

PRESIDING OFFICER'S  
RULING NO. MC2008-1(Phase II)/5

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 CANCELING HEARING  
ON DIRECT CASE AND ESTABLISHING FURTHER PROCEDURES

(Issued April 17, 2009)

Pursuant to Presiding Officer's Ruling No. 4, a hearing is scheduled in this proceeding for April 22, 2009.<sup>1</sup> The ruling required participants desiring to cross-examine witnesses to file a notice of intent to cross-examine by no later than April 8, 2009. Only Pitney Bowes Inc. filed a notice.<sup>2</sup> Pitney Bowes "has no plans at this time to conduct oral cross-examination of United States Postal Service witness Thuro, but reserves the right to do so pending further responses to written discovery and any developments at the April 22 hearing." *Id.* Pitney Bowes did not indicate a desire to cross-examine any other witness.

Inasmuch as no participant seeks to cross-examine the scheduled witnesses, the April 22, 2009 hearing is canceled.

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<sup>1</sup> Presiding Officer's Ruling Establishing Hearing and Related Dates, March 10, 2009 (POR No. 4).

<sup>2</sup> Pitney Bowes Inc. Notice Concerning Oral Cross-Examination of United States Postal Service Witness Gary A Thuro, April 8, 2009.

In response to POR No. 4, Pinpoint LLC requested that the following Declarations of Randall E. Hooker be received into evidence:<sup>3</sup>

- Initial Declaration of Randall E Hooker, filed October 29, 2008;
- Second Declaration of Randall E Hooker, filed November 7, 2008;
- Third Declaration of Randall E Hooker, filed November 21, 2008; and
- Fourth Declaration of Randall E Hooker, filed November 26, 2008.

Declarations having been received, the four declarations will be received into evidence in this proceeding.

The Postal Service identified the following prepared testimony and materials as constituting its direct case:<sup>4</sup>

- Statement of Gary A. Thuro, filed November 17, 2008;
- Supplemental Statement of Gary A. Thuro, filed January 30, 2009;
- Statement of Rick L. Osburn, filed January 29, 2009; and
- Supplemental Statement of Carrie A. Bornitz, filed January 29, 2009.
- From its Initial Response of the United States Postal Service to Order No. 74 filed June 9, 2008, introductory material on licensing on pages 20-21, text on page 21 regarding "USPS Trademarks Used on Third Party Consumer Goods," the text on page 22 regarding "Commercial Trademark Licenses," and the financial information for commercial licenses on page 23.
- From its Attachment to the Response of the United States Postal Service to Order No. 126 Regarding Licensing Agreements filed November 17, 2008

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<sup>3</sup> Pinpoint LLC List of Declarations to Be Received into Evidence in Support of the USPS Direct Case in Phase II Proceedings, March 18, 2009. 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.

<sup>4</sup> United States Postal Service Identification of Materials Constituting its Direct Case, February 26, 2009, as amended by United States Postal Service Response to Presiding Officer's Ruling No. 4 Regarding Witness Statements and Sponsorship of Additional Material, March 20, 2009. The Postal Service's amendment further indicated it will no longer rely upon the statements of Donahoe or Lance for its case in chief.

and Errata filed on November 19, 2008, material concerning five commercial licenses involving mailing and shipping supplies.

The Postal Service shall file certifications attesting to the accuracy of the above prepared testimony and other material by April 22, 2009. See Rule 3001.11(e). Subject to motions for correction or amendment of the above materials, upon the Postal Service's filing of certifications, the witnesses' prepared testimony and other materials shall be entered into evidence in this proceeding.

The Postal Service shall also file certifications attesting to the accuracy of the responses to Presiding Officer's Information Request No. 1 by April 22, 2009. Upon the filing of the certifications, the Postal Service's Response to Presiding Officer's Information Request No. 1 shall be entered into evidence in this proceeding.

During the prehearing conference on February 11, 2009, Pitney Bowes expressed a desire to file evidence responsive to the Postal Service's direct case. Tr. 1/13. Pitney Bowes and any other participant wishing to file rebuttal evidence shall file by May 12, 2009. Discovery on responsive materials shall conclude by May 27, 2009. Hearing on rebuttal cases is scheduled for June 16, 2009. Participants desiring to cross-examine rebuttal witnesses shall file a notice by no later than June 4, 2009. The notice shall indicate the amount of cross-examination anticipated, i.e., light, moderate, or heavy. If no participant requests cross-examination, the hearing may be canceled and further procedures established.

## RULING

1. The hearing scheduled for April 22, 2009 is canceled.
2. As discussed in the body of this ruling, the Postal Service shall file certifications for the prepared testimony and material comprising its direct case by April 22, 2009. Upon filing such certifications, the statements and material shall be entered as evidence into the record of this proceeding.

3. The four declarations of Randall E. Hooker are entered as evidence into the record of this proceeding.
4. As discussed in the body of this ruling, the Postal Service shall file certifications to the Postal Service's Response to Presiding Officer's Information Request No. 1 by April 22, 2009. Upon filing such certifications, the foregoing responses shall be entered as evidence into the record of this proceeding.
5. Participants wishing to submit rebuttal cases may do so not later than May 12, 2009.
6. Discovery on rebuttal cases shall be completed by May 27, 2009.
7. A hearing on rebuttal cases shall be held in the Commission's hearing room on June 16, 2009 at 10:00 a.m.
8. Participants desiring to cross-examine witnesses identified in rebuttal cases must file a notice of intent to cross-examine by no later than June 4, 2009 as set forth in the body of this ruling.

Dan G. Blair  
Presiding Officer