

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

Rate and Service Changes to  
Implement Baseline Negotiated  
Service Agreement with Bookspan

Docket No. MC2005-3

PRESIDING OFFICER'S RULING REVISING BRIEFING SCHEDULE  
AND ESTABLISHING DEADLINE FOR DESIGNATING  
POST-HEARING MATERIAL INTO THE RECORD

(Issued November 4, 2005)

Presiding Officer's Ruling No. MC2005-3/10 established January 6, 2006, and January 13, 2006, for the filing of initial and reply briefs, respectively, assuming no surrebuttal testimony. On October 24, 2005, the Office of the Consumer Advocate (OCA) filed a pleading stating that it decided not to file a direct case in this docket, and suggesting that the current briefing schedule be accelerated.<sup>1</sup> No other participant has filed evidence in response to the Postal Service Request in this proceeding.

OCA suggests that the briefing schedule be changed to make November 10, 2005, the deadline for filing initial briefs and November 21, 2005, as the deadline for filing reply briefs. It also requests that the record in this case be closed.

Valpak Direct Marketing Systems, Inc. and Valpak Dealer's Association, Inc. (Valpak) filed a response agreeing that the record should be closed at this time but opposing the proposed accelerated briefing schedule requested by OCA.<sup>2</sup> Valpak

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<sup>1</sup> Office of Consumer Advocate Notice of Decision Not to File a Direct Case, October 24, 2005. OCA's notice also contained a note that "four limited evidentiary matters are still outstanding." *Id.* at 1. In its pleading on this subject, Bookspan stated that "as of today, the remaining evidentiary matters the OCA identified in its October 18 motion have been addressed by the Postal Service and Bookspan." Answer to the October 18 Motion of the Consumer Advocate, October 31, 2005, at 1 (Bookspan Answer).

<sup>2</sup> Response of Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. to the Office of the Consumer Advocate's Notice and Proposed Briefing Schedule, October 31, 2005.

states that it would like more time to prepare briefs given that “[t]his notice came as a surprise in view of the general understanding that the OCA had been planning on filing testimony.” *Id.* at 2. Valpak asserts that it was operating on the assumption that written discovery on the OCA’s testimony would be conducted during November 2005 with briefing in January. Accordingly, Valpak “does not believe it could prepare competent briefs on the important issues presented by the proposal in this docket if the Commission were to adjust the procedural schedule to the OCA’s suggested dates” and advance the briefing schedule forward two months. *Ibid.* Valpak urges the Commission to set the deadline for initial briefs not less than 21 days from the date of the Presiding Officer’s Ruling establishing a new schedule and make reply briefs due not less than seven, but preferably ten days thereafter. *Ibid.*

Bookspan filed an answer to the OCA’s request suggesting November 14 as the deadline for filing initial briefs, and November 22 as the deadline for filing reply briefs.<sup>3</sup> Bookspan believes that this additional time allows it to complete its review of the closed portion of witness Epp’s appearance before the Commission and file a motion seeking to unseal portions of that transcript to facilitate briefing. It also represents that the Postal Service concurs with Bookspan’s proposed briefing schedule.

The Newspaper Association of America (NAA) filed comments on OCA’s request.<sup>4</sup> It reports that the dates suggested by the OCA may be difficult to meet due to scheduling conflicts and the upcoming holidays. It agrees with the suggested schedule proposed by Valpak.

The Postal Service also filed a reply to OCA’s notice.<sup>5</sup> In addition to concurring with the schedule proposed by Bookspan, it noted that the proposed November 14,

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<sup>3</sup> Bookspan Answer at 1.

<sup>4</sup> Newspaper Association of America Comments on Office of the Consumer Advocate Suggestion Re Briefing Schedule, November 1, 2005. Accompanying this pleading was a motion to file late comments. Newspaper Association of America Motion to Leave to File Late Comments, November 1, 2005. This motion is granted.

<sup>5</sup> Reply of United States Postal Service to Responses of Valpak and NAA Regarding the Briefing Schedule, November 1, 2005 (Postal Service Reply). Accompanying this pleading was a motion for leave to file a reply. Motion for Leave to Reply to Responses of Valpak and NAA Regarding the Briefing Schedule, November 1, 2005. The Postal Service’s motion for leave to file is granted.

2005, date for filing initial briefs is three-and-a half weeks after the conclusion of the hearings in the docket which it considers “generous” compared with the schedules of most cases before the Commission. Postal Service Reply at 1. In the alternative, it states that if the Commission is inclined to delay the briefing schedule beyond the dates suggested by the OCA or Bookspan, it requests that November 22, 2005 be set as the deadline for filing initial briefs and December 6, 2005 be set as the deadline for reply briefs to accommodate the Thanksgiving period and personal time conflicts of counsel.

It is premature to close the record at this time because responses to participant interrogatories and a Presiding Officer’s Information Request are outstanding.<sup>6</sup> A ruling to close the record will be issued after receipt of these responses, and any necessary follow-up.

Responses to questions filed with the Commission after the October 19-20, 2005, hearings are not part of the evidentiary record. Participants may designate such material to be entered in the record by November 18, 2005. Any objection to these designations shall be filed by November 22, 2005.

An adjustment of the procedural schedule is appropriate since no participant has filed rebuttal testimony. Initial briefs will be due on December 6, 2005, and reply briefs will be due on December 15, 2005. This revised briefing schedule allows participants adequate time to prepare their briefs following completion of the evidentiary record takes into consideration the upcoming holidays, yet provides for an expeditious resolution of this case.

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<sup>6</sup> See, Presiding Officer’s Information Request No. 3, November 2, 2005; Office of Consumer Advocate Follow Up Interrogatory to United States Postal Service Witness Michelle K. Yorgey (OCA/USPS-T2-22), October 31, 2005; and Office of Consumer Advocate Follow-Up Interrogatories to United States Postal Service Witness Michelle K. Yorgey (OCA/USPS-T2-23-24), November 1, 2005.

RULING

1. The procedural schedule set forth in P.O. Ruling MC2005-3/10 is revised as follows: initial briefs will be due on or before December 6, 2005, and reply briefs will be due on or before December 15, 2005.
2. Participants may designate responses to questions filed with the Commission after the October 19-20, 2005 hearings by November 18, 2005. Any objection to these designations shall be filed by November 22, 2005.
3. The Newspaper Association of America Motion to Leave to File Late Comments filed on November 1, 2005, is granted.
4. The Postal Service's Motion for Leave to Reply to Responses of Valpak and NAA Regarding the Briefing Schedule filed on November 1, 2005, is granted.

George Omas  
Presiding Officer