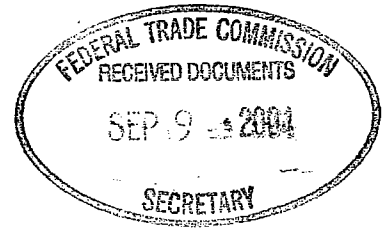


UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION



\_\_\_\_\_  
)  
)  
In the Matter of )  
)

Evanston Northwestern Healthcare )  
Corporation, and )

ENH Medical Group, Inc. )  
)  
\_\_\_\_\_)

Docket No. 9315

**MEMORANDUM IN SUPPORT OF THIRD PARTY FIRST HEALTH'S MOTION FOR  
EXTENSION OF TIME TO OPPOSE RESPONDENTS' MOTION TO COMPEL**

In accordance with Commission Rule § 4.3(b), Third Party First Health Group Corporation (First Health") respectfully submits this Motion For Extension of Time to Oppose Respondents Evanston Northwestern Healthcare's and ENH Medical Group's Motion to Compel First Health to Produce Documents Requested by Subpoenas Duces Tecum.

**BACKGROUND**

Respondents Evanston Northwestern Healthcare and ENH Medical Group (collectively "Respondents") served subpoenas duces tecum on Affordable Medical Carriers, Inc. ("Affordable") and Community Care Network, Inc. ("CCN") on April 14, 2004. Affordable and CCN are currently owned by First Health. Sometime shortly after April 14, 2004, the subpoenas were served on First Health. The subpoenas include 43 document requests (some with multiple subparts), each dating back to at least January 1, 1997. The requests: (1) are overly broad; (2) request documents that have no relevance to this proceeding; and/or (3) place an undue burden on First Health. For example, Respondents' first request seeks production of "all contracts between any third party payor . . . and any health care facility in the Geographic Area, including

*all* amendments, appendices, and related documents reflecting any contract terms,” dating back to *January 1, 1992*. See Subpoena at 6 (emphasis added). As just another example, request number 22 seeks production of “[a]ll print advertisements and the texts of *any* radio or television advertisements that refer or relate to *any health care facility*.” *Id.* at 11. Such requests are not only overly broad, but place an enormous burden on First Health, which would have to manually search for those materials.

Following weeks of productive discussions between in-house counsel for First Health and Respondents’ counsel, First Health was suddenly served with Respondents’ Motion to Compel First Health to Produce Documents Requested by Subpoena Duces Tecum on August 31, 2004. Undersigned counsel first became involved in this issue on September 2, 2004.

### ARGUMENT

Under Commission Rule § 4.3(b), this Court may, “[f]or good cause shown, extend any time limit prescribed or allowed by the rules in this chapter or by order of the Commission or the Administrative Law Judge . . . .” First Health has established “good cause” for two reasons.

First, undersigned counsel only became involved in this dispute on September 2, 2004 – one day before Labor Day weekend and eight days before its Opposition to the Motion to Compel is due. Since that time, undersigned counsel has been in contact with Respondents’ counsel and FTC counsel. Undersigned counsel and Respondents’ counsel have begun to work through the disputes arising under the subpoena and both parties believe that an agreement can be reached, thereby relieving both the parties and the Court of the burden of litigating the motion to compel. Moreover, FTC counsel takes no position with respect to this motion.

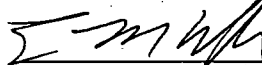
Second, a short extension of time will benefit all parties in this litigation and expedite resolution of the case. Protracted litigation before the Court regarding the motion to compel will

severely delay this litigation and burden First Health, Petitioners, and the Court. A short extension of time, however, will allow the parties to reach an amicable agreement with respect to the outstanding discovery disputes, thereby expediting the production of documents by First Health to Respondents.

**WHEREFORE**, for the foregoing reasons, First Health respectfully requests that the deadline for its Opposition to Respondents' Motion to Compel be extended until October 1, 2004.

DATED: September 9, 2004

Respectfully Submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that on September 9, 2004, a copy of the foregoing Memorandum In Support of Third Party First Health's Motion For Extension of Time to Oppose Respondents' Motion to Compel was served by email and first class mail, postage prepaid, on:

The Honorable Stephen J. McGuire  
Chief Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Ave., NW (H-106)  
Washington, DC 20580  
(two courtesy copies delivered by messenger only)

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