

Respondent can question at any time. Complaint Counsel should be allowed to examine Mr. Roush on the record of the deposition. Complaint Counsel asserts such questioning can occur after Complaint Counsel has concluded its questioning and the time for Respondent's questioning should not be deducted from the seven-hour limit. Complaint Counsel states that it informed Respondent that it has no objection to extending the deposition to include Respondent's employees beyond the seven-hour, in-person, examination and questioning period.

Respondent asserts that a deposition does not consist of direct examination alone, but consists of both direct and cross examination. In a deposition, both direct and cross examination by Complaint Counsel has made no showing of a need to extend Mr. Roush's deposition beyond seven hours. Rather than compelling the witness to answer questions, the deposition should be allocated equitably between the parties, and not allocated to Complaint Counsel and 90 minutes for Respondent.

III.

The Federal Trade Commission Rule on depositions states, "any party shall have the right to question a deponent on any matter relevant to the issues in the case, including questions concerning the deponent's business, activities, and affairs, and any other matters that may be relevant to the issues in the case." 16 C.F.R. § 3.33(d). In *United States v. ZCT Sys. Group v. Flight Safety Int'l*, 2010 US Dist LEXIS 253518 (D. Md. 10/19/10), the court (quoting *United States v. ZCT Sys. Group v. Flight Safety Int'l*, 2010 US Dist LEXIS 253518 (D. Md. 10/19/10)) (holding that the Federal Rules of Civil Procedure "do not limit the right to examine its own witness" at a deposition of a corporate representative).

The issue presented by Complaint Counsel is whether a limitation on the number of questions that Respondent's employees, such that Respondent, 1-800-... is appropriate in the deposition. If Complaint Counsel agrees or the deposition is interrupted, the deposition should be resumed. Respondent has the right to question its own witness. 16 C.F.R. § 3.33(d). Additional Provision 12 clearly states that the parties are not required to agree to an allocation of the seven-hour limit. The parties are not required to agree to an allocation of the seven-hour limit. Where agreement cannot be reached, the parties, individually or jointly, may seek an appropriate order, including an order to extend the seven-hour limitation, upon a showing of good cause. In this matter, Respondent has shown good cause to conclude that good cause exists to extend the limitation at this time.

² "[S]ince many adjudicative rules are derived from the Federal Rules of Civil Procedure, the Federal Rules of Civil Procedure are the primary source of guidance and interpretation of Commission rules where no other authority exists." *In re Laidlaw, Inc.*, 2014 WL 253518 (D. Md. 10/19/10).

IV.

To the extent Complaint Counsel's motion seeks to grant the Scheduling Order, Complaint Counsel's Motion is GRANTED.

However, Complaint Counsel has failed to demonstrate that the Scheduling Order should be interpreted as allocating the entirety of any delay to Respondent's employees. Complaint Counsel's Motion is GRANTED to the extent it seeks to extend the seven-hour limitation on the examination of that Respondent's request for production of documents. Therefore, it is hereby ORDERED that Respondent may take up to 600 minutes for the examination of that Respondent's request for production of documents.

Furthermore, implicit in Complaint Counsel's Motion is the request that the Court will use its authority to extend the seven-hour limitation on the examination of that Respondent's request for production of documents. Therefore, it is hereby ORDERED that Respondent may take up to 600 minutes for the examination of that Respondent's request for production of documents.

Nothing in this order precludes the parties from submitting a motion to extend the seven-hour limitation on the examination of that Respondent's request for production of documents. Therefore, it is hereby ORDERED that Respondent may take up to 600 minutes for the examination of that Respondent's request for production of documents.

ORDERED:

Dm Chappell
D. Michael Chappell
Chief Administrative Law Judge

Date: November 14, 2016