

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY
Docket No. R97-1

POSTAL RATE AND FEE CHANGES, 1997)

NASHUA PHOTO INC., DISTRICT PHOTO INC.,
MYSTIC COLOR LAB AND SEATTLE FILMWORKS, INC.
COMMENTS ON PROPOSED PROCEDURAL SCHEDULE
AND SPECIAL RULES
(July 25, 1997)

Nashua Photo Inc. (hereinafter "Nashua"), District Photo Inc. ("District"), Mystic Color Lab ("Mystic"), and Seattle FilmWorks, Inc. ("Seattle") (hereinafter collectively referred to as "NDMS"), proceeding jointly herein, submit their comments with respect to the proposed Procedural Schedule for the conduct of this proceeding, set forth as Attachment C to Order No. 1186 ("Notice of the U.S. Postal Service's Filing of Proposed Postal Rate, Fee and Classification Changes and Order Instituting Proceedings") issued on July 11, 1997, requesting certain changes therein, and also request a slight modification of the Special Rules promulgated herein for the conduct of this proceeding.

A. Request for Alteration of Certain Dates in Proposed Procedural Schedule

The proposed Procedural Schedule would allow slightly more than one month after the Prehearing Conference on July 30, 1997, to complete discovery on the Postal Service's direct case. Even counting the two additional weeks between the filing of the case and the Prehearing Conference, that does not allow sufficient time for completing discovery of the extensive case filed by the Postal Service. This omnibus rate case, with more Postal Service witnesses and proposed costing changes than can be recalled from any previous rate case, has a plethora of important issues that will require a number of different sets of interrogatories and

document requests, with numerous follow-up questions. NDMS respectfully request that two additional weeks be allowed for such discovery, so that the date for completion of discovery on the Postal Service's direct case would be changed to September 17, 1997.

Similarly, the proposed Procedural Schedule currently establishes October 20, 1997, as the date for filing the case-in-chief of each participant, and November 19, 1997, as the date for completion of discovery on such cases. NDMS respectfully suggest that additional time may be necessary with respect to filing the case-in-chief and discovery on the cases filed by participants, and request that one additional week be permitted for each. That is, the participants' case-in-chief would be due no sooner than November 10, 1997, with December 17, 1997 the suggested date for completion of discovery.

NDMS respectfully submit that such additional discovery time of three weeks, given the scope and complexity of this proceeding, is *de minimis*, and would allow the Commission almost two months after submission of reply briefs to issue their decision within the 10-month time limit set forth in 39 U.S.C. section 3624(c)(1). If the three additional weeks suggested above were added to the proposed schedule, the balance of the target dates could be adjusted with relative ease.

B. Request for Modification of Procedural Rules

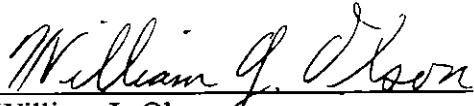
Although Rule 4A of the Special Rules is quite specific that designations of written cross-examination "should be served no later than three working days before the scheduled appearance of a witness," and Rule 4B of the Special Rules is just as specific with respect to requests for permission to conduct oral cross-examination ("should be served three or more working days before the announced appearance of a witness"), the rules are silent on the

consequences of a failure to observe them. "Serve," of course, in the context of a three-day (or less) service deadline, means "deliver" (as opposed to "mail"). In the past, parties have encountered difficulties because of failures to observe these rules.

In particular, Special Rule 4B provides that copies of adequately documented cross-examination exhibits, to be used with respect to complex numerical hypotheticals or extensive cross-references "should be provided to counsel for the witness at least two calendar days (including one working day) before the witness's scheduled appearance." Failure to observe this "24-hour rule" obviously can lead to the same sort of difficulty alluded to above. A recent example occurred in Docket No. MC95-1, when one attorney faxed an extensive (49-page) examination exhibit, relative to proposed cross-examination scheduled for the following Monday, to an intervenor's counsel after the close of business on the preceding Friday. At the hearing on Monday, the Commission was faced with the prospect of either going forward with the cross-examination, continuing the proceeding to allow the witness to prepare himself fully as he was entitled to do, or disallow the cross-examination.

Such situations could be minimized if the Special Rules were modified, and it is submitted that the Special Rules would be improved if they made clear that failure to observe the "three-working-day" rule and the "24-hour rule" would normally (*e.g.*, in the absence of extraordinary circumstances or the parties' agreement) result in the rulebreaker's waiver of the right to conduct cross-examination on the matters not duly noticed. NDMS would also request that the "24-hour rule" be changed to a "48-business hour rule," so that witnesses *receive* copies of cross-examination exhibits at least 48 normal business hours prior to the examination.

Respectfully submitted,



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CERTIFICATE OF SERVICE

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



Alan Woll

July 25, 1997