

# POSTAL RATE COMMISSION

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POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of:

EXPERIMENTAL SUSPENSION OF  
FEE FOR MANUAL DELIVERY  
CONFIRMATION CATEGORY

)  
)  
) Docket No. R2001-2  
) MC2001-2  
)

Pages: 1 through 29

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FEE FOR MANUAL DELIVERY ) MC2001-2  
CONFIRMATION CATEGORY )

Room 300  
Postal Rate Commission  
1333 H Street, N.W.  
Washington, D.C.

Volume 1  
Friday, October 12, 2001

The above-entitled matter came on for prehearing conference, pursuant to notice, at 10:08 a.m.

BEFORE:

HON. GEORGE A. OMAS, VICE-CHAIRMAN  
HON. DANA B. "DANNY" COVINGTON, COMMISSIONER  
HON. RUTH Y. GOLDWAY, COMMISSIONER  
HON. W.H. "TREY" LEBLANC, COMMISSIONER

APPEARANCES :

On behalf of the United Parcel Service:

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APPEARANCES: (cont'd.)

On behalf of The Association for Postal Commerce:

(No appearance.)

On behalf of Douglas F. Carlson:

(No appearance.)

On behalf of The Parcel Shippers Association:

(No appearance.)

On behalf of David B. Popkin:

(No appearance.)

On behalf of the United States Postal Service:

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FRANK HESELTON, Esquire  
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On behalf of the Postal Rate Commission, Office of the  
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P R O C E E D I N G S

(10:08 a.m.)

COMMISSIONER COVINGTON: Good morning to everyone. This is a prehearing conference in Docket No. R2001-2 and MC2001-2.

These proceedings were established a consider a request of the United State Postal Service for expedited recommendation of an experiment it proposes to conduct from December 1 to December 16 of this year, 2001. In the proposed experiment, the Postal Service would suspend the fee charged for the manual delivery confirmation special services to Priority Mail users and offer this service for free.

My name is Danny Covington. If I'm familiar to some of you in the room, it may be because I'm also serving as presiding officer in another Commission proceeding, Docket No. C99-1. Our illustrious vice-chairman, Mr. Omas, has assigned me to preside in this case as well.

I'm happy to be so closely involved in what appears to be a groundbreaking case here at the Postal Rate Commission, not to mention the prospect that this case will require a much shorter term commitment than the post ECS complaint is requiring of us. I see Mr. McKeever back there smiling. He knows quite naturally what it is that I'm alluding to.

1 With me on the bench this morning is Vice-Chairman  
2 Omas seated to my left and your right, along with  
3 Commissioner Goldway and Commissioner LeBlanc on my right,  
4 being your left.

5 Before turning to other issues, I want to take a  
6 minute to get introduced to counsel who are appearing here  
7 today. Would the counsel for the United States Postal  
8 Service please introduce yourself for the record?

9 MR. TIDWELL: Good morning, Commissioner  
10 Covington. On behalf of the United States Postal Service,  
11 we are Michael Tidwell and Frank Heselton.

12 COMMISSIONER COVINGTON: Okay. Good morning, Mr.  
13 Tidwell. Good morning, Mr. Heselton.

14 There are six other participants in this  
15 proceeding, being Docket R2001-2, MC2001-2, the Association  
16 for Postal Commerce, Douglas F. Carlson, Parcel Shippers  
17 Association, David B. Popkin, United Parcel Service and our  
18 own Commission's Office of Consumer Advocate.

19 Would counsel for the Association for Postal  
20 Commerce introduce yourself, please, if you're present?

21 (No response.)

22 COMMISSIONER COVINGTON: Okay. Is Mr. Douglas  
23 Carlson present?

24 (No response.)

25 COMMISSIONER COVINGTON: All right. Will counsel

1 for Parcel Shippers Association introduce yourself if you're  
2 here?

3 (No response.)

4 COMMISSIONER COVINGTON: Is Mr. David Popkin  
5 present in the hearing room today?

6 (No response.)

7 COMMISSIONER COVINGTON: Next, will counsel for  
8 United Parcel Service please introduce yourself?

9 MR. MCKEEVER: Good morning, Commissioner  
10 Covington and members of the Commission. My name is John  
11 McKeever representing United Parcel Service.

12 COMMISSIONER COVINGTON: Good morning, Mr.  
13 McKeever.

14 Finally, will counsel for the Office of Consumer  
15 Advocate please introduce yourself for the record?

16 MS. DREIFUSS: Good morning. I'm Shelley  
17 Dreifuss, the acting director of the Office of Consumer  
18 Advocate. With me today appearing is Rand Costich.

19 COMMISSIONER COVINGTON: Good morning, Ms.  
20 Dreifuss, and hello, Mr. Costich.

21 Before we go further, I need to know. Is there  
22 any other interested person present who would like to  
23 participate in these proceedings?

24 (No response.)

25 COMMISSIONER COVINGTON: Okay. Thank you.

1           For those of you who have not already done so, we  
2 would like to request that you fill out an appearance form  
3 and hand it to the reporter before you leave today. I've  
4 been told that they are available on the side table behind  
5 Postal Service counsel.

6           Anyone interested in obtaining a transcript of  
7 today's prehearing conference or any other official  
8 Commission proceeding in this case should make arrangements  
9 directly with our reporting company. I'm assuming that we  
10 have with us the Heritage Reporting Corporation. An order  
11 form is available on the bottom half of the appearance form  
12 that you would fill out. Transcripts are also available on  
13 computer diskette, so please fill out an order form if you  
14 wish to have transcripts either in a hard copy or the  
15 diskette form.

16           Anyone needing to make additional arrangements  
17 that cannot be dealt with through our reporter, you can  
18 please call Heritage Reporting Corporation at (202)  
19 628-4888.

20           The Postal Service's request in this case was  
21 accompanied by motions asking the Commission, among other  
22 things, to establish procedural mechanisms to encourage  
23 parties to consider expeditious settlement of issues. The  
24 Service also announced its intention to conduct an informal,  
25 off-the-record settlement conference yesterday afternoon.

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1           At this time, I would like to ask either Mr.  
2   Tidwell or Mr. Heselton who are here representing the Postal  
3   Service to report on the status of the settlement  
4   discussions at this time.

5           MR. HESELTON: Thank you, Commissioner Covington.  
6   I'd be happy to. Just for the record, this is Frank  
7   Heselton speaking.

8           At 2:00 yesterday afternoon, October 11, the  
9   Postal Service held at its headquarters building an informal  
10   settlement conference to see if the issues in this case  
11   could be narrowed down. It issued an invitation to all the  
12   participants in this proceeding to attend the conference  
13   either in person or by telephone.

14           PostCom indicated that it would not be able to  
15   attend, but indicated support for the Postal Service's  
16   position in this filing. United Parcel Service indicated  
17   that it would not attend. Douglas Carlson gave no  
18   indication of attendance and in fact did not attend.

19           Attending were the Parcel Shippers Association,  
20   the Office of Consumer Advocate, David Popkin, and, of  
21   course, the Postal Service. The outcome of those in  
22   attendance was that general agreement in terms of the Postal  
23   Service's proposal.

24           COMMISSIONER COVINGTON: Okay. Thanks, Mr.  
25   Heselton.



1 Does any other participant have anything to add on  
2 the subject of a settlement at this time? Mr. McKeever?

3 MR. MCKEEVER: Commissioner Covington, just  
4 briefly. United Parcel Service did not attend because we  
5 believe that the proposal is not consistent in a number of  
6 respects, both as a matter of law and based on the  
7 presentation the Postal Service has made that it is not  
8 consistent with the Postal Reorganization Act.

9 We have in essence so indicated in filings with  
10 the Commission and in particular in our statement of issues  
11 that was filed yesterday.

12 COMMISSIONER COVINGTON: Okay. Thank you, Mr.  
13 McKeever.

14 Section 29 of the Commission's rule directs the  
15 presiding officers to afford participants appropriate  
16 opportunities for settlement conferences, and if the Postal  
17 Service and other parties wish to conduct any additional  
18 conferences on the Commission's premises I would encourage  
19 the Service to contact our administrative office for that  
20 purpose.

21 As I noted earlier, the Commission began these  
22 proceedings in response to a Postal Service request to  
23 conduct an experiment in early to mid December of this year,  
24 2001. The Service states in its request that it wished to  
25 conduct the experiment at that time to give its Priority

1 Mail customers an opportunity or an incentive to mail early  
2 before the busiest week of the holiday rush and to introduce  
3 delivery confirmation service to customers who otherwise  
4 would not be aware of it.

5 In Order No. 1323, the Commission observed that  
6 issuing a recommended decision in sufficient time to enable  
7 the Service to implement its proposal would require  
8 extraordinary expedition. That said, we would endeavor to  
9 do so within the bounds of procedural fairness to all  
10 participants. Accordingly, maximum expedition consistent  
11 with procedural fairness would be standard guiding the  
12 conduct of these proceedings.

13 At this time, I would like to ask if any of my  
14 fellow Commissioners have anything to add to the record at  
15 this point?

16 VICE-CHAIRMAN OMAS: Commissioner Covington, I  
17 would like to make a statement at this time and inform the  
18 participants that if possible the Commission intends to  
19 provide the Governors with a timely recommended decision on  
20 this proposal. However, this case will have to proceed  
21 under an extraordinarily tight procedural schedule largely  
22 because the Postal Service did not get around to submitting  
23 its request until September 20.

24 In this proceeding, the Postal Service has the  
25 burden of proof in this case. It must provide sufficient,

1 persuasive evidence to show that its proposal is consistent  
2 with the applicable provisions of Title 39. If it fails to  
3 do so, its proposal cannot be recommended.

4 The Commission often elicits information during a  
5 case that helps develop a more complete factual record. In  
6 this case, there will be little time for the Commission to  
7 elicit revised evidence or supplemental information that  
8 might help to support the Service's presentation. If  
9 evidence submitted by the Service is incomplete or otherwise  
10 flawed and fails to justify this experiment, so be it.

11 Thank you.

12 COMMISSIONER COVINGTON: Thank you, Vice-Chairman  
13 Omas.

14 Commissioner LeBlanc? Commissioner Goldway?

15 COMMISSIONER GOLDWAY: I have nothing to say.

16 COMMISSIONER COVINGTON: Order 1323 also noted  
17 that the Postal Service's request invoked the Commission's  
18 rule for considering experimental changes and invited  
19 interested parties to comment on the appropriateness of  
20 applying those rules in this case. On October 10, United  
21 Parcel Service filed comments in opposition to applying the  
22 experimental rules and moved to deny their application here.

23 In the interest of expediting a resolution of this  
24 matter, I issued Presiding Officer's Ruling No. 1 on the  
25 same date, which directed that participants be prepared to

1 argue the issues raised in UPS' pleading during this  
2 prehearing conference. In light of that, I would like to  
3 hear arguments by counsel for the Postal Service on these  
4 matters at this time.

5 Mr. Tidwell? Mr. Heselton?

6 MR. HESELTON: Frank Heselton for the Postal  
7 Service, Commissioner Covington.

8 United Parcel Service characterizes improperly the  
9 Postal Service proposal as a rate proposal, and it does this  
10 by focusing on one characteristic of the proposal to the  
11 exclusion of a number of characteristics that make it a  
12 classification case.

13 In its proposal, the Service is proposing to  
14 suspend the fee for manual delivery confirmation for  
15 Priority Mail users for the 16 days prior to the peak  
16 mailing week before the Christmas season. It does this for  
17 two purposes.

18 First of all, it notes that the use of manual  
19 delivery confirmation by Priority Mail users at the window  
20 is about 13 percent. That is, only 13 percent of Priority  
21 Mail users entering Priority Mail at the window utilize the  
22 service. The Postal Service is interested in determining  
23 the extent of interest in users in delivery confirmation at  
24 the time that it has those users available, which is at the  
25 peak time of the year. Therefore, it proposes to use a

1 suspension of fee for delivery confirmation to test the  
2 interest of the users in this service.

3 If it appears as a result of the experiment that  
4 there is a high degree of interest by Priority Mail users at  
5 the window in delivery confirmation, the Service would  
6 continue rolling that service into Priority Mail as a part  
7 of the Priority Mailing itself, as is done now in electronic  
8 conformation of Priority Mail. That is a classification  
9 change. Since the experiment is designed to yield  
10 information to lead to that proposal, if appropriate, it is  
11 a classification experiment.

12 Secondly, the Postal Service notes that it has a  
13 very expensive peak in Priority Mailing before the Christmas  
14 and holiday season. It wishes to suspend the fee on  
15 delivery confirmation, manual category, to test the interest  
16 of users of Priority Mail in that fee to see if they would  
17 be willing to change their mailing habits and move mail  
18 ahead of its current peak, thereby possibly presenting the  
19 opportunity of the Service to save some processing and other  
20 costs during that period.

21 If in fact the Service learns by virtue of the  
22 experiment that users of delivery confirmation are  
23 sufficiently interested in that service to change their  
24 habits, their mailing habits, before the holiday season, the  
25 Service could consider a classification change which would

1 create a seasonal rate on delivery confirmation so that that  
2 rate could be suspended in future years before a holiday  
3 season, encouraging a leveling of the peak. That would  
4 require a change in classification, and for that reason also  
5 this experiment is a classification experiment.

6 The pre-filed testimony of Postal Service witness  
7 Don O'Hara addresses on pages 5 to 7 the compliance of the  
8 proposal with Section 3623(c), the classification section of  
9 the Postal Reorganization Act. It is clear that the  
10 objective of the experiment is to measure the relative value  
11 of the manual delivery confirmation service to the users of  
12 Priority Mail who are mailing at the window and, therefore,  
13 is responsive to a key element of 3623(c), namely  
14 3623(c)(2).

15 Nothing in law or regulation suggests that this  
16 filing is prohibited from being considered as a  
17 classification filing. Review of Rule 67 itself and the  
18 Federal Register notices that led to that rule don't  
19 indicate that this is not a classification filing.

20 Furthermore, a review of the case cited by United  
21 Parcel Service, the National Retired Teachers Association  
22 case which talked about characteristics of a classification  
23 case on pages 146 and 147, review of that case does not  
24 indicate any bar for consideration of this filing as a  
25 classification experiment.

1           That case did indicate that certain factors in  
2   classification were ease of handling, size, weight, identity  
3   of parties, both the posting party and recipient, as  
4   relevant considerations to be included in classification  
5   consideration. It did not, however, limit classification  
6   cases to those particular factors.

7           Furthermore, the proposal that the Postal Service  
8   is making does not fit very well into the rate case  
9   structure. UPS' motion on page 6 indicates that whether  
10   rates should be increased or decreased almost always turns  
11   on whether costs have increased or decreased or on whether a  
12   service should be required to bear a lesser or greater share  
13   of institutional cost. These certainly have been the major  
14   considerations underlying the general rate filings. Neither  
15   of these is relevant in this particular proceeding.

16           The Postal Service's proposal is an appropriate  
17   experiment under Rule 67. First of all, it is novel. In  
18   the 30 years of classification cases before the Commission  
19   or classification issues, there has not been a proposal for  
20   a seasonal rate for a category of mail. This is the first  
21   one. It is, therefore, novel.

22           In terms of duration, it is anticipated by the  
23   rules on experimental classifications that there be a  
24   limited time frame, and classification experiments in the  
25   past have often had time frames of a year or of that

1 magnitude. The duration of this particular experiment is  
2 proposed to be 16 days, certainly as experimental a period  
3 as you can obtain in postal rate making and classification  
4 cases.

5 The magnitude of this case is small. The effect  
6 on revenues is small. In an area where total revenues are  
7 in the \$60 billion to \$70 billion range, this is a category  
8 of service for which there were 2.8 million pieces at 40  
9 cents apiece; a very small amount of revenue involved.

10 The data issues in this case are quite simple. We  
11 are looking for a determination of consumer interest in  
12 delivery confirmation. We will determine that by how much  
13 the peak shifts, and I think a shift in the peak would be  
14 obvious to determine. The degree of interest will be  
15 determined by the amount of customer participation in this  
16 and the willingness of customers to change their mailing  
17 habits to take advantage of the fee in advance of the peak  
18 mailing season.

19 The Service recognizes that Rule 67 does require a  
20 balancing of the need for expedition on the requirements of  
21 due process. The Service feels that the schedule does  
22 permit this balancing in light of the simplicity of this  
23 case and the relatively few issues that it involves.

24 UPS indicates that or suggests that this case is  
25 inappropriate when the Service is operating at a deficit.



1 It's well known that the Service operates under a break even  
2 constraint which results in it having a surplus after it  
3 receives an increase in rate. The Service then moves to a  
4 break even position, and then at that point to achieve break  
5 even it in fact must lose money to make up for the surplus  
6 it had at the beginning of the rate cycle. Nothing suggests  
7 that experiments should be limited to the period when the  
8 Postal Service is showing a financial positive net income  
9 position.

10 UPS also suggests that the Postal Service is  
11 trying to expand the scope of Rule 57, which is limited to  
12 the market response rate request for Express Mail. On its  
13 face, it's clear that the proposal is not designed for the  
14 purpose of responding to some development in the market for  
15 which delivery confirmation competes or for the purpose of  
16 minimizing the loss of delivery confirmation or Priority  
17 Mail contribution to institutional costs recommended in the  
18 last omnibus rate case. Those are the two considerations  
19 for which Rule 57 is directed.

20 The Postal Service concludes, therefore, that the  
21 proposal that it has made in this case is an appropriate  
22 experiment under Rule 67, is in accord with law and  
23 regulation, and, therefore, it concludes that the UPS motion  
24 should be denied.

25 Thank you, Commissioner.

1 COMMISSIONER COVINGTON: Thank you, Mr. Heselton.

2 Would any participant other than United Parcel  
3 Service care to comment on issues raised by Mr. Heselton on  
4 behalf of the United States Postal Service?

5 (No response.)

6 COMMISSIONER COVINGTON: Mr. McKeever, I feel  
7 quite sure that you would like to respond to the arguments  
8 on behalf of the United Parcel Service at this time.

9 MR. MCKEEVER: Thank you, Mr. Commissioner. I'll  
10 try to be brief and not restate the arguments in our motion,  
11 but Mr. Heselton did make some comments that I would like to  
12 respond to.

13 As you noted, Commissioner Covington, this is a  
14 groundbreaking case. It is the first time the Postal  
15 Service has ever proposed to give away a service that it is  
16 charging for now and intends to charge for after this  
17 experiment is over. That is truly groundbreaking and a  
18 severe departure from what has transpired under the Postal  
19 Reorganization Act to date.

20 The only change really that the Postal Service is  
21 proposing in this case is a change in a rate, and that, we  
22 submit, makes it clear that this is solely a rate change,  
23 not a classification change.

24 Now, Mr. Heselton indicated that the Postal  
25 Service is interested in investigating the possibility of a

1 seasonal rate. Aside from the fact that we are not talking  
2 about a seasonable rate here, but we are talking about no  
3 rate, a seasonal rate change is, nevertheless, a rate  
4 change, not a classification change.

5 The Postal Service indicates that one of its goals  
6 is to determine interest in delivery confirmation service,  
7 but again what we're talking about is not what its goal is,  
8 but how it is attempting to achieve that goal, and it is  
9 attempting to achieve that goal solely by changing a rate.

10 It could do a market study. It has other ways to  
11 determine interest in the Service that are probably going to  
12 be more reliable than taking a rate away and trying to guess  
13 how many people bought the service because there was no --  
14 excuse me. Not bought the service. I should say used the  
15 service because there was no charge for it.

16 Mr. Heselton indicated that the Postal Service may  
17 propose rolling the manual delivery confirmation fee into  
18 the base rate, much as is done with electronic delivery  
19 confirmation now. It is not proposing that in this case,  
20 though. It is not proposing that in the rate case that it  
21 filed I think it was four days after this case was filed.  
22 Instead, in the rate case it is proposing to increase the  
23 fee for manual delivery confirmation, not roll it into the  
24 base rate.

25 If the Postal Service is truly interested in

1 rolling this fee into the base rate, it can do that without  
2 an experiment. It certainly did it with electronic delivery  
3 confirmation without an experiment. Instead, it is seeking  
4 to give a service away for free, a competitive service away  
5 for free during the heaviest part of the mailing season  
6 during the year. As I said, the proposal is not to roll the  
7 service into the basic Priority Mail service, and it can do  
8 that without an experiment if that is truly its desire, as  
9 it did in the past.

10 The Postal Service notes that this peak period is  
11 expensive and that there is a lot of Priority Mail using  
12 during this period. Of course, there is a lot of First  
13 Class mail usage during this period too with people sending  
14 greeting cards, but I do not see any proposal to reduce  
15 Postal Service costs more significantly than the Postal  
16 Service claims they would be reduced in this case by coming  
17 up with some sort of free service for First Class mail, such  
18 as suspending the rate for additional ounces or something of  
19 that sort.

20 I think that calls into question whether the  
21 Postal Service is really making a rate change or a  
22 classification change here and in particular a rate change  
23 that is designed to improve its competitive position. We  
24 would submit, Mr. Commissioner and members of the  
25 Commission, that any proposal under which a service is given

1 away for free at a certain time of the year but not at other  
2 times of the year is illegal under the statute.

3 Moreover, we believe that even the numbers  
4 produced by the Postal Service will indicate that this fee  
5 suspension will drive manual delivery confirmation service  
6 below attributable costs for FY 2002 under their own  
7 numbers. The only reason that they can come to the  
8 conclusion that it doesn't is in the way they allocate the  
9 cost of this experiment, allocating it in part to Priority  
10 Mail, in substantial part to Priority Mail, rather than  
11 where it belongs to the manual delivery confirmation  
12 service, which is the purpose for the experiment to see  
13 whether there is interest in the manual delivery  
14 confirmation service.

15 I was very surprised to hear the Postal Service  
16 indicate that because the break even mandate is over time it  
17 must lose money at certain times in order to break even over  
18 time. Members of the Commission and Commissioner Covington,  
19 no other entity would dare to operate like that. No other  
20 entity would give away by its own admission \$10 million or  
21 \$11 million worth of revenue and added cost that it will not  
22 recover.

23 Under their own estimate, we believe it's likely  
24 more substantial because it hasn't taken into account any  
25 additional manual delivery confirmation volume it may

1 attract. It's basing its numbers solely on who has used it  
2 in the past. No organization would do that to test whether  
3 a seasonal rate or whether the service should be rolled into  
4 the basic rate for the service that it is an add on to.

5 We submit, Mr. Commissioner and members of the  
6 Commission, that if the experimental rules are to have any  
7 meaning -- the Postal Service has asked that they be invoked  
8 a number of times, and every time its request has been  
9 granted. If its request is proper, that's the way it should  
10 be. But, if the rules are to have any meaning at all, the  
11 experimental rules, then they must be applied according to  
12 their terms, which is that they apply solely to  
13 classification changes, and they are not available in the  
14 case of pure rate changes with no classification elements to  
15 it.

16 This is that type of case. Therefore, the rules  
17 by their own terms do not apply. As I mentioned, if they  
18 are to have any meaning, they should be applied according to  
19 their terms.

20 Thank you.

21 COMMISSIONER COVINGTON: Thank you, Mr. McKeever.

22 From the arguments I've heard, it's clear that the  
23 comments and motion of United Parcel Service presents some  
24 important legal and policy questions in this case. Also, in  
25 view of the Postal Service's request for extraordinary

1 expedition, I conclude that an immediate and final  
2 determination on these matters will materially advance the  
3 completion of these proceedings.

4 Therefore, as I anticipated in Presiding Officer's  
5 Ruling No. 1, I am certifying the issues raised in UPS'  
6 pleading to the full Commission for their determination. I  
7 would hope and I believe that the parties can reasonably  
8 expect a Commission Order on these matters within the next  
9 few days.

10 Now moving on to the topic of discovery in this  
11 case, Order No. 1323 authorized the parties to begin written  
12 discovery upon intervention. I note that the United Parcel  
13 Service and the Office of Consumer Advocate have directed  
14 interrogatories to the United States Postal Service. In  
15 developing a procedural schedule for this case, I anticipate  
16 that it would be appropriate to conclude written discovery  
17 soon. The tentative date I have in mind would be or should  
18 be somewhere around Wednesday, October 17.

19 In a pleading filed last night, the United Parcel  
20 Service suggested that discovery continue through October.  
21 At this time, I'd like to know. Does any party have a  
22 comment as to the deadline for written discovery?

23 Mr. Heselton? Mr. Tidwell?

24 MR. TIDWELL: The Postal Service recognizes that  
25 there may be some need to accommodate the interest of the

1 parties in this case and is certainly willing to accommodate  
2 some flexibility consistent with the Commission's desire to  
3 continue with maximum expedition.

4 If there is a need, for instance, to extend the  
5 discovery deadline through the end of next week, the Postal  
6 Service is certainly willing to be accommodating in that  
7 respect. We think at a certain point we begin to put the  
8 notion of maximum expedition at risk and then would ask the  
9 Commission to bear that in mind as it considers UPS'  
10 request.

11 COMMISSIONER COVINGTON: Mr. McKeever?

12 MR. MCKEEVER: Mr. Commissioner, I'm not sure I  
13 have too much to add from what we said in our pleading other  
14 than the fact that this would be by far the shortest  
15 discovery schedule probably in any case before the  
16 Commission. I can't say I've gone back and checked them  
17 all. We have checked the cases where the experimental rules  
18 were applied however, and it would be by far the shortest  
19 schedule.

20 The Postal Service is indicating a willingness to  
21 add two days to its original proposed date of October 17.  
22 While we appreciate that offer, we do believe that with the  
23 need for possible follow up interrogatories and other  
24 interrogatories as we dig a little bit deeper into the  
25 filing with expert assistance that that's too short a time



1 frame.

2 The date that we propose is still shorter; maybe  
3 not by a whole lot, but it's still shorter than the shortest  
4 schedule in any of the experimental cases, and we believe we  
5 need at least an additional week or so in order to get out  
6 our discovery request. The date that we had proposed,  
7 October 31, as I mentioned, is still a very expedited date,  
8 and we're just requesting an additional two weeks.

9 It is not the fault of the parties that the Postal  
10 Service waited until 72 days before its implementation date  
11 to file the proposal. It knows what the experimental rules  
12 provide. They provide for possibly a schedule as long as  
13 150 days, and they should have filed this proposal 150 days  
14 in advance. If they didn't think of it before then, then I  
15 wonder how well thought out the proposal is.

16 We submit that it would be a mistake. Discovery  
17 is a very important phase, as we know, of these proceedings.  
18 It's the only opportunity that parties who do not have the  
19 data have to get the data, and so we believe a modest  
20 extension of the type we have proposed is appropriate.

21 COMMISSIONER COVINGTON: Thank you, Mr. McKeever.  
22 You can be assured that we'll keep those comments in mind.

23 The next matter, in light of what it is that you  
24 said, turns to the matter of the hearing. We were  
25 considering hearing the Postal Service's case in chief on

1 Tuesday, October 23, and I'd like to ask Mr. Tidwell or Mr.  
2 Heselton whether or not the witness, Mr. O'Hara, would be  
3 available on that date.

4 MR. TIDWELL: Mr. Tidwell for the Postal Service  
5 again. He certainly will be available on that date.

6 COMMISSIONER COVINGTON: Mr. McKeever, would you  
7 happen to have a comment on that date for scheduling a  
8 hearing in light of the argument up to this point?

9 MR. MCKEEVER: Mr. Commissioner, the only thing I  
10 would point out is that the hearing ought to be after the  
11 end of the discovery deadline, so whatever is decided with  
12 respect to the discovery deadline, we would request that the  
13 hearing be -- you know, it can follow promptly after that  
14 deadline. I shouldn't say the deadline for discovery. I  
15 should say the deadline after the Postal Service responds to  
16 that discovery so we have the information for the hearing.

17 Whatever date is set, we just would request a  
18 reasonable opportunity after the answers to the discovery  
19 are provided for a hearing date. Other than that, Mr.  
20 Commissioner, we are at the Commission's pleasure.

21 COMMISSIONER COVINGTON: Okay. Thank you, Mr.  
22 McKeever. As I stated earlier, we'll keep those comments in  
23 mind as we deal with the discovery date deadline, as well as  
24 when the Postal Service's case in chief position would be  
25 discerned.

1           Order 1323 directed the parties to file statements  
2 of issues they perceive in the case by the close of business  
3 yesterday, meaning it would have been by October 11. UPS,  
4 United Parcel Service, has filed such a statement. It  
5 indicates that it expects to file factual evidence in  
6 response to the Postal Service's direct case on the issues  
7 it has identified.

8           In light of the fact that we will be receiving  
9 evidence from UPS, at this time we'd like to know if there  
10 are any other participants who expect to submit evidence.

11           (No response.)

12           COMMISSIONER COVINGTON: Hearing none, I'd like to  
13 say that we will consider all the comments that have been  
14 raised for the purpose of our procedures schedule. However,  
15 I do anticipate that any responsive testimony would be due  
16 soon after the hearing on the Postal Service's direct case,  
17 and I would encourage any participant intending to submit  
18 such testimony to begin preparing that testimony  
19 immediately.

20           This basically finishes the matters that I  
21 intended to address during this prehearing conference. Does  
22 any participant have anything else to raise here today?

23           Ms. Dreifuss? Mr. Costich?

24           MS. DREIFUSS: No, Commissioner Covington. We  
25 have nothing.

1 COMMISSIONER COVINGTON: Mr. McKeever?

2 MR. MCKEEVER: One very minor matter, Mr.

3 Commissioner. The Commission's Order provided three working  
4 days for the Postal Service to object to discovery requests  
5 and seven days to provide answers.

6 We assume that since the one deadline was stated  
7 in terms of working days that the seven day response period  
8 is not seven working days, but rather seven calendar days as  
9 the Order would indicate, but we just would like  
10 clarification of that.

11 COMMISSIONER COVINGTON: That is correct, Mr.  
12 McKeever.

13 MR. MCKEEVER: Thank you, Mr. Commission.

14 COMMISSIONER COVINGTON: That will be so noted.

15 Mr. Heselton or Mr. Tidwell, are there any issues  
16 you would like to raise at this time?

17 MR. TIDWELL: Yes, Commissioner Covington. The  
18 Postal Service would simply like to observe that we would  
19 like an opportunity to respond by next Tuesday to the  
20 October 10 UPS response in opposition to the Postal  
21 Service's waiver of certain portions of Rules 54 and 64.

22 COMMISSIONER COVINGTON: So noted, Mr. Tidwell.

23 I would like to thank all parties who have  
24 assembled here today. As I think we all agree, the key here  
25 as it relates to this case is going to be a matter of

1 expedition. As Vice-Chairman Omas stated, we find ourselves  
2 in a situation where this is basically groundbreaking.

3 I, as presiding officer, would like to encourage  
4 everyone assembled here to do their best to make sure that  
5 we can get the issues at hand rectified as swift and as  
6 expeditiously as possible. I intend to issue a procedural  
7 schedule in this case shortly.

8 Are there any issues that my colleagues would like  
9 to raise from the bench?

10 (No response.)

11 COMMISSIONER COVINGTON: Okay. Hearing none from  
12 my colleagues and if there are no other issues that need to  
13 be raised during this prehearing conference, I would now  
14 declare the proceedings adjourned.

15 Thank you very much.

16 (Whereupon, at 10:48 a.m. the hearing in the  
17 above-entitled matter was concluded.)

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REPORTER'S CERTIFICATE

DOCKET NO.: R2001-2, MC2001-2  
CASE TITLE: Experimental Suspension of Fee for Manual  
Delivery Confirmation Category  
HEARING DATE: October 12, 2001  
LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence are  
contained fully and accurately on the tapes and notes  
reported by me at the hearing in the above case before the  
Postal Rate Commission.

Date: October 12, 2001

  
Beth Roots

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