

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Deborah Platt Majoras, Chairman

In the Matter of)

EVANSTON NORTHWESTERN)
HEALTHCARE CORPORATION)

a corporation)
_____)

Docket No. 9315

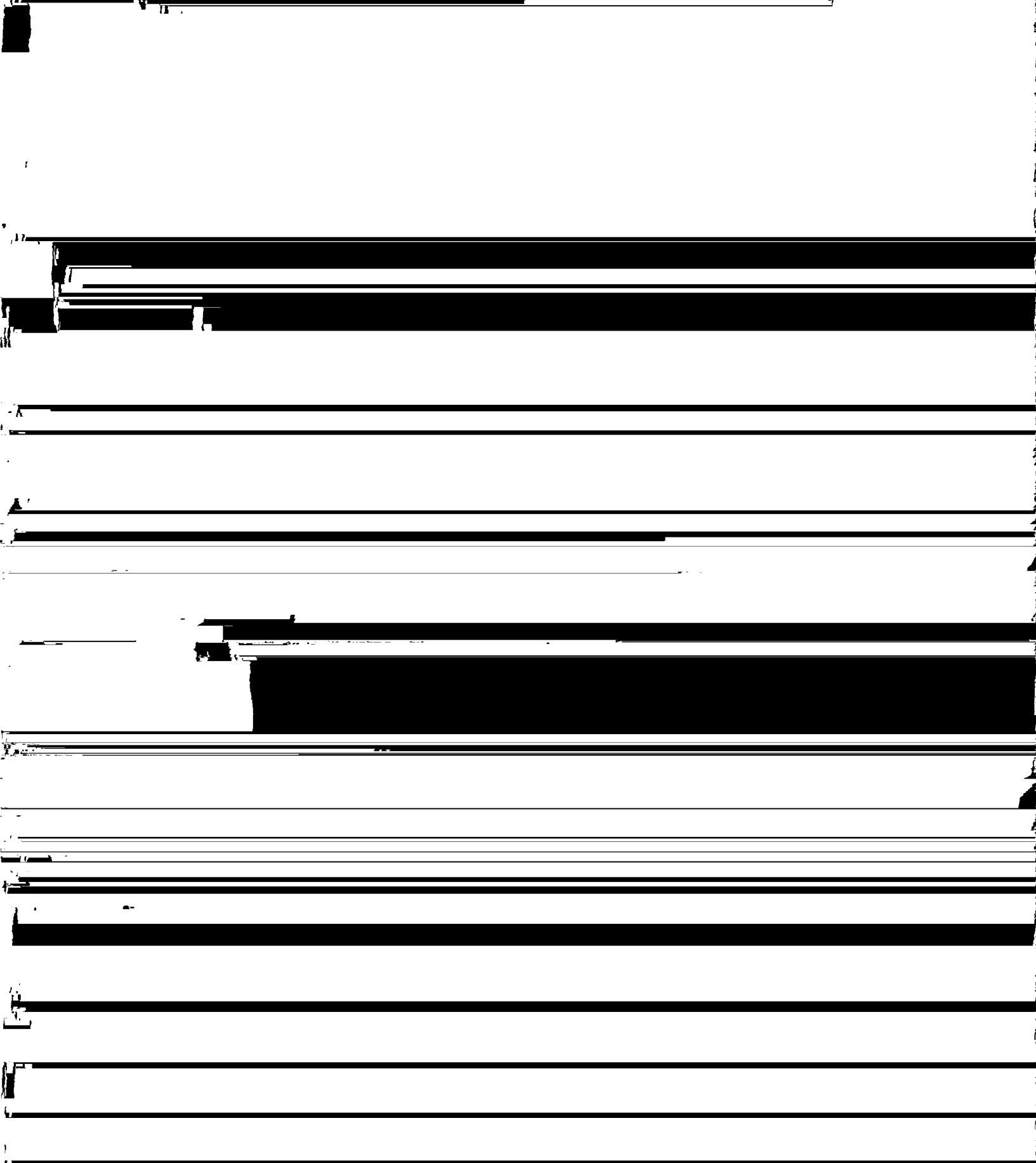
Public Version

RESPONDENT'S EXPEDITED MOTION FOR EXTENSION

OF THE LENGTH OF INITIAL APPEAL BRIEF

This is the first post-consummation challenge to a hospital merger in decades -- and it is

the first challenge to a full-integrated hospital merger. The case arises from the January 2000



December 16, 2005. In order to allow Respondents to effectively utilize any additional length that may be granted, Respondent respectfully requests that the Commission issue a ruling as soon as possible and, in any event, not later than close of business on Thursday, December 8.

ARGUMENT

[REDACTED]

Extensions of Time to File Appellate Briefs and Increase in Word Count Limits, March 18, 2004) (available at <http://www.ftc.gov/os/adjpro/d9302/index.htm>); *In re Schering-Plough*, Dkt. No. 9297 (Order Granting - In Part Complaint Counsel's Motion For Leave To File An Appeal Brief Exceeding The Word Limit In the Commission's Rules of Practice, July 25, 2002, available at <http://www.ftc.gov/os/adjpro/0207/index.htm>)

Respondent must appeal the decision in its entirety within the word limits prescribed by the rule

were improvements on an exception basis (e.g. statistical, pharmaceutical, etc.) making

over 132 findings and employing over 17 pages of the text of his decision (ID175-192). But the ALJ also omitted any reference to a substantial body of evidence -- Respondents submitted more than 1,000 proposed findings on quality-related issues (RFF1165-2277) -- which invariably led to his undervaluing the weight of this evidence. This evidence omitted from the opinion further addresses a number of concerns the ALJ raised about the relevance of the quality evidence including, for example, evidence demonstrating that the improvements were merger specific. In addition to the quality improvements discussed in the Initial Decision, the ALJ also ignored significant record evidence showing improvements in other areas. In its brief, Respondent will

both answer and rebut the claims in the ALJ's decision. C. H. 11-011-00000

c. Competitive Effects

The ALJ erred in every step of his competitive effects analysis. First, he engaged in a blind structural analysis without ever elucidating a clear theory of competitive harm. As an initial matter, the ALJ erred in defining the relevant market and thus any presumption derived from market statistics is flawed. The discussion of the relevant market and presumptions is both complex and fact-intensive. Moreover, the ALJ purported to strengthen his initial presumption by misinterpreting a complex pricing analysis and internal document evidence. Discussion of

these issues in the brief will facilitate the Commission's de novo review of the record. The ALJ

merger. Finally, given the public welfare considerations inherent in the unwinding, through

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Thomas B. Leary
Pamela Jones Harbour
Jon Leibowitz

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EVANSTON NORTHWESTERN)
HEALTHCARE CORPORATION,)

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Docket No. 9315

ORDER GRANTING RESPONDENT'S MOTION FOR EXTENSION
OF LENGTH OF INITIAL APPEAL BRIEF

Respondent Evanston Northwestern Healthcare Corporation has filed a Motion for
Extension of Length of Initial Appeal Brief on December 2, 2005 requesting that the

[REDACTED]

CERTIFICATE OF SERVICE

I hereby certify that on December 2, 2005, copies of the foregoing Respondent's Expedited Motion for Extension of Length of Initial Appeal Brief was served (unless otherwise indicated) by email and first class mail, postage prepaid, on:

Office of the Secretary
Federal Trade Commission

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