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August 22, 2016

Gino J. Agnello, Clerk
U.S. Court of Appeals for the Seventh Circuit
Everett McKinley Dirksen United States Courthouse
219 S. Dearborn Street
Room 2722
Chicago, IL 60604

**Re: *Federal Trade Commission, et al. v. Advocate Health Care Network, et al.*,
No. 16-2492 (argued August 19, 2016)**

Dear Mr. Agnello:

We respectfully ask that the Panel consider this short response to a point raised by Appellants only in their Reply and mentioned at oral argument only during Appellants' rebuttal. We recognize that post-argument submissions are unusual, but we hope the Panel will find this letter appropriate, as the point arose (both in writing and orally) at a time when we did not have the opportunity to respond.

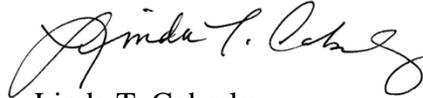
The point relates to what the FTC's counsel called a "concession" at the hearing below. During closing argument, the court asked NorthShore's counsel what the impact would be if the FTC added two specific hospitals to its proposed market: Presence St. Francis and Northwestern Memorial. Counsel responded that if only those two were added, the resulting Herfindahl-Hirschman Index would be "slightly above" the level that triggers a presumption of enhanced market power. (The relevant transcript pages are attached to the Reply at RSA21-22.)

In rebuttal before this Court, the FTC's counsel said that because of this "concession," the Hospitals' argument that the proposed market improperly excludes NorthShore's closest substitute is a "red herring" and "a distraction, because at the end of the day, everyone agrees that it doesn't matter." Not so. If patients and insurers "can practicably turn" to Northwestern Memorial near downtown—and there is both diversion data and insurer testimony (*e.g.*, RSA15; Opp. Br. 39) showing they can—then, geographically speaking, they can also practicably turn to other so-called destination hospitals near downtown, including Lurie Children's and Rush Medical Center. These and others fall within the same product market and also closely compete with the merging hospitals. Opp. Br. 16, 28-29 & n.52, 31 (citing data, insurer testimony).

Put another way, the exclusion of Northwestern Memorial—the first- or second-closest substitute for five of the six merging hospitals—demonstrates the fatal flaws in a critical

assumption on which the FTC's expert relied. Opp. Br. 26-33. And it is undisputed that extending the geographic market's boundaries to encompass downtown "destination" hospitals would very much "matter," because it would leave the Index below the critical level. Tr. 1211:22-1212:8. This further supports affirmance.

Sincerely,



Linda T. Coberly

LTC:tm

cc: Matthew Hoffman, counsel for FTC

CERTIFICATE OF COMPLIANCE AND SERVICE

I hereby certify that the foregoing Letter contains fewer than 350 words. I also certify that on this 22nd day of August, 2016, I electronically filed this Letter with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/DCF users and that service will be accomplished by the CM/ECF system.

Dated: August 22, 2016

/s/ Linda T. Coberly

Linda T. Coberly

*Counsel for Defendant/Appellee
NorthShore University Health System*