

an extension would account for the September 30, 2025 Commission-ordered stay spanning the 43-day partial government shutdown and 5 business days thereafter, plus 90 days to accommodate ongoing collateral proceedings. Consistent with the Commission's last Order Granting Joint Motion for Further Stay and Continuance of Administrative Proceedings, there is continued good cause for an additional limited continuance of this proceeding, including the evidentiary hearing and all discovery and filing deadlines, to allow the federal courts to rule on the parties' pending motions in the collateral federal action, *Asbury Automotive Group, Inc., et al. v. Fed. Trade Comm'n, et al.*, No. 4:24-cv-00950-O (N.D. Tex.).¹

BACKGROUND

On August 16, 2024, the Commission issued an administrative complaint against Asbury Respondents. On October 4, 2024, the Asbury Respondents filed a complaint for injunctive and declaratory relief against the Federal Trade Commission (the "FTC" or "Commission") and its Commissioners in their official capacities (the "Commissioners" and together with the FTC, "FTC Defendants") in the United States District Court for the Northern District of Texas, seeking preliminarily and permanently to enjoin the Part 3 proceeding on constitutional grounds. On October 14, 2024, the Asbury Respondents filed an expedited motion for a preliminary injunction staying these proceedings pending adjudication of the Asbury Respondents' constitutional claims in the collateral federal action. On November 12, 2024, FTC Defendants in the federal action filed a motion to dismiss the federal complaint. The preliminary motions in the collateral federal action were fully briefed on December 24, 2024, and remain partially pending before the district court, although the parties to the federal action subsequently filed supplemental materials and authorities.

¹ Respondents note that, by joining this motion, they do not waive any defenses they may have in this matter.

On October 29, 2024, the Commission granted the parties' joint expedited motion for a four-month stay of the administrative proceeding to allow the parties to brief, and the district court to decide, the issues raised by the parties' preliminary motions in the federal court action. On March 25, 2025, the Commission granted a joint motion for a two-month stay, on similar grounds. On June 3, 2025, the Commission granted a joint motion for an additional two-month stay, on similar grounds. On June 18, 2025, FTC Administrative Law Judge Dania L. Ayoubi entered a corresponding revised scheduling order. On August 5, 2025, the Commission granted a joint motion for an additional three-month stay, on similar grounds. On August 21, 2025, FTC Administrative Law Judge Dania L. Ayoubi entered a corresponding revised scheduling order.

On August 11, 2025, the federal district court issued an order (the "Partial Federal Dismissal Order") that denied the Asbury Respondents' request for preliminary injunctive relief, dismissed multiple but not all of the Asbury's Respondents' claims in the federal matter, and ordered the parties to further brief one claim for summary judgment and agree to a briefing schedule regarding same. However, subsequent to the Partial Federal Dismissal Order, the United States Court of Appeals for the Fifth Circuit issued an opinion—*Space Exploration Tech. Corp. v. NLRB*, No. 24-50627, 2025 WL 2396748 (5th Cir. Aug. 19, 2025), which the Asbury Respondents assert necessitate the district court's reconsideration of several of its rulings in the Partial Federal Dismissal Order. On August 20, 2025, the Asbury Respondents notified the district court of their intent to seek reconsideration.

Following a hearing on September 3, 2025, the district court directed the parties to brief reconsideration on the dismissed claims before briefing summary judgment on the non-dismissed claim. The parties agreed to the following briefing schedule for the Asbury Respondents' Motion for Reconsideration:

09/26/2025 Motion for Reconsideration
10/17/2025 FTC Defendants' response to Motion for Reconsideration
10/31/2025 Reply

On September 26, 2025, the Asbury Respondents filed an Opposed Motion for Reconsideration seeking an indicative ruling and brief in support. The Asbury Respondents filed a Notice of Appeal concurrently.

On October 1, 2025, the federal government was partially shut down due to a lapse in appropriations. This lapse continued for 43 days until November 12, 2025.

On October 1, 2025, counsel in the federal matter for the FTC Defendants informed counsel for the Asbury Respondents that the FTC Defendants would “move for a stay of [their] deadline to respond to Asbury’s Motion for Reconsideration in light of lapse of appropriations, until Congress appropriates funds for the Department [of Justice]” and that the FTC Defendants would “ask that all deadlines be extended commensurate with the duration of the lapse in appropriations.” Counsel asked whether the Asbury Respondents would oppose the FTC Defendants’ motion, to which counsel for the Asbury Respondents stated they would not. On October 1, 2025, the FTC Defendants filed their unopposed Motion to Stay the briefing deadlines. On October 15, 2025, the district court entered an order (a) staying the briefing deadlines with respect to the Asbury Respondents’ Motion for Reconsideration pending further order from the district court and (b) ordering the FTC Defendants to file a notice with the district court within 5 days of “receiving clearance to resume their usual litigation functions.”

The lapse in appropriations and partial federal government shutdown has also resulted in uncertainty regarding the status of the March 19, 2025 hearing (and related Scheduling Order dates) in the FTC administrative matter. On September 30, 2025, Commission Secretary April J. Tabor issued a Commission order (the “Shutdown Stay Order”) that stated as follows:

In the event that a lapse in appropriations results in a shutdown of most Commission operations, the Commission hereby directs that this proceeding be fully stayed for the duration of the shutdown and for an additional five business days thereafter. The Administrative Law Judge shall have the discretion to adjust any applicable deadlines as warranted.

The Shutdown Stay Order does not expressly address the date of the hearing in the FTC administrative matter, which in turn, affects the feasibility of pre-hearing deadlines. The parties thus seek an explicit Commission order resetting the Hearing Date and providing for the adjustment of all deadlines by an amount of time commensurate with the Commission's September 30 order relating to the partial shutdown. Furthermore, for the reasons set forth below, the parties request that the Hearing Date and all pre-hearing deadlines be moved back an additional 90 days.

ARGUMENT

Commission Rule 3.41(b) provides that “upon a showing of good cause” the Commission “may order a later date for the evidentiary hearing to commence.” 16 C.F.R. § 3.41(b). Further, Commission Rule 4.3 provides that the Commission, for good cause shown, may extend any time limit prescribed by Commission rules or by order of the Commission or an Administrative Law Judge. 16 C.F.R. § 4.3. Here, there is good cause for a limited continuance of this proceeding, including the evidentiary hearing and all discovery and filing deadlines, to account for the lapse in appropriations and the partial shutdown, and to allow the federal district court to decide the Asbury Respondents' Motion for Reconsideration seeking an indicative ruling and/or the court of appeals to decide the Asbury Respondents' appeal.

In other Part 3 matters, the Commission has concluded good cause exists to postpone administrative proceedings to allow for the resolution of a motion for preliminary injunction in parallel federal proceedings. *See In re Meta Platforms, Inc.*, No. 9411, 2023 WL 621507, at *1-2 (F.T.C. Jan. 11, 2023) (granting motion to postpone administrative hearing until after date

expected for federal court decision on preliminary injunction); *In re Novant Health, Inc.*, No. 9425, 2024 WL 2974553 (F.T.C. June 5, 2024) (same); *In re FleetCor Techs., Inc.*, No. D-9403, 2021 WL 6618368 (F.T.C. Aug. 25, 2021) (same); *In re Hackensack Meridian Health, Inc.*, No. 9399, 2021 WL 2379546, at *1-2 (F.T.C. May 25, 2021) (same); *In re Thomas Jefferson Univ.*, No. 9392, 2020 WL 7237952, at *1-2 (F.T.C. Nov. 6, 2020) (same); *In re RAG-Stiftung*, No. 9384, 2020 WL 91294, at *1-3 (F.T.C. Jan. 2, 2020) (same); *In re Sanford Health*, No. 9376, 2017 WL 5845596, at *1-2 (F.T.C. Nov. 21, 2017) (same); *In re The Penn State Hershey Med. Ctr.*, No. 9368, 2016 WL 3345405, at *1 (F.T.C. June 10, 2016) (same); *In re Advocate Health Care Network*, No. 9369, 2016 WL 3182774, at *2 (F.T.C. June 2, 2016) (same).

Absent a continuance, the parties will be required to conduct discovery in this Part 3 proceeding while simultaneously awaiting resolution of the Asbury Respondents' Motion for Reconsideration or the court of appeals resolution of their appeal to determine whether one or both of the actions may proceed. A planned, time-limited continuance avoids any inefficiencies that may arise from preparing for the administrative trial while awaiting resolution of the pending matter in the district court and/or the court of appeals, and the requested relief will not prejudice the Commission's ability to discharge its duties.

CONCLUSION

For the foregoing reasons, Complaint Counsel and the Asbury Respondents respectfully request that the Commission enter an order granting the joint expedited motion to continue the evidentiary hearing until August 6, 2026, which reflects the duration of the stay ordered by the Commission on September 30, 2025 plus 90 days, and to commensurately extend all pre-hearing deadlines.

Dated: November 19, 2025

/s/ Mark L. Glassman

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Administrative Law Judge. Under the circumstances presented in the Motion, we find good cause to order the requested continuance of this proceeding, including the evidentiary hearing and all discovery and filing deadlines. Accordingly,

IT IS HEREBY ORDERED THAT the stay and continuance requested in the Joint Expedited Motion for Further Stay and Continuance of Administrative Proceedings is **GRANTED** and that the evidentiary hearing in this proceeding shall commence at 10:00 a.m. on August 6, 2026;

IT IS FURTHER ORDERED that all pre-hearing deadlines in this proceeding are hereby commensurately extended.

By the Commission.

April J. Tabor
Secretary

Seal:
ISSUED:

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Andrew N. Ferguson, Chairman**
 Mark Meador

In the Matter of	)	
	)	
Asbury Automotive Group, Inc.,	)	
a corporation,	)	
	)	
Asbury Ft. Worth Ford, LLC, a limited liability	)	
company, also d/b/a David McDavid Ford	)	
Ft. Worth,	)	
	)	
McDavid Frisco – Hon, LLC, a limited liability	)	
company, also d/b/a David McDavid Honda of	)	DOCKET NO. 9436
Frisco,	)	
	)	
McDavid Irving – Hon, LLC, a limited liability	)	
company, also d/b/a David McDavid Honda of	)	
Irving, and	)	
	)	
Ali Benli, individually and as an officer of	)	
Asbury Ft. Worth Ford, LLC,	)	
McDavid Frisco – Hon, LLC, and	)	
McDavid Irving – Hon, LLC,	)	
	)	
Respondents.	)	
	)	

SEPARATE MEET AND CONFER STATEMENT

Respondents’ Counsel conferred with Complaint Counsel between November 13 and 19, 2025. This motion seeks relief that cannot be obtained solely by agreement of the parties.

Respondents’ Counsel joins Complaint Counsel in the filing of this motion.

/s/ Mark L. Glassman

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Complaint Counsel

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of November, 2025, I filed the foregoing document and its attachments electronically using the FTC's E-filing system, which will send notification of such filing to:

April Tabor
Secretary
Federal Trade Commission
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The Honorable Dania L. Ayoubi
Administrative Law Judge
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I further certify that on this 19th day of November, 2025, a true and correct copy of the foregoing and its attachments were served on all counsel of record—Michael Lockerby, John Sepehri, Robert Johnson, Megan Chester, Brandon Livengood, Mark L. Glassman, Jamie D. Brooks, James Doty, Dan Dwyer, and Sarah Abutaleb—by email.

/s/ Mark L. Glassman

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