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PRESIDING OFFICER'S
RULING NO. MC98-1/18

DEC 2 2 40 PM '98

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

Mailing Online Service

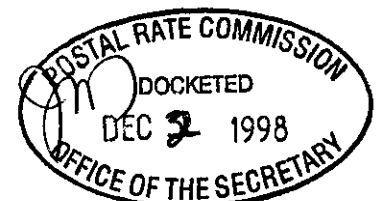
Docket No. MC98-1

PRESIDING OFFICER'S RULING
ADJUSTING THE PROCEDURAL SCHEDULE
TO ACCOMMODATE POSTAL SERVICE
SUPPLEMENTAL DIRECT TESTIMONY

(December 2, 1998)

On November 18, 1998, during hearings for the receipt of Postal Service direct evidence in support of its request concerning a two-year nationwide Mailing Online experiment, the Service indicated that it had determined to make substantial changes in the hardware and software configurations that would process messages sent as Mailing Online. The Service announced it was developing supplemental testimony to fully explain these modifications. The Service was directed to inform the Commission promptly as to when the supplemental testimony would be submitted.

The Postal Service reviewed the status of preparation of the supplemental testimony and reported that it would not be available until January 14, 1999. The Service recognized that the procedural schedule might need to be adjusted to provide for evaluation, cross-examination, and rebuttal of the supplemental testimony. On November 24, 1998, the Postal Service provided suggestions of how the schedule could be modified to accommodate the supplemental testimony and minimize delay. The schedule proposed by the Postal Service calls for reply briefs on March 12, 1999.



On November 30, 1998, the Office of the Consumer Advocate (OCA) and the Mail Advertising Service Association International (MASA) filed comments and suggested alternative schedule adjustments.¹

MASA notes that an expedited procedural schedule was developed in this case in response to a Postal Service request. It suggests that several of the reasons the Postal Service put forward in support of expediting this proceeding have been overtaken by events, and it concludes that a simpler, more efficient schedule can be implemented without significantly delaying a decision. Currently, participants are to file direct evidence in two stages, the first dealing with general issues, and the second incorporating information developed during the recently initiated Mailing Online market test. MASA proposes that participants submit complete direct cases shortly after hearing the Postal Service supplemental testimony.

MASA states that Pitney Bowes, an active participant in this case, supports its suggestions. The Office of the Consumer Advocate also supports MASA's proposal, with one important caveat. The OCA expresses concern that data from the market test should be available before participant direct evidence is to be filed. It suggests that firm procedural dates should not be established until after several weeks of "reliable" market test data have been filed with the Commission.

The procedural schedule for this case will be adjusted as shown on Attachment A to this ruling. In determining what changes would be most appropriate, I have been greatly assisted by the cooperative and reasonable positions taken by participants. It is consistent with the purpose of market tests and experimental service offerings to accommodate system design improvements developed while these tests are in progress. All participants recognize that such changes are to be encouraged,

¹ Presiding Officer's Ruling MC98-1/15, issued November 23, 1998, recognized that the Postal Service had undertaken to file scheduling suggestions by the 24th, and directed other interested participants to submit their views by the 30th.

and have proposed schedule accommodations intended to minimize the inconvenience necessitated by ongoing modifications to Mailing Online.

The schedule suggested by MASA best meets that goal. It simplifies the process of developing participant direct evidence by allowing for a single submission, after all Postal Service direct evidence has been received. The schedule MASA proposes calls for reply briefs on April 16, 1999, slightly more than one month after the date suggested by the Postal Service. Assuming no further delays are encountered, this should enable the Commission to develop a recommended decision before the revised configuration of Mailing Online can be implemented.

The concern raised by OCA is real; however, deferring participant evidence until after "reliable" data has been filed would prevent participants from advance planning of attorney and witness availability. Participant witnesses will be permitted to update their testimony to account for market test results until they appear for oral cross-examination. This will allow for use of more than four months of market test data.

Two additional points require clarification. The MASA comments imply that unlimited discovery on the Postal Service would continue through January 28, 1999. Discovery for the purpose of developing participant evidence, discovery concerning Postal Service supplemental testimony (when filed), and discovery as permitted by Presiding Officer's Ruling MC98-1/17 will be permitted through that date. Participants seeking to file discovery not related to these purposes are to accompany their request with a motion explaining why the questions could not reasonably have been submitted during the period previously established for discovery on the Postal Service direct case.

Finally, the schedule proposed by MASA, and largely implemented by this ruling, requires that participants respond to discovery requests within 7 days. Counsel filing discovery requests on participant witnesses are urged to utilize informal means for expediting transmission of discovery requests to facilitate timely responses.

RULING

The procedural schedule is amended as shown on Attachment A.



W.H. "Trey" LeBlanc III
Presiding Officer

REVISED HEARING SCHEDULE
MAILING ONLINE SERVICE
Docket No. MC98-1

January 14, 1999	Filing of Postal Service supplemental testimony
January 28, 1999	Completion of discovery on the Postal Service's supplemental testimony
February 5, 1999	Hearings for cross-examination of the Postal Service's supplemental testimony
February 8, 1999	Filing of the case-in-chief of each participant, including rebuttal to the Postal Service
March 1, 1999	Completion of discovery directed to intervenors and the OCA
March 2, 1999	Identify expected amount of oral cross-examination. Report on the availability of witnesses
March 10-12, 1999	Evidentiary hearings on the cases-in-chief of intervenors and the OCA
March 22, 1999	Filing of evidence in rebuttal to the cases-in-chief of participants other than the Postal Service (no discovery permitted on this evidence; only oral cross-examination)
March 29-31, 1999	Hearings on evidence in rebuttal to participants' direct evidence
April 9, 1999	Initial Briefs
April 16, 1999	Reply Briefs