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*Before the*

## UNITED STATES POSTAL RATE COMMISSION

In the Matter of:           MAILING ONLINE SERVICE

Docket No.               MC98-1

VOLUME 1

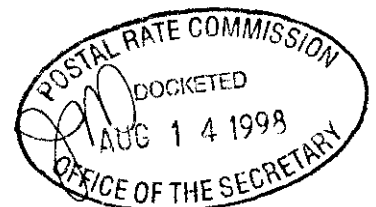
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BEFORE THE  
POSTAL RATE COMMISSION

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In the Matter of: : Docket No. MC98-1  
MAILING ONLINE SERVICE :  
- - - - - X

Third Floor Hearing Room  
Postal Rate Commission  
1333 H Street, N.W.  
Washington, D.C. 20268

Friday, August 14, 1998

The above matter came on for prehearing, pursuant  
to notice, at 9:28 a.m.

BEFORE: EDWARD J. GLEIMAN, Chairman  
W. H. "TREY" LeBLANC, III, Commissioner  
GEORGE W. HALEY, Commissioner  
GEORGE OMAS, Commissioner  
RUTH GOLDMAN, Commissioner

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## P R O C E E D I N G S

[9:28 a.m.]

COMMISSIONER LeBLANC: Before we get started, I'd like to make a comment about one of the Postal Bar who passed away, Mr. Bob Salstein, and for anybody who is interested, there will be a memorial service on August 21 at 3:00 p.m. at the Fort Myer Officers' Club. He was well-respected and known to a lot of you. So I want to pass that information on to you.

Good morning, ladies and gentlemen, and welcome to the first prehearing conference in Docket No. MC98-1. This is considering the Postal Service's request for authority to offer mailing online service.

The Commission has been asked to give expedited consideration to initiating an experimental mail classification and fee schedule for an online mailing service. This experiment is planned to run for two years. The Service also has proposed that a market test of the proposed service precede its introduction.

For those of you who do not know, I am Trey LeBlanc, and will serve as presiding officer during this case. With me today are our Chairman, Ed Gleiman; Vice-Chairman, George Haley; Commissioner George Omas; and soon to be here is Commissioner Ruth Goldway, our newest Commissioner.

1           Before proceeding to substantive matters, I will  
2   ask counsel here today to identify themselves for the  
3   record. Let's start with the Postal Service.

4           MR. HOLLIES: Good morning, Mr. Presiding Officer.  
5   I am Kenneth Hollies, on behalf of the United States Postal  
6   Service, and with me are David Rubin and Scott Reiter.

7           COMMISSIONER LeBLANC: Is anybody here from AMMA?

8           MR. VOLNER: Ian Volner, representing AMMA.

9           COMMISSIONER LeBLANC: ADVO.

10          MR. KEEGAN: Good morning, Commissioner. My name  
11   is Timothy Keegan of the law firm of Burzio & McLaughlin,  
12   and my partner is John Burzio, and Tom McLaughlin will be  
13   appearing in behalf of ADVO, Inc.

14          COMMISSIONER LeBLANC: Alliance of Independent  
15   Store Owners and Professionals.

16          American Business Press.

17          MR. STRAUS: David Straus, of the law firm of  
18   Thompson Coburn, on behalf of American Business Press. I'd  
19   like to note for those present that my name for some reason  
20   does not appear on the service list that was circulated  
21   yesterday by the Commission. I've checked the dockets.  
22   They do have the intervention and they'll correct it, but  
23   I'd like to encourage people to actually correct theirs back  
24   in their offices.

25          Thank you.

1 COMMISSIONER LeBLANC: You would have been missed,  
2 right?

3 American Postal Workers Union, AFL-CIO.  
4 Association of Alternate Postal Systems.  
5 Association of American Publishers.  
6 Douglas F. Carlson.

7 Coalition Against Unfair USPS Competition.  
8 Coalition of Religious Press.  
9 Direct Marketing Association.

10 MR. ACKERLY: Good morning. My name is Todd  
11 Ackerly. I will be representing DMA in this proceeding.

12 COMMISSIONER LeBLANC: Hallmark Cards.

13 MR. STOVER: David Stover, representing Hallmark  
14 Cards. With me on this case will be Sheldon Bierman.

15 COMMISSIONER LeBLANC: Inland Capital Corporation.  
16 Magazine Publishers of America.

17 Mail Advertising Service Association International

18 MR. BUSH: Good morning. My name is Graeme Bush,  
19 and I will be representing MASA, and I'm with the firm of  
20 Caplin & Drysdale.

21 COMMISSIONER LeBLANC: Mail Order Association of  
22 America.

23 National Newspaper Association.

24 MS. RUSH: Good morning. I'm Tondra Rush, with  
25 the law firm of King & Ballou, appearing for the National

1 Newspaper Association.

2 COMMISSIONER LeBLANC: National Postal Mail  
3 Handlers Union.

4 Newspaper Association of America.

5 MR. BRINKMANN: Robert Brinkmann, appearing on  
6 behalf of the Newspaper Association of America.

7 COMMISSIONER LeBLANC: Office of the Consumer  
8 Advocate.

9 MS. DREIFUSS: I'm Shelley S. Dreifuss. I  
10 represent the Office of the Consumer Advocate. Rand Costich  
11 and Kenneth Richardson will also be working on this case for  
12 the OCA.

13 COMMISSIONER LeBLANC: Parcel Shippers  
14 Association.

15 Pitney Bowes Incorporated.

16 MR. VOLNER: My name is Ian Volner. We will be  
17 appearing on behalf of Pitney Bowes, Incorporated, as  
18 follows: myself and Frank Williams of the law firm of  
19 Venable, Baetzer, Howard & Civiletti, and Aubrey Daniel and  
20 Carolyn Williams of the law firm of Williams & Connolly.

21 COMMISSIONER LeBLANC: David P. Popkins.

22 Fred Seymour.

23 United Parcel Service.

24 Val-Pak Dealers Association, Inc.

25 Val-Pak Direct Marketing Systems, Inc.

1 Carol Wright Promotions.

2 Is there anybody else out there that would care  
3 to --

4 MS. CATLER: Good morning. My name is Susan  
5 Catler. I'm here representing the American Postal Workers  
6 Union, AFL-CIO.

7 COMMISSIONER LeBLANC: Thank you.

8 Yes, sir.

9 MR. MALONEY: Good morning. My name is Dave  
10 Maloney, with AccuDocs. Thank you.

11 COMMISSIONER LeBLANC: Is there anybody else?

12 For those of you who have not already done so, I  
13 want to make this clear, if you will, please, for the  
14 reporter. So please fill out an appearance form and hand it  
15 to the reporter before you leave today. They're available  
16 behind the reporter and on the side table behind the Postal  
17 Service.

18 Anyone interested in obtaining a transcript of  
19 today's prehearing conference or any other official  
20 Commission proceeding in this case should make arrangements  
21 directly with the reporting company of Ann Riley &  
22 Associates, Limited. An order form is available on the  
23 bottom half of the appearance form. Transcripts are also  
24 available on computer diskette. Please fill out an order  
25 form if you wish to have this in either hard copy or

1     diskette form. Anyone needing to make additional  
2     arrangements other than this here can call Ann Riley at  
3     (202) 842-0034. Again, (202) 842-0034.

4             I also want to remind counsel that it will help  
5     the reporter greatly if you identify yourself for the record  
6     the first time you speak on any given day.

7             Now we have several important matters to discuss  
8     today. Some of these topics were identified in Commission  
9     Order No. 1216, which gave notice of the Postal Service's  
10    request. Others were mentioned in the Presiding Officer's  
11    Ruling No. 2 issued Tuesday, August 11, 1998.

12            Now the Postal Service has requested that the  
13    Commission consider its mailing online request on an  
14    expedited or an expeditious basis. I hope that on the basis  
15    of discussions at today's conference I will be able to  
16    determine the extent to which expeditious procedures can be  
17    used in this case while preserving the due process rights of  
18    all parties.

19            Presiding Officer's Ruling No. 2 identified areas  
20    that participants will be asked to address today. It also  
21    attempted to provide some context for today's discussions.  
22    Extra copies of that ruling are available on the table at  
23    the door as you enter the hearing room if anyone has not had  
24    an opportunity to review that ruling.

25            This morning I would like to first go through each

1 of the separate topics listed in Ruling No. 2. After we  
2 discuss each of these items, I will open the floor for a  
3 more general discussion during which I will ask participants  
4 for their suggestions on ways to structure this proceeding.  
5 I promise that every participant's views will be heard and  
6 considered.

7 Also I intend to give participants an opportunity  
8 to offer any additional comments or thoughts they consider  
9 relevant to the issues before us including the Postal  
10 Service's request for waivers. I will review the transcript  
11 of today's conference together with written comment that you  
12 provided on August 12 and issue a ruling scheduling further  
13 stages in this docket next week.

14 One issue that I will resolve in my ruling next  
15 week is whether to establish two separate phases in this  
16 docket. This possibility was mentioned in Ruling No. 2.  
17 One phase would deal with the request for authority to offer  
18 a nationwide service on a two-year experimental basis. The  
19 other phase would treat the request for authority to conduct  
20 a market test for three or four months in a limited number  
21 of northeastern metropolitan areas prior to initiating the  
22 experiment.

23 Before discussing this broad procedural decision,  
24 I will ask you to discuss each of the more limited questions  
25 identified in Ruling No. 2. Once we have developed a

1 complete -- complete -- picture of the types of issues that  
2 are likely to be litigated, we will discuss our procedural  
3 options.

4 Now I think a good place to start is by asking the  
5 Postal Service counsel to provide an up-to-date report on  
6 the status of plans for initiation of both the market test  
7 and the experimental service -- now remember we learned this  
8 through your own discovery responses -- and now the market  
9 test is going to be delayed. So would you care to comment  
10 on that, and what has caused the delay, Mr. Hollies?

11 MR. HOLLIES: I would be happy to address that.  
12 In our original filing, early September was the target date  
13 chosen to reflect the then-current development schedule and  
14 postal management's interest in matching up that schedule  
15 with the realities of the ratemaking process.

16 As you have just intimated, we recently advised  
17 that October 1 was the new target implementation date.  
18 Counsel was informed yesterday that a ~~standard~~<sup>S</sup> mail piece,  
19 which is proposed as part of the market test, will not be a  
20 functional part of the operating software, system software,  
21 until October 15. Thus, as a practical matter, assuming the  
22 best possible combination of circumstances, a Commission  
23 recommendation by the end of September would still come  
24 close to comporting with the now-extant implementation  
25 schedule.



1           The Postal Service has otherwise advised witnesses  
2 of the potential for testimony to begin on August 26, and at  
3 this point no specific unavailabilities have been  
4 identified.

5           With respect to the need for expedition of the  
6 experiment, negotiations are underway to put an icon for  
7 ~~Post Office on-line~~ *PostOffice Online* in Microsoft Office 2000 software, now  
8 scheduled for release -- I believe there may be others with  
9 better knowledge in the room -- in early January 1991 -- 9,  
10 excuse me, ~~1991~~ *1999*. Which means that the statement in USPS-T1,  
11 which referred to this in more general terms, in indeed  
12 quite accurate.

13           Postal Service policy generally is not to comment  
14 on ongoing procurement negotiations, so our description,  
15 especially in the testimony, was necessarily somewhat  
16 circumspect. Last night, however, we did check with  
17 Microsoft regarding whether they objected to our going  
18 public with the procurement discussions and they had no  
19 objection so long as no reference was made to any written  
20 agreement. Since none exists, this is not a problem.

21           In essence, the presence of such an icon could  
22 prove to be an effective substitute for more conventional  
23 off-line marketing and advertising activities. An  
24 interrogatory response that may yet be filed today goes into  
25 further detail on this particular point. Putting the icon

1 out there is a key operational goal, although failure to  
2 realize it wouldn't necessarily be a complete show-stopper  
3 for ~~mailing~~ <sup>Online</sup> ~~on-line~~.

4 COMMISSIONER LeBLANC: Mr. Hollies, thank you for  
5 your response on that. But let me make sure I am with you  
6 here then. Will the Postal Service be able to really  
7 realistic begin the market test on October 1? I don't  
8 believe I heard an answer to that question.

9 MR. HOLLIES: With respect to the First Class Mail  
10 portion of it, yes.

11 COMMISSIONER LeBLANC: And --

12 MR. HOLLIES: Well, the Standard Mail piece I  
13 indicated is deeper into the software development process,  
14 so that part of it would not be ready until October 15.

15 COMMISSIONER LeBLANC: And October 15th is a  
16 realistic date then for that?

17 MR. HOLLIES: To the best of my knowledge and  
18 information, yes.

19 COMMISSIONER LeBLANC: Okay. Would delaying the  
20 market test have any impact on the beginning experimental  
21 service?

22 MR. HOLLIES: Well, it's somewhat under the  
23 Commission's control. The Postal Service does have plans  
24 to, basically, move from the current platform supporting the  
25 operations test to the one that is planned for use with the

1 market test on the October schedule we just discussed.

2 The schedule that we have picked, or requested  
3 with request to the experiment is similarly keyed to a  
4 change informally referred to as from Version 2 to Version 3  
5 of the software. That is scheduled to be available for  
6 implementation, or it may in fact be implemented in January  
7 of 1999.

8 COMMISSIONER LeBLANC: Mr. Hollies, I was keyed to  
9 the rates going into effect.

10 MR. HOLLIES: That is correct. That was -- well,  
11 to be frank about it, the clients responsible for mailing  
12 on-line indicated that January 1 was what they were hoping  
13 for and planning on, and when we pointed out to them there  
14 were a host of changes being put into place that the  
15 American public would see on January 10, they were willing  
16 to buy into that date as a way of facilitating and  
17 implementing change readily.

18 COMMISSIONER LeBLANC: So you are still sticking  
19 with your January 1 time frame?

20 MR. HOLLIES: I'm sorry, no, January 10.

21 COMMISSIONER LeBLANC: Okay. I'm sorry. Excuse  
22 me, January 10.

23 MR. HOLLIES: Yes. We are sticking with January  
24 10.

25 COMMISSIONER LeBLANC: Okay. Chairman Gleiman

1 just couldn't resist.

2 CHAIRMAN GLEIMAN: Well, I am bit a confused about  
3 what everything is keyed to now. Assuming for the sake of  
4 discussion that things were to go along the lines that the  
5 Postal Service initially proposed with the decision that  
6 would enable you to implement in January, there will be some  
7 software out there which will have an icon that people can  
8 click on to get to mailing on-line?

9 MR. HOLLIES: That is our hope, yes.

10 CHAIRMAN GLEIMAN: Okay. On the other hand, even  
11 if we proceed with the schedule that you want, it is  
12 conceivable that the Commission could reject the  
13 experimental proposal.

14 MR. HOLLIES: We certainly understand that is a  
15 possibility.

16 CHAIRMAN GLEIMAN: And then MS-2000 would have --  
17 presumably, would have an icon that didn't click to  
18 anything, that didn't operate to anything, is that correct?

19 MR. HOLLIES: I wouldn't go quite that far. My  
20 understanding is that one of topics for negotiation with  
21 Microsoft would be the firmness of our implementation dates  
22 and these proceedings will have some impact there.

23 So I don't know for a fact the details about those  
24 negotiations, and I don't really think I ought to, but there  
25 is some possibility, if we can't provide sufficient

1 assurance that we will actually be out there, I don't think  
 2 Microsoft wants to point an icon to web page that won't take  
 3 the hit. I think there is some chance that Microsoft would  
 4 refuse to include the icon for ~~mailing on-line~~ <sup>My Online</sup>.

5 CHAIRMAN GLEIMAN: I have an icon on my Microsoft  
 6 that doesn't -- when you click on it, it doesn't go anywhere  
 7 because I don't use Microsoft's Internet searcher.

8 MR. HOLLIES: Well, you have superior experience  
 9 to my own in that respect. I should point out that the icon  
 10 is for ~~Post Office On-line~~ <sup>Post Office Online</sup>. Mailing on-line is merely a  
 11 component of that, so there is some chance that the mailing  
 12 -- excuse me, the ~~Post Office On-line~~ <sup>Post Office Online</sup> icon would nonetheless  
 13 appear. I can't really predict what the outcome of  
 14 negotiations would be.

15 CHAIRMAN GLEIMAN: Okay. So if what you are  
 16 negotiating with Microsoft is ~~Post Office On-line~~ <sup>Post Office Online</sup>, which  
 17 involves track and trace and other activities associated  
 18 with other types of mail, parcels, Priority Mail, and the  
 19 like, then whether, when you actually get to ~~Post Office~~ <sup>Post Office</sup>  
 20 ~~On-line~~ <sup>Online</sup>, is it bifurcated so that you can to either the part  
 21 that deals with parcel tracking or the part that deals with  
 22 on-line is really irrelevant time-wise. I mean it would be  
 23 nice if once they got to you, by clicking on this icon, that  
 24 ~~mailing on-line~~ <sup>My Online</sup> was available, but that is really not  
 25 pertinent or germane to the time frame in which this

1 Commission considers the Postal Service's proposal.

2 MR. HOLLIES: That is not my understanding.

3 CHAIRMAN GLEIMAN: Okay. I won't go any further  
4 because I came to a different conclusion than you did and I  
5 will have to think it about a little bit.

6 MR. HOLLIES: That is the subject of ongoing  
7 negotiations. The outcome of those is by no means a  
8 foregone conclusion and the availability of ~~mailing on line~~ *Post Office Online*  
9 could well have an impact there.

10 CHAIRMAN GLEIMAN: ~~Post Office Online~~ has an  
11 element that is separate and distinct from this case that is  
12 before us now and the Postal Service intends to have that  
13 operational regardless of what happens with this  
14 experimental case.

15 MR. HOLLIES: Yes, that is true. Indeed, it is  
16 true now. The operations test itself --

17 CHAIRMAN GLEIMAN: Thank you.

18 MR. HOLLIES: -- is of ~~Post Office Online~~ *Post Office Online*.

19 COMMISSIONER LeBLANC: Thank you, Mr. Hollies.

20 CHAIRMAN GLEIMAN: Thank you.

21 COMMISSIONER LeBLANC: I have got another question  
22 along these lines. It is my understanding that the Postal  
23 Service is currently in the process of contracting with one  
24 or more printers to provide mailing on-line services. Will  
25 you let us know as soon as any such contracts are signed and

1 provide copies of these contracts for the record?

2 MR. HOLLIES: Absolutely. We think that is  
3 critical to these proceedings. I really had hoped, and I  
4 think realistically hoped to have that information available  
5 by this morning. On Tuesday of this week, I was informed  
6 that today -- or at least this morning was going to be  
7 slightly outside the window, the envelope -- the window of  
8 possibility. Barring unforeseen circumstances, that  
9 information should be available next week.

10 COMMISSIONER LeBLANC: Have you identified all of  
11 your concerns in this matter now, do you think, from my  
12 questions so far?

13 MR. HOLLIES: To the questions that have come up  
14 so far, yes, I believe so.

15 COMMISSIONER LeBLANC: Okay. Does any participant  
16 have a question or comment on the status of the contracting  
17 process or anything I have talked about up to now? Mr.  
18 Bush.

19 MR. BUSH: I don't know whether this is the right  
20 time to raise this, because I think the questions maybe are  
21 -- they start here but they may go a little more broadly.  
22 But it is unclear to me --

23 COMMISSIONER LeBLANC: It will get more broad.

24 MR. BUSH: Yes, I am sure it will. One of the  
25 questions that occurred to me in listening to Mr. Hollies'

1 answer is how important these dates are that the Postal  
2 Service has at least offered up for starting the market test  
3 and then ultimately starting the experimental test. And the  
4 linkage between the market test and the experimental test is  
5 very unclear to me, based on the answer.

6 For example, if the market test, as it turns out,  
7 in reality, can't be implemented by October 1st, either  
8 because of the actions of the Commission or perhaps because  
9 of the same types of concerns that have caused it to move  
10 already 30 days, does that impact in any way the  
11 implementation of the date of the experimental service?

12 Perhaps another way to ask it is, how far can we  
13 move the market test before it affects the date of  
14 implementing the experimental test, or does it have no  
15 impact on it at all?

16 COMMISSIONER LeBLANC: Mr. Hollies, would you care  
17 to comment?

18 MR. HOLLIES: Yes. Especially with the mike on.  
19 It is conceivable to the Postal Service that no market test  
20 would be recommended by the Commission, with the result that  
21 when the Version 2 software is put into place in October  
22 that we would be unable to charge a fee for mailing ~~on-line~~ *Online*  
23 service. In that event, the Postal plan would be to  
24 continue the operations test, albeit in a somewhat changed  
25 form.



1           That is not a course of action that the Postal  
2 Service prefers, as we have spelled out, I believe it was in  
3 the <sup>R</sup>request.

4           So, in some sense, I suppose it is true that the  
5 market test could be delayed ad infinitum and we would still  
6 seek to have the experiment commence in January. We do not  
7 believe that to be the best, most prudent approach, and that  
8 is why we have requested what we did.

9           In some sense, I guess then, the market test and  
10 experiment commencement dates are independent of one  
11 another. We don't believe, as I indicated, that that is the  
12 best approach. We are trying to basically put the  
13 developmental process -- to marry the developmental process  
14 with Commission proceedings. I might add that is no simple  
15 chore. We have tried to do so within the existing rule  
16 sets, and several participants have pointed out how the fit  
17 is perhaps somewhat shy of perfect. But that is our  
18 preferred way to proceed. We believe it is a fair and  
19 appropriate way to proceed.

20           COMMISSIONER LeBLANC: Mr. Wiggins.

21           MR. WIGGINS: Yes. Thank you, Presiding Officer  
22 LeBlanc. There is one point that Mr. Hollies made that  
23 seems to us imperative and that is that we all have access  
24 to the contract that is going to define the terms of a  
25 cost-plus 25 percent before we move forward with any of

1 this. That is just imperative. And if I understood Ken  
2 correctly, that is going to happen quickly.

3 COMMISSIONER LeBLANC: Mr. Hollies, did I  
4 understand you to say that that could be as early as this  
5 afternoon possibly?

6 MR. HOLLIES: Yes, although I would prefer to  
7 correct the form of the question almost. The contract, such  
8 as it will exist, is already in play as Library Reference 5.  
9 It does not have the blanks filled in.

10 MR. WIGGINS: Well, it is the price term that is  
11 imperative.

12 MR. HOLLIES: Well, --

13 MR. WIGGINS: That's the only part of it that  
14 counts.

15 MR. HOLLIES: That we concede. That we concede.  
16 That I addressed a few minutes ago. It is possible that it  
17 could be ready as early as this afternoon. The contracting  
18 folks basically told me I was not going to have it, there  
19 was no chance I would have it this morning. And, frankly, I  
20 don't expect it this afternoon, but I am hoping that we are  
21 talking early next week.

22 COMMISSIONER LeBLANC: Well, from an expeditious  
23 standpoint, the sooner you can get it out, it will be  
24 helpful to all parties, I am sure of that.

25 MR. HOLLIES: I understand that, I recognize that.

1 It is necessary for the Commission to proceed. Mostly  
2 recently I understand that the Postal Inspection Service had  
3 expressed some concerns and those need to be satisfied  
4 before we could reach a contract.

5 MR. WIGGINS: And subsequent to that, Mr.  
6 Presiding Officer, we think that the approach tentatively  
7 signaled in your ruling yesterday of bifurcating this  
8 proceeding, so that we have one piece of it directed to the  
9 market test and, subsequently, a piece of it directed to the  
10 experiment is absolutely right on the money. The pleading  
11 that we filed for Pitney Bowes conveniently suggested the  
12 same thing. We are of a mind on that. I think you are  
13 absolutely right about that.

14 COMMISSIONER LeBLANC: Thank you. We will have a  
15 chance to talk about that also in just a moment. Hopefully,  
16 we can get some comments from all parties. Is there anybody  
17 else who would like to make a comment on what Mr. Hollies --  
18 or anything that has been said?

19 [No response.]

20 COMMISSIONER LeBLANC: No more comments. Let me  
21 move on now to explore the extent to which direct evidence  
22 submitted by the Postal Service can be segregated into  
23 evidence concerned the market test, as opposed to evidence  
24 concerning the broader mailing on-line experiment.

25 In Ruling No. 2, I directed that the Postal

1 Service be prepared to discuss this question. Mr. Hollies,  
2 would you confirm that the direct evidence the Postal  
3 Service offered in support of its market test proposal  
4 cannot be easily separated from testimony offered in support  
5 of experimental authority?

6 MR. HOLLIES: I will agree that it is not a clean  
7 cut, but we do have a specific response to that request or  
8 that ruling.

9 The witnesses can be divided into three groups.  
10 The first consists of Witness Garvey, T-1, Witness Plunkett,  
11 T-5, and Witness Hamm, T-6, who generally address why the  
12 Postal Service and the printing industry believe that  
13 mailing online is a good idea. As such, those testimonies  
14 support the requests for both the market test and the  
15 experiment.

16 The second group consists of Witnesses Seckar,  
17 T-2, Stirewalt, T-3, and Rothschild, T-4, who provide the  
18 best available evidence regarding costs, and those primarily  
19 pertain to the experiment and not the market test.

20 The third group consists of Witnesses Wilcox, T-7,  
21 and Campanelli, T-8, who now participate in the mailing  
22 online operations test as customers.

23 As I indicated, the first group of testimony  
24 supports both the market test and the experiment. The  
25 second group is offered in support of the experiment. While

1 the third group pertains to both the experiment and the  
2 market test, the Postal Service simply requests that should  
3 the presiding officer or Commission determine to bifurcate  
4 these proceedings, a proposal that the Postal Service  
5 supports, the Postal Service would ask that the two customer  
6 witnesses not be asked to appear twice.

7 While we can understand why there might be some  
8 procedural need for that, these are customers who are  
9 appearing without any compensation, and we would like to  
10 accommodate them as best we could. While Witness Hamm's  
11 testimony provides clear support for both the market test  
12 and the experiment, the Postal Service also queries whether  
13 he cannot be asked to appear but once. He also is not being  
14 compensated by the Postal Service for his testimony.

15 In conclusion, while the Postal Service agrees  
16 with Pitney Bowes that a hearing is not a necessary  
17 precondition for initiation of market-test service, should  
18 the Commission or Presiding Officer determine that a hearing  
19 for the market test is necessary, Witnesses Garvey and  
20 Plunkett should be faced with a delightful opportunity to  
21 face oral cross-examination twice.

22 COMMISSIONER LeBLANC: So let me get this  
23 straight.

24 [Laughter.]

25 You've got a witness that you're not paying and

1 yet he's still a witness and so he can only appear once.  
2 You've got others who can appear because the Postal  
3 Service -- they're on the Postal Service payroll. And you  
4 don't seem to be objecting to having two sets of hearings.  
5 Yet you seem to be indicating that you want one set of  
6 hearings. Now correct me if I'm wrong. Did I misinterpret  
7 that or mischaracterize it? I don't want to do that.

8 MR. HOLLIES: Well, I think you've picked up some  
9 of the salient elements that I addressed.

10 [Laughter.]

11 We think that a hearing is not necessary for the  
12 market test, but we don't assume that our preference there  
13 will necessarily be conclusive, so should there be a  
14 determination that a hearing is necessary for the market  
15 test, we're saying that two witnesses clearly should be part  
16 of those hearings, a third one, Mr. Hamm, might also be part  
17 of the initial hearings, and I'm simply asking that the  
18 Commission recognize the additional burdens taken on by  
19 those witnesses who are appearing without compensation.

20 In the past the Commission has been very  
21 considerate of individuals who have participated in these  
22 proceedings on a limited basis, and we are only asking for  
23 recognition of that. If on the other hand the Commission or  
24 the Presiding Officer were to determine that in the exercise  
25 of participants' due-process rights these witnesses need to

1 appear more than once, we are prepared to accommodate that.

2 COMMISSIONER LeBLANC: Thank you. Have you so to  
3 speak aired all of your or identified all of your concerns  
4 in that matter?

5 MR. HOLLIES: With respect to which witness might  
6 appear when?

7 COMMISSIONER LeBLANC: Yes.

8 MR. HOLLIES: Yes.

9 COMMISSIONER LeBLANC: Thank you.

10 Does any other participant have any comments on  
11 what was just talked about between myself and Postal Service  
12 counsel?

13 Mr. Wiggins.

14 MR. WIGGINS: Commissioner LeBlanc, Pitney Bowes  
15 has no objection to the proposition advanced by the Postal  
16 Service that the witnesses they've identified as  
17 uncompensated private citizen kind of folks not appear if a  
18 hearing is deemed necessary for the market-test phase of  
19 their proposal.

20 COMMISSIONER LeBLANC: But you're specifying the  
21 market-test part there.

22 MR. WIGGINS: That's absolutely correct.

23 COMMISSIONER LeBLANC: Okay. Anybody else have a  
24 comment?

25 Mr. Bush.

1           MR. BUSH: Commissioner LeBlanc, my only comment  
2   is that I'm going to reserve, and I didn't want by my  
3   silence to have waived the opportunity to discuss whether  
4   bifurcation itself is the appropriate way to proceed, and if  
5   so, what issues would be dealt with in a bifurcated  
6   proceeding as opposed to one consolidated proceeding. I  
7   don't at first blush have any real objection to trying to  
8   accommodate the needs of the private witnesses, assuming  
9   that's consistent with what the nature of that hearing is,  
10   but I'm afraid we've kind of got the cart before the horse  
11   here, and when we get to the bifurcation issue, I am  
12   prepared to discuss that, unless you'd like to hear about it  
13   now.

14           COMMISSIONER LeBLANC: I understand, and we will  
15   get to that in a moment, but I just want to make sure that  
16   you understand that we will give due process to everybody as  
17   best we can here.

18           MS. DREIFUSS: Commissioner LeBlanc?

19           COMMISSIONER LeBLANC: Yes, ma'am, Ms. Dreifuss.

20           MS. DREIFUSS: Shelley Dreifuss for the OCA.

21           OCA I believe will disagree with Mr. Hollies'  
22   characterization that Witnesses Stirewalt and Rothschild  
23   should be deferred for the experimental phase of the  
24   proceeding. We feel that that testimony will have a bearing  
25   on the market-test rates that the Postal Service would like



1 the Commission to recommend, and I think if hearings are  
2 held, we would want to cross-examine those witnesses during  
3 the market-test phase of the proceeding if you do decide to  
4 bifurcate.

5 COMMISSIONER LeBLANC: But again, as a point of  
6 clarification, that would be for the market-test phase.

7 MS. DREIFUSS: I think it's quite possible we  
8 would want to cross-examination both Witnesses Stirewalt and  
9 Rothschild during the market hearings and the experimental  
10 hearings.

11 COMMISSIONER LeBLANC: And experimental then,  
12 okay.

13 MS. DREIFUSS: Possibly.

14 COMMISSIONER LeBLANC: Thank you.

15 Any other person care to comment?

16 Then -- Mr. Hollies?

17 MR. HOLLIES: One response to the OCA's comment, I  
18 don't believe that Witness Rothschild's testimony in any way  
19 bears on the market test. Her volume projections are used  
20 solely to develop estimates of revenue, and those revenue  
21 estimates are based solely on what is projected as a  
22 two-year experiment. They do not bear on the market-test  
23 period as we have proposed.

24 COMMISSIONER LeBLANC: Ms. Dreifuss.

25 MS. DREIFUSS: I would need to look at Witness

1 Rothschild's testimony in Library Reference 2 to respond to  
2 that. So why don't I hold off on Witness Rothschild for the  
3 moment, but say that we do feel that Witness Stirewalt's  
4 testimony does have an important bearing on the rates that  
5 will be charged during the market test, and we would like to  
6 explore the basis for that testimony during hearings of the  
7 market-test phase.

8 COMMISSIONER LeBLANC: I understand.

9 Any other further comments?

10 Let's move on then. The next topic to be  
11 addressed is information collected during the market test.  
12 Several participants contend that the market test as  
13 currently proposed will not generate information that will  
14 help the Commission to evaluate the proposal to initiate  
15 mailing online as a nationwide experiment. So as I said, I  
16 want to explore this just a minute.

17 Mr. Hollies, the Postal Service appears to have  
18 collected weekly volume data during the operational test.  
19 Does the Postal Service intend to collect volume data during  
20 the market test, and is there any reason that this  
21 information cannot be provided to the Commission on a weekly  
22 basis?

23 MR. HOLLIES: I don't believe there is a problem  
24 with that. The market-test data-collection plan attached as  
25 Exhibit A to USPS-T-1 indicates that we were planning to do

1 so on a AP basis, but I think the Presiding Officer is  
2 correct in observing that it could be made available on a  
3 weekly one.

4 With respect more generally to the question of how  
5 market-test data might inform an opinion, a Commission  
6 opinion on the experiment, I would note that ~~mailing~~ *mailing online*  
7 is designed to collect extensive mail-piece characteristics  
8 data, and that is what is primarily proposed for submission  
9 in the data collection plan. Thus whether the pieces  
10 resemble greeting cards, would likely have been entered as  
11 First Class single-piece mail, or are the types of mail  
12 typically entered by letter shops will become evident and  
13 available for consideration by participants and the  
14 Commission.

15 As such, the Postal Service believes that a market  
16 test as a prelude to the nationwide availability of ~~mailing~~ *mailing*  
17 ~~on line~~ *Online* in the form of an experiment is appropriate. Other  
18 information collected during the market test will provide  
19 useful feedback to the Postal Service for structuring the  
20 experiment, although such information may be less useful in  
21 a Commission proceeding per se. These include the technical  
22 performance of each system component, which marketing  
23 techniques for a ~~post office on line~~ *Post Office Online* appear to be most  
24 fruitful, and whether our expectations regarding  
25 scaleability of the system are on the mark.

1 COMMISSIONER LeBLANC: So let me come back to my  
2 first question. For the weekly part of it, you have no  
3 objections. Did I -- am I interpreting that right?

4 MR. HOLLIES: That's correct.

5 COMMISSIONER LeBLANC: And if I understood what  
6 you said, then all the other information, whether it be  
7 volume data or any other data that you may have, then you  
8 would have no objections to providing that to the Commission  
9 and all interested parties, period.

10 MR. HOLLIES: I understand your question to sound  
11 in the types of information we have proposed to submit in  
12 the market-test data-collection plan, and with that, perhaps  
13 that's a caveat, maybe not, yes, I would agree, we will  
14 provide all.

15 COMMISSIONER LeBLANC: Are there any comments from  
16 the -- Mr. Bush?

17 MR. BUSH: It's unclear to me whether Mr. Hollies  
18 is saying that the data can be made available weekly is the  
19 volume data or all the data that has been -- that would be  
20 collected during a market test. Perhaps you could clarify  
21 that. I take it that there is both volume data and mailing  
22 characteristics, I think is the term you used, that will be  
23 collected, in your view, during the market test. Is both of  
24 that -- will both of those types of information be made  
25 available on a weekly basis?

1 MR. HOLLIES: I think those types of information  
2 are fairly close cousins to one another. The kind of  
3 information we collect basically identifies each ~~mailing~~ <sup>mailing</sup>  
4 ~~on-line~~ <sup>Online</sup> mailing and it has various characteristics. It is  
5 two page black and white duplex. It was 48 page color. It  
6 went in a run of three pieces or 3,000. And all of that  
7 information would be the type of information we provide.

8 MR. BUSH: Okay. And you say it can be made  
9 available on a weekly basis. What kind of time lag is there  
10 on that?

11 MR. HOLLIES: That I don't have a specific answer  
12 for. I do know that the system is designed to collect the  
13 information, so I wouldn't expect the lag to be too  
14 substantial, but I really don't have information that would  
15 permit me to quantify that today.

16 MR. BUSH: Okay.

17 COMMISSIONER LeBLANC: Mr. Wiggins?

18 MR. WIGGINS: I take it the point, Mr. Presiding  
19 Officer, is that we will get that information, whatever they  
20 have available, we will get it more quickly than we could if  
21 we had to do formal discovery requests.

22 COMMISSIONER LeBLANC: Mr. Hollies, that is my  
23 understanding. Is that correct? I hope that -- I hope that  
24 is your answer.

25 MR. HOLLIES: Even within the constraints now

1 applying, that is the 10-day turnaround, I would say yes.

2 COMMISSIONER LeBLANC: Is that a problem, Mr.  
3 Wiggins?

4 MR. WIGGINS: Thank you.

5 COMMISSIONER LeBLANC: Mr. Bush, any follow-up?

6 MR. BUSH: Is this on?

7 COMMISSIONER LeBLANC: Yes, it's on.

8 MR. BUSH: Actually, I guess it is an additional  
9 question, which I would like to know from Mr. Hollies how  
10 whatever this information is that is gathered during the  
11 market test would be, in his view, the Postal Service's  
12 view, used by the Commission in rendering a decision on a  
13 classification request for the experimental status. In  
14 other words, what, if anything, might change about the  
15 classification request as a result of information gathered  
16 during the market test?

17 MR. HOLLIES: Well, the Postal Service has not  
18 invoked the provision in the rules that basically allows the  
19 Postal Service to say a certain element, I believe it is of  
20 the market test, is something that the Commission should not  
21 or cannot alter. As such, I believe that means everything  
22 is open to change at some level.

23 If the service were recommended by the Commission  
24 in a form that differs drastically from what we have  
25 requested, it is safe to assume that there might be some

1 contention in postal management, or at the Governors' level,  
2 when it came to determining whether -- or whether not to  
3 implement the service as recommended.

4 MR. BUSH: Might I continue to pursue the  
5 question?

6 COMMISSIONER LeBLANC: Yes, please. Because we  
7 will, I believe, address -- you will have ample opportunity,  
8 but I think this is one of the things that I want to address  
9 down the road, I mean I know it is, but if you want to  
10 pursue it now, by all means.

11 MR. BUSH: Well, I will be happy to wait if it is  
12 better at another time

13 COMMISSIONER LeBLANC: Go ahead. No, go ahead.

14 MR. BUSH: But one quick question. Do you foresee  
15 any way in which the Postal Service might change its request  
16 for the experimental classification as a result of the data  
17 that is gathered during the market test?

18 MR. HOLLIES: No. And the reason is  
19 process-based. The Postal Service has put together the best  
20 case that it was able to put together. The mailing ~~on-line~~ <sup>M</sup> <sup>Online</sup>  
21 operations test is a constant source of data for  
22 reevaluation of decisions made and for the development of a  
23 context in which new decisions would be made.

24 We think the service ought to be a go, as  
25 requested. That does not mean we won't learn something new.

1     There might not -- there might be a bump in the road we have  
2     not foreseen, and if we encounter such a bump, we would need  
3     to take a further look at what is happening. And as a  
4     practical matter, the Commission proceedings, or information  
5     that is made available within the context of the  
6     proceedings, could conceivably constitute such a bump in the  
7     road. Not knowing what will appear, it is difficult to  
8     foresee what might appear.

9             COMMISSIONER LeBLANC: Mr. Wiggins or anybody else  
10    care to comment as a follow-up?

11            MR. WIGGINS: Not me, Mr. Presiding Officer.  
12    Thank you.

13            COMMISSIONER LeBLANC: Anybody else?

14            MS. DREIFUSS: Commissioner LeBlanc.

15            COMMISSIONER LeBLANC: Oh, Ms. Dreifuss, I'm  
16    sorry. Excuse me.

17            MS. DREIFUSS: You raised the issue of regular  
18    reporting of volumes during the market phase, and I think  
19    the Postal Service agreed that perhaps even mailing  
20    characteristics information might be reported regularly.  
21    Are you going to get to the issue of Postal Service  
22    expenditures during the market test? Should I comment on  
23    that now or wait, in the event that you may --

24            COMMISSIONER LeBLANC: Well, I was going to talk  
25    about costing issues in a moment.



1 MS. DREIFUSS: Okay. Then I'll hold off.

2 COMMISSIONER LeBLANC: If you want to do it there,  
3 proceed now if you care to.

4 MS. DREIFUSS: OCA is concerned that the Postal  
5 Service track its expenses also during the conduct of the  
6 market test, particularly the amount of Postal Service  
7 personnel time, if the Postal Service is using contractors  
8 to man the help desk, the amount of time they spend in  
9 fielding questions from the public. We are interested in  
10 Postal Service expenditures on advertising and on  
11 educational efforts to attract customers.

12 We are interested in Postal Service expenses in  
13 screening out applicants. As I understand it, the Postal  
14 Service will probably be limiting the number of market test  
15 participants to 5,000. They may be getting applications for  
16 many more. We would like to learn how much Postal Service  
17 personnel time is spent screening out the applicants who are  
18 not going to participate and selecting the ones that do. We  
19 would like to know more about the criteria that are being  
20 used to screen applicants and accept others for  
21 participation in the experiment.

22 So my first question is will the Postal Service be  
23 tracking these costs and be tracking these expenditures of  
24 personnel time? And, if so, will they report that regularly  
25 to the Commission?

1           COMMISSIONER LeBLANC: I definitely was going to  
2 cover that almost verbatim, so now might be a time. We'll  
3 just change the process just a tad. Mr. Hollies, would you  
4 care to comment, please?

5           MR. HOLLIES: The Postal Service is tracking  
6 expenses to the extent it believes is warranted for  
7 Commission proceeding purposes and also for its own internal  
8 purposes. That does not mean that we will necessarily be  
9 tracking everything the OCA would prefer. There are  
10 interrogatories outstanding and some of which I believe have  
11 already been answered, which get more deeply into the  
12 questions, and we answering their requests for information  
13 with specificity there.

14           In terms of reporting that information, well,  
15 there is the discovery process and there's an obligation to  
16 provide supplemental answers where appropriate. But, beyond  
17 that, we -- and beyond the data collection plan details we  
18 have put into play, as perhaps modified by our discussion  
19 this morning, we did not plan, for example, to track all of  
20 my time on this case.

21           COMMISSIONER LeBLANC: Ms. Dreifuss, does that  
22 address your concerns? Because you can ask it through the  
23 discovery process, interrogatories and so forth, if you do  
24 not get specific answers to your questions. However, I want  
25 to be as giving due process here this morning as best we can

1 to all parties. Does that answer your question?

2 MS. DREIFUSS: Well, I suppose we would prefer not  
3 to rely on the efforts of the Postal Service to continually  
4 update interrogatory responses to our questions. What OCA  
5 would prefer to see is data collection plan which would  
6 specify the types of costs and labor, labor expenditures  
7 that would be involved in this experiment. So what we would  
8 envision is, sometime before the Commission recommends its  
9 decision, actually, a concrete plan for what data ought to  
10 be collected. And we include in that Postal Service  
11 expenses, maybe telecommunications expenses, which I think I  
12 neglected to mention before. Some of the other expenses I  
13 did mention, and, again, this expenditure of personnel time.

14 We would like to see that formally made part of  
15 the data collection plan and not simply left to the updating  
16 of interrogatory responses.

17 COMMISSIONER LeBLANC: So you would want that to  
18 come from the Commission?

19 MS. DREIFUSS: Yes. In its recommended decision.

20 COMMISSIONER LeBLANC: Mr. Wiggins.

21 MR. WIGGINS: It seems to me, Commissioner  
22 LeBlanc, that we need to do discovery as the Postal Service  
23 continues to learn stuff about what the costs are of this  
24 experiment, and I am talking only about the experiment, not  
25 the market test, and that if it proves to be the case that

1 we are not getting the information that we need, that we  
2 might have to extend the duration of the time that the  
3 Postal Service is asking for you folks to act on their  
4 experimental request, so that both -- first, the Commission  
5 and those of us who have a partisan interest in this matter,  
6 can be sure that we got accurate information about costs.

7 So that I guess what I am suggesting is that you  
8 don't make an absolutely cast in iron commitment on a time  
9 that you are going to require to adjudicate the experimental  
10 phase, that we hold that a little bit loose, depending upon  
11 the information, the quality of information that we all  
12 request and extract from the Postal Service in the course of  
13 this.

14 COMMISSIONER LeBLANC: Ms. Dreifuss, it might be  
15 helpful to the Commission is you could put in writing a  
16 motion in regards to what Mr. Wiggins has said and what my  
17 concern would be is that you can't cross every "T" and dot  
18 every "I" in this state period of time. But if you could  
19 give a broad brush approach to what we may want to look at  
20 in forming our decision, get that to us as soon as possible,  
21 hopefully, by close of business today, or at the latest, on  
22 Monday.

23 So that we can move on that for you. Hopefully I'll get a  
24 chance to look at that next week and get you a ruling on  
25 that next week. So would Monday at the latest be

1     inconvenient?

2                   MS. DREIFUSS: We'd be very pleased to put this in  
3     writing. We may ask for everything we could possibly hope  
4     to get and understand realistically that perhaps we'll get a  
5     little less.

6                   COMMISSIONER LeBLANC: Mr. Bush.

7                   MR. BUSH: One further comment on this, the  
8     market-test data-collection effort. Appendix B, which I  
9     believe is the appendix that describes the data-collection  
10    effort, is extremely cursory. By its terms it doesn't  
11    purport to collect any costing information, which I think is  
12    consistent with what Mr. Hollies just said, but quite  
13    frankly it doesn't tell us very much at all about exactly  
14    what will be collected during that period of time, and I  
15    gather, although I haven't seen it, that Pitney Bowes may  
16    have filed a document in connection with this prehearing  
17    conference that suggests certain other things that ought to  
18    be collected.

19                   It's MASA's view that we shouldn't have a market  
20    test, and I'm sure we'll get to the point where we discuss  
21    that later. But if in fact a market test goes forward, it  
22    may be that MASA would like an opportunity consistent with  
23    the time frame you just suggested for the OCA to identify  
24    specific elements of data that we believe ought to be  
25    collected during any market test that does proceed.

1 COMMISSIONER LeBLANC: Mr. Hollies, any followup  
2 comments?

3 MR. HOLLIES: Yes. We fully expect the Commission  
4 and participants to involve themselves, as appears to be  
5 happening right now, in details of what the specifics of the  
6 data-collection plan should include.

7 Now while Appendix B does not have much detail, it  
8 expressly rests on all of the detail in Appendix A. So we  
9 think we've made a very good beginning at that.

10 We would request I guess that the market test go  
11 forward with a plan of providing the information we have  
12 previously been discussing this morning, and that the  
13 discussion of the data-collection plan instead focus on  
14 details that could be included in the experiment. As a  
15 practical matter right now we have worked out the  
16 data-collection systems largely internal to the web server  
17 which will collect the information we expect to provide.  
18 Depending upon what other information is deemed appropriate  
19 for inclusion in an experimental test plan data collection,  
20 we may or may not need to establish new procedures to make  
21 sure that information is collected.

22 MR. VOLNER: Mr. Presiding Officer, may I speak to  
23 that for one moment? It seems to me, it seems to us --

24 COMMISSIONER LeBLANC: Mr. Volner, pull that  
25 closer to you.

1 MR. VOLNER: I'm sorry.

2 COMMISSIONER LeBLANC: Thank you.

3 MR. VOLNER: It seems to us for Pitney Bowes that  
4 what the Postal Service has done here is flipped the rules.  
5 They're talking about data collection during an experiment.  
6 The rules contemplate a market test, and notwithstanding the  
7 objection to a market test, we don't take a position one way  
8 or another on whether there should be a market test. But if  
9 there is one, the purpose of the market test is to collect  
10 data so that you can determine either a permanent rate or in  
11 this case an experimental rate.

12 This explanation causes us some concern. If the  
13 market test is simply a ramp-up to an experiment, then I  
14 suggest that MASA is correct. Forget the market test; let's  
15 do the experimental case with whatever time we need and  
16 we'll go from there. If, however, there is a legitimate  
17 need for information which could be collected in a genuine  
18 market test of three months' duration to continue as we  
19 suggested in our paper during the litigation of the  
20 experimental phase, then we need -- and we may need hearings  
21 on this -- a clear plan of data collection. And I think  
22 that that's what the OCA and Mr. Wiggins were getting at  
23 when we began this discussion. But it seems to me we've now  
24 completely flipped these rules.

25 COMMISSIONER GOLDWAY: Mr. Chairman.

1 COMMISSIONER LeBLANC: Commissioner Goldway.

2 COMMISSIONER GOLDWAY: It seems to me the nature  
3 of the test that you're describing does lend itself to some  
4 specific data collection that could be quite easily done  
5 during a market test regarding these issues of labor.  
6 Certainly one is the length of time of telephone  
7 conversations with the salespeople to come up with  
8 contracts, the number of telephone conversations, if there  
9 are telephone conversations directly with the printer and  
10 supervisors have to be involved in that.

11 You do mention in your records that you do want  
12 customer feedback through your data-collection process. You  
13 must have some indication that you're trying to get that. I  
14 think there are clearly ways in which these kinds of issues  
15 could be gathered very promptly in the course of a market  
16 test, and they shouldn't be delayed.

17 MR. HOLLIES: Those points are well taken, and I  
18 did not mean to intend by my comments that discussion of a  
19 market-test data-collection plan should be precluded.  
20 That's not what we're asking for. That's not what we've  
21 sought. And Commissioner Goldway's observations are also  
22 quite telling.

23 Yes, it would seem that information should be  
24 fairly readily available, and I dare say that given the  
25 comprehensive scope with which the OCA traditionally



1 proceeds, those will be included in their Monday pleading,  
2 and we will respond accordingly to such well-reasoned  
3 approaches.

4 COMMISSIONER LeBLANC: Are there any further  
5 comments?

6 Well, then let's move along in that same vein, if  
7 we can, and along the lines that Mr. Volner talked about a  
8 minute ago, Mr. Hollies, does the Postal Service intend to  
9 review the results of the market test for the purpose of  
10 suggesting any amendments to the proposed experiment?

11 MR. HOLLIES: Well, not with specific intent at  
12 the outset. As I indicated earlier, we've made our plans  
13 based on the information that we have to date, and if  
14 something comes up that surprises us, which does happen with  
15 some regularity, we would be prepared to modify what we've  
16 asked for.

17 In a quite different vein, I would point out that  
18 a variety of interrogatory responses have indicated some  
19 things might be the subject of study during the experiment,  
20 and those could be taken as responsive to your question as  
21 well. As an example, ancillary special services. Is that  
22 something that would be within the scope of the experiment?  
23 Well, it's not actually planned at the moment, and  
24 accordingly might not be available -- I'm not sure if that  
25 specific example it's true of -- but might not be available

1 right at the outset of the experiment but might be available  
2 at a later point in time. The Postal Service is aware that  
3 information could develop which would require us to pull the  
4 plug on this. That's certainly not our hope or our desire  
5 or our expectation, but it's possible.

6 COMMISSIONER LeBLANC: Thank you. Are there any  
7 other comments?

8 Mr. Bush?

9 MR. BUSH: I am not sure I agree with Mr. Volner  
10 that the Postal Service has flipped the market-test rules  
11 and the experimental rules. I think they've just treated  
12 them as in essence the same. And it seems to me pretty  
13 clear that while there's always some theoretical possibility  
14 that data gathered during the market test would cause the  
15 Postal Service to want to modify its experimental proposal,  
16 they've been quite forthright about saying that's not the  
17 purpose of it. And the purpose for a market test is to  
18 develop information necessary to get permanent rates.

19 Even if the Commission were willing at this point  
20 to waive the requirement that it be tied to permanent rates,  
21 it still doesn't even satisfy the purpose, because they're  
22 not -- quite expressly they're not trying to gather  
23 information that would be necessary to make the case for  
24 experimental rates.

25 Furthermore, when we get into the experimental

1 period, I think again Mr. Hollies has been quite forthright  
2 in saying that the service might be modified at various  
3 points along the two-year period that it has been proposed.  
4 If you look at the DMCS proposal, the actual wording,  
5 there's very little there that would actually have to change  
6 in order -- in fact, probably nothing -- in order for the  
7 service to change substantially, because most of the  
8 features that are offered in terms of, for example, duplex  
9 or color printing or anything like that don't show up  
10 anywhere. That's simply something that the Postal Service I  
11 believe thinks that it can modify at any point along the  
12 way. Likewise I believe, although maybe I'm wrong on this  
13 point, that they think that they could modify the rates at  
14 which the proposal goes forward.

15 So the notion that we have some fixed-in-stone  
16 experiment that's going to go forward starting on January 10  
17 and it'll stay that way for two years it strikes me is just  
18 not what the Postal Service contemplates, and if that's  
19 true, then there's no difference between the market test and  
20 the experiment, in my view.

21 COMMISSIONER LeBLANC: Mr. Volner.

22 MR. VOLNER: Mr. Presiding Officer, it's a matter  
23 of characterization, but Mr. Bush is absolutely right.  
24 They've treated the two rules as if they were the same, and  
25 they are not.

1           As to the question of whether there's going to be  
2 a change, the Postal Service is not able to answer that now,  
3 and Mr. Hollies has been reasonably forthright in saying  
4 that. But what it counsels is what Pitney Bowes has  
5 suggested in our paper, which is that there be no  
6 commencement of the experimental phase of the adjudication  
7 until the conclusion of the three-month experiment, at which  
8 time either the Postal Service may or may not have seen the  
9 light, or we will know what changes they want to make for  
10 the experimental phase.

11           COMMISSIONER LeBLANC: Commissioner Goldway's got  
12 a question.

13           COMMISSIONER GOLDWAY: I think there was some  
14 confusion among the Commissioners about the stages of the  
15 market and experimental test as they were proposed. We  
16 understood that in the market phase it was going to be just  
17 First Class rates, or are Standard rates also available?

18           MR. HOLLIES: The operations test now under way is  
19 only First Class mail.

20           COMMISSIONER GOLDWAY: The market test will  
21 include Standard rate?

22           MR. HOLLIES: The market test is expected to  
23 include Standard rate. That's why I mentioned earlier that  
24 in connection with the need for expedition, I pointed out  
25 that the Standard ~~mail~~ piece of what's planned to be the

1 market test is not going to make it on October 1 but is now  
2 scheduled to make it on October 15.

3 COMMISSIONER GOLDWAY: And post cards, individual  
4 mail, is that contemplated for the experimental test?

5 MR. HOLLIES: Cards and nonprofit categories were  
6 planned for the experiment and not for the market test. I  
7 mean, the market test was seen as a way of testing this  
8 service to confirm our hope and expectation that we should  
9 go forward with an experiment, which is why we have a limit  
10 on the number of people or participants, ~~post office~~ <sup>Post Office</sup> online  
11 customers.

12 COMMISSIONER GOLDWAY: The market test is regional  
13 for the Northeast but will include those people in Florida  
14 who've already been participating?

15 MR. HOLLIES: Yes. I have a little section  
16 prepared on that. The Postal Service will be filing today a  
17 library reference that identifies by ZIP ~~code~~ <sup>code</sup> the areas to  
18 be included in the market test. We will also provide a copy  
19 of the Excel file identifying those ZIP ~~codes~~ <sup>codes</sup>, and would ask  
20 that the Commission consider posting the electronic form,  
21 perhaps in its native format, on its Web page to assist  
22 those in determining whether they will be eligible to  
23 participate.

24 The list is rather lengthy since we were unable to  
25 make a cut at the three digit ZIP ~~code~~ <sup>code</sup> level and instead had

1 to list five digit ZIP <sup>C</sup>odes. In general, though, the test  
2 area does involve the Philadelphia, New York City and Boston  
3 areas, as well as the Tampa and Hartford areas now involved  
4 in the operations test. I also have a copy of what we will  
5 be filing -- this is actually the only copy I have -- here  
6 at counsel table for those whose curiosity brooks no further  
7 delay.

8 COMMISSIONER <sup>Goldman</sup> GOLDMAN: And the experimental test  
9 then is nationwide?

10 MR. HOLLIES: The experiment -- well, it is worth  
11 distinguishing nationwide in two senses of the word.  
12 Mailings in the current operations test, as in the market  
13 test, could be destinating anywhere nationwide, but the  
14 customers, in order to qualify for the market test, must  
15 live or conduct business at a location within the list of  
16 five digit ZIP code areas.

17 On January 10, per our request, customers anywhere  
18 in the country -- at least anywhere in the country would be  
19 eligible to participate.

20 CHAIRMAN GLEIMAN: People anywhere in the country  
21 would be eligible to participate or people would be eligible  
22 to participate as you roll this out across the country? You  
23 are not suggesting --

24 MR. HOLLIES: More the former. The roll-out has  
25 to do with the print sites. So while the long-term plan is

1 to have a network of print sites available that will provide  
2 some form of local -- of entry near the destination point,  
3 if somebody -- if, as is the case with Linda Wilcox today in  
4 the operations test, she wishes to mail copies of ~~her~~ Blues  
5 Club Calendar to customers in Chicago, she can do so and  
6 does so. It is still entered somewhere other than Chicago.

7 CHAIRMAN GLEIMAN: So you are not going to have an  
8 ever-increasing list of three or five digit ZIP codes as you  
9 add print sites on. Once you get beyond the market test,  
10 your intention is to allow anybody anywhere in the country  
11 to jump on board at whatever print sites are open?

12 MR. HOLLIES: That's correct. And our marketing  
13 of Post Office On-Line would, to some extent, be keyed to  
14 where the printers are located as well, because we think  
15 that is where the greatest value would be offered to  
16 customers.

17 ~~COMMISSIONER GOLDMAN~~ <sup>Gold Way</sup> Thank you. I wanted to get  
18 a sense of the scale of the different tests as you propose  
19 them.

20 COMMISSIONER LeBLANC: Are you finished?

21 ~~COMMISSIONER GOLDMAN~~ <sup>Gold Way</sup> Yes.

22 MS. DREIFUSS: Commissioner LeBlanc.

23 COMMISSIONER LeBLANC: Ms. Dreifuss.

24 MS. DREIFUSS: I have one related question. I  
25 don't know whether Mr. Hollies can answer it at the moment.

1 Will the Postal Service permit any customer with Internet  
2 access, even if they live outside the borders of the United  
3 States, to use Mailing On-line?

4 MR. HOLLIES: Well, I do believe I read an  
5 interrogatory to that effect in the last 48 hours and I  
6 don't know the answer yet.

7 MS. DREIFUSS: Okay. Thank you.

8 COMMISSIONER LeBLANC: Any other comments? Mr.  
9 Wiggins.

10 MR. WIGGINS: Do I correctly understand Mr.  
11 Hollies' response to Chairman Gleiman to say that, although  
12 during the experimental phase, mail on-line is going to be  
13 rated or priced as if entered at a destination BMC, that  
14 isn't going to be the case?

15 COMMISSIONER LeBLANC: Mr. Hollies?

16 MR. HOLLIES: I'm sorry, I may have lost my focus  
17 on the question. Are you asking about the rates applicable  
18 during the market test?

19 MR. WIGGINS: During the experiment, you are going  
20 to be pricing things as though they were destination  
21 BMC-entered, but I think what you said --

22 MR. HOLLIES: For Standard Mail.

23 MR. WIGGINS: -- in response to Chairman Gleiman  
24 was that, though you are going to be imagining that they are  
25 destination BMC-entered, they are really not going to be, is



1     that right?

2                 MR. HOLLIES: I think that is substantially  
3     correct, which is why we have requested the DMCS language we  
4     have. There is also an interrogatory response, perhaps one  
5     that is due today, which explains that in a little bit more  
6     detail. The experiment is focused on where we hope this  
7     service will end up, as a permanent service. And that plan  
8     contemplates approximately 25 geographically dispersed print  
9     sites that will permit destination entry, using that term  
10    loosely, rather than strictly, as the rules currently  
11    specify.

12                MR. WIGGINS: I think that was my point.

13                COMMISSIONER LeBLANC: Any other further comments?  
14    I would like to make one thing clear here, we have asked --  
15    or we talked about motions being put in Monday. I would  
16    like to have the responses back no later than Wednesday,  
17    noon.

18                MR. HOLLIES: We will certainly do our utmost.

19                COMMISSIONER LeBLANC: Thank you very much. Now,  
20    having heard all of this, Mr. Hollies, let me go over again  
21    and make sure I have got this -- or let me ask you to do it  
22    for me, would be a better way of doing it. Why does the  
23    Postal Service believe it is important to precede this  
24    on-line experiment with a market test that is only in effect  
25    for a few months?

1           MR. HOLLIES: For two sets of reasons, and one is  
2 focused on the business side and the other is focused on the  
3 Commission's side. The developmental schedule, to take the  
4 first one, the former first, is moving from a platform that  
5 is effectively not scalable. The operations test platform  
6 can only accommodate, I don't know, a hundred, a couple of  
7 hundred customers, not very many, and we had to retool the  
8 entire system -- we are talking now hardware, software type  
9 things -- in order to make it scalable. And that retooling  
10 is planned for implementation in October currently, and that  
11 is the business side of the answer.

12           From the Commission's side, the market test, as we  
13 have proposed it, is intended to develop information that we  
14 hope will confirm the propriety of the approach we have  
15 chosen for the experiment. And so we are hoping to -- I  
16 mean if all of our expectations fall together, we will see a  
17 confirmation that our plans are correct and that the  
18 experiment is the right way in which to move.

19           It so happens that bringing another printer in or  
20 scaling the server add new levels of complexity that we  
21 don't propose to test, at least at the outset of that market  
22 test. We want to make those part of the experiment as the  
23 pieces, hopefully, fall into place.

24           I have kind of given you two different parts of  
25 the answer. I gather from Mr. Gleiman's face that he has a

1 follow-up question.

2 CHAIRMAN GLEIMAN: You have an interrogatory  
3 response that you have submitted and I don't -- you know, I  
4 haven't called it up, but that indicates that you might, if  
5 the traffic so dictates, engage the services of a second  
6 printer during the market test. You just said a moment ago,  
7 I think, that that is not something you anticipate. And now  
8 I am confused. And let me just give you Part B, which is,  
9 if you do get a second printer, is it going to be in a  
10 different BMC than the first printer since your ultimate  
11 plan calls for one printer for BMC? So I need to understand  
12 more about this market test here.

13 MR. HOLLIES: We have acknowledged the possibility  
14 that the second print site might be up and running within  
15 the time frame we have requested for the market test. In  
16 order for that to happen, several pieces have to fall into  
17 place, not the least of which is that the procurement cycle  
18 would have to reach completion. With the complexities of  
19 running T-1 lines into print sites, the need for a site  
20 inspection to satisfy ourselves and the Postal Inspection  
21 Service regarding security, the lead time on one of those  
22 contracts is on the order of three to five months.

23 So that's one part of it. Another part that has  
24 to fall into place is the demand for mailing on-line  
25 printing.

1 CHAIRMAN GLEIMAN: So if I understand you  
2 correctly then, if the market test is only for three months,  
3 then it is impossible for you, or nearly impossible for you  
4 to wind up with a second print site since it takes three to  
5 five months to --

6 MR. HOLLIES: Well, those plans are already  
7 underway. The procurement effort has begun. The second  
8 print site would be located I believe in the New York City  
9 area. So it would be --

10 CHAIRMAN GLEIMAN: A different BMC.

11 MR. HOLLIES: -- a different entry point.

12 CHAIRMAN GLEIMAN: So what you are telling us is  
13 that the market test hospital a ramp up aspect to it, to use  
14 Mr. Volner's phrase, that ramps up from one of your 25 sites  
15 to two of your 25 ultimate sites.

16 MR. HOLLIES: I think that is a fair statement.  
17 What we have here is a situation where we are trying to  
18 marry business plans of a start-up with the Commission  
19 proceedings, and it is not necessarily a match made in  
20 heaven.

21 COMMISSIONER LeBLANC: Are there any other --

22 CHAIRMAN GLEIMAN: You know, with all due respect,  
23 Mr. Hollies, you seem to feel that it is the Commission's  
24 regulations, which the Postal Service had an opportunity to  
25 comment on when they were under a Notice of Proposed

1 Rulemaking several years ago, that seemed to be creating a  
2 problem here. There's still a lot that we have to hear and  
3 think about. But just let me suggest to you that it is the  
4 Postal Service's timing and design of this proposal that has  
5 created the confusion and the problem, not our regulations  
6 and your attempt to use two different aspects of our  
7 regulation.

8 If you had simply filed for an experimental case,  
9 which, based on your last response to me, seems to be what  
10 you really are talking about with your market test, then  
11 there wouldn't be any confusion.

12 *Mr. Hollies:* I mean no disrespect to the Commission or its rule  
13 sets. We certainly participated in the development of those  
14 rules. I'm merely noting that they are not a perfect  
15 vehicle for launching a new service.

16 CHAIRMAN GLEIMAN: Sure.

17 MR. HOLLIES: And we're grappling with that  
18 difficulty. It's an ongoing struggle.

19 CHAIRMAN GLEIMAN: The experimental rules are a  
20 perfect vehicle, as perfect vehicles go, for launching --

21 MR. HOLLIES: Well, I'm glad you can say that, Mr.  
22 Chairman.

23 COMMISSIONER LeBLANC: Mr. Wiggins, I believe you  
24 had a comment you were going to make a minute ago. Has that  
25 been taken care of?

1 MR. WIGGINS: Just Amen.

2 [Laughter.]

3 COMMISSIONER <sup>Goldway</sup>~~GOLDMAN~~: I have a question. Is the  
4 ramp-up in the second print site absolutely necessary for a  
5 market test?

6 MR. HOLLIES: No. What's kind of missing from  
7 this is whether or not the demand develops. I mean, that's  
8 one of the pieces of information we see arising from the  
9 market test that would inform the propriety of an  
10 experiment. If the demand is not there, well, that --

11 COMMISSIONER <sup>Goldway</sup>~~GOLDMAN~~: The time frame is so short,  
12 though, that it seems to me that --

13 MR. HOLLIES: Well, I stand by my answer. No, it  
14 is not strictly necessary to the market test.

15 COMMISSIONER <sup>Goldway</sup>~~GOLDMAN~~: I would simply say that I  
16 think the Commission, if we support the market test, would  
17 use it to get as much cost data as we possibly could to  
18 inform a decision about the experimental test.

19 COMMISSIONER LeBLANC: Okay. Any other further  
20 comments on why the market test, if you will, may or may not  
21 help us evaluate the online service?

22 Mr. Bush?

23 MR. BUSH: Briefly, Commissioner LeBlanc, I would  
24 just I guess echo what Commissioner <sup>Goldway</sup>~~GOLDMAN~~ just said. I  
25 think that, in fact, the notion that this market test might

1 inform either the Commission or the Postal Service with  
2 respect to, for example, the issue Mr. Hollies identifies,  
3 whether the service ought to be offered at all, in some ways  
4 is highly misleading, and I don't mean in any intentional  
5 sense, but only in the sense that this is such a short time  
6 frame that you could get a very distorted look or --

7 COMMISSIONER ~~COLEMAN~~ <sup>Coleman</sup> That's a good point.

8 MR. BUSH: -- view of what's going or what might  
9 ultimately happen in a two-year period from this market  
10 test.

11 If you really were going to make a decision based  
12 on that, which I doubt -- and by you, I mean the Postal  
13 Service more than the Commission, but it would include the  
14 Commission -- it could be a very misinformed decision.

15 COMMISSIONER LeBLANC: Mr. Hollies, one last  
16 comment?

17 MR. HOLLIES: Well, I would note that in some  
18 sense, to the extent there's any truth in that, it's even  
19 more true of the current operations test. We have not used  
20 the current operations test as a proxy for the market test  
21 or the experimental versions of mailing <sup>M</sup> online, let alone  
22 what we hope in the long run proves to be a permanent form  
23 of the service.

24 The market test will be a whole lot better a proxy  
25 than the operations test. We're working in a situation

1 where there's basically a dearth of data, and we must mine  
2 it for what we can.

3 COMMISSIONER LeBLANC: Thank you.

4 Now, we have been on the -- up to this point,  
5 we've kind of focused on the Postal Service. I want to  
6 shift gears a minute and get some information from the  
7 intervenors.

8 The first question I've got is, does any  
9 participant intend to submit testimony opposing any market  
10 test of online mailing service? And let me emphasize here  
11 I'm interested in testimony at this point.

12 It goes without saying that participants will have  
13 the opportunity to file written briefs presenting legal and  
14 policy grounds for rejecting the market test.

15 For example, the statement of the OCA in response  
16 to my Order Number 1216 identified several areas where the  
17 current Postal Service presentation might be deficient.  
18 Those deficiencies might effectively be clarified through  
19 cross examination and argued on brief.

20 I did not see anything in the OCA statement  
21 indicating that it intended to submit testimony on these  
22 points. Does any participant intend to submit testimony  
23 opposing the market test? Any comments?

24 MR. WIGGINS: Commissioner LeBlanc, Pitney Bowes  
25 is really in a position where it is not able to give you a



1 straight answer to that question. And part of the reason  
2 for that is that we have not seen the contract that's going  
3 to define the price term as the Postal Service proposes the  
4 service, and until we've seen that, we really can't evaluate  
5 our position on that.

6 COMMISSIONER LeBLANC: Mr. Bush?

7 MR. BUSH: Yes, Commissioner LeBlanc. As I have  
8 already indicated, it's MASA's view that, as a purely legal  
9 matter, that this is not an appropriate use of the market  
10 test rules, and that's really our principal position here.  
11 We think this is an experimental test in market test  
12 clothing. And as such, I suppose theoretically, all of the  
13 issues that we have identified, at least in a preliminary  
14 manner, in our filing for this prehearing conference that  
15 relate to the experimental test could be issues that would  
16 be evidentiary issues in the market test and on which we  
17 might or might not offer testimony.

18 In the shortened time frame that's being  
19 discussed, I suspect as a realistic matter, we wouldn't  
20 either try to or perhaps even be permitted by the  
21 Commission, by the presiding officer, to litigate all of  
22 those matters, and aside from the legal issue, the other  
23 aspect of this, it seems to me that if the market test is  
24 going forward, we might want to put on testimony as opposed  
25 to simply be limited to cross examination, oral or

1 otherwise, would be the structure of the data collection  
2 plan.

3 But I'm laboring under some of the same  
4 constraints that Mr. Wiggins is referring to. We simply  
5 haven't gotten to the point where we've got enough  
6 information about this to really be able to say anything on  
7 that score with much definiteness.

8 COMMISSIONER LeBLANC: So am I to understand that  
9 you and Mr. Wiggins both -- in effect, your material issue  
10 of fact is not out there at this point, but it could come  
11 from the contract vis-a-vis, if you will, the costing data  
12 that is in that contract?

13 MR. WIGGINS: That's certainly right from our  
14 point of view.

15 MR. BUSH: I'm with Mr. Wiggins on that. And in  
16 addition, I think that we may want or need to put in some  
17 testimony with respect to the data collection plan.

18 COMMISSIONER LeBLANC: I'm sorry, Ms. Dreifuss, I  
19 didn't mean to cut you off. I apologize.

20 MS. DREIFUSS: You didn't, Commissioner LeBlanc.

21 At the present time, OCA does not anticipate  
22 presenting testimony during the market phase of the  
23 proceeding. If the Commission does decide to bifurcate this  
24 docket, I think it's possible we would have testimony in the  
25 experimental phase, although we haven't made a firm decision

1 about that.

2 We would anticipate during -- if there is a market  
3 phase and then an experimental phase, conducting oral cross  
4 examination at hearings and then presenting our position on  
5 brief.

6 COMMISSIONER LeBLANC: Our Commission rules for  
7 the consideration of market test provide for the  
8 identification of these contested issues of fact and  
9 contemplate, if you will, the prompt filings of these  
10 rebuttal testimony so that we can reach our decision in 90  
11 days.

12 Now, if the Postal Service witnesses testify on,  
13 as an example, August 26th or 27th, up in that time frame,  
14 would you be able to tell us at the conclusion of the  
15 testimony whether you want to submit further testimony on  
16 that market test?

17 MR. WIGGINS: It's certainly correct for Pitney  
18 Bowes.

19 COMMISSIONER LeBLANC: That would be a good time  
20 frame?

21 MR. WIGGINS: Yes. Well, it's a little tight, but  
22 we can accommodate it.

23 COMMISSIONER LeBLANC: Ms. Dreifuss?

24 MS. DREIFUSS: We certainly could then, and as I  
25 say, even at the present time, I think I can say almost with

1     certainty that we will not be presenting any testimony in  
2     the market phase if the case is bifurcated.

3             COMMISSIONER LeBLANC:  Mr. Bush?

4             MR. BUSH:  We can live with that schedule.

5             COMMISSIONER LeBLANC:  Anybody else out there who  
6     would want to comment on those dates, procedural or  
7     otherwise?

8             [No response.]

9             COMMISSIONER LeBLANC:  Okay.

10            Does any other participant out there have any  
11   testimony that they think they may present?

12            [No response.]

13            COMMISSIONER LeBLANC:  Okay.

14            The next idea I would like to explore is the need  
15   for oral cross examination of Postal Service witnesses.  
16   Presiding Officer's Ruling Number 2 asks participants to be  
17   prepared to identify the issues of fact relevant to the  
18   market test that require development through all cross  
19   examination.

20            Again, I want to be clear here that the inquiry  
21   relates to cross examination concerning the market test as  
22   opposed to the experiment.

23            Now, first there are participants who want to  
24   cross, as I understand it, Postal Service's witnesses on the  
25   subject of the market test.  Now, I understand that you've

1 talked to me about you need the contract, you need to follow  
2 that through and so forth. Now, given that scenario, are we  
3 still talking here about oral, or what are we talking about  
4 from the standpoint of your case or anybody else's case?

5 MR. VOLNER: It is, indeed, difficult for us to  
6 state that we will, in fact, want cross examination. There  
7 is certainly a distinct possibility of it.

8 In part because of what has transpired here today,  
9 I have learned a great deal more about what now appears to  
10 be a semi ramped up market test than I understood when we  
11 filed our paper.

12 While I'm sure that Mr. Hollies is being entirely  
13 candid and forthright with us, I would like to hear it from  
14 witnesses on a record because it seems to me that, market  
15 test rules or no, you are required to make a determination  
16 on a record where there are substantial questions of fact.

17 COMMISSIONER LeBLANC: Mr. Bush?

18 MR. BUSH: I really have a similar answer to Mr.  
19 Volner's. We haven't received any responses yet to our  
20 discovery request, not that they're late or anything, we  
21 just haven't received them, and it's hard to know whether  
22 and to what extent we're going to want to conduct oral cross  
23 examination.

24 But my guess is that we -- there is a significant  
25 possibility we will want to do that. I too have learned

1 some things today from Mr. Hollies, and they have actually  
2 raised questions I haven't thought of before. So I suppose  
3 it's getting worse rather than better in terms of clarifying  
4 things from my perspective. But I think there's a  
5 reasonable possibility of the need for oral cross  
6 examination.

7 COMMISSIONER LeBLANC: Ms. Dreifuss?

8 MS. DREIFUSS: I came prepared today to indicate  
9 to the Commission which witnesses we thought we would like  
10 to cross examine during the market test phase of the  
11 proceeding if you bifurcate, and we do agree with the Postal  
12 Service to some extent. They identified witnesses Garvey  
13 and Plunkett as having testimony pertinent to the market  
14 test, and we would like to cross examine witnesses Garvey  
15 and Plunkett.

16 Witnesses Wilcox and Campanelli certainly do  
17 present testimony relevant to the market test, but I don't  
18 believe we will need to cross examine them.

19 We do disagree with the Postal Service --

20 COMMISSIONER LeBLANC: I'm sorry, you said you  
21 would not need to cross examine them?

22 MS. DREIFUSS: At this time, I don't think we  
23 would need to cross examine witnesses Wilcox or Campanelli.

24 COMMISSIONER LeBLANC: Okay.

25 MS. DREIFUSS: Nor do I think we would need to

1 cross examine witness Hamm.

2 We would very much like to cross examine witness  
3 Stirewalt. We think his testimony is very relevant to rates  
4 that would be offered during the market test. And I guess  
5 we're still not certain about witness Rothschild. When I  
6 came here this morning, I thought we would want to cross  
7 examine witness Rothschild, thinking that that testimony was  
8 relevant to a market test. But I will need to go back and  
9 look more carefully at her testimony and the library  
10 reference she sponsors to make that determination.

11 COMMISSIONER LeBLANC: It seems or it appears, if  
12 you will, to me that we may need to hold some hearings on  
13 the 26th and/or the 27th for oral cross examination. To  
14 help us prepare, can you, Mr. Wiggins and/or you, Mr. Bush,  
15 maybe tell us who you may be interested in as witnesses?  
16 Wilcox, Campanelli, Ms. Rothschild and so forth.

17 MR. WIGGINS: Witnesses Garvey and Plunkett for  
18 Pitney Bowes.

19 COMMISSIONER LeBLANC: Mr. Bush?

20 MR. BUSH: At this point, I would identify  
21 witnesses Garvey and Plunkett, and I have some interest in  
22 Mr. Stirewalt as well. I don't think I have any interest in  
23 Wilcox and Campanelli at this point, but to some extent,  
24 that depends on answers to interrogatories.

25 COMMISSIONER LeBLANC: Mr. Hollies, will that

1 cause you a problem based on your scenario earlier where  
2 some would be available, some might not, you would have to  
3 poll people from different directions and so forth?

4 MR. HOLLIES: I have no present knowledge, having  
5 inquired of the full set of witnesses, that they are  
6 unavailable on any day, be it the 26th, the 7th or the rest  
7 of the following week. I can poll them again. I don't  
8 expect any problem.

9 COMMISSIONER LeBLANC: Okay. Any other further  
10 comments from participants?

11 [No response.]

12 COMMISSIONER LeBLANC: At this point, I think we  
13 can turn to a discussion of whether it makes sense to  
14 conduct this case in two separate phases, one considering  
15 the market test and the other considering the experiment.

16 My initial thought was that these two phases could  
17 proceed concurrently. That is, that after participants  
18 submitted briefs, the Commission could be preparing its  
19 opinion and recommended decision on the market test while  
20 participants were litigating the request for experimental  
21 authority.

22 I would like participants to comment on that  
23 suggestion. We've already touched on it a little bit.  
24 Would you like to begin the discussion, Mr. Hollies,  
25 anything that we didn't cover before.



1           MR. HOLLIES: I would just like to say that  
2 proceeding with the two concurrently is what the Postal  
3 Service has formally requested and continues to prefer.

4           COMMISSIONER LeBLANC: Mr. Bush, Mr. Wiggins,  
5 anybody? Mr. Bush?

6           MR. BUSH: I think that -- I don't want to repeat  
7 what I've already said and just take up everybody's time.  
8 Our position is pretty clear that we think that the market  
9 test is -- whether you want to call it just a ramp-up,  
10 whether you want to call it simply something that the Postal  
11 Service feels it needs for business reasons, or whether you  
12 want to call it an experimental test, that seems to me what  
13 it is. It's an experiment. And therefore, this ought to be  
14 conducted as an experimental proceeding and it should not be  
15 bifurcated in any evidentiary sense, that the evidence ought  
16 to be taken on the experiment.

17           Having said that, I recognize that the mere fact  
18 that I think it's really an experiment doesn't mean much  
19 unless the Commission agrees, and it does seem that it would  
20 be useful to have some mechanism to determine whether my  
21 view of that is correct. If it is, then I think everything  
22 follows pretty nicely and we can schedule evidentiary  
23 hearings as if it's an -- as an experimental proceeding.

24           If my view is not accepted by the Commission, then  
25 I think we would need to have -- I think at that point, we

1 would need to have some separate proceedings, possibly  
2 evidentiary proceedings on some of the issues that we've  
3 already discussed, including a data collection plan, maybe  
4 the contract issues and some of the costing issues.

5 But it does seem to me it makes most sense to try  
6 and get the legal issue determined pretty promptly to see  
7 whether or not we're even going forward with a market test.

8 COMMISSIONER LeBLANC: Mr. Wiggins?

9 MR. WIGGINS: Pitney Bowes is of the view that it  
10 may be beneficial to the Commission and to competitors with  
11 the Postal Service to, with all appropriate respect to --

12 COMMISSIONER LeBLANC: Would you talk up, Mr.  
13 Wiggins, please.

14 MR. WIGGINS: Yes. With all appropriate respect  
15 to Mr. Bush and MASA, to have two parts to this proceeding,  
16 that it makes sense to have a market test because the market  
17 test, if properly conducted, and this is the point that our  
18 paper really makes to the Commission, if properly conducted,  
19 the market test will supply us all with some information  
20 about this proposal that the Postal Service has put in front  
21 of you.

22 In terms of the contract price, which is really central to  
23 this whole thing that is the mystery meat that we don't know  
24 about. And that following the market test, and that the  
25 Commission ought to adjudicate the propriety of that market

1 test first, that following that market test you have an  
2 adjudication of an experiment, if that's what the Postal  
3 Service wants to do.

4           Though the rules don't quite look like that, we  
5 have no objection to that. You have an adjudication based  
6 on the market-test data of experimental rates. And then  
7 after the end of the experiment, if the Postal Service is  
8 still interested in moving forward with this thing, you have  
9 a proposal for permanent rates. And that's good by us.

10           COMMISSIONER LeBLANC: Thank you, Mr. Wiggins.

11           Ms. Dreifuss.

12           MS. DREIFUSS: OCA has considerations pulling us  
13 in several directions on whether it's appropriate to  
14 bifurcate the proceeding, so we've decided not to take a  
15 formal position on that issue.

16           COMMISSIONER LeBLANC: The easy way out, I  
17 suppose, just like me combing hair.

18           [Laughter.]

19           I'm one of five.

20           Does any other participant have any comments they  
21 would like to make?

22           MR. BUSH: I have one comment on --

23           COMMISSIONER LeBLANC: Yes, Mr. Bush.

24           MR. BUSH: On AMMA's proposal. I haven't read  
25 their proposal, I haven't had a chance to, so I don't know

1 exactly what they've proposed. But the thing that concerns  
2 me about that procedure is that -- it goes back to something  
3 I said earlier. I think that the market test, (a) it's not  
4 really what they're doing, but (b) the market test is going  
5 to be conducted in such a short period of time, it's not  
6 really going to produce very much useful information.

7 MR. WIGGINS: We made that point, Graeme, and  
8 suggested that if the Commission is to approve of a market  
9 test, it be of a sufficient duration to provide data that  
10 would be useful in evaluating a subsequent proposal for an  
11 experiment, and we stand by that.

12 CHAIRMAN GLEIMAN: Implicit in your suggestion  
13 that we bifurcate and that we do it in a manner that  
14 provides meaningful data is that we can't accommodate the  
15 Postal Service's request for a decision on the experiment  
16 within 150 days.

17 MR. WIGGINS: That's absolutely correct.

18 CHAIRMAN GLEIMAN: Okay.

19 MR. WIGGINS: Well, that you can't accommodate the  
20 combination of a ruling on a market test and then an  
21 experiment within a total elapsed time of 150 days. You  
22 have to do the thing sequentially.

23 CHAIRMAN GLEIMAN: Okay.

24 COMMISSIONER GOLDWAY: I do have a question.

25 COMMISSIONER LeBLANC: Ladies and gentlemen, does

1 anybody else have any -- any participant have any other  
2 comments before we go to the bench?

3 Now my colleagues, I'm going to offer to them --  
4 excuse me -- if I touch on any issue the discussion that  
5 they want to pick up or ask any further questions, so we'll  
6 start with our Chairman.

7 CHAIRMAN GLEIMAN: No, you go ahead if you have a  
8 question.

9 COMMISSIONER LeBLANC: Chairman Gleiman.

10 CHAIRMAN GLEIMAN: There's a matter which I would  
11 like to bring up, but it's not substantive related to the  
12 market test or the experiment.

13 MR. HOLLIES: Excuse me, Mr. Presiding Officer.  
14 If the Chairman could be urged to speak more directly into  
15 the microphone, I believe there would be greater benefit for  
16 his words.

17 CHAIRMAN GLEIMAN: Are you speaking in the active  
18 or the passive voice?

19 COMMISSIONER LeBLANC: Speak up.

20 CHAIRMAN GLEIMAN: Would you urge me to do that?

21 COMMISSIONER LeBLANC: Commissioner Goldway.

22 COMMISSIONER GOLDWAY: I just wanted to hear if  
23 there were some comments about what the legal and  
24 substantive issues would be for an experimental hearing, a  
25 hearing on the experimental test that we haven't touched on

1 in discussing the market test. I can think of some, but I  
2 don't know that I want to throw them out here. I wanted to  
3 hear if you thought of any issues that would be explored in  
4 such a hearing that have not been talked about today.

5 COMMISSIONER LeBLANC: Just a point of  
6 clarification, Commissioner Goldway. Are we talking now to  
7 the participants or are we talking to the Postal Service?

8 COMMISSIONER GOLDWAY: The Postal Service and the  
9 participants.

10 COMMISSIONER LeBLANC: Thank you.

11 Any comments, Mr. Hollies?

12 MR. HOLLIES: Well, I think I can understand how  
13 participants and Commissioners could understand the nature  
14 of the request we have made to raise some significant and  
15 substantial issues that would be appropriate for the  
16 experiment and perhaps not for the market test, but I don't  
17 want to lead too much with my chin here. Let me just  
18 identify one particular example. We have asked that the  
19 experiment involve a markup rather than a many-celled fee  
20 schedule. And that's novel.

21 COMMISSIONER GOLDWAY: Um-hum.

22 MR. HOLLIES: We deliberately did not do so for  
23 the market test in order to provide, shall we say, a more  
24 full opportunity to explore that particular issue. There  
25 are perhaps some other examples to be found in our request

1 in our initial filing that are similar in that respect to  
2 the markup issue.

3 COMMISSIONER LeBLANC: Mr. Bush.

4 MR. BUSH: Yes, Mr. Presiding Officer.

5 Commissioner Goldway, we have filed, as I'm sure you're  
6 aware, the comments that were required by Order 1216, and we  
7 have listed there 12 issues that we believe would be  
8 pertinent, at least the ones that we can figure out at this  
9 point, to an experimental case. Those include, and I  
10 certainly won't go through all of them --

11 COMMISSIONER GOLDWAY: Um-hum.

12 MR. BUSH: Because they're there already. They  
13 include the markup issue, they include whether or not  
14 assuming you use the markup structure a 25-percent markup is  
15 appropriate or whether there should be some other type of  
16 markup.

17 Another issue which I think is probably subsumed  
18 in something that we've listed here but which has become I  
19 guess a little more clarified for me by something Mr.  
20 Hollies said earlier is whether the postage rate is  
21 appropriate, given as he acknowledged earlier that at least  
22 some portion of the mailing online mail will not be entered  
23 at destination BMC's, notwithstanding the fact that they'll  
24 get that rate.

25 So there's a host of issues, and I suppose most

1 importantly from MASA's point of view is the issue of the  
2 competition with letter shops and other mailing service  
3 firms.

4 COMMISSIONER LeBLANC: Mr. Wiggins.

5 MR. WIGGINS: In Pitney Bowes' assessment the  
6 approval of a market test is really a proceeding that's a  
7 lot less evidentially rigorous --

8 COMMISSIONER GOLDWAY: Um-hum.

9 MR. WIGGINS: Than that that is appropriate to the  
10 approval of an experiment. The reason that you do a market  
11 test is to get the kind of evidence that you guys need to  
12 see in order to approve an experiment which in turn is  
13 productive of the kind of evidence that you need to see in  
14 order to approve a permanent rate. So it's sort of a  
15 totemic thing.

16 COMMISSIONER GOLDWAY: Um-hum.

17 MR. WIGGINS: And precisely because the market  
18 test is short-lived by rule, it's a year long at maximum, by  
19 Postal Service proposal it's three months long.

20 COMMISSIONER GOLDWAY: Um-hum.

21 MR. WIGGINS: So that there's less injury to  
22 competitors available.

23 COMMISSIONER GOLDWAY: Um-hum.

24 MR. WIGGINS: From the market test, so that in our  
25 view a market test is not completely a no-brainer sort of



1     thing, but it's a thing that if facially reasonable you  
2     ought to approve. And then it supplies all of us with the  
3     kind of -- and you, not incidentally -- with the kind of  
4     evidence that you need to make a reasoned determination of  
5     whether the longer-term business of an experiment is  
6     available. And then after you have the product of the  
7     experimental evidence, you can make an adjudication of the  
8     real thing, a permanent rate.

9                 COMMISSIONER LeBLANC: Ms. Dreifuss.

10                MS. DREIFUSS: Our view is very close to that  
11     expressed by Mr. Wiggins a moment ago. We believe that the  
12     potential for harm is not very great with the market test  
13     because there are a limited number of participants and it is  
14     a very short duration. We feel that there's potential  
15     competitive harm, and in theory there could be harm even to  
16     all mailers if this service doesn't cover its costs, and we  
17     do have concerns about that.

18                When we get to the experimental phase, we'd like  
19     the evidence upon which the Commission bases its decision to  
20     be much firmer and more sound than the evidence which  
21     probably be acceptable during the market-test phase because  
22     the potential for harm is much greater. It'll be offered on  
23     a nationwide basis. There could be a very large number of  
24     customers, a lot of mail involved. So competitive harm and  
25     the possibility of not covering costs becomes a much greater

1 risk once it's offered as an experiment.

2 COMMISSIONER LeBLANC: Any other participant care  
3 to comment on Commissioner Goldway's questions, comments?

4 COMMISSIONER GOLDWAY: Thank you. I wanted to get  
5 a sense of the complexity of the experimental hearing.

6 COMMISSIONER LeBLANC: Is that all?

7 COMMISSIONER GOLDWAY: Yes.

8 COMMISSIONER LeBLANC: Before concluding this  
9 conference there are a couple of procedural matters to take  
10 up. In the past we have often issued fairly detailed  
11 special rules of practice applicable to individual cases. I  
12 do not think the detailed special rules of practice are  
13 necessary in this case. Presiding Officer's Ruling No. 2  
14 directed that responses to discovery requests be provided  
15 within ten days. I will set a blanket seven-day rule for  
16 other discovery-related filings, that is, objections are due  
17 in seven days, motions to compel due in seven days, answers  
18 to motions due in seven days. If this rule causes counsel  
19 undue hardship in a particular circumstance, I count on you  
20 to let me know. Otherwise, we will stick to that rule.

21 The Commission may adopt special rules concerning  
22 service of documents for this case. In recent cases we've  
23 been experimenting with ways to reduce the cost of  
24 participation by reducing the requirements for mailing hard  
25 copies of documents. You may have seen a document entitled

1 "Electronic Service Experiment" when you entered the hearing  
2 room. Extra copies of that document are on the table behind  
3 the Postal Service counsel. Chairman Gleiman has been  
4 working very hard to modernize the Commission and its  
5 procedures, and in my opinion done a very good job, so I  
6 will ask him to explain how electronic service might work.

7 Chairman Gleiman.

8 CHAIRMAN GLEIMAN: Would you urge me to speak?

9 COMMISSIONER LeBLANC: Speak up, as they say.

10 CHAIRMAN GLEIMAN: First off, I want to make clear  
11 that this is an experiment and not a market test.

12 [Laughter.]

13 CHAIRMAN GLEIMAN: Lest there be any confusion.

14 We have -- we tried electronic filing once before, as some  
15 of you may recall, and we ran into some problems, primarily  
16 at the outbound end with software and being able to read  
17 messages, download and read messages that were sent.

18 We think that, given our experience over the past  
19 couple of years with our web site, and the responses that we  
20 have gotten from individuals about how they have used it to  
21 access documents earlier than they might otherwise get them,  
22 that this provides -- our web site provides a reasonable  
23 opportunity to us proceed with another experiment, an  
24 electronic service experiment and, in effect, it becomes an  
25 electronic filing experiment in some respects, too.

1           I am not going to go into all the gory details of  
2   this one page document. I think it is fairly simple and  
3   straightforward. I would urge everyone to think seriously  
4   about participating. As I said, this is an experiment and  
5   we hope to learn from the experiment and figure out what  
6   problems there might be for the future when we have a case  
7   that has many, many more intervenors than we have in this  
8   case.

9           In any event, I hope you all will participate. It  
10   is likely to save time on the receiving end, the cost that  
11   you all incur in both copying and mailing the many service  
12   documents and, also, it will save a couple of trees out  
13   there somewhere, which I think we are generally all in favor  
14   of. I urge you, if you haven't picked up a copy of the  
15   document, to do so.

16           The presiding officer, I believe, working with our  
17   technical people and legal shop, will issue a ruling,  
18   inasmuch as we are not preparing special rules, which will  
19   guide you in how you can sign up for this if you wish to do  
20   so. We think that we have done some things here which would  
21   encourage folks to sign up and relieve themselves of certain  
22   obligations that they might otherwise have with respect to  
23   service of documents.

24           Also, it is conceivable, after the ruling comes  
25   out, after you have an opportunity to read the one page that

1 outlines the experiment, that we may decide to hold a  
2 technical conference if there are questions. And I would  
3 encourage you, if you have questions, to contact our  
4 administrative office and they will be able to guide you  
5 through the specifics of this proposal.

6 Thank you, Mr. Presiding Officer.

7 COMMISSIONER LeBLANC: Thank you, Mr. Chairman.

8 Finally, let us go over the Commission hearing  
9 room procedures for those of you may not be familiar with  
10 it. The Commission has maintained the same routine through  
11 a number of cases and many of the participants in the case  
12 are familiar with it. Hearings will begin at 9:30 sharply  
13 and will proceed with morning breaks as we need them, if you  
14 will. We will take a lunch break, hopefully around 12:15,  
15 12:30. That should be the morning.

16 Then the Commission will again maintain the same  
17 schedule in the afternoon, breaking when necessary and going  
18 till all the witnesses are covered. The Commission will  
19 again maintain a recorded telephone message to announce the  
20 hearing schedules. The schedule will be updated during  
21 hearing breaks so that you can learn how cross-examination  
22 is progressing at approximately 11:00, 1:00 and 3:15.  
23 That's again 11:00, 1:00 and 3:15. The telephone number is  
24 area code 202-789-6874. 202-789-6874.

25 Additionally, as most of you are aware, the

1 Commission's home page on the web site -- excuse me, on the  
2 World Wide Web, will provide access to all documents issued  
3 by the Commission and to most documents submitted by all of  
4 participants. As Chairman Gleiman has said, it is our goal  
5 to have all documents available. Also, we will continue our  
6 practice of providing a complete daily list of all documents  
7 filed with the Commission. The address for our home page is  
8 [www.prc.gov](http://www.prc.gov).

9 Now, before we end, does any participant have any  
10 issue that you want to talk about at this particular time  
11 that wasn't covered? Mr. Hollies, I believe you -- did you?

12 MR. HOLLIES: I leapt to the mike first. Yes, I  
13 do have one comment. We have received an informal request  
14 for a site visit. A physical site visit is kind of  
15 impossible and impractical. The printers themselves have a  
16 security problem with letting outsiders in. Seeing the web  
17 server itself -- you know, look at a box in the computer  
18 room, it wouldn't be very exciting.

19 So we are looking to provide, basically, a  
20 demonstration of the user interface. There is already being  
21 developed a suitable vehicle. It is something that is  
22 intended to be shown at the National Postal Forum at the end  
23 of this month in Washington. It should be available right  
24 about the time hearings may well be commencing, but I was  
25 going to suggest a date that might even have overlapped with

1 those hearing dates, so I will not make a suggestion at this  
2 point. Suffice it to say that in the last few days of the  
3 month is when we are looking at providing a demonstration.

4 It will be basically portable on a PC, so we could  
5 probably bring it over here, or we could invite people over  
6 to the Postal Service. I would be happy to deal with those  
7 administrative details with the Commission's staff.

8 COMMISSIONER LeBLANC: Thank you, Mr. Hollies. I  
9 wish you would give the administrative office a call and try  
10 to work out some details as far as maybe some times that  
11 would be available and so forth. But I'll leave that in  
12 your capable hands and our administrative office's capable  
13 hands.

14 Mr. Bush.

15 MR. BUSH: Yes, Mr. Presiding Officer. I have one  
16 question of Mr. Hollies. I wonder if he could be a little  
17 more specific about what the security concern would be that  
18 would prevent a site visit to one of the printers.

19 COMMISSIONER LeBLANC: Mr. Hollies, any comment?

20 MR. HOLLIES: Well, in a nutshell, the printers  
21 are bound to live by the mail security procedures that the  
22 Postal Service itself is bound by. In addition, it is a  
23 normal printing industry standard to require, for example,  
24 that advertising materials they may be printing are not  
25 subject to release or publicly available in any sense of the

1 word prior to their actually being delivered, whether via  
2 the mailstream or otherwise. So we do not have the  
3 capability to, in our contracts, to direct those printers to  
4 permit us and interested participants to those sites.

5 If we have -- I am sure we can answer  
6 interrogatory type questions about them. There are details  
7 of the mail security requirements specified in Library  
8 Reference 5.

9 MR. BUSH: But I take it that the concern, the  
10 security concerns that you just referenced could conceivably  
11 be dealt with by some kind of a protective order, couldn't  
12 it?

13 MR. HOLLIES: Seeing as how those printers are not  
14 processing exclusively Postal Service material, I am not at  
15 all confident about that.

16 COMMISSIONER LeBLANC: Mr. Hollies, could you  
17 check into that for me?

18 MR. HOLLIES: I will certainly check further.

19 COMMISSIONER LeBLANC: And I guess you can handle  
20 that in writing with a request if you care to, and we'll let  
21 Mr. Hollies respond, if that is okay with you, Mr. Bush, in  
22 this particular case?

23 MR. BUSH: That is fine, Commissioner.

24 COMMISSIONER LeBLANC: Because there may be a  
25 possibility, as he said earlier, that we can have some



1 general demonstration that may answer some of the questions  
2 or may not. But I mean at least it is a starting point  
3 where we find ourselves today.

4 MR. BUSH: That's fine. The only other comment I  
5 wanted to make in response to your last question was that I  
6 have been advised by one of my colleagues here that perhaps  
7 I was insufficiently clear in a suggestion I made in  
8 response to your earlier question about bifurcation, and I  
9 will try and clearer, which is that I think it would be a  
10 good idea for the Commission to resolve the legal issue of  
11 whether the market test rules have been appropriately  
12 invoked here, either in the context of a motion for a  
13 declaratory ruling or a ruling on the waiver request is also  
14 possible. But that should be resolved earlier before we get  
15 to any evidentiary question.

16 COMMISSIONER LeBLANC: I understand and that is  
17 definitely our intent to get back with you as fast as  
18 possible.

19 Mr. Wiggins, I believe you had a comment.

20 MR. WIGGINS: Pitney Bowes just want to thank you  
21 all for -- absolutely.

22 COMMISSIONER LeBLANC: Ms. Dreifuss or any other  
23 participant have any comments, suggestions?

24 I believe our Chairman had one follow-up.

25 CHAIRMAN GLEIMAN: Mr. Hollies, inasmuch as you

1 raise the question of security in connection with the site  
2 visit and also the availability of materials before they  
3 actually enter the mailstream, perhaps you can help me and  
4 save me from doing a little bit of research. I noticed in  
5 one of the interrogatory responses that there is mention of  
6 a Privacy Act record system that was established last May, I  
7 believe, into which data, both mailing list data and textual  
8 data associated with people who participate in this  
9 experiment or market test, or whatever, I guess in the  
10 operational test also, is being kept.

11 Do you know offhand whether the Postal Service's  
12 many routine uses that allow disclosure of that information  
13 apply to that record system? And could you please check if  
14 you do not know, for example, whether that data is available  
15 for law enforcement purposes and the like?

16 MR. HOLLIES: Well, I don't know all of those off  
17 the top of my head. I will certainly check it out. I  
18 understand that the information is treated as confidential,  
19 it is given the most confidential level of treatment that we  
20 give information.

21 CHAIRMAN GLEIMAN: All records, all information,  
22 all records in record systems under the Privacy Act is  
23 protected. But the Postal Service over the years, as have  
24 many other agencies, have established a number of what are  
25 called routine uses, which is permitted under the law. And

1 among the many routine uses that you apply to almost of your  
2 other record systems, as I recall, is the availability of  
3 that information for law enforcement purposes and the like.  
4 And I would like to know whether, in fact, those routine  
5 uses apply to that particular record system, which would  
6 indicate that while a site visit may be inappropriate, that  
7 law enforcement people or others could have access to that  
8 information. So if you could let us know, I would  
9 appreciate it.

10 MR. HOLLIES: Well, I will be happy to let you  
11 know about the routine uses for that Privacy Act system of  
12 records. I don't know that there is a particular nexus  
13 between that and the print sites, per se.

14 CHAIRMAN GLEIMAN: I don't want to belabor the  
15 point. It has to do with the security and protection of  
16 that data. You implied that the nature of the data is such  
17 that, as soon as it is transmitted, it is sealed against  
18 inspection. I think that is what you were referring to when  
19 you said it is basically mail and you can't see it until it  
20 goes into the mailstream and the addressee gets it.

21 I would just like to know who can have access to  
22 that data and when. And one thought that crossed my mind,  
23 as a consequence of seeing that interrogatory response, was  
24 that it is maintained in a Privacy Act record system and it  
25 might, as a consequence of an oversight on the part of the

1     Postal Service, I am sure, be available to law enforcement.

2             It is not that I am opposed to it being -- you  
3     know, I am not making a value judgment, I just would like to  
4     know, and I think others would also.

5             MR. HOLLIES: I think an inquiry --

6             CHAIRMAN GLEIMAN: Especially the users.

7             MR. HOLLIES: An inquiry into the routine uses of  
8     that information seems reasonable. I will follow up on  
9     that.

10            COMMISSIONER LeBLANC: Thank you. Thank you, Mr.  
11     Hollies.

12            Commissioner Goldman.

13            COMMISSIONER GOLDMAN: I think part of the concern  
14     is the printer's contracts with other uses other than the  
15     Postal Service, that they have made contracts with other  
16     potential advertisers and wouldn't want us to come and see  
17     what they are printing. I know in my own experience having  
18     to go through print shops, that they were careful not to  
19     show me the work they were doing for other printers when I  
20     was doing contracts. So that is what I assumed some of  
21     their concerns were.

22            MR. HOLLIES: Yes. That is covered in the  
23     unfilled-out version of the contract. They are required to  
24     maintain a rather tight set of security arrangements.

25            COMMISSIONER GOLDMAN: But I think the Chairman

1 raises a question that I had in a somewhat different way,  
2 which is the responsibility of the Postal Service to all  
3 this information that is being printed and whether it is  
4 accurate information and what the liabilities are for that  
5 information once you agree to print it.

6 MR. HOLLIES: Well, we have provided an  
7 interrogatory response on that as well.

8 COMMISSIONER GOLDMAN: I am sure you have thought  
9 about that. Okay.

10 MR. HOLLIES: The simple description would be that  
11 when material is physically entered as mail, the Federal  
12 Torte Claims Act is applicable. Prior to that, if the  
13 printer makes a mistake, the contract makes the printer  
14 responsible for that. And if the printer makes a mistake or  
15 if the Postal Service makes a mistake at the web server, a  
16 refund would be available to the customer. Those are the  
17 general parameters.

18 COMMISSIONER GOLDMAN: I was thinking of issues  
19 such as plagiarism or liable.

20 MR. HOLLIES: Okay. Can we articulate a specific  
21 question?

22 COMMISSIONER GOLDMAN: Well, I am just saying that  
23 since the Postal Service somehow is involved in actually  
24 printing material, to what extent is or is not the Postal  
25 Service responsible for those violations of law, or is the

1 printer or the original submitter of the documents, and how  
2 do you separate those out? These issues of the Postal  
3 Service taking on private information, which the Chairman  
4 presents in the issue of confidentiality, I think raise  
5 other issues as well. About the --

6 MR. HOLLIES: We will see if can address more  
7 generally than just the privacy system of records, the issue  
8 of security for information ultimately that participates or  
9 is part of the *m*ailing *Online* ~~on-line~~ service.

10 COMMISSIONER LeBLANC: Thank you, Mr. Hollies. I  
11 hope we don't have to get back with you with a POI on that  
12 -- POIR, but we will see.

13 I want to thank everybody this morning for coming,  
14 and I will take your written and oral arguments under  
15 advisement, and discuss them with my colleagues.

16 A procedural schedule will be issued next week.  
17 This pre-hearing conference is adjourned. And, again, thank  
18 you very much.

19 [Whereupon, at 11:26 a.m., the pre-hearing  
20 conference adjourned.]

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