

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

Postal Rate and Fee Changes

Docket No. R2006-1

PRESIDING OFFICER'S RULING
ADOPTING PROCEDURAL SCHEDULE

(Issued June 30, 2006)

In response to Order No. 1464, on June 7 the United States Postal Service filed suggestions regarding a procedural schedule for the immediate next steps in this proceeding.¹ Specifically, the Service proposes a 70-day period for initial discovery, with a cutoff date of July 12. The Service opines that selection of this date should allow sufficient time for responses and hearings to enable scheduling the filing of intervenor cases by September 1, 2006.

The Office of the Consumer Advocate submitted an alternative proposal in a motion filed on June 15.² While agreeing with the Service's suggestion to establish procedural dates initially for the most immediate stages of the case, OCA requests a 90-day discovery period, concluding on August 2, 2006, based on several considerations it cites.

During the prehearing conference of June 16, I noted the Postal Service's scheduling suggestion and OCA's motion for a longer discovery schedule, and invited

¹ Suggestion of the United States Postal Service Regarding Schedule Dates, June 7, 2006.

² Office of the Consumer Advocate Motion for Extended Period for Discovery, June 15, 2006.

oral comments at that time.³ In addition to these oral comments, several participants filed written responses to OCA's motion.⁴

After considering the comments of participants, I have decided to establish a 72-day discovery period, and a procedural schedule for this case that will entail hearings during the month of August and the filing of direct cases responsive to the Postal Service by September 6, 2006.

OCA and other participants note that this omnibus rate proceeding, coming as it does after two settled cases, presents complex cost and markup issues, and also includes major classification proposals. However, as the Postal Service rejoins, those prior proceedings also involved ratemaking and mail classification complexities; it proposed differential rate increases and several classification changes in Docket No. R2001-1, and Docket No. R2005-1 involved a substantial array of cost analyses on which it continues to rely in this case.⁵

More importantly, as the Service argues, the crucial question is whether the particular features of its request justify unbalancing the ten-month procedural schedule in a way that may jeopardize adequate opportunities for due process in later stages of the case. As other participants have recognized, a protracted initial discovery period could impair opportunities for response by both opponents and supporters of features of the Service's request.⁶ Alternatively, an extended discovery schedule could foreshorten

³ Tr. 1/30-42.

⁴ Reply of Alliance of Nonprofit Mailers, American Bankers Association, Direct Marketing Association, Discover Financial Services, LLC, Magazine Publishers of America, Inc., Morgan Stanley Inc., National Association of Presort Mailers, National Postal Policy Council and Pitney Bowes Inc. to Motion of Office of Consumer Advocate for Extended Period for Discovery, June 22, 2006 (corrected) (Reply of Alliance of Nonprofit Mailers *et al.*); Response of Greeting Card Association in Support of Motion of the Office of the Consumer Advocate to Extend the Time for Discovery, June 22, 2006; [Association for Postal Commerce] Reply to the June 15, 2006 Motion of Office of Consumer Advocate, June 20, 2006; and Response of the United States Postal Service to OCA Motion for Extended Period of Discovery, June 22, 2006 (Postal Service Response). On June 22, Alliance of Nonprofit Mailers *et al.* filed a motion for leave to file a corrected version of its initial Reply. As no participant is prejudiced by the timely filing of its corrected version, I shall grant the motion.

⁵ Postal Service Response at 3-4.

⁶ Tr. 1/36-38; Reply of Alliance of Nonprofit Mailers *et al.* at 1-2.

the time available for the Commission to deliberate and render a decision on these complex ratemaking issues. An attachment to the Postal Service's Response illustrates these potential effects.⁷

OCA and other participants state that their resources are stretched thin by other current Commission proceedings. The Postal Service notes that its filing includes "roadmap" testimony and other guidance for understanding its evidence and proposals, and states that it stands ready to work informally with counsel to facilitate production of information and to help refine discovery requests.⁸ These undertakings should lead to greater productivity in the discovery process. Additionally, I remind participants that the deadline for initial discovery does not curtail the availability of germane follow-up, or questions to acquire additional information necessary for the development of direct or rebuttal evidence.

Other participants suggest alternatives that would incorporate lesser extensions of discovery, from 77 to 86 days. Rather than "splitting the difference" between OCA's proposal and these alternatives, I believe it is preferable to adopt a partial procedural schedule that more closely adheres to the Postal Service suggestion of a 70-day period for discovery, which is more congruent with the historical average interval for omnibus rate proceedings.⁹ Discovery on the direct case of the Postal Service shall extend through Friday, July 14, 2006. Should any participant believe that an extension is required for the testimony of a particular witness or on an identified issue, I shall consider such requests on a case-by-case basis.

This decision enables adoption of the Postal Service's suggestion that hearings be held during the month of August. To this end, the Service is directed to file by July 17, 2006, a statement of witness availability during the interval of August 2 through 30.

The attached schedule also requires participants to identify the amount of oral cross-examination they have for each Postal Service witness whom they intend to

⁷ Postal Service Response, Attachment C, at 20-21.

⁸ *Id.* at 6-7.

⁹ *Id.*, Attachment A, at 13.

cross-examine on July 17, 2006. The case-in-chief of each participant is to be filed by September 6, 2006.

Rather than adopting an interim schedule for the early stages of this case, as the Postal Service suggests, I have developed a complete procedural schedule to indicate the likely intervals for hearings and other major milestones. Of course, should any participant believe that an adjustment in the attached schedule is required, I will entertain a motion to that effect.

RULING

1. The Motion of Alliance of Nonprofit Mailers *et al.* to File Corrected Reply to Motion of Office of Consumer Advocate for Extended Period for Discovery, filed June 22, 2006, is granted.
2. The procedural schedule attached hereto is adopted for this proceeding.

George Omas
Presiding Officer

PROCEDURAL SCHEDULE
POSTAL RATE AND FEE CHANGES
Docket No. R2006-1

May 3, 2006	Postal Service Request filed
June 16, 2006	Prehearing Conference
July 14, 2006	Completion of discovery on Postal Service direct case
July 17, 2006	Identify expected amount of oral cross-examination. Report on availability.
August 7, 2006	Completion of discovery on direct case of Postal Service concerning the Forever Stamp
August 2 – August 30, 2006	Hearings for cross-examination of the Postal Service's direct case (9:30 a.m. in the Commission hearing room)
September 6, 2006	Filing of the case-in-chief of each participant, including rebuttal to the Postal Service
October 4, 2006	Completion of discovery directed to intervenors and the OCA
October 4, 2006	Identify expected amount of oral cross-examination. Report on the availability of witnesses.
October 23 – November 9, 2006	Evidentiary hearings on the case-in-chief on intervenors and the OCA (9:30 a.m. in the Commission hearing room)
November 17, 2006	Completion of discovery directed to the Postal Service

November 20, 2006	Filing of evidence in rebuttal to the cases-in-chief of participants other than the Postal Service (no discovery permitted on the rebuttal evidence; only oral cross-examination)*
November 29 – December 7, 2006	Hearings on rebuttal to participants' direct evidence (9:30 a.m. in the Commission hearing room)
December 21, 2006	Filing of initial briefs
January 4, 2007	Filing of reply briefs
January 10, 2007	Oral argument (if requested)

* Counsel should indicate any dates between November 29 through December 7, 2005 when witnesses are unavailable to appear.