

ORDER NO. 40

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

Before Commissioners:

Dan G. Blair, Chairman;
Dawn A. Tisdale, Vice Chairman;
Mark Acton; Ruth Y. Goldway; and
Tony L. Hammond

Premium Forwarding Service

Docket No. MC2007-3

ORDER ON PROCEDURAL SCHEDULE

(Issued October 15, 2007)

The Postal Service has filed a motion, along with a signature page, seeking Commission consideration of a proposed settlement agreement as the basis for a recommended decision in this case.¹ It notes therein that the National Newspaper Association, the Association of Priority Mail Users, and the Commission's Office of the Consumer Advocate have authorized the Service to report their support for the settlement agreement and their intention to file signature pages. The Service makes no affirmative representation regarding David B. Popkin's position on the settlement, but notes that it has filed a partial objection and answer to one of his late-filed interrogatories (DBP/USPS-22) and a full objection to the other (DBP/USPS-23).² The

¹ Motion of the United States Postal Service for Consideration of the Stipulation and Agreement as the Basis for the Recommended Decision, October 11, 2007 at 1 (Postal Service Motion).

² United States Postal Service Partial Objection to Interrogatory DBP/USPS-22, and Full Objection to Interrogatory DBP/USPS-23, Both Propounded by David B. Popkin (DBP/USPS-22 and 23), October 5, 2007 (Objection).

Service indicates that should a motion to compel ensue, it will stand on its filed objections (effectively waiving its right to reply), unless the Commission seeks a reply. Postal Service Motion at 1.

The Commission appreciates the information provided in the Postal Service Motion. Given the developments reported therein, the lack of any requests for a hearing, and the case's status as a request to establish an existing experimental service on a permanent basis, the Commission finds that issuance of a schedule facilitating resolution is appropriate.

The Commission notes that the Service's referenced Objection contends that the interrogatories in issue are argumentative, cumulative, filed after the close of discovery while failing to articulate appropriate follow-up questions, and not relevant, as they will not lead to the discovery of admissible evidence. Under Commission rule 26(d), the filing of the Service's Objection triggers an opportunity for Mr. Popkin to file, within 14 days (October 19, 2007), a motion to compel responses. The rules make no explicit provision for a reply to a motion to compel, and the Service indicates it is prepared to stand on its Objection; therefore, this Order does not set out a date for a reply.

The Commission establishes October 24, 2007 as the deadline for participants to file designated written cross-examination and for the Postal Service to file written copies of witnesses' testimony, including signed declarations attesting to the continued truth and accuracy of that testimony. The Service may also file a blanket declaration from each witness attesting to their responses to written interrogatories. October 24, 2007 is also the deadline for filing outstanding signature pages.

Detailed notices of opposition to any of the designated material are to be filed by October 31, 2007. The evidentiary record will close on November 7, 2007. Initial briefs (or comments in lieu thereof), should participants choose to file them, are due November 14, 2007; reply briefs (or comments) are due November 21, 2007.

It is ordered:

1. The deadline for filing designated written cross-examination, written copies of witnesses' testimony and related signed declarations (including blanket declarations from each witness covering their respective answers to written interrogatories), and outstanding signature pages to the proposed settlement is October 24, 2007.
2. The deadline for filing notice of opposition to designated material is October 31, 2007.
3. The evidentiary record closes on November 7, 2007.
4. The deadline for filing initial briefs or comments on the proposed settlement is November 14, 2007.
5. The deadline for filing reply briefs or comments on the proposed settlement is November 21, 2007.

By the Commission.

Steven W. Williams
Secretary