

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

Mail Processing Network  
Rationalization Service Changes, 2012

Docket No. N2012-1

PRESIDING OFFICER'S RULING  
ESTABLISHING PROCEDURAL SCHEDULE

(Issued January 12, 2012)

A prehearing conference convened on January 4, 2012 to provide participants an opportunity to inform the Commission of preferences for establishing a procedural schedule, the need for technical conferences, and any special procedures that may be applicable to this docket. Written comments concerning these issues also were received from American Postal Workers Union, AFL-CIO (APWU), Greeting Card Association (GCA), National Association of Letter Carriers, AFL-CIO (NALC), National Postal Mail Handlers Union (NPMHU), the Public Representative, and the Postal Service.<sup>1</sup>

The procedural schedule attached to this Ruling carefully balances the Postal Service's request to expedite and streamline the proceeding and participants' rights to adequately explore and comment on the Postal Service's proposals.

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<sup>1</sup> American Postal Workers Union, AFL-CIO, Comments on Scheduling and Other Procedural Matters, January 6, 2012 (APWU Comments); Greeting Card Association Response to Public Representative's Notice of Proposed Procedural Schedule, January 9, 2012 (GCA Comments); Statement Concerning Scheduling Submitted by the National Association of Letter Carriers, AFL-CIO, January 6, 2012, and Supplemental Statement Concerning Scheduling Submitted by the National Association of Letter Carriers, AFL-CIO, January 9, 2012 (NALC Comments); Statement of the National Postal Mail Handlers Union Regarding Timelines for the Completion of Discovery on the Postal Service's Direct Case and the Submission of Rebuttal Testimony, January 6, 2012 (NPMHU Comments); Public Representative Notice of Proposed Procedural Schedule, January 5, 2012 (PR Comments); United States Postal Service Reply to Comments Regarding Scheduling and Other Procedural Matters, January 9, 2012 (Postal Service Comments).

This proceeding must be conducted with the opportunity for on the record hearings under the Administrative Procedure Act 5 U.S.C. 556, 557. See 39 U.S.C. 3661(c). Most dates appearing on the schedule are driven by the due process requirements that flow from these procedures. The two areas where there is some scheduling flexibility, the initial discovery period and the date for filing rebuttal testimony, have been carefully considered to balance the requests of both the Postal Service and other participants.

*Technical conferences.* Participants were informed that the Commission considered scheduling one or more technical conferences in the near future. Participants were asked to comment on whether they also would find technical conferences useful, and what topics would be of interest. Tr. 1/17.

APWU, GCA, NPMHU, and the Public Representative expressed an interest in exploring the material presented by witness Rosenberg (USPS-T-30), specifically the optimization model presented in her testimony.<sup>2</sup>

In response, the Postal Service scheduled a technical conference at Postal Service Headquarters for January 20, 2012, to discuss the network modeling presented by witness Rosenberg and the library references associated with her testimony.<sup>3</sup>

The Commission will consider the need for additional technical conferences as issues arise.

*Discovery.* The completion and disclosure of the Postal Service's Area Mail Processing (AMP) studies is raised as an issue related to the scheduling of the close of discovery on the Postal Service's direct case. APWU contends that it needs to review the AMP studies in order to respond to the Postal Service's direct case. Tr. 1/21-22; APWU Comments at 4-5. NPMHU echoed the comments of APWU. Tr. 1/23-24,

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<sup>2</sup> *Id.* at 18-19; APWU Comments at 7; GCA Comments at 1; Public Representative Comments at 1-2; Notice by the National Postal Mail Handlers Union of Intent to Participate in the Technical Conference with Postal Witness Rosenberg, January 6, 2012.

<sup>3</sup> United States Postal Service Notice of Scheduling of Technical Conference in Relation to Testimony of Witness Emily Rosenberg (USPS-T-3), January 6, 2012.

26-27. NALC suggests that review of a “critical mass” of AMP studies is necessary to proceed with this docket. NALC Comments at 2.

The Postal Service, citing other recently completed dockets, expresses an opinion that the completion and review of the AMP studies or similar, studies is not necessary for the Commission to complete its work. Tr. 1/24-26; see *generally* Postal Service Comments. Regardless, the Postal Service has an expectation that a majority of AMP studies will be completed by late January or early February. Postal Service Comments at 2 n.1, 11.

In written comments, APWU requests an additional 45 days for discovery from the date of this Ruling, with the caveat that the submission of AMP studies may require adjustments to this estimate. APWU Comments at 2. GCA and NALC asked for at least 45 additional days of discovery. Tr. 1/31-33; GCA Comments at 1; NALC Comments at 1.

NPMHU requests that discovery be allowed until 30 days after a critical mass of AMP studies have been disclosed. NPMHU Comments at 6. NPMHU also offers an alternative plan to bifurcate the proceeding. It suggests (1) concluding discovery of the Postal Service’s case as filed by February 15, 2012; and (2) allowing continued discovery concerning the AMP studies until 30 days after a critical mass of AMP studies have been disclosed. *Id.*

The Public Representative views 45 days from when this ruling is issued to be a reasonable period of time for discovery to conclude. Public Representative Comments at 3. The Postal Service believes that 30 days of discovery from this scheduling order is reasonable. Postal Service Comments at 1.

In summary, the majority of commenters appear to suggest extending discovery for 45 additional days, with caveats concerning the disclosure of AMP studies. The Postal Service favors a shorter 30-day period.

Given the requests to include data from some portion of AMP studies, the need to convene technical conferences to better understand the Postal Service’s proposal, and the apparent increased complexity of this docket compared with other recently filed

advisory opinion dockets, an extension of discovery close to 45 days will be provided. The Postal Service has indicated that a significant portion of AMP studies will be available for review within the allotted discovery period. Allowing open-ended discovery until completion of a critical mass of AMP studies has not been justified.

The procedural schedule establishes a February 24, 2012 date for completion of discovery. This is slightly shorter than the period requested by most commenters, and slightly longer than suggested by the Postal Service.<sup>4</sup>

*Rebuttal testimony.* The Public Representative expresses an interest in filing rebuttal testimony to review (1) excess capacity as related to cost savings; (2) the optimization model; and (3) the impact of the proposal on certain segments of the mailing community. Public Representative Comments at 4; see *also* Tr. 1/36. He states that a minimum of 60 days from receiving the Postal Service's direct case into evidence will be required to provide quantitative testimony. He suggests allowing 60 days for additional discovery to be used for preparation of rebuttal testimony.

APWU provides comments similar to the Public Representative. APWU asks for 60 days of discovery after the close of the Postal Service's direct case for the purpose of developing quantitative testimony. However, it states that qualitative testimony could be developed within 30 days from entering the Postal Service's direct case into the record. Tr. 1/33-35; APWU Comments at 2-3.

GCA states it is not in a position to know whether it will file rebuttal testimony, but estimates that at least 60 days from entering the Postal Service's direct case into the record would be necessary. GCA Comments at 1-2.

NALC has not made a decision on the filing of rebuttal testimony. However, it asks for 45 days from the time the Postal Service's direct case is entered into the record for the filing of rebuttal testimony. Tr. 1/33; NALC Comments at 1.

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<sup>4</sup> Thirty (30) days from today would fall on a Saturday. The next workday would be February 13, 2012, 11 days before February 24, 2012.

NPMHU states it will likely file rebuttal testimony to examine whether the Postal Service's plan is both rational and feasible. Tr. 1/36-37. It requests 45 days beyond the 30 days it requested for discovery in regard to the AMP studies. NPMHU Comments at 6.

National Newspaper Association (NNA) would like to know more about the AMP studies before making a decision on how to proceed. Tr. 1/35-36.

National Postal Policy Council (NPPC) and Newspaper Association of America (NAA) have not made a decision on filing rebuttal testimony, but suggest allowing the usual amount of time. Tr. 1/37-38.

The Postal Service suggests a time period of 10 days to file rebuttal testimony from the date of receiving the Postal Service's direct case into evidence. Postal Service Comments at 9-10. It notes that this amount of time is similar to what was recently provided in Docket No. N2010-1.

APWU and the Public Representative request an additional 60 days of discovery directed to the Postal Service for the purpose of developing rebuttal testimony. This is a significantly longer period than has been provided by the Commission in the past.

Providing any additional time for this type of discovery necessarily adds slightly over two weeks to the procedural schedule because of the need to provide time for responses that can be incorporated into rebuttal testimony. This schedule delay has to be weighed against the complexity of the issues present in the docket and the benefit of being informed by more comprehensive rebuttal testimony.

In this instance, the Commission and the participants are presented with complex issues, and there will likely be a benefit from receiving rebuttal testimony that thoroughly explores issues. Thus, 14 days of discovery will be allowed after receipt of the Postal Service's direct case into evidence. Although this is less than requested by APWU and the Public Representative, it results in a procedural schedule that provides 31 days from when the Postal Service's direct case is entered into the record until the deadline for filing rebuttal testimony.

*Request for Postal Service policy witness.* APWU discussed the need for a Postal Service policy witness to explain the interrelationship of the instant proposal with other previously offered proposals, e.g., the five days/week versus six days/week delivery proposal; the proposals to close retail facilities; and the potential exigent rate request. Tr. 1/29-31; APWU Comments at 5-6. APWU anticipates discovery on this topic to require more than 30 days.

The Postal Service does not believe the relationship between the network rationalization plan and other Postal Service proposals is material to this docket. Postal Service Comments at 14-16.

The interrelationship of different Postal Service proposals could be relevant and material to the record in this proceeding. Participants may explore these interrelationships through discovery. The Postal Service has not chosen to provide a witness to explain the interaction of its various proposals and the need for such a witness has not been shown. The discovery process will be monitored to evaluate whether any further action is required.

*Access to non-public information.* APWU requests the institution of a streamlined approach for gaining access to non-public information. APWU Comments at 6.

The Postal Service contends the example of gaining access presented by APWU did not help illuminate the nature of any access problems. The Postal Service has offered to informally discuss the issue with APWU and explore a mutually acceptable solution. Postal Service Comments at 16-17.

The Commission has a procedural rule in place to expedite access to non-public information. 39 CFR 3007.40. If certain conditions are met, access is provided unless the Postal Service objects within 3 days. Furthermore, in other cases Postal Service counsel have agreed to allow access immediately following the exchange of relevant information by counsel. Parties are encouraged to pursue informal arrangements without resort to Commission intervention. However, the Commission will promptly respond if any access problems arise.

RULING

The procedural schedule attached to this Ruling is established for Docket No. N2012-1.

Ruth Y. Goldway  
Presiding Officer

**Procedural Schedule for Docket No. N2012-1**

(January 12, 2012)

Close of discovery on Postal Service direct case	February 24, 2012
Notice of intent to conduct oral cross-examination	March 12, 2012
Hearing on the Postal Service's direct case (9:30 AM in the Commission's hearing room)	March 20-23, 2012
Close of discovery for developing intervenors' direct case	April 6, 2012
Filing of rebuttal testimony	April 23, 2012
Conclusion of discovery directed towards rebuttal testimony	May 23, 2012
Notice of intent to conduct oral cross-examination (rebuttal)	May 29, 2012
Hearing to enter rebuttal testimony into the record (9:30 AM in the Commission's hearing room)	June 12-15, 2012
Notice of intent to file surrebuttal testimony	June 15, 2012
Filing of surrebuttal testimony (if requested)	June 22, 2012
Hearing to enter surrebuttal testimony into the record (9:30 AM in the Commission's hearing room, if necessary)	June 28-29, 2012
Filing of briefs	
If no surrebuttal testimony filed	June 27, 2012
If surrebuttal testimony filed	July 10, 2012
Filing of reply briefs	
If no surrebuttal testimony filed	July 9, 2012
If surrebuttal testimony filed	July 20, 2012