given an opportunity to come up  
24 with a different plan. Apparently there have been no  
25 transaction documents signed, as far as I understand, and the