

ORIGINAL

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Before the

UNITED STATES POSTAL RATE COMMISSION

In the Matter of: **POSTAL RATE AND FEE CHANGE**

Docket No. **R2000-1**

VOLUME 1

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BEFORE THE
POSTAL RATE COMMISSION

-----X
In the Matter of: :
POSTAL RATE AND FEE CHANGE : Docket No. R2000-1
-----X

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

Volume I
Wednesday, February 16, 2000

The above-entitled matter came on for pre-hearing
conference, pursuant to notice, at 9:31 a.m.

BEFORE:

HON. EDWARD J. GEILMAN, CHAIRMAN
HON. GEORGE A. OMAS, VICE CHAIRMAN
HON. W.H. "TREY" LeBLANC, COMMISSIONER
HON. DANA B. "DANNY" COVINGTON, COMMISSIONER
HON. RUTH GOLDWAY, COMMISSIONER

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1 APPEARANCES:

2 On behalf of the National Association of Letter
3 Carriers, AFL-CIO:
4 KEITH SECULAR, ESQ.
Cohen, Weiss & Simon
330 W. 42nd Street
New York, NY 10036

5 On behalf of the Newspaper Association of America:
6 ROBERT J. BRINKMANN, ESQ.
Newspaper Association of America
429 14th Street, NW
7 Washington, DC 20045

8 WILLIAM B. BAKER, ESQ.
9 Wiley, Rein & Fielding
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10 Washington, DC 20006

11 On behalf of the National Association of Presort
12 Mailers:
HENRY A. HART, ESQ.
13 Reed, Smith, Shaw & McClay, LLP
1301 L Street, NW
14 East Tower, Suite 1100
Washington, DC 20005

15 On behalf of the Classroom Publishers Association:
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16 5335 Wisconsin Avenue, NW
Suite 920
17 Washington, DC 20015

18 On behalf of OCA-PRC:
KENNETH E. RICHARDSON, ESQ.
19 EMMETT RAND COSTICH, ESQ.
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20 TED P. GERARDEN, DIRECTOR
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22 On behalf of Hallmark Cards, Incorporated:
23 DAVID F. STOVER, ESQ.
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1 APPEARANCES: (continued)

2 On behalf of ADVO, Incorporated; and the
3 Saturation Mail Coalition:

4 JOHN M. BURZIO, ESQ.

5 THOMAS W. McLAUGHLIN, ESQ.

6 Burzio & McLaughlin

7 1054 31st Street, NW, Suite 540

8 Washington, DC 20007

9 On behalf of the American Postal Workers Union,
10 AFL-CIO:

11 SUSAN L. CATLER, ESQ.

12 O'Donnell, Schwartz & Anderson, P.C.

13 1300 L Street, NW, Suite 1200

14 Washington, DC 20005

15 On behalf of the American Bankers Association:

16 IRVING D. WARDEN, ESQ.

17 1120 Connecticut Avenue, NW

18 Washington, DC 20036

19 On behalf of the Amazon.com:

20 WILLIAM B. BAKER, ESQ.

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22 1776 K Street, NW, Suite 1100

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24 On behalf of the Association of American
25 Publishers:

MARK PELESH, ESQ.

JOHN PRZYPYSZAY, ESQ.

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On behalf of the Alliance of Nonprofit Mailers;
American Library Association:

DAVID M. LEVY, ESQ.

CHRISTOPHER T. SHENK, ESQ.

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On behalf of the McGraw-Hill Companies,
Incorporated:

TIMOTHY W. BERGIN, ESQ.

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1 APPEARANCES: (continued)

2 On behalf of the American Business Press:

3 DAVID STRAUS, ESQ.

4 MERCIA ARNOLD, ESQ.

5 Thompson, Coburn

6 700 14th Street, NW, Suite 900

7 Washington, DC 20005

8 On behalf of the Florida Gift Fruit Shippers
9 Association:

10 MAXWELL W. WELLS, JR., ESQ.

11 Maxwell W. Wells, Jr., PA

12 14 E. Washington Street, Suite 600

13 Orlando, FL 32802

14 On behalf of the Association for Postal Commerce;
15 Pitney-Bowes and the Recording Industry
16 Association; R.R. Donnelly & Sons Company:

17 IAN D. VOLNER, ESQ.

18 FRANK WIGGINS, ESQ.

19 HEATHER McDOWELL, ESQ.

20 Venable, Baetjer, Howard & Civiletti

21 1201 New York Avenue

22 Washington, D.C. 20005

23 On behalf of the Direct Marketing Association:

24 DANA T. ACKERLY, ESQ.

25 Covington & Burling

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On behalf of Time Warner, Inc.:

JOHN M. BURZIO, ESQ.

TIMOTHY L. KEEGAN, ESQ.

Burzio & McLaughlin

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Washington, DC 20007

20 On behalf of ValPak Direct Marketing Systems,
21 Inc.; ValPak Dealers Association, Inc.; Carol
22 Wright Promotions, Inc.; Association of Priority
23 Mail Users, Inc.; District Photo, Inc.; Cox
24 Sampling; and Mystic Color Lab:

25 WILLIAM J. OLSON, ESQ.

JOHN S. MILES, ESQ.

William J. Olson, PC

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1 APPEARANCES: (continued)

2 On behalf of the United Parcel Service:
 3 JOHN E. McKEEVER, ESQ.
 4 Piper, Marbury, Rudnick & Wolfe, LLP
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 Philadelphia, PA 19103

5 On behalf of the Dow Jones & Company, Inc.:
 6 MICHAEL F. McBRIDE, ESQ.
 7 BRUCE W. NEELY, ESQ.
 8 JOSEPH FAGAN, ESQ.
 LeBoeuf, Lamb, Greene & MacCrae, LLP
 1875 Connecticut Avenue, NW, Suite 1200
 Washington, DC 20009

9 On behalf of the Parcel Shippers Association; and
 10 E-Stamp Corporation:
 11 TIMOTHY J. MAY, ESQ.
 12 Patton Boggs, LLP
 2550 M Street, NW
 Washington, D.C. 20037

13 On behalf of the MPA:
 14 JAMES R. CREGAN, ESQ.
 15 ANNE R. NOBLE, ESQ.
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 Suite 610
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16 On behalf of Stamps.com:
 17 DAVID P. HENDEL, ESQ.
 18 Wickwire Gavin, P.C.
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 Vienna, VA 22182

19 On behalf of the National Newspaper Association;
 20 and the Professional Football Publication
 Association:
 21 TONDA F. RUSH, ESQ.
 22 King & Ballow
 6054 N. 21st Street
 Arlington, VA 22205

23 On behalf of Key Span Energy; Long Island Power
 24 Authority; and Major Mailers Association:
 25 MICHAEL W. HALL, ESQ.
 34693 Bloomfield Avenue
 Round Hill, VA 20141

1 APPEARANCES: (continued)

2 On behalf of the Mail Advertising Services
3 Association International; and Smart Mail, Inc.:
4 GRAEME W. BUSH, ESQ.
5 Zuckerman, Spader, Goldstein, Taylor & Kolken, LLP
6 1201 Connecticut Avenue, NW
7 Washington, DC 20036

8 On behalf of the Coalition for Religious Press
9 Associations:
10 STEPHEN FELDMAN, ESQ.
11 JOHN STAPERT, ESQ.

12 On behalf of the Magazine Publishers of America:
13 JAMES CREGAN, ESQ.
14 ANN NOBLE, ESQ.

15 On behalf of the Mail Order Association of
16 America:
17 DAVID TODD, ESQ.

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C O N T E N T S

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
NONE				

RULINGS	PAGE
Late acceptance in the notice of intervention filed on February 15th by Cox Sampling and District Photo, Inc.	19
Late acceptance of response to interrogatories, OCA/USPS 46-50	45

DOCUMENTS TRANSCRIBED INTO THE RECORD:	PAGE
NONE	

E X H I B I T S

EXHIBITS AND/OR TESTIMONY	IDENTIFIED	RECEIVED
NONE		

P R O C E E D I N G S

[9:31 a.m.]

CHAIRMAN GLEIMAN: Good morning, ladies and gentlemen. This is the first prehearing conference in Docket R-2001, considering your request to the United States Postal Service for rate and fee changes.

For those of you who don't know, I'm Ed Gleiman, the Chairman of the Commission. I have to read that part, just to make sure I get it right. With me today are Vice Chairman, George Omas, Commissioners Trey LeBlanc, Ruth Goldway, and Dana Convington.

We have a significant number of topics to discuss at today's conference. First, I intend to review some of the general procedural matters that I hope will make this proceeding go more smoothly.

After that, we'll talk about several substantive matters. I intend to allow counsel full opportunity to discuss each of these issues, and if participants have additional substantive issues they wish to raise, we'll address those as well.

Finally, we'll turn to the issue of the procedural dates for the conduct of this case.

As a first order of business, I would request that counsel representing Intervenors who are present today introduce themselves for the record.

1 My list includes Notices of Intervention received
2 in our docket room through February 14. If I neglect to
3 mention an Intervenor, please speak up.

4 With that, who is appearing on behalf of the
5 United States Postal Service?

6 MR. FOUCHEAUX: Thank you, Mr. Chairman. My name
7 is Daniel Foucheaux. I'm accompanied by a long list of
8 attorneys that are all indicated on the front of our
9 request. I won't go through all of the names, but I do want
10 to point out especially Eleanor Brown, or paralegal, who
11 increasingly becomes an important part of our team effort.

12 CHAIRMAN GLEIMAN: Welcome, Eleanor.

13 ADVO, Inc.?

14 MR. BURZIO: Good morning, Mr. Chairman, members
15 of the Commission. For the record, I am John Burzio.
16 Thomas McLaughlin and I will appear on behalf of ADVO, Inc.

17 CHAIRMAN GLEIMAN: Thank you.

18 Agricultural Publishers Association?

19 [No response.]

20 CHAIRMAN GLEIMAN: The Alliance of Independent
21 Store Owners and Professionals?

22 [No response.]

23 CHAIRMAN GLEIMAN: Alliance of Non-Profit Mailers?

24 MR. SHENK: Good morning. My name is Chris Shenk.
25 I'm here with David Levy you represent the Alliance of

1 Non-Profit Mailers.

2 CHAIRMAN GLEIMAN: And a new Intervenor,
3 Amazon.com? And a not so new attorney.

4 [Laughter.]

5 MR. BAKER: Mr. Chairman, Bill Baker appearing on
6 behalf of Amazon.com, which is a limited participant.

7 CHAIRMAN GLEIMAN: American Bankers Association?

8 MR. WARDEN: Mr. Chairman, Irving Warden appearing
9 on behalf of American Bankers Association. Good morning,
10 sir.

11 CHAIRMAN GLEIMAN: American Business Press?

12 MR. STRAUS: Good morning. I'm David Straus
13 appearing on behalf of American Business Press. I would
14 like to also to enter the appearance of Mercia Arnold.
15 Mercia, would you stand? This is a club here and people
16 don't know each other. Mercia is new to the club, but
17 she'll be here a lot, and I thought people ought to get to
18 know her. Thanks.

19 CHAIRMAN GLEIMAN: Welcome.

20 American Postal Workers Union?

21 MS. CATLER: Good morning, Mr. Chairman, members
22 of the Commission. My name is Susan Catler, and I'll be
23 appearing on behalf of the American Postal Workers Union,
24 AFL-CIO.

25 CHAIRMAN GLEIMAN: The Association for Postal

1 Commerce?

2 MR. VOLNER: Good morning, Mr. Chairman, members
3 of the Commission. My name is Ian Volner. I will be
4 appearing on behalf of the Association for Postal Commerce
5 together with Frank Wiggins and Heather McDowell. If you
6 want to expedite this process, Mr. Chairman, we can also
7 make our appearances for Pitney-Bowes and the Recording
8 Industry Association, all three.

9 CHAIRMAN GLEIMAN: It's likely to confuse me a
10 lot, --

11 MR. VOLNER: Sorry.

12 CHAIRMAN GLEIMAN: -- but let's see if I can
13 remember that. Thank you.

14 The Association of Alternative Postal Systems?

15 [No response.]

16 CHAIRMAN GLEIMAN: Association of American
17 Publishers?

18 MR. PELESH: Good morning. My name is Mark Pelesh
19 on behalf of AAP, and with me is John Przypyszay.

20 CHAIRMAN GLEIMAN: The Association of Priority
21 Mail Users, Inc.?

22 MR. OLSON: Good morning, Mr. Chairman. William
23 Olson and John Miles on behalf of Association of Priority
24 Mail Users, and we could follow Mr. Volner's example and add
25 Carol Wright Promotions, Cox Sampling, ValPak Direct

1 Marketing Systems and ValPak Dealers Association, and two
2 others that are not on your list, District Photo filing
3 yesterday and Mystic Color Lab filing today.

4 CHAIRMAN GLEIMAN: Thank you, sir.

5 Banta Corporation?

6 [No response.]

7 CHAIRMAN GLEIMAN: Jody Berenblatt?

8 [No response.]

9 CHAIRMAN GLEIMAN: Brown Printing Company?

10 [No response.]

11 CHAIRMAN GLEIMAN: Douglas F. Carlson?

12 [No response.]

13 CHAIRMAN GLEIMAN: Classroom Publishers

14 Association?

15 MR. OWEN: Good morning, Mr. Chairman. Steve Owen
16 appearing for the Classroom Publishers Association.

17 CHAIRMAN GLEIMAN: Thank you.

18 Coalition of Religious Press Associations?

19 MR. FELDMAN: Mr. Chairman, Commissioners, I'm
20 Stephen Feldman along with John Stabert. I am appearing for
21 the Coalition of Religious Press Associations.

22 CHAIRMAN GLEIMAN: Conde Naste Publications?

23 [No response.]

24 CHAIRMAN GLEIMAN: Continuity Shippers

25 Association?

1 [No response.]

2 CHAIRMAN GLEIMAN: Direct Marketing Association?

3 MR. ACKERLY: Good morning, Mr. Chairman, members
4 of the Commission. My name is Todd Ackerly. I'll be
5 representing DMA in this case.

6 CHAIRMAN GLEIMAN: Dow Jones & Company?

7 MR. McBRIDE: Good morning, Mr. Chairman, members
8 of the Commission. I'm Michael McBride. I'll be appearing
9 on behalf of Dow Jones with Bruce Neely and Joseph Fagan.

10 CHAIRMAN GLEIMAN: Electronic Retailing
11 Association?

12 [No response.]

13 CHAIRMAN GLEIMAN: E-Stamp Corporation?

14 MR. MAY: Good morning, Mr. Chairman, members of
15 the Commission. I am Timothy May representing E-Stamp
16 Corporation.

17 CHAIRMAN GLEIMAN: Experian?

18 [No response.]

19 CHAIRMAN GLEIMAN: FedEx Express Corporation?

20 [No response.]

21 CHAIRMAN GLEIMAN: Florida Gift Fruit Shippers
22 Association?

23 MR. WELLS: Good morning, Mr. Chairman, members of
24 the Commission. Maxwell Wells appearing on behalf of
25 Florida Gift Fruit Shippers Association.

1 CHAIRMAN GLEIMAN: Greeting Card Association?

2 [No response.]

3 CHAIRMAN GLEIMAN: Hallmark Cards, Incorporated?

4 MR. STOVER: Mr. Chairman and Commissioners, I am
5 David Stover, representing Hallmark Cards, and associated
6 with me will be Sheldon Bierman.

7 CHAIRMAN GLEIMAN: Thank you.

8 Hearst Corporation?

9 [No response.]

10 CHAIRMAN GLEIMAN: Inland Capital Corporation?

11 [No response.]

12 CHAIRMAN GLEIMAN: J.C. Penney, Company, Inc.?

13 [No response.]

14 CHAIRMAN GLEIMAN: Key Span Corporation, d/b/a Key
15 Span Energy?

16 MR. HALL: Mr. Chairman and Commissioners, Mike
17 Hall appearing on behalf of Key Span Energy. I'm also
18 entering an appearance on behalf of Long Island Power
19 Authority and Major Mailers Association.

20 CHAIRMAN GLEIMAN: Knight-Ridder?

21 [No response.]

22 CHAIRMAN GLEIMAN: Lifetime Addressing, Inc.?

23 [No response.]

24 CHAIRMAN GLEIMAN: We've already heard from Mr.
25 Hall on Long Island Power Authority.

1 Magazine Publishers of America?

2 MR. CREGAN: Good morning, Mr. Chairman and
3 members of the Commission. MPA will be represented in this
4 case by myself and by a new face, Ann Noble. Would you
5 stand? And we look forward to working with you again.

6 CHAIRMAN GLEIMAN: Mail Advertising Services
7 Association International?

8 MR. BUSH: Good morning, Mr. Chairman, members of
9 the Commission. My name is Graeme Bush and I will be
10 appearing on behalf of MASAI in this proceeding. I will
11 also be appearing on behalf of Smart Mail, Inc., assuming
12 you're still keeping track of multiple representations.

13 CHAIRMAN GLEIMAN: I'm attempting to keep track.
14 Mail Order Association of America?

15 MR. TODD: Good morning, Mr. Chairman. I am David
16 Todd and will be appearing on behalf of the Mail Order
17 Association of America.

18 CHAIRMAN GLEIMAN: It's good to see you, Mr. Todd.
19 I'd rather see you somewhere else, but it's good to see you
20 here in the hearing room.

21 MR. TODD: Thank you, Mr. Chairman.

22 CHAIRMAN GLEIMAN: Major Mailers Association we've
23 heard from.

24 The McLatchey Company?

25 [No response.]

1 CHAIRMAN GLEIMAN: McGraw-Hill Companies, Inc.?

2 MR. BERGIN: Good morning, Mr. Chairman, members
3 of the Commission. Tim Bergin on behalf of the McGraw-Hill
4 Companies.

5 CHAIRMAN GLEIMAN: Meredith Corporation?

6 [No response.]

7 CHAIRMAN GLEIMAN: Peter J. Moore & Associates?

8 [No response.]

9 CHAIRMAN GLEIMAN: National Association of Presort
10 Mailers?

11 MR. HART: Good morning, Mr. Chairman and
12 Commissioners. My name is Henry Hart, I'll be representing
13 the National Association of Presort Mailers in this case.

14 CHAIRMAN GLEIMAN: The National Federation of
15 Nonprofits?

16 [No response.]

17 CHAIRMAN GLEIMAN: National Newspaper Association?

18 MS. RUSH: Good morning, Mr. Chairman and
19 Commissioners. Tonda Rush representing National Newspaper
20 Association. I'll be appearing with Sonny Boone. And if
21 you're still keeping track, we'll also be appearing for the
22 Professional Football Publication Association. Mark Hunt
23 will be appearing with me there.

24 CHAIRMAN GLEIMAN: We got all excited when we saw
25 that intervention.

1 [Laughter.]

2 CHAIRMAN GLEIMAN: The National Postal Mail
3 Handlers Union?

4 [No response.]

5 CHAIRMAN GLEIMAN: Newspaper Association of
6 America?

7 MR. BAKER: Bill Baker again, Mr. Chairman,
8 appearing on behalf of the Newspaper Association of America.
9 I'll be assisted by Duffy Canole, and Isaac Campbell of my
10 office, and Mr. Bob Brinkmann of the NAA.

11 CHAIRMAN GLEIMAN: Niagara Telephone Company?

12 [No response.]

13 CHAIRMAN GLEIMAN: Parcel Shippers Association?

14 MR. MAY: Mr. Chairman, Timothy May representing
15 the Parcel Shippers Association, and I've already filled the
16 appearance form out.

17 CHAIRMAN GLEIMAN: Periodical Publications
18 Association, Inc.?

19 [No response.]

20 CHAIRMAN GLEIMAN: We've already heard from
21 Pitney-Bowes.

22 David B. Potkin?

23 [No response.]

24 CHAIRMAN GLEIMAN: We've heard from the
25 Professional Football Publications Association. We expected

1 to see Paul Tagliabeau in the hearing room this morning.

2 [Laughter.]

3 CHAIRMAN GLEIMAN: Quebacor World USA, Inc.?

4 [No response.]

5 CHAIRMAN GLEIMAN: Reader's Digest Association?

6 [No response.]

7 CHAIRMAN GLEIMAN: We've heard from the Recording
8 Industry Association.

9 R.R. Donnelly & Sons Company? Did I miss that
10 one? I tried to talk them all off.

11 MR. VOLNER: I didn't realize. On behalf of R.R.
12 Donnelly & Sons Company, which is a limited intervenor, Ian
13 Volner and Heather McDowell.

14 CHAIRMAN GLEIMAN: The Saturation Mail Coalition?
15 [No response.]

16 CHAIRMAN GLEIMAN: We've heard from Smart Mail's
17 representative.

18 Stamps.com?

19 MR. McLAUGHLIN: Mr. Chairman, Tom McLaughlin for
20 the Saturation Mail Coalition, along with John Burzio.

21 CHAIRMAN GLEIMAN: Time Warner, Inc.?

22 MR. HENDEL: I didn't want to jump the gun on you.
23 I'm David Hendel representing Stamps.com.

24 CHAIRMAN GLEIMAN: I apologize for moving more
25 quickly than I should have.

1 MR. BURZIO: John Burzio again, Mr. Chairman.
2 Timothy Keegan and I will appear on behalf of Time Warner,
3 Inc.

4 CHAIRMAN GLEIMAN: United Parcel Service?

5 MR. MCKEEVER: Thank you, Mr. Chairman and members
6 of the Commission. I am John McKeever appearing on behalf
7 of the United Parcel Service. Also appearing on behalf of
8 the United Parcel Service in this case will be William
9 Pinamont and Philip Wilson.

10 CHAIRMAN GLEIMAN: U.S. News & World Report?

11 [No response.]

12 CHAIRMAN GLEIMAN: I believe, if my score card is
13 correct, that we have heard from the representative of Carol
14 Wright, ValPak Dealers Association, and ValPak Direct
15 Marketing, which leaves us with Wilmer Associates
16 International.

17 [No response.]

18 CHAIRMAN GLEIMAN: Yesterday, we received two
19 additional notices of intervention. Both were accompanied
20 by motions for late acceptance of intervention. I believe
21 we already know the representative of Cox Sampling and
22 District Photo, Inc., is here. Does anyone have an
23 objection to granting intervention for Cox Sampling and
24 District Photo?

25 [No response.]

1 CHAIRMAN GLEIMAN: All right. Hearing no
2 objection, the motions for late acceptance in the notice of
3 intervention filed on February 15th by Cox Sampling and
4 District Photo, Inc. are granted. Mr. Reporter, would you
5 please index this ruling in the front of today's transcript.

6 [Chairman's ruling indexed.]

7 Is there anyone who I filed to mention who has
8 filed a notice of intervention?

9 MR. SECULAR: Mr. Chairman, I am Keith Secular
10 from Cohen, Weiss & Simon in New York. It's my
11 understanding a notice of intervention was filed on behalf
12 of the National Association of Letter Carriers.

13 CHAIRMAN GLEIMAN: Well, if it has not been filed,
14 we will let you know, and if it has been filed, accept my
15 apology for overlooking the NALC, and the OCA.

16 MR. RICHARDSON: Thank you, Mr. Chairman. On
17 behalf of the Office of the Consumer Advocate, I would like
18 to enter my appearance, Kenneth E. Richardson, and that of
19 Emmett Rand Costich, Shelley S. Dreifuss, and the Director
20 of the Office of the Consumer Advocate, Ted P. Gerarden.

21 CHAIRMAN GLEIMAN: Yes, sir.

22 MR. LEVY: I apologize, Mr. Chairman. When I was
23 up here earlier for the Alliance of Nonprofit Mailers, I
24 forgot to say that we are also here to represent the
25 American Library Association. I hope it's not too late to

1 enter an appearance now.

2 CHAIRMAN GLEIMAN: It is not. I assume that an
3 intervention -- I do recall an intervention that crossed my
4 desk.

5 MR. LEVY: Thank you.

6 CHAIRMAN GLEIMAN: For those of you who have not
7 already done so, if you would please fill out an appearance
8 form and hand it to the reporter before you leave today.
9 The reporter has been doing a good job of making sure that
10 everybody got a form. If you didn't, there are more of them
11 available on the table here at the front of the room.

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1 Anyone interested in obtaining a transcript of
2 today's pre-hearing conference or any other official
3 Commission proceeding in this case should make arrangements
4 directly with the reporting company, Ann Riley & Associates,
5 Limited. An order form is available on the bottom half of
6 the appearance form. Transcripts are also available on
7 computer diskette, and if you would please fill out the
8 order form if you wish transcripts either in hard copy or
9 diskette form.

10 Anyone needing to make additional arrangements
11 that can not be dealt with today through the reporter can
12 call the company at 202-842-0034.

13 I want to remind counsel it will be a great help
14 to the reporter if you identify yourself for the record the
15 first time you speak on any day that we are here in the
16 hearing room.

17 The next item on our agenda is operations here at
18 the Commission. We will begin with our hearing room
19 procedures. The Commission has maintained pretty much the
20 same routine through a number of cases and many of the
21 participants are familiar with those practices, and I expect
22 we will continue with them.

23 Hearings will begin at 9:30 a.m. We will proceed
24 with a 10 minute mid-morning break at approximately 10:45.
25 We will then proceed to break for lunch for about an hour

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1 and 15 minutes at roughly 12:15 each day, and we will take
2 afternoon breaks as may be necessary until the scheduled
3 testimony has been completed.

4 As in the past, hearings will generally be
5 scheduled five days a week if necessary to maintain our
6 schedule. We will, however, hold hearings in the evening
7 and possibly on Saturdays.

8 Does any participant wish to suggest a change to
9 our traditional hearing room practices?

10 [No response.]

11 CHAIRMAN GLEIMAN: The docket room is open from
12 8:00 a.m. to 4:30 p.m. for filing of documents and for
13 public review of documents. The Commission will again
14 maintain a recorded telephone message to announce the
15 hearing schedule and the telephone message will be updated
16 during the breaks at 12:15, lunch time and probably 3:15 in
17 the afternoon, so that you can monitor how cross-examination
18 on that particular day is progressing. The telephone number
19 for the updating of what is going on in the hearing room is
20 202-789-6874.

21 Now, if we can turn to some procedural matters
22 that should, I hope, facilitate a smooth and relatively
23 trouble-free proceeding. First, the Commissioners have been
24 struck by a substantial number of acronyms that have been
25 used in the various discovery requests. We would request

1 that any time an acronym appears for the first time in a
2 document that a full reference for which the acronym is used
3 also appear. Some acronyms such as USPS and CRA are readily
4 understandable to everyone and we are not particularly
5 worried about those, but the potential for confusion arises
6 when different types of machines, facilities, organizations
7 and minor data collection systems are being referenced.

8 Next, I want to request your cooperation when you
9 are preparing designations for written cross-examinations
10 for incorporation into our transcript. The system that we
11 have developed works well when the parties take the time to
12 make it easy for the Commission staff to collate the many
13 varied designations that we receive on any given day. And
14 this is our request -- please provide a separate, discrete
15 document containing the designations for each witness. If
16 you are designating written cross-examination for five
17 witnesses, all of whom have been scheduled to appear on the
18 same day, we would still like you to provide five separate
19 notices accompanied by five separate packages of designated
20 written cross-examination.

21 Participants may continue to combine multiple
22 statements of intent to conduct oral cross-examination into
23 single documents. Our problem has been that assuring all
24 the designated written cross-examination is identified and
25 incorporated into the packets to provide the witnesses at

1 the beginning of the hearing. With your cooperation, we can
2 save time at the beginning of the day, and I think that we
3 will have a better hearing record for your use and for ours
4 when all is said and done.

5 Are there any questions about this request?

6 [No response.]

7 CHAIRMAN GLEIMAN: As most of you know, the
8 Commission recently amended its Rules of Practice,
9 incorporating many of the special rules that were used in
10 omnibus rate cases. It is our expectation that having a
11 single comprehensive set of rules should reduce potential
12 confusion and ease participation in this case. The
13 Commission has printed copies of the rules available on the
14 table as you enter the room, or at least there should be
15 some over there. If there are not, we will make sure they
16 appear there magically at some point. If necessary, we
17 would be happy to make additional copies.

18 I would ask you to limit yourself to one or two
19 copies this morning so that we can make sure that everyone
20 who wants a copy of the rules can get one. And I should
21 mentioned that you can also access the rules on the
22 Commission's web site, www.prc.gov. There is a heading
23 "Contents" on the Commission home page that provides access
24 to the rules.

25 As long as I have mentioned the Commission's web

1 site, I have a few more items concerning electronic access
2 to information. We are quite proud of our web site. Some
3 of you may have noticed on the table out in the corridor
4 that we received a government technology award this year for
5 our web site.

6 In addition to providing a convenient site to find
7 basic information about the Commission and its rules, we are
8 trying very hard to make every document filed with the
9 Commission available for viewing and copying before the
10 beginning of the next business day. We have been pretty
11 successful in doing this. Except on those days when the
12 Postal Service submits a rather large direct case, we have
13 actually been able to achieve our goal in this regard.

14 The Commissioners and staff have found it an
15 exceptionally versatile tool for navigating through the
16 reams of documents that get filed in any case, especially a
17 major rate case, and we hope that everyone interested in
18 Commission affairs will become familiar with our web site
19 and make use of it.

20 Over the past several months a number of trade
21 association representatives and attorneys who practice
22 before the Commission have been invited to test the web
23 site. Generally, they have had a very positive reaction.

24 We would like to assist as many people as possible
25 to become familiar with the web site. Therefore, on

1 Tuesday, February the 22nd, we are going to hold an open
2 house training session here in the Commission's hearing
3 room. All counsel are invited, but you are also welcome to
4 send paralegals, administrative assistants, consultants and
5 anyone else who you think might benefit from instruction on
6 how to quickly find information about Commission procedures
7 and schedules, and also to search documents electronically
8 from the web site.

9 The session will be held between 10:00 in the
10 morning and 2:00 in the afternoon. We will have laptops set
11 up here in the room for your use, and about half a dozen
12 members of the Commission staff will be available to assist.
13 We have training materials and we can provide some
14 instruction, question and answer sheets. You can come in at
15 any time during the four hours. Our goal is to maximize the
16 benefits of the web site for you.

17 Once you get familiar with the system, I think
18 that you will find it has the potential to save hours of
19 time, and that means dollars.

20 If there are any questions about web site
21 training, I would take them now.

22 [No response.]

23 CHAIRMAN GLEIMAN: One of the things that you are
24 going to find at our training session is that documents that
25 are inartfully named or titled are sometimes difficult to

1 find when you are searching, and that is why we have
2 stressed in the past providing meaningful and accurate
3 captions on documents filed with the Commission.

4 For the most part we have been able to easily
5 identify the types of content in documents from its caption,
6 but there has been one significant problem that has arisen
7 in the rate case that we have noticed. On a number of
8 occasions the Postal Service has filed additions,
9 substitutions, or corrections to documents, and as we get on
10 in the case with other parties filing materials, I suspect
11 that we will have similar experiences with those parties.
12 Anyone relying on testimony or a Library Reference, of
13 course, wants to know about all the changes that have been
14 made in a particular document. However, because of the
15 variety of captions describing actions affecting individual
16 documents, it is sometimes difficult to readily identify and
17 collect all the filings related to that particular document.

18 I have a proposed solution. The solution is that
19 everyone -- you include the word "erratum" at the end of the
20 caption any time a document is changed, supplemented,
21 modified, added to or corrected. I know that we generally
22 associate errata with an error that has occurred that
23 requires correction, and that sometimes there is a negative
24 connotation associated with that term. I want to assure you
25 that I understand that many of these documents are not

1 correcting errors, but rather adding or supplementing.
2 Nevertheless, if you do put the term "erratum" at the end of
3 a caption, it will enable our information technology people
4 to successful cross-reference for search purposes all
5 filings concerning a particular document and, in turn, it
6 will make it easier for you to make sure that you have the
7 most complete and up-to-date document in hand when you are
8 working.

9 Are there any comments or questions about this
10 request?

11 [No response.]

12 CHAIRMAN GLEIMAN: One of the principal benefits
13 of having a searchable database of case documents is
14 improved productivity. There also exists the potential for
15 avoiding or mitigating costs associated with filing and
16 serving documents. Parties filing documents in electronic
17 format are already realizing the benefit of providing fewer
18 hard copies to the Commission. I suspect that direct
19 electronic filing may not be that far off into the future,
20 but the potential to save dollars, and, I might add, a few
21 trees here and there exists right now.

22 There are hundreds of names on the service list
23 and scores of documents to be served. The cost of copying,
24 enveloping and mailing documents is particularly burdensome
25 to parties on tight budgets and schedules. It was our hope

1 and our expectation that the availability of immediate
2 access to documents through the web site would reduce the
3 need for hard copy service.

4 I must say, however, that I have been surprised by
5 the number of participants who have requested service of all
6 discovery documents. Some counsel who represent more than
7 one participant have even requested separate complete
8 service of discovery documents for each of their clients.
9 The existing rules excuse service of discovery documents to
10 save participants money and because in the past many of you
11 have indicated that you had limited need for access to all
12 discovery documents.

13 What I am wondering is whether we could agree, or
14 at least some of you could agree that, given the web site
15 access to discovery requests, objections, and motions for
16 extension of time, that we do not have to require hard copy
17 service. I am looking for volunteers or anyone who would
18 like to comment on the idea that perhaps some of you might
19 be willing to accept the posting on our web site as service
20 of hard copy documents.

21 COMMISSIONER GLEIMAN: We won't ask anyone to step
22 up and volunteer right now, but I would like to you think
23 about it, and if anyone does have a comment they would like
24 to make right now about the suggestion they of course may.

25 Yes, Mr. Hart?

1 MR. HART: Briefly, I want to commend and
2 encourage the Commission on the website. It's a tremendous
3 help. I am realizing as you speak here that I was one of
4 the people who as part of my notice of intervention did
5 request filing of all discovery requests and I will this
6 week file a change to that to take my name off the list.

7 My only suggestion is -- and I would be willing to
8 take service of discovery documents through the website --
9 my suggestion is the Commission on the service list that
10 they keep now, if we do implement something like this if you
11 could bifurcate the service list for us, so that we know who
12 on the service list we need to mail in hard copy. It would
13 be a great service because the only difficulty I see is us
14 trying to figure out who do we need to mail to and who is
15 satisfied with the website, and if you could keep track of
16 that for us, I think it might work.

17 COMMISSIONER GLEIMAN: I appreciate the
18 suggestion. That is something we thought about and
19 certainly would be amenable to notating the service list
20 that way.

21 MR. VOLNER: Mr. Chairman, one other thought on
22 this question of requesting serviceable interrogatories of
23 documents. To some extent it is selective and the rules
24 don't really permit us to designate those whom we are
25 willing to waive. Even today I have received e-mail

1 requests from several individual participants and some
2 limited intervenors asking whether I would be willing to
3 waive, and I am certainly perfectly willing to do so.

4 It seems to me that a way to deal with this
5 question of the volume of paper, the unnecessary volume of
6 paper, is to encourage parties to communicate with one
7 another whether they are willing to waive.

8 COMMISSIONER GLEIMAN: As you know, Mr. Volner, I
9 think that is a good suggestion and as you know we have
10 always encouraged parties to work out informal arrangements
11 to the extent that they can. I think that certainly the
12 parties should continue that but to supplement that, again,
13 if there are parties who feel that they are in a position to
14 accept the website posting as service.

15 Let me just add that I recognize that on occasion
16 there are problems with posting documents and it would be my
17 view that in the event we ran into some type of a problem
18 with documents getting posted in a timely manner, we would
19 make some accommodation for whatever response times and the
20 like were in the offing downstream.

21 Yes, sir? Mr. McLaughlin.

22 MR. McLAUGHLIN: Mr. Chairman, first of all, I
23 would like to say that I spoke with Steve Sharfman earlier
24 today about what a terrific job the Commission has done with
25 its website. We were amazed at getting documents the day of

1 the filing, when the Postal Service filed its case, and
2 Steve pointed out that there was an awful lot of work hours
3 put in by the Commission Staff to get that all done, and I
4 think that we all very much appreciate all the hard work the
5 Commission has done as well as the job that you
6 Commissioners have done in making sure the system works.

7 We are one of the parties that filed two separate
8 notices for two separate parties and we can obviously pull
9 back one of those. One problem we do have is that if you
10 pull things off the web and there are more than one attorney
11 involved in it, as we have in our office, then you have got
12 to print the hard copy anyway for circulation and whatever,
13 so we will try to see if we can work something out, and I
14 think the suggestion of working bilaterally to perhaps limit
15 the requests to those parties whose interrogatories we are
16 most interested in might work out.

17 COMMISSIONER GLEIMAN: I appreciate that. You
18 know, what we are trying to do here is just optimize the
19 potential savings and whether it is done informally or
20 whether it is done by someone filing a notice saying that
21 they are willing to take materials off of the website is
22 irrelevant. What is important is the end result I think for
23 all of us because it does involve time and it does involve
24 money.

25 I must tell you I appreciate all your kind words

1 about our website. We have had one semi-failure I will call
2 it, and it has been a disappointment to me personally, and
3 that is that we have been unable, at least as of today, to
4 get up on our website access to the archive data of all past
5 cases. It is still available. Laser-fiche searching of all
6 previous case documents is available here at the Commission,
7 but we are having some difficulty of a technical nature that
8 is far beyond my ability to comprehend that has kept up from
9 having that database up.

10 My hope is that at some point in the
11 not-too-distant future we will have in addition to the
12 current case up there in the searchable database the
13 archived material also, which I think also would be a help.

14 There is nothing I enjoy more than having somebody
15 cite my words back at me from some ruling from six years
16 ago --

17 [Laughter.]

18 COMMISSIONER GLEIMAN: -- and we want to make that
19 easier for you to do if we possibly can.

20 Yes, sir? Mr. Levy.

21 MR. LEVY: Thank you, Mr. Chairman, and good
22 morning.

23 We are also, the Alliance of Nonprofit Mailers is
24 a party that has requested a service of hard copy of all
25 discovery paper. In light of the experience with the

1 website, we plan to withdraw that. We found it in fact a
2 more reliable method of service than even -- even the mails.

3 [Laughter.]

4 COMMISSIONER GLEIMAN: Now we didn't want to
5 suggest that this was better service than the mails. I know
6 that for everybody who is located in Washington, D.C. they
7 get it bright and early the next morning anyway in hard copy
8 form, but it was just a question of, as I said, trying to
9 save some trees and some money, and also complying with some
10 executive orders that were issued last November that asked
11 all agencies in the Government to find a way to maximize the
12 availability of data that they are involved in to the
13 general public and parties who practice before them.

14 MR. LEVY: We have a mailroom, so I am not
15 pointing any fingers.

16 I do have one procedural suggestion though. As
17 the case gets on and the paper starts flying faster, it is
18 sometimes hard to figure out exactly what has been posted on
19 that day, and it might make it easier for parties,
20 particularly when you are dealing with answers, objections,
21 motions to compel, and replies, for the party who is filing
22 one of those things to send an e-mail to the target of the
23 pleading or other document.

24 COMMISSIONER GLEIMAN: I have no problem with
25 people establishing informal arrangements to that end. I

1 would suggest to you that even if there was some trouble
2 getting a document actually up on the site, one thing that
3 we always do, except when we don't, is put up a daily
4 listing, a complete daily listing that has all the
5 documents. It's fairly descriptive.

6 I mean this morning for example I looked at the
7 daily listing because I knew that there were some late
8 interventions and I couldn't remember exactly who they were
9 and we were able to pick them up very quickly off of the
10 daily listing, so I would suggest that the first thing
11 anyone do in the morning after they have their cup of coffee
12 and grouse about whatever they want to grouse about is check
13 the daily listing, but thank you. I think it would be a
14 good idea, but it's one of those informal party-to-party
15 arrangements.

16 MR. ACKERLY: Mr. Chairman, let me add my voice to
17 those who have already said how appreciative those of us who
18 practice before you are for this website. It saves just
19 tremendous amounts of time and money.

20 I would like to second the idea that if it is
21 possible for the Commission to keep a bifurcated list, those
22 who have requested hard copy and those who have not, that
23 would help us a great deal, because it is hard for us, and I
24 think frankly those who have requested hard copy would
25 probably get better service hard copy that way.

1 My additional suggestion, and perhaps it is a
2 question really, is I believe that in past cases when the
3 daily listing has been -- when you have had a daily listing,
4 that there has been an e-mail that has gone out that has
5 said we are up to date as of 5 p.m. as of the certain day.

6 I don't believe that is being done. I don't
7 believe it is necessary to be done. Perhaps the reverse is
8 the case, and that if for some reason or other the daily
9 listing is not completed as of 9 o'clock the next day and
10 e-mail could go out to alert us that there may be documents
11 that have been filed that are not on the daily listing.

12 COMMISSIONER GLEIMAN: I thank you. I think that
13 is a good suggestion and I think the thrust of your comments
14 is correct.

15 We have gotten to the point now where the crew
16 that runs the document room in the website has gotten so
17 good at it that we rarely miss, but if we do miss we
18 certainly will post a notice to the effect that it is not
19 complete. Yes, sir?

20 MR. MAY: Mr. Chairman, Timothy May. May I
21 suggest there are probably -- there are three categories of
22 intervenors, not two.

23 First of all, those who have requested service of
24 all documents, under our present rule service of responses
25 is required on all parties whether they request it or not.

1 It is only the interrogatories that are not required to be
2 served on those who have failed to ask for it. So that is
3 two categories.

4 The third category, of those who are willing to
5 accept the electronic filing as their service for all
6 pleadings, so that would be a third category, and lest there
7 be any confusion when it comes time to make responses absent
8 some indication to the contrary, I assume we are serving
9 this on everybody when we have a response.

10 COMMISSIONER GLEIMAN: Appreciate that. Are there
11 any other comments?

12 [No response.]

13 CHAIRMAN GLEIMAN: All of the comments today have
14 been very helpful to me, and we will get the transcript back
15 tomorrow morning and sort through and see what we can come
16 up with in the way of some additional guidance that we will
17 have.

18 If any of you have further thoughts on this matter
19 later on in the week, later today or later on in the week, I
20 would appreciate it very much if you would just submit them,
21 perhaps by the end of the week, or maybe close of business
22 next Tuesday. And that would give us an opportunity and you
23 an opportunity to think a little bit more, and see if, as I
24 said, we can maximize the website and the informal
25 agreements.

1 And if Mr. May -- he's right, there are three
2 categories. I'm sure somebody's come up with a fourth
3 category since you spoke. So if anybody else can think of
4 other ways to split the deck, you know, that would be
5 helpful, too, as we try to move in this direction.

6 When Mr. Levy was up here a moment ago, we
7 mentioned that things could get really dicey when the
8 documents really start coming in. In fact, I thought I
9 heard a sigh from a couple of the newer colleagues who have
10 not been through this rate case before.

11 Yes, folks, there will be a lot more documents
12 than we've seen already.

13 In any event, moving on now, I want to focus for a
14 minute on the Special Rules of Practice. In past cases, we
15 have had quite a number of rules. One of the reasons for
16 updating the Commission's Special Rules of Practice was to
17 eliminate the confusion between our regular rules and the
18 large set of special rules.

19 When the Commission adopted its final Rules of
20 Practice, it noted that it used several suggestions for
21 changes that were not incorporated. It noted that these
22 ideas could be tested in a future rate case.

23 I guess what I'm about to ask you is whether this
24 is that future rate case? In particular, one of the ideas
25 was to reduce the period for objecting to discovery requests

1 from ten to seven days.

2 And then there was another suggestion to reduce
3 the time available for filing motions to compel discovery
4 responses. And I'm just wondering if anybody feels that we
5 ought to test those two shortened time periods in the
6 context of this omnibus rate case.

7 Does anybody want to comment on that one way or
8 the other? Yes, sir, Mr. Straus.

9 MR. STRAUS: As much as I'd support saving time,
10 the overwhelming paper that we get during these cases just
11 makes it impossible. You sometimes don't get the document
12 for a couple of days. You sometimes have to check with your
13 witness to see whether the question really is objectionable
14 or not.

15 It's so hard keeping up with the ten days to get
16 out responses to questions for parties that aren't, you
17 know, equipped with scores of lawyers and paralegals. I
18 just don't see that it's practical.

19 What you're going to get is an awful lot of
20 motions for an extension from seven days to ten days.

21 CHAIRMAN GLEIMAN: Well, I think that we tended to
22 agree with you when we were doing the update of the
23 Commission Rules, which is why we didn't incorporate those
24 changes as our standing Rules.

25 But I did want to give people who supported that

1 approach, an opportunity to comment about whether it would
2 work in this type of a case.

3 Yes, sir?

4 MR. ACKERLY: Mr. Chairman, let me be one of those
5 who does support a shortening of the time period, especially
6 if we are going to be in a situation where the overall
7 schedule of the case tightens discovery, in general.

8 I think it would be good if we could have a quick
9 turnaround on motions.

10 CHAIRMAN GLEIMAN: Let me go out of order, then,
11 and reduce a bit of your angst in that regard. I have
12 already pretty much concluded that we're going to have to
13 extend the discovery time on the Postal Service's case.
14 We'll get back to that a little bit later on.

15 Just a couple of additional -- I'm sorry, Mr.
16 McKeever?

17 MR. MCKEEVER: I apologize, Mr. Chairman. I'm
18 John McKeever for United Parcel Service. With respect to
19 the specific proposal that you raised, I think a shortening
20 of the time for objections is helpful, because they tend to
21 be relatively -- I don't want to say pro forma documents --
22 but it's not too difficult to put an objection together.

23 And I say that not because it's usually the Postal
24 Service who files them. We, on occasion, do as well.

25 But motions to compel are different, because when

1 a party does have to file a motion to compel, it does have
2 to be a fairly extensive, well-thought-out document.

3 So if there is going to be any shortening of any
4 timeframes, I can understand it in the case of shortening
5 the deadline for objecting, which also gets the ball rolling
6 on any discovery disputes that may exist. But it would be
7 very difficult, I think, to prepare meaningful motions to
8 compel in less than the time permitted the present Rules.

9 CHAIRMAN GLEIMAN: Thank you.

10 MR. FOUCHEAUX: Mr. Chairman, in light o that
11 comment, I would like to reaffirm the Postal Service's
12 strong objection to shortening the time period for
13 objections.

14 [Laughter.]

15 CHAIRMAN GLEIMAN: Could you get back to us in
16 seven, rather than ten days on that?

17 [Laughter.]

18 CHAIRMAN GLEIMAN: I think I hear you. So, we'll,
19 I think, pretty much stay where we are for this case, and
20 perhaps try those shortened times in a case that is not as
21 far-reaching, and doesn't touch on as many interests.

22 Just a couple of additional minor procedural
23 matters that I'd like to mention: We've noticed in one or
24 two instances where discovery requests have mis-cited Postal
25 Service testimony.

1 That may be the result of using one of the
2 versions of the testimony obtained from our website. You
3 can access documents on our website in either PDF or native
4 format, such as Word.

5 The citation problem may have resulted from using
6 the native format version of a document when you're
7 preparing a discovery request. As it turns out, native
8 formats -- don't ask me to go into great detail about this
9 -- native formats don't match up, line-by-line,
10 page-by-page, with the nature of the original hard copy
11 document.

12 But if you use the PDF version, which is pretty
13 easy to use -- even I know where to click to get one of
14 those now -- you will get an actual image of the
15 originator's hard copy version of the document.

16 And if you use that for your citations, you will
17 then avoid incorrect page/line citations. The Postal
18 Service has in its responses, as best I can recall,
19 attempted to note incorrect citations, and to the extent
20 that we can figure out what the problem is, it has to do
21 with using native format rather than PDF versions of
22 documents when you're looking at them to cite.

23 So click on the little thing that says PDF, and we
24 can avoid some problems with confusion.

25 Another problem or question has been posed

1 concerning extension files applied to data in several of the
2 Postal Service's library references. In some of the files
3 that have been submitted, at the end of the little title,
4 not the title of the document, but rather the way it's
5 listed in the computer, it will say .SAS, S-A-S, extension.
6 That's an extension notice on a file.

7 But the files, in fact, are actually data files
8 and not SAS program files. And in cases where the .SAS
9 extension must be -- in cases where the files are data files
10 and not SAS program files, you have to change the extension
11 in your computer. You just go in there, and you get rid of
12 the .SAS, and you put in .DAT, okay?

13 And if you do that, where you have been unable to
14 open a file in a library reference, you will then be able to
15 open the file, as I understand it. I see somebody who seems
16 to understand this, nodding in agreement with me, so I'm
17 glad that we seem to have gotten this one right.

18 If you have a problem opening a file that's got
19 .SAS, S-A-S on the end of the title, then please give your
20 computer office a call at 789-6873, and they will endeavor
21 to assist you in figuring out how to open up that document
22 so that you can use it.

23 A word or two about briefs: It's a little early
24 to talk about briefs, but nevertheless, as you are well
25 aware, briefs are exceptionally important.

1 They tie together your arguments in an
2 understandable manner, and it is very helpful to include
3 record citations to support your arguments.

4 In our last omnibus rate case, we encouraged
5 participants to submit trial briefs just prior to the
6 appearance of their witnesses. This innovation was helpful
7 to the Commission, and the proposed procedural schedule that
8 was issued contained proposed dates for filing trial briefs.

9 Of course, participants are not required to file
10 these briefs, however, a clear statement of how the
11 testimony you are sponsoring establishes important facts,
12 will enhance our understanding, and will help to put the
13 large amount of testimony that we're going to hear, into a
14 usable context.

15 Trial briefs should also contain an explanation of
16 the theoretical and public policy considerations that you
17 believe the Commission should give weight to.

18 A couple of recent filings warrant special
19 comment: I want to compliment the Postal Service and UPS
20 for working together, hand-in-hand, agreeing to discuss ways
21 to overcome potential problems concerning cost data on
22 specific advertising programs.

23 We've had a minimum of motion practice in this
24 case to date, and I think it must be the direct result of
25 parties attempting to resolve differences informally. The

1 Commission very much appreciates this effort and urges that
2 you all continue it.

3 On Monday, the Postal Service filed a motion for
4 late acceptance of five interrogatories posed by OCA. The
5 motion is noteworthy, only because there have been very few
6 requests for extensions so far in this case.

7 Again, I consider this to be the direct result of
8 efforts to meet applicable deadlines, and the Commission
9 appreciates the effort that the Postal Service is putting
10 forward now, and anticipates that all the other parties to
11 this case are going to attempt to meet time limits.

12 Unless there is an objection, I will grant the
13 February 14th motion of the United States Postal Service for
14 late acceptance of response to interrogatories, OCA/USPS
15 46-50. Do I hear an objection?

16 [No response.]

17 CHAIRMAN GLEIMAN: No objection. I suspect that
18 you have to index this ruling also at the front end of
19 today's transcript, Mr. Reporter.

20 [Chairman's ruling indexed.]

21 CHAIRMAN GLEIMAN: Now, if we can turn to some
22 more substantive issues: Notice of Inquiry No. 1 raised
23 questions concerning the data used by the Postal Service to
24 develop its projected test year cost and revenues.

25 The Postal Service uses some FY-98 data for these

1 purposes -- excuse me, uses some FY-99 data for these
2 purposes, but largely uses FY-98 data.

3 The Notice of Inquiry No. 1 raised the possibility
4 that FY-99 data might be available soon, and that this more
5 recent data might allow for better projections.

6 As the first step, it asked the Postal Service to
7 provide information on when an audited '99 CRA report would
8 be available, and when the '99 billing determinants would be
9 available.

10 The Postal Service provided this information, and
11 in case anyone has not had an opportunity to review the
12 Postal Service's response, I'd ask Postal Service counsel
13 just to provide a brief oral summary of what they told us in
14 that response.

15 MR. FOUCHEAUX: Thank you, Mr. Chairman. On the
16 question of when the audited Postal Service version of the
17 Cost and Revenue Analysis Report for FY-99 might be
18 available, what we stated is that we currently have
19 underway, a pretty intense effort to produce that as soon as
20 possible.

21 We believe, a reasonable expectation is that it
22 will be available sometime in mid-April, however, it could
23 be available as soon as the first of April or shortly
24 thereafter. We will try to meet the earlier date.

25 With respect to the billing determinants, which

1 are also very important, what we stated is that the people
2 who are responsible for developing these billing
3 determinants, by and large are the same rates witnesses that
4 we have in the case, who are currently occupied with
5 discovery, which generally tends to take up most of their
6 time.

7 They are going to be endeavoring to produce
8 billing determinants as soon as possible. We think, if we
9 are not so overburdened with discovery that it becomes
10 impossible, we might be able to have billing determinants
11 for FY-99 by the end of March.

12 CHAIRMAN GLEIMAN: You made reference in your
13 response to the fact that -- in the middle of the first page
14 it says, for example, detailed information on FY-99 were
15 utilized, and it then goes on to mention three witnesses.
16 These are primarily volume-type witnesses, Dr. Tollex, Mr.
17 Thress, and Dr. Musgrave.

18 Could you give us a complete list of all the
19 witnesses who may have used FY-99 data? For example, did
20 any of the costing witnesses use any '99 data in their
21 testimony?

22 MR. FOUCHEAUX: I believe some '99 data were
23 inputs to some of the models, Mr. Chairman. I hesitate to
24 try to be comprehensive today. If we could provide that to
25 you in writing -- and it's pointed out me that we have some

1 current discovery, asking exactly this question, that we're
2 working on, and we should provide either an objection or
3 answer to that.

4 CHAIRMAN GLEIMAN: I don't recall having seen that
5 interrogatory, but if there is such an interrogatory, the
6 I'll defer to the interrogatory, and we'll look for the
7 response there.

8 I did notice that in the testimony of Witness
9 Stevens, that there was a reference to the fact that Stevens
10 had gone to a certain degree, using base year data from 1996
11 and 1998, and then goes on to say -- and this is on page 19
12 at line 22 of his testimony, starting in FY-99, we will use
13 data directly from VMAS for purposes of determining certain
14 types of transportation costs.

15 You know, when I saw this, it just made me wonder,
16 you know, whether there were others who were already
17 incorporating FY-99 data, and the extent to which it had
18 been incorporated. And I think this is important,
19 regardless of when we get the CRA, for everybody to
20 understand that we may be dealing with data off of two
21 different song sheets, as the case may be.

22 So, we will look forward, as I'm sure everyone
23 else will, to the response to that interrogatory.

24 The Notice of Inquiry announced that participants
25 would have opportunity to file written statements concerning

1 how or whether the '99 CRA and billing determinant data
2 could be used in this case or should be used in this case.

3 And those written comments may be more useful if
4 we take a few minutes this morning to identify issues on
5 which there is general agreement and issues on which there
6 may be some differences of opinion.

7 Is there any participant who believes that the
8 Commission should ignore Fiscal '99 data, and on the other
9 side of the coin, who believes that the Commission could --
10 should completely replace Fiscal '98 CRA data and billing
11 determinants with Fiscal '99 data? Does anybody care to
12 comment on that today, or would you prefer to hold your fire
13 until the comments?

14 Mr. Straus? While Mr. Straus is making his way to
15 the front of the hearing room -- walk slowly, please -- I
16 would like to note at this point that the Commission
17 yesterday issued its Rules in our International Mail Report
18 Docket.

19 That's the report that we're required to do by the
20 Congress every year, and in that set of rules, the Postal
21 Service has an obligation to provide us at least an
22 unaudited CRA, '99 CRA, by the 15th of March, as I recall
23 from reading through the draft when we signed off on it.

24 So, I suspect that in any event, regardless of how
25 long the audited version may take, that we'd be looking at

1 an unaudited version here in the docket room by March 15.
2 The fact that it might be in another docket, an IM docket,
3 which is the docket that we established related to those
4 international reports, I don't think would make a
5 difference. It will be public information at that point in
6 time.

7 Yes, sir?

8 MR. STRAUS: You presented two rather extreme
9 positions, and I guess my position would be somewhere in
10 between, but the periodical publishing industry is faced
11 with a devastating increase in this case of 15 percent,
12 notwithstanding other numbers that have been thrown around
13 as averages.

14 And given that, the industry intends once again to
15 present a united and coordinated presentation to the
16 Commission. So these comments that I'm about to give you
17 are not only on behalf of American Business Press, but also
18 on behalf of Dow Jones, the Magazine Publishers of America,
19 the McGraw Hill Companies, the National Newspaper
20 Association, and Time-Warner, although each of them reserves
21 the right, of course, to add to or subtract from what I have
22 to say.

23 [Laughter.]

24 MR. STRAUS: Given the rather august group on
25 behalf of whom I intend to speak, I think I better pretty

1 much stick closely to a written script I have here, rather
2 than doing my normal adlibbing, because I may make a
3 mistake, and with my back to these people, I'd be in serious
4 trouble.

5 [Laughter.]

6 MR. STRAUS: Our Coalition does support the
7 Commission's request for Fiscal Year 1999 data. We're
8 concerned that the data must be available to Intervenors and
9 the Commission, and we're very concerned that there's a
10 mismatch in the data as it now exists in the record.

11 Basing rates on forecasts, as we know, is always a
12 risky undertaking, but it should be no more speculative than
13 the data will allow. No one can argue against the notion
14 that the leap from Fiscal Year 1998 to Fiscal Year 2001 can
15 be made with greater accuracy and more confidence, if the
16 complete Fiscal Year 1999 data are available. We know of no
17 legitimate argument to the contrary.

18 I should emphasize that this is not a situation
19 faced in many administrative proceedings where actual data
20 spring up late in a case, and differ from the forecast test
21 year data. We recognize the principle that the forecasts
22 must sometime be acceptable, and that actual data need not
23 always be substituted for estimates when the estimates are
24 reasonable when made and when use of the estimates will not
25 produce a significant injustice.

1 We are not proposing to substitute actual data for
2 the estimated test year data; rather, all we're asking is
3 that all available tools be used to assure the test year
4 forecasts are as accurate as possible, and doing so clearly
5 requires the Fiscal Year 1999 data be used.

6 In this connection, of course, it doesn't do us
7 any good to obtain Fiscal Year 1999 data, after our
8 testimony is prepared or after the record closes. We
9 suggest, therefore, that the procedural schedule, other than
10 discovery, be stayed, such that Intervenor's testimony is
11 due a reasonable time, perhaps six weeks after all Fiscal
12 Year 1999 data are made available.

13 We recognize that this delay could cause the case
14 to extend beyond the ten-month standard, but we should all
15 keep in mind that there is nothing magic about ten months.
16 That was an estimate made about 24 years ago, about how long
17 a case could take, and those of us who have been around for
18 all of those 24 years, know full well that a case today,
19 with probably 200 people in the service list, and library
20 references on CD ROMs is a far different case than existed
21 24 years ago when ten months was deemed reasonable.

22 We would expect in this connection, that the
23 Commission could and should solicit from the Governors of
24 the Postal Service an assurance that temporary rates would
25 not be imposed if, in fact, this case must extend beyond 10

1 months in order to fully utilize the Fiscal Year 1999 data
2 in the case. Our overriding concern in this regard is due
3 process for the participants.

4 I would like to read to you a brief passage from
5 one of favorite Court of Appeals cases, it is a very famous
6 case at the Federal Energy Regulatory Commission, the name
7 is Scenic Hudson Preservation Conference v. Federal Power
8 Commission. It tells you a lot about what your rule is in
9 this dispute. Here is the quote:

10 "In this case, as in many others, the Commission
11 has claimed to be the representative of the public interest.
12 This role does not permit it to act as a umpire blandly
13 calling balls and strikes for adversaries appearing before
14 it. The right of the public must receive active and
15 affirmative protection at the hands of the Commission. The
16 Commission must see to it that the record is complete. The
17 Commission has an affirmative duty to inquire into and
18 consider all relevant facts."

19 On that basis we think it is your obligation and
20 your duty to obtain the Fiscal Year 1999 data and to make
21 sure that it is used properly in this case. Thank you.

22 CHAIRMAN GLEIMAN: Any other comments?

23 MR. VOLNER: Mr. Chairman, on the merits I am
24 going to reserve my comments for the filing of written
25 comments. I think, in general terms, though, the

1 Commission's concern and the parties' concern, and Mr.
2 Straus' concern with the need of access to the 1999 data is
3 very well taken.

4 I cannot help but, however, -- Scenic Hudson is a
5 very famous case. There are some of us who are older than
6 others who worked on that case, and the only thing you need
7 to know is that it had to do with a power plant on the
8 Hudson River which was reported as leaking radiation
9 yesterday. So maybe we ought to find another case to
10 invoke.

11 [Laughter.]

12 CHAIRMAN GLEIMAN: Well, I would hope that your
13 comments will address a particular point that Mr. Straus
14 raised, trying to sort out exactly what it all meant. He
15 said that he didn't -- and I hope I understood and am not
16 misstating your position, that he did not feel that we
17 necessarily had to substitute '99 data for '98 data straight
18 up and down the line, but that it was important for all of
19 us to have the '99 data to ensure that there wasn't
20 something askew in the base year data, the '98 data, that we
21 already all have.

22 If someone would take the time and a few lines in
23 their comments to explain somewhat about how one would
24 determine, from year to another, whether data might be askew
25 or not. Costs do change. I mean I have looked at CRAs for

1 a bunch of years now and some of you who are older, and some
2 of you who are younger than I am have looked at more CRAs
3 for more years and they don't always tell you what you might
4 expect to see based on what you saw the year before. And it
5 would be interesting if someone -- and helpful if someone
6 could give us some guidance as to how we might evaluate
7 changes from one year to the next in CRA data.

8 I look forward to the comments on the 23rd and I
9 can foresee additional changes to the procedural schedule
10 beyond extending the period for discovery on the Postal
11 Service cases that I mentioned a moment ago.

12 There are several questions of first impression,
13 if you will, raised by the Postal Service's filing. I found
14 rather unique the Postal Service's assumption that
15 legislation would be enacted that would directly impact on
16 the rates of publications, standard, non-profit ECR and
17 Library Rate mail. To my knowledge, no specific legislation
18 incorporating the Postal Service's proposals has yet been
19 dropped into the hopper on either side of the Hill, and I am
20 wondering, Mr. Foucheaux, whether you have some information
21 about the state of affairs with legislation that we might
22 not be familiar with.

23 MR. FOCHEAUX: I have no current information that
24 would shed light on that question, Mr. Chairman.

25 CHAIRMAN GLEIMAN: If and when such legislation is

1 introduced, will you undertake to file with the Commission a
2 copy as soon as it becomes available?

3 MR. FOUCHEAUX: We certainly will do that.

4 CHAIRMAN GLEIMAN: And the question that is most
5 interesting, of course, is, since the case, at least that
6 part of the case, is premised on the enactment of
7 legislation, and we all know that the legislative arena is
8 difficult to predict, what will happen if no such
9 legislation is enacted by the Congress before the Commission
10 issues its recommended decision?

11 It seems to me that if there is no legislation, we
12 have got a problem with a potential deficiency in areas in
13 question with regard to the filing. Would you care to
14 comment on what your expectation is if we don't get any
15 legislation?

16 MR. FOUCHEAUX: I think it is a reasonable
17 conclusion, Mr. Chairman, that if the law is not changed,
18 then the current law which has a bearing on the level of
19 rates for particular categories of mail will control the
20 situation.

21 CHAIRMAN GLEIMAN: Will the Postal Service want or
22 need to present additional evidence should there be no
23 legislation? And, if so, when would you foresee presenting
24 such evidence?

25 MR. FOUCHEAUX: I am not aware of any requirement

1 that would require the Postal Service to provide additional
2 evidence, Mr. Chairman. The Postal Service has made
3 proposals in accordance with the Commission's rules. These
4 particular proposals were conditioned on an event that may
5 or may not happen. If the Commission feels it needs more
6 information, the Commission is certainly free to ask for it
7 and we will do our best to try to provide it.

8 CHAIRMAN GLEIMAN: Do I understand correctly that,
9 at least at this point in time, your point of view is that
10 the underlying information that has been submitted would
11 support the development of rates in the absence of a
12 legislative proposal being enacted?

13 MR. FOUCHEAUX: The information we have provided
14 supports our proposal. The question of whether or not the
15 Commission would need additional information to make a
16 recommendation in accordance with the law is a question the
17 Commission I think should address.

18 CHAIRMAN GLEIMAN: We will address it when we get
19 there.

20 Next, I want to turn to the subject of Library
21 References. The Commission adopted new rules governing the
22 use of Library References, and it appears to me that the
23 Postal Service has been far more informative this time
24 around in notices of Library References than was the case in
25 R97. The Postal Service included with its request in this

1 case motions for waivers of the new Library Reference rules
2 to the extent that its practices have failed to comply with
3 the letter of the new rules.

4 The order giving notice of the Postal Service
5 request announced that participants would be given an
6 opportunity to discuss compliance with the Library Reference
7 rules at the pre-hearing conference. My primary concern at
8 this stage relates to so-called Category 2 Library
9 References. These are the witness foundation materials
10 consisting of material relating to the testimony of specific
11 witnesses, primarily that which is essential to the
12 establishment of a proper foundation for receiving into
13 evidence the results of studies and analyses.

14 Several witnesses refer to Category 2 Library
15 References as their work papers, and some witnesses have
16 included their studies in a Category 2 Library Reference.

17 I would like counsel to focus on what should be
18 the evidentiary status of materials contained in Library 2
19 References, and I have three related questions with regard
20 to the Library References.

21 (1) Can Postal Service witness rely on information
22 contained in Category 2 References, even though that
23 Reference has not been admitted into evidence?

24 (2) Can other participants' witnesses rely on
25 information contained in Category 2 References even though

1 that Reference has not been admitted into evidence?

2 And (3), can the Commission rely on information
3 contained in Category 2 Library References even though the
4 Reference has not been admitted into evidence?

5 It seems to me that the answer to all three
6 questions should be the same. If Postal Service witnesses
7 can rely on Library Reference information, then other
8 participants and the Commission must also be able to rely on
9 that information.

10 One solution to this issue would be to view
11 Category 2 Library References as the equivalent of work
12 papers in that they provide the foundation of testimony of
13 Postal Service witnesses. It has been our practice to treat
14 foundational work papers as properly sponsored even though
15 they have not been formally admitted into evidence.

16 Would any participant like to comment on creating
17 -- excuse me -- on treating Category 2 Library References as
18 equivalent to work papers for purposes of this case?

19 MR. FOUCHEAUX: Mr. Chairman, the Postal Service
20 would concur in that approach.

21 COMMISSIONER GLEIMAN: Any other comments? Mr.
22 McKeever?

23 MR. MCKEEVER: Mr. Chairman, I have a concern with
24 the Commission relying on information that has not been
25 admitted into evidence because there have been controversies

1 in the past where some parties have questioned Commission
2 findings based on material not admitted into evidence.

3 I think we do have to be careful to make sure that
4 if it is foundational material it is either going to be
5 admitted into evidence or not to make sure that we do not
6 have attacks on the Commission's findings and
7 recommendations on the ground that the material technically
8 was not admitted into evidence.

9 I do believe, and this is of course a controversy
10 that came up in a slightly different form in the last case,
11 and I do believe that the Postal Service and intervenor
12 witnesses if they are testifying as expert witnesses are
13 permitted to rely on certain types of material even though
14 those materials are not admitted into evidence.

15 I am not sure and I am not prepared here to take a
16 position on this issue, but I am not sure that the
17 Commission is in the same boat because the Commission does
18 have to base its findings and recommendations on record
19 evidence, and my concern is with protecting the integrity of
20 the Commission's findings and not having those findings
21 being attacked because of some technical omission and not
22 admitting certain materials into evidence.

23 I am not sure that is very helpful, except to pose
24 the question, but I think that we should all err on the side
25 of caution and if certain materials are going to be treated

1 as foundational materials, which the Commission is entitled
2 to rely on, then there ought to be a motion at the
3 appropriate point in time for those materials to be admitted
4 into evidence.

5 COMMISSIONER GLEIMAN: Thank you. Are there any
6 other comments? I am going to let you guys duke it out.
7 There are three of you heading for the mike.

8 MR. MAY: Timothy May, Mr. Chairman. I find
9 myself in the rare instance of agreeing with Mr. McKeever.
10 In fact, I think we have had this controversy in previous
11 cases with Mr. McKeever.

12 It seems to me just fundamental that if it is not
13 in the record you can't rely on it. Now on the other hand,
14 if you are going to say that automatically a witness's
15 foundation papers will be admitted into evidence, even
16 though not printed in the record, that may deal with the
17 problem because it means that that foundational material, be
18 it work papers or something else, is something that that
19 witness is attesting to.

20 If it is his own work product, then clearly he can
21 sponsor that and attest to it. If it is somebody else's,
22 then it seems to me that the somebody -- that we have a
23 problem, because if it is not something that the witness
24 himself can vouch for, I don't know -- even though he says
25 he is relying on it, if it is an objective report that we

1 can all take notice of, that's one thing, but if it is some
2 obscure anonymous piece of work that some stranger did and
3 the witness says, well -- "Where did you get the number?" --
4 "Why I got it from that document." I don't think that
5 document properly is in the record, even though the witness
6 says that's where I got it.

7 So I think it is a little more difficult than
8 simply to sweep it all up and say we will treat all Category
9 2 as though the witness's work papers, because the witness
10 can indeed vouch for his own workpapers. Thank you.

11 COMMISSIONER GLEIMAN: Thank you. We will let Mr.
12 Hall go next so that Mr. May can have his chair back.

13 MR. HALL: To make room for musical chairs here.

14 Mr. Chairman, I think the key to this is notice to
15 the parties that whatever party is using a library reference
16 of whatever category intends to make it part of the record
17 or whatever relevant portion the party wants to make part of
18 the record so that the opposing party can have the
19 opportunity to scour the document, examine the witness about
20 the document and the witness's relation to the document and
21 then, to borrow your phrase, duke it out in front of you to
22 see whether it comes into evidence or not, but I think it
23 needs to be in evidence if you are going to rely upon it.

24 COMMISSIONER GLEIMAN: Mr. Levy.

25 MR. LEVY: Thank you. Mr. Chairman, I think that

1 the participants need not only notice but the opportunity to
2 confront the party relying on the foundational material if
3 it is sought to be relied on to support a conclusion.

4 Now in most cases, that right is not going to be
5 exercised. I mean if you have a witness relying on Postal
6 Service records kept in the ordinary course of business,
7 compilations of data from all over the country, and there is
8 not a -- nobody has raised a reason for challenging the
9 reliability of the way the data are collected or maintained,
10 cross examining a witness on that is going to lead to a
11 description of these were kept in the ordinary course of
12 business, and then the cross examiner is going to run into a
13 stone wall, a cement wall. I don't mean stone walling.

14 The reality is as a practical matter when you have
15 a large organization and tons of data, it's not going to go
16 beyond that, but if there is a reason, a legitimate,
17 plausible reason raised to question the reliability of the
18 underlying source data, then the parties who are adversely
19 affected by the source data have the right to, should have
20 the right to not only notice of the data but also a live
21 witness to cross examine about it.

22 You may remember, the Commissioners who were here
23 at the end of the last case, the issue we had about the
24 underlying source data for the mail that was entered at
25 commercial rates bearing nonprofit markings, and that turned

1 into an inquiry of source data that really couldn't -- that
2 I think cast doubt on the records but couldn't have happened
3 without an opportunity for discovery and cross examination
4 of the records, so the bottom line is regardless of which
5 category of work papers it is called or library references,
6 if it is material and there is a reason, legitimate reason,
7 raised to question it, there ought to be an opportunity for
8 notice and confrontation.

9 COMMISSIONER GLEIMAN: Thank you.

10 MR. McBRIDE: Mr. Chairman, Members of the
11 Commission, Michael McBride for Dow Jones.

12 I just want to add one caveat, and I think this
13 record already reflects a good example of that caveat, Mr.
14 Chairman. I agree generally with what Mr. Levy just said,
15 but there is actually a rule of evidence on this that we
16 might actually apply to these proceedings and it is called
17 Rule 201 of the Federal Rules of Evidence, and it is about
18 judicial notice of adjudicative facts.

19 It allows the Commission or any adjudicatory body
20 to rely on material that is either, one, generally known
21 within the territorial jurisdiction of the trial court --
22 well, here it is obviously the Postal Service's data and the
23 records of this Commission, and you already noted for
24 example a ruling you made yesterday which you would be
25 entitled to rely on in this docket without incorporating it

1 here; or two, capable of accurate and early determination by
2 resort to sources whose accuracy cannot reasonably be
3 questioned.

4 So I would suggest to you that you could take
5 judicial notice of things that are, generally speaking,
6 assumed to be beyond dispute. Official reports of the
7 Service, for example, Congressional reports and that sort of
8 thing, but I think work papers come into an entirely
9 different category. Can't generally make an assumption that
10 a witness's work papers are beyond dispute, so I think with
11 notice and the opportunity to cross examine those would have
12 to come forward and either be admitted into evidence or
13 people would be aware that you would be accepting them
14 generally as evidence, but otherwise I think you can take
15 notice of things in another category.

16 COMMISSIONER GLEIMAN: I appreciate that. The
17 Postal Service I am sure would like us to adopt other
18 Federal Rules also, like limiting discovery and cross
19 examination and the like, but I appreciate that. It is
20 useful to have something in another venue that maybe we can
21 model off of.

22 Well, we will have to wrestle when we get your
23 comments in on this matter in addition to those that we
24 heard today, and hopefully we will come up with something
25 that accommodates the concerns that have been expressed.

1 Has any participant encountered a problem with
2 library references that they would like to discuss at this
3 point in time?

4 MR. McKEEVER: Mr. Chairman, John McKeever for
5 United Parcel Service.

6 We did file a notice of a topic we intended to
7 raise today and it does relate to library references or at
8 least one library reference in particular.

9 If you are prepared to entertain those remarks
10 now, I can move to that subject.

11 COMMISSIONER GLEIMAN: You're up. We can do it
12 now.

13 MR. McKEEVER: Okay. We appreciate the
14 opportunity to raise this because it has presented an
15 obstacle to a timely analysis of some of the data that the
16 Postal Service is using and has relied on in support of its
17 proposals.

18 When the Postal Service filed its request, it
19 included among the many documents it filed a motion with
20 respect to Witness Yezer's testimony for protective
21 conditions with respect to some information that Witness
22 Yezer relied on.

23 That was a commendable approach, I think. The
24 situation we have run into is one where if the Postal
25 Service had taken that approach, and I am not faulting the

1 Postal Service here -- this may have been something that
2 counsel was not aware of -- but if they had taken that
3 approach in this case we might have had the ball advanced a
4 little bit further.

5 We were very interested in obtaining library
6 references dealing with RPW data -- that is Revenue Pieces
7 and Weight Data used by the Postal Service to estimate
8 volumes and revenues for the different classes of mail, and
9 we obtained one library reference in particular, Library
10 Reference 25, and when we put up the data or whatever the
11 technical expression for that is, we discovered that some
12 data was missing. Thinking that that was an oversight, we
13 contacted counsel for the Postal Service and pointed that
14 out to them and asked if we could have the missing data.

15 Counsel for the Postal Service at first also
16 thought it was an oversight, but then indicated a few days
17 later that the data was omitted because it included
18 commercially sensitive facility-specific information, much
19 the same way Witness Yezer's testimony contained
20 facility-specific information, and as a result the Postal
21 Service moved for protective conditions.

22 Now we have been working with Postal Service
23 counsel to get the data in a form that satisfies their
24 concerns that what they believe is commercially sensitive
25 information will be protected but that will also give us

1 data that we can use to replicate and analyze and evaluate
2 the data that they are relying on.

3 We have received excellent cooperation from
4 counsel, in this case in particular Mr. Hollies, and we
5 believe that within a few days we will have data that we
6 hope we can use but will also mask whatever they consider to
7 be commercially sensitive, but we are over a month into the
8 proceeding and we still have not yet had an opportunity to
9 look at that data.

10 Now I am not raising this for this particular
11 problem, because, as I mentioned, I believe we are going to
12 resolve that in a few days, but really to get guidance or
13 maybe assistance for the future as discovery proceeds.
14 There may be instances where the Postal Service will be
15 asked to produce other data that includes what it considers
16 to be commercially-sensitive information.

17 We would request that in those instances the
18 Postal Service make an effort to produce the data in a form
19 that will mask whatever they consider to be commercially
20 sensitive, of course notify the parties, and I assume they
21 would do this by the objection process, that there is other
22 information that they are not including because they
23 consider it commercially sensitive, so the parties can make
24 a decision whether they need that information or not and if
25 they need it then enter into protective conditions or

1 whatever so they can obtain access to it.

2 To boil it all down, Mr. Chairman, my request is
3 that the Postal Service consider and perhaps maybe with
4 guidance from the Commission adopt the approach that they
5 have with respect to the data relied on by Witness Yezer and
6 when information is requested that includes commercially
7 sensitive information, but other data can be provided in a
8 timely way so as not to raise their concern about the
9 commercially sensitive data, that they do that and then give
10 the parties notice, the requesting party notice that we are
11 going to supply you the data that you have requested which
12 is not commercially sensitive. We are going to take steps
13 to mask the commercially sensitive data, and then if the
14 party requesting the data has a problem we can of course
15 work it out with the Postal Service or come to the
16 Commission for a resolution.

17 CHAIRMAN GLEIMAN: I'm pleased to know that it
18 appears that in the particular matter that's on the table,
19 that you and the Postal Service seem to be working things
20 out.

21 With respect to us being a month into the case, as
22 I indicated earlier on, there is a fair to middling chance
23 that we're doing to extend the discovery period, which may
24 help a little bit with respect to your suggestion for how to
25 treat these situations in the future.

1 I'll let Mr. Foucheaux or one of his minions to
2 have an opportunity to comment.

3 MR. FOUCHEAUX: On the general proposal Mr.
4 McKeever makes, we think that's a reasonable approach to
5 this. I would like to point out that in the past, the
6 Postal Service has endeavored to mask commercially sensitive
7 information to make it most useful.

8 Perhaps what we haven't been always consistent in
9 doing is giving notice of the status of particular
10 information that we file with the Commission. In that
11 regard, in the future, it's certainly a reasonable
12 expectation that we might provide better notice, and we'll
13 certainly endeavor to do that.

14 CHAIRMAN GLEIMAN: I, once again, appreciate the
15 level of cooperation in resolving matters informally.

16 MR. FOUCHEAUX: Thank you, Mr. Chairman.

17 CHAIRMAN GLEIMAN: Thank you. Before I leave
18 library references, I just want to know whether any
19 participant would like to comment today on the Postal
20 Service's motion on waiver of rules governing library
21 references.

22 [No response.]

23 CHAIRMAN GLEIMAN: No takers? Does any
24 participant have another issue that they would like to raise
25 at this point in time?

1 MR. RICHARDSON: Mr. Chairman?

2 CHAIRMAN GLEIMAN: Yes.

3 MR. RICHARDSON: If I could go back to the Special
4 Rules, the new Special Rules that have been put into effect,
5 we have been asked by one of the Intervenors who is not here
6 today, and has been having some difficulty in receiving or
7 in having delivery of his interrogatories to the Postal
8 Service, and on getting those filed with the Commission.

9 He's out of town some distance from Washington,
10 and apparently his mail service is much longer than the
11 usual two or three days that he would anticipate.

12 It's really a question of the timing of the
13 response to interrogatories that it has arisen. The
14 Commission's Special Rules and the rules that the Commission
15 has always had, refer to the responses or the answers to
16 interrogatories are to be filed within a certain time period
17 of the service of the interrogatories.

18 And the Commission's Rule 12(f) talks in terms of
19 the service shall be the mailing date. However, it's been
20 Commission practice and the practice, I believe, of most of
21 the parties, to deem the date filed as the date tolling the
22 time period for responses to interrogatories.

23 This particular individual has discussed this
24 issue with the Postal Service, and the Postal Service has
25 been deeming the period for responses to interrogatories to

1 run from the date of the filing, the date that the
2 interrogatory is received at the Commission, rather than the
3 mailing date.

4 And because of the timeframes involved and the
5 distances involved, it's creating some problems with delays.
6 If we could perhaps get some type of clarification from the
7 Commission through the Presiding Officer, as to the intent
8 of the new Rules or the Rules as they have been, or perhaps
9 a comment from the Postal Service to determine if perhaps an
10 accommodation can be made on that area?

11 CHAIRMAN GLEIMAN: Mr. Foucheaux, would you like
12 to comment?

13 MR. FOUCHEAUX: Thank you, Mr. Chairman. Yes, we
14 are very familiar with -- it's Mr. Carlson's situation. And
15 normally we try to accommodate special circumstances
16 whenever possible.

17 In this case, Mr. Carlson, however, insists on
18 taking the position that the time limit starts to run from
19 the date we actually set eyes on his requests. And we
20 acknowledge that there may be some uncertainty created by
21 the words in the Rules in this respect, but we think a
22 reasonable approach to this is that the status of -- the
23 legal status of the interrogatory is triggered by the
24 filing, and not by the service or by constructive or actual
25 knowledge of what the actual question is.

1 We think that's a workable approach to this. We
2 think it applies to 99 percent of all the parties, and that
3 we shouldn't make an exception in Mr. Carlson's case.

4 CHAIRMAN GLEIMAN: Thank you, Mr Foucheaux. Do
5 you have any further comments, Mr. Richardson?

6 MR. RICHARDSON: Well, I would note that Mr.
7 Carlson does e-mail his interrogatories to the Postal
8 Service, I believe, as an accommodation, at the same time at
9 which he mails his interrogatories, so that the Postal
10 Service would have the full time period to answer these
11 interrogatories from the date of mailing, as a practical
12 matter.

13 CHAIRMAN GLEIMAN: Well, it's my understanding
14 that at least during my time here, that we've always
15 considered the time to run from the filing with the
16 Commission.

17 And while that may pose a bit of a problem, I
18 think that the existence of the website and the posting of
19 the documents, and the fact that Mr. Carlson is e-mailing
20 his interrogatories to try and get them to the Postal
21 Service more quickly, and that even though there's 14 days,
22 there's no obligation to wait until Day 14 to respond; that
23 we're going to stick with the rule that we've gone by, 10,
24 these many years. We're going to continue to count the days
25 from the date of filing with the Commission.

1 You know, I think that's no unreasonable, and I'm
2 sure that if the service is as bad as Mr. Carlson makes it
3 out, the mail service is as bad as Mr. Carlson makes it out
4 to be, we'll hear about that at some point in the future.

5 I don't do much mailing from here to California,
6 so I don't know, you know, whether there is that kind of
7 problem or not.

8 The final topic on today's -- are there any other
9 issues that anyone wants to raise? I knew I should have
10 moved right on.

11 [Laughter.]

12 MR. STRAUS: This may seem like a small point but
13 it's become, it's very disturbing when it hits.

14 The Postal Service during the case requests, and
15 we have always tried to accommodate the request that
16 material be hand-delivered to them. Hand delivering
17 material to the Postal Service is probably more difficult
18 than hand delivering it to the CIA.

19 [Laughter.]

20 MR. STRAUS: You cannot leave material with the
21 guard. You send a messenger, they have to call -- the guard
22 has to call upstairs.

23 If the guard gets voice mail, they won't take the
24 material. I had a messenger that they sent, tried to send
25 to the loading dock to go outside under the street, around

1 to the back, across the street. He got lost and never made
2 it.

3 [Laughter.]

4 MR. STRAUS: If there is some way the Postal
5 Service could establish a drop-off point for material -- we
6 are just not going to do it anymore.

7 We are not going to hand serve. I am not going to
8 send one of my employees and spend half an hour or 45
9 minutes trying to hand deliver material to the Postal
10 Service. The commercial messenger services give up and
11 leave when the guards call up.

12 The Postal Service is not full of national secrets
13 and I have spoken to the Security people over there. They
14 thus far, and maybe the rules have changed this year, but
15 they will not allow us to drop off materials at a guard's
16 desk or anywhere else. They have to stand there until
17 somebody calls upstairs and somebody comes downstairs to
18 pick it up. It just doesn't work.

19 COMMISSIONER GLEIMAN: According to what the
20 Postal Service has told Mr. McKeever from time to time, they
21 are full of national security secrets.

22 [Laughter.]

23 COMMISSIONER GLEIMAN: But be that as it may, we
24 will let Mr. Foucheaux have a shot at that. Perhaps there
25 is some reasonable way to accommodate your interest in

1 accommodating the Postal Service.

2 MR. FOCHEAUX: All I can say is that I share your
3 pain --

4 [Laughter.]

5 MR. FOCHEAUX: -- because we have the same
6 arguments with our own internal Security people. We will
7 make another run at this, and try to see if we can establish
8 a drop-off point, but I will note that we have tried this
9 numerous times before and it just hasn't worked. That is
10 one of the unfortunate consequences of working in a
11 bureaucracy.

12 COMMISSIONER GLEIMAN: Well, at the risk of
13 getting nailed for an ex parte communication, I am willing
14 to call Bill Henderson and see if we can get something
15 worked out.

16 MR. FOCHEAUX: I may very well take you up on
17 that, Mr. Chairman.

18 COMMISSIONER GLEIMAN: And I say that because I am
19 hoping that someone will then ask me to recuse myself from
20 the case.

21 [Laughter.]

22 COMMISSIONER GLEIMAN: Because I am sharing
23 everybody's pain right now.

24 Well, hopefully we can work something out on that,
25 and if there is something that we can do to assist, I mean I

1 think that it is important when the intervenors are trying
2 to make the system work more smoothly if we can do something
3 to accommodate them.

4 The final topic of discussion at today's
5 conference is schedule for conducting the case. The
6 Commission has a history of adjusting its procedural
7 schedule in order to provide participants with the maximum
8 amount of meaningful participation possible during the 10
9 months that is allowed by statute.

10 You may recall that in R97 the Commission acceded
11 to requests from participants and extended the discovery
12 period on the Postal Service and the period between the
13 conclusion of the hearings on Postal Service evidence and
14 the date for filing direct cases of participants other than
15 the Postal Service.

16 Several parties have suggested, both in writing
17 and here today, the need for more time for these events in
18 this instant case. The requests remind me of two precepts
19 that seem to apply. First is let no good deed go
20 unpunished. Obviously the Commission should not have been
21 so generous in 97. The second principle is that anything
22 that can go wrong will go wrong, and we were trying to save
23 a little bit of time to accommodate whatever it is that is
24 going to go wrong at some point in this case.

25 I remember very clearly warning a roomful of

1 attorneys in the R97 prehearing conference that although the
2 Commission was providing extra time for discovery and the
3 preparation of participants' direct evidence, there was no
4 additional leeway in the procedural schedule and that short
5 of an Act of God the schedule would not be extended further,
6 and I guess our problems with library references must have
7 been equivalent to an Act of God because we wound up with
8 another extension of the schedule.

9 The long and the short of it is I am somewhat
10 leery about extending the procedural schedule, so much so
11 that the Commission does not have time to carefully review
12 the evidence before it and prepare a cogent and reasoned
13 opinion and recommended decision within 10 months.

14 On the other hand, if we don't allow enough time
15 for good evidence, no matter how much time we have to
16 prepare our decision it is not going to be the best that it
17 could be.

18 I mentioned earlier that some participants might
19 contend that additional time would be required if the
20 Commission were to announce its intention to use Fiscal '99
21 data and I can foresee other problems arising that might
22 generate requests for delay.

23 I saw the comments that came in. I have already
24 said a couple of times that the inclination at this point is
25 to extend the discovery period and slide the schedule a

1 little bit in relation to that. Would anyone care to
2 elaborate on their written suggestions or otherwise comment
3 on the procedural schedule proposed in Ruling Number 1?

4 Okay. Well, just let me say while you are
5 approaching, Mr. Olson, that while I appreciate the
6 suggestion that we could simply ignore the law because the
7 law was written 24 years ago when cases were simpler, I am
8 disinclined to do that because I know somebody that suggests
9 that I ignore the law will come back and beat me up later
10 for doing just what they suggested, so yes, sir?

11 MR. OLSON: Mr. Chairman, after filing nine pages
12 of comments on the calendar, there's little more that I
13 could possibly think to say but I would suggest that we
14 weren't trying to punish the Commission for having been
15 generous in R97-1.

16 As a matter of fact, the exemplar that we used for
17 our proposed extensions in the schedule that has been
18 offered so far in this docket was the original schedule in
19 R97-1, and we think that was an inspired schedule and we
20 would suggest that that gave enough time to develop the type
21 of record that is necessary for the Commission to do its job
22 at the tail end of the proceeding, and we were suggesting in
23 addition to the one week of discovery that I am glad to see
24 the Commission's considering seriously that there be two
25 additional weeks between the close of hearings on the Postal

1 Service's direct case and the filing of the intervenors'
2 case-in-chief.

3 Right now it is a scant seven days and that
4 doesn't give much time to -- either you are participating in
5 the cross examination of Postal Service witnesses or you are
6 working on your case-in-chief. You can't easily do both.

7 Lastly, an additional week between the completion
8 of discovery to intervenors and OCA and the filing of trial
9 briefs, this also has the effect, as some of the other
10 parties have pointed out to me, that it gives an adequate
11 period of time between the date on which the intervenors and
12 the OCA cases-in-chief are filed and the date on which
13 rebuttal evidence to that evidence is filed.

14 In R97-1, the original schedule provided for 77
15 days in that timeframe. This schedule gives 66 days and we
16 are urging it be 73, so there are different extensions and
17 we do believe that the amount of time that is given to the
18 intervenors now will redound to the benefit of the
19 Commission as you make your decisions.

20 COMMISSIONER GLEIMAN: Well, we are either going
21 to do one of two things. We are either going to revise the
22 schedule once we get people's comments on the '99 data and
23 look again at the comments that we have received on the
24 procedural schedule before today and the ones that you
25 presented today.

1 In the alternative, several of my colleagues have
2 developed an astonishing track record of getting settlements
3 in any cases on which they are the Presiding Officer. I
4 think one of the alternatives may be to defer to one of my
5 colleagues. Commissioner Omas and now Commissioner LeBlanc
6 seem to have developed a knack for getting settlements and
7 based on what I have seen so far in the discovery I know
8 that we can do that in this case. I just know it, so -- no,
9 but all kidding aside, we will take a look at the comments
10 again and the concerns you have expressed both before and
11 today, and we will issue a revised procedural schedule some
12 time late next week.

13 Are there any other matters that anyone wishes to
14 raise today?

15 MR. FOUCHEAUX: Mr. Chairman, I would like to make
16 a comment on the schedule.

17 I certainly understand the inclination of the
18 parties and perhaps the Commission to want to discovery
19 period on the Postal Service, and it certainly is reasonable
20 in the context of possible introduction of new information
21 that may have a significant bearing on the outcome of the
22 case.

23 However, I would like to see just a refinement in
24 that thinking that has to do with certain Postal Service
25 testimony will probably be little affected by the new

1 information, and somehow it seems unfair to extend discovery
2 on all of the Postal Service's witnesses when I think the
3 Commission initially proposed a reasonable amount of
4 discovery on the whole case.

5 I understand that circumstances may change with
6 the introduction of new information but that information may
7 not have a bearing, so I would encourage you to consider
8 this when you decide to extend the schedule.

9 COMMISSIONER GLEIMAN: I appreciate your comments,
10 Mr. Foucheaux.

11 I think it has been pointed out to us that we did
12 provide perhaps less time for discovery on the Postal
13 Service's case-in-chief than in some earlier proceedings,
14 and then of course we have got the complication of the new
15 matter, but it will be of great interest to see the response
16 to that interrogatory that you mentioned earlier on that
17 asks you to list which witnesses have already used '99 data
18 and which have not, and I suspect that when we know about
19 when we are going to get the '99 and we have that list in
20 hand that there will be suggestions for more or less
21 discovery and I am certainly open if there are witnesses
22 whose testimony is not touched in any matter by additional
23 data that is brought in to perhaps limiting further
24 discovery on them to a reasonable, agreed upon amount of
25 time and allowing additional discovery where new data does

1 affect the testimony of particular witnesses, so we will
2 just wait until we get some of that material and we will
3 make some judgments and try to accommodate everybody's
4 concerns as best we can.

5 MR. FOUCHEAUX: In that regard, Mr. Chairman, I am
6 reminded that the interrogatory in reference is not just one
7 interrogatory but I believe it is an interrogatory, a
8 separate interrogatory to every Postal Service witness, so
9 we might have some indication of where the guidelines would
10 be established in that respect.

11 COMMISSIONER GLEIMAN: Thank you very much. I
12 appreciate your comments.

13 If there is nothing further, that brings the
14 prehearing conference to a close today.

15 I am going to give my colleagues an opportunity to
16 comment if they would like on anything that has transpired
17 here or anything that they might like to bring up.

18 [No response.]

19 COMMISSIONER GLEIMAN: No takers? Okay. That
20 being the case, I want to thank you for your participation
21 today and we look forward to working with you during the
22 coming months.

23 The conference is adjourned. Have a good day.

24 [Whereupon, at 11:17 a.m., the prehearing
25 conference was concluded.]

