

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

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

POSTAL RATE AND FEE CHANGES, 2000)

Docket No. R2000-1

VAL-PAK DIRECT MARKETING SYSTEMS, INC.,
VAL-PAK DEALERS' ASSOCIATION, INC., AND
CAROL WRIGHT PROMOTIONS, INC.
COMMENTS ON PROPOSED PROCEDURAL SCHEDULE
(February 14, 2000)

OVERVIEW

Val-Pak Direct Marketing Systems, Inc. ("Val-Pak"), Val-Pak Dealers' Association, Inc. ("VPDA"), and Carol Wright Promotions, Inc. ("Carol Wright") hereby respond to the opportunity for suggesting alterations to the proposed procedural schedule as provided by Presiding Officer's Ruling No. R2000-1/1, issued January 27, 2000.

These intervenors in this omnibus rate docket support the alteration of the proposed procedural schedule as follows: (1) one additional week of discovery on the Postal Service's direct case; (2) two additional weeks between the close of hearings on the Postal Service's direct case and the filing of intervenors' case-in-chief; and (3) one additional week between the completion of discovery to intervenors/OCA and their filing of trial briefs. These changes would bring the calendar roughly in line with that established for the last omnibus rate case by Presiding Officer's Ruling R97-1/4.¹ (See Attachment I.)

¹ We recognize that this schedule was not in effect during much of the course of litigation of Docket No. R97-1. However, as there is no expectation that the procedural issues resolved in that docket will need to be re-litigated in this docket, thereby causing the same resultant disturbance to the schedule, we therefore view the early schedule set by POR R97-1/4 as a reasonable exemplar for the schedule to be followed in this docket.

Reasons for Suggested Changes to Proposed Procedural Schedule

The additional time for discovery on the Postal Service's direct case is necessary to deal with the breadth and complexity of the Postal Service's request, which is at least the equal of that filed in Docket No. R97-1. There are 41 pieces of testimony presented by 40 postal witnesses in this docket; in Docket No. R97-1, the original filing had 42 pieces of testimony presented by 40 postal witnesses. The Postal Service is seeking more extensive changes to the DMCS in this docket.² Furthermore, the rate increases sought by the Postal Service in this docket for the various classes and subclasses of mail are substantially larger than the increases sought in the prior omnibus rate docket. The Postal Service's request seeks to increase domestic mail postage revenues by nearly \$2.5 billion a year. Thus, much is at stake.

The Commission is required by statute (39 U.S.C. sec. 3624(b)) to balance expedition with "procedural fairness to the parties" in the conduct of its proceedings. We respectfully

² In Docket No. R97-1, the Postal Service sought three changes in the structure of First-Class Mail, realignment of the existing 3/5-digit rate category in each Periodicals subclass, elimination of the Standard Mail (A) Single-Piece subclass and the introduction of a Residual Shape surcharge in Standard Mail (A), and classification changes affecting registered mail, business reply mail, and the newly-proposed prepaid reply mail.

In this docket, the Postal Service seeks one change in the First-Class Mail rate structure, the combination of three of the four current Periodicals subclasses into one subclass, which would be referred to as "Outside County," permitting pieces weighing less than one pound in all Standard Mail subclasses, extending a parcel barcode discount, delivery confirmation, return receipt for merchandise, and bulk insurance service to Standard (A) parcels, renaming Standard Mail (B) as Package Services, renaming Special Standard as Media Mail, renaming destination-entered parcel post as Parcel Select, the elimination of local rates and adding destination drop shipping discounts for Bound Printed Matter, the application of new *nonmachinable* surcharges to Parcel Select-DBMC and intra-BMC parcels, a general rewrite of the DMCS sections on special services, a major restructuring of the fee structure for post office boxes, elimination of the merchandise return service fee, and the addition of a quarterly fee option for users of Qualified Business Reply Mail.

submit that our suggested alterations to the procedural schedule better achieves this balance. Without such changes, the schedule for this proceeding would jeopardize the interests and rights of these intervenors. We also note that parties in this docket are “entitled to present [their] case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a **full and true disclosure of the facts.**” (5 U.S.C. sec. 556(d), cited in 39 U.S.C. sec. 3624(a), emphasis added.) We respectfully submit that our suggested alterations to the procedural schedule would facilitate the presentation of a full and true disclosure of the facts by the parties to the Commission for its consideration.

One Week of Additional Discovery on the Postal Service’s Case

As is customary in its filings, the Postal Service claims to have remedied all deficiencies in data collection and analysis which had previously been identified by the Commission in the most recent prior omnibus rate case. It is also customary in these rate cases to find gaps between the ideal and the Postal Service’s performance. Unfortunately, intervenors and OCA are obliged to invest significant time and energy in the study of the supporting data and analyses underlying the Postal Service’s rate and classification proposals. Here, we simply request that the Commission provide adequate time to allow for such study. We observe that the Postal Service has not presented any credible basis for conducting this docket with excessive expedition. Neither has any other party to this docket given substantial cause for so reducing the opportunities for both obtaining and more ably presenting the facts underlying this omnibus rate filing to the Commission. Accordingly, we would propose

changing the deadline for “Completion of discovery on the Postal Service’s direct case” from March 16, 2000 to March 23, 2000.

Two Additional Weeks to Submit Intervenors’ Case-in-Chief

The proposed schedule for this docket allows for only one week between the conclusion of hearings and the filing of intervenors’ (and OCA’s) cases-in-chief. This is significantly less than the 26 days provided in Docket No. R97-1. It is difficult to exaggerate the importance to intervenors of their cases-in-chief — involving both rebuttal to the Postal Service’s proposals as well as alternative proposals. Both aspects to the intervenors’ cases-in-chief demand extensive study and analysis; failure to address an issue in a case-in-chief will often preclude its later presentation to the Commission for consideration. Further, the Commission consistently has given less consideration to either intervenors’ alternatives or critiques which are not firmly grounded in the data and analyses presented by the Postal Service; yet the inconsistencies and inadequacies of such Postal Service data and analyses are often made manifest through oral cross-examination. The proposed schedule in this docket would require *intervenors either to neglect participation in oral cross-examination (as well as gaining insights concerning the Postal Service’s direct case elicited by other parties during such cross-examination) or to hurriedly draft their testimony (with predictable effects upon both readability and accuracy).*

If the intervenors are to have a meaningful opportunity to participate in this docket, we respectfully request that an additional two weeks be added to the time between the conclusion of oral cross-examination on the Postal Service’s direct case and the deadline for filing intervenors’ cases-in-chief.

Accordingly, we would propose changing the deadline for "Filing the case-in-chief of each participant, including rebuttal to the Postal Service," from May 5, 2000 to May 26, 2000.

One Additional Week for Filing Intervenor/OCA Trial Briefs (and Rebuttal Evidence)

Likewise, the filing of trial briefs by intervenors (which provides the Commission with a timely introduction to the arguments to be set forth in intervenors' initial and reply briefs) will be of far more limited utility if additional time is not provided between the completion of discovery on intervenors (and OCA) and the deadline for filing such briefs. By necessity (as was true regarding the filing of intervenors' cases-in-chief), when the time between the completion of discovery and the filing of such briefs is reduced by more than one-half, the difference will be evident in the coherence and completeness of the briefs filed.

This extension would have a secondary benefit which is perhaps even more significant than extending the date for trial briefs. Under the proposed schedule for this docket, there are 66 days between the date that Intervenor/OCA file their cases-in-chief and the date that rebuttal evidence is due. This is a reduction of 11 days from the timetable established in Ruling No. R97-1/4 which provided 77 days. The schedule changes proposed herein would cause that period to be 73 days, still less than in Docket No. R97-1. There is every reason to believe that Intervenor and the OCA will make important, substantive proposals in their cases-in-chief, and will require the preparation of rebuttal testimony which cannot now be anticipated. The extra week proposed herein would be of great value in allowing intervenors (and the OCA) to make a proper response to the cases-in-chief of other intervenors (and the OCA).

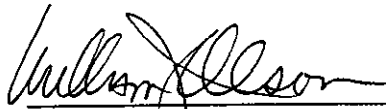
Accordingly, we would propose changing the deadline for "Trial briefs of intervenors and the OCA" from June 6, 2000 to July 5, 2000 (due to the Holiday, an eight day extension).

With these changes, the proposed revisions to the schedule appear as Attachment II.

CONCLUSION

Barring unforeseen shocks (such as an untimely submission of extensive supplemental testimony by the Postal Service), this schedule (with the amendments herein requested) would still provide the Commission with substantial time for consideration and review of the Postal Service's proposals as probed and tested by intervenors and OCA, as well as consideration and review of rebuttal and alternative proposals (which will have received equivalent examination). In fact, it is not unreasonable to anticipate that the Commission's performance of its duty actually will be facilitated if the additional time sought herein is made available to intervenors to improve the quality of the record by means of more complete discovery, testimony and trial briefs.

Respectfully submitted,



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<u>Activity</u>	<u>Days from Filing of the Case in Docket No.</u>		
	<u>R97-1¹</u>	<u>R2000-1²</u>	<u>R2000-1³</u>
Completion of discovery on the Postal Service's direct case	69 days	64 days	71 days
Start hearings on the Postal Service's direct case	88 days	84 days	91 days
Conclude hearings on the Postal Service's direct case	104 days	107 days	114 days
Intervenors/OCA file cases-in-chief	130 days	114 days	135 days
Completion of discovery on intervenors/OCA cases	159 days	142 days	163 days
Identify amount oral cross/report on availability of witnesses	158 days	141 days	162 days
Intervenors/OCA file trial briefs	172 days	146 days	175 days
Start hearings on intervenors cases	181 days	155 days	183 days
Complete discovery on Postal Service	187 days	160 days	188 days
Conclude intervenors case hearings	197 days	170 days	198 days
File rebuttal evidence	207 days	180 days	208 days
Start hearings on rebuttal evidence	215 days	189 days	217 days
Conclude hearings on rebuttal evidence	225 days	197 days	225 days
File initial briefs	236 days	208 days	237 days
File reply briefs	246 days	216 days	244 days
Oral argument	252-53 days	223-24 days	251-52 days

¹ As set forth in Presiding Officer's Ruling No. R97-1/4, August 1, 1997.

² As currently proposed under Presiding Officer's Ruling No. R2000-1/1.

³ As requested herein by Val-Pak, VPDA and Carol Wright.

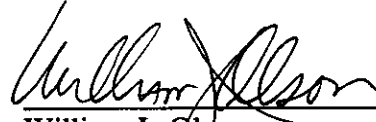
**Suggested Alterations to
Proposed Procedural Schedule Set Out in P.O. Ruling No. R2000-1/1**

<u>Date(s) in P.O. Ruling No. R2000-1/1</u>	<u>Suggested Date(s)</u>	<u>Activity</u>
January 12, 2000		Postal Service Request filed
February 16, 2000		Prehearing conference
March 16, 2000		Identify expected amount of oral cross-examination. Report on the availability of witnesses
March 16, 2000	March 23, 2000	Completion of discovery on the Postal Service's direct case
March 27, 2000	April 3, 2000	Trial brief of the Postal Service
April 5-28, 2000	April 12 - May 5, 2000	Hearings for cross-examination of the Postal Service's direct case (9:30 a.m. in the Commission hearing room)
May 5, 2000	May 26, 2000	Filing of the case-in-chief of each participant, including rebuttal to the Postal Service
June 1, 2000	June 22, 2000	Identify expected amount of oral cross-examination. Report on the availability of witnesses
June 2, 2000	June 23, 2000	Completion of discovery directed to intervenors and the OCA
June 6, 2000	July 5, 2000	Trial briefs of intervenors and the OCA
June 15-30, 2000	July 13-28, 2000	Evidentiary hearings on the cases-in-chief of intervenors and the OCA (9:30 a.m. in the Commission hearing room)
June 20, 2000	July 18, 2000	Completion of discovery directed to the Service

Date(s) in P.O. Ruling No. R2000-1/1	<u>Suggested Date(s)</u>	<u>Activity</u>
July 10, 2000	August 7, 2000	Filing of evidence in rebuttal to the cases-in-chief of participants other than the Postal Service (no discovery permitted on this rebuttal evidence; only oral cross-examination)
July 19-27, 2000	August 16-24, 2000	Hearings on rebuttal to participants' direct evidence (9:30 a.m. hearings in the Commission hearing room)
August 7, 2000	September 5, 2000	Filing of initial briefs
August 15, 2000	September 12, 2000	Filing of reply briefs
August 22-23, 2000	September 19-20, 2000	Oral arguments (if requested)

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

February 14, 2000