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PRESIDING OFFICER'S
RULING NO. MC96-3/13

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 GRANTING IN PART
NASHUA ET AL. MOTION FOR EXTENSION OF TIME

(September 19, 1996)

POSTAL RATE COMMISSION
DOCKETED
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OFFICE OF THE SECRETARY

On September 12, 1996, Nashua Photo Inc., Mystic Color Lab, and Seattle FilmWorks ("Nashua et al.") filed a motion for a three-week extension of the time for filing their direct case, from September 25, 1996, to October 16, 1996.¹ As grounds for their motion, they argue that they have issued timely discovery requests to the Postal Service for information necessary to prepare their direct case, but that they are still without responses to the large majority of their discovery requests, due to the Postal Service's extensive motion practice resisting discovery, as well as its tardy and unresponsive answers to their interrogatories.

Nashua et al. notes that several days after the Commission granted their motion to have their Business Reply Mail

¹ Nashua Photo Inc., Mystic Color Lab, and Seattle FilmWorks Inc. Motion to Enlarge the Time Within Which Direct Testimony Must be Filed ("Motion").

classification proposal considered in this docket, they filed three sets of interrogatories. They observe that at time of filing of their Motion, the Postal Service had responded only to a small minority of their first 65 interrogatories (N/M-USPS-7, and 28-36) and asserts that even those responses are inadequate, requiring them to issue follow-up interrogatories (N/M-USPS-66-72). Nashua et al. point out that responses to most of their remaining interrogatories are not due until September 23, 1996, as a result of Postal Service motion practice.² Nashua et al. emphasizes that September 23, 1996, is only two days before their direct case is due. They contend that two days are not enough to digest the discovery responses that are due, issue appropriate follow-up interrogatories and incorporate the information into their direct case. Motion at 1-2.

Nashua et al. argue that they have been diligent in conducting discovery, but that the Postal Service has unreasonably delayed its responses, by filing a motion to reconsider the Commission's order expanding this docket without offering new grounds for reconsideration, and by not answering discovery while its motion to reconsider was pending. Id. at 3, 5. Nashua et al. contend that if the Postal Service had responded to their remaining interrogatories when responses were initially due, they would have had six weeks, rather than two days, to digest the responses, send appropriate follow-up

² On September 10, 1996, the Commission rejected the Postal Service's motion to reconsider its decision to include the Nashua proposal in this docket. Order No. 1132. The following day, the Presiding Officer required Postal Service responses to Nashua et al.'s pending discovery requests by September 23, 1996. P.O. Ruling MC96-3/10.

interrogatories, and incorporate the information into their direct case. They suggest that three weeks is a modest extension to request in light of the delay that they have experienced. *Id.* at 5-6.

Nashua et al. assert that a three-week extension should not delay this proceeding. They acknowledge that this would leave the Postal Service only nine days (until October 25, 1996) to conduct discovery, and recognize the potential need to extend that part of the schedule as well. Even with a modest extension of the discovery period, they contend, the October 30, 1996 deadline (for indicating the amount of oral cross and the availability of witnesses), and all subsequent procedural deadlines, could still be met. *Id.* at 6.

On September 17, 1996, Nashua et al. filed a motion to require the Postal Service to respond by September 18, 1996 to their motion to extend the deadline for their direct case. Nashua Photo Inc., Mystic Color Lab, and Seattle FilmWorks, Inc. Motion for Expedited Response and Ruling on Pending Motion to Enlarge the time Within Which Direct Testimony Must Be Filed.³ On September 18, 1996, the Postal Service responded to Nashua et al.'s motion to expedite. It states that on September 23, 1996, it will file responses to the majority of Nashua et al.'s interrogatories. It further states that on that date it will also file its opposition to Nashua et al.'s Motion, and will explain that because of the substance of its interrogatory

³ Since their motion for an expedited response was filed one day before the requested response deadline, notice of the relief requested is inadequate, and the motion will be denied.

responses, there is no need either to expedite its answer to Nashua et al.'s motion to extend, or to grant Nashua et al.'s underlying motion to extend the due date for their direct case. Response of the United States Postal Service to Nashua Photo, Mystic Color Lab, and Seattle FilmWorks Motion for Expedited Response and Ruling on Pending Motion to Enlarge the Time Within Which Direct Testimony Must Be Filed, filed September 18, 1996.

The next day, Nashua et al. replied to the Postal Service's response to their motion to expedite. They pointed out that if the ruling on their initial Motion were deferred until after September 23, when the Postal Service files its opposition, the ruling would be issued almost at the same time their direct case is due. Nashua Photo Inc., Mystic Color Lab, and Seattle FilmWorks Inc. Motion for Leave to File Reply and Reply to Postal Service's Opposition to Motion For Expedited Response and Ruling On Pending Motion To Enlarge The Time Within Which Direct Testimony Must Be Filed, September 19, 1996 at 2. Nashua et al. also criticizes the Postal Service for failing to indicate, even in summary fashion, its reasons for contending that the substance of its September 23 responses to discovery will obviate any need to extend the due date of Nashua et al.'s' direct case. Id. at 2-3.

Nashua et al. is warranted in requesting an expedited ruling on their motion to extend. Requiring them to file their direct case on September 25, 1996, two days after receiving responses to the large majority of their discovery requests, is unreasonable regardless on the substance of those responses. Nashua et al. has been diligent in pursuing discovery. In contrast, the Postal

Service has consistently requested extensions in responding to discovery, raised objections that often were weakly supported, and filed motions for reconsideration that recycled arguments previously made.

Largely to accommodate the Postal Service's special procedural requests, the effective discovery period available to Nashua et al. has been contracted to the point that most of the responses sought will not be available for use in their direct case unless the due date is extended. Accordingly, although the Postal Service intends to object to a modest extension of the deadline for filing Nashua et al.'s direct case, I will grant the Nashua et al. an additional two weeks, until October 9, 1996, to file their direct case. If Nashua et al. demonstrates that substantial follow-up to the discovery responses that the Postal Service files on September 23, 1996, is warranted, they may seek a modest additional extension.

This extension will contract the period for discovery on Nashua et al.'s direct case. Whether, and the extent to which, that period should be extended as well is a matter best determined after Nashua et al.'s direct case is filed. It is plausible, however, that the remainder of the procedural schedule can be maintained intact, if Nashua et al.'s direct case is confined to the narrow proposal that they have previously described in this docket.

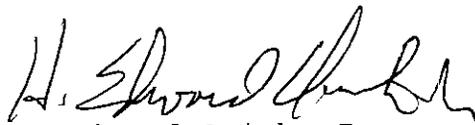
Because I am granting Nashua et al.'s Motion before the period that our Rules allow for answering motions, my ruling is subject to a motion by the Postal Service for reconsideration.

RULING

1. The Nashua Photo Inc., Mystic Color Lab, and Seattle FilmWorks Inc. Motion to Enlarge the Time Within Which Direct Testimony Must Be Filed, filed September 12, 1996, is granted to the extent that they will have until October 9, 1996, to file their direct case in this docket.

2. The Nashua Photo Inc., Mystic Color Lab, and Seattle FilmWorks Inc. Motion for Expedited Response and Ruling on Pending Motion to Enlarge the Time Within Which Direct Testimony Must Be Filed, filed September 17, 1996, is denied.

3. The Nashua Photo Inc., Mystic Color Lab, and Seattle FilmWorks Inc. Motion for Leave to File Reply to Postal Service's Opposition to Motion for Expedited Response and Ruling on Pending Motion to Enlarge the Time Within Which Direct Testimony Must Be Filed, filed on September 19, 1996, is granted.



H. Edward Quick, Jr.
Presiding Officer