

PRESIDING OFFICER'S  
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RULING NO. R97-1/4

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

POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY

Postal Rate and Fee Changes

Docket No. R97-1

PRESIDING OFFICER'S RULING AMENDING  
THE HEARING SCHEDULE AND  
THE SPECIAL RULES OF PRACTICE

(August 1, 1997)

On July 30, 1997, a Prehearing Conference was held in this case at which participants discussed the hearing schedule and special rules of practice established by the Commission in Order No. 1186. As a result of those discussions, and in consideration of the comments filed in advance of that conference,<sup>1</sup> the hearing schedule and the special rules of practice are amended.

*Hearing schedule.* Twelve participants supported extending the period of time allowed for discovery on the direct case of the Postal Service. There was no opposition to this suggestion. In light of the variety and complexity of new technical material submitted by the Postal Service in support of its request, the schedule will be adjusted

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<sup>1</sup> Request of American Business Press, Dow Jones & Company, Inc., Magazine Publishers of America, the McGraw-Hill Companies, and Time Warner for Adjustment of Procedural Schedule and Notice of Topic for Discussion at Prehearing Conference, filed July 25, 1997; Douglas F. Carlson Motion to Modify and Clarify the *Special Rules of Practice*, filed July 15, 1997; Direct Marketing Association, Inc. Notice of Topics for Discussion at Prehearing Conference, filed July 22, 1997; Nashua Photo Inc., District Photo Inc., Mystic Color Lab and Seattle FilmWorks, Inc. Comments on Proposed Procedural Schedule and Special Rules, filed July 25, 1997; Newspaper Association of America Notice of Issues to be Raised at Prehearing Conference, filed July 25, 1997; Office of the Consumer Advocate Statement of Topics for Discussion at Prehearing Conference, filed July 25, 1997; and Motion of United Parcel Service to Modify Special Rules of Practice and Notice of Issue to be Discussed at Prehearing Conference, filed July 25, 1997.

to allow additional discovery. As a result of this change, all other procedural dates must be adjusted.

Direct Marketing Association (DMA) submitted a proposed hearing schedule which provided an additional two weeks of discovery on the Postal Service and generally maintained the intervals established in the hearing schedule published in Order No. 1186. With a limited number of exceptions, DMA's proposal has been accepted.

The DMA proposal also delayed by an additional week, the date when participants were to file their case-in-chief. Nashua Photo Inc., District Photo Inc., Mystic Color Lab and Seattle FilmWorks, Inc. suggested that this additional time should instead be allowed for discovery on the direct cases filed by participants. The amended schedule divides the extra week, allowing five additional days for the preparation of testimony and two additional days for discovery.

Other changes to the schedule proposed by DMA involve dates for evidentiary hearings. Hearings to receive the cases-in-chief of intervenors and the OCA will begin on January 7, 1998, thereby allowing discovery responses to be reviewed and designated notwithstanding the intervention of the New Year holiday. Those hearings will extend through January 23, 1998. Hearings to receive evidence in rebuttal to participants' direct cases will begin February 10, 1998 and be completed on or before February 20, 1998.

The amended schedule also sets dates for the submission of trial briefs. The Postal Service commented that it might be difficult to submit its trial brief two weeks before the hearings to receive its direct case are scheduled to begin. A two-week advance submission standard would be even more difficult for intervenors, since hearings to receive participant cases-in-chief will begin two weeks after Christmas Day. Therefore, the schedule will allow the Postal Service to submit its brief on or before September 29, 1997 (7 days before its first witness appears), and other participants to submit trial briefs on or before December 29, 1997 (9 days before hearings begin).

Participants are reminded that the purpose of trial briefs is to facilitate Commission understanding. Early submissions of trial briefs will be greatly appreciated.

*Special rules of practice.* Three aspects of the special rules of practice published in Order No. 1186 were focused on during the prehearing conference. Special rule 3.C. provides exceptions to the rule of practice requiring service of documents on all participants. Language is added to the second paragraph of that rule to clarify the types of discovery-related documents which need not be served on all participants. Participants are still expected to make full service of answers to written discovery.

Special rule 4.B. describes the steps participants should take to provide notice if they intend to cross-examine, and further, if they intend to use cross-examination exhibits during oral cross-examination. That rule is amended to require actual delivery of such notices to counsel for the witness to be cross-examined.

Participants are reminded that cross-examination exhibits help the Commission to understand the importance of particular lines of questions. They are most effective when the witness has had an opportunity to examine the material. Therefore, counsel are urged to provide as much advance notice as feasible before using cross-examination exhibits.

Special rule 5, paragraph 4, discusses library references. United Parcel Service (UPS) submitted a motion requesting that three copies of library references be provided. At the prehearing conference, UPS became aware that currently three copies of library references are made available, one at the Commission Docket Room and two at the Postal Service library. Rather than require the preparation of extensive additional documents, I will defer ruling on this motion to allow participants the opportunity to determine whether adequate access to library references is provided through their availability at two locations. If UPS continues to experience delay in gaining access to library references, it should notify the Presiding Officer.

To facilitate use of all copies of Postal Service library references, the Service is to serve a notice on all participants explaining the exact location of its library, the hours of service for that library, any steps participants must take to use materials at that

library, and a telephone number participants can use to assure that copies of desired materials are available for review and/or reproduction.

### RULING

1. The procedural schedule for this case is amended as shown in Attachment A.
2. Special rules of practice in this case are amended as shown in Attachment B.
3. The Douglas F. Carlson Motion to Modify and Clarify the Special Rules of Practice, filed July 15, 1997, is granted as described in the body of this ruling.
4. A ruling on The Motion of United Parcel Service to Modify the Special Rules of Practice is deferred to allow additional experience on the availability of library references.
5. The Postal Service is to provide notice to participants of the availability of library references at its library, as described in the body of this ruling, on or before August 7, 1997.

  
Edward J. Gleiman  
Presiding Officer

REVISED HEARING SCHEDULE  
POSTAL RATE AND FEE CHANGES  
Docket No. R97-1

September 17, 1997	Identify expected amount of oral cross-examination. Report on the availability of witnesses
September 17, 1997	Completion of discovery on the Postal Service's direct case
September 29, 1997	Trial brief of the Postal Service
October 6-22, 1997	Hearings for cross-examination of the Postal Service's direct case (9:30 a.m. in the Commission hearing room)
November 17, 1997	Filing of the case-in-chief of each participant, including rebuttal to the Postal Service
December 17, 1997	Identify expected amount of oral cross-examination. Report on the availability of witnesses
December 16, 1997	Completion of discovery directed to intervenors and the OCA
December 29, 1997	Trial briefs of intervenors and the OCA
January 7-23, 1997	Evidentiary hearings on the cases-in-chief of intervenors and the OCA (9:30 a.m. in the Commission hearing room)
January 13, 1997	Completion of discovery directed to the Service
February 2, 1997	Filing of evidence in rebuttal to the cases-in-chief of participants other than the Postal Service (no discovery permitted on this rebuttal evidence; only oral cross-examination)
February 10-20, 1997	Hearings on rebuttal to participants' direct evidence (9:30 a.m. in the Commission hearing room)
March 3, 1997	Filing of initial briefs
March 13, 1997	Filing of reply briefs
March 19-20	Oral argument

## **SPECIAL RULES OF PRACTICE**

### **1. Evidence**

*A. Case-in-chief.* A participant's case-in-chief shall be in writing and shall include the participant's direct case and rebuttal, if any, to the United States Postal Service's case-in-chief. It may be accompanied by a trial brief or legal memoranda. There will be a stage providing an opportunity to rebut presentations of other participants and for the Postal Service to present surrebuttal evidence.

*B. Exhibits.* Exhibits should be self-explanatory. They should contain appropriate footnotes or narrative explaining the source of each item of information used and the methods employed in statistical compilations. The principal title of each exhibit should state what it contains or represents. The title may also contain a statement of the purpose for which the exhibit is offered; however, this statement will not be considered part of the evidentiary record. Where one part of a multi-part exhibit is based on another part or on another exhibit, appropriate cross-references should be made. Relevant exposition should be included in the exhibits or provided in accompanying testimony.

*C. Motions to Strike.* Motions to strike are requests for extraordinary relief and are not substitutes for briefs or rebuttal evidence. All motions to strike testimony or exhibit materials are to be submitted in writing at least 14 days before the scheduled appearance of the witness, unless good cause is shown. Responses to motions to strike are due within seven days.

*D. Designation of Evidence from other Commission Dockets.* Participants may request that evidence received in other Commission proceedings be entered into the

record of this proceeding. These requests should be made by motion, should explain the purpose of the designation, and should identify material by page and line or paragraph number. Absent extraordinary justification, these requests must be made at least 28 days before the date for filing the participant's direct case. Oppositions to motions for designation and/or requests for counter-designations shall be filed within 14 days. Oppositions to requests for counter-designations are due within 7 days. At the time requests for designations and counter-designations are made, the moving participant must submit two copies of the identified material to the Secretary of the Commission.

## **2. Discovery**

*A. General.* Sections 25, 26 and 27 of the rules of practice apply during the discovery stage of this proceeding except when specifically overtaken by these special rules. Questions from each participant should be numbered sequentially, by witness.

The discovery procedures set forth in the rules are not exclusive. Parties are encouraged to engage in informal discovery whenever possible to clarify exhibits and testimony. The results of these efforts may be introduced into the record by stipulation, by supplementary testimony or exhibit, by presenting selected written interrogatories and answers for adoption by a witness at the hearing, or by other appropriate means.

In the interest of reducing motion practice, parties also are encouraged to use informal means to clarify questions and to identify portions of discovery requests considered overbroad or burdensome.

*B. Objections and Motions to Compel Responses to Discovery.* Upon motion of any participant in the proceeding, the Commission or the presiding officer may compel a more responsive answer, or an answer to an interrogatory or request for admission to which an objection was interposed, if the objection is overruled. Motions

to compel should be filed within 14 days of the answer or objection to the discovery request. The text of the discovery request, and any answer provided, should be provided in the text or as an attachment to the motion to compel.

Parties who have objected to interrogatories or requests for production of documents or items which are the subject of a motion to compel shall have seven days to answer. Answers will be considered supplements to the arguments presented in the initial objection.

*C. Answers to Interrogatories.* Answers to discovery are to be filed within 14 days of the service of the discovery request. Answers to discovery requests shall be prepared so that they can be incorporated as written cross-examination. Each answer shall begin on a separate page, identify the individual responding, the participant who asked the question, and the number and text of the question.

Participants are expected to serve supplemental answers to update or to correct responses whenever necessary, up until the date that answers are accepted into evidence as written cross-examination. Participants filing supplemental answers shall indicate whether the answer merely supplements the previous answer to make it current or whether it is a complete replacement for the previous answer.

Participants may submit responses with a declaration of accuracy from the respondent in lieu of a sworn affidavit.

*D. Follow-up Interrogatories.* Follow-up interrogatories to clarify or elaborate on the answer to an earlier discovery request may be filed after the initial discovery period ends. They must be served within seven days of receipt of the answer to the previous interrogatory unless extraordinary circumstances are shown.

*E. Discovery to Obtain Information Available Only from the Postal Service.*  
Sections 25 through 27 of the rules of practice allow discovery reasonably calculated to



lead to admissible evidence during a noticed proceeding with no time limitations. Generally, discovery against a participant is scheduled to end prior to the receipt into evidence of that participant's direct case. An exception to this procedure shall operate when a participant needs to obtain information (such as operating procedures or data) available only from the Postal Service. Discovery requests of this nature are permissible up to 20 days prior to the filing date for final rebuttal testimony.

### 3. Service

*A. Receipt of Documents.* The Service List shall contain the name and address of up to two individuals entitled to receive copies of documents for each participant. If possible that entry will also include a telephone number and facsimile number.

*B. Service of Documents.* Documents shall be filed with the Commission and served upon parties in accordance with sections 9 through 12 of the Commission's rules of practice. Participants capable of submitting documents stored on computer diskettes may use an alternative procedure for filing documents with the Commission. Provided that the stored document is a file generated in either Word Perfect 5.1 or any version of Microsoft Word, and is formatted in Arial 12 font, in lieu of the requirements of section 10 of the rules, a participant may submit a diskette containing the text of each filing simultaneously with the filing of 1 (one) printed original and 3 (three) hard copies.

*C. Exceptions to general service requirements for certain documents.* Designations of written cross-examination, notices of intent to conduct oral cross-examination, and notices of intent to participate in oral argument need to be served only on the Commission, the OCA, the Postal Service, and the complementary party (as applicable), as well as on participants filing a special request for service.

Discovery requests and pleadings related thereto, such as objections, motions for extensions of time, motions to compel or for more complete answers, and answers to such pleadings, must be served only on the Commission, the OCA, the Postal Service, the complementary party, and on any other participant so requesting, as provided in sections 25-27 of the rules of practice. Special requests relating to discovery must be served individually upon the party conducting discovery and state the witness who is the subject of the special request.

*D. Document titles.* Parties should include titles that effectively describe the basic content of any filed documents. Where applicable, titles should identify the issue addressed and the relief requested. Transmittal documents should identify the answers or other materials being provided.

#### **4. Cross-examination**

*A. Written cross-examination.* Written cross-examination will be utilized as a substitute for oral cross-examination whenever possible, particularly to introduce factual or statistical evidence.

Designations of written cross-examination should be served no later than three working days before the scheduled appearance of a witness. Designations shall identify every item to be offered as evidence, listing the participant who initially posed the discovery request, the witness and/or party to whom the question was addressed (if different from the witness answering), the number of the request and, if more than one answer is provided, the dates of all answers to be included in the record. (For example, "OCA-T1-17 to USPS witness Jones, answered by USPS witness Smith (March 1, 1997) as updated (March 21, 1997))." When a participant designates written cross-examination, two copies of the documents to be included shall simultaneously be submitted to the Secretary of the Commission.

The Secretary of the Commission shall prepare for the record a packet containing all materials designated for written cross-examination in a format that facilitates review by the witness and counsel. The witness will verify the answers and materials in the packet, and they will be entered into the transcript by the presiding officer. Counsel for a witness may object to written cross-examination at that time, and any designated answers or materials ruled objectionable will be stricken from the record.

*B. Oral cross-examination.* Oral cross-examination will be permitted for clarifying written cross-examination and for testing assumptions, conclusions or other opinion evidence. Notices of intent to conduct oral cross-examination should be delivered to counsel for the witness and served three or more working days before the announced appearance of the witness, and should include (1) specific references to the subject matter to be examined and (2) page references to the relevant direct testimony and exhibits.

Participants intending to use complex numerical hypotheticals or to question using intricate or extensive cross-references, shall provide adequately documented cross-examination exhibits for the record. Copies of these exhibits should be delivered to counsel for the witness at least two calendar days (including one working day) before the witness's scheduled appearance.

## **5. General**

Argument will not be received in evidence. It is the province of the lawyer, not the witness. It should be presented in brief or memoranda. Legal memoranda on matters at issue will be welcome at any stage of the proceeding.

New affirmative matter (not in reply to another party's direct case) should not be included in rebuttal testimony or exhibits.

Cross-examination will be limited to testimony adverse to the participant conducting the cross-examination.

Library references may be submitted when documentation or materials are too voluminous reasonably to be distributed. Each party should sequentially number items submitted as library references and provide each item with an informative title. Parties are to file and serve a separate Notice of Filing of Library Reference(s). Library material is not evidence unless and until it is designated and sponsored by a witness.