

ORIGINAL

Official Transcript of Proceedings

Before the

UNITED STATES POSTAL RATE COMMISSION

IN MATTER OF THE POSTAL SERVICE, PETITION
FOR REORGANIZATION OF THE
EXPERIMENTAL TRAINING CENTER
FOR MANAGEMENT DEVELOPMENT
AND RESEARCH

DOCKET NO. 100-100000-000000

THE UNITED STATES OF AMERICA, Petitioner,
vs.
THE POSTAL SERVICE, Respondent.

BEFORE THE
POSTAL RATE COMMISSION

- - - - -X
In the Matter of: :
POSTAL SERVICE REQUEST FOR :
A RECOMMENDED DECISION ON : Docket No. MC2000-2
EXPERIMENTAL CLASSIFICATION :
FOR MAILING ON-LINE SPECIAL :
SERVICE :
- - - - -X

Third Floor Hearing Room
Postal Rate Commission
1333 H Street, N.W.
Washington, D.C. 20268

Volume I
Monday, December 13, 1999

The above-entitled matter came on for prehearing
conference, pursuant to notice, at 2:00 p.m.

BEFORE:

HON. EDWARD GLEIMAN, CHAIRMAN
HON. W.H. "TREY" LeBLANC, PRESIDING OFFICER
HON. GEORGE OMAS, VICE CHAIRMAN
HON. DANNY COVINGTON, COMMISSIONER
HON. RUTH GOLDWAY, COMMISSIONER

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1 APPEARANCES:

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5 Drinker Biddle & Reath, LLP
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8 On behalf of the United States Postal Service:

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10 SCOTT REITER, ESQ.
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13 United States Postal Service
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P R O C E E D I N G S

[2:00 p.m.]

PRESIDING OFFICER LeBLANC: Okay, Mr. Reporter,
we'll go on the record, please.

Good afternoon, ladies and gentlemen, and welcome
to the first prehearing conference in Docket Number MC2000-2
considering the Postal Service request for a recommended
decision on experimental classification for Mailing On-Line
special service. The Commission has been asked to give
expedited consideration to this request.

For those of you who do not know me, I am
Commissioner Trey LeBlanc and have been appointed presiding
officer for this case. With me today are Chairman Ed
Gleiman, Vice Chairman George Omas, Danny Covington, and
Ruth Goldway.

This will be the second case in which the
Commission has considered a request to initiate a Mailing
On-Line experiment. I presided during Docket Number MC98-1,
the first such request.

As most of you know, the Postal Service conducted
a one-year market test of a Mailing On-Line service but
withdrew its request for authority to follow that market
test with a two-year nationwide experiment. The current
request seeks authority to conduct a three-year, three-year
experiment of a similar but different service.

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1 Before proceeding to substantive matters, I will
2 ask counsel present here today to identify themselves for
3 the record.

4 For the Postal Service, Mr. Hollies?

5 MR. HOLLIES: I am Kenneth Hollies. And also
6 making appearances on behalf of the Postal Service are Scott
7 Reiter, David Rubin and Richard Cooper.

8 PRESIDING OFFICER LeBLANC: Thank you.

9 Association of American Publishers?

10 MR. PRZYPYSZNY: John Przypyszny for the
11 Association of American Publishers.

12 MR. ANDERSON: Thank you, sir.

13 Cox Target Media, Inc.?

14 MR. MILES: John Miles on behalf of Cox Target
15 Media, Inc., Mr. Presiding Officer.

16 PRESIDING OFFICER LeBLANC: Thank you, Mr. Miles.

17 Mail Advertising Service Association
18 International?

19 MR. BUSH: Graeme Bush from MASA.

20 PRESIDING OFFICER LeBLANC: Newspaper Association
21 of America?

22 [No response.]

23 PRESIDING OFFICER LeBLANC: Moving right along,
24 Office of The Consumer Advocate?

25 MS. DREIFUSS: I'm Shelley Dreifuss representing

1 the Office of the Consumer Advocate. With me here today is
2 Ted Gerarden, the Director of the OCA.

3 PRESIDING OFFICER LeBLANC: Thank you.

4 Pitney Bowes, Inc.?

5 MR. WIGGINS: Frank Wiggins for Pitney Bowes, Mr.
6 Presiding Officer.

7 PRESIDING OFFICER LeBLANC: Thank you.

8 Mr. David Popkin?

9 [No response.]

10 PRESIDING OFFICER LeBLANC: United Parcel Service?

11 [No response.]

12 PRESIDING OFFICER LeBLANC: Okay.

13 This afternoon, we -- I'm sorry -- this morning,
14 we received a motion from Hallmark Cards, Inc., to appear as
15 a limited intervenor. Is there a representative from
16 Hallmark here today?

17 [No response.]

18 PRESIDING OFFICER LeBLANC: No one. All right.

19 Anybody know -- have they seen anybody from
20 Hallmark possibly?

21 [No response.]

22 PRESIDING OFFICER LeBLANC: Okay. Okay. I will
23 allow, unless there is an objection, Hallmark's motion to be
24 granted. Is there any objection to this at this time since
25 they are not here?

1 [No response.]

2 PRESIDING OFFICER LeBLANC: Okay. Now, is there
3 any intervenor out in the audience out here who I have not
4 mentioned?

5 [No response.]

6 PRESIDING OFFICER LeBLANC: Okay. For those --
7 Mr. Hollies?

8 MR. HOLLIES: Mr. Presiding Officer, we received
9 intervention notices from both NNA and NAA, but I don't
10 think they both appear on the Commission's web page and we
11 didn't get them from the Commission. I don't know what to
12 do with that, but I know at least one other participant was
13 able to get an intervention notice to us but not to the
14 Commission. Mr. Popkin subsequently remediated that.

15 PRESIDING OFFICER LeBLANC: I'll tell you what
16 we'll do, Mr. Hollies. I'll check the web page, and if
17 there is a problem, we will get back with you. Otherwise,
18 we'll let it stand as it is with NAA and NNA both. But if
19 there is a problem, we will get back with you on that.

20 For those of you who have not already done so,
21 please fill out an appearance form and hand it to the
22 reporter before you leave today, please. They are available
23 from the reporter on the side table behind the Postal
24 Service's counsel.

25 Anyone interested in obtaining a transcript of

1 today's prehearing conference or any other on-the-record
2 conference or hearing in this case should make arrangements
3 directly with the reporting company, which is Ann Riley &
4 Associates, Limited. Her order is available in the bottom
5 half of the appearance form.

6 Transcripts are also available on computer
7 diskettes. Please fill out an order form if you wish
8 transcripts either in hard copy or diskette form. Anyone
9 needing to make an additional arrangement that cannot be
10 dealt with today through the reporter should call the
11 company at (202) 842-0034. One more time: (202) 842-0034.

12 I also want to remind counsel that it will help
13 the reporter greatly if you identify yourself for the record
14 the first time you speak on any given day, please.

15 The Postal Service requested that the Commission
16 expedite this proceeding. It scheduled a technical
17 conference in early December to assist potential parties to
18 determine whether issues existed that might require
19 exploration and formal hearings.

20 Commission Order Number 1272 asked participants to
21 provide comments on the Postal Service request for
22 expedition and also to comment on the need to hold
23 evidentiary hearings in this docket.

24 The Postal Service also requested that the
25 Commission consider Mailing On-Line under Rule 67(a) through

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1 (d). This provided for limited issues on requests for
2 experimental authority and arriving at a decision within 150
3 days. Order Number 1272 directed participants to indicate
4 if they opposed consideration of this request under Rule
5 67(a) through (d).

6 Finally, the Postal Service requested a waiver of
7 certain Commission rules related to materials that must be
8 filed in support of a request for a classification change.
9 Participants were directed to respond to that request on or
10 before December 8th, 1999.

11 No participant has filed an opposition to the
12 Postal Service request that this docket be considered
13 pursuant to Rule 67(a) through (d). The request is for a
14 service not currently available that should have minimal
15 impact on Postal cost and revenues.

16 The Postal Service appears willing to collect any
17 necessary data and, as I noted, no user or competitor has
18 filed an opposition to the Postal Service request;
19 therefore, this docket will proceed subject to the rules
20 applicable to requests involving experimental changes, Rule
21 67(a) through (d). Participants are reminded that under
22 those rules, the issues to be litigated can be limited.

23 Order Number 1272 announced that participants
24 would be expected to submit a statement of issues on or
25 before December 16th, 1999. Please submit those statements

1 by that time.

2 There also was no opposition to the Postal
3 Service's request for waiver of certain filing requirements.
4 Again, the Postal Service's request appears reasonable in
5 the context of the proposed Mailing On-Line experiment, and
6 I will grant the request for waiver of certain provisions of
7 Rules 64(h).

8 I will not rule on the Postal Service request for
9 a recommended decision in less than 150 days. It is
10 possible that no participant will identify any issues
11 requiring hearings in the December 16th filing. If hearings
12 are not required, the Commission should be able to issue a
13 decision expeditiously; however, based on the litigation
14 surrounding the earlier request to conduct a Mailing On-Line
15 experiment, I expect that evidentiary hearings will be
16 necessary.

17 On the table as you enter the hearing room, I have
18 left copies of the proposed procedural schedule. If counsel
19 has not obtained copies of that proposed schedule, please do
20 so now. I'll wait just a minute, make sure everybody has
21 it.

22 [Pause.]

23 MR. HOLLIES: Mr. Presiding Officer?

24 PRESIDING OFFICER LeBLANC: Mr. Hollies?

25 MR. HOLLIES: The Postal Service has also prepared

1 a proposed schedule, which is similar in many respects to
2 the one that the Commission is distributing. Our copy is
3 available on this table in front of me. I could also
4 provide copies to the bench if that would be of interest.

5 PRESIDING OFFICER LeBLANC: It might be of
6 interest. Please.

7 [Pause.]

8 PRESIDING OFFICER LeBLANC: Are there any further
9 comments you want to make on the scheduling procedures here,
10 Mr. Hollies, before I proceed with the opening statement
11 here?

12 MR. HOLLIES: I do have one comment, and as you
13 can see, the Postal Service's proposed schedule does
14 contemplate a 150-day period; so to the extent we were
15 seeking a decision more rapidly than that, this reflects an
16 update to our original position.

17 PRESIDING OFFICER LeBLANC: Okay. We'll
18 definitely take a look at this and, as we say, take it under
19 advisement. Thank you, sir.

20 As you can see, a 150-day schedule allows the
21 Commission only three weeks to prepare a decision after
22 briefs are filed. That is on the Commission schedule. If
23 there are substantive factual issues that participants wish
24 to explore in this case, it would be very difficult to issue
25 a recommended decision in much less than 150 days. It may

1 be possible, however, to save some time, if no participant
2 decides to submit rebuttal testimony. The only other
3 possible way to shorten your schedule is if participants are
4 willing to forego written discovery on the case-in-chief for
5 participants other than the Postal Service.

6 Of course, parties are not now in the position to
7 know whether either of these options would be viable. At
8 the appropriate time, I would be happy to entertain motions
9 to do without either written discovery or rebuttal
10 testimony.

11 With regard to expedition, OCA submitted a
12 response suggesting two alternative procedures. First, it
13 suggested that a seven-day response time be applied to
14 written discovery requests. Order Number 1272 directed the
15 Postal Service to provide responses to discovery within ten
16 days.

17 Mr. Hollies, is the Postal Service willing to
18 provide responses to discovery within seven days?

19 MR. HOLLIES: No, we are not, but there's a
20 counterproposal that appears in our proposed schedule which
21 basically applies an eight-business-day rule. It's a
22 different kind of an approach, but among other things it
23 would mean that interrogatories filed on Wednesday, Thursday
24 and Friday wouldn't all be due on a Monday. It also
25 accounts for the holidays.

1 MS. DREIFUSS: Commissioner LeBlanc, I do have one
2 matter to add. We probably won't need to continue to pursue
3 the seven-day turnaround time. That seven-day turnaround
4 time was connected to a 100-day procedural schedule -- I'm
5 sorry -- 120-day procedural schedule.

6 We thought if we were going to try to proceed with
7 unusual expedition -- that is, in 120 days -- that it could
8 be accomplished or at least made -- the possibility would be
9 increased that we could do that if we had a seven-day
10 turnaround time.

11 So I'd say that either a ten-day turnaround time
12 would be acceptable to us or the Postal Service's
13 eight-business-day suggestion is also acceptable to us.

14 PRESIDING OFFICER LeBLANC: Yes, sir. Please.

15 MR. BUSH: Good afternoon. This is Graeme Bush
16 from MASA.

17 You know, these things are all kind of related,
18 and while I appreciate the OCA's feeling that because we're
19 now dealing with 150 days instead of 100 days, that we don't
20 need a short turnaround time, to some extent, in my view,
21 that depends on what the cutoff for discovery is.

22 If we're going to have a discovery cutoff that's
23 similar to the ones in both the Postal Service proposal and
24 in the schedule circulated by the Commission, it seems to me
25 we're going to need to have a relatively short turnaround

1 time. Whether it's seven days or eight business days, I
2 don't know, but I don't think we're going to be able to go
3 back to the normal turnaround.

4 Frankly, I suspect that that's true even if we
5 push back or at the end of the day -- I shouldn't say we
6 --even if the Commission ends up establishing a discovery
7 cutoff after December 30th or December 29th, which seem to
8 be the two that are in front of you right now.

9 PRESIDING OFFICER LeBLANC: We were going to get
10 to discovery in just a minute because that's the second part
11 of the issue here, but thank you for your comments on that,
12 Mr. Bush. You can re-comment if you'd care to in the next
13 few minutes here.

14 Mr. Wiggins.

15 MR. WIGGINS: I'll wait to talk about discovery.

16 PRESIDING OFFICER LeBLANC: What I will do is I
17 will take this under advisement on the eight-day business
18 deal and/or the ten-day situation, and I will get back with
19 everybody in writing as soon as possible under the
20 circumstances here.

21 Any other comments on that before we move on to
22 discovery here?

23 [No response.]

24 PRESIDING OFFICER LeBLANC: Okay. Then we've
25 already talked about the other OCA suggestion, which was an

1 alternate proposal for resolving discovery disputes here.

2 Mr. Bush has already made his comments known. Mr.
3 Wiggins, would you care -- I mean, excuse me, Mr. Hollies,
4 would you care to make any comments on the discovery side?

5 MR. RUBIN: This is David Rubin for the Postal
6 Service.

7 On the end of discovery by December 29th or 30th,
8 the Postal Service believes that should be adequate time for
9 the intervenors. We're already four weeks into this case,
10 and that would be over six weeks of discovery, which is
11 significant out of a 150-day period.

12 Are we also -- are we getting into direct case
13 discovery or --

14 PRESIDING OFFICER LeBLANC: Yes.

15 MR. RUBIN: Because that --

16 PRESIDING OFFICER LeBLANC: Because you need to --
17 you're going to have to talk about that eventually, so let's
18 go ahead and do it now, then.

19 MR. RUBIN: I mean, on the direct case of the
20 participants, there's only 14 days contemplated in the
21 Commission's proposed schedule, and the Postal Service
22 believes that would be inadequate to conduct full discovery
23 on those cases. It takes a certain amount -- a certain
24 number of days to just get up to speed to be able to put out
25 any questions, and then we would like to get at least time

1 for a second round, and I think the 14 days may not allow
2 that. The Postal Service's schedule was able to find I
3 guess 18 days for discovery on participant cases.

4 PRESIDING OFFICER LeBLANC: Is that it, Mr.
5 Hollies and Mr. Rudin? No further comments?

6 MR. RUBIN: On the discovery periods.

7 PRESIDING OFFICER LeBLANC: And/or scheduling.

8 MR. RUBIN: On scheduling in general, other --
9 another issue we have is with the January 11th and 12th
10 hearings on our case, and that's a little tricky, but we're
11 concerned that we may get orders to work on another case and
12 get that filed around then, and --

13 PRESIDING OFFICER LeBLANC: I wonder what case
14 that might be? Do you have any ideas? But --

15 MR. RUBIN: And, you know, we weren't -- it's not
16 very easy to figure out how to work around that. Our
17 judgment was that if there's any way to push the hearing
18 back a week from that, that would be a little safer.

19 PRESIDING OFFICER LeBLANC: So you would still
20 stick, then, with your 18th and 19th date, then?

21 MR. RUBIN: Right. And that gave -- well, allowed
22 at least one more day of discovery and more time to get the
23 answers to that discovery in and have the intervenors
24 prepare their cross-examination and get everything
25 designated.

1 PRESIDING OFFICER LeBLANC: Mr. Wiggins?

2 MR. WIGGINS: I would just point out, and I think
3 the Postal Service tacitly at least conceded this, that
4 moving from the customary ten-day turnaround time on
5 responses to interrogatories to eight business days will in
6 some circumstances make those interrogatory answers come in
7 later than they otherwise would, and if you're questing
8 after expedition, that may not be the best plan.

9 I would also note --

10 PRESIDING OFFICER LeBLANC: Excuse me for
11 interrupting you, but you would move it back towards the
12 11th and the 12th there?

13 MR. WIGGINS: No. I was talking about the time
14 for responding to interrogatories.

15 PRESIDING OFFICER LeBLANC: You're talking about
16 the time for responding, just the response time?

17 MR. WIGGINS: Exactly.

18 PRESIDING OFFICER LeBLANC: Okay.

19 MR. WIGGINS: I think I favor, though I'm not sure
20 it matters very much to my client whose participation in
21 this case is going to be considerably more restrained than
22 it was the first time around, but it just seems to me that
23 if you're questing after expedition, you don't adopt a rule
24 that makes the interrogatory answers come back later than
25 they otherwise would.

1 It also seems to me that if you do accommodate the
2 Postal Service's expectation that some mysterious case might
3 be filed in mid-January by moving the hearing back to the
4 18th and 19th, you could also, without substantial
5 disruption, move the close of discovery date back by seven
6 days or so, and that will give us a little bit more comfort
7 if we learn things in the course of discovery that do
8 require more follow-up.

9 PRESIDING OFFICER LeBLANC: Mr. Bush, do you have
10 any comment?

11 MR. BUSH: Yes. If I could just add, I think I
12 favor what Mr. Wiggins just said in terms of moving the
13 discovery cutoff back, and add two other comments here.

14 It is true the case has been pending for several
15 weeks. The parties have had some discussions about ways to
16 try and I guess cut down on the number or the amount or the
17 length, burden of proceedings, and I think those will be
18 fruitful, and I assume we'll get a chance to talk about
19 those a little later in terms of designating stuff that's
20 already been put in the record in the last case and here so
21 we don't have to redo discovery. So I don't think that time
22 has been lost.

23 The second point is that it's not at all clear --
24 while I understand we've got to have some time in here for
25 the filing of intervenors' cases and discovery on

1 intervenors' cases, there's been some discussion about that,
2 too, and it's not clear how much of that is going to be
3 filed or what the nature of it would be.

4 I'm not quite sure how to accommodate it or how
5 the Commission can accommodate the various different
6 possibilities of how that will all play out, but if, for
7 example, parties file by and large testimony that simply
8 updates testimony from the last Mailing On-Line proceeding
9 -- for example, there is costing testimony that was put in
10 -- well, the numbers have changed. In order to make that
11 testimony pertinent to this proceeding, you would at a
12 minimum have to come in and just redo the numbers. If
13 that's all that's done, then perhaps we don't need any cross
14 examination, written or otherwise, on that type of
15 testimony.

16 So I guess what I'm just trying to get in front of
17 the Commission is the possibility that in the service of
18 trying to make sure we have enough time to do written -- or
19 the Postal Service has enough time to do written and oral
20 cross examination of intervenors' testimony, there may, in
21 fact, turn out not to be that much, or not so much that we
22 need to kind of jack all the rest of the proceedings around
23 to accommodate one witness or one-and-a-half witnesses.

24 PRESIDING OFFICER LeBLANC: Ms. Dreifuss, any
25 other comments? Anybody else? Ms. Dreifuss?

1 MS. DREIFUSS: Well, I can comment that we've
2 looked over both the Postal Service's proposed schedule and
3 the Commission's and find them similar. I think we would be
4 prepared to move forward under either of these schedules.

5 PRESIDING OFFICER LeBLANC: Okay.

6 MS. DREIFUSS: Either would be acceptable to us.

7 I would like to comment on Mr. Wiggins' suggestion
8 that if we do hold hearings on the Postal Service's case in
9 late January, probably it makes sense to extend the
10 discovery period by that week as he thought.

11 PRESIDING OFFICER LeBLANC: Thank you all for your
12 comments. As we always say, I will take it under advisement
13 and get back to you as soon as possible in writing on all of
14 the suggestions.

15 Yes, Mr. Reiter.

16 MR. RUBIN: Mr. Rubin --

17 PRESIDING OFFICER LeBLANC: I mean, excuse me, Mr.
18 Rubin.

19 MR. RUBIN: -- from the Postal Service.

20 On that last point about -- well, on direct cases,
21 we're trying to get a meeting among the participants
22 together for next Monday in which we'll try to figure out if
23 there's a way to avoid as much as possible direct cases by
24 the participants.

25 It may make sense to wait until we report on that

1 meeting to issue a schedule because we may find at that
2 meeting that we don't need much of the time in the latter
3 part of the schedule, although there certainly are no
4 guarantees we'll be getting to that. But that is something.

5 On the Postal Service proposed schedule, we had a
6 date which was next Monday for a statement of intent by the
7 participants to file a case-in-chief so we get that out.
8 That would need to be, I guess, a little later than the
9 20th, but we could probably figure out by the day after that
10 if there was going to be direct cases.

11 We do want to reiterate our interest in the eighth
12 business day time for responding to discovery. Since the
13 discovery will be coming during the Christmas and New Year
14 period, it's going to be very difficult for the Postal
15 Service to get all its witnesses there every day, so this,
16 we believe, is a special circumstance.

17 One last point. On the filling of rebuttal cases,
18 that's currently for -- on a Friday, March 3rd. If it's
19 going to be on a Friday, it would probably help if we had it
20 maybe due at noon or something like that to make sure that
21 everyone gets that testimony without much trouble before the
22 weekend because the hearings would be just a few days later.

23 PRESIDING OFFICER LeBLANC: That's fair.

24 MR. RUBIN: Thank you.

25 PRESIDING OFFICER LeBLANC: Again, we'll take all

1 this under consideration and get back with you, as we say,
2 ASAP. Hopefully -- maybe it's a good fix if we can wait
3 until after the meeting on the 17th. We'll see. We'll take
4 a look at all of this after today and we'll see where we go
5 with it.

6 Any other further comments, then?

7 Mr. Wiggins, did you have a comment?

8 MR. WIGGINS: The second page of paper that Mr.
9 Hollies put in front of the Commissioners --

10 PRESIDING OFFICER LeBLANC: The second page being
11 the one that starts --

12 MR. WIGGINS: The one that says Proposed Procedure
13 for Designation.

14 PRESIDING OFFICER LeBLANC: All right.

15 MR. WIGGINS: There is one addition that I believe
16 should be made to that, if you're going to consider a
17 procedure of this kind, and I believe the Postal Service
18 agrees with me on this.

19 PRESIDING OFFICER LeBLANC: We can consider all of
20 the -- everything we've talked about.

21 MR. WIGGINS: I understand, but I have a suggested
22 change to that language that I'd like to have you consider
23 as well, and I believe that the Postal Service agrees with
24 me that this change should be made.

25 In the second -- beginning of the second line, the

1 only material eligible for designation under this procedure
2 is -- and I would insert the word, testimony, comma, written
3 or oral, and cross examination.

4 In other words, to include the possibility of
5 designating testimony from the earlier incarnation of this
6 case, which in the case of Pitney Bowes, I believe, if I
7 could designate the testimony of the witness I put on last
8 time, it would make unnecessary, the presentation of new
9 testimony this time around, and would help to speed things
10 along.

11 I think there are others who might be in
12 comparable positions.

13 PRESIDING OFFICER LeBLANC: Before we have that,
14 are there any further comments on that. Mr. Bush or -- Mr.
15 Bush?

16 MR. BUSH: Amen.

17 PRESIDING OFFICER LeBLANC: Okay, Ms. Dreifuss?

18 MS. DREIFUSS: Actually, we think that's an
19 improvement.

20 PRESIDING OFFICER LeBLANC: Mr. Hollies?

21 MR. HOLLIES: I concur that it is an improvement,
22 but I want to be precise here. The intent in drafting was
23 to focus upon the testimony of Postal Service witnesses, and
24 the intent, as I understand it, of Mr. Wiggins's
25 counterproposal focuses not on Postal Service witnesses, but

1 on other witnesses, witnesses who filed participant
2 testimony last time.

3 So the intent here in adding testimony is not to
4 open up what I think could be a messy process of designating
5 our current witnesses' previous testimonies; this is a
6 vehicle for expediting this proceeding without calling these
7 other witnesses back again.

8 MR. WIGGINS: That was absolutely my intent, Mr.
9 Presiding Officer.

10 PRESIDING OFFICER LeBLANC: What we will do is, we
11 will try to make sure that we clarify that in the ruling
12 that we provide, and if there is any problem with the
13 ruling, please get back with us and we'll try to clarify it
14 again for the record to make sure that the record, again, is
15 clear.

16 Any other further comments then before we move on?

17 [No response.]

18 PRESIDING OFFICER LeBLANC: Having gotten all of
19 that out of the way, I have several substantive matters I'd
20 like to raise here.

21 Mr. Hollies, am I correct that currently the
22 Postal Service does not have any contract with printers to
23 provide mailing online services?

24 MR. HOLLIES: I'm sorry, maybe I misunderstood.
25 Do we have a contract with a printer?

1 PRESIDING OFFICER LeBLANC: Do you have any
2 contracts with printers?

3 MR. HOLLIES: We have a contract with the same
4 printer whose contract was filed in the previous case.

5 PRESIDING OFFICER LeBLANC: The same printer or
6 printers? Plural or singular in this case?

7 MR. HOLLIES: Singular. There is but one of them.

8 PRESIDING OFFICER LeBLANC: I just wanted to
9 clarify the record, thank you.

10 Now the previous mailing on online service
11 involved a contract with a printer in which the printer
12 would receive a specified minimum payment, regardless of the
13 volume of mailing online processed by that printer.

14 Does the Postal Service intend to include such a
15 provision in any contract or contracts it may enter with the
16 printers for the current version of the mailing online?

17 MR. HOLLIES: I believe that is a matter being
18 considered. The proposal, the solicitation, if you will, is
19 not yet final.

20 That has been something that has been considered.
21 I'm not sure that a decision has been reached one way or the
22 other at this point in time.

23 PRESIDING OFFICER LeBLANC: I would suggest to you
24 that if is reached, if you could notify us about that, I
25 would appreciate that very much at this point.

1 MR. HOLLIES: Our expectation had been that when
2 the solicitation was final, whether or our own volition or
3 pursuant to somebody's direction or request, we would be
4 making that available here.

5 PRESIDING OFFICER LeBLANC: Good. it's also my
6 understanding that the Postal Service would like to be able
7 to implement mailing online services by mid-April.

8 Does the Postal Service expect to enter into any
9 contracts with printers while this case is proceeding, and,
10 if so, will it undertake to provide copies of those
11 contracts for the record in this case?

12 MR. HOLLIES: Yes.

13 PRESIDING OFFICER LeBLANC: Thank you.

14 MR. HOLLIES: Mr. Presiding Officer, there's been
15 a change which I did touch on a little while ago. We're no
16 longer seeking expedition beyond or within the 150-day
17 period, which would mean -- I guess that would be an April
18 14th recommendation date, something on that order.

19 PRESIDING OFFICER LeBLANC: You said you are not?

20 MR. HOLLIES: The request that we filed indicated
21 some aspiration towards a Commission opinion and recommended
22 decision, hopefully a favorable one, in less than 150 days,
23 and that is no longer contemplated by the schedule we put in
24 play today.

25 PRESIDING OFFICER LeBLANC: That's correct, thank

1 you.

2 Any other comment before I move on?

3 [No response.]

4 PRESIDING OFFICER LeBLANC: I want to comment and
5 commend the Postal Service for scheduling a technical
6 conference at its earliest convenience. However, several
7 participants may not have been able to take advantage of
8 that conference as it was scheduled, because of the
9 scheduling, soon after the filing of the request here at the
10 Commission.

11 Does any participant then in this particular case
12 wish to request that another technical conference be
13 scheduled? Is there a need for it?

14 [No response.]

15 PRESIDING OFFICER LeBLANC: All right.

16 MR. HOLLIES: Mr. Presiding Officer, for the
17 edification of those who might be interested, much of the
18 substantive content of that technical conference is captured
19 by the interrogatories posed by OCA. As such, those answers
20 will provide some insight as to what went on.

21 PRESIDING OFFICER LeBLANC: Thank you. And there
22 has been one problem that may have arisen as a result of the
23 technical conference. And that is, on December 2nd, 1999,
24 counsel for the Postal Service e-mailed several Excel
25 spreadsheets to the Commission.

1 These spreadsheets related to the testimony of
2 Postal Service witnesses, and the transmitting e-mail stated
3 that they were provided at the request of the OCA. No
4 problem.

5 As everyone here knows, the Commission wants to
6 encourage the use of electronic transmission of information.
7 However, the Commission rules currently do not allow for
8 filing by fax or e-mail.

9 So such future transmissions must be accompanied
10 by a hard copy notice or motion indicating the contents of
11 the electronic filing and the reason for its submission.
12 That is to clarify that for the future.

13 MR. HOLLIES: I can appreciate why you raise this.
14 The spreadsheets that were filed are those reflected in
15 testimony. We may not have made that clear when we sent
16 them over.

17 We will make sure to avoid such problems in the
18 future.

19 PRESIDING OFFICER LeBLANC: Good, thank you, Mr.
20 Hollies.

21 MR. HOLLIES: In the past, the Postal Service has
22 often been asked to provide, in electronic copy,
23 spreadsheets that were not initially furnished, for example,
24 in response to an interrogatory.

25 So we were looking at this as in keeping with

1 those previous procedures, but I can appreciate the issue.

2 PRESIDING OFFICER LeBLANC: Thank you, sir.

3 The Commission is publishing a daily listing,
4 indicating all formal submissions received in docketed
5 cases. Participants have to be made aware of any documents
6 filed with the Commission by the parties.

7 Are there any questions about that? I want to
8 make sure that everybody is on the same sheet of music here.

9 [No response.]

10 PRESIDING OFFICER LeBLANC: Okay. One other issue
11 concerning the technical conference: The Postal Service
12 indicated in its motion of expedition that it would provide
13 a report on the technical conference. No written report has
14 been filed.

15 Mr. Hollies, are you prepared to provide an oral
16 report on the technical conference at this time, or would
17 you care to issue it in writing very shortly?

18 MR. HOLLIES: I'm prepared to talk about it
19 briefly right now. I think that might be the simplest and
20 most straightforward way of explaining what happened. I
21 already mentioned that the substance of the discussions is
22 rather well captured by OCA interrogatories, and we will be
23 providing those answers on the schedule contemplated by
24 Order No. 1272.

25 Notwithstanding, I can mention a couple of other

1 things we got into: There was some substantial interest in
2 identifying what mailing online would look like when the
3 experiment is launched.

4 And the basic response is that that material was
5 filed in the previous case. In particular, the fourth tab
6 in Library Reference 29, Docket No. MC98-1, the fourth tab,
7 which is labeled 102590-98-D-3091, Delivery Order, specifies
8 those features mailing online should have when it hits the
9 ground running, so to speak.

10 We thought that was a very good and constructive
11 inquiry, and so we went back and we thought we had filed it,
12 but yes, we have, and that's where it is.

13 Let see, we had some other issues. There was some
14 discussion about a marketing plan filed under protective
15 conditions last time, and the Postal Service has checked
16 that out and basically determined that in our view, the
17 protective conditions do continue to apply, and that
18 participants or others who have taken a look at that, signed
19 a nondisclosure agreement, can assume, as far as the Postal
20 Service is concerned, that those conditions continue to
21 apply and those protective conditions -- well, the
22 procedures in place before can be assumed to still apply, is
23 what it boils down to.

24 If they were not -- if the materials were not
25 returned at the end of MC98-1 or otherwise destroyed, I

1 believe one counsel gave us a testimonial to that effect,
2 they can revive those materials or check them out again, as
3 far as the Postal Service is concerned.

4 I'm not sure that there is much -- a great deal of
5 vitality in those materials, but on the other hand, we're
6 trying to maintain the confidentiality of them, so maybe
7 they have some.

8 Another issue that came up in the technical
9 conference was the need to set forth some procedure whereby
10 evidence from the previous case could, in effect, be
11 designated into the record here. And you have the Postal
12 Service's proposal.

13 There is not that much to it, but there was some
14 concern about do I need to really ask all those
15 interrogatories again? Or is there some other way we can
16 handle it?

17 I believe that what the Postal Service has
18 proposed is an appropriate avenue to go forward with. It
19 does forebear some interests. For example, there is no
20 right to object contemplated by the procedure the Postal
21 Service has put in place.

22 If it was record evidence before, it can be record
23 evidence again, and there should really be no basis for
24 objection or the repeating motions practice that was
25 conducted in the previous round.

1 There were some procedural matters discussed that
2 had to do with sharing of information prior to today's
3 hearing. I think that was to the extent that they need to
4 be covered, already have been. They're not really very
5 relevant at this point.

6 There was some agreement that different interests
7 might put together a schedule which assumed a so-called
8 worst case of three rounds in the litigation: The Postal
9 Service's direct, the participants' direct, and the need for
10 the Postal Service to rebut that.

11 We have, indeed, put together such a schedule, and
12 we've discussed that, and you've taken it under advisement,
13 so I'm not sure we need to go into that again.

14 MR. HOLLIES: I think that's about it in terms of
15 the substance. We'll be providing those interrogatory
16 answers, as I say, and we'll let everybody have an equal
17 view of those matters.

18 PRESIDING OFFICER LeBLANC: Thank you, Mr.
19 Hollies.

20 Any other comments? Mr. Wiggins, I know you
21 touched on one of those comments a little bit. Anybody want
22 to comment on that before we move on, then?

23 [No response.]

24 PRESIDING OFFICER LeBLANC: Good.

25 Just one more comment here, Mr. Hollies. As a

1 result of the technical conference or for some other reason,
2 the Postal Service realizes that it will have to amend or
3 update any of its direct testimony, I urge you to file such
4 changes as soon as you can. I think that goes without
5 saying here in this case.

6 This case is being considered, as you know, in an
7 expedited fashion, and it's important for all of us to have
8 the information before us and have it as accurate as we can.

9 Now, does any participant have any issue to raise
10 at this particular time? Ms. Rush? Would you introduce
11 yourself, please, for the record.

12 MS. RUSH: Yes. Thank you, Mr. Presiding Officer.
13 I'm Tonda Rush, counsel to the National Newspaper
14 Association. I apologize for my late arrival; I was
15 detained by another matter.

16 I learned when I arrived here today that the
17 Association's motion for participation as a limited
18 participant evidently has not arrived as we thought and does
19 not appear on the record. Evidently service has been
20 received by some parties and I'm not sure what happened to
21 it, if we had a courier error or what happened, but I wanted
22 to state that the Association does want to participate as a
23 limited participator and will file a motion for late
24 acceptance if that's possible. We're not requesting a
25 hearing in this case.

1 PRESIDING OFFICER LeBLANC: Thank you very much.

2 Any other further comments?

3 [No response.]

4 PRESIDING OFFICER LeBLANC: Finally, as most of
5 you are aware, then, the Commission's home page on worldwide
6 web will provide access to all documents issued by the
7 Commission and most documents submitted by participants. We
8 will continue our practice of providing both a complete
9 daily list of all documents filed with the Commission as
10 well as all files provided electronically. The address for
11 our home page is www.prc.gov.

12 Any other further comments before I ask my
13 colleagues if they have any comments?

14 [No response.]

15 PRESIDING OFFICER LeBLANC: Then do any of my
16 colleagues have any comments?

17 [No response.]

18 PRESIDING OFFICER LeBLANC: None.

19 Well, thank you very much for your attendance
20 today. If there is nothing further, this prehearing
21 conference is adjourned. Thank you very much. Have a nice
22 day.

23 [Whereupon, at 2:43 p.m., the prehearing
24 conference adjourned.]

25