

**§ 1005.114. Electronic testimony.**

(a) *Purpose, ~~[and]~~ scope and definitions.*

(1) The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

*Electronic testimony witness*—An individual offered to provide testimony or other evidence at a hearing conducted pursuant to Chapter 1005, Subchapter B (relating to hearings) in an enforcement proceeding by telephone or audio-visual means. This term does not apply to an individual who is either of the following:

- (i) An Authority employee.
- (ii) A regulated party.
- (iii) Any agent or employee of a regulated party.

~~[(1)]~~(2) 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)]~~(3) When the general rules of this subpart conflict with this section, this section controls.

~~[(3)]~~(4) This section applies to the ~~[testimony]~~ use of an electronic testimony witness~~[es]~~ in enforcement ~~[actions]~~ proceedings initiated by Trial Counsel or the Enforcement Department, or both.

~~[(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.)]~~ Scheduling of electronic testimony witnesses shall proceed as follows:

(i) The party seeking to present an electronic testimony witness must file a written notice with the Clerk. The notice must be filed more than 20 days before the scheduled hearing date. The notice must contain the name of the proposed electronic testimony witness, the reason an exemption from standard in-person testimony is requested and an offer of proof as to the proposed testimony.

(ii) A party may file written objections to the use of an electronic testimony witness with the Clerk within 10 days of the filing of the notice required by paragraph (2)(i). The objection shall set forth the reasons in support thereof.

(iii) The notice required by this paragraph, and any objection thereto, shall be served as provided in Chapter 1001, Subchapter F. (relating to service of documents) on the same day the document is filed with the Clerk. A certificate of service shall be filed with the Clerk.

(iv) In the event a timely objection is not filed pursuant to this paragraph, all parties will be deemed to consent to the use of the electronic testimony witness.

(v) The parties may mutually agree to waive the time limitations of this paragraph.

(2) It is within the sole discretion of the [The Authority or] presiding officer [may] to permit the use of an electronic testimony witness in consideration of the notice and objection, if any, required by this section.[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:] The presiding officer shall also consider the following factors prior to scheduling the testimony of an electronic testimony witness:

(i) [The parties consent to the receipt of testimony by telephone or audio-visual means] The value of the proposed witness in developing a full and complete record.

(ii) [The witness is reasonably unable to testify in person due to employment, transportation, mobility, health reason, or other compelling problem] The reason the proposed witness is unable to testify. Particular consideration shall be given to reasonable conflicts or challenges associated with employment, childcare, transportation, mobility issues or health reasons.

(iii) The rebuttable presumption that a [witness is a] police officer within the definition of 234 Pa. Code Rule 103, should be permitted to testify by telephone or audio-visual means in matters related to the [offered for testimony regarding the] impoundment of a taxicab or limousine, or vehicle acting as a taxicab or limousine.

(iv) If the probative value of the proposed electronic testimony is substantially outweighed by the danger or any unfair prejudice to the opposing party.

(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 (d),] 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)](4) 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)](c) *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,] electronic testimony witness[, legal counsel or authorized agent who is to testify or appear by telephone or through audio-visual means].

| (2) The [Authority or] presiding officer will permit parties a reasonable opportunity to question [other parties or witnesses testifying by telephone or audio-visual means]

electronic testimony witnesses for the purpose of verifying the identity of [the parties or] such 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.] This section does not create special procedures or standards for the presentation, cross-examination, exclusion or weighing of the testimony of an electronic testimony witness or for establishing the creditability of such a witness once the witness is scheduled by the presiding officer.

(4) The oath or affirmation administered to [parties or witnesses testifying by telephone or audio-visual means] an electronic testimony witness 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 electronic testimony witness [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.