

**§ 1005.114. Electronic testimony.**

(a) *Definitions.* The following words and terms, when used in this part, have the following meanings, unless the context clearly indicates otherwise:

*Audio-visual—*

(b) *Purpose and scope.*

(1) In-person testimony is normally preferable to testimony by telephone or audio-visual means; however, there can be reasons to justify receiving testimony by telephone or audio-visual means, including the transitory nature of many of the users of taxicabs and limousines. This section is promulgated to provide the conditions under which testimony by telephone or audio-visual means will be scheduled and received, to safeguard the due process rights of the parties, and to ensure that testimony by telephone or audio-visual means is received under uniformly applied rules.

(2) When the general rules of this subpart conflict with this section, this section controls.

(3) This section applies to the testimony of witnesses in enforcement actions.

(4) This section does not apply to proposed witnesses who are any of the following:

- (i) Authority employees.
- (ii) Parties to an enforcement action.
- (iii) Employees of parties to an enforcement action.

(b) *Scheduling of telephone or audio-visual testimony.*

(1) The Authority or presiding officer may schedule, on its own motion, testimony by telephone or audio-visual means of a witness when it appears from the record that the witness is located at least 25 miles from the location at which the Authority or presiding officer will conduct the hearing, without regard to State boundaries.

(2) The Authority or presiding officer may schedule testimony by telephone or audio-visual means of a witness, at the request of one or more parties, when one of the following applies:

- (i) The parties consent to the receipt of testimony by telephone or audio-visual means.
- (ii) The witness is reasonably unable to testify in person due to employment, transportation, mobility, health reason, or other compelling problem.

(iii) The witness is a police officer within the definition of 234 Pa. Code Rule 103, offered for testimony regarding the impoundment of a taxicab or limousine, or vehicle acting as a taxicab or limousine.

(3) Only a witness scheduled to testify by telephone or audio-visual means, or identified prior to the taking of testimony in accordance with subsection (e), may testify by telephone or audio-visual means, and the testimony of each other witness shall be received in person.

(4) The Authority or presiding officer will promptly rule on a request that testimony be taken by telephone or audio-visual means after a reasonable attempt has been made to inform the parties of the request, the basis for the request, and the right of a party to object. The basis for the request, the position of the parties, if known, and the ruling will be documented on the record.

(5) A witness scheduled to testify by telephone or audio-visual means will be permitted to testify in person.

(c) *Procedures subsequent to scheduling.*

(1) If a party moves to withdraw consent to the receipt of testimony by telephone or audio-visual means prior to the taking of testimony, the Authority or presiding officer will allow the withdrawal if it is found that the consent was not freely and knowingly given.

(2) An objection to the receipt of testimony by telephone or audio-visual means shall set forth the reasons in support thereof and shall be promptly communicated to the Authority or presiding officer and any opposing party, but may not be asserted subsequent to the taking of testimony.

(3) The Authority or presiding officer will promptly rule on objections to testimony by telephone or audio-visual means after a reasonable attempt to obtain the position of the other party. The basis for the objection, the position of the other party, if known, and the ruling will be documented on the record.

(4) A party may pursue an objection to telephone or audio-visual testimony at the hearing and shall set forth reasons in support thereof. If the objection is sustained, the Authority or presiding officer will reschedule the hearing at a later date, either in person or by telephone or audio-visual, in accordance with this part. If the objection is not sustained, the Authority or presiding officer may proceed with the hearing in accordance with this subpart.

(d) *Hearing process.*

(1) At the start of the hearing, the Authority or presiding officer will state on the record the time and telephone or audio-visual numbers at which the Authority or presiding

officer initiates the contact with any party, witness, legal counsel or authorized agent who is to testify or appear by telephone or audio-visual.

(2) The Authority or presiding officer will permit parties a reasonable opportunity to question other parties or witnesses testifying by telephone or audio-visual for the purpose of verifying the identity of the parties or witnesses. Falsification of identity is prohibited.

(3) A party or witness not identified to the Authority or presiding officer and all other parties before the beginning of the testimony will not be permitted to testify by telephone or audio-visual. Testimony taken or given in violation of this subsection will be excluded from consideration.

(4) The oath or affirmation administered to parties or witnesses testifying by telephone or audio-visual means shall indicate that the parties or witnesses will not testify from documents that are not in the record.

(5) The Authority or presiding officer, the person testifying by telephone or audio-visual means, and all persons in the room in which the Authority or presiding officer is present while telephone or audio-visual testimony is presented must be able to hear and speak to one another through the telephone or audio-visual connection used to submit testimony pursuant to this section.