

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

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

GENERAL REVIEW OF THE RULES OF PRACTICE

Docket No. RM98-3

COMMENTS OF UNITED STATES POSTAL SERVICE
ON PROPOSED CHANGES TO THE COMMISSION'S
RULES OF PRACTICE AND PROCEDURE
(January 21, 2000)

In Order No. 1274 (December 17, 1999), the Commission solicited comments and suggestions on potential improvements in the Commission's rules of practice. Among other things, the Commission proposes to codify as permanent rules a number of special rules that had been adopted on a case-by-case basis in several past proceedings. The Order also rejects or defers consideration of several proposals advanced by the Postal Service to streamline and expedite Commission proceedings. The Postal Service hereby files its comments.

As an initial matter, the Postal Service is disappointed that the Commission has chosen not to propose many of the improvements to its rules suggested by the Postal Service at a prior stage of this proceeding. The Postal Service continues to believe that many of its suggestions, especially that for numerical limitations on discovery requests, can be successfully implemented by the Commission with appropriate regard for due process, as they have been implemented in the context of complex litigation by the federal judiciary and by other federal agencies. The Postal Service hopes that these proposals, as well as those explicitly deferred by the Commission, will receive further consideration in the future.

With respect to the proposals now made by the Commission, the bulk of the special rules proposed to be made permanent by the Commission would serve to shorten permanently the filing deadlines for various pleadings in Commission

proceedings. The Commission states that "incorporation of the shortened time periods into the current Rules of Practice and Procedure is a reasonable action, given that parties repeatedly have demonstrated an ability to meet the deadlines set in omnibus rate cases."

The Postal Service generally supports the Commission's efforts to improve the efficiency and effectiveness of proceedings conducted pursuant to 39 U.S.C. § 3624. To the extent that the use of shortened pleading deadlines may enable the Commission to more expeditiously complete its task in omnibus rates proceedings, and thereby issue recommended decisions in less than the statutory 10-month period, the Postal Service encourages such efforts to reduce the lag time required to change rates and classifications. In this respect, the Postal Service has worked hard to meet all pleading deadlines imposed in the past, and will continue to do so in the future. We must note, however, that, in the past, the Postal Service has not always been able to meet the shortened deadlines imposed under the special rules. Furthermore, as the moving party faced with the largest discovery burden, the Postal Service would be the party most likely to be adversely affected by the proposed change in rules. Therefore while we are generally optimistic that some shortened deadlines will present no extraordinary problems in future cases, the Postal Service is hopeful that the Commission's Presiding Officers will continue to liberally grant appropriate extensions of time on those occasions in which circumstances necessarily require a delay in filing.

While the Postal Service is generally supportive of the Commission's effort to achieve greater efficiency in its proceedings, we are concerned that, in a few instances, the proposed shortened deadlines may be too severe, and may actually lead to increased motions practice and other inefficiencies. Specifically, the Commission's proposed rules would make objections to interrogatories, requests for admissions, and requests for production of documents or things, due 7 days from the filing of the interrogatory or request. This proposal would permanently and significantly reduce the

current 10-day deadline for objections utilized in prior cases, without any past demonstration of success under special rules with such a shortened deadline.

The Postal Service anticipates that it will encounter frequent difficulties in complying with this requirement, especially in the context of omnibus rate cases. It has been the experience of the Postal Service that during periods of heavy discovery, the need to respond to a large volume of interrogatories leads to a situation where responses to interrogatories become backlogged, and oftentimes the witness has time to review and answer each interrogatory only a day or two prior to the date the answer is due. This backlog phenomenon has intensified in recent cases employing special rules with a shortened 14-day interrogatory response deadline. In such circumstances, potential objections, such as those relating to the release of confidential or trade secret information, ordinarily do not come to light within the 7-day period contemplated by the proposed rule. In order to protect against claims of waiver under the proposed rule, therefore, counsel would frequently need to file motions for late acceptance of objections. Given that the 10-day period for objections has seemed to work reasonably well in prior cases, the Postal Service believes that the increased probability of motions practice likely to be occasioned by the proposed rule is not justified.

The Postal Service has similar concerns with respect to changing the deadline for responses to motions in Rule 21 from 10 to 7 days. Apart from the fact that such a short deadline has not been tested in the course of a major rate proceeding, the Postal Service believes that in the press of litigation in such cases a 7-day deadline ordinarily will be difficult to meet. In such circumstances, the likely outcome is the filing of yet more motions: motions for extension of time in which to respond. The institution of this requirement as a permanent rule should not be carried out.

There is one aspect of the Commission's proposal which, however, may not go far enough to expedite its proceedings through shortened deadlines. The Postal Service urges that the Commission consider in this docket shortening the time period

for filing motions to compel responses to discovery in Rules 26(d), 27(d), and 28(d) from 14 to 10 days. This measure would be intended to shorten the time needed to achieve resolution of discovery disputes, thereby reducing, to some measure, the number of outstanding discovery disputes pending against a participant during and after the hearing stage of its case-in-chief. It would also promote consistency with the current 10-day period for responding to a motion in Rule 21(b), which, although not directly applicable here, serves as a close analog in this particular set of circumstances, i.e., where a requesting party fashions an affirmative pleading seeking relief based on written objections of the objecting party.

The Postal Service would also like to briefly comment on those proposals that are unrelated to filing deadlines. In this regard, the Postal Service supports the Commission's proposal to alter Rule 31(k)(3)(I) to eliminate the required production of hardcopy listings of data files and other computer information, in favor of production on electronic media. This change will modernize Commission practice, and will conform the rule to the *de facto* practice generally employed by the Postal Service for many years.

The Postal Service would like to request, however, further clarification of proposed Rule 25, which provides for an extended period of discovery on the Postal Service. The proposed rule, in part, states that "[d]iscovery requests of this nature are permissible for the purpose of the development of rebuttal testimony and may be made up to 20 days prior to the filing date for final rebuttal testimony." The Postal Service suggests that the intent of this discovery exception could be made more plain if the rule were reworded to state that "[d]iscovery requests of this nature are permissible *only* for the purpose of the development of rebuttal testimony and may be made up to 20 days prior to the filing date for final rebuttal testimony." Such wording would be consistent with longstanding Commission precedent.

The Postal Service also would like to comment on proposed Rule 10, which would allow pleadings to be filed either as hardcopy or on computer diskettes. From the wording of the proposed rule, it would appear that parties are free to select the medium of filing on a document-by-document basis. The Postal Service is in favor of such an interpretation. If, however, this is not the intent of the proposal, the proposal should be clarified to require the selection of one form of filing for all of a party's documents in a given proceeding.

The Postal Service further would like to encourage the Commission to reconsider the amount of hardcopy documents required to be filed under Rule 10(d). As stated, parties filing hardcopy documents must present an original and 24 copies. In light of the fact that the Commission has made filed documents more readily available to all via its web site, it may be appropriate at this time to consider whether 24 copies continue to be necessary for the Commission's internal distribution. The Postal Service can attest that on those days in which many discovery responses are due to be filed with the Commission, and provision on diskette is not feasible, a significant impediment to timely filing is the need to make multiple copies for filing. If the Commission could undertake to reduce the required number of filing copies, a significant savings of time could be achieved for those parties required to respond to numerous discovery requests. The Postal Service respectfully requests that the Commission review its distribution needs to determine if any savings can be achieved in this regard.

Finally, the Postal Service would like to suggest a number of small technical amendments to the Commission's Rules which have not previously been considered:

First, the Postal Service proposes that Rule 12(e) be amended so that the street address of the Chief Counsel at Headquarters, i.e., 475 L'Enfant Plaza SW Room 6536, would also be included.

Second, the Postal Service proposes that the last sentence in Rule 12(d) be amended so that it is clear which version of the service list would be used to determine

compliance with service requirements. In complex, multi-party cases, particularly in the beginning stages, a hard-copy service list distributed by the Secretary at any given can become out of date. Presumably, the Commission intends that participants use the service list maintained on the Commission's web site, www.prc.gov, so as to ensure that any new parties that have since joined the proceeding receive service before the issuance of the next version of the Secretary's hard-copy service list.

Third, the Postal Service proposes that the phrase "Except as otherwise provided in these Rules" be added at the beginning of the first sentence in Rule 18. Rule 18 essentially grants participants the right to request a hearing without specifying the reasons or grounds therefor; however, some of the Commission's rules require participants to specify the underlying purpose for the hearing. For instance, Rule 163(d) for market tests permits participants to request hearings in order to "dispute a genuine issue of material fact to be resolved in the consideration of the Postal Service's request." To promote consistency between these provisions, a conforming amendment to Rule 18 would be appropriate.

The Postal Service appreciates the Commission's consideration of its comments, and looks forward to working with the Commission in the future to streamline the administrative process governing the conduct of rate and classification proceedings.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

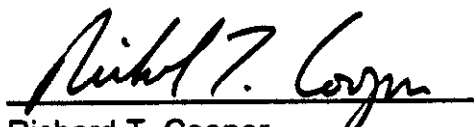
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January 21, 2000

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all participants of record in Docket No. R97-1 in accordance with section 12 of the Rules of Practice.


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