

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

Nov 2 9 32 AM '98

General Review of the Rules of Practice )

Docket No. RM98-3

SUPPLEMENT TO  
OFFICE OF THE CONSUMER ADVOCATE  
SUGGESTIONS IN RESPONSE TO ORDER NO. 1218  
ON IMPROVEMENTS IN THE COMMISSION'S RULES OF PRACTICE  
(November 2, 1998)

On October 28, 1998, the Office of the Consumer Advocate (OCA) filed suggestions in response to Order No. 1218 on improvements in the Commission's rules of practice. For the convenience of the Commission and interested parties, this filing supplements that pleading.

Attached hereto are the pertinent sections of the current Commission regulations with the language of the special rules, together with conforming language, inserted and underlined with bracketed portions to be deleted as proposed in Attachment 1 to OCA's October 28 filing.

Respectfully submitted,



Kenneth E. Richardson  
Attorney

**OCA Proposals For Inserting Special Rules  
Into Current Code of Federal Regulations**

**Sec. 3001.10 Form and number of copies of documents.**

(c) Number of copies. Except for correspondence or as otherwise required by the Commission, the Secretary, or the presiding officer in any proceeding, all persons shall file with the Secretary, an original and 24 fully conformed copies of each document required or permitted to be filed under this part. The copies need not be signed but shall show the full name of the person signing the original document and the certificate of service attached thereto. Documents shall be filed with the Commission and served upon parties in accordance with sections 9 through 12 of the Commission's rules of practice. Participants capable of submitting documents stored on computer diskettes may use an alternative procedure for filing documents with the Commission. Provided that the stored document is a file generated in either Word Perfect 5.1 or any version of Microsoft Word, and is formatted in Arial 12 font, in lieu of the requirements of section 10 of the rules, a participant may submit a diskette containing the text of each filing simultaneously with the filing of 1 (one) printed original and 3 (three) hard copies.

**Sec. 3001.12 Service of documents.**

(b) Service by the parties. Every document filed by any person with the Commission in a proceeding shall be served by the person filing such document upon the participants in the proceeding individually or by such groups as may be directed by the Commission or presiding officer except for discovery requests governed by Secs. 3001.25 (a) and (c), 3001.26 (a) and (c), and 3001.27 (a) and (c). and, except for designations for written cross-examination, notices of intent to conduct oral cross-examination, and notices of intent to participate in oral argument need to be served only on the Commission, the OCA, the Postal Service, and the complementary party (as applicable), as well as on participants filing a special request for service. Discovery requests and pleadings related thereto, such as objections, motions for extensions of time, motions to compel or for more complete answers, and answers to such pleadings, must be served only on the Commission, the OCA, the Postal Service, the complementary party, and on any other participant so requesting, as provided in sections 25-27 of the rules of practice. Special requests relating to discovery must be served individually upon the party conducting discovery and state the witness who is the subject of the special request. Special requests relating to discovery must be served individually upon the party conducting discovery and state the witness who is the subject of the special request.

(d) Service list. The Secretary shall maintain a current service list in each proceeding which shall include the participants in that proceeding and the person

or persons designated for service of documents by each party with the address and, if possible, a telephone number and facsimile number designated in the party's initial pleading in such proceeding or a notice of appearance as provided in Sec. 3001.6(c); provided, however, the Secretary is not required to include on such list more than two designated representatives for any party to the proceeding. The service list shall show the participants actively participating in the hearing and representative groups established pursuant to paragraph (c) of this section. Service on the persons, active participants or groups on the Secretary's service list in any proceeding, as directed by the Commission or hearing officer, shall be deemed service in compliance with the requirements of this section.

#### Sec. 3001.21 Motions.

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

Sec. 3001.24A *Discovery - general policy.* Sections 25, 26 and 27 of the rules of practice apply during the discovery stage of this proceeding except when specifically overtaken by these special rules. Questions from each participant should be numbered sequentially, by witness. The discovery procedures set forth in the rules are not exclusive. Parties are encouraged to engage in informal discovery whenever possible to clarify exhibits and testimony. The results of these efforts may be introduced into the record by stipulation, by supplementary testimony or exhibit, by presenting selected written interrogatories and answers for adoption by a witness at the hearing, or by other appropriate means. In the interest of reducing motion practice, parties also are encouraged to use informal means to clarify questions and to identify portions of discovery requests considered overbroad or burdensome.

#### Sec. 3001.25 Interrogatories for purpose of discovery.

(a) Service and contents. In the interest of expedition and limited to information which appears reasonably calculated to lead to the discovery of admissible evidence, any participant may serve upon any other participant in a proceeding written interrogatories requesting nonprivileged information relevant to the subject matter in such proceeding, to be answered by the participant served, who shall furnish such information as is available to the participant. A participant through interrogatories may require any other participant to identify each person whom the other participant expects to call as a witness at the hearing and to state the subject matter on which the witness is

expected to testify. The participant serving the interrogatories shall file a copy thereof with the Secretary pursuant to Sec. 3001.9 and shall serve a copy upon the Postal Service. Special requests for service by other participants shall be honored. Follow-up interrogatories to clarify or elaborate on the answer to an earlier discovery request may be filed after the initial discovery period ends. They must be served within seven days of receipt of the answer to the previous interrogatory unless extraordinary circumstances are shown. Sections 25 through 27 of the rules of practice allow discovery reasonably calculated to lead to admissible evidence during a noticed proceeding with no time limitations. Generally, discovery against a participant is scheduled to end prior to the receipt into evidence of that participant's direct case. An exception to this procedure shall operate when a participant needs to obtain information (such as operating procedures or data) available only from the Postal Service. Discovery requests of this nature are permissible up to 20 days prior to the filing date for final rebuttal testimony.

(b) Answers. [Each interrogatory shall be answered separately and fully in writing.] Answers to discovery requests shall be prepared so that they can be incorporated as written cross-examination. Each answer shall begin on a separate page, identify the individual responding, the participant who asked the question, and the number and text of the question unless it is objected to, in which event the reasons for objection shall be stated in the manner prescribed by paragraph (c) of this section. The party responding to the interrogatories shall serve the answers on the party who served the interrogatories within [20] 14 days of the service of the interrogatories or within such other period as may be fixed by the presiding officer, but before the conclusion of the hearing. Participants may submit responses with a declaration of accuracy from the respondent in lieu of a sworn affidavit. The answers are to be signed by the person making them. If the person responding to the interrogatory is unavailable to sign the answer when filed, a signature page must be filed within ten days thereafter with the Commission, but need not be served on participants. Copies of the answers to interrogatories shall be filed with the Secretary pursuant to Sec. 3001.9 and shall be served upon other participants pursuant to Sec. 3001.12(b).

(d) Objections and Motions to Compel Responses to Discovery. Upon motion of any participant in the proceeding, the Commission or the presiding officer may compel a more responsive answer, or an answer to an interrogatory or request for admission to which an objection was interposed, if the objection is overruled. Motions to compel should be filed within 14 days of the answer or objection to the discovery request. The text of the discovery request, and any answer provided, should be provided in the text or as an attachment to the motion to compel. Parties who have objected to interrogatories or requests for production of documents or items which are the subject of a motion to compel shall have

seven days to answer. Answers will be considered supplements to the arguments presented in the initial objection.

(e) Compelled answers. The Commission, or the presiding officer, upon motion of any participant to the proceeding, may compel answer to an interrogatory to which an objection has been raised if the objection is found not to be valid, or may compel an additional answer if the initial answer is found to be inadequate. Such compelled answers shall be served on the party who moved to compel the answer within 10 days of the date of the order compelling an answer or within such other period as may be fixed by the presiding officer, but before the conclusion of the hearing. Copies of the answers shall be filed with the Secretary pursuant to Sec. 3001.9 and on participants pursuant to Sec. 3001.12(b).

(f) Supplemental answers. A participant who has answered interrogatories is under the duty to seasonably amend a prior answer if he/she obtains information upon the basis of which he/she knows that the answer was incorrect when made or is no longer true. (A participant filing a supplemental answer shall indicate whether the answer merely supplements the previous answer to make it current, or whether it is intended as a complete replacement for the answer previously given.) Participants are expected to serve supplemental answers to update or to correct responses whenever necessary, up until the date that answers are accepted into evidence as written cross-examination. Participants filing supplemental answers shall indicate whether the answer merely supplements the previous answer to make it current or whether it is a complete replacement for the previous answer.

(g) Orders. The Commission or the presiding officer may order that any participant or person shall answer on such terms and conditions as are just and may for good cause make any protective order, including an order limiting or conditioning interrogatories, as justice requires to protect a party or person from undue annoyance, embarrassment, oppression, or expense.

Sec. 3001.26 Requests for production of documents or things for purpose of discovery.

(a) Service and contents. In the interest of expedition and limited to information which appears reasonably calculated to lead to the discovery of admissible evidence, any participant may serve on any other participant to the proceeding a request to produce and permit the participant making the request, or someone acting in his/her behalf, to inspect and copy any designated documents or things which constitute or contain matters, not privileged, which are relevant to the subject matter involved in the proceeding and which are in the custody or control of the participant upon whom the request is served. The request shall set forth the items to be inspected either by individual item or

category, and describe each item and category with reasonable particularity, and shall specify a reasonable time, place and manner of making inspection. The participant requesting the production of documents or things shall file a copy of the request with the Secretary pursuant to Sec. 3001.9 and shall serve copies thereof upon the Postal Service. Special requests for service by other participants shall be honored. Follow-up interrogatories to clarify or elaborate on the answer to an earlier discovery request may be filed after the initial discovery period ends. They must be served within seven days of receipt of the answer to the previous interrogatory unless extraordinary circumstances are shown. Sections 25 through 27 of the rules of practice allow discovery reasonably calculated to lead to admissible evidence during a noticed proceeding with no time limitations. Generally, discovery against a participant is scheduled to end prior to the receipt into evidence of that participant's direct case. An exception to this procedure shall operate when a participant needs to obtain information (such as operating procedures or data) available only from the Postal Service. Discovery requests of this nature are permissible up to 20 days prior to the filing date for final rebuttal testimony.

(b) Answers. The participant upon whom the request is served shall serve a written answer on the participant who filed the request within [20] 14 days after the service of the request, or within such other period as may be fixed by the presiding officer. The answer shall state, with respect to each item or category, that inspection will be permitted as requested unless the request is objected to pursuant to paragraph (c) of this section. The participant answering the request shall sign and file a copy of the answer with the Secretary pursuant to Sec. 3001.9 and shall serve copies thereof upon other participants who request them.

(d) Objections and Motions to Compel Responses to Discovery. Upon motion of any participant in the proceeding, the Commission or the presiding officer may compel a more responsive answer, or an answer to an interrogatory or request for admission to which an objection was interposed, if the objection is overruled. Motions to compel should be filed within 14 days of the answer or objection to the discovery request. The text of the discovery request, and any answer provided, should be provided in the text or as an attachment to the motion to compel. Parties who have objected to interrogatories or requests for production of documents or items which are the subject of a motion to compel shall have seven days to answer. Answers will be considered supplements to the arguments presented in the initial objection.

(e) Orders. The Commission or the presiding officer may, on such terms and conditions as are just and reasonable, order that any participant in a proceeding shall respond to a request for inspection, and may make any protective order of the nature provided in paragraph (f) of Sec. 3001.25 as may be appropriate. Upon motion of any participant to the proceeding, the Commission or the presiding officer may compel production of documents or things to which an

objection has been raised if the objection is found not to be valid. Such compelled documents or things shall be made available to the party making the motion within 10 days of the date of the order compelling production or within such other period as may be fixed by the presiding officer, but before the conclusion of the hearing. Documents or things ordered to be produced shall also be made available to the Secretary pursuant to Sec. 3001.9 and to the other participants who request them.

**Sec. 3001.27 Requests for admissions for purpose of discovery.**

(a) Service and content. In the interest of expedition any participant may serve upon any other participant a written request for the admission, for purposes of the pending proceeding only, of any relevant, unprivileged facts, including the genuineness of any documents or exhibits to be presented in the hearing. The participant requesting the admission shall file a copy of the request with the Secretary pursuant to Sec. 3001.9 and shall serve copies thereof upon the Postal Service. Special requests for service by other participants shall be honored. Follow-up interrogatories to clarify or elaborate on the answer to an earlier discovery request may be filed after the initial discovery period ends. They must be served within seven days of receipt of the answer to the previous interrogatory unless extraordinary circumstances are shown. Sections 25 through 27 of the rules of practice allow discovery reasonably calculated to lead to admissible evidence during a noticed proceeding with no time limitations. Generally, discovery against a participant is scheduled to end prior to the receipt into evidence of that participant's direct case. An exception to this procedure shall operate when a participant needs to obtain information (such as operating procedures or data) available only from the Postal Service. Discovery requests of this nature are permissible up to 20 days prior to the filing date for final rebuttal testimony.

(b) Answers. Each matter of which an admission is requested shall be separately set forth and is admitted unless within [20] 14 days after service of the request, or within such other period as may be fixed by the presiding officer, the participant to whom the request is directed serves upon the participant requesting the admission a written answer or files an objection pursuant to paragraph (c) of this section. A participant who answers a request for admission shall file a copy of the answer with the Secretary pursuant to Sec. 3001.9 and shall serve copies thereof upon other participants who request them.

(d) Objections and Motions to Compel Responses to Discovery. Upon motion of any participant in the proceeding, the Commission or the presiding officer may compel a more responsive answer, or an answer to an interrogatory or request for admission to which an objection was interposed, if the objection is overruled. Motions to compel should be filed within 14 days of the answer or objection to the discovery request. The text of the discovery request, and any answer

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

(e) Orders. If the Commission or presiding officer determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served, or may determine that final disposition of the request be made at a pretrial conference or at a designated time prior to the hearing. Upon motion of any participant to the proceeding, the Commission or the presiding officer may compel answers to a request for admissions to which an objection has been raised if the objection is found not to be valid. Such compelled answers shall be served on the party who moved to compel the answers within 10 days of the date of the order compelling production or within such other period as may be fixed by the presiding officer, but before the conclusion of the hearing. Copies of the answers shall be filed upon the Secretary pursuant to Sec. 3001.9 and served upon other participants who request them.

#### Sec. 3001.30 Hearings.

(d) Order of procedure. In public hearings before the Commission, the Postal Service shall open and close in proceedings which it has initiated under sections 3622, 3623, or 3661 of the Act, and a complainant shall open and close in proceedings on complaints filed under section 3662 of the Act. With respect to the order of presentation of all other participants, and in all other proceedings, unless otherwise ordered by the Commission, the presiding officer shall direct the order of presentation of evidence and issue such other procedural orders as may be necessary to assure the orderly and expeditious conclusion of the hearing. New affirmative matter (not in reply to another party's direct case) should not be included in rebuttal testimony or exhibits.

(e)(1) Presentation by parties. Any participant shall have the right in public hearings of presentation of evidence, cross-examination, limited to testimony adverse to the participant conducting the cross-examination, objection, motion, and argument. A participant's case-in-chief shall be in writing and shall include the participant's direct case and rebuttal, if any, to the United States Postal Service's case-in-chief. It may be accompanied by a trial brief or legal memoranda. There will be a stage providing an opportunity to rebut presentations of other participants and for the Postal Service to present surrebuttal evidence. When objections to the admission or exclusion of evidence before the Commission or the presiding officer are made, the grounds relied upon shall be stated briefly. Formal exceptions to rulings are unnecessary. Legal memoranda on matters at issue will be welcome at any stage of the proceeding.



(2) Written cross-examination. Written cross-examination will be utilized as a substitute for oral cross-examination whenever possible, particularly to introduce factual or statistical evidence. Designations of written cross-examination should be served no later than three working days before the scheduled appearance of a witness. Designations shall identify every item to be offered as evidence, listing the participant who initially posed the discovery request, the witness and/or party to whom the question was addressed (if different from the witness answering), the number of the request and, if more than one answer is provided, the dates of all answers to be included in the record. (For example, "OCA-T1-17 to USPS witness Jones, answered by USPS witness Smith (March 1, 1997) as updated (March 21, 1997))." When a participant designates written cross-examination, two copies of the documents to be included shall simultaneously be submitted to the Secretary of the Commission. The Secretary of the Commission shall prepare for the record a packet containing all materials designated for written cross-examination in a format that facilitates review by the witness and counsel. The witness will verify the answers and materials in the packet, and they will be entered into the transcript by the presiding officer. Counsel for a witness may object to written cross-examination at that time, and any designated answers or materials ruled objectionable will be stricken from the record.

(3) Oral cross-examination. Oral cross-examination will be permitted for clarifying written cross-examination and for testing assumptions, conclusions or other opinion evidence. Notices of intent to conduct oral cross-examination should be delivered to counsel for the witness and served three or more working days before the announced appearance of the witness, and should include (1) specific references to the subject matter to be examined and (2) page references to the relevant direct testimony and exhibits. Participants intending to use complex numerical hypotheticals or to question using intricate or extensive cross-references, shall provide adequately documented cross-examination exhibits for the record. Copies of these exhibits should be delivered to counsel for the witness at least two calendar days (including one working day) before the witness's scheduled appearance.

#### Sec. 3001.31 Evidence.

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

should be included in the exhibits or provided in accompanying testimony. Where relevant and material matter offered in evidence is embraced in a document containing other matter not material or relevant or not intended to be put in evidence, the participant offering the same shall plainly designate the matter offered excluding the immaterial or irrelevant parts. If other matter in such document is in such bulk or extent as would unnecessarily encumber the record, such document may be marked for identification, and, if properly authenticated, the relevant and material parts thereof may be read into the record, or, if the Commission or the presiding officer so directs, a true copy of such matter in proper form shall be received in evidence as an exhibit. Copies of documents shall be delivered by the participant offering the same to the other participants or their attorneys appearing at the hearing, who shall be afforded an opportunity to examine the entire document and to offer in evidence in like manner other material and relevant portions thereof. Designation of a document as a library reference is a procedure for facilitating reference to the document in Commission proceedings and does not, by itself, confer any particular evidentiary status upon the document. The evidentiary status of the document is governed by this section.

(c) Commission's files. (1) Except as otherwise provided in paragraph (2), In case any matter contained in a report or other document on file with the Commission is offered in evidence, such report or other document need not be produced or marked for identification, but may be offered in evidence by specifying the report, document, or other file containing the matter so offered. (2) *Designation of Evidence from other Commission Dockets.* Participants may request that evidence received in other Commission proceedings be entered into the record of this proceeding. These requests should be made by motion, should explain the purpose of the designation, and should identify material by page and line or paragraph number. Absent extraordinary justification, these requests must be made at least 28 days before the date for filing the participant's direct case. Oppositions to motions for designation and/or requests for counter-designations shall be filed within 14 days. Oppositions to requests for counter-designations are due within 7 days. At the time requests for designations and counter-designations are made, the moving participant must submit two copies of the identified material to the Secretary of the Commission.

## CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the rules of practice.

A handwritten signature in cursive script, reading "Kenneth E. Richardson".

KENNETH E. RICHARDSON  
Attorney

Washington, D.C. 20268-0001  
November 2, 1998