

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

RECEIVED
Jul 27 2 20 PM '01
POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

Complaint on Sunday
and Holiday Collections

)
)

Docket No. C2001-1

RESPONSE OF THE OFFICE OF THE CONSUMER ADVOCATE TO
COMPLAINANT'S RESPONSE TO PRESIDING OFFICER'S RULING NO. C2001-1/1
AND COMMENTS ON NATURE OF EVIDENTIARY PRESENTATION
(July 27, 2001)

The Office of the Consumer Advocate ("OCA") hereby responds to the Douglas F. Carlson ("Complainant") response to Presiding Officer's Ruling No. C2001-1/1 and comments on the nature of the evidentiary presentation, filed July 17, 2001. The Presiding Officer's Ruling No. C2001-1/1¹ provides that participant's may file responses to Complainant's filing by July 27.

The Complainant indicates that he plans to submit a limited amount of testimony and that it is not likely to consist of a substantial amount of new data or factual information. He further states that he currently "may be able to meet the August 17, 2001, deadline for filing testimony," as established by the Presiding Officer's ruling. Complainant's ability to meet the August 17 filing date is, however, subject to his review of interrogatory responses directed to the Postal Service requesting data about the Collection Box Management System (CBMS) database. He states that upon review of the requested data, it may be necessary for him to move for an extension of the August

¹ "Presiding Officer's Ruling on Postal Service Request for Extension of Time," June 4, 2001.

17, deadline. The Presiding Officer granted on July 23, 2001, a significant portion of Complainant's motion to compel a response to his interrogatories about the CBMS database. It is now unclear whether Complainant will move for an extension of the August 17 date for filing testimony.

The Presiding Officer's Ruling No. C2001-1/1 also provided that other participants may indicate the nature of their presentations and suggest a procedural outline by July 27, 2001. At this time, the OCA does not plan to present direct testimony on the issues raised in this proceeding. However, the OCA reserves the right to indicate at the appropriate time (the Complainant proposes September 27) whether the OCA plans to submit rebuttal testimony in this proceeding.

The OCA supports the proposed filing date of August 17 for Complainant's testimony. The OCA also has no objection to the proposed September 7 date for submission of written discovery on the Complainant's case and September 27, as the date for participants to indicate if rebuttal testimony will be submitted. Given the possibility that Complainant may seek an extension of time for the filing of testimony and because of the unresolved nature and extent of oral cross-examination, the OCA believes it is premature to attempt to establish dates for filing briefs.

Complainant proposes that the Presiding Officer consider requiring oral cross-examination only upon a showing of need by the Postal Service or another party for a full and true disclosure of the facts. Complainant contends the Postal Reorganization Act does not require oral cross-examination in proceedings heard pursuant to §3662 and which do not involve a rate or classification matter. Complainant notes that other sections of the Postal Reorganization Act specifically require compliance with hearing

procedures prescribed by §§556 and 557 of the Administrative Procedure Act whereas, Complainant notes, the applicable portion of §3662 contains no such requirement.

The OCA suggests that even if Complainant is correct in the analysis of the statutory requirements, the Presiding Officer should carefully consider all circumstances before dispensing with oral cross-examination over the objection of one of the parties. At this time there is no indication whether oral cross-examination will be desired by any party. Also, in a case such as this with few participants, eliminating oral cross-examination may appear to be an easy alternative to eliminate an inconvenience to one of the parties. However, the precedent established by eliminating oral cross-examination should be considered. If there is no real need to reject a request for oral cross-examination, the Presiding Officer should be reluctant to deny the request. The Complainant would place the burden on the parties to demonstrate that oral cross-examination is necessary because "they have been unable to achieve a full and true disclosure of the facts via written cross-examination." (Response at 4). On the other hand, it is not clear whether Complainant is suggesting the test should be applied to all §3662 cases of this type under the Postal Reorganization Act. Alternatively, Complainant may be suggesting that cross-examination might be eliminated if it is not necessary for a full and true disclosure of the facts only after individual participants, such as Complainant, first demonstrate (or claim) a significant financial burden if oral cross-examination is required.

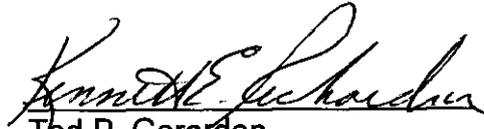
The OCA suggests that if oral cross-examination is a burden, the Presiding Officer consider oral cross-examination via a transcribed telephone conference call. While a telephonic presentation may not be satisfactory in all instances, in this case, the

small number of participants would easily permit such a procedure. The local parties, the Presiding Officer and the reporter could convene in the Commission's hearing room with the individual appearing for cross-examination via a telephone conference call. While unusual, this procedure would allow for the give-and-take of oral cross-examination with only limited adjustment to the process, and yet minimize Complainant's expenses. In any event, the need to alter the usual hearing procedure should first be demonstrated by the participant requiring the relief—in this case the individual Complainant—before shifting the burden to other participants to demonstrate a need for oral cross-examination for a full and true disclosure of the facts.

Wherefore, the OCA supports the dates proposed in the Complainant's Response. As to the Complainant's suggestion that parties should justify requests for oral cross-examination, the OCA urges the Presiding Officer to give careful consideration to the tests to be applied before rejecting a request for oral cross-examination. As an alternative, the OCA suggests that if oral cross-examination is necessary and the Complainant requires relief, the Presiding Officer give consideration to providing for oral cross-examination through a telephone conference call.

Respectfully submitted,

OFFICE OF THE CONSUMER ADVOCATE



Ted P. Gerarden
Director

Kenneth E. Richardson
Attorney

1333 H Street, N.W.
Washington, D.C. 20268-0001
(202) 789-6830; Fax (202) 789-6819

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document upon all participants of record in this proceeding in accordance with Section 12 of the Rules of Practice.



Kenneth E. Richardson

Washington, D.C. 20268-0001
July 27, 2001