

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



_____)
In the Matter of)
)
Axon Enterprise, Inc.)
a corporation,)
)
and)
)
Safariland, LLC,)
a partnership,)
)
Respondents.)
_____)

Docket No. 9389

**ORDER ON JOINT MOTION TO ALLOW WITNESSES TO
TESTIFY REMOTELY AT THE HEARING**

On July 16, 2020, Federal Trade Commission (“FTC”) Complaint Counsel and Respondent Axon Enterprise, Inc. (“Respondent”) filed a Joint Motion to Allow Witnesses to Testify Remotely at the Hearing (“Joint Motion”).¹ The parties request that this Court allow witnesses to testify via video teleconference (“VTC”) at the evidentiary hearing scheduled to begin on October 13, 2020.

The parties assert that the country is in the middle of a public health emergency occasioned by the outbreak of the coronavirus disease (“COVID-19”) and that while the effects of the virus may vary by individual and by community, it is unlikely that it will be controlled or eradicated before the hearing is scheduled to occur. The parties further assert that potential witnesses are located in states across the country, including Arizona, California, New York, Washington, and Florida, and that many of the witnesses likely to be called during the hearing would have to travel across the country to attend the hearing, potentially exposing themselves and others to COVID-19 along the way. For these reasons, the parties request that the Court exercise its discretion and allow the presentation of witnesses via VTC at the hearing. *See* 16 C.F.R. § 3.42(c) (“Administrative Law Judge . . . shall have all powers necessary . . . including [the power to] regulate the course of hearings and the conduct of the parties and their counsel therein”).

¹ The parties’ request for expedited treatment is GRANTED.

Based on the foregoing, pursuant to FTC Rule 3.42(c), the Joint Motion is GRANTED.² As to witnesses that will appear by live video teleconference, the following additional provisions apply:

1. All witness examination shall be focused and efficient.
2. To prevent unnecessary delay, time limits may be imposed by the Administrative Law Judge at any time.
3. By September 25, 2020, each party shall file an updated witness list identifying each witness that wishes to appear via VTC.
4. By September 25, 2020, the parties shall jointly confer and coordinate with the Federal Trade Commission's I.T. staff (and, as appropriate, any third-party vendors), and submit a proposal detailing how testimony shall be presented via VTC at the hearing. Any proposed technical solution for presenting testimony via VTC must allow the Administrative Law Judge, court reporter, and all counsel present in the courtroom to see, hear, and speak to the witness testifying via VTC. Similarly, any proposed technical solution must allow the witness testifying remotely to see, hear, and speak to the presiding Administrative Law Judge, court reporter, and all counsel present in the courtroom.
5. By October 2, 2020, the parties shall submit information via email to the Office of Administrative Law Judges demonstrating that the video feed will be reliable and not pose any security concerns.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: July 20, 2020

² Nothing in this order is intended to limit other permissible methods of presenting testimony, including live testimony, or deposition excerpts. *See* Scheduling Order, Additional Provision 23 (“Properly admitted deposition testimony and properly admitted investigational hearing transcripts are part of the record and shall not be read in open court to provide that testimony, but may be used in the examination of live witnesses. Videotape deposition excerpts that have been admitted in evidence may be presented in open court only upon prior approval by the Administrative Law Judge.”)