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POSTAL RATE COMMISSION
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UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001

PRESIDING OFFICER'S
RULING NO. C2001-3/1

Complaint on First-Class Mail Standards

Docket No. C2001-3

PRESIDING OFFICER'S RULING ON RESPONSES
TO ORDER NO. 1320 SCHEDULING MATTERS

(Issued October 10, 2001)

Commission Order No. 1320 directed complainant Douglas F. Carlson (Carlson) to estimate the time needed for discovery against the Postal Service and preparation of his direct case, and allowed others to comment thereon. Mr. Carlson, Mr. Popkin and the Postal Service have filed responses. In general, Mr. Carlson seeks – and Mr. Popkin supports – deadlines that provide comparatively more time than the Service believes is appropriate. Mr. Carlson also asks for specific authorization to direct interrogatories to both the Postal Service and to postal employee Charles M. Gannon. Mr. Gannon has filed two declarations in this case, but is not formally a witness. Douglas F. Carlson Response to Order No. 1320, September 15, 2001 (Carlson Response) at 1-3.

The Carlson scheduling proposal entails five weeks for initial discovery, calculated from the date of this ruling, and a testimony deadline of "eight weeks later than 14 days following the deadline for filing discovery requests," or essentially 10 weeks. Carlson Response at 3. Mr. Carlson cites the adoption of similar time frames in Docket No. C2001-1 in support of their appropriateness in this case.¹ Mr. Popkin supports the Carlson scheduling proposals. Reply of David B. Popkin to Douglas F.

¹ Mr. Carlson also indicates he believes he must await a specific ruling or order before proceeding with discovery. Carlson Response at 3.

Carlson Response to Order No. 1320 and Potential Motion for Late Acceptance, October 1, 2001 at 1, 3.

The Postal Service's alternative also allows a five-week discovery period, but calculates it from Order No. 1320's issuance date of September 12, 2001, rather than the date of this ruling. The Service proposes setting the deadline for Mr. Carlson's testimony at two to four weeks after the conclusion of discovery. In support of this approach, the Service cites three main considerations. It contends that Carlson's comparison to Docket No. C2001-1 is inapposite, given the considerable amount of material that has been provided to Mr. Carlson in earlier filings in this docket through the Gannon declarations and in a related Freedom of Information Act (FOIA) request. It also contends that the issues to be resolved are relatively narrow, and center primarily on legal, rather than factual, matters. Finally, the Service notes that despite Mr. Carlson's apparent belief that a specific ruling is needed before he can proceed, discovery is already underway. Reply of the United States Postal Service to Douglas F. Carlson's Response to Order No. 1320, September 26, 2001 at 1-4.

Discussion. With respect to initial discovery, the main disagreement is over the tolling of the five-week period. I find that the preliminary stages of this proceeding, which produced the two Gannon declarations, materially distinguishes this case from Docket No. C2001-1. Therefore, the schedule adopted in that case is not necessarily the appropriate model. On the other hand, calculating the five-week period from issuance of Order No. 1320 – as the Service suggests – would unduly shorten the remaining time for discovery. An approach that balances participants' legitimate interests, as well as the Commission's need to manage its workload, is to calculate the starting date of the discovery period from the date of the Carlson Response, which was September 24, 2001. By that time, all interested parties were on notice of the potential scope of the proceeding, had access to the Gannon declarations, had knowledge of the related FOIA request, and knew discovery was underway pursuant to Commission rules. Thus, the deadline for submitting discovery requests will be five weeks from the date Mr. Carlson's September 24, 2001 response, or October 29, 2001.

There is stronger disagreement over the deadline for Mr. Carlson's direct case. While the Gannon declarations may have provided Mr. Carlson and others with more

lead time in this case than in Docket No. C2001-1, two to four weeks may unduly interfere with the complainant's ability to prepare his direct case, especially in light of the recent filing of the omnibus rate and classification case and widely-observed holidays in the next two months. Accordingly, the deadline for filing Mr. Carlson's direct case is January 7, 2002.

On the matter of addressing interrogatories to Mr. Gannon, I will allow the complainant to use this approach. Mr. Gannon's expertise and legitimacy as a spokesman for the Service have been well-established, notwithstanding his status as a declarant rather than a witness. However, this decision is made with the understanding that the Postal Service, in its discretion, may re-direct interrogatories to elicit the most appropriate response.

RULING

1. The initial discovery period in this docket concludes on October 29, 2001.
2. The deadline for filing complainant's direct case is January 7, 2002.
3. The complainant may direct interrogatories to Mr. Charles M. Gannon, as explained in the body of this ruling.


Ruth Y. Goldway
Presiding Officer