

**IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

FEDERAL TRADE COMMISSION and)	
)	
COMMONWEALTH OF PENNSYLVANIA,)	
)	
Plaintiffs-Appellants,)	
)	
v.)	No. 16-2365
)	
PENN STATE HERSHEY)	
MEDICAL CENTER and)	
)	
PINNACLEHEALTH SYSTEM,)	
)	
Defendants-Appellees.)	
)	

SUPPLEMENTAL MOTION TO EXPEDITE APPEAL

Pursuant to LAR 4.0 and the Court’s May 12, 2016 order, Appellants propose a briefing schedule for an expedited appeal, should the Court grant our motion for an injunction pending appeal. We have consulted with counsel for Appellees, who did not consent to this proposed schedule.

The schedule set forth below reflects a balance between the need for expedition and the practical limitations on the resources of the Federal Trade Commission. The FTC line attorney responsible for this case has an oral argument in the Second Circuit scheduled on June 3. Preparing for that argument will take significant time and attention during the period leading up to that date. The FTC

Director of Litigation, who closely reviews all appellate pleadings, has an oral argument in the Ninth Circuit scheduled on June 17, which similarly will require substantial preparation. Given the complexity of the record in this case and the investment of resources already made, reassigning the matter within the office would work a considerable hardship on the FTC's appellate division. The dates we propose will nevertheless ensure that the case is fully briefed and ripe for argument and decision well before it would be in the ordinary course.

Appellants' opening brief: June 24, 2016

Appellees' brief: July 22, 2016

Reply brief: August 4, 2016

Oral argument to be scheduled at the Court's earliest convenience thereafter.

Appellees' decision not to agree to this schedule may indicate that they would prefer one that provides the parties with less time to file their briefs. The Court will be best served, however, if both sides have a full opportunity to craft briefs that present their arguments most effectively. Moreover, there is no reason to believe that Appellees will be prejudiced if the briefs are not filed sooner. As we noted in our motion for an injunction pending appeal, Appellees first began to pursue the merger that is the subject of this case in October 2013. They signed a letter of intent in June 2014, and their boards of directors gave final approval in March 2015. We are aware of no firm deadline for concluding the deal. On that

background, it is hard to see what difference would result from a few extra weeks for briefing.

Respectfully submitted,

Bruce L. Castor, Jr.
Solicitor General

David C. Shonka
Acting General Counsel

Bruce Beemer
First Deputy Attorney General

Joel Marcus
Director of Litigation

James A. Donahue, III
Executive Deputy Attorney General
Public Protection Division

/s/ Michele Arington

Tracy W. Wertz
Chief Deputy Attorney General
Antitrust Section

Michele Arington
Attorney
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
(202) 326-3157

Pennsylvania Office of the Attorney
General
Antitrust Section
14th Floor, Strawberry Square
Harrisburg, PA 17120

May 12, 2016

CERTIFICATE OF SERVICE

I certify that on May 13, 2016, I filed the foregoing Supplemental Motion to Expedite Appeal by using the Court's ECF system. All parties will be served by the ECF system.

/s/ Michele Arington