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POSTAL RATE COMMISSION  
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PRESIDING OFFICER'S  
RULING NO. MC96-3/3

UNITED STATES OF AMERICA  
POSTAL RATE COMMISSION  
WASHINGTON, D.C. 20268-0001

Special Services Fees and Classifications

Docket No. MC96-3

PRESIDING OFFICER'S RULING CONFIRMING  
PROCEDURAL SCHEDULE AND  
SPECIAL RULES OF PRACTICE

(July 25, 1996)



At the prehearing conference July 12, 1996, the proposed schedule for these proceedings was distributed and participants were invited to offer suggestions. Only one participant, the Postal Service, filed comments. It suggested that perhaps the schedule could be shortened, although it offered no specific alternate dates.

The proposed schedule will be adopted in its present form. Requests to shorten the case will be considered if it appears that less time is necessary for discovery on the case-in-chief of participants other than the Postal Service, or for briefs.

The Postal Service also suggests that it might facilitate the development of a partial settlement if parties are required to identify on or before August 27, 1996, the special service proposals upon which they intend to submit evidence.<sup>1</sup> While I encourage participants' discussions on potential areas of

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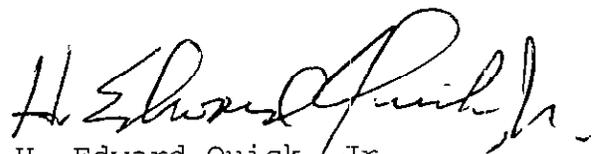
<sup>1</sup> Section 25(a) of the rules of practice permits interrogatories seeking this information.

settlement, I will not require parties to announce the extent of their evidentiary presentations prior to oral cross-examination on the Postal Service's direct case.

Special rules of practice distributed in Order No. 1115 were also discussed at the prehearing conference. As a result of suggestions from the Direct Marketing Association and the Postal Service, adjustments have been made to special rule 3. The only participant to take advantage of the opportunity provided to submit additional written comments is the American Bankers Association which suggests that the special rules should specifically provide for parties to alter how they prefer to receive service of documents. Language to that effect has been added.

#### RULING

1. The procedural schedule is set forth in Attachment A.
2. The special rules of practice are set forth in Attachment B.

  
H. Edward Quick, Jr.  
Presiding Officer

HEARING SCHEDULE FOR PROCEEDINGS  
DOCKET NO. MC96-3

July 12, 1996	Prehearing Conference
August 12, 1996	Complete discovery concerning direct case of the Postal Service.
August 14, 1996	Identify expected amount of oral cross-examination. Report on the availability of witnesses.
September 9-13, 1996	Hearings for cross-examination of the Postal Service's case-in-chief.
September 25, 1996	Filing of participants' case-in-chief, including rebuttal to Postal Service.
October 25, 1996	Complete discovery directed to intervenors and OCA.
October 30, 1996	Identify expected amount of oral cross-examination. Report on the availability of witnesses.
November 15, 1996	Completion of all discovery directed to the Postal Service.
November 18-22, 1996	Evidentiary hearings as to the case-in-chief of intervenors and OCA.
December 6, 1996	Filing of evidence in rebuttal to direct cases of participants other than Postal Service. (No discovery to be permitted on this rebuttal evidence)
December 16-20, 1996	Hearings on rebuttal to participant direct evidence.
January 7, 1997	Initial briefs filed.
January 14, 1997	Reply briefs filed.

**SPECIAL RULES OF PRACTICE****1. Evidence**

A. *Case-in-chief.* A participant's case-in-chief shall be in writing and shall include the participant's direct case and rebuttal, if any, to the United States Postal Service's case-in-chief. It may be accompanied by a trial brief or legal memoranda. There will be a stage providing an opportunity to rebut presentations of other participants and for the Postal Service to present surrebuttal evidence.

B. *Exhibits.* Exhibits should be self-explanatory. They should contain appropriate footnotes or narrative explaining the source of each item of information used and the methods employed in statistical compilations. The principal title of each exhibit should state what it contains or represents. The title may also contain a statement of the purpose for which the exhibit is offered; however, this statement will not be considered part of the evidentiary record. Where one part of a multi-part exhibit is based on another part or on another exhibit, appropriate cross-references should be made. Relevant exposition should be included in the exhibits or provided in accompanying testimony.

C. *Motions to Strike.* Motions to strike are requests for extraordinary relief and are not substitutes for briefs or rebuttal evidence. All motions to strike testimony or exhibit materials are to be submitted in writing at least 14 days before

the scheduled appearance of the witness. Responses to motions to strike are due within seven days.

*D. Designation of Evidence from other Commission Dockets.*

Participants may request that evidence received in other Commission proceedings be entered into the record of this proceeding. These requests should be made by motion, should explain the purpose of the designation, and should identify material by page and line or paragraph number. Absent extraordinary justification, these requests must be made at least 28 days before the date for filing the participant's direct case. If requests for designations and counter-designations are granted, the moving participant must submit two copies of the approved material to the Secretary of the Commission for inclusion in the record.

Oppositions to motions for designation and/or requests for counter-designations shall be filed within 14 days.

**2. Discovery**

A. *General.* Rules 25, 26 and 27 apply during the discovery stage of this proceeding except when specifically overtaken by these special rules. Questions from each participant should be numbered sequentially, by witness.

The discovery procedures set forth in the rules are not exclusive. Parties are encouraged to engage in informal discovery whenever possible to clarify exhibits and testimony. The results of these efforts may be introduced into the record by

stipulation, by supplementary testimony or exhibit, by presenting selected written interrogatories and answers for adoption by a witness at the hearing, or by other appropriate means.

In the interest of reducing motion practice, parties also are encouraged to use informal means to clarify questions and to identify portions of discovery requests considered overbroad or burdensome.

*B. Objections and Motions to Compel Responses to Discovery.* Upon motion of any participant in the proceeding, the Commission or the presiding officer may compel an answer to an interrogatory or request for admissions if the objection is overruled. Motions to compel should be filed within 14 days of an objection to the discovery request.

Parties who have objected to interrogatories or requests for production of documents or items which are the subject of a motion to compel shall have seven days to answer. Answers will be considered supplements to the arguments presented in the initial objection.

*C. Answers to Interrogatories.* Answers to discovery are to be filed within 14 days of the service of the discovery request. Answers to discovery requests shall be prepared so that they can be incorporated as written cross-examination. Each answer shall begin on a separate page, identify the individual responding, the participant who asked the question, and the number and text of the question.

Participants are expected to serve supplemental answers to update or to correct responses whenever necessary, up until the date that answers are accepted into evidence as written cross-examination. Participants filing supplemental answers shall indicate whether the answer merely supplements the previous answer to make it current or whether it is a complete replacement for the previous answer.

Participants may submit responses with a declaration of accuracy from the respondent in lieu of a sworn affidavit.

*D. Follow-up Interrogatories.* Follow-up interrogatories to clarify or elaborate on the answer to an earlier discovery request may be filed after the initial discovery period ends. They must be served within seven days of receipt of the answer to the previous interrogatory unless extraordinary circumstances are shown.

*E. Discovery to Obtain Information Available Only from the Postal Service.* Rules 25 through 27 allow discovery reasonably calculated to lead to admissible evidence during a noticed proceeding with no time limitations. Generally, through actions by the presiding officer, discovery against a participant is scheduled to end prior to the receipt into evidence of that participant's direct case. An exception to this procedure shall operate when a participant needs to obtain information (such as operating procedures or data) available only from the Postal Service. Discovery requests of this nature are permissible up to 20 days prior to the filing date for final rebuttal testimony.

### 3. Service

A. *Receipt of Documents.* The Service List shall contain the name and address of up to two individuals entitled to receive copies of documents for each participant. If possible, that entry will also include a telephone number and facsimile number. Participants providing the Commission with electronic copies or diskettes containing the text of filings may include up to five additional e-mail addresses on the service list. Service on those individuals will be made electronically, if possible, as provided in rule 3.B. Otherwise service should be effected as provided in Rules of Practice, section 12.

B. *Service of Documents.* Service of documents may be effected using one of three procedures. Procedure (1): participants will file documents and effect service as provided in Rules of Practice, sections 9-12. Procedure (2): participants will provide the Commission with an original, one hard copy, and a diskette containing the text of each filing. Procedure (2) participants will serve all individuals on the service list not identified as willing to receive electronic service as provided by Rules of Practice, section 12. The Commission will provide service via e-mail to the remainder of the service list. Procedure (3): participants will provide the Commission with an original, one hard copy, and an electronic copy sent by e-mail to PRC-DOCKETS @ PRC.GOV. Procedure (3) participants will serve all individuals on the service list not

identified as willing to receive electronic service as provided by Rules of Practice, section 12. The Commission will provide service electronically via e-mail to the remainder of the service list. Participants may change their entries on the service list by providing written notice.

Certificates of service should identify the procedure used to effect service.

*C. Exceptions to general service requirements for certain documents.* Designations of written cross-examination, notices of intent to conduct oral cross-examination, and notices of intent to participate in oral argument need to be served only on the Commission, the OCA, the Postal Service, and the complementary party (as applicable), as well as on participants filing a special request for service.

Discovery requests, objections and answers thereto need to be served on the Commission, the OCA, the Postal Service, on the complementary party, and on any other participant so requesting, as provided in Rules of Practice, sections 25-27. Special requests relating to discovery must be served individually upon the party conducting discovery and state the witness who is the subject of the special request.

*D. Document titles.* Parties should include titles that effectively describe the basic content of any filed documents. Where applicable, titles should identify the issue addressed and the relief requested. Transmittal documents should identify the answers or other materials being provided.

#### 4. Cross-examination

A. *Written cross-examination.* Written cross-examination will be utilized as a substitute for oral cross-examination whenever possible, particularly to introduce factual or statistical evidence.

Designations of written cross-examination should be served no later than three working days before the scheduled appearance of a witness. Designations shall identify every item to be offered as evidence, listing the participant who initially posed the discovery request, the witness and/or party to whom the question was addressed (if different from the witness answering), the number of the request and, if more than one answer is provided, the dates of all answers to be included in the record. (For example, "OCA-T1-17 to USPS witness Jones, answered by USPS witness Smith (July 1, 1996) as updated (July 21, 1996).") When a participant designates written cross-examination, two copies of the documents to be included shall simultaneously be submitted to the Secretary of the Commission.

The Secretary of the Commission shall prepare for the record a packet containing all materials designated for written cross-examination in a format that facilitates review by the witness and counsel. The witness will verify the answers and materials in the packet, and they will be entered into the transcript by the presiding officer. Counsel for a witness may object to written cross-examination at that time, and any designated

answers or materials ruled objectionable will be stricken from the record.

*B. Oral cross-examination.* Oral cross-examination will be permitted for clarifying written cross-examination and for testing assumptions, conclusions or other opinion evidence. Requests for permission to conduct oral cross-examination should be served three or more working days before the announced appearance of a witness and should include (1) specific references to the subject matter to be examined and (2) page references to the relevant direct testimony and exhibits.

Participants intending to use complex numerical hypotheticals or to question using intricate or extensive cross-references, shall provide adequately documented cross-examination exhibits for the record. Copies of these exhibits should be provided to counsel for the witness at least two calendar days (including one working day) before the witness's scheduled appearance.

## **5. General**

Argument will not be received in evidence. It is the province of the lawyer, not the witness. It should be presented in brief or memoranda. Legal memoranda on matters at issue will be welcome at any stage of the proceeding.

New affirmative matter (not in reply to another party's direct case) should not be included in rebuttal testimony or exhibits.

Cross-examination will be limited to testimony adverse to the participant conducting the cross-examination.

Library references may be submitted when documentation or materials are too voluminous reasonably to be distributed. Each party should sequentially number items submitted as library references and provide each item with an informative title. Parties are to file and serve a separate Notice of Filing of Library Reference(s). Library material is not evidence unless and until it is designated and sponsored by a witness.