



NEW YORK STATE
Unified Court System

OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

MEMORANDUM

JOHN W. McCONNELL
COUNSEL

August 1, 2019

To: All Interested Persons
From: John W. McConnell
Re: Request for Public Comment on Proposed Amendment to Commercial Division Rule 1 to Facilitate Remote Video Appearances by Counsel

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The Administrative Board of the Courts is seeking public comment on a proposal, proffered by the Commercial Division Advisory Council (the "Advisory Council"), to amend Commercial Division Rule 1 (22 NYCRR § 202.70(g), Rule 1) to facilitate the voluntary participation of counsel in court proceedings from remote locations. As described in a memorandum in support of this proposal (Exh. A), the Advisory Council believes that such a rule will improve court efficiency and encourage avoidance of wasteful attorney travel. The proposed language is as follows (new material underlined):

Rule 1. Appearance by Counsel with Knowledge and Authority.

* * *

(d) Counsel may request the court's permission to participate in court conferences and oral arguments of motions from remote locations through use of videoconferencing or other technologies. Such requests will be granted in the court's discretion for good cause shown; however, nothing contained in this subsection (d) is intended to limit any rights which counsel may otherwise have to participate in court proceedings by appearing in person.

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Persons wishing to comment on the proposal should e-mail their submissions to rulecomments@nycourts.gov or write to: John W. McConnell, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 11th Fl., New York, New York, 10004. Comments must be received no later than September 30, 2019.

All public comments will be treated as available for disclosure under the Freedom of Information Law and are subject to publication by the Office of Court Administration. Issuance of a proposal for public comment should not be interpreted as an endorsement of that proposal by the Unified Court System or the Office of Court Administration.

EXHIBIT A

MEMORANDUM

TO: The Administrative Board of the Courts
FROM: Commercial Division Advisory Council
DATE: June 12, 2019
RE: Proposal To Amend Commercial Division Rule 1 To Facilitate Participation Of Counsel In Court Proceedings From Remote Locations

Introduction

Counsel for parties in cases pending before the Commercial Division often are required to travel substantial distances to participate in court proceedings. Sometimes those distances are thousands of miles, such as when a lawyer from San Francisco travels to New York County to argue a motion. More often those distances may be hundreds or dozens of miles, such as when a lawyer from White Plains travels to Erie County or Albany County to participate in a status conference. Such travel is often inefficient, wasteful and expensive: lawyers generally do not add value to their representation of a client by spending hours traveling to participate in court proceedings. Furthermore, for safety reasons, lawyers should not use their travel time in automobiles to text or make telephone calls to address their professional or personal matters. To protect confidentiality, lawyers should also avoid speaking by telephone while on a crowded train or bus. Business clients are often sensitive to the cost issues presented by travel time: they sometimes refuse to pay their lawyers for their travel time or at least object to and complain about the cost. Many business clients are also acutely aware of the solution which technology enables them to utilize in reducing travel time and expense in their own businesses: the use of videoconferencing.

A number of Commercial Division Justices have sought to address the issue of expensive and unnecessary travel time by permitting counsel to participate in some court proceedings by telephone conference call. Although clients and counsel are grateful for these judicial efforts to reduce wasteful travel time, all commercial litigators readily recognize the limitations and shortcomings of attempting to participate in court proceedings by telephone. In all but the most perfunctory of proceedings, many lawyers feel that to serve their clients effectively, they must be able to make their presentations in person and see the judge in order to gauge his or her reactions to the arguments presented by counsel for the parties. In addition, judges may feel that they can control overbearing or other inappropriate behavior by counsel more readily and more effectively by visual cues or otherwise if the judge and counsel can see each other during the proceeding. Thus, it is clear that telephone conference calls are not a complete solution to obviating inefficiencies caused by traveling to court proceedings.

Fortunately, as it has in other areas, technology provides a better solution to this problem. Videoconferencing from remote locations provides an efficient, cost-effective, and entirely satisfactory alternative to traveling substantial distances to participate in many court proceedings. As discussed in this memorandum, the technology involved has been widely used in many different contexts for many years. The technology is remarkably inexpensive and many lawyers already use it for various purposes. All that is required is attaching an inexpensive camera to the computers used by counsel and the judge, and obtaining an inexpensive license to use a videoconferencing service.

Accordingly, the Commercial Division Advisory Council now proposes an amendment to Commercial Division Rule 1 which will facilitate participation of counsel in court proceedings from remote locations. The proposed amendment to Rule 1 does not require the

court to permit counsel to participate in court proceedings from remote locations and the court may exercise its discretion to decline to permit such participation. In addition, the proposed amendment to Rule 1 enables any lawyer to decline to participate from remote locations; thus, the Rule provides that nothing contained in the amendment is intended to limit any rights which counsel may otherwise have to participate in court proceedings by appearing in court. The proposed amendment addresses only the participation of counsel in court proceedings and does not address testimony of a witness through remote transmission. Thus, the proposed amendment is limited to court conferences and oral argument of motions and the amendment is not intended to address the more complex subject of testimony by witnesses at trials or other evidentiary hearings.

Further, this amendment to Commercial Division Rule 1 will not harm any constituencies or threaten the rights of any participant in court proceedings. What the amendment will do is obviate huge amounts of wasted time and money devoted to unnecessary travel by lawyers.

The Commercial Division Advisory Council believes that this amendment will encourage parties to make voluntary use of an easy-to-use and helpful technological tool; will confer appropriate discretion on individual Justices to permit counsel to participate in court proceedings from remote locations where it would further the interests of justice, but not otherwise; and will avoid any burden on the diminishing population of lawyers who lack the technical resources to participate in court proceedings from remote locations. An additional benefit of this amendment will be to facilitate participation of lawyers who have disabilities which prevent or hamper their attendance in court.

Implementing this proposal at this time will advance the goals of Chief Judge DiFiore’s Excellence Initiative, which has already resulted in numerous “measures to improve promptness and productivity, eliminate case backlogs and delays, and provide better service to the public.”¹ It will also be consistent with the Commercial Division’s role as a laboratory for innovation in the court system; after new rules and procedures have been introduced in the Commercial Division, other parts of the court system can evaluate whether these innovations might be valuable to them as well. This proposal embraces the opportunities technology provides to help the public, the bar and the judiciary, by improving the efficiency and productivity of the New York State courts.

Finally, many of the law firms that regularly appear in the Commercial Division and their clients already use videoconferencing in their everyday business operations, making the Commercial Division the logical place to begin the introduction of videoconferencing technology to the New York State courts. Thus, this amendment would help achieve the Excellence Initiative’s “goal of administering a high-functioning court system that provides all litigants with just and timely dispositions and first-rate judicial service.”²

Existing Commercial Division Rule 1

As currently written, Commercial Division Rule 1 provides:

Rule 1. *Appearance by Counsel with Knowledge and Authority.*

(a) Counsel who appear in the Commercial Division must be fully familiar with the case in regard to which they appear and fully authorized to enter into agreements, both substantive and

¹ STATE OF N.Y. UNIFIED COURT SYSTEM, THE STATE OF OUR JUDICIARY 2019, EXCELLENCE INITIATIVE: YEAR THREE i (Feb. 2019), https://ww2.nycourts.gov/sites/default/files/document/files/2019-02/19_SOJ-Report.pdf.

² STATE OF N.Y. UNIFIED COURT SYSTEM, THE STATE OF OUR JUDICIARY 2019, EXCELLENCE INITIATIVE: YEAR THREE i (Feb. 2019), https://ww2.nycourts.gov/sites/default/files/document/files/2019-02/19_SOJ-Report.pdf.

procedural, on behalf of their clients. Counsel should also be prepared to discuss any motions that have been submitted and are outstanding. Failure to comply with this rule may be regarded as a default and dealt with appropriately. See Rule 12.

(b) Consistent with the requirements of Rule 8(b), counsel for all parties who appear at the preliminary conference shall be sufficiently versed in matters relating to their clients' technological systems to discuss competently all issues relating to electronic discovery. Counsel may bring a client representative or outside expert to assist in such discussions.

(c) It is important that counsel be on time for all scheduled appearances.³

Proposed Addition to Commercial Division Rule 1

The Commercial Division Advisory Council proposes adding subsection (d) to Commercial Division Rule 1 as follows:

(d) Counsel may request the court's permission to participate in court conferences and oral arguments of motions from remote locations through use of videoconferencing or other technologies. Such requests will be granted in the court's discretion for good cause shown; however, nothing contained in this subsection (d) is intended to limit any rights which counsel may otherwise have to participate in court proceedings by appearing in person.

Overview of Videoconferencing Technology

Video calling was introduced at the World's Fair in 1964 by AT&T. In 1992 McIntosh (Apple) released its personal videoconferencing software. At the present time, there are dozens of videoconferencing providers. Some of the most well-known products include FaceTime, WebEx, GoToMeeting, Zoom, and Skype (formerly Lync).⁴ Videoconferencing is becoming ubiquitous in personal and professional life whether it is being used on a mobile

³ Uniform Civil Rules for the Supreme Court and the County Court, § 202.70 Commercial Division Rule of Practice 1 (2019).

⁴ For more information about videoconferencing providers, see G2, *Video Conferencing Software*, <https://www.g2.com/categories/video-conferencing> (last visited Jun. 3, 2019).

phone, on a computer, or in a conference room. Even a standard business desktop phone can have built-in videoconferencing. For example, the Cisco 8865 desk phone provides videoconferencing capabilities.

Information technology consulting firm Gartner publishes a series of market research reports entitled *Magic Quadrant* that rely on qualitative data analysis methods to demonstrate market trends and identify market participants. Gartner's *Magic Quadrant* lists Zoom, Cisco WebEx, and Microsoft Skype as the three leading videoconferencing options. As Gartner requires a login, we have cited Cisco's re-posting of the videoconferencing *Magic Quadrant*.⁵ Confirming the ubiquity of videoconferencing, Cisco notes in its re-post that "Cisco Webex hosts more than 6 billion meeting minutes every month."

Use of Videoconferencing by Other Courts

Videoconferencing technology has been used by courts throughout the United States, beginning in the 1990's.⁶ For example, videoconferencing technology is used in Federal Courts of Appeals, where attorneys (and judges) may conduct oral arguments from remote locations. As long ago as 2006, the Second, Third, Eighth, Ninth, and Tenth Circuits used some form of videoconferencing technology for conducting oral arguments.⁷ Moreover, even that long ago, the Second Circuit used videoconferencing with remote appearances from attorneys for approximately 10% of the oral arguments conducted each week.⁸ The Tenth Circuit includes

⁵ Webex Team, *Cisco Named a Leader in Gartner Magic Quadrant for Meeting Solutions 2018*, WEBEX (Oct. 16, 2018), <https://blog.webex.com/2018/10/cisco-named-a-leader-in-gartner-magic-quadrant-for-meeting-solutions-2018/>.

⁶ See MIKE L. BRIDENBACK, NAT'L ASS'N FOR PRESIDING JUDGES AND COURT EXECUTIVE OFFICERS, *STUDY OF STATE TRIAL COURTS USE OF REMOTE TECHNOLOGY 12* (Apr. 2016), <http://napco4courtleaders.org/wp-content/uploads/2016/08/Emerging-Court-Technologies-9-27-Bridenback.pdf>.

⁷ MEGHAN DUNN & REBECCA NORWICK, FEDERAL JUDICIAL CENTER, *REPORT OF A SURVEY OF VIDEOCONFERENCING IN THE COURTS OF APPEALS 3* (2006), <https://www.fjc.gov/sites/default/files/2012/VidConCA.pdf>.

⁸ *Id.* at 5.

specific instructions regarding videoconferencing oral arguments.⁹ The Western District of Oklahoma has used videoconferencing for status conferences, hearings, trials, oral arguments, and other proceedings with remote sites throughout the country, finding it to be a “cost-effective and productive technology.”¹⁰

In a Survey of Videoconferencing in the Courts of Appeals, for the judges interviewed, the benefits of videoconferencing outweighed its disadvantages.¹¹ As benefits, judges cited the following advantages of videoconferencing:

- saves travel time,
- allows for scheduling flexibility and reduces the administrative burden on the courts,
- decreases litigation cost, and
- increases access to courts for marginalized litigants whose in-person appearance might otherwise be prohibitively expensive.¹²

One judge remarked, “Not every lawyer wants to show in court, and it’s not a lack of commitment to the case but more an economic decision. Videoconferencing solves that.”¹³ The disadvantages cited by the survey include technical difficulties, such as poor connections, and decreased level of personal interactions. However, the interviewed judges indicated no

⁹ See THE U.S. COURT OF APPEALS FOR THE TENTH CIR., VIDEOCONFERENCED ARGUMENTS GUIDE, <https://www.ca10.uscourts.gov/clerk/videoconferenced-arguments-guide> (last visited Jun. 3, 2019); see also THE U.S. COURT OF APPEALS FOR THE THIRD CIR., NOTICE: AVAILABILITY OF VIDEO-ARGUMENT (Dec. 2, 2013), <https://www.ca3.uscourts.gov/sites/ca3/files/videonot.pdf>.

¹⁰ U.S. DISTRICT COURT, WESTERN DISTRICT OF OKLAHOMA, ATTORNEY’S MANUAL FOR COURTROOM TECHNOLOGY, <http://www.okwd.uscourts.gov/wp-content/uploads/2015/01/Courtroom-Technology-Manual-0411.pdf> (last visited Jun. 3, 2019).

¹¹ DUNN & NORWICK, *supra* note 7 at 16.

¹² *Id.* at 8-9.

¹³ *Id.* at 9.

difference in their understanding of the legal issues in arguments that were videoconferenced versus those that were not.¹⁴

Many federal courts have installed videoconferencing equipment, which can be used for remote witness testimony and other court proceedings.¹⁵ In fact, the United States Judicial Conference Committee on Automation and Technology has endorsed the use of videoconferencing systems as “necessary and integral parts of courtrooms.”¹⁶

Federal courts have often permitted testimony of witnesses through remote transmission. The practice of securing the testimony of a witness through remote transmission is generally accomplished through the use of a live video feed that transmits an image of the witness, along with corresponding audio, onto a video monitor situated in a courtroom. However, the language of Federal Rule of Civil Procedure 43(a) does not mandate that video be the form of transmission and the Rule has been cited in connection with requests for telephonic transmissions as well. In any event, the Commercial Division Advisory Council’s proposed amendment to Commercial Division Rule 1 relates only to participation by counsel in court proceedings and thus does not raise any of the issues presented by witness testimony.

As one appellate judge remarked, “Videoconferencing is the wave of the future.”¹⁷ State trial courts have also embraced videoconferencing permitting attorneys to participate in some pretrial hearings through the technology. In fact, a 2016 study indicates that

¹⁴ *Id.* at 12.

¹⁵ *See, e.g.*, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO, COURTROOM TECHNOLOGY, <http://www.nmd.uscourts.gov/courtroom-technology> (last visited Jun. 3, 2019).

¹⁶ LEONIDAS RALPH MECHAM, ADMINISTRATIVE OFFICE OF THE U.S. COURTS, THE COURTROOM TECHNOLOGY MANUAL (Aug. 1999), <https://www.uscourts.gov/sites/default/files/courtroomtechnologymanual.pdf>.

¹⁷ DUNN & NORWICK, *supra* note 7 at 17.

as more state trial courts expand their videoconferencing capabilities, videoconferencing is becoming more common than telephone conferencing.¹⁸

In 2010, the National Center for State Courts conducted a survey covering videoconferencing. When respondents were asked nine years ago to elaborate on whether videoconferencing helps or hinders the administration of justice, one respondent commented, “Video Conferencing can help tremendously with the administration of Justice, IF you have all the stakeholders wanting to make it work. Proactive judges and attorneys that find ways to use it and make it work, reap benefits for all.”¹⁹ More recently, the National Center for State Courts has concluded: “Not only has videoconferencing proven to be effective within the courtroom, but it likewise benefits attorneys and judges by saving time and cutting costs of the *entire judicial process*.”²⁰

One reason videoconferencing is superior to telephone conferencing is the fact that courtroom participants rely on accurately assessing the demeanor and physical expressions of each other. Videoconferencing can replicate the experience of talking to a real person across the table, with all of the nuances and body language that in-person conversations would convey. According to the 2010 Future Trends in State Courts Report, vendors have strengthened their understanding of the behavioral issues involved in effectively communicating with remote video technologies.²¹ In fact, Judge Ronald Gould of the Ninth Circuit stated, “the technology has

¹⁸ See BRIDENBACK, *supra* note 6 at 20.

¹⁹ See NATIONAL CENTER FOR STATE COURTS, NCSC VIDEO CONFERENCING SURVEY (Sept. 2010), <https://www.ncsc.org/services-and-experts/areas-of-expertise/technology/ncsc-video-conferencing-survey.aspx>.

²⁰ *Video Technologies Resource Guide*, NATIONAL CENTER FOR STATE COURTS (Mar. 6, 2018), <https://www.ncsc.org/Topics/Technology/Video-Technologies/Resource-Guide.aspx> (emphasis added).

²¹ THOMAS M. CLARKE, NATIONAL CENTER FOR STATE COURTS, FUTURE TRENDS IN STATE COURTS 2010 – TECHNOLOGY REENGINEERING (2010).

improved to the point where it is virtually the same as being in the courtroom, and I believe that there will be a trend to increasing use.”²²

Videoconferencing is also growing in demand as a result of the globalization of legal practice where controversies often cross geographic barriers.²³ Attorneys from outside the local area of the court are requesting this technology to facilitate efficient participation by attorneys and reduce the demand for continuances due to travel constraints. Videoconferencing expands the boundaries of what can be achieved in the legal field.

In this connection, the Chief Judge of the State of New York has stated that “The New York State courts are open and welcoming to foreign litigants.”²⁴ We believe that business litigants from Argentina or India or Australia are more likely to accept this invitation to litigate in New York State courts if they are able to observe court proceedings in their case through videoconferencing without substantial expense.

In the New York County Commercial Division, Justice Scarpulla’s courtroom has recently implemented videoconferencing technology, and she has started using Skype for remote testimony, oral argument, and court conferences. In addition, Kings County Surrogate Margarita Lopez Torres has explained that her court has utilized videoconferencing or Skype to avoid the very expensive use of “commissions” for hearings in other countries. Further, the Appellate Division for the Second Judicial Department has installed Skype equipped large screen

²² Daniel Devoe & Sarita Frattaroli, *Videoconferencing in the Courtroom: Benefits, Concerns, and How to Move Forward*, SOCIAL LAW LIBRARY BOSTON 28 (2009), <http://sociallaw.com/docs/default-source/judge-william-g.-young/judging-in-the-american-legal-system/04devoe-sarita-paper.pdf?sfvrsn=6>.

²³ Pamela Maclean, *Courts Urged to Accept Videoconferencing*, LAW.COM (Apr. 22, 2005) (“The growing internationalization of prosecutions -- particularly international fraud -- raises problems for the government, which can’t force foreign witnesses to come to the United States.”).

²⁴ Janet DiFiore, *New York State of Mind*, I Asia Business Law Journal 33, 37 (May-June, 2017), <https://www.vantageasia.com/ny-state-of-mind/>.

computers in both its courtroom and consult room and has started to use Skype for arguments of appeals and motions.

A 2016 study of state trial courts' use of remote technology noted that "there are many trial courts that have experienced great success in integrating remote technologies to improve court performance without compromising established legal principles that have guided American courts for centuries."²⁵ Indeed, courts in many states, including California, Florida, North Carolina, and New Jersey, now rely on videoconferencing. For example, Rule 12.4 of the North Carolina Business Court General Rules of Practice and Procedure provides that in a pretrial attorney conference, "[t]he conference may be an in-person conference or conducted through *remote means*."²⁶

Other jurisdictions have adopted similar court rules. Rule 99(a) of the Alaska Court Rules of Civil Procedure states regarding authorization for telephonic, video, or internet participation that the "court may allow one or more parties, counsel, witnesses or the judge to participate *telephonically* in any hearing or deposition for good cause and in the absence of substantial prejudice to opposing parties."²⁷ Likewise, the Arizona Supreme Court provides that "when the appearance of a defendant or counsel is required in any court, subject to the provisions of this rule, the appearance may be made by the use of an *interactive audiovisual system*."²⁸

In addition, a Florida survey indicates that seven judicial circuits authorize attorneys to participate in select hearings through videoconferencing at the judge's discretion.

²⁵ BRIDENBACK, *supra* note 6 at 27.

²⁶ N.C. R. BUS. CT. § 12.4 (2019) (emphasis added).

²⁷ A.K. CT. R. § 99(a) (2019) (emphasis added).

²⁸ A.Z. SUPREME CT., § R-06-0016 (2019) (emphasis added).

California and New Jersey courts also permit attorneys to appear remotely via video conferences by request in family law cases.²⁹

The proposed amendment to Commercial Division Rule 1 is similarly permissive to that adopted by the state courts listed above. The Commercial Division Advisory Council has proposed a limited rule that grants the judge discretion to use, or not use, the technology.

Cost Considerations

The Commercial Division Advisory Council has addressed the cost of videoconferencing in this memorandum to demonstrate how remarkably inexpensive this technology is in comparison to the savings which its use can provide. In general, the Advisory Council seeks to identify technological innovations which provide substantial savings and efficiencies yet are inexpensive for the court and counsel to obtain and use. The Advisory Council cannot think of any other technology (with the possible exception of hyperlinking) which offers such significant economic benefits to court constituencies at such minimal expense.

To be more specific, a lawyer who travels from San Francisco to New York County to argue a motion will require a minimum of 15 hours of travel time and will incur out-of-pocket disbursements for airline tickets, ground transportation, lodging, and meals. If that lawyer bills \$1,000 per hour, the cost of the travel to the lawyer's client would be \$15,000 in attorney's fees plus at least another \$1,000 in disbursements. A lawyer who travels from White Plains to Albany County to participate in a status conference will require a minimum of four hours of travel time and will incur out-of-pocket disbursements for travel by train or automobile. If that lawyer bills \$600 per hour, the cost of the travel to the lawyer's client would be \$2,400 in attorney's fees plus another \$100 in disbursements.

²⁹ BRIDENBACK, *supra* note 6 at 20.

In addition to the minimum costs outlined above, a lawyer who is required to travel to participate in court proceedings is likely to incur other expenses as well. Prudent lawyers do not wait to arrive in the courtroom until the precise minute that their court proceeding is scheduled to begin; instead, prudent lawyers schedule their travel so they will arrive on time no matter what travel difficulties they may encounter. Thus, the number of hours estimated for travel time in the preceding paragraph should generally be increased to provide a “cushion” against travel problems. In addition, lawyers may wish to ask a partner or associate who has participated in the matter to travel with them; such travel can easily double the cost estimates set forth above.

The distance problem is often compounded by significant traffic congestion, not only in the center of urban areas, but on the major traffic arteries that lead to and from urban areas. These traffic issues are part of the reason for the growth of mobile applications such as Waze and Google Traffic and increased consideration of congestion pricing programs. Moreover, travel is often impeded by adverse weather conditions.

When the lawyer arrives in the courtroom, there is, of course, no guarantee that the court will be able to hear the matter at the time originally scheduled. Although the Commercial Division has made substantial efforts to schedule particular proceedings such as oral arguments of motions for specific times and to adhere to its schedules, inevitably there will be occasions where other urgent court business will require that counsel must wait to be heard. The cost of any such waiting time must be added to the estimates of minimum costs for travel time outlined above.

In contrast, the cost of videoconferencing is minimal. In addition, the use of videoconferencing permits the lawyer’s partners and associates who have participated in the

matter (or who are merely interested) as well as the lawyer's client to observe the proceeding in real time and to provide assistance to the lawyer who is making the appearance. If the pendency of other court business prevents the Commercial Division judge from presiding over the court proceeding at the scheduled time, counsel may conduct other business while waiting for electronic notification from the court clerk that the judge is able to proceed.

Use of videoconferencing technology may also provide greater flexibility for the court in scheduling and adjourning court conferences and oral arguments of motions. Because so much less time is required for counsel to participate in a court proceeding, the court may be able to schedule a proceeding for a time period that would not be sufficient if counsel had to travel hours in order to participate. In addition, the court may be able to adjourn a proceeding even at the last minute before it is scheduled to commence with little inconvenience to counsel because they do not need to leave their offices to participate.

In providing a cost analysis in this memorandum, the Advisory Council has used Skype as an example to enable discussion of specific dollar figures. However, the Advisory Council expresses no preference for Skype or any other particular type of videoconferencing technology.

The New York courts are currently using Skype and that will presumably be the default technology for lawyers to use. If a lawyer wishes to use another type of videoconferencing technology, then it should be up to the lawyer who wants to appear by video to provide appropriate access to the other technology and, if necessary, suitable equipment. The Advisory Committee believes that it is not necessary or appropriate for the amendment to Commercial Division Rule 1 to address specific types or brands of videoconferencing technology because technology changes so rapidly that a rule incorporating specific types of technology may

become obsolete within a few months. In addition, the Advisory Council’s proposed amendment to Commercial Division Rule 1 recognizes the court’s authority to control the technology by providing that requests for use of videoconferencing “will be granted in the court’s discretion for good cause shown;” thus, the court can withhold permission to use videoconferencing unless suitable technology is available or provided.

Skype is a part of Microsoft’s Office 365 (O365) offering. O365 is a collection of on-line (hosted) products and services. Microsoft offers multiple personal and business plans for O365. The higher the plan cost, the more products and/or services that are included.

For illustrative purposes, we have set forth below a simple comparison of two Enterprise plans including the applications and the services included in each plan and the cost:

Office 365 Enterprise E1:

- Applications: Not included
- Services: Includes Skype for Business and the ability to “Host unlimited HD videoconferencing meetings”
- Cost: \$8 per user per month, with an annual contract

Office 365 Enterprise E3:

- Applications: Outlook, Word, Excel, etc.
- Services: Includes Skype for Business and the ability to “Host unlimited HD videoconferencing meetings”
- Cost: \$20 per user per month, with an annual contract

Consumer pricing is illustrated above. Microsoft provides special pricing for governmental organizations.³⁰ Microsoft does not display the cost or discounts associated with governmental plans.

³⁰ *Office 365 Government Plans*, MICROSOFT, (last visited Jun. 3, 2019), <https://products.office.com/en-us/government/compare-office-365-government-plans>.

Generally the only other cost is a camera as long as the person joining a videoconference already has a computer and Internet connectivity. Logitech is a commonly known brand of USB (plugs into a computer) camera. Depending upon the resolution and features, pricing ranges from \$40 to \$200. Features can include the camera following persons if they move, a built-in microphone, wide-angle lens, light adjusting, and so forth.³¹ Relatedly, iPads, tablets, and laptops commonly have cameras built-in.

Conclusion

Videoconferencing is a great convenience familiar to all Commercial Division constituencies. It enables lawyers and their clients to save time and money. The case for making greater use of this simple yet effective technology is obvious and compelling, and it presents an opportunity for the Commercial Division to continue its innovation and leadership in the smart adoption of technology in aid of the efficient administration of justice. The proposed amendment to Commercial Division Rule 1 is in line with the approach of other state and federal courts, confers substantial discretion on individual Justices to permit participation in court proceedings from remote locations in the way that makes sense for their particular docket, and is calculated to avoid any burden or prejudice to the few lawyers who might not want to use this technology. The Commercial Division Advisory Council recommends building on the experience of other courts by adopting the proposed amendment to Rule 1.

³¹ *WEBCAMS for Video Conferencing and Video Calling*, LOGITECH (last visited Jun. 3, 2019), <https://www.logitech.com/en-us/video/webcams>.