



**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Edith Ramirez, Chairwoman**
 Maureen K. Ohlhausen
 Terrell McSweeney

In the Matter of)	
)	
)	
Advocate Health Care Network,)	Docket No. 9369
a corporation;)	
)	
Advocate Health and Hospitals Corporation,)	
a corporation;)	
)	
and)	
)	
NorthShore University HealthSystem,)	
a corporation.)	

**JOINT EXPEDITED MOTION
FOR CONTINUANCE OF ADMINISTRATIVE PROCEEDINGS**

Pursuant to Rule 3.41 of the Federal Trade Commission’s (“FTC” or “Commission”) Rules of Practice, Complaint Counsel and Respondents, Advocate Health Care Network (“AHCN”), Advocate Health and Hospitals Corporation (“AHC,” and together with AHCN, “Advocate”), and NorthShore University HealthSystem (“NorthShore”), jointly move for an eleven-week continuance of the commencement of the administrative hearing from November 21, 2016, to February 7, 2017, as well as an extension of all pre-trial deadlines.

The Commission previously issued orders on May 6, 2016, June 2, 2016, and June 28, 2016 (“June 28 Order”), continuing the commencement of the hearing. Originally scheduled to begin on May 24, 2016, the June 28 Order set the commencement date for 21 days after the United States Court of Appeals for the Seventh Circuit rendered its judgment on the FTC’s appeal of the June 14, 2016, order by the United States District Court for the Northern District of Illinois denying the FTC’s request for preliminary injunctive relief. On October 31, 2016, the Court of Appeals reversed, finding that certain of the District Court’s geographic market findings were clearly erroneous, and remanded the case for further proceedings consistent with its opinion. The merger remains enjoined pending the District Court’s reconsideration of the preliminary injunction motion. In accordance with the Commission’s June 28 Order, the administrative hearing is currently scheduled to begin on November 21, 2016.

Complaint Counsel and Respondents respectfully submit that a further continuance is now necessary to provide the time for the parties and third parties to conduct necessary pre-trial work and to ease the burden on third parties and expert witnesses. The requested relief will not prejudice the Commission’s ability to discharge its duties.

BACKGROUND

An evaluation of this motion requires a brief summary of the status of the judicial proceedings brought by the FTC and the status of the Part 3 proceedings now pending before the Chief Administrative Law Judge.

When it issued the administrative complaint in this action, the Commission originally scheduled the Part 3 hearing to begin on May 24, 2016. On April 27, 2016, the Parties moved the Commission for a stay of the administrative hearing to June 15, 2016. *See* Exhibit A, Joint Expedited Motion for a 22-Day Stay of Administrative Proceedings. The purpose of that motion was to avoid potentially unnecessary expense and burden to non-parties and the Parties while the FTC's motion for preliminary injunction to enjoin the consummation of the proposed merger pending the completion of the administrative proceedings was *sub judice* at the United States District Court for the Northern District of Illinois. That motion was granted on May 6, 2016, at which time the parallel proceedings in *FTC et al v. Advocate Health Care Network et al.* had not yet concluded. *See* Exhibit B, FTC Order Granting Continuing Administrative Hearing at 2.

On May 27, 2016, the Parties again moved the Commission for a continuance of the administrative hearing then scheduled to begin on June 15, 2016, by 26 days. *See* Exhibit C, Joint Expedited Motion for Continuance of Administrative Proceedings. As with the earlier request, the purpose of that motion was to avoid potentially unnecessary expense and burden to non-parties and the Parties while the FTC's motion for preliminary injunction to enjoin the consummation of the proposed merger was pending before the United States District Court for the Northern District of Illinois. The order granting that motion was issued on June 2, 2016, which moved the start date for the administrative hearing to July 11, 2016. *See* Exhibit D, FTC Order Granting Continuing Administrative Hearing at 2.

On June 14, 2016, the United States District Court for the Northern District of Illinois issued a memorandum opinion and order denying the FTC's request for preliminary injunctive relief. The FTC subsequently filed a notice of appeal with the United States Court of Appeals for the Seventh Circuit. A Motion for Injunction Pending Appeal was granted by the District Court on June 16, 2016. On June 24, 2016, the Parties jointly moved the Commission for a stay of the administrative hearing until after the Court of Appeals ruled on the FTC's appeal. *See* Exhibit E, Joint Expedited Motion for Continuance of Administrative Proceedings. On June 28, 2016, the Commission granted a continuance, ordering the evidentiary hearing to begin 21 days after the Court of Appeals rendered its judgment on the FTC's appeal. *See* Exhibit F, FTC Order Granting Continuing Administrative Hearing at 2.

On October 31, 2016, the Court of Appeals reversed the District Court's denial of a preliminary injunction and remanded for further proceedings, leaving the merger enjoined pending the District Court's reconsideration of the preliminary injunction motion. Based on the Commission's June 28 Order, the Part 3 administrative hearing is currently scheduled to begin on November 21, 2016.

ARGUMENT

Under Rule 3.41 of the Commission's Rules of Practice, "[t]he Commission, upon a showing of good cause, may order a later date for the evidentiary hearing to commence." 16 C.F.R. § 3.41(b). Here, good cause exists for a further continuance of the commencement of the administrative trial because a brief postponement will allow the Parties to conclude meaningful,

new trial work, as well as reduce the burden on third parties and expert witnesses attempting to address evidentiary issues and schedule appearances around the Thanksgiving and year-end holidays.

When the Commission rescheduled the Part 3 hearing to commence on June 15, 2016, it contemplated that this extension “would allow additional time for the district court to complete its proceeding and issue a ruling, which could obviate the need for an administrative hearing.” *See* Exhibit B, FTC Order Granting Continuing Administrative Hearing at 2. Respondents have stated—and here again reaffirm—that, if the District Court orders that the proposed transaction be enjoined pending the outcome of the administrative proceeding, they do not intend to proceed with the proposed transaction. Under the current circumstances, however, it is not clear when the District Court will issue a new ruling on the motion for preliminary injunction. The Parties agree to move forward in federal court on an expedited basis. We expect, therefore, that the District Court will begin reconsidering the preliminary injunction motion in the next couple of weeks.

A continuance from the currently scheduled date of November 21, 2016, is warranted. First, doing so will ease the burden on third parties and expert witnesses to prepare for the hearing. Under the current schedule, November 18, 2016, is the deadline for non-party motions for *in camera* treatment, expert rebuttal reports, and expert depositions. The Parties have identified approximately 24 non-parties as witnesses that may be called live at the administrative trial. Additional non-parties will be required to move for *in camera* treatment of any material

they do not want presented on the public record. Three or more rebuttal expert reports, as well as up to nine expert depositions, will need to be completed prior to the hearing. While the Parties and third parties were aware that the administrative hearing could begin three weeks after the Court of Appeals's decision, no one knew in advance the timing of that decision. As such, the third parties have only been given notice recently that the administrative hearing would be rescheduled to begin the week of Thanksgiving, based on the date of the Court of Appeals's October 31 decision.

Second, granting a brief continuance will provide the Parties an opportunity to discuss narrowing the scope of issues to be presented at the administrative hearing. For example, both the District Court and Court of Appeals determined the relevant product market to be general acute care inpatient services. Additional time would allow the Parties to discuss proposed stipulations of law or fact.

Granting a shorter continuance than the eleven weeks requested here would create a hardship for non-parties. As noted above, up to 24 non-parties will need to travel to Washington, D.C. to testify at the hearing, and many of these witnesses will need to be in the city for a number of days in advance of their testimony. Currently, the evidentiary hearing is scheduled to begin three days before the Thanksgiving holiday. Beginning the Part 3 administrative hearing on November 21, 2016, or during the month of December will require many of these non-parties to travel during or immediately preceding the Thanksgiving and year-end holidays.

RELIEF REQUESTED

For all the reasons foregoing, Complaint Counsel and Respondents jointly and respectfully request that the Commission exercise its discretion under Rule 3.41(b) and/or Rule 3.41(f) to postpone commencement of the administrative hearing by eleven weeks until February 7, 2017, or until such later date as may be convenient for the Chief Administrative Law Judge and the Commission. Complaint Counsel and Respondents also request that interim pre-trial deadlines be moved until after January 6, 2017, and further determined by the Administrative Law Judge.¹

¹ If the commencement date for the administrative hearing is moved to February 7, 2017, but all pre-trial deadlines are adjusted day-for-day based on a comparable schedule as that contained in the original Scheduling Order, all remaining deadlines would occur no earlier than January 9, 2017.

Dated: November 10, 2016

/s/ Robert McCann

Robert W. McCann, Esq.
Kenneth M. Vorrasi, Esq.
Drinker Biddle & Reath LLP
1500 K Street, NW
Washington, DC 20005
Telephone: (202) 842-8800
Email: Robert.McCann@dbr.com
Email: Kenneth.Vorrasi@dbr.com

/s/ Robert Robertson

J. Robert Robertson, Esq.
Leigh Oliver, Esq.
Hogan Lovells US LLP
555 13th Street, NW
Washington, DC 20001
Telephone: (202) 637-5774
Email: robby.robertson@hoganlovells.com

*Counsel for Respondents Advocate Health Care
Network and Advocate Health and Hospitals
Corporation*

/s/ Dan Webb

Dan K. Webb, Esq.
David E. Dahlquist, Esq.
Winston & Strawn LLP
35 W. Wacker Drive
Chicago, IL 60601
Telephone: (312) 558-5660
Email: Ddahlquist@winston.com

*Counsel for Respondent NorthShore University
HealthSystem*

Respectfully submitted,

/s/ Kevin Hahm

Kevin Hahm, Esq.
Sean P. Pugh, Esq.
Federal Trade Commission
Bureau of Competition
600 Pennsylvania Avenue, NW
Washington, DC 20580
Telephone: (202) 326-3680
Facsimile: (202) 326-2286
Email: khahm@ftc.gov
Email: spugh@ftc.gov

Counsel Supporting the Complaint

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
Maureen K. Ohlhausen
Terrell McSweeney

In the Matter of)
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Advocate Health Care Network,
a corporation;)
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Advocate Health and Hospitals Corporation,
a corporation;)
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and)
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NorthShore University HealthSystem,
a corporation.)
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Docket No. 9369

**[PROPOSED] ORDER GRANTING JOINT EXPEDITED MOTION FOR
CONTINUANCE OF ADMINISTRATIVE PROCEEDINGS**

Good cause having been shown,

IT IS HEREBY ORDERED THAT Complaint Counsel's and Respondents' Joint Expedited Motion for Continuance of Administrative Proceedings is **GRANTED**; and

- (1) Commencement of the evidentiary hearing in this matter is moved from November 21, 2016, to February 7, 2017; and

- (2) All other proceedings in this matter will be moved until after January 6, 2017, and further determined by the Administrative Law Judge.

By the Commission.

Donald S. Clark
Secretary

ISSUED:

EXHIBIT A

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Edith Ramirez, Chairwoman**
 Maureen K. Ohlhausen
 Terrell McSweeney

In the Matter of

**Advocate Health Care Network,
a corporation;**

**Advocate Health and Hospitals Corporation,
a corporation;**

and

**NorthShore University HealthSystem,
a corporation.**

Docket No. 9369

**JOINT EXPEDITED MOTION FOR A 22-DAY STAY OF ADMINISTRATIVE
PROCEEDINGS**

Pursuant to Rule 3.41 of the Federal Trade Commission's ("FTC" or "Commission") Rules of Practice, Complaint Counsel and Respondents, Advocate Health Care Network ("AHCN"), Advocate Health and Hospitals Corporation ("AHCN," and together with AHCN, "Advocate"), and NorthShore University HealthSystem ("NorthShore"), jointly move for a 22-day postponement of the commencement of the administrative trial currently scheduled to begin on May 24, 2016, to June 15, 2016. This brief postponement may avoid significant expense and

burden on non-parties whose confidential information has been designated for use in the administrative trial. Additionally, it may allow the Parties to avoid additional expenses, such as expert depositions, in the event the administrative proceedings are suspended.

The Respondents' previously filed a Motion to Stay the Administrative Hearing on February 5, 2016, and the Commission denied this motion on March 18, 2016, on the grounds that at the time there was "no conflict between the two proceedings" – the preliminary injunction action in federal district court, *FTC et al. v. Advocate Health Care Network et al.*, No. 1:15-cv-11473 (N.D. Ill.), and the administrative hearing scheduled for May 24, 2016. Since the denial of the Respondents' original Motion to Stay, circumstances have changed.

The requested relief will not prejudice the Commission's ability to discharge its duties. The parallel proceedings in federal district court on the Commission's motion for a preliminary injunction in *FTC et al. v. Advocate Health Care Network et al.*, will now conclude sometime after May 6, 2016.¹ Although the District Court has not yet determined when it will issue its ruling, it is expected that this ruling will issue within a short time of the beginning of the administrative trial currently set for May 24, 2016. *See* Exhibit A, PI Hearing Transcript 1384:6-1385:12. If the preliminary injunction is granted, Respondents have consistently stated—and hereby reaffirm—that they do not intend to proceed with the proposed transaction. Under the recent revisions to Rule 3.26, if the PI is denied, the administrative proceeding will be

¹ The District Court paused the preliminary injunction hearing on April 20, 2016 due to issues with the Plaintiffs' witness availability and the Court's schedule. The hearing will be completed on May 6, 2016. The District Court has not yet set a date for closing arguments.

automatically stayed or withdrawn on the request of the Respondents. *See also* FTC Revisions to Rules of Practice, 80 Fed. Reg. 15,157, 15,158 (Mar. 23, 2015). Therefore, regardless of whether the District Court grants or denies the injunction, the administrative proceeding either will be rendered moot by the merging parties abandoning the transaction or may be stayed pending any appeal. Even if the Commission determines to proceed with the administrative litigation following denial of the preliminary injunction motion, this brief stay will not hamper the Commission's ultimate ability to obtain relief and will avoid starting the trial only to have it likely stayed pursuant to Rule 3.26.

ARGUMENT

Expedited consideration is appropriate because, unless this brief stay of the administrative proceedings is granted, numerous non-parties that have been notified by the Parties that their confidential material may be used at the trial are required to move by May 16, 2016, for *in camera* treatment of any material they do not want presented on the public record.² Such motions will address significant volumes of competitively and commercially sensitive documents and data that were produced during the course of the preliminary injunction proceeding and the FTC's merger review. If the Commission grants this motion for a brief stay, then the non-parties may avoid the substantial burden of reviewing voluminous documents, performing line-by-line proposed redactions of confidential information, preparing legal

² On April 26, 2016, the Parties also moved the Chief Administrative Law Judge to amend the schedule to give the non-parties an additional eleven days in which to file their motions. On April 27, 2016, Judge Chappell granted the Parties' request and extended the date until May 16, 2016.

memoranda requesting in camera treatment of those materials, and filing copies of all such materials with the Court. Additionally, the Parties have identified approximately 24 non-parties as witnesses that may be called live at the administrative trial. A brief stay will postpone the need for those witnesses to prepare to testify. Moreover, because the administrative trial may become moot, a temporary stay may allow the Parties to avoid additional expenses, such as the expense for up to nine expert depositions.

The brief postponement of the administrative trial will not prejudice the Commission. As Respondents have represented repeatedly and again represent now, if the District Court grants the preliminary injunction, the Respondents do not intend to proceed with their merger and this administrative proceeding will be moot. *See* Exhibit B, PI Hearing Transcript 59:1-7. If the District Court denies the motion for preliminary injunction, Respondents will file a motion pursuant to Rule 3.26 to withdraw the case from adjudication or dismiss the complaint. Rule 3.26(b)-(d). Once a respondent files such a motion, “the new rule now provides for an automatic withdrawal or automatic stay” of the administrative proceeding, depending on the type of motion. FTC Revisions to Rules of Practice, 80 Fed. Reg. 15,157, 15,158 (Mar. 23, 2015) (emphasis added); *see also* Rule 3.26(c); Rule 3.26(d)(2). Imposing a brief stay now avoids the inefficiency of beginning the presentation of evidence in the administrative trial only to suspend the proceeding following the ruling by the District Court, without prejudicing the Commission.

RELIEF REQUESTED

For all the reasons foregoing, Complaint Counsel and Respondents jointly and respectfully request that the Commission exercise its discretion under Rule 3.41(b) and/or Rule 3.41(f) to postpone commencement of the administrative hearing by 22 days, or until such later date as may be convenient for the Chief Administrative Law Judge and the Commission. Complaint Counsel and Respondents also request that interim pre-trial deadlines be stayed for 22 days.

Dated: April 27, 2016

Respectfully submitted,

/s/ Robert McCann

Robert W. McCann, Esq.
Kenneth M. Vorrasi, Esq.
Drinker Biddle & Reath LLP
1500 K Street, NW
Washington, DC 20005
Telephone: (202) 842-8800
Email: Robert.McCann@dbr.com
Email: Kenneth.Vorrasi@dbr.com

/s/ Robert Robertson

J. Robert Robertson, Esq.
Leigh Oliver, Esq.
Hogan Lovells US LLP
555 13th Street, NW
Washington, DC 20001
Telephone: (202) 637-5774
Email: robby.robertson@hoganlovells.com

*Counsel for Respondents Advocate Health Care
Network and Advocate Health and Hospitals
Corporation*

/s/ Thomas Greene

J. Thomas Greene, Esq.
Kevin Hahm, Esq.
Sean P. Pugh, Esq.
Federal Trade Commission
Bureau of Competition
600 Pennsylvania Avenue, NW
Washington, DC 20580
Telephone: (202) 326-5196
Facsimile: (202) 326-2286
Email: tgreene2@ftc.gov
Email: khahm@ftc.gov
Email: spugh@ftc.gov

Counsel Supporting the Complaint

/s/ Dan Webb
Dan K. Webb, Esq.
David E. Dahlquist, Esq.
Winston & Strawn LLP
35 W. Wacker Drive
Chicago, IL 60601
Telephone: (312) 558-5660
Email: Ddahlquist@winston.com

*Counsel for Respondent NorthShore University
HealthSystem*

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
Maureen K. Ohlhausen
Terrell McSweeney

In the Matter of)

Advocate Health Care Network,
a corporation;)

Advocate Health and Hospitals Corporation,
a corporation;)

and)

NorthShore University HealthSystem,
a corporation.)

Docket No. 9369

**[PROPOSED] ORDER GRANTING JOINT EXPEDITED MOTION FOR A 22-DAY
STAY OF ADMINISTRATIVE PROCEEDINGS**

Good cause having been shown,

IT IS HEREBY ORDERED THAT Complaint Counsel's and Respondents' Joint Expedited Motion for a 22-Day Stay of Administrative Proceedings is **GRANTED**; and

(1) Commencement of the evidentiary hearing in this matter is moved from May 24, 2016 to June 15, 2016; and

(2) All other proceedings in this matter are stayed for 22 days from the date of this order.

By the Commission.

Donald S. Clark
Secretary

ISSUED:

EXHIBIT A

1 APPEARANCES: (Continued)

2 For the Defendant
3 Advocate:

HOGAN LOVELLS US LLP
BY: MR. JOHN ROBERT ROBERTSON
MR. ROBERT FREDERICK LEIBENLUFT
MS. LEIGH L. OLIVER
MS. KIMBERLY D. RANCOUR
555 Thirteenth Street, NW
Washington, D.C. 20004
(202) 637-5600

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7

8

9

10

11

12

13

14

DRINKER BIDDLE & REATH LLP
BY: MR. ROBERT WALTER McCANN
MR. JOHN LEROY ROACH
MR. JONATHAN HAROLD TODT
MR. KENNETH MARK VORRASI
1500 K Street
Suite 1100
Washington, D.C. 20005
(202) 230-5149

15 For the Defendant
16 NorthShore:

17

18

19

20

21

22

23

24

25

WINSTON & STRAWN LLP
BY: MR. DAN K. WEBB
MR. DAVID EDWARD DAHLQUIST
MR. MARK WILLIAM LENIHAN
MR. MICHAEL S. PULLOS
MS. LAURA B. GREENSPAN
MS. CONOR A. REIDY
35 West Wacker Drive
Chicago, Illinois 60601
(312) 558-5600

10:21:52 1 servants in this. But if it were our druthers, I believe both
10:21:56 2 sides thought an hour and a half a side was probably the right
10:21:59 3 answer in terms of that.

10:22:00 4 MR. WEBB: That's right.

10:22:03 5 MR. GREENE: So I think that's our --

10:22:04 6 THE COURT: I think an hour would be more helpful
10:22:08 7 to --

8 MR. GREENE: Okay.

10:22:08 9 THE COURT: -- me. To the extent the parties
10:22:10 10 condense it, that would actually be more helpful. Doesn't
10:22:14 11 sound logical but it actually is in my experience. So let's
10:22:18 12 make it an hour for closing. Let's set 5/13 for those
10:22:24 13 post-trial briefings. And we've talked about what exactly
10:22:28 14 those will -- or what they may possibly include. And then I
10:22:34 15 will have to look, and Ms. Fratto will have to look, at the
10:22:37 16 calendar to get you guys in here shortly thereafter for
10:22:42 17 closing arguments or -- I should say after 5/6. We'll look at
10:22:48 18 the calendar to see what date after 5/6 makes sense for
10:22:52 19 closing arguments.

10:22:54 20 MR. GREENE: Yeah, I think our collective view -- I
10:22:56 21 mean, it's whatever helps you. But I think our view is that
10:22:59 22 giving you some opportunity to look at the findings of fact,
10:23:02 23 conclusions of law and then we could -- you could ask us the
10:23:06 24 hard questions, which I think is really the point of this kind
10:23:08 25 of thing.

10:23:08 1 THE COURT: So after 5/13 is your sense?

10:23:11 2 MR. GREENE: That would be my sense, yes, Your Honor.

10:23:13 3 MR. WEBB: We had the same view.

10:23:14 4 THE COURT: Okay.

10:23:16 5 MR. GREENE: And then, again, just for the record,

10:23:18 6 you know, the administrative trial begins on the 24th

10:23:21 7 currently so --

10:23:22 8 THE COURT: Right. Okay.

10:23:28 9 MR. ROBERTSON: Mr. Greene is going.

10:23:31 10 THE COURT: Right. Okay. So I'll get you that

10:23:35 11 information, the sooner the better. Is it too late to include

10:23:40 12 tomorrow, or no, in terms of witness availability?

10:23:45 13 MR. ROBERTSON: We hadn't planned on it, Your Honor.

10:23:47 14 MR. GREENE: Yeah, that's correct.

10:23:48 15 THE COURT: So forget about tomorrow. We are looking

10:23:50 16 at 5/6, and hopefully we have enough time allotted on 5/6.

10:23:55 17 MR. ROBERTSON: Yes, sir.

10:23:55 18 MR. DAHLQUIST: We think we do.

10:23:57 19 MR. GREENE: And, absolutely, I think our time

10:23:58 20 budgets will be essentially very limited by the end of today

10:24:02 21 so --

10:24:03 22 MR. WEBB: There may be only like an hour. We may

10:24:05 23 only have each like an hour or -- so as far as how much

10:24:10 24 testimony there will actually be on May 6th, it looks like

10:24:13 25 maybe it's going to be an hour on each side if I had to

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FEDERAL TRADE COMMISSION and
STATE OF ILLINOIS,

Plaintiffs,

v.

ADVOCATE HEALTH CARE NETWORK,
ADVOCATE HEALTH AND HOSPITALS
CORPORATION, and NORTHSORE
UNIVERSITY HEALTHSYSTEM,

Defendants.

No. 15 C 11473

Chicago, Illinois

April 11, 2016

1:00 p.m.

VOLUME 1

TRANSCRIPT OF PROCEEDINGS - PRELIMINARY INJUNCTION HEARING
BEFORE THE HONORABLE JORGE L. ALONSO

APPEARANCES:

For the Plaintiff
FTC:

FEDERAL TRADE COMMISSION
BY: MR. JAMES THOMAS GREENE
MR. CHRISTOPHER JOHN CAPUTO
MR. DANIEL ZACH
MR. KEVIN HAHM
MR. SEAN PUGH
MS. EMILY CATHERINE BOWNE
MS. SOPHIA VANDERGRIFF
MR. ALEXANDER JAMES BRYSON
600 Pennsylvania Avenue, NW
Washington, D.C. 20580
(202) 326-5196

FEDERAL TRADE COMMISSION
BY: MR. DANIEL JOHN MATHESON
400 7th Street, SW
Washington, D.C. 20003
(202) 326-2460

For the Plaintiff
State of Illinois:

ILLINOIS ATTORNEY GENERAL'S OFFICE
BY: MR. ROBERT W. PRATT
100 West Randolph Street
13th Floor
Chicago, Illinois 60601
(312) 814-3722

Nancy C. LaBella, CSR, RMR, CRR
Official Court Reporter
219 South Dearborn Street, Room 1222
Chicago, Illinois 60604
(312) 435-6890
Nancy LaBella@ilnd.uscourts.gov

1 APPEARANCES: (Continued)

2 For the Defendant
3 Advocate:

HOGAN LOVELLS US LLP
BY: MR. JOHN ROBERT ROBERTSON
MR. ROBERT FREDERICK LEIBENLUFT
MS. LEIGH L. OLIVER
MS. KIMBERLY D. RANCOUR
555 Thirteenth Street, NW
Washington, D.C. 20004
(202) 637-5600

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7

8

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15 For the Defendant
16 NorthShore:

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20

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23

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DRINKER BIDDLE & REATH LLP
BY: MR. ROBERT WALTER McCANN
MR. JOHN LEROY ROACH
MR. JONATHAN HAROLD TODT
MR. KENNETH MARK VORRASI
1500 K Street
Suite 1100
Washington, D.C. 20005
(202) 230-5149

DRINKER BIDDLE & REATH LLP
BY: MR. DANIEL J. DELANEY
191 North Wacker Drive
Suite 3700
Chicago, Illinois 60606
(312) 569-1175

WINSTON & STRAWN LLP
BY: MR. DAN K. WEBB
MR. DAVID EDWARD DAHLQUIST
MR. MARK WILLIAM LENIHAN
MR. MICHAEL S. PULLOS
MS. LAURA B. GREENSPAN
MS. CONOR A. REIDY
35 West Wacker Drive
Chicago, Illinois 60601
(312) 558-5600

1 quotes, well, that's a -- not an equity. It's a fact. It's
2 only that your Honor is here because this is the only court
3 that's going to decide this. We can't wait for two years for
4 the AOJ to do a decision, have an argument to the commission,
02:39:07 5 and then briefs, and then finally go to a court after all that
6 -- and it takes a long time to get to a court after all that.
7 By that time this case -- this deal is done.

8 If the FTC still thinks that they're right, give our
9 merger a chance; they can come back and sue us two years from
02:39:24 10 now if they want to. Most of the cases I tried, your Honor,
11 were post acquisition cases. The last case they talk about in
12 this region was a post acquisition case. They do it all the
13 time.

14 Now, at this point --

02:39:37 15 THE COURT: Is that the Evanston --

16 MR. ROBERTSON: -- let me --

17 THE COURT: -- Evanston case you're referencing?

18 MR. ROBERTSON: Sir?

19 THE COURT: Evanston?

02:39:45 20 MR. ROBERTSON: Yes, sir. That was a post
21 acquisition case. It was long after the acquisition, in fact,
22 about 12 years ago. The market has changed a lot since then.
23 Northwestern Memorial has all these new places up and along
24 the lakeshore. That's in the last four years. It wasn't
02:39:59 25 there 12 years ago.

CERTIFICATE OF SERVICE

I hereby certify that on April 27, 2016, I caused the foregoing document to be electronically filed with the Secretary of the Commission using the Federal Trade Commission's e-filing system, causing the document to be served on all of the following registered participants:

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW Rm. H-110
Washington, DC 20580

I also certify that I delivered via electronic mail a copy of the foregoing document

Robert W. McCann, Esq.
Kenneth M. Vorrasi, Esq.
Drinker Biddle & Reath LLP
1500 K Street, N.W.
Washington, DC 20005
Telephone: (202) 842-8800
Email: Robert.McCann@dbr.com
Email: Kenneth.Vorrasi@dbr.com

J. Robert Robertson, Esq.
Leigh Oliver, Esq.
Hogan Lovells US LLP
555 13th Street, NW
Washington, DC 20004
Telephone: (202) 637-5774
Email: robby.robertson@hoganlovells.com

*Counsel for Respondents Advocate Health
Care Network and Advocate Health and
Hospitals Corporation*

Dan K. Webb
David E. Dahlquist, Esq.
Winston & Strawn LLP
35 W. Wacker Drive

Chicago, IL 60601
Telephone: (312) 558-5660
Email: Ddahlquist@winston.com

*Counsel for Respondent NorthShore University
HealthSystem*

CERTIFICATE FOR ELECTRONIC FILING

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

April 27, 2016

By: s/ Emily Bowne

EXHIBIT B

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Edith Ramirez, Chairwoman**
 Maureen K. Ohlhausen
 Terrell McSweeney

In the Matter of

**Advocate Health Care Network,
a corporation;**

**Advocate Health and Hospitals Corporation,
a corporation;**

and

**NorthShore University HealthSystem,
a corporation.**

Docket No. 9369

ORDER GRANTING CONTINUANCE

On December 17, 2015, the Commission issued an administrative complaint alleging that an affiliation agreement by the Respondents violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and, if consummated, would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the FTC Act. On December 21, 2015, pursuant to Section 13(b) of the FTC Act and Section 16 of the Clayton Act, the Commission filed a complaint in United States District Court for the Northern District of Illinois seeking a temporary restraining order and a preliminary injunction to prevent Respondents from consummating their proposed merger until final resolution of this administrative proceeding. *Compl., FTC v. Advocate Health Care Network*, No. 1:15-cv-11473 (N.D. Ill.) (Dec. 21, 2015). In accordance with Commission Rule 3.11(b) (4), the evidentiary hearing is scheduled to begin on May 24, 2016.

On March 18, 2016, the Commission denied without prejudice a motion by Respondents to stay the administrative hearing pending a ruling by the district court on the Commission's request for a preliminary injunction.¹ The parties have now filed a Joint Expedited Motion

¹ *Advocate Health Care Network*, Docket No. 9369, Commission Order Denying Motion To Stay the Administrative Hearing (Mar. 18, 2016).

seeking a 22-day continuance of the administrative hearing and related pre-hearing deadlines,² citing the fact that the district court hearing on the Commission's motion for preliminary injunction has yet to conclude.³ Respondents represent that if the district court grants the preliminary injunction motion, they will abandon the proposed transaction. They further assert that, if the district court denies the preliminary injunction motion, they will file a motion pursuant to Commission Rule 3.26, which would trigger either a possible withdrawal of this matter from adjudication or a stay, pending further action by the Commission.

In support of their request for a continuance, the parties argue that, should the evidentiary hearing become moot, the requested continuance could relieve third parties of the burden and cost associated with preparing witnesses to testify and filing motions for *in camera* treatment of their confidential materials, which would need to commence soon under the current schedule. The parties also argue that a continuance would not prejudice the Commission, even if the adjudication of this matter were to proceed.

Although the Commission is committed to moving forward as expeditiously as possible with adjudicative proceedings,⁴ we find there is good cause here to grant the requested continuance of the administrative hearing and related deadlines. A short continuance would allow additional time for the district court to complete its proceeding and issue a ruling, which could obviate the need for an administrative hearing. Additionally, a short delay in the start of the administrative hearing would not harm the Commission or the public interest should it be necessary for the administrative adjudication to go forward. We note, however, that a more significant delay may not be justified as our rules contemplate that both district court and administrative proceedings can proceed in parallel.

Accordingly, **IT IS HEREBY ORDERED** that the evidentiary hearing shall commence on June 15, 2016 and all related pre-hearing deadlines shall be extended by 22 days.

By the Commission.

Donald S. Clark
Secretary

SEAL:

ISSUED: May 6, 2016

² The parties have styled their Joint Motion as one seeking a stay of administrative proceedings, but their request makes clear that what they seek is a continuance of the evidentiary hearing and related deadlines, which we have the authority to grant under Commission Rule 3.41(b). 16 C.F.R. § 3.41(b) ("The Commission, upon a showing of good cause, may order a later date for the evidentiary hearing to commence . . .").

³ The parties note that the evidentiary portion of the hearing will conclude on May 6, but that no date has been set for closing arguments.

⁴ See Commission Rule 3.1, 16 C.F.R. § 3.1 ("[T]he Commission's policy is to conduct [adjudicative] proceedings expeditiously."); Commission Rule 3.41(b), 16 C.F.R. § 3.41(b) ("Hearings shall proceed with all reasonable expedition . . .").

EXHIBIT C

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Edith Ramirez, Chairwoman
Maureen K. Ohlhausen
Terrell McSweeney**

In the Matter of

**Advocate Health Care Network,
a corporation;**

**Advocate Health and Hospitals Corporation,
a corporation;**

and

**NorthShore University HealthSystem,
a corporation.**

Docket No. 9369

**JOINT EXPEDITED MOTION
FOR CONTINUANCE OF ADMINISTRATIVE PROCEEDINGS**

Pursuant to Rule 3.41 of the Federal Trade Commission's ("FTC" or "Commission") Rules of Practice, Complaint Counsel and Respondents, Advocate Health Care Network ("AHCN"), Advocate Health and Hospitals Corporation ("AHHC," and together with AHCN, "Advocate"), and NorthShore University HealthSystem ("NorthShore"), jointly move for a 26-day continuance of the commencement of the administrative hearing from June 15, 2016, to July 11, 2016, as well as a corresponding extension of all pre-trial deadlines.

The Commission issued an order on May 6, 2016 (“May 6 Order”) continuing the commencement of the hearing from May 24, 2016 to June 15, 2016. However, the Parties respectfully submit that a further continuance is now necessary due to the timing of the preliminary injunction action in federal district court, *FTC et al. v. Advocate Health Care Network et al.*, No. 1:15-cv-11473 (N.D. Ill.). At the time of the Commission’s May 6 Order, the District Court proceedings had not yet concluded and the Court had not yet set a date for closing arguments. The preliminary injunction proceedings only recently concluded with closing arguments on May 25, 2016.

The requested relief will not prejudice the Commission’s ability to discharge its duties. If the preliminary injunction is granted, Respondents have consistently stated—and hereby reaffirm—that they do not intend to proceed with the proposed transaction. Under the recent revisions to Rule 3.26, if the PI is denied, the administrative proceeding will be automatically stayed or withdrawn on the request of the Respondents. FTC Revisions to Rules of Practice, 80 Fed. Reg. 15,157, 15,158 (Mar. 23, 2015). Therefore, regardless of whether the District Court grants or denies the injunction, the administrative proceeding either will be rendered moot by the merging parties abandoning the transaction or may be stayed pending any appeal. Even if the Commission determines to proceed with the administrative litigation following denial of the preliminary injunction motion, this brief continuance will not hamper the Commission’s ultimate ability to obtain relief and will avoid starting the trial only to have it likely stayed pursuant to Rule 3.26.

BACKGROUND

An evaluation of this motion requires a brief summary of the status of the judicial proceedings brought by the FTC and the status of the Part 3 proceedings now pending before the Chief Administrative Law Judge.

When it issued the administrative complaint in this action, the Commission originally scheduled the Part 3 hearing to begin on May 24, 2016. On April 27, 2016, the Parties moved the Commission for a stay of the administrative hearing to June 15, 2016. *See* Exhibit A, Joint Expedited Motion for a 22-Day Stay of Administrative Proceedings. The purpose of that motion was to avoid potentially unnecessary expense and burden to non-parties and the Parties while the Commission's motion for preliminary injunction to enjoin the consummation of the proposed merger pending the completion of these was *sub judice* at the United States District Court for the Northern District of Illinois.

On May 6, 2016, the Commission granted the continuance, stating that, "Although the Commission is committed to moving forward as expeditiously as possible with adjudicative proceedings, we find there is good cause here to grant the requested continuance of the administrative hearing and related deadlines." *See* Exhibit B, FTC Order Granting Continuing Administrative Hearing at 2. At the time of the Commission's May 6 Order, the parallel proceedings in *FTC et al v. Advocate Health Care Network et al.* had not yet concluded.

Plaintiffs presented their rebuttal case in the preliminary injunction proceedings on May 6, 2016. The Parties then submitted post-hearing evidentiary submissions on May 9 and 11,

2016, submitted post-hearing briefs and proposed findings of facts and conclusions of law on May 18, 2016, and presented closing arguments on May 25, 2016. The District Court has now taken the matter under advisement, though it has not announced when it will issue a ruling.

ARGUMENT

Under Rule 3.41 of the Commission's Rules of Practice, "[t]he Commission, upon a showing of good cause, may order a later date for the evidentiary hearing to commence." 16 C.F.R. § 3.41(b). Here, good cause exists for a further continuance of the commencement of the administrative trial because a brief postponement may avoid significant expense and burden on non-parties whose confidential information has been designated for use in the administrative trial. Additionally, it may allow the Parties to avoid additional expenses in the event the administrative proceedings are suspended.

When the Commission rescheduled the Part 3 hearing to commence on June 15, 2016, it contemplated that this extension, "would allow additional time for the district court to complete its proceeding and issue a ruling, which could obviate the need for an administrative hearing." *See* Exhibit B, FTC Order Granting Continuing Administrative Hearing at 2. However, given the timing of the District Court proceedings, trial preparations for an administrative hearing beginning June 15 will require a significant expenditure of resources over the next three weeks for a proceeding that may become moot. For example, June 7, 2016 is the deadline for non-party motions for *in camera* treatment, expert rebuttal reports, and expert depositions. The burden on non-parties will be especially onerous given that they are required to move for *in camera*

treatment of any material they do not want presented on the public record. The Parties have also identified approximately 24 non-parties as witnesses that may be called live at the administrative trial. Moreover, because the administrative trial may become moot, a temporary continuance may allow the Parties to avoid additional expenses, such as the expense for up to nine expert depositions, as well as the expenses associated with generating three or more rebuttal expert reports.

Granting a shorter continuance of 14 or 21 days would also create a hardship for non-parties over the July 4 holiday weekend. Up to 24 non-parties will need to travel to Washington, D.C. to testify at the hearing, and many of these witnesses will need to be in the city for a number of days in advance of their testimony. Beginning the Part 3 proceedings in late June or the first week of July will require many of these non-parties to travel during or immediately preceding the holiday.

The brief postponement of the administrative trial will not prejudice the Commission. As Respondents have represented repeatedly and again represent now, if the District Court grants the preliminary injunction, the Respondents do not intend to proceed with their merger and this administrative proceeding will be moot. *See* Exhibit C, PI Hearing Transcript 59:1-7. If the District Court denies the motion for preliminary injunction, Respondents will file a motion pursuant to Rule 3.26 to withdraw the case from adjudication or dismiss the complaint. Rule 3.26(b)-(d). Once a respondent files such a motion, “the new rule now provides for an automatic withdrawal or automatic stay” of the administrative proceeding, depending on the type of

motion. FTC Revisions to Rules of Practice, 80 Fed. Reg. 15,157, 15,158 (Mar. 23, 2015) (emphasis added); *see also* Rule 3.26(c); Rule 3.26(d)(2). While the Commission stated in its May 6 Order that, “a more significant delay may not be justified,” the Parties believe providing a brief continuance now avoids the inefficiency of beginning the presentation of evidence in the administrative trial only to suspend the proceeding following the ruling by the District Court, without prejudicing the Commission.

RELIEF REQUESTED

For all the reasons foregoing, Complaint Counsel and Respondents jointly and respectfully request that the Commission exercise its discretion under Rule 3.41(b) and/or Rule 3.41(f) to postpone commencement of the administrative hearing by 26 days, or until such later date as may be convenient for the Chief Administrative Law Judge and the Commission. Complaint Counsel and Respondents also request that interim pre-trial deadlines be continued for 26 days.

Dated: May 27, 2016

/s/ Robert McCann

Robert W. McCann, Esq.
Kenneth M. Vorrasi, Esq.
Drinker Biddle & Reath LLP
1500 K Street, NW
Washington, DC 20005
Telephone: (202) 842-8800
Email: Robert.McCann@dbr.com
Email: Kenneth.Vorrasi@dbr.com

/s/ Robert Robertson

J. Robert Robertson, Esq.
Leigh Oliver, Esq.
Hogan Lovells US LLP
555 13th Street, NW
Washington, DC 20001
Telephone: (202) 637-5774
Email: robby.robertson@hoganlovells.com

*Counsel for Respondents Advocate Health Care
Network and Advocate Health and Hospitals
Corporation*

/s/ David E. Dahlquist

David E. Dahlquist, Esq.
Michael Pullos, Esq.
Winston & Strawn LLP
35 W. Wacker Drive
Chicago, IL 60601
Telephone: (312) 558-5660
Email: Ddahlquist@winston.com
Email: mpullos@winston.com

*Counsel for Respondent NorthShore University
HealthSystem*

Respectfully submitted,

/s/ Thomas Greene

J. Thomas Greene, Esq.
Kevin Hahm, Esq.
Sean P. Pugh, Esq.
Federal Trade Commission
Bureau of Competition
600 Pennsylvania Avenue, NW
Washington, DC 20580
Telephone: (202) 326-5196
Facsimile: (202) 326-2286
Email: tgreene2@ftc.gov
Email: khahm@ftc.gov
Email: spugh@ftc.gov

Counsel Supporting the Complaint

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
Maureen K. Ohlhausen
Terrell McSweeney

In the Matter of

Advocate Health Care Network,
a corporation;

Advocate Health and Hospitals Corporation,
a corporation;

and

NorthShore University HealthSystem,
a corporation.

Docket No. 9369

**[PROPOSED] ORDER GRANTING JOINT EXPEDITED MOTION FOR A 26-DAY
CONTINUANCE OF ADMINISTRATIVE PROCEEDINGS**

Good cause having been shown,

IT IS HEREBY ORDERED THAT Complaint Counsel's and Respondents' Joint Expedited Motion for a 26-Day Continuance of Administrative Proceedings is **GRANTED**; and

(1) Commencement of the evidentiary hearing in this matter is moved from June 15, 2016 to July 11, 2016; and

(2) All other proceedings in this matter are continued for 26 days from the date of this order.

By the Commission.

Donald S. Clark
Secretary

ISSUED:

EXHIBIT A

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Edith Ramirez, Chairwoman**
 Maureen K. Ohlhausen
 Terrell McSweeney

In the Matter of

**Advocate Health Care Network,
a corporation;**

**Advocate Health and Hospitals Corporation,
a corporation;**

and

**NorthShore University HealthSystem,
a corporation.**

Docket No. 9369

**JOINT EXPEDITED MOTION FOR A 22-DAY STAY OF ADMINISTRATIVE
PROCEEDINGS**

Pursuant to Rule 3.41 of the Federal Trade Commission’s (“FTC” or “Commission”) Rules of Practice, Complaint Counsel and Respondents, Advocate Health Care Network (“AHCN”), Advocate Health and Hospitals Corporation (“AHC,” and together with AHCN, “Advocate”), and NorthShore University HealthSystem (“NorthShore”), jointly move for a 22-day postponement of the commencement of the administrative trial currently scheduled to begin on May 24, 2016, to June 15, 2016. This brief postponement may avoid significant expense and

burden on non-parties whose confidential information has been designated for use in the administrative trial. Additionally, it may allow the Parties to avoid additional expenses, such as expert depositions, in the event the administrative proceedings are suspended.

The Respondents' previously filed a Motion to Stay the Administrative Hearing on February 5, 2016, and the Commission denied this motion on March 18, 2016, on the grounds that at the time there was "no conflict between the two proceedings" – the preliminary injunction action in federal district court, *FTC et al. v. Advocate Health Care Network et al.*, No. 1:15-cv-11473 (N.D. Ill.), and the administrative hearing scheduled for May 24, 2016. Since the denial of the Respondents' original Motion to Stay, circumstances have changed.

The requested relief will not prejudice the Commission's ability to discharge its duties. The parallel proceedings in federal district court on the Commission's motion for a preliminary injunction in *FTC et al. v. Advocate Health Care Network et al.*, will now conclude sometime after May 6, 2016.¹ Although the District Court has not yet determined when it will issue its ruling, it is expected that this ruling will issue within a short time of the beginning of the administrative trial currently set for May 24, 2016. *See* Exhibit A, PI Hearing Transcript 1384:6-1385:12. If the preliminary injunction is granted, Respondents have consistently stated—and hereby reaffirm—that they do not intend to proceed with the proposed transaction. Under the recent revisions to Rule 3.26, if the PI is denied, the administrative proceeding will be

¹ The District Court paused the preliminary injunction hearing on April 20, 2016 due to issues with the Plaintiffs' witness availability and the Court's schedule. The hearing will be completed on May 6, 2016. The District Court has not yet set a date for closing arguments.

automatically stayed or withdrawn on the request of the Respondents. *See also* FTC Revisions to Rules of Practice, 80 Fed. Reg. 15,157, 15,158 (Mar. 23, 2015). Therefore, regardless of whether the District Court grants or denies the injunction, the administrative proceeding either will be rendered moot by the merging parties abandoning the transaction or may be stayed pending any appeal. Even if the Commission determines to proceed with the administrative litigation following denial of the preliminary injunction motion, this brief stay will not hamper the Commission's ultimate ability to obtain relief and will avoid starting the trial only to have it likely stayed pursuant to Rule 3.26.

ARGUMENT

Expedited consideration is appropriate because, unless this brief stay of the administrative proceedings is granted, numerous non-parties that have been notified by the Parties that their confidential material may be used at the trial are required to move by May 16, 2016, for *in camera* treatment of any material they do not want presented on the public record.² Such motions will address significant volumes of competitively and commercially sensitive documents and data that were produced during the course of the preliminary injunction proceeding and the FTC's merger review. If the Commission grants this motion for a brief stay, then the non-parties may avoid the substantial burden of reviewing voluminous documents, performing line-by-line proposed redactions of confidential information, preparing legal

² On April 26, 2016, the Parties also moved the Chief Administrative Law Judge to amend the schedule to give the non-parties an additional eleven days in which to file their motions. On April 27, 2016, Judge Chappell granted the Parties' request and extended the date until May 16, 2016.

memoranda requesting in camera treatment of those materials, and filing copies of all such materials with the Court. Additionally, the Parties have identified approximately 24 non-parties as witnesses that may be called live at the administrative trial. A brief stay will postpone the need for those witnesses to prepare to testify. Moreover, because the administrative trial may become moot, a temporary stay may allow the Parties to avoid additional expenses, such as the expense for up to nine expert depositions.

The brief postponement of the administrative trial will not prejudice the Commission. As Respondents have represented repeatedly and again represent now, if the District Court grants the preliminary injunction, the Respondents do not intend to proceed with their merger and this administrative proceeding will be moot. *See* Exhibit B, PI Hearing Transcript 59:1-7. If the District Court denies the motion for preliminary injunction, Respondents will file a motion pursuant to Rule 3.26 to withdraw the case from adjudication or dismiss the complaint. Rule 3.26(b)-(d). Once a respondent files such a motion, “the new rule now provides for an automatic withdrawal or automatic stay” of the administrative proceeding, depending on the type of motion. FTC Revisions to Rules of Practice, 80 Fed. Reg. 15,157, 15,158 (Mar. 23, 2015) (emphasis added); *see also* Rule 3.26(c); Rule 3.26(d)(2). Imposing a brief stay now avoids the inefficiency of beginning the presentation of evidence in the administrative trial only to suspend the proceeding following the ruling by the District Court, without prejudicing the Commission.

RELIEF REQUESTED

For all the reasons foregoing, Complaint Counsel and Respondents jointly and respectfully request that the Commission exercise its discretion under Rule 3.41(b) and/or Rule 3.41(f) to postpone commencement of the administrative hearing by 22 days, or until such later date as may be convenient for the Chief Administrative Law Judge and the Commission. Complaint Counsel and Respondents also request that interim pre-trial deadlines be stayed for 22 days.

Dated: April 27, 2016

Respectfully submitted,

/s/ Robert McCann

Robert W. McCann, Esq.
Kenneth M. Vorrasi, Esq.
Drinker Biddle & Reath LLP
1500 K Street, NW
Washington, DC 20005
Telephone: (202) 842-8800
Email: Robert.McCann@dbr.com
Email: Kenneth.Vorrasi@dbr.com

/s/ Robert Robertson

J. Robert Robertson, Esq.
Leigh Oliver, Esq.
Hogan Lovells US LLP
555 13th Street, NW
Washington, DC 20001
Telephone: (202) 637-5774
Email: robby.robertson@hoganlovells.com

*Counsel for Respondents Advocate Health Care
Network and Advocate Health and Hospitals
Corporation*

/s/ Thomas Greene

J. Thomas Greene, Esq.
Kevin Hahm, Esq.
Sean P. Pugh, Esq.
Federal Trade Commission
Bureau of Competition
600 Pennsylvania Avenue, NW
Washington, DC 20580
Telephone: (202) 326-5196
Facsimile: (202) 326-2286
Email: tgreene2@ftc.gov
Email: khahm@ftc.gov
Email: spugh@ftc.gov

Counsel Supporting the Complaint

/s/ Dan Webb

Dan K. Webb, Esq.

David E. Dahlquist, Esq.

Winston & Strawn LLP

35 W. Wacker Drive

Chicago, IL 60601

Telephone: (312) 558-5660

Email: Ddahlquist@winston.com

*Counsel for Respondent NorthShore University
HealthSystem*

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
Maureen K. Ohlhausen
Terrell McSweeney

In the Matter of)

Advocate Health Care Network,
a corporation;)

Advocate Health and Hospitals Corporation,
a corporation;)

and)

NorthShore University HealthSystem,
a corporation.)

Docket No. 9369

**[PROPOSED] ORDER GRANTING JOINT EXPEDITED MOTION FOR A 22-DAY
STAY OF ADMINISTRATIVE PROCEEDINGS**

Good cause having been shown,

IT IS HEREBY ORDERED THAT Complaint Counsel's and Respondents' Joint Expedited Motion for a 22-Day Stay of Administrative Proceedings is **GRANTED**; and

- (1) Commencement of the evidentiary hearing in this matter is moved from May 24, 2016 to June 15, 2016; and

(2) All other proceedings in this matter are stayed for 22 days from the date of this order.

By the Commission.

Donald S. Clark
Secretary

ISSUED:

EXHIBIT A

1 APPEARANCES: (Continued)

2 For the Defendant
3 Advocate:

HOGAN LOVELLS US LLP
BY: MR. JOHN ROBERT ROBERTSON
MR. ROBERT FREDERICK LEIBENLUFT
MS. LEIGH L. OLIVER
MS. KIMBERLY D. RANCOUR
555 Thirteenth Street, NW
Washington, D.C. 20004
(202) 637-5600

6

7

8

9

10

11

12

13

14

DRINKER BIDDLE & REATH LLP
BY: MR. ROBERT WALTER McCANN
MR. JOHN LEROY ROACH
MR. JONATHAN HAROLD TODT
MR. KENNETH MARK VORRASI
1500 K Street
Suite 1100
Washington, D.C. 20005
(202) 230-5149

15 For the Defendant
16 NorthShore:

17

18

19

20

21

22

23

24

25

DRINKER BIDDLE & REATH LLP
BY: MR. DANIEL J. DELANEY
191 North Wacker Drive
Suite 3700
Chicago, Illinois 60606
(312) 569-1175

WINSTON & STRAWN LLP
BY: MR. DAN K. WEBB
MR. DAVID EDWARD DAHLQUIST
MR. MARK WILLIAM LENIHAN
MR. MICHAEL S. PULLOS
MS. LAURA B. GREENSPAN
MS. CONOR A. REIDY
35 West Wacker Drive
Chicago, Illinois 60601
(312) 558-5600

10:21:52 1 servants in this. But if it were our druthers, I believe both
10:21:56 2 sides thought an hour and a half a side was probably the right
10:21:59 3 answer in terms of that.

10:22:00 4 MR. WEBB: That's right.

10:22:03 5 MR. GREENE: So I think that's our --

10:22:04 6 THE COURT: I think an hour would be more helpful
10:22:08 7 to --

8 MR. GREENE: Okay.

10:22:08 9 THE COURT: -- me. To the extent the parties
10:22:10 10 condense it, that would actually be more helpful. Doesn't
10:22:14 11 sound logical but it actually is in my experience. So let's
10:22:18 12 make it an hour for closing. Let's set 5/13 for those
10:22:24 13 post-trial briefings. And we've talked about what exactly
10:22:28 14 those will -- or what they may possibly include. And then I
10:22:34 15 will have to look, and Ms. Fratto will have to look, at the
10:22:37 16 calendar to get you guys in here shortly thereafter for
10:22:42 17 closing arguments or -- I should say after 5/6. We'll look at
10:22:48 18 the calendar to see what date after 5/6 makes sense for
10:22:52 19 closing arguments.

10:22:54 20 MR. GREENE: Yeah, I think our collective view -- I
10:22:56 21 mean, it's whatever helps you. But I think our view is that
10:22:59 22 giving you some opportunity to look at the findings of fact,
10:23:02 23 conclusions of law and then we could -- you could ask us the
10:23:06 24 hard questions, which I think is really the point of this kind
10:23:08 25 of thing.

10:23:08 1 THE COURT: So after 5/13 is your sense?

10:23:11 2 MR. GREENE: That would be my sense, yes, Your Honor.

10:23:13 3 MR. WEBB: We had the same view.

10:23:14 4 THE COURT: Okay.

10:23:16 5 MR. GREENE: And then, again, just for the record,

10:23:18 6 you know, the administrative trial begins on the 24th

10:23:21 7 currently so --

10:23:22 8 THE COURT: Right. Okay.

10:23:28 9 MR. ROBERTSON: Mr. Greene is going.

10:23:31 10 THE COURT: Right. Okay. So I'll get you that

10:23:35 11 information, the sooner the better. Is it too late to include

10:23:40 12 tomorrow, or no, in terms of witness availability?

10:23:45 13 MR. ROBERTSON: We hadn't planned on it, Your Honor.

10:23:47 14 MR. GREENE: Yeah, that's correct.

10:23:48 15 THE COURT: So forget about tomorrow. We are looking

10:23:50 16 at 5/6, and hopefully we have enough time allotted on 5/6.

10:23:55 17 MR. ROBERTSON: Yes, sir.

10:23:55 18 MR. DAHLQUIST: We think we do.

10:23:57 19 MR. GREENE: And, absolutely, I think our time

10:23:58 20 budgets will be essentially very limited by the end of today

10:24:02 21 so --

10:24:03 22 MR. WEBB: There may be only like an hour. We may

10:24:05 23 only have each like an hour or -- so as far as how much

10:24:10 24 testimony there will actually be on May 6th, it looks like

10:24:13 25 maybe it's going to be an hour on each side if I had to

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FEDERAL TRADE COMMISSION and
STATE OF ILLINOIS,

Plaintiffs,

v.

No. 15 C 11473

ADVOCATE HEALTH CARE NETWORK,
ADVOCATE HEALTH AND HOSPITALS
CORPORATION, and NORTHSORE
UNIVERSITY HEALTHSYSTEM,

Defendants.

Chicago, Illinois
April 11, 2016
1:00 p.m.

VOLUME 1

TRANSCRIPT OF PROCEEDINGS - PRELIMINARY INJUNCTION HEARING
BEFORE THE HONORABLE JORGE L. ALONSO

APPEARANCES:

For the Plaintiff
FTC:

FEDERAL TRADE COMMISSION
BY: MR. JAMES THOMAS GREENE
MR. CHRISTOPHER JOHN CAPUTO
MR. DANIEL ZACH
MR. KEVIN HAHM
MR. SEAN PUGH
MS. EMILY CATHERINE BOWNE
MS. SOPHIA VANDERGRIFF
MR. ALEXANDER JAMES BRYSON
600 Pennsylvania Avenue, NW
Washington, D.C. 20580
(202) 326-5196

FEDERAL TRADE COMMISSION
BY: MR. DANIEL JOHN MATHESON
400 7th Street, SW
Washington, D.C. 20003
(202) 326-2460

For the Plaintiff
State of Illinois:

ILLINOIS ATTORNEY GENERAL'S OFFICE
BY: MR. ROBERT W. PRATT
100 West Randolph Street
13th Floor
Chicago, Illinois 60601
(312) 814-3722

1 APPEARANCES: (Continued)

2 For the Defendant
3 Advocate:

HOGAN LOVELLS US LLP
BY: MR. JOHN ROBERT ROBERTSON
MR. ROBERT FREDERICK LEIBENLUFT
MS. LEIGH L. OLIVER
MS. KIMBERLY D. RANCOUR
555 Thirteenth Street, NW
Washington, D.C. 20004
(202) 637-5600

6

7

8

9

10

11

12

13

14

15 For the Defendant
16 NorthShore:

17

18

19

20

21

22

23

24

25

DRINKER BIDDLE & REATH LLP
BY: MR. ROBERT WALTER McCANN
MR. JOHN LEROY ROACH
MR. JONATHAN HAROLD TODT
MR. KENNETH MARK VORRASI
1500 K Street
Suite 1100
Washington, D.C. 20005
(202) 230-5149

DRINKER BIDDLE & REATH LLP
BY: MR. DANIEL J. DELANEY
191 North Wacker Drive
Suite 3700
Chicago, Illinois 60606
(312) 569-1175

WINSTON & STRAWN LLP
BY: MR. DAN K. WEBB
MR. DAVID EDWARD DAHLQUIST
MR. MARK WILLIAM LENIHAN
MR. MICHAEL S. PULLOS
MS. LAURA B. GREENSPAN
MS. CONOR A. REIDY
35 West Wacker Drive
Chicago, Illinois 60601
(312) 558-5600

1 quotes, well, that's a -- not an equity. It's a fact. It's
2 only that your Honor is here because this is the only court
3 that's going to decide this. We can't wait for two years for
4 the AOJ to do a decision, have an argument to the commission,
02:39:07 5 and then briefs, and then finally go to a court after all that
6 -- and it takes a long time to get to a court after all that.
7 By that time this case -- this deal is done.

8 If the FTC still thinks that they're right, give our
9 merger a chance; they can come back and sue us two years from
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17 THE COURT: -- Evanston case you're referencing?

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21 acquisition case. It was long after the acquisition, in fact,
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23 Northwestern Memorial has all these new places up and along
24 the lakeshore. That's in the last four years. It wasn't
02:39:59 25 there 12 years ago.

CERTIFICATE OF SERVICE

I hereby certify that on April 27, 2016, I caused the foregoing document to be electronically filed with the Secretary of the Commission using the Federal Trade Commission's e-filing system, causing the document to be served on all of the following registered participants:

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW Rm. H-110
Washington, DC 20580

I also certify that I delivered via electronic mail a copy of the foregoing document

Robert W. McCann, Esq.
Kenneth M. Vorrasi, Esq.
Drinker Biddle & Reath LLP
1500 K Street, N.W.
Washington, DC 20005
Telephone: (202) 842-8800
Email: Robert.McCann@dbr.com
Email: Kenneth.Vorrasi@dbr.com

J. Robert Robertson, Esq.
Leigh Oliver, Esq.
Hogan Lovells US LLP
555 13th Street, NW
Washington, DC 20004
Telephone: (202) 637-5774
Email: robby.robertson@hoganlovells.com

*Counsel for Respondents Advocate Health
Care Network and Advocate Health and
Hospitals Corporation*

Dan K. Webb
David E. Dahlquist, Esq.
Winston & Strawn LLP
35 W. Wacker Drive

Chicago, IL 60601
Telephone: (312) 558-5660
Email: Ddahlquist@winston.com

*Counsel for Respondent NorthShore University
HealthSystem*

CERTIFICATE FOR ELECTRONIC FILING

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

April 27, 2016

By: s/ Emily Bowne

EXHIBIT B

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Edith Ramirez, Chairwoman**
 Maureen K. Ohlhausen
 Terrell McSweeney

In the Matter of

**Advocate Health Care Network,
a corporation;**

**Advocate Health and Hospitals Corporation,
a corporation;**

and

**NorthShore University HealthSystem,
a corporation.**

Docket No. 9369

ORDER GRANTING CONTINUANCE

On December 17, 2015, the Commission issued an administrative complaint alleging that an affiliation agreement by the Respondents violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and, if consummated, would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the FTC Act. On December 21, 2015, pursuant to Section 13(b) of the FTC Act and Section 16 of the Clayton Act, the Commission filed a complaint in United States District Court for the Northern District of Illinois seeking a temporary restraining order and a preliminary injunction to prevent Respondents from consummating their proposed merger until final resolution of this administrative proceeding. Compl., *FTC v. Advocate Health Care Network*, No. 1:15-cv-11473 (N.D. Ill.) (Dec. 21, 2015). In accordance with Commission Rule 3.11(b) (4), the evidentiary hearing is scheduled to begin on May 24, 2016.

On March 18, 2016, the Commission denied without prejudice a motion by Respondents to stay the administrative hearing pending a ruling by the district court on the Commission's request for a preliminary injunction.¹ The parties have now filed a Joint Expedited Motion

¹ *Advocate Health Care Network*, Docket No. 9369, Commission Order Denying Motion To Stay the Administrative Hearing (Mar. 18, 2016).

seeking a 22-day continuance of the administrative hearing and related pre-hearing deadlines,² citing the fact that the district court hearing on the Commission's motion for preliminary injunction has yet to conclude.³ Respondents represent that if the district court grants the preliminary injunction motion, they will abandon the proposed transaction. They further assert that, if the district court denies the preliminary injunction motion, they will file a motion pursuant to Commission Rule 3.26, which would trigger either a possible withdrawal of this matter from adjudication or a stay, pending further action by the Commission.

In support of their request for a continuance, the parties argue that, should the evidentiary hearing become moot, the requested continuance could relieve third parties of the burden and cost associated with preparing witnesses to testify and filing motions for *in camera* treatment of their confidential materials, which would need to commence soon under the current schedule. The parties also argue that a continuance would not prejudice the Commission, even if the adjudication of this matter were to proceed.

Although the Commission is committed to moving forward as expeditiously as possible with adjudicative proceedings,⁴ we find there is good cause here to grant the requested continuance of the administrative hearing and related deadlines. A short continuance would allow additional time for the district court to complete its proceeding and issue a ruling, which could obviate the need for an administrative hearing. Additionally, a short delay in the start of the administrative hearing would not harm the Commission or the public interest should it be necessary for the administrative adjudication to go forward. We note, however, that a more significant delay may not be justified as our rules contemplate that both district court and administrative proceedings can proceed in parallel.

Accordingly, **IT IS HEREBY ORDERED** that the evidentiary hearing shall commence on June 15, 2016 and all related pre-hearing deadlines shall be extended by 22 days.

By the Commission.

Donald S. Clark
Secretary

SEAL:

ISSUED: May 6, 2016

² The parties have styled their Joint Motion as one seeking a stay of administrative proceedings, but their request makes clear that what they seek is a continuance of the evidentiary hearing and related deadlines, which we have the authority to grant under Commission Rule 3.41(b). 16 C.F.R. § 3.41(b) ("The Commission, upon a showing of good cause, may order a later date for the evidentiary hearing to commence . . .").

³ The parties note that the evidentiary portion of the hearing will conclude on May 6, but that no date has been set for closing arguments.

⁴ See Commission Rule 3.1, 16 C.F.R. § 3.1 ("[T]he Commission's policy is to conduct [adjudicative] proceedings expeditiously."); Commission Rule 3.41(b), 16 C.F.R. § 3.41(b) ("Hearings shall proceed with all reasonable expedition . . .").

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FEDERAL TRADE COMMISSION and
STATE OF ILLINOIS,

Plaintiffs,

v.

ADVOCATE HEALTH CARE NETWORK,
ADVOCATE HEALTH AND HOSPITALS
CORPORATION, and NORTHSORE
UNIVERSITY HEALTHSYSTEM,

Defendants.

No. 15 C 11473

Chicago, Illinois

April 11, 2016

1:00 p.m.

VOLUME 1

TRANSCRIPT OF PROCEEDINGS - PRELIMINARY INJUNCTION HEARING
BEFORE THE HONORABLE JORGE L. ALONSO

APPEARANCES:

For the Plaintiff
FTC:

FEDERAL TRADE COMMISSION
BY: MR. JAMES THOMAS GREENE
MR. CHRISTOPHER JOHN CAPUTO
MR. DANIEL ZACH
MR. KEVIN HAHM
MR. SEAN PUGH
MS. EMILY CATHERINE BOWNE
MS. SOPHIA VANDERGRIFF
MR. ALEXANDER JAMES BRYSON
600 Pennsylvania Avenue, NW
Washington, D.C. 20580
(202) 326-5196

FEDERAL TRADE COMMISSION
BY: MR. DANIEL JOHN MATHESON
400 7th Street, SW
Washington, D.C. 20003
(202) 326-2460

For the Plaintiff
State of Illinois:

ILLINOIS ATTORNEY GENERAL'S OFFICE
BY: MR. ROBERT W. PRATT
100 West Randolph Street
13th Floor
Chicago, Illinois 60601
(312) 814-3722

1 APPEARANCES: (Continued)

2 For the Defendant
3 Advocate:

HOGAN LOVELLS US LLP
BY: MR. JOHN ROBERT ROBERTSON
MR. ROBERT FREDERICK LEIBENLUFT
MS. LEIGH L. OLIVER
MS. KIMBERLY D. RANCOUR
555 Thirteenth Street, NW
Washington, D.C. 20004
(202) 637-5600

6

7

8

9

10

11

12

13

14

DRINKER BIDDLE & REATH LLP
BY: MR. ROBERT WALTER McCANN
MR. JOHN LEROY ROACH
MR. JONATHAN HAROLD TODT
MR. KENNETH MARK VORRASI
1500 K Street
Suite 1100
Washington, D.C. 20005
(202) 230-5149

15 For the Defendant
16 NorthShore:

17

18

19

20

21

22

23

24

25

DRINKER BIDDLE & REATH LLP
BY: MR. DANIEL J. DELANEY
191 North Wacker Drive
Suite 3700
Chicago, Illinois 60606
(312) 569-1175

WINSTON & STRAWN LLP
BY: MR. DAN K. WEBB
MR. DAVID EDWARD DAHLQUIST
MR. MARK WILLIAM LENIHAN
MR. MICHAEL S. PULLOS
MS. LAURA B. GREENSPAN
MS. CONOR A. REIDY
35 West Wacker Drive
Chicago, Illinois 60601
(312) 558-5600

1 quotes, well, that's a -- not an equity. It's a fact. It's
2 only that your Honor is here because this is the only court
3 that's going to decide this. We can't wait for two years for
4 the AOJ to do a decision, have an argument to the commission,
02:39:07 5 and then briefs, and then finally go to a court after all that
6 -- and it takes a long time to get to a court after all that.
7 By that time this case -- this deal is done.

8 If the FTC still thinks that they're right, give our
9 merger a chance; they can come back and sue us two years from
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*Counsel for Respondents Advocate Health
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*Counsel for Respondent NorthShore University
HealthSystem*

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May 27, 2016

By: s/ Emily Bowne

EXHIBIT D

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Edith Ramirez, Chairwoman**
 Maureen K. Ohlhausen
 Terrell McSweeney

In the Matter of

**Advocate Health Care Network,
a corporation;**

**Advocate Health and Hospitals Corporation,
a corporation;**

and

**NorthShore University HealthSystem,
a corporation.**

Docket No. 9369

ORDER GRANTING CONTINUANCE

The evidentiary hearing in this administrative proceeding is scheduled to commence on June 15, 2016, following the grant of a prior continuance to provide additional time for the U.S. District Court for the Northern District of Illinois to rule on the Commission's request for a preliminary injunction.¹ Although the preliminary injunction hearing has now concluded, the district court has taken the matter under advisement and has not indicated when it will issue a ruling. Citing this circumstance, Complaint Counsel and Respondents now request that the Commission continue the evidentiary hearing and all pre-hearing deadlines by an additional 26 days.²

Respondents reaffirm that if the district court grants the preliminary injunction motion, they will abandon the proposed transaction, and that if the preliminary injunction motion is denied, they will file a motion pursuant to Commission Rule 3.26, which would trigger either a possible withdrawal of this matter from adjudication or a stay, pending further action by the Commission. The parties also note that if the evidentiary hearing is to begin on June 15, trial preparations will require both the parties and numerous non-parties to expend significant resources over the next two weeks.

¹ *Advocate Health Care Network*, Docket No. 9369, Commission Order Granting Continuance (May 6, 2016), <https://www.ftc.gov/system/files/documents/cases/160506advocateorder.pdf>.

² *Advocate Health Care Network*, Docket No. 9369, Joint Expedited Motion for Continuance of Administrative Proceedings (May 27, 2016).

In light of the foregoing, we find there is good cause here to grant the requested continuance. Accordingly,

IT IS HEREBY ORDERED that the evidentiary hearing shall commence on July 11, 2016, and all related pre-hearing deadlines are extended by 26 days.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED: June 2, 2016

EXHIBIT E

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Edith Ramirez, Chairwoman**
 Maureen K. Ohlhausen
 Terrell McSweeney

<hr/>)	
In the Matter of)	
)	
Advocate Health Care Network,)	Docket No. 9369
a corporation;)	
)	
Advocate Health and Hospitals Corporation,)	PUBLIC DOCUMENT
a corporation;)	
)	
and)	
)	
NorthShore University HealthSystem,)	
a corporation.)	
<hr/>)	

**JOINT EXPEDITED MOTION
FOR CONTINUANCE OF ADMINISTRATIVE PROCEEDINGS**

Complaint Counsel and Respondents, Advocate Health Care Network (“AHCN”), Advocate Health and Hospitals Corporation (“AHHC,” and together with AHCN, “Advocate”), and NorthShore University HealthSystem (“NorthShore”), jointly seek to continue the administrative proceedings until 30 days after the U.S. Court of Appeals for the Seventh Circuit issues a mandate resolving the Commission’s currently pending appeal in the companion federal court litigation. The Parties also seek a corresponding extension of all pre-hearing deadlines.

The Parties respectfully request that the Commission rule on this motion expeditiously as there are pre-trial deadlines, such as those for expert depositions and rebuttal reports, beginning July 5.

As required by Rules 3.21(c) and 3.41(f), there is good cause for granting a stay here. On June 17, 2016, the U.S. District Court for the Northern District of Illinois enjoined Respondents' proposed transaction pending appellate review of the District Court's order on the motion for preliminary injunction. ECF No. 482. The Parties have requested expedited briefing before the Seventh Circuit, each proposing their own briefing schedule. The Seventh Circuit's order establishing an expedited briefing schedule and oral argument is currently pending. However, the Seventh Circuit's resolution of the expedited appeal could end this case and moot the administrative hearing. If Respondents lose on appeal, they intend to abandon the proposed transaction. If the Commission loses on appeal but chooses to go forward with the hearing, there is no harm in waiting until that point to commence the hearing: because the proposed transaction has been enjoined pending appeal, the Parties will be in the same position that they are in now. On the other hand, conducting the hearing before the Seventh Circuit rules would impose burdens not only on the Parties, but also on the many non-parties involved in this proceeding. Given all this, there is no reason to go forward with the hearing before the Seventh Circuit rules, and there are very good reasons to continue the hearing until after that point.

BACKGROUND

An evaluation of this motion requires a brief summary of the status of the judicial proceedings brought by the FTC and the status of the Part 3 proceedings now pending before the Chief Administrative Law Judge.

The Commission initiated this administrative proceeding on December 17, 2015. Four days later, it filed a companion suit for preliminary injunctive relief in the U.S. District Court for the Northern District of Illinois. *FTC et al. v. Advocate Health Care Network et al.*, No. 1:15-cv-11473 (N.D. Ill.). The District Court then held a nine-day evidentiary hearing.

On June 14, 2016, the District Court issued a memorandum opinion and order denying the Commission's request for preliminary injunctive relief. ECF No. 473.

On June 15, 2016, the Commission filed a notice of appeal with the Seventh Circuit. ECF No. 474. On June 16, 2016, the Commission filed a Motion for Injunction Pending Appeal with the District Court. ECF No. 478. On June 17, 2016, the District Court granted the Commission's Injunction Pending Appeal. ECF No. 482.

On June 20, 2016, Advocate and NorthShore filed a motion to expedite with the Seventh Circuit and proposed a briefing schedule that would conclude in July 2016.

On June 21, 2016, Complaint Counsel filed a separate request to expedite with the Seventh Circuit and proposed a briefing schedule that would conclude in August 2016.

The Parties have each separately requested that the Seventh Circuit schedule the case for oral argument as soon as possible after the conclusion of the briefing.

Currently, the administrative hearing is set to begin on July 11, 2016, based on the Commission's order granting the Parties' joint request to continue the hearing to that date. *See* Exhibit A, Commission Order Granting Continuance. Because that prior joint motion was made before the District Court ruled on the preliminary injunction and before the District Court granted Complaint Counsel's motion for an injunction pending appeal, the Parties requested a continuance only to July 11.

ARGUMENT

Under Rule 3.41 of the Commission's Rules of Practice, "[t]he Commission, upon a showing of good cause, may order a later date for the evidentiary hearing to commence." 16 C.F.R. § 3.41(b). Here, good cause exists for a further continuance of the commencement of the administrative trial because the value of conducting the administrative hearing before the Seventh Circuit's ruling is outweighed by the likelihood that the Seventh Circuit's ruling will render the hearing moot, and because of the burden that the hearing would impose on Complaint Counsel, Respondents, and the many non-party witnesses involved in this proceeding.

The Seventh Circuit's decision will resolve this dispute in the following scenarios:

- *First*, if the Seventh Circuit reverses the District Court's decision and orders that the proposed transaction be enjoined pending the outcome of the administrative hearing, Respondents intend to abandon the proposed transaction, thus mooting the hearing.
- *Second*, if the Seventh Circuit affirms the District Court's decision denying injunctive relief, Respondents will move to have this matter withdrawn from administrative adjudication under Rule 3.26(b). If the Commission abandons the administrative complaint, the hearing would be moot.
- *Third*, if the Seventh Circuit affirms but the Commission—after withdrawing the matter from adjudication—nevertheless reinstates the matter and moves forward with the

hearing, the Commission will not have suffered any harm whatsoever from granting this requested continuance. Because the District Court has enjoined the proposed transaction pending appeal, the Parties would be in the same position then that they are in right now.

Given these possibilities, there is simply no reason for commencing the administrative hearing before the Seventh Circuit rules.

There are, on the other hand, very good reasons *not* to proceed with the hearing until after the Seventh Circuit issues its decision. As the Parties have jointly recognized in their prior motions for continuances, proceeding with the hearing would require substantial preparations and expenses on behalf of both Complaint Counsel and Respondents; going forward now would create the risk that those preparations and expenses will ultimately be rendered meaningless by the Seventh Circuit's decision.

This burden, moreover, would not impact the Parties alone. Rather, as the Parties' prior motions have noted, the burden of moving forward would be especially onerous for the many non-parties involved in this litigation. The Parties have identified dozens of non-party witnesses they may call to testify; proceeding with the hearing raises the risk that those many individuals will incur substantial out-of-pocket expenses—and take time out of their schedules to travel to Washington, D.C.—all in furtherance of a proceeding that will likely be rendered moot. The Parties have also obtained discovery from 25 non-parties that would need to expend money and effort reviewing their materials, identifying confidential materials, and potentially filing motions for *in camera* treatment. There is no basis for burdening so many non-parties in furtherance of

an administrative hearing that will likely be mooted—especially given that simply delaying the hearing will not impose any countervailing harm.

Finally, the prudence of awaiting the Seventh Circuit's decision is further confirmed by the Parties' separate requests to treat the appeal on an expedited basis. There is every reason for the Commission to wait the relatively short amount of time it will take the Seventh Circuit to rule on the Commission's appeal, rather than unnecessarily burdening the Parties and non-parties before the Seventh Circuit's decision issues.

Conclusion

Given that the Seventh Circuit's decision is likely to resolve this matter; given that under a scenario in which the Seventh Circuit's decision does not resolve this matter, the Commission would not be prejudiced by a brief stay; and given the expense and burden to both the Parties and non-parties in having to conduct the administrative hearing, Complaint Counsel and Respondents jointly submit that the interests of the Parties and non-parties are best served by allowing the Seventh Circuit to resolve the expedited appeal before the administrative hearing commences. The Parties therefore jointly and respectfully request that the Commission stay the administrative proceedings until 30 days after the Seventh Circuit issues its mandate in the pending appeal, and that the Commission grant a corresponding extension of all pre-hearing deadlines.

Dated: June 24, 2016

/s/ Robert McCann

Robert W. McCann, Esq.
Kenneth M. Vorrasi, Esq.
Drinker Biddle & Reath LLP
1500 K Street, NW
Washington, DC 20005
Telephone: (202) 842-8800
Email: Robert.McCann@dbr.com
Email: Kenneth.Vorrasi@dbr.com

/s/ Robert Robertson

J. Robert Robertson, Esq.
Leigh Oliver, Esq.
Hogan Lovells US LLP
555 13th Street, NW
Washington, DC 20001
Telephone: (202) 637-5774
Email: robby.robertson@hoganlovells.com

*Counsel for Respondents Advocate Health Care
Network and Advocate Health and Hospitals
Corporation*

/s/ David Dahlquist

David E. Dahlquist, Esq.
Michael Pullos, Esq.
Winston & Strawn LLP
35 W. Wacker Drive
Chicago, IL 60601
Telephone: (312) 558-5660
Email: Ddahlquist@winston.com

*Counsel for Respondent NorthShore University
HealthSystem*

Respectfully submitted,

/s/ Thomas Greene

J. Thomas Greene, Esq.
Kevin Hahm, Esq.
Sean P. Pugh, Esq.
Federal Trade Commission
Bureau of Competition
600 Pennsylvania Avenue, NW
Washington, DC 20580
Telephone: (202) 326-5196
Facsimile: (202) 326-2286
Email: tgreene2@ftc.gov
Email: khahm@ftc.gov
Email: spugh@ftc.gov

Counsel Supporting the Complaint

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
Maureen K. Ohlhausen
Terrell McSweeney

In the Matter of)

Advocate Health Care Network,
a corporation;)

Advocate Health and Hospitals Corporation,
a corporation;)

and)

NorthShore University HealthSystem,
a corporation.)

Docket No. 9369

**[PROPOSED] ORDER GRANTING JOINT EXPEDITED MOTION FOR A
CONTINUANCE OF ADMINISTRATIVE PROCEEDINGS**

Good cause having been shown,

IT IS HEREBY ORDERED THAT Complaint Counsel's and Respondents' Joint Expedited Motion For Continuance of the Administrative Proceedings is **GRANTED**; and Commencement of the evidentiary hearing and all other proceedings in this matter are continued until 30 days after the United States Court of Appeals for the Seventh Circuit issues its mandate in the Commission's pending appeal, *FTC et al. v. Advocate Health Care Network et al*, No. 16-2492.

By the Commission.

Donald S. Clark
Secretary

ISSUED:

EXHIBIT A

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Edith Ramirez, Chairwoman**
 Maureen K. Ohlhausen
 Terrell McSweeney

In the Matter of

**Advocate Health Care Network,
a corporation;**

**Advocate Health and Hospitals Corporation,
a corporation;**

and

**NorthShore University HealthSystem,
a corporation.**

Docket No. 9369

ORDER GRANTING CONTINUANCE

The evidentiary hearing in this administrative proceeding is scheduled to commence on June 15, 2016, following the grant of a prior continuance to provide additional time for the U.S. District Court for the Northern District of Illinois to rule on the Commission's request for a preliminary injunction.¹ Although the preliminary injunction hearing has now concluded, the district court has taken the matter under advisement and has not indicated when it will issue a ruling. Citing this circumstance, Complaint Counsel and Respondents now request that the Commission continue the evidentiary hearing and all pre-hearing deadlines by an additional 26 days.²

Respondents reaffirm that if the district court grants the preliminary injunction motion, they will abandon the proposed transaction, and that if the preliminary injunction motion is denied, they will file a motion pursuant to Commission Rule 3.26, which would trigger either a possible withdrawal of this matter from adjudication or a stay, pending further action by the Commission. The parties also note that if the evidentiary hearing is to begin on June 15, trial preparations will require both the parties and numerous non-parties to expend significant resources over the next two weeks.

¹ *Advocate Health Care Network*, Docket No. 9369, Commission Order Granting Continuance (May 6, 2016), <https://www.ftc.gov/system/files/documents/cases/160506advocateorder.pdf>.

² *Advocate Health Care Network*, Docket No. 9369, Joint Expedited Motion for Continuance of Administrative Proceedings (May 27, 2016).

In light of the foregoing, we find there is good cause here to grant the requested continuance. Accordingly,

IT IS HEREBY ORDERED that the evidentiary hearing shall commence on July 11, 2016, and all related pre-hearing deadlines are extended by 26 days.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED: June 2, 2016

CERTIFICATE OF SERVICE

I hereby certify that on June 24, 2016, I caused the foregoing document to be electronically filed with the Secretary of the Commission using the Federal Trade Commission's e-filing system, causing the document to be served on all of the following registered participants:

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Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580

The Honorable D. Michael Chappell
Administrative Law Judge
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Robert W. McCann, Esq.
Kenneth M. Vorrasi, Esq.
Drinker Biddle & Reath LLP
1500 K Street, N.W.
Washington, DC 20005
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J. Robert Robertson, Esq.
Leigh Oliver, Esq.
Hogan Lovells US LLP
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*Counsel for Respondents Advocate Health
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Hospitals Corporation*

Dan K. Webb
David E. Dahlquist, Esq.
Winston & Strawn LLP
35 W. Wacker Drive
Chicago, IL 60601
Telephone: (312) 558-5660
Email: Ddahlquist@winston.com

*Counsel for Respondent NorthShore University
HealthSystem*

CERTIFICATE FOR ELECTRONIC FILING

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June 24, 2016

By: s/ Emily Bowne

EXHIBIT F

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Edith Ramirez, Chairwoman**
 Maureen K. Ohlhausen
 Terrell McSweeney

In the Matter of

**Advocate Health Care Network,
a corporation;**

**Advocate Health and Hospitals Corporation,
a corporation;**

and

**NorthShore University HealthSystem,
a corporation.**

Docket No. 9369

ORDER GRANTING CONTINUANCE

The evidentiary hearing in this administrative proceeding is scheduled to commence on July 11, 2016, following the grant of a prior continuance.¹ On June 14, 2016, the United States District Court for the Northern District of Illinois issued a memorandum opinion and order denying the Commission's request for preliminary injunctive relief.² The Commission then filed a notice of appeal with the United States Court of Appeals for the Seventh Circuit. On June 16, 2016, the Commission filed a Motion for Injunction Pending Appeal with the district court, which the district court granted. Complaint Counsel and Respondents now jointly request that the Commission stay the administrative proceedings until after the Seventh Circuit rules on the Commission's appeal, and grant a corresponding extension of all pre-hearing deadlines.³

Respondents state that if the Seventh Circuit grants the Commission's appeal, they will abandon the proposed transaction, and that if the appeal is denied, they will file a motion pursuant to Commission Rule 3.26 to withdraw this matter from adjudication, pending further action by the Commission. The parties also note that if the evidentiary hearing is to begin on July 11, trial preparations will require both the parties and numerous non-parties to expend significant resources over the next two weeks.

¹ Commission Order Granting Continuance, *Advocate Health Care Network*, Docket No. 9369 (June 2, 2016), <https://www.ftc.gov/system/files/documents/cases/160602advocatehealthorder.pdf>.

² Memorandum Opinion & Order, *FTC v. Advocate Health Care Network*, No. 1:15-cv-11473 (N.D. Ill. June 14, 2016).

³ Joint Expedited Motion for Continuance of Administrative Proceedings, *Advocate Health Care Network*, Docket No. 9369, (June 24, 2016), <https://www.ftc.gov/system/files/documents/cases/160624advhcnmtn.pdf>.

In light of the foregoing, we find that there is good cause to grant the requested continuance. Accordingly,

IT IS HEREBY ORDERED that the evidentiary hearing shall commence 21 days after the United States Court of Appeals for the Seventh Circuit renders its judgment on the Commission's appeal, and that all pre-hearing deadlines shall be extended until after the Court of Appeals renders its judgment, as determined by the Administrative Law Judge.

By the Commission.

Donald S. Clark
Secretary

SEAL:

ISSUED: June 28, 2016

CERTIFICATE OF SERVICE

I hereby certify that on November 10, 2016, I caused the foregoing document to be electronically filed with the Secretary of the Commission using the Federal Trade Commission's e-filing system, causing the document to be served on all of the following registered participants:

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW Rm. H-110
Washington, DC 20580

I also certify that I delivered via electronic mail a copy of the foregoing document

Robert W. McCann, Esq.
Kenneth M. Vorrasi, Esq.
Drinker Biddle & Reath LLP
1500 K Street, N.W.
Washington, DC 20005
Telephone: (202) 842-8800
Email: Robert.McCann@dbr.com
Email: Kenneth.Vorrasi@dbr.com

J. Robert Robertson, Esq.
Leigh Oliver, Esq.
Hogan Lovells US LLP
555 13th Street, NW
Washington, DC 20004
Telephone: (202) 637-5774
Email: robby.robertson@hoganlovells.com

*Counsel for Respondents Advocate Health
Care Network and Advocate Health and
Hospitals Corporation*

Dan K. Webb
David E. Dahlquist, Esq.
Winston & Strawn LLP
35 W. Wacker Drive
Chicago, IL 60601
Telephone: (312) 558-5660
Email: Ddahlquist@winston.com

*Counsel for Respondent NorthShore University
HealthSystem*

CERTIFICATE FOR ELECTRONIC FILING

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

November 10, 2016

By: s/ Emily Bowne