

PRESIDING OFFICER'S
RULING NO. MC2004-2/7

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001

Experimental Priority Mail
Flat-Rate Box

Docket No. MC2004-2

PRESIDING OFFICER'S RULING ESTABLISHING
FINAL PROCEDURAL SCHEDULE

(Issued August 31, 2004)

On August 19, 2004, the Postal Service filed a motion that requests establishment of final procedural steps for this docket.¹ The Service observes that a Stipulation and Agreement has been filed, and signature pages have been submitted by all but two participants; that all pending interrogatory responses have been provided; and that motions practice and rulings thereon are nearing an end. In view of these circumstances, the Service moves for establishment of a final procedural schedule, including due dates for the submission of designations for the record and for the filing of initial and reply briefs.

Intervenor David B. Popkin opposes the Service's Motion.² In his Opposition, Mr. Popkin asserts the filing of such a motion is premature, as discovery is still outstanding and he desires an opportunity to evaluate responses, in particular responses to DBP/USPS-T2-32 and -34, which seek an updated version of the graphics and text that would appear on the flat-rate boxes and supplemental information regarding the

¹ Motion of United States Postal Service for Establishment of Final Procedural Steps, August 19, 2004 (Motion).

² David B. Popkin Opposition to the Motion of the United States Postal Service for Establishment of Final Procedural Steps, August 23, 2004 (Opposition).

Service's draft communications plan.³ Mr. Popkin asserts the importance of taking measures to ensure that mailers will be adequately educated to make informed choices between the proposed flat-rate boxes and other options. He also claims that the Postal Service has effectively delayed the proceeding by not furnishing draft copies of the design of the proposed flat-rate boxes and of the communications plan for evaluation.

Notwithstanding Mr. Popkin's opposition, I shall grant the Postal Service's Motion and adopt a final procedural schedule for this proceeding.

In Presiding Officer's Ruling No. 1, I noted that a significant volume of discovery had already been conducted in this case, and found—in accordance with parties' estimates of additional time required to complete it—that new discovery requests should be concluded by Thursday, July 29.⁴ On the same day, I granted Mr. Popkin's motion to compel responses to his interrogatories DBP/USPS-T2-13 and 19, which requested information regarding the design of the flat-rate boxes and the Postal Service's communications plan.⁵ In that ruling, I granted Mr. Popkin's motion regarding box design "to the extent that responsive materials exist or will be produced in the near future[.]"⁶ With respect to the Service's communications plan, I noted the Service's argument that current planning materials might be superseded by settlement negotiations among the parties, and therefore granted Mr. Popkin's motion "only to the extent of directing production of the latest version of the communications plan following completion of the participants' settlement negotiations."⁷

The Postal Service provided the compelled responses on August 19.⁸ As directed, they include the flat-rate boxes' graphic design, as currently envisaged by the Postal Service, together with a three-page draft communications plan.⁹

³ The Postal Service has objected to these interrogatories. Objections of the United States Postal Service to Interrogatories of David B. Popkin, DBP/USPS-T2-32, -34 (August 26, 2004).

⁴ Presiding Officer's Ruling No. MC2004-2/1, July 26, 2004.

⁵ Presiding Officer's Ruling No. MC2004-2/2, July 26, 2004.

⁶ *Id.* at 3.

⁷ *Ibid.*

⁸ Compelled Responses of United States Postal Service Witness Barrett to Interrogatories of David B. Popkin, DBP/USPS-T2-13, 19, August 19, 2004.

Mr. Popkin's two recent interrogatories seek additional information beyond the scope of the Service's compelled responses of August 19. I do not find this further discovery effort a sufficient basis for extending the procedural schedule in this proceeding, which is being conducted under the expedited rules applicable to experimental classification proposals. Furthermore, the Postal Service has represented that "the prototype boxes and draft communications plan will likely not evolve further until after any favorable action by the Commission on the instant Request."¹⁰

Inasmuch as there has been no request for a hearing in this proceeding, and in view of the advanced procedural posture of the case, I shall grant the Service's Motion and establish a schedule for its final stages.

Participants may designate interrogatory responses to be included in the record as written cross-examination. Designations shall be filed by September 3, 2004. Two copies of the designated material shall be provided to the Commission at that time.

The Postal Service, by motion, shall request the Commission to enter witness testimony, the designated written cross-examination, and any Postal Service designated written counter-cross-examination into the record. The motion shall include a declaration/affidavit from the witness attesting to the proposed record material. This motion is due September 8, 2004.

Any other participants that intend to sign the Stipulation and Agreement are to return signed signature pages to the Postal Service and file signature pages with the Commission by September 8, 2004.

Briefs of the parties shall be due on September 9, 2004. Reply briefs are due September 16, 2004.

⁹ *Id.* at 4-9.

¹⁰ Objections of the United States Postal Service to Interrogatories of David B. Popkin, DBP/USPS-T2-32, -34, *supra*, at 4. (Footnote omitted.)

RULING

The Motion of United States Postal Service for Establishment of Final Procedural Steps, filed August 19, 2004 is granted consistent with the body of this ruling and Attachment.

Dana B. Covington, Sr.
Presiding Officer

DOCKET NO. MC2004-2
FINAL PROCEDURAL SCHEDULE

Designation of written cross-examination	September 3, 2004
Stipulation and Agreement signature pages returned to the Postal Service and filed with the Commission	September 8, 2004
Postal Service motion to place testimony into record	September 8, 2004
Initial Briefs	September 9, 2004
Reply Briefs	September 16, 2004