UNITED STATES OF AMERICA BEFORE FEDERAL TRADE COMMISSION

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In the Matter of

TENET HEALTHCARE CORPORATION, a corporation,

and

Docket No. 9289

POPLAR BLUFF PHYSICIANS GROUP, INC. d/b/a Doctors Regional Medical Center, a corporation.

To: Commission

COMPLAINT COUNSEL'S RESPONSE TO ORDER TO SHOW CAUSE

The Commission on December 3, 1999 issued an Order to Show Cause why the Commission should not dismiss the complaint in this matter. Complaint counsel believe that the Commission should dismiss the complaint.

The Commission's order asks the parties to address, among other things, the Commission's Policy Regarding Administrative Merger Litigation Following the Denial of a Preliminary Injunction, 4 Trade Reg. Rep. (CCH) ¶ 13,242. We believe the first factor cited in that policy statement - "the factual findings and legal conclusions of ... any appellate court" - is dispositive of this matter.

Evidence presented at the preliminary injunction hearing showed, and the district court found, that the challenged merger is likely to have anticompetitive effects. The court found intense competition between the merging hospitals that has resulted in significant benefits to consumers, encouraged efficiency, and improved hospital quality and services, and that the merger would eliminate that competition.

However, the Eighth Circuit Court of Appeals, in reversing the district court, displaced the findings of the district court with its own views regarding the relevant geographic market, as well as on issues not raised on appeal. See Federal Trade Commission Petition for Rehearing En Banc, FTC v. Tenet Healthcare Corp., 186 F.3d 1045 (8th Cir. 1999) (No. 98-3123). Those views do not appear to be based on any deficiency in the record developed by the district court, whose findings were well-

supported by that record. Since there are no such gaps that an administrative proceeding on the merits could fill, it is unclear what purpose such a proceeding might serve.

Any order against respondents that might result from this administrative proceeding would be subject to review in the Eighth Circuit. In light of the nature of that Court's prior decision in this case, we think it highly unlikely that the administrative record that could be developed here would be sufficient to persuade the Eighth Circuit to uphold an order against respondents. Complaint counsel therefore believe that further administrative proceedings would not be in the public interest.

Respectfully submitted,

Oscar M. Voss

Counsel Supporting the Complaint

December 10, 1999

CERTIFICATE OF SERVICE

I, the undersigned, certify that I caused a true and correct copy of the attached Complaint Counsel's Response to Order to Show Cause to be served by facsimile and first class mail on Charles James, Esq. of Jones, Day, Reavis & Pogue, attorney for respondents, on this 10th day of December, 1999.

Oscar M. Voss