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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

PRESIDING OFFICER'S
RULING NO. C2001-1/11

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

Complaint on Sunday and Holiday Collections

Docket No. C2001-1

PRESIDING OFFICER'S RULING ON
SCHEDULING OF PROCEEDINGS

(Issued August 23, 2001)

Presiding Officer's Ruling No. 1 established a July 20, 2001 date for the Complainant to file a notice indicating the nature of the presentation that he expects to file in this proceeding, and his suggestions of procedural steps to follow to bring this proceeding to a conclusion.¹ Participants were given until July 27, 2001 to respond to the Complainant's notice, and to file a similar notice of their own. In addition, a preliminary date of August 17, 2001 was established for the Complainant to file his case-in-chief.

Douglas F. Carlson, the Complainant, timely filed in response to POR No. C2001-1/1 on July 20, 2000.² He subsequently filed a further response that delayed the schedule that he proposed in the initial response because of pending discovery disputes.³ He now indicates that he intends to submit direct testimony by September 17, 2001. He suggests an October 10, 2001 date for close of discovery on his

¹ POR No. C2001-1/1, issued May 18, 2001.

² Douglas F. Carlson Response to Presiding Officer's Ruling C2001-1/1 and Comments on Nature of Evidentiary Presentation, filed July 20, 2001 (Response).

³ Douglas F. Carlson Further Response to Presiding Officer's Ruling C2001-1/1 and Comments on Scheduling Issues, filed July 31, 2001 (Further Response).

testimony. He no longer proposes dates for participants to indicate if they will file rebuttal testimony, filing of rebuttal testimony, filing of briefs, or filing of reply briefs.

Carlson also proposes that consideration be given to only requiring oral cross-examination upon a showing of need by another participant. He states that the Administrative Procedure Act (APA) is useful for guidance. He interprets section 556(d) of the APA as contemplating cross-examination only when necessary for a full and true disclosure of the facts. Furthermore, he concludes that cross-examination need not be oral. Carlson argues that the "burden should be on participants requesting oral cross-examination of witnesses to demonstrate that they have been unable to achieve a full and true disclosure of the facts via written cross-examination." Carlson mentions the financial burden that he would incur in making an appearance given the distance between his home in California, and the Commission in Washington, DC. He has not, as requested in POR No. C2001-1/1, specified when his witness(es) will be available for examination at a hearing.

The Office of the Consumer Advocate (OCA) timely filed in response to POR No. C2001-1/1 on July 27, 2000.⁴ The OCA indicates that it does not intend to file direct testimony, and has not determined whether it will submit rebuttal testimony in this proceeding. The OCA supported the scheduling dates originally proposed by the Complainant, but believes it premature to establish filing dates for briefs. The OCA did not comment on the revised dates proposed in the Complainant's Further Response.

The OCA does comment on the Complainant's proposal that oral cross-examination only be required upon a showing of need by another party for a full and true disclosure of the facts. Its expresses concern over eliminating oral cross-examination, and over establishing a burden on the party requesting oral cross-examination to show a need for such examination. The OCA's position is that the need to alter the usual hearing procedure should first be demonstrated by the participant requesting relief, before shifting the burden to other participants to show a need for oral

⁴ 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, filed July 27, 2001.

cross-examination. The OCA concludes by suggesting that if oral cross-examination is a burden, consideration should be given to oral cross-examination via a transcribed telephone conference call.

There has been a flurry of motions practice since the scheduled date for close of discovery. This practice has caused a delay in the anticipated proceeding schedule. Participants are again encouraged to use informal methods to resolve discovery disputes before filing motions. Informal methods should be employed to narrow the focus of potentially objectionable interrogatories where possible. Likewise, the unobjectionable portions of that material should be provided forthwith, and not withheld until the overall discovery dispute is resolved.

To facilitate reaching a conclusion in this proceeding, this ruling establishes a schedule through the possible submission of rebuttal testimony. Any request for adjustments to this schedule shall be made by motion. The date of September 17, 2001 is acceptable for submission of Carlson's direct testimony. The proposed date of October 10, 2001 for close of discovery directed to Carlson is unopposed and thus accepted. An October 17, 2001 date shall be established for participants to indicate whether they intend to submit rebuttal testimony. The date for filing of rebuttal testimony, if necessary, shall be November 19, 2001. It is premature to set dates for briefs and reply briefs at this point in the proceeding.

Dates related to the entry of evidence into the record and of a possible hearing also must be established. The tentative date for the hearing to enter the Complainant's direct testimony and other evidence into the record, and for possible cross-examination shall be November 5, 2001. Participants shall indicate the need to cross-examine the Complainant by filing notice with the Commission by October 17, 2001.⁵

⁵ Participants are requested to provide Complainant with the maximum amount of notice if they expect to want to orally cross-examine. The Complainant, by motion, may at that time plead any burden associated with appearing for cross-examination. Any such motion shall be filed with the Commission within seven days of the notice that indicates the need for cross-examination and should address the standards set out in Rule 33. A further ruling modifying standard hearing practice, or otherwise limiting cross-examination, cannot be made at this time without knowing the extent and contents of the written testimony, written cross-examination, or of an indication of need for oral cross-examination.

If a need is not indicated for oral cross-examination, the Complainant may move to submit his testimony for the record by affidavit.⁶ The motion also shall indicate any corrections or changes made by the Complainant to the original material. The deadline for filing the motion, affidavit and corrected testimony with the Commission shall be October 31, 2001.

Participants shall submit any notice of designation of written cross-examination of Complainant to the Commission by October 31, 2001. Two copies of the designated material shall be provided to the Commission at that time. If a hearing is held at the Commission, the written cross-examination will be entered into the record at that time. If a hearing is not indicated, the Complainant shall indicate by motion the necessary corrections or changes to designated written cross-examination, and request that the original material be modified accordingly. The deadline for filing the Complainant's motion with the Commission shall be November 9, 2001.

The initial institutional discovery responses provided by the Postal Service are not on the record of this proceeding and, at this time, the Postal Service is not required to assign an institutional witness to sponsor these interrogatories. Assuming that participants will rely on some of these discovery responses in their written testimony or briefs, it will benefit the participants and the Commission to have the pertinent discovery responses placed on the record for consideration through a stipulation and agreement.⁷ Any such stipulation and agreement shall state that the Postal Service has prepared the designated discovery responses, that signatory participants accept the accuracy of the

⁶ The affidavit shall be in the form of a declaration of authenticity. The following format is acceptable:

DECLARATION OF PARTICIPANT'S NAME

I declare under penalty of perjury, that the foregoing Direct Testimony of *Participant's Name* (*Testimony Identification Number*) was prepared by me, or under my direct supervision, and that if called to testify under oath, it would be my testimony.

Dated: September __, 2001

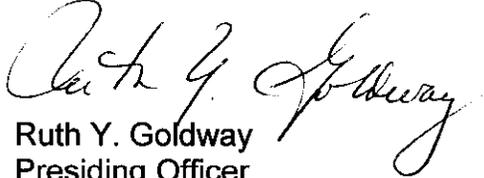
Participant's Signature
Participant's Printed Name

⁷ This proposal takes into account the limited number of participants, and technical requirements for developing a record in this proceeding.

discovery responses, and no party objects to treating the discovery responses as record evidence.⁸ Acceptance of this stipulation and agreement shall be requested by motion. If there is an objection to this proposal, the objection shall be filed with the Commission by September 7, 2001 along with alternative suggestions. Otherwise, the motion to accept the stipulation and agreement shall be filed with the Commission by September 24, 2001.

RULING

The schedule in attached Appendix A and explained in the body of this ruling shall be observed in this proceeding.


Ruth Y. Goldway
Presiding Officer

⁸ As a suggestion, the following procedure might be followed. Individual participants shall submit a specific list (including references to specific Library References) to the Postal Service of discovery responses to be included in the record by September 17, 2001. The Postal Service shall be allowed to make counter-designations to the list, and corrections as necessary. The Postal Service shall generate the stipulation and agreement, which must include the specific list of discovery items under consideration, and circulate the stipulation and agreement for signature to all participants. The Postal Service shall submit the signed stipulation and agreement to the Commission for acceptance, including two copies of each specified discovery response.

SCHEDULE

Objections to stipulation and agreement proposal	September 7, 2001
Complainant's filing of case-in-chief	September 17, 2001
Motion for consideration of stipulation and agreement	September 24, 2001
Discovery period concludes on Complainant's material	October 10, 2001
Participants' indication of intent to file rebuttal testimony	October 17, 2001
Participants' indication of need for oral cross-examination	October 17, 2001
Designation of written cross-examination	October 31, 2001
Hearing date to accept Complainant's testimony	November 5, 2001
Participants' filing of rebuttal testimony	November 19, 2001