UNITED STATES OF AMERICA BEFORE THE FEDERAL TRADE COMMISSION OFFICE OF J. THOMAS ROSCH

In the Matter of

INOVA HEALTH SYSTEM FOUNDATION,
a corporation, and

PRINCE WILLIAM HOSPITAL SYSTEM, INC.
a corporation.

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Docket No. 9326

PUBLIC

ORDER DENYING RESPONDENTS' MOTION TO STAY ADMINISTRATIVE PROCEEDINGS

Respondents Inova Health System Foundation and Prince William Health System, Inc.

("Respondents") seek to stay discovery and all other aspects ofthis administrative proceeding,

pending resolution ofthe preliminary injunction that the Federal Trade Commission ("FTC")

and Commonwealth ofVirginia filed in the Eastern District ofVirginia. Respondents' Motion to

Stay Discovery and All Other Aspects ofthis Proceeding ("Respondents' Motion to Stay") (May

23, 2008) available at http://www.ftc.gov/os/adjpro/d9326/080523respmostaydiscov.pdf.

Complaint Counsel filed a response opposing Respondents' motion on May 27. Complaint

Counsel's Opposition to Respondents' Motion to Stay Discovery and All Other Aspects ofthe

Proceeding ("Complaint Counsel's Opposition to Stay Proceedings") available at

http://www.ftc.gov/os/adjpro/d9326/080527ccopprespmostaydiscov.pdf. Oral argument was

invited and occurred on May 29. Forth

The Federal Trade Commission's Rules ofPractice encourage an expeditious

for the merging parties will often cite the "leisurely pace" of administrative proceedings in an effort to convince a federal district court that it, not the Commission, is the de facto ultimate arbiter ofthe merger challenge. Indeed, Respondents appear to have already suggested to the federal district court in the Section 13(b) proceedings in this matter that the administrative meetings may take "years." Reply in Support ofMotion for a Scheduling Order and an Expedited Status Conference, FTC v. Inova Health System Foundation, et. aI., 1:08-cv-460, at 7 (May 29, 2008).
The Commission

precedent support a stay ofthe administrative proceedings. Respondents' Motion to Stay

Proceedings at 4. Yet the most recent practice is not to stay the proceedings pending

adjudication ofthe preliminary injunction.'

Third, Respondents suggest that discovery in the administrative proceedings will

interfere with the federal court action. See Respondents' Motion to Stay Proceedings at 5.

Indeed, Respondents seem to go so far as to suggest that the preliminary proceedings in federal

district court are of greater importance than the plenary proceedings at the Commission. See id.

("It is plainly correct that the FTC's federal court action for a preliminary injunction must take

priority over any administrative

Conclusion

For the reasons stated, the motion to stay these proceedings in whole or in part (i.e., to

stay discovery in these proceedings) is denied."

ORDERED:

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Commissioner

ISSUED: May 29, 2008

4 Respondents assert that the discovery heretofore served by Complaint Counsel is premature because it predates the Scheduling Conference. Respondents Motion to Stay Discovery at 6-7. Complaint Counsel points out that while Federal Rule 26 prohibits discovery prior to the910PTj 0ucs