

UNITED STATES OF AMERICA
Before The
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

Mailing Online Experiment

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Docket No. MC2000-2

OFFICE OF THE CONSUMER ADVOCATE
RESPONSE TO THE MOTION OF THE POSTAL SERVICE
FOR EXPEDITION AND WAIVER OF CERTAIN PROVISIONS OF
COMMISSION RULES

(December 8, 1999)

The Office of the Consumer Advocate ("OCA") hereby responds to the Motion of the Postal Service for Expedition, and for Waiver of Certain Provisions of Rule 161 and Certain Provisions of Rule 64 (h).¹ The OCA does not challenge the Postal Service's motion to waive portions of rules 54 and 64. With respect to expedition, the OCA notes that "the Postal Service hopes that this case can be resolved more rapidly than the rules' aspiration."² Assuming that evidence responsive to the Postal Service's case is filed and that standard discovery practice is followed, it will be very difficult to afford due process to the participants even under the 150-schedule contemplated in Rule 67d. A further reduction in an already compressed schedule can only be achieved through cooperation among the participants and adoption of extraordinary measures, as discussed below.

¹ November 16, 1999. The caption of the Postal Service's motion appears to be in error. The Postal Service wishes to proceed under experimental rules 67-67d, not rule 161, which is applicable to market tests.

Request for Waiver. In its motion, the Postal Service outlines its reasons for waiver of portions of rules 54 and 64. The Service argues that the Mailing Online service ("MOL") will have a minor impact on the Postal Service's overall costs, revenues, and volumes. The OCA accepts the reasons advanced and agrees that the cited sections of the rules may be waived with no resultant harm.

Request for Expedition. Like the Postal Service, the OCA finds it desirable to conclude the MOL proceeding with all due expedition. The filing of the next omnibus rate case appears imminent, and it would be to the advantage of the Commission and all participants to "clear the decks" for the absorbing effort of a major rate case.

If, however, responsive evidence is filed, the normal steps are followed in addressing discovery disputes, and a ten-day period allowed for all discovery responses, it seems unlikely that the case can be decided by the Commission in much less than 150 days.

The OCA is willing to cooperate in moving this case forward as rapidly as possible, consistent with the need to provide due process to the participants and to assure that an adequate record is developed. The OCA will determine by the December 13 prehearing conference whether the OCA will need to file evidence, and will agree to incorporation into this record of relevant material from the prior MOL proceeding, Docket No. MC98-1.

At the same time, the OCA recognizes that no Commission decision was reached in Docket No. MC98-1, and that the new filing presents significant issues requiring thoughtful resolution by the Commission. Unless special time-saving

measures can be adopted, the OCA recommends that a standard experimental 150-day schedule be adopted by the Commission. As an alternative, however, the OCA suggests two procedures that would maximize the productivity of the discovery process in the MOL case, thereby allowing the discovery period to be somewhat truncated and the entire MC2000-2 proceeding concluded in 120 days or less.

First, the OCA asks that a special rule be adopted in this proceeding that was used successfully in an earlier mail classification case—Docket No. MC93-1, Bulk Small Parcel Service. In Order No. 954,³ the Commission adopted special rule 2D. This rule instituted a procedure that resolved discovery disputes much more rapidly than is typical of practices followed more recently. The MC93-1 special rule provided:

Objections. Objections to discovery requests shall be made in the form of a Motion to Excuse from Answering. Responses to such motions shall be filed within six days of receipt. Should such a motion be denied, answers to the discovery request in question are due within seven days of denial.

This rule may be compared with the discovery procedures established in the earlier MOL proceeding—Docket No. MC98-1. At the prehearing conference, Presiding Officer Le Blanc stated:⁴

I will set a blanket seven-day rule for . . . discovery-related filings, that is, objections are due in seven days, motions to compel due in seven days, answers to motions due in seven days.

If the MC98-1 practice were instituted in the instant proceeding, a disagreement about a discovery request would be ripe for resolution after 22 days:

³ December 11, 1992.

⁴ Tr. 1/81.

Day 1. Question filed.
Day 8. Objection filed.
Day 15. Motion to compel filed.
Day 22. Response to motion to compel filed.

However, under the MC93-1 special rule, the disagreement would be ready for a determination by the Presiding Officer after only 14 days:

Day 1. Question filed.
Day 8. Motion to Excuse from Answering filed.
Day 14. Response due to Motion to Excuse from Answering (due in six days).

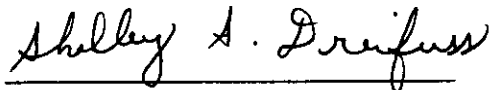
The OCA submits that the latter schedule results in an earlier understanding of the Postal Service's case by the participants, with a corresponding earlier capability to prepare and present rebuttal or alternative evidence. All subsequent stages of the case are accelerated as well, including the ability of the Postal Service to prepare and file rebuttal testimony (if any), the exchange of briefs, and a recommended decision by the Commission.

It should also be noted that the MC93-1 special rule provided that, in the event that a Motion to Excuse from Answering were to be denied, responses to the disputed discovery request would be required within seven days. The OCA proposes that a seven-day response period for *all* discovery requests be adopted in Docket No. MC2000-2. A shortened response time should not impose hardship upon the Postal Service or other participants, given the familiarity with MOL from Docket No. MC98-1. It will permit discovery to be completed in less time than would be possible with a ten-day response period. The OCA understands, of course, that it is sometimes difficult to respond to discovery requests, even given familiar material, within seven days. Therefore, requests for extensions of time, while not to be encouraged, should be

liberally granted for good cause. On the other hand, many questions *can* be readily answered within seven days. Provision should be made for a quick turnaround in such cases.

If the Commission were to adopt the Motion to Excuse from Answering procedure and the seven-day response time for discovery requests, the OCA would support a schedule to complete the instant proceeding in 120 days or less.

Wherefore, the OCA (1) does not oppose the Postal Service's motion to waive portions of rules 54 and 64, and (2) asks that a 150-day schedule be adopted for this proceeding unless special procedures are adopted that would permit the instant proceeding to be resolved with the additional expedition sought by the Postal Service.



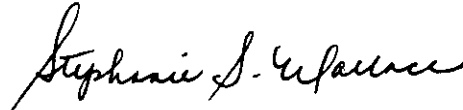
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CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the rules of practice.


STEPHANIE S. WALLACE

Washington, D.C. 20268-0001
December 8, 1999