

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

COMMISSIONERS: **Deborah Platt Majoras, Chairman**
 Thomas B. Leary
 Pamela Jones Harbour
 Jon Leibowitz

In the Matter of)	
)	
)	
EVANSTON NORTHWESTERN)	Docket No. 9315
HEALTHCARE CORPORATION,)	
a corporation, and)	
)	
ENH MEDICAL GROUP, INC.)	
)	

**ORDER GRANTING EXPEDITED MOTION AND PERMITTING
ENLARGEMENT OF LENGTHS OF APPEAL BRIEFS**

Respondent Evanston Northwestern Healthcare, Inc. has filed an Expedited Motion for Extension of Length of Initial Appeal Brief (“Expedited Motion”), requesting leave to file an opening brief not to exceed 24,000 words in length. This amount is a 28 percent increase over the 18,750 word limitation prescribed by Commission Rule 3.52(b)(2). For the reasons set forth below, the Commission grants the Expedited Motion, and also enlarges by the same percentage amount the word limitations for the other three briefs that may be filed by the parties in this appeal.

This is the second motion for an extension of the word limitations filed by Respondent. By Order dated November 18, 2005, the Commission denied the portion of a previous Joint Motion filed by Respondent and Complaint Counsel that requested that the Commission enlarge the word limitations for all of the briefs by 60 percent. Commission Rule 3.52(k) expressly provides that “[e]xtensions of word count limitations are disfavored, and will only be granted where a party can make a strong showing that undue prejudice would result from complying with the existing limit.” In their Joint Motion, however, the parties based their request to extend the word limitations only on their assertions that the case involved “complex underlying issues” and on the length of the trial record, the prior pleadings, and the Initial Decision. Joint Motion at 3-4. The Commission denied the parties’ request because “[t]hese facts, offered without any elaboration as to the nature of the complexity of the issues, [did] not by themselves constitute the necessary strong showing to warrant extending the word count limitation.” November 18 Order at 2. Many of the Commission’s matters involve complex issues and large records. To make the showing required by Commission Rule 3.52(k), a party must, at minimum, state with specificity the reasons for the request for the extension, including the precise issues to be covered in the

briefs, and why those issues cannot be adequately briefed in the specified word limitations. Otherwise, any party could seek an extension to the Commission's word limitations for briefs simply by making a general assertion about the complexity of the issues in the case at issue.

Respondent's Expedited Motion states that if it is bound in its Appeal Brief to the 18,750 word limitation prescribed by Commission Rule 3.52(b)(2), it will have to omit "important arguments necessary for its defense and will so limit its discussion of other complex, nuanced and novel issues raised on this appeal as to interfere with their clarity and completeness." Expedited Motion at 2. Respondent contends that these arguments and issues include (1) whether the merger at issue produced "substantial, verified pro-competitive effects arising from improved quality of care," and if so, whether any such improvements were merger specific; (2) whether the merger produced improvements "in other areas;" (3) whether, and if so to what extent, the merger affected prices, as reflected in "complex pricing analyses and internal documentary evidence;" (4) the contours of relevant markets, and the manner in which they should be defined; and (5) whether, and if so to what extent, the merger produced unilateral anticompetitive effects. Expedited Motion at 5-7.¹

The Commission expresses no opinion as to the substantive relevance or merit of any of the arguments or issues identified by Respondent with respect to the ultimate resolution of Respondent's appeal. The Commission has determined, however, that Respondent's contentions about the complexity of the issues before the Commission, combined with the substantial size of the record in this matter, are sufficiently specific and well-founded to warrant extending the word limitation for Respondent's opening brief by the requested 28 percent amount.² Therefore, the Commission grants the Expedited Motion, and also enlarges by the same percentage amount the word limitations for the other three briefs that may be filed by the parties in this appeal.

Accordingly,

IT IS ORDERED THAT Respondent's Appeal Brief shall not exceed 24,000 words in length.;

IT IS FURTHER ORDERED THAT if Complaint Counsel perfects its Cross-Appeal, Complaint Counsel's Answering and Cross-Appeal Brief shall not exceed 33,600 words in length;³

¹ Respondent advises that Complaint Counsel takes no position on the relief requested in Respondent's motion. Expedited Motion at 2.

² See *In the Matter of Rambus, Incorporated*, Docket No. 9302, Order Granting Extensions of Time To File Appellate Briefs and Increases in Word Count Limits (March 18, 2005), at 2.

³ For purposes of this Order, Complaint Counsel's Cross-Appeal will be deemed to have been perfected if its Answering and Cross-Appeal Brief contains "its arguments as to any

IT IS FURTHER ORDERED THAT Respondent's Reply and Answering Brief shall not exceed 24,000 words in length.;

IT IS FURTHER ORDERED THAT Complaint Counsel's Rebuttal Brief shall not exceed 14,400 words in length.; and

IT IS FURTHER ORDERED THAT all of the foregoing Briefs shall in all other respects conform to the requirements of Commission Rule 3.52, 16 C.F.R. § 3.52.

By the Commission.

Donald S. Clark
Secretary

ISSUED: December 8, 2005

issues [Complaint Counsel] is raising on cross-appeal . . ." Commission Rule 3.52(c), 16 C.F.R. § 3.52(c). If Complaint Counsel do not perfect their cross-appeal, then their Answering Brief shall not exceed 24,000 words in length. *Id.*