

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

POSTAL RATE AND FEE CHANGES
PURSUANT TO PUBLIC LAW 108-18

Docket No. R2005-1

UNITED STATES POSTAL SERVICE COMMENTS ON PROCEDURAL SCHEDULE
(May 12, 2005)

On May 5, 2005, at the Prehearing Conference in this docket, the Presiding Officer announced that participants would be permitted until today to submit additional written comments on the proposed discovery deadline applicable to the Postal Service's direct case.¹ The Postal Service hereby supplements its comments presented at the Prehearing Conference.

In light of the first settlement report,² as well as comments made by participants at the Prehearing Conference, the Postal Service believes that extension of discovery beyond its original proposal of May 27 is warranted. In this regard, the Postal Service reiterates that it does not oppose a reasonable extension of its proposed deadline by two weeks to June 10. This deadline would be consistent with the historical average discovery period,³ the limited nature of the Postal Service's proposals in this docket, the prospects for settlement, and the status of and progress toward settlement at this time.

¹ Tr. 1/32.

² First Report of the United States Postal Service as Settlement Coordinator, Docket No. R2005-1 (May 10, 2005).

³ As noted at the Prehearing Conference, the historical average of discovery periods in omnibus rate cases, beginning with Docket No. R80-1, is 65 days. In considering this historical standard, we note that, in many of these cases, the period for responses to interrogatories under the Commission's rules was 20 days, as opposed to the 14 day limit that has applied in recent proceedings. A June 10 deadline would allow 63 days

The Postal Service also reaffirms its opinion that the July 1 discovery deadline proposed by the Office of the Consumer Advocate (OCA) is unwarranted and would place ill-advised pressure on subsequent deadlines leading to a recommended decision.

Apart from the OCA's proposal to extend discovery to July 1, the other specific deadline proposed at the Prehearing Conference was June 15, suggested by the National Association of Presort Mailers (NAPM).⁴ While only a few days separate this proposal from the Postal Service's proposed deadline, the Postal Service continues to believe that June 10 would be preferable, and would provide adequate time for parties to explore the topics that concern them. Cutting off discovery on June 10, and waiting 14 days for responses before cross-examination hearings begin, would permit the Commission to schedule hearings for at least some witnesses prior to the July 4 holiday. The Commission could schedule the balance of the hearings, if needed, after the holiday, thus permitting an end to cross-examination earlier in July. In this regard, we presume that the Commission will be inclined to permit the hearings to run their course, before asking for notice from participants regarding which parties, if any, will oppose settlement, or which parties intend to submit affirmative cases.⁵ Judging by the participants' comments at the Prehearing and settlement conferences, furthermore, early July would probably also be the first opportunity to assess realistically whether settlement will be substantially achieved, since several participants have been inclined

for discovery from the date of filing the Postal Service's request.

⁴ Tr. 1/24.

⁵ In Docket No. R2001-1, the date for announcing opposition was scheduled after the completion of hearings. In this instance, however, we would welcome an earlier date, if

to reserve judgment on settlement until after the completion of discovery and perhaps cross-examination.

July 1 as a deadline for discovery would be inappropriate in light of similar considerations. A July 1 discovery cut-off would create the longest discovery period against the Postal Service's direct testimony in modern memory, three months, as opposed to the 70 day limits established in Docket Nos. R84-1 and R2000-1. No party has offered sufficient justification for such lengthy discovery, particularly considering the limited nature of the Postal Service's proposals in this docket. Furthermore, a three-month discovery period would severely limit the time available to accommodate and consider opposition to settlement, if it were to materialize. In this regard, we note that, in Docket No. R2001-1, the participants and the Commission were able to expedite the later stages of the proceeding by compromising on the need for discovery and hearing time, and because the issues raised in opposition to settlement were relatively narrow. Without knowing the nature or scope of potential opposition, it is difficult to predict whether participants in this case would be similarly inclined. If hearings on the Postal Service's direct case could not begin until mid-July, at the earliest, it is difficult to believe that sufficient time would be available in August and September to permit a recommended decision in October.⁶

Admittedly, the scheduling possibilities discussed above embody an optimistic

it appeared feasible.

⁶ Assuming that at least six weeks to two months will be required to implement omnibus rate changes in early January, after a Postal Service Governors' decision acting on Commission recommendations, we estimate that a recommended decision no later than early-to-mid October will be needed. See United States Postal Service Request for Expedition and Early Consideration of Procedures Facilitating Settlement Efforts,

assumption about the prospects for settlement. In this regard, the Postal Service remains convinced that successful settlement is a strong possibility. By contrast, if the proceeding evolves in a direction that does not favor settlement and expedition, the Postal Service will need to reassess whether continuing to pursue its Request in this docket is practical or appropriate, in light of the limited financial objective in the Postal Service's proposals and the unavoidable escrow requirement created by Public Law 108-18. Furthermore, we reiterate the statement made in the Postal Service's request for expedition: "Neither the Commission nor the participants need be held accountable, if this ambitious plan fails because a fair and orderly review of the Postal Service's request, by necessity, takes longer than hoped." *Id.* at 4. Regarding the establishment of a discovery deadline, we merely request that a reasonable discovery period be established within the overall context of the participants' needs, the Postal Service's objectives, and procedural fairness.

Finally, we note that the Presiding Officer at the Prehearing Conference suggested that it could be possible to make discovery more flexible by establishing different deadlines for different witnesses. Tr. 1/32-33. He pointed out that, in Docket No. R2001-1, the Commission was able to facilitate expedition by ending discovery for several witnesses earlier in the case than for other witnesses, and he observed that "[t]here may be particular topics on which extended discovery may be necessary." *Id.* at 32. The Postal Service does not disagree, and believes that it might be possible to establish earlier deadlines within the overall discovery period for topics and witnesses that even now appear not to be much in demand. Nevertheless, we must emphasize

Docket No. R2005-1, at 3-4 (April 8, 2005).

that whatever direction that approach takes, in no circumstances should it lead to establishing an outer limit for discovery later than we have advocated. In other words, discovery should not extend beyond June 10. In particular, the Commission should not regard a June 10 deadline for most of the testimony acceptable, but “compromise” by establishing July 1 as the discovery deadline for the testimony parties most want to explore. June 10 would establish a reasonable discovery period for all of the Postal Service’s testimony. If a participant knows at this point that it will need additional time to prepare a direct case, or a case in opposition to settlement, it is probably because the participant has already made the decision to take the case in that direction. If so, the Commission should require parties to announce those intentions as early as possible. Otherwise, a deadline beyond June 10 would create the same problems for scheduling and the ultimate outcome that we describe above in connection with the OCA’s discovery proposal.

Respectfully submitted,

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May 12, 2005

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.

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