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BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

SPECIAL SERVICES FEES AND CLASSIFICATIONS, 1996) Docket No. MC96-3

NASHUA PHOTO INC., MYSTIC COLOR LAB, AND SEATTLE FILMWORKS INC.
MOTION TO ENLARGE THE TIME WITHIN WHICH
DIRECT TESTIMONY MUST BE FILED
(September 12, 1996)

Nashua Photo Inc. ("Nashua"), Mystic Color Lab ("Mystic"), and Seattle FilmWorks Inc. ("Seattle"),[1] also referred to jointly herein as the "movants," respectfully file this joint motion, pursuant to Rule 16 of the Rules of Practice (39 C.F.R. sec. 3001.16), for a three-week extension of time within which they must file their direct testimony in this proceeding. This would make the direct testimony sponsored by movants due to be filed on or before October 16, 1996.

The grounds for this motion are that the extension is required because of the Postal Service's inordinately late responses to discovery. No party hereto will be prejudiced and the proceeding will not be delayed.

As the Commission is aware, on July 15, 1996, Nashua/Mystic moved for an expansion of this docket to include consideration of a proposal to modify the mail classification schedule with respect to a Special Service — Business Reply Mail — that was not included in the Postal Service's request. The Postal Service opposed that motion, but the motion was granted on August 8, 1996. (Order No. 1129.) Beginning that same date, on

[1] Seattle's motion for leave to intervene out of time is still pending. If granted, Nashua, Mystic, and Seattle intend to proceed jointly herein for all purposes, including the filing of testimony.

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August 8, and again on August 12 and 13, Nashua/Mystic timely filed their three sets of interrogatories and requests for production of documents on the Postal Service.[2]

To date, virtually no information has been forthcoming from the Postal Service in response to this discovery. As is set forth in more detail below, the Postal Service's actions in trying to avoid expansion of this docket, and in refusing to provide responses to most of the discovery sought by Nashua/Mystic, have caused the movants to be without certain information, deemed critical to the preparation of their direct testimony herein.

The Postal Service's efforts to deny a hearing to Nashua/Mystic's proposal was finally rejected by the Commission in Order No. 1132 (September 10, 1996). Thereafter, on September 11, 1996, the Presiding Officer issued his ruling (POR MC96-3/10) requiring the Postal Service to respond to most of the discovery by Monday, September 23, 1996 (Tr. 4/925). Even assuming that the Postal Service provides fully responsive answers, the movants will obtain such information only two days before their direct testimony is due. That is not sufficient time for the movants to digest and evaluate the information. It is entirely possible, moreover, particularly in light of some of the Postal Service's discovery responses thus far in this case, that additional questions will need to be asked.[3]

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[2] Nashua/Mystic's third set of interrogatories/request for production of documents (N/M-USPS 37-65) was filed on August 13, 1996, technically one day beyond the close of discovery, but the Postal Service had agreed not to oppose them, and Nashua/Mystic's motion for leave to file them one day out of time was granted, on the ground, inter alia, that they would not delay this proceeding. (POR MC96-3/6)

[3] For example, the only Nashua/Mystic interrogatories to which the Postal Service has responded (aside from a response to interrogatory N/M-USPS-7, filed September 6, 1996), were the responses to N/M-USPS-28-36, filed on August 30, 1996. Those responses, with all due respect, were inadequate, and necessitated Nashua/Mystic's follow-up interrogatories, N/M-USPS 66-72, filed September 6, 1996.

Movants believe that no extension would have been required had the Postal Service furnished the information requested by Nashua/Mystic, despite any efforts to seek reconsideration of the Commission's Order expanding the docket. Having lost its opposition to the motion to expand the docket, however, the Postal Service not only filed a motion for reconsideration, while offering no new basis for reconsideration[4], but also delayed furnishing the information requested by Nashua/Mystic's discovery. Thus, using its motion for reconsideration as the underlying basis for refusing to provide the requested discovery — reasoning that, if the Commission granted reconsideration and refused to expand the docket, the discovery would be moot — the Postal Service handled the Nashua/Mystic discovery requests in the following fashion:

- Nashua/Mystic's First Set, NM/USPS 1-27 (filed August 8, 1996): the Postal Service never objected to interrogatories 1-7 at all. On the other hand, it waited until the day responses were due, and then filed, on August 22, 1996, a motion for an extension of time until September 6, 1996, to respond to them. On September 6, 1996, it submitted a response to interrogatory 7, and filed a second motion for extension of time, until September 13, 1996, to respond to interrogatories 1-6.

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[4] As recited by the Commission in Order No. 1132, denying the motion for reconsideration, "[t]he Postal Service's Motion for Reconsideration, for the most part, reiterates the policy arguments that it first made in its opposition to Nashua/Mystic's July 15, 1996, motion to enlarge...."(p .2) "Because the Postal Service's Motion for Reconsideration of Order No. 1129 essentially repeats arguments originally made in its opposition to the Nashua/Mystic motion to enlarge, a perfunctory denial of its motion to reconsider would have been warranted." (pp. 3-4).

As to interrogatories 8-27, the Postal Service objected to them in its "Motion of August 19"[5], both generally (on the ground of the pending motion for reconsideration) and, with respect to certain of them, for various reasons advanced in said motion. Nashua/Mystic subsequently, in its Opposition to Reconsideration,[6] moved to compel answers to the interrogatories to which objections had been filed. In his Ruling No. MC96-3/10 (September 11, 1996), the Presiding Officer ordered the Postal Service to respond to all of the interrogatories, except numbers 12 and 21. The responses are due to be filed within 10 days of that ruling, or by September 21, 1996, which falls on a Saturday, making the responses due on Monday, September 23, 1996, two days before the current filing date for direct testimony of intervenors in this proceeding.

- Nashua/Mystic's Second Set, NM/USPS 28-36 (filed August 12, 1996): as already mentioned above, the Postal Service never objected to these interrogatories, yet its responses were filed four days late, on August 30, 1996. Nashua/Mystic found it necessary to file follow-up interrogatories. Accordingly, Nashua/Mystic propounded follow-up interrogatories 66-72, filed September 6, 1996. Responses to those interrogatories are due by September 20, 1996.

- Nashua/Mystic's Third Set, NM/USPS 37-65 (filed August 13, 1996): shortly before responses to these interrogatories were due, on August 23, 1996, the Postal Service

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[5] Motion of the United States Postal Service for Relief from Obligation to Respond to Interrogatories from Nashua/Mystic (NM/USPS-8-27) Pending Resolution of Motion for Reconsideration of PRC Order 1129 and, in the Alternative, Objections to Nashua/Mystic Interrogatories, filed August 19, 1996.

[6] Nashua Photo Inc. and Mystic Color Lab Opposition to United States Postal Service Motion to Reconsider and All Pending Discovery Motions, and Nashua/Mystic Motion to Compel, filed August 29, 1996.

filed its objections against providing any responses to these questions at all because of the pendency of its motion for reconsideration, and its also specifically objected to interrogatories 45, 49(a), and 49(c).[7] Subsequently, in its Opposition to Reconsideration, Nashua/Mystic moved to compel answers to the interrogatories to which objections had been filed. In his Ruling No. MC96-3/10 (September 11, 1996), the Presiding Officer ordered the Postal Service to respond to those interrogatories, and ruled that the responses must be filed by September 23, 1996.

Obviously, movants have proceeded diligently in an effort to discover information they feel is critical to the BRM proposal they would advance in this proceeding. The fact that they have received virtually none of the information sought is not attributable to any failure on their part. Under the Commission's current hearing schedule, direct testimony of intervenors is due to be filed on September 25, 1996, which is approximately six weeks after the date on which the Postal Service should have provided responses to Nashua/Mystic's final (third) set of interrogatories herein, but which are not now due until September 23, 1996. The movants seek an extension of only three weeks, rather than the six weeks they were delayed, to file their direct testimony herein. The extension is necessary, not only to digest, evaluate, and work with the information that the Postal Service will provide, but also possibly to follow up additional leads and obtain further information relevant to their direct testimony. The requested extension, it is submitted, is reasonable both with respect to the

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[7] Motion of the United States Postal Service for Relief from Obligation to Respond to Interrogatories from Nashua/Mystic (NM/USPS-37-65) Pending Resolution of Motion for Reconsideration of PRC Order 1129 and, in the Alternative, Objections to Nashua/Mystic Interrogatories, filed August 23, 1996.

basis for its need (i.e., Postal Service delay) and with respect to the amount of time requested.

Moreover, and significantly, the requested extension should not result in any delay of this proceeding. The Commission's current hearing schedule herein provides that, subsequent to the filing of direct testimony of intervenors on September 25, 1996, the parties herein have until October 25, 1996, to submit discovery requests to the intervenors and the OCA. This proposed schedule provides the parties nine days to propound their discovery requests to movants. Furthermore, it would not be unreasonable to permit an additional period of time, such as one week following the close of normal discovery, within which the parties could propound additional discovery to the movants in connection with their direct testimony.

Following the completion on October 25, 1996, of discovery directed to intervenors and the OCA, the next scheduled date in the hearing schedule is October 30, 1996, when the parties are required to identify the amount of expected cross-examination and report on the availability of witnesses. Nothing in the extension requested by the movants herein would interfere with the accomplishment of that requirement. Furthermore, the important subsequent dates, such as the evidentiary hearings (November 18-22, 1996), the filing of rebuttal evidence (December 6, 1996), and the filing of initial briefs (January 7, 1997) and reply briefs (January 14, 1997) should not be affected at all.

Accordingly, the requested extension, if granted, should not result in any prolongation whatsoever of this case, nor should any of the parties be inconvenienced by the requested extension.[8]

CONCLUSION

The relief sought by the movants is both necessary and fair, under the circumstances of this case, and granting a three-week extension of time, where Nashua/Mystic will have waited six weeks longer than they should have had to wait to receive the discovery they are entitled to, which is necessary to the proper presentation of their case-in-chief, is reasonable. For these reasons, this motion for extension of time within which to file direct testimony should be granted.

Respectfully submitted,

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[8] The only further extension that could result would be if the Postal Service were still to refuse to cooperate in any meaningful way with discovery. Were this to occur, movants would ask the Commission for a further day-for-day delay in filing testimony until interrogatories and document requests are complied with properly.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with Section 12 of the Rules of Practice.

William J. Olson

September 12, 1996