

PRESIDING OFFICER'S
RULING NO. MC2008-1 (Phase II)/4

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

Review of Nonpostal Services

Docket No. MC2008-1
(Phase II)

PRESIDING OFFICER'S RULING
ESTABLISHING HEARING AND RELATED DATES

(Issued March 10, 2009)

Presiding Officer's Ruling No. 1 established procedural dates for parties to indicate their interest in conducting discovery directed to the Postal Service, for the Postal Service to advise on the availability of its witnesses for hearing, and for the Postal Service to identify the statements and materials that constitute its direct case in this proceeding.¹ No party requests discovery of the Postal Service.

The Postal Service submitted schedules showing the availability of its witnesses for hearing.² In addition, on February 26, 2009, it identified the statements and materials constituting its direct case.³

Although no party sought discovery, the Presiding Officer intends to request additional information from the Postal Service regarding outstanding issues in this proceeding. Such requests will be forthcoming shortly.

¹ Presiding Officer's Ruling on Procedural Dates, February 11, 2009.

² See United States Postal Service Statement of Witness Availability and Amount of Discovery, February 19, 2009; and Supplemental Statement of Witness Availability, February 20, 2009.

³ United States Postal Service Identification of Materials Constituting Its Direct Case, February 26, 2009 (February 26, 2009 Filing).

In its February 26, 2009 Filing, the Postal Service identified materials constituting its direct case, including the following testimony:

- Statement of Gary A. Thuro (filed November 17, 2008);
- Supplemental Statement of Gary A. Thuro (filed January 30, 2009);
- Statement of Patrick R. Donahoe (filed June 23, 2008); and
- Statement of Rick L. Osburn (filed January 29, 2009).

Id. at 1.

In addition, the Postal Service identified the following testimony, to the extent that music compact discs with a postal theme remain part of this proceeding:

- Supplemental Statement of Carrie A. Bornitz (filed January 29, 2009); and
- Statement of Tina M. Lance (filed March 19, 2008).

Id. at 2.

Further, the Postal Service indicated that it may rely on declarations filed by Randall E. Hooker, and thus would like to ensure an opportunity for those various declarations to be admitted into the record. *Id.*

Lastly, the Postal Service identified the following submissions as part of its direct case:

- Initial Response of the United States Postal Service to Order No. 74 (filed June 9, 2008); and
- Attachment to the Response of the United States Postal Service to Order No. 126 Regarding Licensing Agreements (filed November 17, 2008, with Errata filed on November 19, 2008).

Id. at 1.

A hearing to receive evidence in support of the Postal Service's direct case is scheduled for April 22, 2009.⁴ Testimony from the foregoing witnesses will be received into evidence.⁵

On or before March 20, 2009, Pinpoint LLC is to identify those declarations filed by Randall E. Hooker that it wishes to sponsor as evidence in Phase II in support of the Postal Service's direct case.

Concerning the additional materials designated as part of its direct case, the Postal Service shall identify by no later than March 20, 2009 a witness (or witnesses) to sponsor such materials and, if the entire document is not being relied upon, the portions of the document sponsored for purposes of Phase II.

Participants desiring to cross-examine any of the foregoing witnesses must file a notice of intent to cross-examine by no later than April 8, 2009. The notice shall identify each witness to be cross-examined and the amount of cross-examination anticipated, *i.e.*, light, moderate, heavy. In the event that no participant requests cross-examination, the hearing may be canceled. A subsequent ruling will then be issued addressing procedures for receipt of evidence in support of the Postal Service's direct case. In addition, dates for responsive testimony will be established subsequently.

RULING

1. A hearing to receive testimony in support of the Postal Service's direct case is scheduled for April 22, 2009.

⁴ If the hearing is not concluded on April 22, it would continue on April 23, 2009.

⁵ In statements indicating the availability of its witnesses, the Postal Service provided no indication of the availability of witnesses Donahoe and Lance. If these witnesses are unavailable on the hearing date, the Postal Service shall promptly notify the Commission and provide a schedule of their availability. In addition, by no later than March 20, 2009, the Postal Service shall identify the portions of each witness's statement being submitted in support of its direct case in Phase II.

2. Pinpoint LLC shall file by no later than March 20, 2009 a list of the various declarations of Randall E. Hooker that it wishes to have received into evidence in Phase II of this proceeding in support of the Postal Service's direct case.
3. The Postal Service shall submit by no later than March 20, 2009 the name of a witness (or witnesses) sponsoring its Initial Response of the United States Postal Service to Order No.74 (filed June 9, 2008) and the Attachment to the Response of the United States Postal Service to Order No. 126 Regarding Licensing Agreements (filed November 17, 2008, with Errata filed on November 19, 2008). If the entire document is not being relied upon for purposes of Phase II, the Postal Service shall identify the portions of such document submitted in support of its direct case.
4. If witnesses Donahoe and Lance are unavailable on the hearing date established herein, the Postal Service shall promptly provide the Commission with the dates during April and May that they are available, and identify by March 20, 2009 the portions of their statements being submitted as part of the Postal Service's direct case in Phase II.
5. Any participant desiring to cross-examine any of the witnesses identified in the body of this Ruling scheduled for the hearing on April 22, 2009 must file a notice of intent to cross-examine by no later than April 8, 2009. The notice shall identify each witness to be cross-examined and the amount of cross-examination anticipated.

Dan G. Blair
Presiding Officer