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BEFORE THE
POSTAL RATE COMMISSION

- - - - - X
In the Matter of: :
POSTAL RATE AND FEE CHANGES : Docket No. R97-1
- - - - - X

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

Volume 1
Wednesday, July 30, 1997

The above-entitled matter came on for prehearing
conference, pursuant to notice, at 9:30 a.m.

BEFORE:

HON. EDWARD J. GLEIMAN, CHAIRMAN
HON. H. EDWARD QUICK, JR., COMMISSIONER

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1 APPEARANCES:

2 On behalf of the Newspaper Association of America:

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4 Wiley, Rein & Fielding

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8 ROBERT J. BRINKMANN, ESQUIRE

9 Newspaper Association of America

10 529 14th Street, NW, Suite 440

11 Washington, DC

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13 On behalf of the National Newspaper Association:

14 TONDA F. RUSH, ESQUIRE

15 SENNY BOONE, ESQUIRE

16 National Newspaper Association

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20 On behalf of the Alliance of Nonprofit Mailers:

21 JOEL T. THOMAS, ESQUIRE

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1 APPEARANCES: [continued]

2 On behalf of the United States Postal Service:

3 DANIEL J. FOUCHEAUX, JR., ESQUIRE

4 SUSAN DUCHEK, ESQUIRE

5 ERIC KOETTING, ESQUIRE

6 RICHARD COOPER, ESQUIRE

7 MICHAEL TIDWELL, ESQUIRE

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15 On behalf of Hallmark Cards, Incorporated:

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1 APPEARANCES: [continued]

2 On behalf of the McGraw-Hill Companies:

3 TIMOTHY W. BERGIN, ESQUIRE

4 AMY L. BROWN, ESQUIRE

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9 On behalf of the Mail Advertising Association,

10 International:

11 GRAEME BUSH, ESQUIRE

12 Caplin & Drysdale

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16 On behalf of the National Federation of Nonprofits:

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1 APPEARANCES: [continued]

2 On behalf of the Greeting Card Association:

3 ALAN R. SWENDIMAN, ESQUIRE

4 Jackson & Campbell

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6 Washington, DC 20036

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8 On behalf of the Mail Order Association of America:

9 DAVID C. TODD, ESQUIRE

10 Patton Boggs, LLP

11 2550 M Street, NW

12 Washington, DC 20037

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14 On behalf of Readers Digest Association, Parcel Shippers
15 Association:

16 TIMOTHY J. MAY, ESQUIRE

17 Patton Boggs, LLP

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21 On behalf of the National Postal Policy Council, Inc.:

22 MICHAEL F. CAVANAUGH, ESQUIRE

23 National Postal Policy Council, Inc.

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1 APPEARANCES: [continued]

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4 American Bankers Association

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8 On behalf of the Direct Marketers Association:

9 DANA T. ACKERLY, ESQUIRE

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14 On behalf of the Brooklyn Union Gas Company:

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1 APPEARANCES: [continued]

2 On behalf of Nashua Photo, Inc.; District Photo, Inc.;
3 Mystic Color Lab; Seattle FilmWorks, Inc.; Association of
4 Priority Mail Users; ValPak Direct Marketing Systems, Inc.;
5 ValPak Dealers' Association; Carol Wright Promotions:

6 WILLIAM J. OLSON, ESQUIRE

7 JOHN S. MILES, ESQUIRE

8 ALAN WOLL, ESQUIRE

9 William J. Olson, P.C.

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13 On behalf of American Business Press:

14 DAVID STRAUS, ESQUIRE

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19 On behalf of the United Parcel Service:

20 JOHN E. MCKEEVER, ESQUIRE

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1 APPEARANCES: [continued]

2 On behalf of the Major Mailers Association:

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7 On behalf of the Edison Electric Institute:

8 BRIAN CORCORAN, ESQUIRE

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13 On behalf of the Magazine Publishers of America:

14 JAMES R. CREGAN, ESQUIRE

15 Magazine Publishers of America

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19 On behalf of ADVO, Inc.:

20 JOHN M. BURZIO, ESQUIRE

21 THOMAS W. McLAUGHLIN, ESQUIRE

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1 APPEARANCES: [continued]

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8 On behalf of Florida Gift Fruit Shippers Association:

9 MAXWELL W. WELLS, JR., ESQUIRE

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13 On behalf of Advertising Mail Marketing Association:

14 IAN D. VOLNER, ESQUIRE

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1 APPEARANCES: [continued]

2 On behalf of the Consumer Advocate:

3 EMMETT R. COSTICH, ESQUIRE

4 SHELLEY S. DREIFUSS, ESQUIRE

5 KENNETH E. RICHARDSON, ESQUIRE

6 Office of the Consumer Advocate

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11 On behalf of Federal Express:

12 JAMES I. CAMPBELL, ESQUIRE

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16 On behalf of the American Postal Workers Union, AFL-CIO:

17 PHILIP TABBITA, ESQUIRE

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1 APPEARANCES: [continued]

2 On behalf of the Dow Jones & Company, Inc.:

3 MICHAEL McBRIDE, ESQUIRE

4 Dow Jones & Company, Inc.

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8 On behalf of the Association of American Publishers:

9 KEVIN M. GOLDBERG, ESQUIRE

10 Cohn & Marks

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P R O C E E D I N G S

[9:30 a.m.]

1
2
3 CHAIRMAN GLEIMAN: Good morning.

4 I don't know what it is that you all did that
5 scared my colleagues away this morning, but here we are at
6 the first prehearing conference for Docket R97-1 considering
7 the request of the Postal Service for rate and fee changes.

8 I'm Ed Gleiman, chairman of the Postal Rate
9 Commission, and I expect I'll be joined shortly by one of my
10 fellow Commissioners, Ed Quick. Commissioner Haley is busy
11 with a commitment outside of the Commission this morning,
12 and Commissioner LeBlanc is away.

13 One of the principal topics of discussion at
14 today's conference is going to be the schedule for
15 conducting this case. The Commission has a history of
16 adjusting its procedures in order to provide participants
17 with the maximum amount of meaningful participation during
18 the ten months that we are allowed to do these cases in by
19 the statute.

20 The Commission identified this conference as the
21 first prehearing conference and scheduled it earlier in our
22 proceedings than we usually do. This was a conscious effort
23 on our part to start an early dialogue on ways to smooth
24 participation in this case.

25 The period for intervention has not yet expired,

1 and it may be necessary to hold additional conferences. The
2 Commission is prepared to gather whatever -- whenever it
3 will be helpful to parties to conduct the successful
4 evaluation of the Postal Service's proposal which forms a
5 basis for this case.

6 Parties believing that additional conferences
7 would be helpful should file a motion describing the topics
8 that they wish to be dealt with at said conferences.

9 The Commission notice of the Postal Service filing
10 was mailed to participants in our last major rate case and
11 classification cases on July 10th, but it wasn't printed in
12 the Federal Register until July the 23rd.

13 To assure that all interested members of the
14 public have an opportunity to participate in this case, this
15 morning I issued a ruling extending the time for
16 intervention as of right now until August the 13th. Parties
17 intervening before that date will not have waived the right
18 to question procedural issues before that date.

19 Before moving on to substantive topics, I will
20 request that counsel representing intervenors who are
21 present today introduce themselves for the record. I
22 believe that my list includes all the notices of
23 intervention we received through last night, but if I
24 neglect to mention an intervenor, would their representative
25 please speak up.

1 Who is appearing on behalf of the United States
2 Postal Service?

3 MR. FOUCHEAUX: Thank you, Mr. Chairman. My name
4 is Daniel Foucheaux. With me here today are Ms. Duchek, Mr.
5 Koetting, Mr. Cooper, Mr. Tidwell, Ms. Reynolds, Mr.
6 Alverno, Mr. Rubin. Not here are Mr. Reiter, Mr. Hollies.
7 I would like to introduce our paralegal, Eleanor Brown, who
8 will be doing a lot of work for us in this case.

9 CHAIRMAN GLEIMAN: Thank you.
10 The American Bankers Association?

11 MR. WARDEN: Irving Warden for American Bankers
12 Association.

13 CHAIRMAN GLEIMAN: Thank you, Mr. Horton.
14 ADVO, Inc.?

15 MR. BURZIO: Good morning, Mr. Chairman. I'm John
16 Burzio. I'll be appearing for ADVO along with Tom
17 McLaughlin.

18 CHAIRMAN GLEIMAN: Agricultural Publishers
19 Association?
20 The Alliance of Independent Store Owners and
21 Professionals?

22 The Alliance of Non-Profit Mailers?
23 American Business Press?

24 MR. STRAUS: Mr. Chairman, I'm David Straus
25 appearing on behalf of American Business Press. Also

1 appearing but not here today will be Steven Feldman.

2 CHAIRMAN GLEIMAN: Thank you.

3 American Postal Workers Union, AFL-CIO?

4 MR. TABBITA: Philip Tabbita. Appearing for us
5 normally will be Susan Catler.

6 CHAIRMAN GLEIMAN: Thank you.

7 The Association of Paid Circulation Publications,
8 Inc.?

9 The Association of Priority Mail Users, Inc.?

10 MR. OLSON: Mr. Chairman, William Olson appearing
11 for APMU, along with John Miles and Alan Woll.

12 CHAIRMAN GLEIMAN: Thank you.

13 Brooklyn Union Gas Company?

14 MR. HALL: Mr. Chairman, Mike Hall on behalf of
15 Brooklyn Union Gas Company.

16 CHAIRMAN GLEIMAN: Douglas F. Carlson?

17 The Classroom Publishers Association?

18 The Coalition of Religious Press Association?

19 Conde Nast Publications, Inc.?

20 The Consumers Union of the United States, Inc.?

21 The Direct Marketing Association, Inc.?

22 MR. ACKERLY: Good morning, Mr. Chairman. My name
23 is Todd Ackerly. We'll be appearing on behalf of Direct
24 Marketing Association along with David Myer and Michael
25 Bergman.

1 CHAIRMAN GLEIMAN: Thank you.

2 Dowden Publishing Company?

3 Dow Jones & Company, Inc.?

4 MR. McBRIDE: Good morning, Mr. Chairman,
5 Commissioner Quick. My name is Michael McBride on behalf of
6 Dow Jones & Company, Inc. Also appearing with me in the
7 case will be Samuel Barrens, Brenda Durham, and Joseph
8 Fagan.

9 Nice to see you both again.

10 CHAIRMAN GLEIMAN: Thank you.

11 Federal Express Corporation?

12 MR. CAMPBELL: Good morning. Jim Campbell,
13 Federal Express.

14 CHAIRMAN GLEIMAN: Florida Gift Fruit Shippers
15 Association?

16 MR WELLS: Mr. Chairman, Maxwell W. Wells, Jr.,
17 appearing for Florida Gift Fruit Shippers Association.

18 CHAIRMAN GLEIMAN: Good to see you, Mr. Wells.
19 Greeting Card Association?

20 MR. SWENDIMAN: Good morning, Mr. Chairman. Alan
21 Swendiman appearing on behalf of the Greeting Card
22 Association.

23 CHAIRMAN GLEIMAN: Hallmark Cards, Incorporated?
24 A new face that we've not seen around here before.

25 MR. STOVER: Mr. Chairman, good morning.

1 Commissioner Quick. David Stover on behalf of the Greeting
2 -- of the Hallmark Cards, Incorporated. Remember who my
3 client is. With me will be Sheldon Bierman.

4 CHAIRMAN GLEIMAN: I half expected you to say the
5 Postal Rate Commission.

6 [Laughter.]

7 CHAIRMAN GLEIMAN: The Hearst Corporation?

8 The International Labor Communications

9 Association?

10 Knight-Ridder?

11 McGraw-Hill Companies, Inc.?

12 MR. BERGIN: Good morning, Mr. Chairman. Timothy
13 W. Bergin on behalf of the McGraw-Hill Companies. Also
14 appearing with me is Amy L. Brown.

15 CHAIRMAN GLEIMAN: Magazine Publishers
16 Association?

17 MR. CREGAN: Good morning, Mr. Chairman. For the
18 Magazine Publishers of America, Jim Cregan.

19 CHAIRMAN GLEIMAN: Excuse me. I apologize. Old
20 habits die hard.

21 Mail Advertising Services Association

22 International?

23 MR. TODD: David Todd appearing for Mail Order
24 Association.

25 CHAIRMAN GLEIMAN: We'll mark that as the Mail

1 Order Association of America with Mr. Todd representing
2 them, and we'll back up one in the order and go to MASS
3 International.

4 MR. BUSH: Good morning, Mr. Chairman. Graeme
5 Bush on behalf of Mail Advertising Association
6 International.

7 CHAIRMAN GLEIMAN: The Meredith Corporation?
8 Metro Mail?

9 Peter J. Moore & Associates?
10 Mystic Color Lab?

11 Would you like to just stay up there while I do
12 the next one also.

13 MR. OLSON: Sure, we could do that.

14 CHAIRMAN GLEIMAN: Mystic Color Lab, Nashua Photo
15 and who else?

16 MR. OLSON: Two others: District Photo and
17 Seattle FilmWorks.

18 CHAIRMAN GLEIMAN: Thank you.

19 MR. OLSON: William Olson and John Miles and Alan
20 Woll. Thank you.

21 CHAIRMAN GLEIMAN: The National Association of
22 Presort Mailers?

23 The National Federation of Nonprofits?

24 MR. MILLER: Good morning, Mr. Chairman,
25 Commissioner Quick. George Miller appearing on behalf of

1 National Federation of Nonprofits, along with Carolyn Emigh
2 and Robert Tigner.

3 CHAIRMAN GLEIMAN: The National Newspaper
4 Association?

5 MS. BOONE: Good morning, Mr. Chairman. Senny
6 Boone. Also appearing will be Tonda Rush and Steve Doves
7 for the National Newspaper Association.

8 CHAIRMAN GLEIMAN: The National Postal Mail
9 Handlers Union?

10 The Newspaper Association of America?

11 MR. BAKER: Good morning, Mr. Chairman. William
12 Baker appearing on behalf of the NAA. I will be assisted in
13 this case by Michael Yourshaw and Alan Jenkins.

14 CHAIRMAN GLEIMAN: Thank you.

15 The Office of the Consumer Advocate?

16 MR. COSTICH: Thank you, Mr. Chairman. I am Rand
17 Costich for the OCA. Also appearing for the OCA will be
18 Shelley Dreifuss and Kenneth Richardson.

19 CHAIRMAN GLEIMAN: The Parcel Shippers
20 Association?

21 MR. TODD: Timothy J. May will be appearing for
22 the Parcel Shippers Association.

23 CHAIRMAN GLEIMAN: Thank you.

24 David B. Popkin? The Readers Digest Association,
25 Inc.?

1 MR. TODD: And Timothy J. May will be appearing
2 for the Readers Digest Association.

3 CHAIRMAN GLEIMAN: Rusmar, Inc.?

4 SJ Consulting Group?

5 Time Warner, Inc.?

6 MR. BURZIO: John Burzio, Mr. Chairman. Appearing
7 with me on behalf of Time Warner will be my partner, Tim
8 Keegan.

9 CHAIRMAN GLEIMAN: Thank you.

10 TMR Services?

11 United Parcel Service?

12 Good morning, Chairman Gleiman, Commissioner
13 Quick. John McKeever of Schnader, Harrison, Segal & Lewis,
14 for United Parcel Service. Also joining me, but not here
15 today, will be Albert Parker and Stephanie Richman.

16 CHAIRMAN GLEIMAN: Thank you.

17 Did I miss anyone who is in the room? I apologize
18 if I --.

19 MR. VOLNER: You didn't miss me. Considering the
20 distance between your office and mine, I don't quite know
21 why we didn't get filed yesterday, but in any event, Ian
22 Volner, appearing together with Frank Wiggins and Heather
23 McDowell, on behalf of the Advertising Mail Marketing
24 Association, and Ian Volner and Frank Wiggins and Heather
25 McDowell on behalf of the Recording Industry Association of

1 America.

2 MR. THOMAS: Good morning, Mr. Chairman. I am
3 Joel Thomas. I will be appearing for the Alliance of
4 Nonprofit Mailers. David Levy will also be representing
5 them, but he will not be here today.

6 CHAIRMAN GLEIMAN: Thank you.

7 MR. LITTELL: I am Richard Littell. I will be
8 here on behalf of the Major Mailers Association, which will
9 intervene this afternoon.

10 CHAIRMAN GLEIMAN: Thank you, Mr. Littell.

11 Well, if it wasn't an ex parte communication, Mr.
12 Volner, we could probably pass those things off from you to
13 me as I turn the corner at 14th and I in the evenings.

14 Yes, sir?

15 MR. CORCORAN: Good morning, Mr. Chairman. I am
16 Brian Corcoran, and I will be appearing on behalf of the
17 Edison Electric Institute.

18 CHAIRMAN GLEIMAN: Thank you.

19 MR. CAVANAUGH: Michael Cavanaugh for the National
20 Postal Policy Council, Mr. Chairman.

21 MR. GOLDBERG: Mr. Chairman, Kevin Goldberg. I
22 will be appearing, along with Richard Schmidt and Mark
23 Pellis, on behalf of the Association of American Publishers.

24 CHAIRMAN GLEIMAN: Thank you.

25 MR. OLSON: Mr. Chairman, also intervening this

1 morning is ValPack Directing Marketing Systems,
2 Incorporated, and ValPack Dealers Association, and we will
3 be intervening later today, Carol Wright Promotions.
4 William Olson, John Miles, and Alan Woll. Thank you.

5 CHAIRMAN GLEIMAN: Thank you.

6 For those of you who have not already done so, if
7 you would please fill out an appearance form and hand it to
8 the reporter before you leave today, we would be most
9 appreciative. They are available on the side table near the
10 -- in back of the Postal Service counsel table.

11 Anyone interested in obtaining a transcript of
12 today's prehearing conference or any other official
13 Commission proceeding in this case should make arrangements
14 directly with the reporting company, Ann Riley & Associates,
15 Ltd. An order form is available on the bottom half of the
16 appearance form. Transcripts are also available on computer
17 diskettes. Please fill out an order form if you wish
18 transcripts in either hard copy or diskette form. Anyone
19 needing to make additional arrangements that cannot be dealt
20 with today in the room here with the reporter, please call
21 the company at 202-842-0034.

22 I also want to remind counsel that it will help
23 reporters greatly if you identify yourself for the record
24 the first time that you speak on any given day.

25 We received seven statements identifying topics

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1 for discussion at today's conference. First I want to
2 comment favorably on the fact that several of these
3 statements reflect parties with mutual interests working
4 together. The Commission's rules of practice encourage
5 joint pleadings, and I want to assure participants that I
6 read carefully both the title of documents filed, the
7 signature pages, and what goes between them, and that a
8 single document submitted by five parties will be given the
9 same weight as five separate documents filed by those
10 parties. Joint filings are obviously less expensive to
11 prepare and to serve, and I commend the practice of joint
12 filings.

13 I also want to comment favorably on the practice
14 followed by two participants, the Direct Marketing
15 Association and Douglas Carlson, who chose to submit their
16 statements as early as possible. There is a tendency, I
17 think, in all of us -- certainly I have the tendency -- to
18 put things off until the due date and beyond at times. By
19 filing early, DMA and Mr. Carlson gave other participants
20 additional time to evaluate their proposals and, as a
21 result, a number of supportive documents were filed prior to
22 today's conference. This will help us conduct our business
23 efficiently and productively, and I encourage participants
24 to submit any other procedural or substantive suggestions
25 they may have at the earliest possible convenience for them.

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1 The first substantive issue on today's agenda is
2 the procedural schedule for the case. Commissioner Order
3 1186, which gave notice of the Postal Service request,
4 included a proposed procedural schedule. The Direct
5 Marketing Association requested this schedule be adjusted to
6 allow additional time for discovery on the Postal Service
7 proposal. The statements submitted by 12 participants urged
8 that the schedule be extended to allow participants
9 additional time for discovery. In support of these
10 requests, participants referred to the breadth and
11 complexity of the new analyses incorporated into the Postal
12 Service presentation.

13 Let me say right off that I find these arguments
14 persuasive. There is a great deal of new material in the
15 Postal Service request, and I certainly understand why
16 members of the community would need some time to familiarize
17 themselves with this material and why participants might
18 need more time for discovery.

19 While I recognize that many of you would like to
20 see a process that permits the Postal Service to adjust
21 rates without the burdens associated with independent
22 review, it is certainly reassuring that some of you,
23 including the advocates for change, recognize that current
24 10-month time frame is really not overly generous when you
25 have a complex case.

1 DMA submitted a proposed hearing schedule which
2 would allow more time for discovery on the Postal Service,
3 and more time for participants to prepare their cases in
4 chief, including their rebuttal, to the Postal Service. For
5 those parties who may not have seen the DMA proposed hearing
6 schedule, I have had copies made and placed at the table
7 near the door of the hearing room, along with copies of the
8 schedule that were published in order along with Order 1186.

9 I intend to ask for comments on the DMA proposal,
10 and I will pause at this moment in the event anyone wishes
11 to obtain a copy of the DMA proposal. It is on the table
12 near the door here, up at the front end of the room.

13 MR. OLSON: Mr. Chairman, could I just note that I
14 will put additional copies of our comments also at the
15 front, since we were only able to serve selected people and
16 not having a service list?

17 CHAIRMAN GLEIMAN: Certainly. I'd appreciate
18 that.

19 MR. CREGAN: Mr. Chairman, Jim Cregan, MPA. I am
20 going to do the same thing for our joint comments on behalf
21 of ABP, et al.

22 CHAIRMAN GLEIMAN: Please.

23 That was the Magazine Publishers of America, Mr.
24 Cregan.

25 Docket R94-1, the previous omnibus rate case, was

1 completed in about eight and a half months, and the
2 Commission would always endeavor to complete its cases with
3 maximum expedition, consistent with due process, but this
4 case contains a number of areas which may require
5 considerable analysis, and I am not optimistic about
6 reaching that early of a decision. There are two important
7 considerations which led the Commission to publish the
8 procedural schedule that appeared in Order 1186, and I will
9 not ignore these considerations.

10 First, the Commission was concerned that it have
11 adequate time to carefully and conscientiously evaluate each
12 of the arguments presented by participants before reaching
13 its final decision. The Commission evaluates the evidence
14 while the record is being developed, but there has to be
15 enough time to take a step back and look at the entire
16 record so that we can come to an understanding of how the
17 various parts of the evidentiary record mesh.

18 Even under the schedules followed in previous rate
19 cases, it has been difficult for the Commission at times to
20 carefully think through the thousands of pages of arguments
21 submitted in parties' briefs and in the records. We get
22 briefs and oral arguments with about two months left in a
23 case, generally, and that really isn't much time when you
24 think about what we have to do. My recollection is that at
25 an early stage in Docket R94-1, we discussed limiting the

1 length of briefs in an attempt to help everyone involved in
2 the case, including the Commission. A number of parties,
3 especially the Postal Service, opposed that idea, and I must
4 say that we have so many issues in an omnibus rate case,
5 that page limits may well be counterproductive. So in this
6 case, I want to try something new. I will issue a revised
7 schedule that allows more time for discovery and less time
8 for the Commission to evaluate the completed record, but I
9 will ask parties to submit trial briefs two weeks before
10 their witnesses take the stand.

11 Let me explain what I hope will be contained in
12 the trial briefs. I hope that each party, including the
13 Postal Service, will set forth in detail its theory of the
14 case. Each party should include an explanation of the
15 theoretical and public policy considerations which it
16 believes the Commission should give weight to. The Postal
17 Service case does not include testimony from a so-called
18 policy witness this time, to explain how the Postal Service
19 views its future and why its request is both consistent with
20 and in furtherance of that future.

21 At first blush, its evidence focuses on individual
22 rates and subclasses without presenting a picture of the
23 whole, and why the constituent parts of its proposal sum to
24 a result that is consistent with a particular public policy.
25 So in your presentation it would be very helpful to the

1 Commission to put the 42 pieces of Postal Service testimony
2 into context. Such a statement, by its nature, would be
3 argument and thus it should be presented in a brief. But to
4 be really helpful, the statement should be available to the
5 Commission before the witnesses answer oral cross
6 examination, so that we can understand the Postal Service's
7 view and question witnesses about aspects of their testimony
8 which appear to be inconsistent with that view.

9 I have given a lot of thought as to whether this
10 requirement might be unfair or might put the Postal Service
11 at some strategic disadvantage, and I have concluded that
12 the requirement is reasonable. It is an administrative
13 proceeding intended to evaluate facts. I know that these
14 cases sometimes seem adversarial and that participants
15 support different results, but I believe all participants
16 will best be served if the Commission understands everyone's
17 position and can base its conclusions on knowledge, rather
18 than supposition.

19 I will direct that this trial brief be submitted
20 two weeks before the hearings begin. That will give the
21 Commission time to thoroughly review the brief and
22 understand the importance of each piece of Postal Service
23 testimony.

24 Also the brief will not be supported until after
25 discovery on the Postal Service direct case has been

1 completed, thus the brief will not disrupt discovery.

2 The same obligation will apply to participants.
3 Participants will be requested to submit trial briefs which
4 describe the theoretical and public policy positions they
5 support and provide a rationale underlying their views.
6 Those briefs will be due 14 days before hearings begin to
7 receive the direct testimony of -- testimony on the direct
8 cases of intervenors.

9 Intervenor cases often focus on selected issues.
10 The trial brief should explain how the proffered evidence
11 should be used in reaching a recommended decision. Two
12 weeks will allow the Commission to review and understand the
13 competing theories and test those theories during cross
14 examination.

15 Again, these briefs will be due after discovery
16 has been completed.

17 I realize this requirement will impose a strain on
18 legal counsel. All I can say is that having your arguments
19 presented at an early stage will help the Commission to
20 understand your case and make all of our efforts more
21 worthwhile.

22 It is my expectation that as a result of this
23 requirement, initial and reply briefs will be much more
24 succinct; since you will have already explained the
25 important applicable theories and policies, you can focus

1 your attention on identifying record evidence which confirms
2 your position and is contrary to opposing views.

3 I would expect and encourage participants to
4 consider arguments presented in trial briefs automatically
5 incorporated into their initial briefs.

6 This morning I have spoken of trial briefs as an
7 obligation. I am aware that no intervenor is required to
8 file an initial brief or, for that matter, file evidence.
9 However, I urge the intervenors to take this request very
10 seriously. If the Commission does not understand why you
11 believe a particular outcome is justified, it may not
12 initially appreciate your expectation of how much weight we
13 should give to the evidence supporting that outcome.

14 One additional point. I have concluded that trial
15 briefs will not disrupt discovery since they will be filed
16 after discovery on a party's direct case is completed.
17 However, the Postal Service is obligated to respond to
18 discovery even after its direct case has been received into
19 evidence because the Postal Service has access to
20 information participants may need to present useful rebuttal
21 evidence.

22 It is my expectation that parties will not abuse
23 this situation and direct discovery to the Postal Service
24 which is unrelated to the collection of information needed
25 to present rebuttal evidence.

1 Later on this morning, we'll talk more about ways
2 to foster effective and conflict-free discovery. For now,
3 let me assure you that I will look with great disfavor on
4 anything that appears to be an abuse of discovery, and in
5 particular, I will not permit inappropriate discovery to
6 undermine the benefits of having an effective and
7 informative trial brief.

8 If there are any questions about the trial brief
9 idea or comments, I would like to hear them now.

10 Mr. Foucheaux?

11 MR. FOUCHEAUX: Mr. Chairman, Daniel Foucheaux for
12 the Postal Service.

13 Your comments are well taken, and we don't find
14 the demand to be an unreasonable one. However, I would like
15 to comment about the timing. Even though discovery ends on
16 a particular date, quite often, in fact typically in general
17 rate cases, the last day of discovery generates the most
18 interrogatories; therefore, the Postal Service's work and
19 particularly Postal Service's counsel's work is generally
20 not done after discovery date is over. Typically, as I
21 said, we have a tremendous amount of questions to answer
22 after the discovery date.

23 I think if I were permitted to adjust that
24 schedule, I would say one week would be more reasonable,
25 give us more flexibility; otherwise, I would hope the

1 Commission would understand if we missed a few deadlines in
2 preparing for that trial brief because we do realize, as you
3 have expressed it, how important that will be for the future
4 conduct of this case.

5 CHAIRMAN GLEIMAN: I think your point is
6 reasonably well taken. I'll certainly consider that as we
7 put together the schedule that we hope to get out within the
8 next few days, Mr. Foucheaux. Thank you.

9 Mr. Volner?

10 MR. VOLNER: Mr. Chairman, I think the idea is
11 commendable. It is one that AMMA has long supported. I do
12 have a question, however. Some of us, given the nature of
13 this somewhat complicated case, may be filing cases in chief
14 in opposition to some Postal Service proposals when those
15 are due, but may also be filing rebuttal testimony in the
16 rebuttal phase of the case.

17 Is it your expectation that there will be trial
18 briefs at both stages, at the case in chief stage and at the
19 rebuttal stage?

20 CHAIRMAN GLEIMAN: At this juncture, I think that
21 we would expect it would be at the case in chief stage.

22 MR. VOLNER: Okay. Thank you.

23 CHAIRMAN GLEIMAN: Are there any other comments?

24 Trial briefs are intended to be a remedy for the
25 first problem inherent in the schedule proposed by DMA.

1 They will provide the Commission with more time to carefully
2 evaluate the policy arguments of the parties.

3 The second problem is a bit more difficult to deal
4 with. Simply stated, the second problem is, what if
5 something unexpected delays the schedule? The DMA has no
6 extra time built into its proposed schedule, and I'm not
7 really certain that six weeks will allow the Commission the
8 necessary time to decide all the technical and policy issues
9 raised by the parties and develop a reasoned and justifiable
10 recommendation to present to the governors. I know that
11 less time will simply not allow the Commission to perform
12 the duties prescribed by law.

13 Consequently, all participants are on notice that
14 nothing short of an act of God will be justification for
15 shortening the time left to the Commission in the schedule
16 that we put out to prepare its opinion and recommended
17 decision.

18 With those preliminaries out of the way, we can
19 discuss the actual procedural dates for the case. I've
20 already said that I was convinced by the arguments of DMA
21 and those who offered up support for the DMA proposal.

22 Let me also say that I think Mr. Ackerly did an
23 excellent job of developing a proposed schedule that avoids
24 holidays and allows time for parties to designate cross
25 examination before witnesses take the stand.

1 The only participant suggesting alternative dates
2 -- NDMS suggests that instead of allowing intervenors an
3 additional week to prepare their direct case, an additional
4 week be provided for discovery on the direct case of
5 participants.

6 Mr. Olson, would you like to comment on your
7 alternative suggestion?

8 MR. OLSON: The reason for the request was simply
9 that the request of participants -- the direct case of
10 participants very often involves matters that need extensive
11 discovery, just as the Postal Service case, and we generally
12 support the DMA approach and certainly, if that's the
13 approach taken, we would support this, but this does seem to
14 be a point in the procedural schedule where additional time
15 could be usefully taken advantage of.

16 CHAIRMAN GLEIMAN: I don't disagree with you.
17 Unfortunately, it appears -- there is no good time to file a
18 case, I've concluded, because the holidays are spread
19 throughout the year and certainly filing the case in
20 midsummer, we run into a whole host of problems, in early
21 fall with some religious holidays, and then subsequently,
22 toward the end of the year, with religious holidays and
23 non-sectarian holidays, and after the first of the year with
24 other national holidays. If it's possible to squeeze a few
25 more days out, we will endeavor to do that, but at this

1 point, I'm not sure that we'll be able to.

2 Mr. Ackerly, do you have any additional thoughts
3 you would like to share with us on your proposal?

4 MR. ACKERLY: No, sir.

5 CHAIRMAN GLEIMAN: Mr. Foucheaux, do you care to
6 comment, or anyone else?

7 MR. FOUCHEAUX: I'll have a brief comment, Mr.
8 Chairman. First of all, the Postal Service was content with
9 the Commission's schedule, and in saying that, we recognize
10 that perhaps one of the motivating factors that was behind
11 the design of that schedule was the Postal Service's
12 interest in expedition in rate cases. Obviously we have
13 very important financial interest in the length of these
14 proceedings, where days can equate to millions of dollars.

15 At the same time, we do acknowledge that this is a
16 challenging case and it interjects a lot of new elements,
17 and we also understand that the Commission has important
18 responsibilities to ensure that every party has a fair
19 opportunity to comment on the Postal Service's proceeding
20 and take a position on it.

21 In that regard, nobody is -- no party is more
22 interested in the integrity of the Commission's hearing
23 process than the Postal Service. After all, the great
24 majority of Commission recommendations end up being approved
25 by the Postal Service and we find ourselves together

1 defending it in court. So the procedural integrity in
2 particular of the Commission schedule is very important to
3 us.

4 We do not think DMA's proposal was unreasonable.
5 At the same time, we would defer to the Commission's
6 judgment as to how to best balance the competing interest of
7 a speedy resolution of this case and the parties' rights.
8 In that regard, we are especially sensitive to the
9 Commission's need to have an adequate period of time to
10 deliberate, to evaluate the record, and to write a well
11 reasoned opinion.

12 Further in that regard, I would like to again
13 express our often expressed expectation that the decision in
14 this case will be based on evidence that is scrutinized and
15 tested on the record, and that any new variations are given
16 the full due process scrutiny that's available to all the
17 parties under the law.

18 Having said that, we will abide by your judgment,
19 although we were reasonably content with your original
20 schedule.

21 CHAIRMAN GLEIMAN: I thought for sure you were
22 going to ask me to take a week out of the discovery on the
23 Postal Service's case.

24 MR. FOUCHEAUX: We always prefer less discovery
25 rather than more.

1 CHAIRMAN GLEIMAN: Well, I also understand that
2 you want us to order a rubber stamp that says "Approved."
3 But somebody told me that even if we do that, we would still
4 have to address the arguments that are raised in the
5 proceedings, so it will still take us a week or two at the
6 end.

7 Does anyone else wish to comment?

8 If there are no other comments, then we will move
9 on, and hopefully, before the end of the week, we will issue
10 a revised procedural schedule.

11 One factor which bears on our ability to keep to
12 the procedural schedule deserves particular emphasis. A
13 hearing schedule will be established more than two months
14 before any witness appears, and under this circumstance, I
15 expect witnesses to be available to give direct testimony
16 throughout the period of the hearings that are scheduled to
17 take place.

18 This is particularly important for the Postal
19 Service given that you have 40 witnesses and 42 pieces of
20 testimony. I know that some of these folks are out of town
21 and I think it's important for the Postal Service to ensure
22 at the front end of the process that university professors
23 with teaching obligations and others who are out of town are
24 available for a reasonable amount of time during the
25 several-week period that we will be holding hearings.

1 I'm sympathetic when people have vacations or are
2 going to be out of the country or have other obligations,
3 but this is an important case, so I would request that you
4 pay particular attention early on to assuring that your
5 witnesses are available.

6 In that regard, I would ask that you provide us
7 with an indication of any conflicts that may exist due to
8 teaching schedules and the like by September the 3rd. A
9 complete list of conflicts can then be submitted closer to
10 the beginning of the hearing schedule.

11 I urge participants to have the hearing schedule
12 in mind when they choose witnesses to present their direct
13 evidence, and, again, please try to avoid submitting
14 testimony from witnesses who, for all intents and purposes,
15 are going to be unavailable to appear and respond to oral
16 cross examination during the period set forth for hearings.

17 Does anyone have any additional issues concerning
18 this schedule that they want to raise before we move on?

19 If not, then just let me say that nothing is more
20 central to effective completion of the Postal Rate
21 Commission proceedings than the discovery process.
22 Participants and the Commission both rely on the Postal
23 Service providing complete and cooperative responses to
24 discovery. Without this, neither participants nor the
25 Commission have a meaningful opportunity to evaluate the

1 Postal Service request within the 10-month statutory period.

2 Similarly, we must rely on participants to provide
3 full and complete responses to discovery if we are able to
4 understand and effectively evaluate their presentations.
5 Sometimes the number of discovery requests made during a
6 case seems overwhelming, and this is part of the price for
7 an expedited postal case. Participants with a brief period
8 to study and understand complex questions may submit more
9 questions than would be necessary if they had additional
10 time and could review in a more methodological approach the
11 materials that they receive from others.

12 I urge participants to attempt to avoid discovery
13 which is unnecessarily burdensome. If you have a lot of
14 questions, it might be useful to request an informal
15 technical conference. Of course, the key to effective
16 discovery is a submission of timely and responsive answers.
17 And it seems to me that in recent cases, we have been
18 slipping away from that standard a bit.

19 In Docket MC97-2, a distressing number of
20 discovery responses were filed late by the Postal Service,
21 and in MC97-4, none of the answers to discovery provided by
22 the Postal Service were submitted in a timely fashion, and
23 Presiding Officer Quick had to instruct the Postal Service
24 counsel to convey to management the Commission's deep
25 concern about this situation.

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1 It is essential that the Postal Service commit
2 sufficient resources to meet established deadlines in this
3 case. Therefore, I am going to ask the Postal Service
4 counsel to inform both the vice president in charge of
5 conduct of rate cases before the Commission and the Postal
6 Service general counsel that this Commission considers the
7 submission of timely and responsive answers to discovery
8 requests to be a matter of great importance.

9 Also, at the conclusion of Docket MC97-2, the
10 Office of the Consumer Advocate provided extensive comments
11 on discovery disputes which hampered its participation. I
12 don't intend at this point to address the specifics on any
13 of the particular complaints detailed by OCA. However, the
14 OCA document is instructive and may be worth reviewing.

15 I will say that occasionally one could infer that
16 an overly burdened staff has provided a nonresponsive answer
17 simply because there was insufficient resources to procure a
18 timely and responsive answer, and I trust that will not be
19 the case this time around.

20 The delay in complying with Rule 54(a) is
21 troubling. The notice which accompanied Postal Service
22 request filed July 10th indicated that compliance would be
23 achieved within 10 to 12 days. The most recent notice,
24 which was filed on Monday the 28th, stated that the required
25 information would not be available until the end of this

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1 week, approximately 10 days after the Postal Service
2 initially expected to be able to provide it.

3 I sincerely hope that this slippage is not the
4 result of a commitment of adequate resources. This type of
5 delay cannot be experienced on a regular basis. Otherwise,
6 we are going to have serious problems in meeting the
7 10-month deadline.

8 I also want to share my thoughts on objections to
9 providing data. Objections should not be used
10 unnecessarily. I have in mind our experience in Docket
11 R94-1. There were a number of instances, but one in
12 particular, when the Postal Service claimed that a survey of
13 customer-stamped purchasing preferences contained sensitive
14 business information. After extensive motion practice, a
15 version with three redacted numbers was produced. A
16 significant amount of time and effort could have been saved,
17 had the Postal Service counsel examined the document at the
18 early stage and taken steps to facilitate access, instead of
19 attempting to avoid -- attempting to block access.

20 Comments submitted by OCA at the conclusion of the
21 MC97-2 docket touched on sanctions that could be requested
22 if a proponent fails to provide appropriate discovery
23 responses. Quite frankly, I don't want to have to consider
24 sanctions. The role of the Commission is to evaluate Postal
25 Service requests, not to impose sanctions, but the

1 obligation of the Postal Service is to be as responsive as
2 possible and to do so in a timely manner.

3 The Postal Service has already invested
4 significant resources in preparing its request. The
5 participants and the Postal Service are going to expend
6 enormous amounts of time and, I suspect, money in pursuit of
7 a rational and justifiable recommended decision, and these
8 resources would be wasted if discovery disputes prevent
9 meaningful participation by intervenors, and prevent the
10 Commission from reaching an informed judgment on the merits
11 of the Postal Service case.

12 Turning now to the rules of practice. Several
13 parties indicated an intention to suggest amendments at
14 today's conference. The special rules were published in
15 Order 1186 and additional copies of that order are also
16 available along with other documents at the front table.

17 United Parcel Service expressed an intention to
18 discuss the rules concerning library references. Mr.
19 McKeever, are you prepared to discuss your proposal for the
20 benefit of those who have not seen your July 25th motion?

21 MR. MCKEEVER: Yes, Mr. Chairman. Basically our
22 proposal is that instead of one copy of library references
23 being filed with the Commission, that at least three copies
24 be filed. As you indicated, Mr. Chairman, a crucial part of
25 the case is right at the beginning, analyzing the Postal

1 Service's proposals and finding out their basis and the data
2 that supports them. We have sometimes run into the
3 frustrating experience of finding that much of that support
4 is in library references rather than in Postal Service
5 testimony or even work papers, and we have the need to get
6 the library references quickly as possible so that we can
7 avoid unnecessary discovery and delay in analyzing those
8 proposals.

9 What happens, however, is in attempt to obtain the
10 library reference, we often find that the one copy that is
11 filed has already been obtained by another party, signed out
12 for purposes of being duplicated, because that party also
13 finds that the library reference is key to its concerns in
14 the case, and sometimes there is a delay in obtaining a copy
15 of the library references as a result.

16 Our suggestion is that instead of having only one
17 copy available in the docket room, that can be signed out
18 and be copied, there ought to be more than one. We suggest
19 three. I might point out that a lot of the material in the
20 library references is in the nature of work papers and there
21 the requirement, I believe, is that seven copies be filed.
22 But we are trying to strike a balance because we know that
23 particularly in the case of the Postal Service, that's a lot
24 of paper, and also in the case of the Commission's docket
25 room, because the more paper that the Commission's docket

1 room has to deal with, the more difficult the job is, of
2 course.

3 However, as I said, it is crucial, really, that we
4 obtain library references as timely as possible, and the
5 suggestion is meant to ease the burden of parties who are
6 attempting, in the very short time available to them, to
7 analyze the Postal Service's case and get to the meat of
8 what is at issue and to the data that really matters to
9 them.

10 If I may, Mr. Chairman, mention one or two minor
11 additional thoughts that we had since we filed our notice.
12 We find it might be helpful if either the notice of the
13 library reference or something could indicate how many pages
14 are in the library reference when it is hard copy. That
15 sometimes permits us to make a judgment as to the time
16 involved in copying it and studying it. So if the library
17 reference could indicate the number of pages in a library
18 reference, we would find that helpful. And when the library
19 reference is a computer disk, if perhaps the notice could
20 indicate the files that are on that disk, that sometimes is
21 helpful because we get the disk sometimes and we don't know
22 what's on it until we put it up and run it, and then we find
23 out that something we thought would be on it is not on it,
24 and as I say, that is no one's fault, it's just a matter
25 that disclosure earlier might be helpful to us.

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1 CHAIRMAN GLEIMAN: Thank you.

2 Are there any comments? Mr. Foucheaux? Anyone
3 else?

4 MR. FOUCHEAUX: Yes, thank you, Mr. Chairman.

5 First of all, we are certainly not unsympathetic
6 to the travails of litigators in these cases. Obviously
7 there are many competing demands on a limited amount of
8 resources. We will comment, however, that one copy has been
9 adequate in the past, and I can remember one instance in
10 Docket No. R90-1 case when I believe, before the case was
11 filed, we inquired of the Commission if additional copies of
12 library references were needed and were informed that due to
13 space requirements, mainly, an additional copy would not be
14 requested.

15 I think it is useful to provide context to UPS's
16 motion, however, to note that although one copy of library
17 references is on file with the Commission, the Postal
18 Service library, which is open to the public, has two copies
19 available. The library does have copying facilities, and is
20 willing and quite frequently allows parties to check out
21 those library references for limited periods of time to make
22 their own copies. As far as electronic data is concerned
23 and electronic formats, we observed that some of the parties
24 have been quite successful coming into the library with
25 portable computers and downloading the contents of disks

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1 directly in the library.

2 Therefore, while we have no philosophical
3 objection to providing more copies to the Commission, there
4 is an expense involved, perhaps not a great expense in
5 relation to the amount of money at stake in these cases;
6 however, reproduction also takes time, and Postal Service
7 attorneys in the past have been very amenable to requests by
8 counsel to assist when library references have been in short
9 supply or have been missing.

10 I believe just this week we reproduced a library
11 reference for UPS and sent it to that party. Therefore,
12 while we don't think it's necessarily an unreasonable
13 demand, I think the full picture reflects that there are
14 three copies available, and two are readily available in the
15 Postal Service library, and Postal Service attorneys can be
16 contacted if that is not adequate.

17 Thank you.

18 CHAIRMAN GLEIMAN: Thank you.

19 Does anyone else have a comment?

20 Then we will take your suggestion and your
21 comments into consideration in reaching a decision on how to
22 proceed here.

23 Two parties, Douglas Carlson and the Newspaper
24 Association of America, suggested adjustments to section
25 3(c) of the special rules of practice which deals with

1 service of discovery documents.

2 Now Mr. Carlson, who is not here this morning, was
3 concerned with minimizing the cost of participation of
4 individuals, and he suggested that motions to compel
5 interrogatory answers be subject to rule 3(c) and,
6 therefore, exempt from the general service requirement.

7 The Newspaper Association of America has a
8 slightly different suggestion, and Mr. Baker is here, so I
9 will let him speak for the position of NAA.

10 MR. BAKER: Thank you, Mr. Chairman.

11 We endeavored to serve our comments on all parties
12 as soon as we got the service list, and we believe there may
13 have been some later interventions who may not have seen it,
14 although we did not bring extra copies.

15 Our point was centrally one, Mr. Carlson's motion
16 seemed to identify an ambiguity in the way the special rule
17 is written as to the obligation to serve discovery answers
18 on all parties or, rather, only those who had requested
19 them, and our view was simply that while we take no position
20 on whether objections, motions to compel, and responses
21 thereto need to be filed on the parties who are minimal
22 participants or who do not ask to receive it, we do believe
23 that answers to interrogatories should be served on all
24 parties in that they can become evidence in the proceedings,
25 and as a matter of due process, it seems to us that all

1 parties should be aware of at least substantive answers that
2 are being served and should be served on all.

3 CHAIRMAN GLEIMAN: Thank you.

4 Does anyone care to comment?

5 MR. FOUCHEAUX: Thank you, Mr. Chairman. Daniel
6 Foucheaux for the Postal Service.

7 We acknowledge the ambiguity in the special rule.
8 However, our recollection of the history of this provision
9 is consistent with that of NAA's, namely that answers to
10 interrogatories would be served on all parties. While it
11 doesn't gore our ox, since we get everything, we generally
12 concur in the logic of NAA's interpretation of the rule.

13 CHAIRMAN GLEIMAN: Thank you.

14 Any other comments?

15 Moving on, then, to the next suggestion that we
16 have, Nashua District Mystic Seattle -- did I get it right
17 -- commented on rule 4(b), in a written comment submitted
18 July the 25th. It suggested that under some circumstances,
19 the word "service" should be interpreted to mean delivery.
20 It also suggested providing additional notice of the
21 intention to oral cross examination and enforcing strict
22 sanctions on participants who fail to comply with that rule.

23 Taken together, these suggestions would require
24 actual delivery of certain notices 48 business hours in
25 advance.

1 Before asking counsel to provide additional
2 details, I want to clarify my understanding. When a rule
3 uses the word "serve," I interpret it to mean serve, as
4 provided in the rules of practice. If a rule uses the word
5 "deliver," it means actual delivery must be made. Thus, I
6 would interpret the Nashua, et al suggestion as a request to
7 substitute the word "deliver" for the word "serve" in
8 certain instances.

9 Mr. Olson, would you like to explain your proposal
10 further and in particular would you like to comment on the
11 cost to parties and counsel not located in the metropolitan
12 area and how they might be affected on delivery?

13 MR. OLSON: Yes. What -- the genesis of this
14 suggestion came from some problems that have occurred in
15 prior dockets with respect to inadequate notice being given
16 to witnesses and their counsel prior to oral cross
17 examination, and as the rules are currently written, the
18 notice requesting permission to conduct oral cross
19 examination must be served three or more working days, and
20 then if there are complex numerical hypotheticals or
21 intricate or extensive cross references, those would be
22 provided at least two calendar days, including one working
23 day, ahead.

24 There are two thoughts here. The first is that if
25 there is to be a rule, there ought to be perhaps a sanction,

1 or there ought to be the presumption of a particular
2 sanction. If there is no notice, whatever the notice that
3 the Commission requires be given, then the failure to give
4 that notice would result in the ordinary course, in the
5 absence of some extraordinary good cause, it would result in
6 the inability to perform oral cross examination or to use
7 the exhibits with the intricate or extensive cross
8 references or complex numerical hypothetical.

9 So the first proposal really goes to the issue of
10 the existence of a sanction. The failure to include a
11 sanction, we would submit, gives the Chairman or the
12 Presiding Officer of each docket the undesirable selection
13 of options as follows:

14 He can either allow the cross examination to go
15 forward, recognizing that the witness, for example, has not
16 seen the documents; he could defer to another day, perhaps
17 reschedule the witness at great cost and expense,
18 frequently; or disallow the use of the document in cross
19 examination. And we would suggest that that would be the
20 appropriate sanction, and if it was in the rule, then we
21 would have much better adherence to the rule.

22 Secondly, there is another issue with respect to
23 the amount of time given, particularly with the complex
24 numerical hypothetical at each of those documents. Right
25 now the rule says two calendar days, including one working

1 day. Unfortunately, Sunday is a calendar day and Saturday
2 is a calendar day, and very often people aren't at their
3 office, but that becomes a day which is counted toward
4 notice, and I don't think that is reasonable.

5 What we are suggesting that one working day is not
6 enough, and certainly if these were -- if the word "serve"
7 means "mail," that is not adequate. I'm not sure that there
8 isn't a rule in 39 CFR that defines for periods of three
9 days or less that service means deliver. I'm not sure if
10 that is not an even further complicating factor; I'd have to
11 go back and review the CFR.

12 But basically the proposal is that there be a
13 sanction for failure to -- and the sanction ordinarily would
14 be the inability to go forward, absent good cause shown; and
15 secondly, that there would be at least 48 business hours
16 where complex hypotheticals and these other documents that
17 are described as intricate or extensive cross references be
18 given to a witness. Failing them being given to a witness,
19 they could not be used. That would be the proposal.

20 Thank you.

21 CHAIRMAN GLEIMAN: Thank you.

22 Are there any comments?

23 MR. FOUCHEAUX: Thank you, Mr. Chairman. Daniel
24 Foucheaux for the Postal Service.

25 We are reasonably content with the existing rule,

1 and we certainly regret any failure by our representatives
2 to observe it in the past, although I could probably, for
3 every one violation by the Postal Service, cite at least
4 five by counsel for intervenors, and some attorneys seem to
5 be more persistently in violation than others.

6 We don't think it is unreasonable to take account
7 of weekend time, and obviously Mr. Olson's comments are very
8 well taken, but we do work weekends, and so we don't think
9 that an expansion of the rule is mandated by any set of
10 circumstances.

11 We do think that forfeiture of the right to cross
12 examine is probably too harsh a penalty, if a penalty is to
13 be imposed. I think counsel for intervenors and the Postal
14 Service have been reasonably good, in spite of any instances
15 of violation, in observing these rules, and that usually
16 when they are not observed, there are special circumstances.
17 I would think if there is a pattern of flagrant abuse, that
18 could be handled by special motion, rather than having a
19 standing rule that if you don't technically comply, you
20 forfeit the right to cross examine.

21 CHAIRMAN GLEIMAN: Any other comments?

22 I am sensitive to the situation that you describe,
23 Mr. Olson, and Mr. Foucheaux, that you seem to encounter
24 more frequently than perhaps intervenors' counsel, but as I
25 mentioned previously, when we were talking about OCA's

1 thoughts on discovery problems, I am somewhat reluctant to
2 impose sanctions, but certainly we will take the suggestions
3 and your thoughts into consideration and see if we can't
4 address them and make the system work a little bit better
5 for everyone involved.

6 Does any participant want to suggest or discuss
7 any other possible changes in the special rules that were
8 published with the order?

9 Mr. Straus?

10 MR. STRAUS: I am not sure if this is a question
11 on the special rules or not.

12 I noticed when the service list was issued, some
13 people had e-mail addresses who had provided them in
14 accordance with the special rules request that e-mail
15 addressees be provided, and as to other names under the name
16 indicated hard copy.

17 I am hoping that is not an indication that no hard
18 copy need be served on those who provided e-mail addresses.
19 As I understand the rules, there's hard copy service on
20 everybody, whether or not we provided an e-mail address.

21 CHAIRMAN GLEIMAN: Right.

22 MR. STRAUS: And I am confused by the service
23 list.

24 CHAIRMAN GLEIMAN: Right. Right now, that is the
25 case. YOU know, as you are well aware, we have made some

1 attempts to save everyone some money and some paper by
2 electronic service to those who are willing to participate
3 but there being -- I think the word is "plethora" of
4 problems, not here at the Commission but at Intervenors'
5 offices, with respect to what comes out on their end, and
6 until we can find some way to overcome the technical
7 problems, I guess we are stuck with hard copy for the
8 moment.

9 MR. STRAUS: So in other words everyone will be
10 receiving hard copy from each party notwithstanding the
11 availability of an e-mail address?

12 CHAIRMAN GLEIMAN: Unless they don't want hard
13 copy at all, in which case I think they have made that
14 known.

15 MR. STRAUS: Thank you.

16 CHAIRMAN GLEIMAN: The next item on our agenda --
17 are there any others? Any other questions or concerns?

18 MR. FOUCHEAUX: Mr. Chairman, I have been urged to
19 add a comment to Mr. McKeever's suggestion that the contents
20 of notices of library references be more detailed.

21 I would urge the Commission to avoid creating any
22 kind of a formula for the contents of notices of library
23 references. The Postal Service will certainly try to be as
24 specific as possible in the circumstance if we can.
25 However, in the crush of litigation it sometimes is a great

1 hindrance to be real specific about a document which can be
2 easily inspected by the parties, as I said in two places,
3 and I would urge the Commission not to make a requirement
4 that dictates the contents of notices but rather leave the
5 rule as it exists now.

6 CHAIRMAN GLEIMAN: Well, just let me say before
7 Mr. McKeever comments that I would much prefer to have a
8 good faith effort on the part of the Postal Service address
9 the issue that was raised rather than have another
10 Commission rule. It is always better to work things out
11 sensibly and together.

12 Mr. McKeever?

13 MR. MCKEEVER: Yes, Mr. Chairman. My suggestion
14 was very limited and I was not really asking for a change in
15 the special rules, but rather voluntary cooperation on the
16 part of all parties, and the suggestion was only with
17 respect to diskettes.

18 I recognize the problems sometimes in what is an
19 adequate description of a library reference, but at least in
20 the case of a diskette we would find it helpful if the files
21 on the diskette could be listed in the notice of the library
22 reference.

23 We are not asking for or suggesting any change
24 with respect to hard copy documents. We assume that counsel
25 makes every effort to describe the contents of those library

1 references as well as they can in the title of the
2 reference. It is solely with respect to diskettes.

3 If I may for one more moment, Mr. Chairman, this
4 library reference problem is not one that has started only
5 in this case.

6 We have experienced it in past cases. This is the
7 first case in which we really felt a need to bring it to the
8 attention of the Commission, and yes, the Postal Service did
9 very graciously supply us with a diskette when we were not
10 able to obtain it, and we appreciate that.

11 We attempt to keep our requests of that nature to
12 the Postal Service down to a minimum because we know they
13 are very busy, but we don't hesitate to make them if we find
14 that that is the only resource we have.

15 I am glad to know that there are two copies of
16 library references in the Postal Service library. I did not
17 realize that and will perhaps now start making our visits
18 first to their library, since they have two copies, and not
19 only one, but still, as I mentioned, a lot of the library
20 references are in the nature of work papers where seven
21 copies are required to be filed.

22 We only ask that a little bit more access be given
23 here at the Commission as well, but we will take up the
24 Postal Service on its offer to use its duplicating machines
25 in its library with respect to the copies available there.

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1 CHAIRMAN GLEIMAN: Thank you.

2 MR. FOUCHEAUX: Mr. Chairman, one further comment
3 from the Postal Service.

4 We will note that for computer diskettes the
5 listing of the contents is typically included in the
6 diskette itself and we would again suggest that it would be
7 in most circumstances or some circumstances it would be a
8 burden on us to try to list the contents of diskettes in
9 notices of filing library references.

10 CHAIRMAN GLEIMAN: Well, maybe somebody can --
11 since we all want to cooperate and reach a positive end
12 result here without the Commission having rules, maybe
13 somebody can pop the diskette into the machine over at the
14 Postal Service and print out page 1 of what is on the
15 diskette and slap that onto the notice and everyone would be
16 reasonably happy, but if you could examine that and perhaps
17 reach some reasonable middle ground here, that would be very
18 helpful.

19 MR. FOUCHEAUX: We will follow that up.

20 CHAIRMAN GLEIMAN: Mr. Ackerly?

21 MR. ACKERLY: Mr. Chairman, Todd Ackerly for DMA.

22 On the matter of the special rules, it seems to
23 DMA with respect to this question of confidential
24 information and discovery practice with respect to it that
25 the Commission ought to give serious consideration to a

1 standard protective order type of system.

2 Protective orders have been used in the past, of
3 course, but I don't believe that there's ever been a sort of
4 standard system in place, and we would propose within the
5 next week to file a piece of paper detailing our suggestions
6 in this respect.

7 We think that if adopted it might save a great
8 deal of discovery problems and the like. It is a system of
9 course to be used by other agencies in town.

10 I am not asking the Postal Service to respond at
11 the moment. We would propose to put something in writing
12 and that perhaps at some appropriate time in the future it
13 could be added to the special rules in this case.

14 CHAIRMAN GLEIMAN: Thank you.

15 MR. ACKERLY: Mr. Chairman, I have two additional
16 things, I don't know if they are relevant at the moment,
17 having to do with discovery and electronic versions of
18 documents. If this is a subject that you are going to get
19 to later, I will sit down and speak later.

20 CHAIRMAN GLEIMAN: Well, I am going to touch on
21 electronic versions of documents a bit.

22 MR. ACKERLY: On discovery then, I would like the
23 Postal Service to address a problem that we have had in the
24 past, which is that although Postal Service papers are filed
25 on the day in which the certificate of service is signed, we

1 often don't get them for three, four, five days later, and
2 we have been told in the past that the reason is, at least
3 in part, because they are not actually served on the day
4 that the certificate of service is signed because they
5 haven't actually gotten into the mail through the production
6 process. This, of course, creates a huge problem in terms
7 of response.

8 May I --

9 CHAIRMAN GLEIMAN: Well, I will tell you that we
10 generally receive documents over here fairly late in the
11 day, so if they wait until after the documents are filed
12 over here before they put them into the envelopes and put
13 them into the mailstream, I suspect you are not going to get
14 next-day service because it probably comes after the last
15 pickup from wherever. But, Mr. Foucheaux, maybe you can
16 help us out on this.

17 MR. FOUCHEAUX: Well, our practices are dictated
18 by circumstances and not intent, unfortunately, and our
19 problems in this area are probably legendary by now. I
20 think we have surmounted a major obstacle by contracting out
21 the printing and service of documents to a private company,
22 although, as we have experienced in the last year, they are
23 not perfect, either, but we did have a problem at one time
24 with our mail room which was faced with a lot of competing
25 demands within the headquarters building, but I urge you to

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1 continue to bring these problems to our attention, and we
2 will continue to try to address them and deal with them the
3 best way we can.

4 I would observe that most parties that are active
5 -- and DMA is one of those -- share with us the practice of
6 providing documents by messenger when it's feasible.

7 CHAIRMAN GLEIMAN: Mr. Ackerly, just let me
8 mention in connection with your concern, that I would expect
9 that 92 out of 100 times, since you are in town here, you
10 would get the document the next day and not three days
11 later. I think that we are up to 92 percent delivery on
12 overnight mail in the District of Columbia metropolitan
13 area.

14 But separate and apart from that, there is a daily
15 listing of documents on the computer's home page which I
16 think, to the extent anybody is willing to take the time and
17 make the effort to crank it up, at least they will know what
18 was filed the day before, and if it looks like there is
19 something in there that you did not receive, you will -- or
20 that you would like to have faster than it might otherwise
21 get to you, you will be on notice and perhaps you will get
22 it -- call the Postal Service or call our docket room.

23 Anyone else?

24 The next item on the agenda is operations at the
25 Commission. We will begin with hearing room procedures.

1 The Commission has maintained pretty much the same routine
2 through a number of cases and many of the participants in
3 this case are familiar with those practices, and I expect to
4 continue most of them.

5 Hearings will begin at 9:30 a.m. and we will
6 proceed with a 10-minute midmorning break at approximately
7 10:45, approximately a 75-minute lunch break at 12:15 or so,
8 and afternoon breaks are as necessary until we conclude our
9 schedule for a given day.

10 As has been the case in the past, hearings will
11 generally be held five days a week and, if necessary to
12 maintain our schedule, we may also hold evening and even
13 possibly Saturday sessions.

14 Does any participant wish to suggest a change in
15 our traditional hearing room practices?

16 Our docket section is open from 8:00 a.m. to 5:00
17 p.m. for filing of documents and for public review of
18 documents. The Commission will again maintain a recorded
19 telephone message to announce the hearing schedules. The
20 schedules will be updated during hearing breaks so that you
21 can learn how cross examination is progressing, and the
22 updates will be done at approximately 10:45 a.m., 1:00 p.m.
23 and 3:15 p.m. The telephone number is area code
24 202-789-6874.

25 Additionally, as most of you are aware, the

1 Commission's home page on the web will provide access to all
2 documents issued by the Commission and those submitted by
3 participants in electronic form. The address of our home
4 page is www.prc.com. We make a concerted effort to put up
5 as many documents in a case as we possibly can on the web
6 page, and I mentioned earlier the daily listing.

7 I suggest you check the web page for other
8 documents as well. While the Commission cannot promise that
9 all the filings will be available in electronic form, we
10 provide as much access as we possibly can. We are exploring
11 methods of scanning documents, and we hope to provide an
12 effective reference source to any interested member of the
13 public. For example, at this time, a large number of Postal
14 Service library references can in fact be downloaded from
15 the Commission's web page.

16 A recently updated version of the domestic mail
17 classification schedule also is accessible on our web page,
18 as are the Commission's rules of practice.

19 The Commission is also attempting to make
20 electronic access to a complete hearing record feasible. We
21 are attempting to make a laserfeed search system operational
22 in our library. We are pretty close, and we hope in short
23 order to be able to tell you all with some degree of
24 assuredness that there will be a work station in the library
25 and in the reading room which will be accessible to

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1 interested parties to use and to word search this complete
2 database for the case. If the system works, we would also
3 establish a work station, as I said, in our reading room,
4 and I think this is pretty exciting, given the sheer mass of
5 the records and the problems that that causes, the
6 capability to do word searches, even if you have to leave
7 your office, is a step forward.

8 Let me mention one other matter, and that is that
9 as I understand it, we now have the capability to press CDs
10 that contain the data that we put into our laserfeed system
11 so that you can contact the administrative office. If you
12 have the capability, software capability in your own office
13 to do word searches, then perhaps you might consider
14 obtaining CDs that contain the records of the case.

15 Does anyone wish to offer suggestions on how our
16 web page might be made more helpful at this point in time?

17 Does anyone use our Web page? I know one person
18 who does. I don't if you have any suggestions or not at
19 this time, Mr. Ackerly. I don't mean to press you into
20 service.

21 MR. ACKERLY: The thing I would like to say, first
22 of all, Mr. Chairman, is that I think all of us, indeed the
23 public at large, ought to be very grateful for the efforts
24 that you have made electronically. It greatly facilitates
25 access to a record which otherwise is very difficult to try

1 and deal with and particularly for those who are either out
2 of town or the smaller participants in these cases.

3 I think it does a great deal to improve the
4 practical public access to the Commission proceedings and I
5 would like to commend you on behalf of DMA for this.

6 The only suggestion I would have is obviously
7 timeliness of having things posted on the Web page is
8 important. If our experience is any indication, the daily
9 listing is two days behind. In other words, today, this
10 morning, I was able to access July the 28th's list but not
11 July the 29th's.

12 I know there is a significant amount of work
13 involved in getting that list prepared and put on the Web
14 site. If I guess I have a single recommendation it would be
15 that priorities be given to that because it is very helpful
16 in getting a sense of what papers have been filed before the
17 Postal Service brings them in electronic form.

18 Secondly, and I guess this isn't a suggestion to
19 the Commission as much as it is a suggestion to all parties,
20 and that is that I think we all have a stake in the
21 electronic version of these papers. DMA makes an effort to
22 submit electronic versions of everything that it files and
23 although I don't believe there is a requirement in the
24 Commission rules at least in the moment, I would certainly
25 like to encourage all parties to do that for the benefit of

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1 everybody else and the public at large, and I guess I would
2 like to ask the Postal Service in light of the problems it
3 has sometimes in getting the hard copy out into the postal
4 stream and in our hands what the Postal Service's policy is
5 going to be with respect to electronic filing?

6 MR. FOUCHEAUX: Our policy is going to be
7 voluntary compliance whenever feasible. As difficult as the
8 problems that face us in delivering hard copy might be at
9 times, sometimes those problems are dwarfed by the
10 difficulties of ensuring the electronic versions of
11 documents that come from disparate sources are consolidated
12 and transmitted in a timely fashion.

13 We do understand the direction that we are all
14 moving in terms of exchanging information of this nature,
15 and we will as we have in the recent past in particular try
16 to make the contents of these documents available
17 electronically whenever we can, but there will be many
18 circumstances in the course of the litigation when we just
19 can't do that in a fashion that is timely enough for parties
20 who are actively litigating but we will try.

21 MR. ACKERLY: Thank you, Mr. Chairman.

22 CHAIRMAN GLEIMAN: Mr. Ackerly, let me mention
23 that I am a bit concerned about the daily listing issue.

24 I was under the impression that it was getting up
25 there in real time when we get it. I know when I turned my

1 computer on this morning our document database in the daily
2 listing was good through last night and I will endeavor to
3 make sure that one of the first things that the folks who
4 deal with the Web do each day is to take what I get at my
5 computer and get it up on the Web so that you have it at
6 essentially the same time that we do.

7 Let me just mention also that our ability to
8 achieve some successes in the area of access, computers and
9 what have you is due in no small part to the assistance that
10 we have gotten over the past couple of years from the Postal
11 Service's Information Resources Group.

12 We have worked closely with them and also I think
13 that there has been a growing level of cooperation between
14 the Postal Rate Commission and the Postal Service Legal
15 Office in resolving issues and attempting to get more and
16 more data in electronic form, so I think that the thanks
17 should go not only to those at the Commission who conceived
18 of getting this material out as quickly as we could, but
19 also to the folks at the Postal Service, both in Information
20 Resources and Legal Counsel who have been more and more
21 cooperative over time in addressing these things.

22 I finally want to thank you for your kind words to
23 us.

24 Mr. Volner?

25 MR. VOLNER: Mr. Chairman, let me second the DMA's

1 comments that your Home Page is very, very useful.

2 On this question of listings, it is however a
3 little disconcerting. Sometimes we find that it runs two
4 and three days behind and what is more disconcerting, and I
5 don't know whether this is a problem with the imperfect
6 state of the electronics or what. When you go on the page
7 and you know a document has been filed and it doesn't show
8 up, you are not certain, since it was filed by a third
9 party, you are not certain whether it didn't get on there
10 because there was some delay in getting it on, or whether it
11 didn't get on there for the simple version of the facts that
12 it wasn't submitted in electronic form.

13 I just don't know, and that leaves you in kind of
14 a state of puzzlement and a state of unease in terms of
15 relying on the Home Page.

16 What I am suggesting, Mr. Chairman, is if there
17 was some way --

18 CHAIRMAN GLEIMAN: I got you.

19 MR. VOLNER: Okay.

20 CHAIRMAN GLEIMAN: My guess is that if it is not
21 there, it's because it wasn't submitted in electronic form,
22 although we do have the capability now, as I said, or we're
23 exploring the capability of scanning in some documents that
24 we get in hard copy, but certainly I think your suggestion,
25 which I short-circuited, makes sense.

1 There is no reason why we can't add a notation, at
2 least that I am aware of -- I'm sure the techies will tell
3 me why we can't -- but we'll give it a shot. Thank you.

4 Mr. Baker.

5 MR. BAKER: Thank you, Mr. Chairman.

6 With respect to the electronic filing, the special
7 rules specify that the files be formatted in Arial 12 font,
8 and I am not aware of a reason why it has to be that way --

9 CHAIRMAN GLEIMAN: I will tell you straight up.
10 We have found through a lot of experimenting that Arial 12
11 scans on most scanning systems almost 100 percent.

12 MR. BAKER: For scanning.

13 CHAIRMAN GLEIMAN: For scanning purposes, and if
14 we want to be able to scan documents in and have a complete
15 set of case documents up on the Web at some point, or if we
16 want to scan it in for some other purpose -- even into
17 laserfiche -- and ultimately if I understand correctly, and
18 I am not sure I am right on this, that is the font of choice
19 of the Government Printing Office also these days in terms
20 of their ability to use new technologies for printing up
21 documents, whether they are Federal Register or --

22 MR. BAKER: My suggestion, Mr. Chairman, though,
23 is if -- I understand how a font is useful for scanning of a
24 hard copy document. I believe if the document is filed in
25 an electronic version in whatever font should not be --

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1 standing should not enter into the process. And we have
2 found that converting from one font to another sometimes
3 changes pagination, it alters the document, and we have
4 chosen not to do that. So as a result we are not now
5 currently filing our documents electronically, and wondered
6 if we were allowed to file electronically in the font that
7 we have if that would help matters.

8 CHAIRMAN GLEIMAN: I will have to find out the
9 answer to that one for you. I don't know.

10 Anyone else? Good. Because I am running out of
11 answers.

12 Next I want to take this opportunity to urge
13 counsel to fully and accurately caption documents. Please
14 include the name of the party or parties filing and the
15 subject matter of the document. Also please strive to
16 actually serve documents on the date recited on the
17 certificate of service, and we have short deadlines
18 frequently, and it is essential that everyone cooperate in
19 this regard. If there is a problem with service to or from
20 a particular party, please attempt to resolve it informally.
21 I know that you have in the past and generally with good
22 results.

23 I hesitate to suggest it, but one way to resolve
24 problems with service is to send facsimile copies, if it's
25 warranted.

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1 I do want to comment that in the last rate case,
2 counsel always seemed to notify other affected parties when
3 they filed a request for expedited consideration or other
4 extraordinary relief, and we found this to be extremely
5 professional. It made life easier for the parties involved
6 and certainly for the Presiding Officer. I want to thank
7 you and urge you to continue the practice.

8 Are there any other matters that anyone wishes to
9 discuss today?

10 Mr. Foucheaux?

11 MR. FOUCHEAUX: Mr. Chairman, Daniel Foucheaux for
12 the Postal Service.

13 I have two more items, if they are not out of
14 order. First of all, in the past the Postal Service has
15 adopted the practice of scheduling technical conferences for
16 parties who were interested in learning more on an informal
17 basis about the contents of our testimony and our
18 methodologies. In the past we have scheduled these in
19 advance and given notice. Unfortunately, in some instances,
20 the level of participation hasn't warranted our scheduling a
21 technical conference. We would urge, therefore, the parties
22 in this case to contact us directly, if you have an interest
23 in conducting a technical conference with us, with our
24 witnesses, and we will schedule those at a time and a place
25 that is the most convenient for the parties who are

1 interested, including the Commission, if it wishes to
2 attend.

3 Secondly, the Postal Service is always very
4 interested in settlement of contentious issues in these
5 cases, and I expressed this interest from the very highest
6 levels of the Postal Service. While it might not seem
7 likely that in a case this complex there would be much
8 common ground for agreement, it is possible, and therefore
9 we would like to pursue that wherever it is possible. If we
10 can make the Commission's job easier by settling or coming
11 to some kind of agreement over particular issues, we would
12 like to do that. That can be pursued in a couple of ways:
13 We could either be contacted directly by attorneys who think
14 there might be issues that could be productively pursued in
15 settlement discussions, or perhaps the Commission could ask
16 for pleadings from parties to indicate areas where there
17 might be areas where we could agree.

18 Obviously we don't want to waste time pursuing
19 settlement just for the show of pursuing settlement. This
20 is going to be a very complex case, and our time and
21 resources are going to be in constant demand, but wherever
22 it is possible, the Postal Service is very interested in
23 settling issues.

24 CHAIRMAN GLEIMAN: Thank you for bringing that up,
25 Mr. Foucheaux. It was something that I should have

1 mentioned as a possibility. It is always something that we
2 would like to see, and I might mention that there are more
3 than words to back up the suggestion because, as some of you
4 may know, there are two cases currently pending before the
5 Commission. They are rather modest compared to the R97-1
6 case, but nevertheless, I think the Postal Service and the
7 parties have shown a great deal of willingness to settle and
8 these cases are moving in what some think is the proper
9 direction with all due deliberate speed. So hopefully we
10 will see more of that.

11 Are there any other matters that anyone wishes to
12 discuss today? My colleagues?

13 If there is nothing further, then this prehearing
14 conference is adjourned. Thank you.

15 [Whereupon, at 10:55 a.m., the prehearing
16 conference was concluded.]

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1 APPEARANCES: [continued]

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16 On behalf of the National Federation of Nonprofits:

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1 APPEARANCES: [continued]

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8 On behalf of the Mail Order Association of America:

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14 On behalf of Readers Digest Association, Parcel Shippers
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21 On behalf of the National Postal Policy Council, Inc.:

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1 APPEARANCES: [continued]

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8 On behalf of the Direct Marketers Association:

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1 APPEARANCES: [continued]

2 On behalf of Nashua Photo, Inc.; District Photo, Inc.;
3 Mystic Color Lab; Seattle FilmWorks, Inc.; Association of
4 Priority Mail Users; ValPak Direct Marketing Systems, Inc.;
5 ValPak Dealers' Association; Carol Wright Promotions:

6 WILLIAM J. OLSON, ESQUIRE

7 JOHN S. MILES, ESQUIRE

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7 On behalf of the Edison Electric Institute:

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1 APPEARANCES: [continued]

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13 On behalf of Advertising Mail Marketing Association:

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1 APPEARANCES: [continued]

2 On behalf of the Consumer Advocate:

3 EMMETT R. COSTICH, ESQUIRE

4 SHELLEY S. DREIFUSS, ESQUIRE

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11 On behalf of Federal Express:

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16 On behalf of the American Postal Workers Union, AFL-CIO:

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1 APPEARANCES: [continued]

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8 On behalf of the Association of American Publishers:

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P R O C E E D I N G S

[9:30 a.m.]

CHAIRMAN GLEIMAN: Good morning.

I don't know what it is that you all did that scared my colleagues away this morning, but here we are at the first prehearing conference for Docket R97-1 considering the request of the Postal Service for rate and fee changes.

I'm Ed Gleiman, chairman of the Postal Rate Commission, and I expect I'll be joined shortly by one of my fellow Commissioners, Ed Quick. Commissioner Haley is busy with a commitment outside of the Commission this morning, and Commissioner LeBlanc is away.

One of the principal topics of discussion at today's conference is going to be the schedule for conducting this case. The Commission has a history of adjusting its procedures in order to provide participants with the maximum amount of meaningful participation during the ten months that we are allowed to do these cases in by the statute.

The Commission identified this conference as the first prehearing conference and scheduled it earlier in our proceedings than we usually do. This was a conscious effort on our part to start an early dialogue on ways to smooth participation in this case.

The period for intervention has not yet expired,

1 and it may be necessary to hold additional conferences. The
2 Commission is prepared to gather whatever -- whenever it
3 will be helpful to parties to conduct the successful
4 evaluation of the Postal Service's proposal which forms a
5 basis for this case.

6 Parties believing that additional conferences
7 would be helpful should file a motion describing the topics
8 that they wish to be dealt with at said conferences.

9 The Commission notice of the Postal Service filing
10 was mailed to participants in our last major rate case and
11 classification cases on July 10th, but it wasn't printed in
12 the Federal Register until July the 23rd.

13 To assure that all interested members of the
14 public have an opportunity to participate in this case, this
15 morning I issued a ruling extending the time for
16 intervention as of right now until August the 13th. Parties
17 intervening before that date will not have waived the right
18 to question procedural issues before that date.

19 Before moving on to substantive topics, I will
20 request that counsel representing intervenors who are
21 present today introduce themselves for the record. I
22 believe that my list includes all the notices of
23 intervention we received through last night, but if I
24 neglect to mention an intervenor, would their representative
25 please speak up.

1 Who is appearing on behalf of the United States
2 Postal Service?

3 MR. FOUCHEAUX: Thank you, Mr. Chairman. My name
4 is Daniel Foucheaux. With me here today are Ms. Duchek, Mr.
5 Koetting, Mr. Cooper, Mr. Tidwell, Ms. Reynolds, Mr.
6 Alverno, Mr. Rubin. Not here are Mr. Reiter, Mr. Hollies.
7 I would like to introduce our paralegal, Eleanor Brown, who
8 will be doing a lot of work for us in this case.

9 CHAIRMAN GLEIMAN: Thank you.
10 The American Bankers Association?

11 MR. WARDEN: Irving Warden for American Bankers
12 Association.

13 CHAIRMAN GLEIMAN: Thank you, Mr. Horton.
14 ADVO, Inc.?

15 MR. BURZIO: Good morning, Mr. Chairman. I'm John
16 Burzio. I'll be appearing for ADVO along with Tom
17 McLaughlin.

18 CHAIRMAN GLEIMAN: Agricultural Publishers
19 Association?
20 The Alliance of Independent Store Owners and
21 Professionals?

22 The Alliance of Non-Profit Mailers?
23 American Business Press?

24 MR. STRAUS: Mr. Chairman, I'm David Straus
25 appearing on behalf of American Business Press. Also

1 appearing but not here today will be Steven Feldman.

2 CHAIRMAN GLEIMAN: Thank you.

3 American Postal Workers Union, AFL-CIO?

4 MR. TABBITA: Philip Tabbita. Appearing for us
5 normally will be Susan Catler.

6 CHAIRMAN GLEIMAN: Thank you.

7 The Association of Paid Circulation Publications,
8 Inc.?

9 The Association of Priority Mail Users, Inc.?

10 MR. OLSON: Mr. Chairman, William Olson appearing
11 for APMU, along with John Miles and Alan Woll.

12 CHAIRMAN GLEIMAN: Thank you.

13 Brooklyn Union Gas Company?

14 MR. HALL: Mr. Chairman, Mike Hall on behalf of
15 Brooklyn Union Gas Company.

16 CHAIRMAN GLEIMAN: Douglas F. Carlson?

17 The Classroom Publishers Association?

18 The Coalition of Religious Press Association?

19 Conde Nast Publications, Inc.?

20 The Consumers Union of the United States, Inc.?

21 The Direct Marketing Association, Inc.?

22 MR. ACKERLY: Good morning, Mr. Chairman. My name
23 is Todd Ackerly. We'll be appearing on behalf of Direct
24 Marketing Association along with David Myer and Michael
25 Bergman.

1 CHAIRMAN GLEIMAN: Thank you.

2 Dowden Publishing Company?

3 Dow Jones & Company, Inc.?

4 MR. McBRIDE: Good morning, Mr. Chairman,
5 Commissioner Quick. My name is Michael McBride on behalf of
6 Dow Jones & Company, Inc. Also appearing with me in the
7 case will be Samuel Barrens, Brenda Durham, and Joseph
8 Fagan.

9 Nice to see you both again.

10 CHAIRMAN GLEIMAN: Thank you.

11 Federal Express Corporation?

12 MR. CAMPBELL: Good morning. Jim Campbell,
13 Federal Express.

14 CHAIRMAN GLEIMAN: Florida Gift Fruit Shippers
15 Association?

16 MR WELLS: Mr. Chairman, Maxwell W. Wells, Jr.,
17 appearing for Florida Gift Fruit Shippers Association.

18 CHAIRMAN GLEIMAN: Good to see you, Mr. Wells.
19 Greeting Card Association?

20 MR. SWENDIMAN: Good morning, Mr. Chairman. Alan
21 Swendiman appearing on behalf of the Greeting Card
22 Association.

23 CHAIRMAN GLEIMAN: Hallmark Cards, Incorporated?
24 A new face that we've not seen around here before.

25 MR. STOVER: Mr. Chairman, good morning.

1 Commissioner Quick. David Stover on behalf of the Greeting
2 -- of the Hallmark Cards, Incorporated. Remember who my
3 client is. With me will be Sheldon Bierman.

4 CHAIRMAN GLEIMAN: I half expected you to say the
5 Postal Rate Commission.

6 [Laughter.]

7 CHAIRMAN GLEIMAN: The Hearst Corporation?

8 The International Labor Communications

9 Association?

10 Knight-Ridder?

11 McGraw-Hill Companies, Inc.?

12 MR. BERGIN: Good morning, Mr. Chairman. Timothy
13 W. Bergin on behalf of the McGraw-Hill Companies. Also
14 appearing with me is Amy L. Brown.

15 CHAIRMAN GLEIMAN: Magazine Publishers
16 Association?

17 MR. CREGAN: Good morning, Mr. Chairman. For the
18 Magazine Publishers of America, Jim Cregan.

19 CHAIRMAN GLEIMAN: Excuse me. I apologize. Old
20 habits die hard.

21 Mail Advertising Services Association

22 International?

23 MR. TODD: David Todd appearing for Mail Order
24 Association.

25 CHAIRMAN GLEIMAN: We'll mark that as the Mail

1 Order Association of America with Mr. Todd representing
2 them, and we'll back up one in the order and go to MASS
3 International.

4 MR. BUSH: Good morning, Mr. Chairman. Graeme
5 Bush on behalf of Mail Advertising Association
6 International.

7 CHAIRMAN GLEIMAN: The Meredith Corporation?
8 Metro Mail?

9 Peter J. Moore & Associates?
10 Mystic Color Lab?

11 Would you like to just stay up there while I do
12 the next one also.

13 MR. OLSON: Sure, we could do that.

14 CHAIRMAN GLEIMAN: Mystic Color Lab, Nashua Photo
15 and who else?

16 MR. OLSON: Two others: District Photo and
17 Seattle FilmWorks.

18 CHAIRMAN GLEIMAN: Thank you.

19 MR. OLSON: William Olson and John Miles and Alan
20 Woll. Thank you.

21 CHAIRMAN GLEIMAN: The National Association of
22 Presort Mailers?

23 The National Federation of Nonprofits?

24 MR. MILLER: Good morning, Mr. Chairman,
25 Commissioner Quick. George Miller appearing on behalf of

1 National Federation of Nonprofits, along with Carolyn Emigh
2 and Robert Tigner.

3 CHAIRMAN GLEIMAN: The National Newspaper
4 Association?

5 MS. BOONE: Good morning, Mr. Chairman. Senny
6 Boone. Also appearing will be Tonda Rush and Steve Doves
7 for the National Newspaper Association.

8 CHAIRMAN GLEIMAN: The National Postal Mail
9 Handlers Union?

10 The Newspaper Association of America?

11 MR. BAKER: Good morning, Mr. Chairman. William
12 Baker appearing on behalf of the NAA. I will be assisted in
13 this case by Michael Yourshaw and Alan Jenkins.

14 CHAIRMAN GLEIMAN: Thank you.

15 The Office of the Consumer Advocate?

16 MR. COSTICH: Thank you, Mr. Chairman. I am Rand
17 Costich for the OCA. Also appearing for the OCA will be
18 Shelley Dreifuss and Kenneth Richardson.

19 CHAIRMAN GLEIMAN: The Parcel Shippers
20 Association?

21 MR. TODD: Timothy J. May will be appearing for
22 the Parcel Shippers Association.

23 CHAIRMAN GLEIMAN: Thank you.

24 David B. Popkin? The Readers Digest Association,
25 Inc.?

1 MR. TODD: And Timothy J. May will be appearing
2 for the Readers Digest Association.

3 CHAIRMAN GLEIMAN: Rusmar, Inc.?

4 SJ Consulting Group?

5 Time Warner, Inc.?

6 MR. BURZIO: John Burzio, Mr. Chairman. Appearing
7 with me on behalf of Time Warner will be my partner, Tim
8 Keegan.

9 CHAIRMAN GLEIMAN: Thank you.

10 TMR Services?

11 United Parcel Service?

12 Good morning, Chairman Gleiman, Commissioner
13 Quick. John McKeever of Schnader, Harrison, Segal & Lewis,
14 for United Parcel Service. Also joining me, but not here
15 today, will be Albert Parker and Stephanie Richman.

16 CHAIRMAN GLEIMAN: Thank you.

17 Did I miss anyone who is in the room? I apologize
18 if I --.

19 MR. VOLNER: You didn't miss me. Considering the
20 distance between your office and mine, I don't quite know
21 why we didn't get filed yesterday, but in any event, Ian
22 Volner, appearing together with Frank Wiggins and Heather
23 McDowell, on behalf of the Advertising Mail Marketing
24 Association, and Ian Volner and Frank Wiggins and Heather
25 McDowell on behalf of the Recording Industry Association of

1 America.

2 MR. THOMAS: Good morning, Mr. Chairman. I am
3 Joel Thomas. I will be appearing for the Alliance of
4 Nonprofit Mailers. David Levy will also be representing
5 them, but he will not be here today.

6 CHAIRMAN GLEIMAN: Thank you.

7 MR. LITTELL: I am Richard Littell. I will be
8 here on behalf of the Major Mailers Association, which will
9 intervene this afternoon.

10 CHAIRMAN GLEIMAN: Thank you, Mr. Littell.

11 Well, if it wasn't an ex parte communication, Mr.
12 Volner, we could probably pass those things off from you to
13 me as I turn the corner at 14th and I in the evenings.

14 Yes, sir?

15 MR. CORCORAN: Good morning, Mr. Chairman. I am
16 Brian Corcoran, and I will be appearing on behalf of the
17 Edison Electric Institute.

18 CHAIRMAN GLEIMAN: Thank you.

19 MR. CAVANAUGH: Michael Cavanaugh for the National
20 Postal Policy Council, Mr. Chairman.

21 MR. GOLDBERG: Mr. Chairman, Kevin Goldberg. I
22 will be appearing, along with Richard Schmidt and Mark
23 Pellis, on behalf of the Association of American Publishers.

24 CHAIRMAN GLEIMAN: Thank you.

25 MR. OLSON: Mr. Chairman, also intervening this

1 morning is ValPack Directing Marketing Systems,
2 Incorporated, and ValPack Dealers Association, and we will
3 be intervening later today, Carol Wright Promotions.
4 William Olson, John Miles, and Alan Woll. Thank you.

5 CHAIRMAN GLEIMAN: Thank you.

6 For those of you who have not already done so, if
7 you would please fill out an appearance form and hand it to
8 the reporter before you leave today, we would be most
9 appreciative. They are available on the side table near the
10 -- in back of the Postal Service counsel table.

11 Anyone interested in obtaining a transcript of
12 today's prehearing conference or any other official
13 Commission proceeding in this case should make arrangements
14 directly with the reporting company, Ann Riley & Associates,
15 Ltd. An order form is available on the bottom half of the
16 appearance form. Transcripts are also available on computer
17 diskettes. Please fill out an order form if you wish
18 transcripts in either hard copy or diskette form. Anyone
19 needing to make additional arrangements that cannot be dealt
20 with today in the room here with the reporter, please call
21 the company at 202-842-0034.

22 I also want to remind counsel that it will help
23 reporters greatly if you identify yourself for the record
24 the first time that you speak on any given day.

25 We received seven statements identifying topics

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1 for discussion at today's conference. First I want to
2 comment favorably on the fact that several of these
3 statements reflect parties with mutual interests working
4 together. The Commission's rules of practice encourage
5 joint pleadings, and I want to assure participants that I
6 read carefully both the title of documents filed, the
7 signature pages, and what goes between them, and that a
8 single document submitted by five parties will be given the
9 same weight as five separate documents filed by those
10 parties. Joint filings are obviously less expensive to
11 prepare and to serve, and I commend the practice of joint
12 filings.

13 I also want to comment favorably on the practice
14 followed by two participants, the Direct Marketing
15 Association and Douglas Carlson, who chose to submit their
16 statements as early as possible. There is a tendency, I
17 think, in all of us -- certainly I have the tendency -- to
18 put things off until the due date and beyond at times. By
19 filing early, DMA and Mr. Carlson gave other participants
20 additional time to evaluate their proposals and, as a
21 result, a number of supportive documents were filed prior to
22 today's conference. This will help us conduct our business
23 efficiently and productively, and I encourage participants
24 to submit any other procedural or substantive suggestions
25 they may have at the earliest possible convenience for them.

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1 The first substantive issue on today's agenda is
2 the procedural schedule for the case. Commissioner Order
3 1186, which gave notice of the Postal Service request,
4 included a proposed procedural schedule. The Direct
5 Marketing Association requested this schedule be adjusted to
6 allow additional time for discovery on the Postal Service
7 proposal. The statements submitted by 12 participants urged
8 that the schedule be extended to allow participants
9 additional time for discovery. In support of these
10 requests, participants referred to the breadth and
11 complexity of the new analyses incorporated into the Postal
12 Service presentation.

13 Let me say right off that I find these arguments
14 persuasive. There is a great deal of new material in the
15 Postal Service request, and I certainly understand why
16 members of the community would need some time to familiarize
17 themselves with this material and why participants might
18 need more time for discovery.

19 While I recognize that many of you would like to
20 see a process that permits the Postal Service to adjust
21 rates without the burdens associated with independent
22 review, it is certainly reassuring that some of you,
23 including the advocates for change, recognize that current
24 10-month time frame is really not overly generous when you
25 have a complex case.

1 DMA submitted a proposed hearing schedule which
2 would allow more time for discovery on the Postal Service,
3 and more time for participants to prepare their cases in
4 chief, including their rebuttal, to the Postal Service. For
5 those parties who may not have seen the DMA proposed hearing
6 schedule, I have had copies made and placed at the table
7 near the door of the hearing room, along with copies of the
8 schedule that were published in order along with Order 1186.

9 I intend to ask for comments on the DMA proposal,
10 and I will pause at this moment in the event anyone wishes
11 to obtain a copy of the DMA proposal. It is on the table
12 near the door here, up at the front end of the room.

13 MR. OLSON: Mr. Chairman, could I just note that I
14 will put additional copies of our comments also at the
15 front, since we were only able to serve selected people and
16 not having a service list?

17 CHAIRMAN GLEIMAN: Certainly. I'd appreciate
18 that.

19 MR. CREGAN: Mr. Chairman, Jim Cregan, MPA. I am
20 going to do the same thing for our joint comments on behalf
21 of ABP, et al.

22 CHAIRMAN GLEIMAN: Please.

23 That was the Magazine Publishers of America, Mr.
24 Cregan.

25 Docket R94-1, the previous omnibus rate case, was

1 completed in about eight and a half months, and the
2 Commission would always endeavor to complete its cases with
3 maximum expedition, consistent with due process, but this
4 case contains a number of areas which may require
5 considerable analysis, and I am not optimistic about
6 reaching that early of a decision. There are two important
7 considerations which led the Commission to publish the
8 procedural schedule that appeared in Order 1186, and I will
9 not ignore these considerations.

10 First, the Commission was concerned that it have
11 adequate time to carefully and conscientiously evaluate each
12 of the arguments presented by participants before reaching
13 its final decision. The Commission evaluates the evidence
14 while the record is being developed, but there has to be
15 enough time to take a step back and look at the entire
16 record so that we can come to an understanding of how the
17 various parts of the evidentiary record mesh.

18 Even under the schedules followed in previous rate
19 cases, it has been difficult for the Commission at times to
20 carefully think through the thousands of pages of arguments
21 submitted in parties' briefs and in the records. We get
22 briefs and oral arguments with about two months left in a
23 case, generally, and that really isn't much time when you
24 think about what we have to do. My recollection is that at
25 an early stage in Docket R94-1, we discussed limiting the

1 length of briefs in an attempt to help everyone involved in
2 the case, including the Commission. A number of parties,
3 especially the Postal Service, opposed that idea, and I must
4 say that we have so many issues in an omnibus rate case,
5 that page limits may well be counterproductive. So in this
6 case, I want to try something new. I will issue a revised
7 schedule that allows more time for discovery and less time
8 for the Commission to evaluate the completed record, but I
9 will ask parties to submit trial briefs two weeks before
10 their witnesses take the stand.

11 Let me explain what I hope will be contained in
12 the trial briefs. I hope that each party, including the
13 Postal Service, will set forth in detail its theory of the
14 case. Each party should include an explanation of the
15 theoretical and public policy considerations which it
16 believes the Commission should give weight to. The Postal
17 Service case does not include testimony from a so-called
18 policy witness this time, to explain how the Postal Service
19 views its future and why its request is both consistent with
20 and in furtherance of that future.

21 At first blush, its evidence focuses on individual
22 rates and subclasses without presenting a picture of the
23 whole, and why the constituent parts of its proposal sum to
24 a result that is consistent with a particular public policy.
25 So in your presentation it would be very helpful to the

1 Commission to put the 42 pieces of Postal Service testimony
2 into context. Such a statement, by its nature, would be
3 argument and thus it should be presented in a brief. But to
4 be really helpful, the statement should be available to the
5 Commission before the witnesses answer oral cross
6 examination, so that we can understand the Postal Service's
7 view and question witnesses about aspects of their testimony
8 which appear to be inconsistent with that view.

9 I have given a lot of thought as to whether this
10 requirement might be unfair or might put the Postal Service
11 at some strategic disadvantage, and I have concluded that
12 the requirement is reasonable. It is an administrative
13 proceeding intended to evaluate facts. I know that these
14 cases sometimes seem adversarial and that participants
15 support different results, but I believe all participants
16 will best be served if the Commission understands everyone's
17 position and can base its conclusions on knowledge, rather
18 than supposition.

19 I will direct that this trial brief be submitted
20 two weeks before the hearings begin. That will give the
21 Commission time to thoroughly review the brief and
22 understand the importance of each piece of Postal Service
23 testimony.

24 Also the brief will not be supported until after
25 discovery on the Postal Service direct case has been

1 completed, thus the brief will not disrupt discovery.

2 The same obligation will apply to participants.
3 Participants will be requested to submit trial briefs which
4 describe the theoretical and public policy positions they
5 support and provide a rationale underlying their views.
6 Those briefs will be due 14 days before hearings begin to
7 receive the direct testimony of -- testimony on the direct
8 cases of intervenors.

9 Intervenor cases often focus on selected issues.
10 The trial brief should explain how the proffered evidence
11 should be used in reaching a recommended decision. Two
12 weeks will allow the Commission to review and understand the
13 competing theories and test those theories during cross
14 examination.

15 Again, these briefs will be due after discovery
16 has been completed.

17 I realize this requirement will impose a strain on
18 legal counsel. All I can say is that having your arguments
19 presented at an early stage will help the Commission to
20 understand your case and make all of our efforts more
21 worthwhile.

22 It is my expectation that as a result of this
23 requirement, initial and reply briefs will be much more
24 succinct; since you will have already explained the
25 important applicable theories and policies, you can focus

1 your attention on identifying record evidence which confirms
2 your position and is contrary to opposing views.

3 I would expect and encourage participants to
4 consider arguments presented in trial briefs automatically
5 incorporated into their initial briefs.

6 This morning I have spoken of trial briefs as an
7 obligation. I am aware that no intervenor is required to
8 file an initial brief or, for that matter, file evidence.
9 However, I urge the intervenors to take this request very
10 seriously. If the Commission does not understand why you
11 believe a particular outcome is justified, it may not
12 initially appreciate your expectation of how much weight we
13 should give to the evidence supporting that outcome.

14 One additional point. I have concluded that trial
15 briefs will not disrupt discovery since they will be filed
16 after discovery on a party's direct case is completed.
17 However, the Postal Service is obligated to respond to
18 discovery even after its direct case has been received into
19 evidence because the Postal Service has access to
20 information participants may need to present useful rebuttal
21 evidence.

22 It is my expectation that parties will not abuse
23 this situation and direct discovery to the Postal Service
24 which is unrelated to the collection of information needed
25 to present rebuttal evidence.

1 Later on this morning, we'll talk more about ways
2 to foster effective and conflict-free discovery. For now,
3 let me assure you that I will look with great disfavor on
4 anything that appears to be an abuse of discovery, and in
5 particular, I will not permit inappropriate discovery to
6 undermine the benefits of having an effective and
7 informative trial brief.

8 If there are any questions about the trial brief
9 idea or comments, I would like to hear them now.

10 Mr. Foucheaux?

11 MR. FOUCHEAUX: Mr. Chairman, Daniel Foucheaux for
12 the Postal Service.

13 Your comments are well taken, and we don't find
14 the demand to be an unreasonable one. However, I would like
15 to comment about the timing. Even though discovery ends on
16 a particular date, quite often, in fact typically in general
17 rate cases, the last day of discovery generates the most
18 interrogatories; therefore, the Postal Service's work and
19 particularly Postal Service's counsel's work is generally
20 not done after discovery date is over. Typically, as I
21 said, we have a tremendous amount of questions to answer
22 after the discovery date.

23 I think if I were permitted to adjust that
24 schedule, I would say one week would be more reasonable,
25 give us more flexibility; otherwise, I would hope the

1 Commission would understand if we missed a few deadlines in
2 preparing for that trial brief because we do realize, as you
3 have expressed it, how important that will be for the future
4 conduct of this case.

5 CHAIRMAN GLEIMAN: I think your point is
6 reasonably well taken. I'll certainly consider that as we
7 put together the schedule that we hope to get out within the
8 next few days, Mr. Foucheaux. Thank you.

9 Mr. Volner?

10 MR. VOLNER: Mr. Chairman, I think the idea is
11 commendable. It is one that AMMA has long supported. I do
12 have a question, however. Some of us, given the nature of
13 this somewhat complicated case, may be filing cases in chief
14 in opposition to some Postal Service proposals when those
15 are due, but may also be filing rebuttal testimony in the
16 rebuttal phase of the case.

17 Is it your expectation that there will be trial
18 briefs at both stages, at the case in chief stage and at the
19 rebuttal stage?

20 CHAIRMAN GLEIMAN: At this juncture, I think that
21 we would expect it would be at the case in chief stage.

22 MR. VOLNER: Okay. Thank you.

23 CHAIRMAN GLEIMAN: Are there any other comments?

24 Trial briefs are intended to be a remedy for the
25 first problem inherent in the schedule proposed by DMA.

1 They will provide the Commission with more time to carefully
2 evaluate the policy arguments of the parties.

3 The second problem is a bit more difficult to deal
4 with. Simply stated, the second problem is, what if
5 something unexpected delays the schedule? The DMA has no
6 extra time built into its proposed schedule, and I'm not
7 really certain that six weeks will allow the Commission the
8 necessary time to decide all the technical and policy issues
9 raised by the parties and develop a reasoned and justifiable
10 recommendation to present to the governors. I know that
11 less time will simply not allow the Commission to perform
12 the duties prescribed by law.

13 Consequently, all participants are on notice that
14 nothing short of an act of God will be justification for
15 shortening the time left to the Commission in the schedule
16 that we put out to prepare its opinion and recommended
17 decision.

18 With those preliminaries out of the way, we can
19 discuss the actual procedural dates for the case. I've
20 already said that I was convinced by the arguments of DMA
21 and those who offered up support for the DMA proposal.

22 Let me also say that I think Mr. Ackerly did an
23 excellent job of developing a proposed schedule that avoids
24 holidays and allows time for parties to designate cross
25 examination before witnesses take the stand.

1 The only participant suggesting alternative dates
2 -- NDMS suggests that instead of allowing intervenors an
3 additional week to prepare their direct case, an additional
4 week be provided for discovery on the direct case of
5 participants.

6 Mr. Olson, would you like to comment on your
7 alternative suggestion?

8 MR. OLSON: The reason for the request was simply
9 that the request of participants -- the direct case of
10 participants very often involves matters that need extensive
11 discovery, just as the Postal Service case, and we generally
12 support the DMA approach and certainly, if that's the
13 approach taken, we would support this, but this does seem to
14 be a point in the procedural schedule where additional time
15 could be usefully taken advantage of.

16 CHAIRMAN GLEIMAN: I don't disagree with you.
17 Unfortunately, it appears -- there is no good time to file a
18 case, I've concluded, because the holidays are spread
19 throughout the year and certainly filing the case in
20 midsummer, we run into a whole host of problems, in early
21 fall with some religious holidays, and then subsequently,
22 toward the end of the year, with religious holidays and
23 non-sectarian holidays, and after the first of the year with
24 other national holidays. If it's possible to squeeze a few
25 more days out, we will endeavor to do that, but at this

1 point, I'm not sure that we'll be able to.

2 Mr. Ackerly, do you have any additional thoughts
3 you would like to share with us on your proposal?

4 MR. ACKERLY: No, sir.

5 CHAIRMAN GLEIMAN: Mr. Foucheaux, do you care to
6 comment, or anyone else?

7 MR. FOUCHEAUX: I'll have a brief comment, Mr.
8 Chairman. First of all, the Postal Service was content with
9 the Commission's schedule, and in saying that, we recognize
10 that perhaps one of the motivating factors that was behind
11 the design of that schedule was the Postal Service's
12 interest in expedition in rate cases. Obviously we have
13 very important financial interest in the length of these
14 proceedings, where days can equate to millions of dollars.

15 At the same time, we do acknowledge that this is a
16 challenging case and it interjects a lot of new elements,
17 and we also understand that the Commission has important
18 responsibilities to ensure that every party has a fair
19 opportunity to comment on the Postal Service's proceeding
20 and take a position on it.

21 In that regard, nobody is -- no party is more
22 interested in the integrity of the Commission's hearing
23 process than the Postal Service. After all, the great
24 majority of Commission recommendations end up being approved
25 by the Postal Service and we find ourselves together

1 defending it in court. So the procedural integrity in
2 particular of the Commission schedule is very important to
3 us.

4 We do not think DMA's proposal was unreasonable.
5 At the same time, we would defer to the Commission's
6 judgment as to how to best balance the competing interest of
7 a speedy resolution of this case and the parties' rights.
8 In that regard, we are especially sensitive to the
9 Commission's need to have an adequate period of time to
10 deliberate, to evaluate the record, and to write a well
11 reasoned opinion.

12 Further in that regard, I would like to again
13 express our often expressed expectation that the decision in
14 this case will be based on evidence that is scrutinized and
15 tested on the record, and that any new variations are given
16 the full due process scrutiny that's available to all the
17 parties under the law.

18 Having said that, we will abide by your judgment,
19 although we were reasonably content with your original
20 schedule.

21 CHAIRMAN GLEIMAN: I thought for sure you were
22 going to ask me to take a week out of the discovery on the
23 Postal Service's case.

24 MR. FOUCHEAUX: We always prefer less discovery
25 rather than more.

1 CHAIRMAN GLEIMAN: Well, I also understand that
2 you want us to order a rubber stamp that says "Approved."
3 But somebody told me that even if we do that, we would still
4 have to address the arguments that are raised in the
5 proceedings, so it will still take us a week or two at the
6 end.

7 Does anyone else wish to comment?

8 If there are no other comments, then we will move
9 on, and hopefully, before the end of the week, we will issue
10 a revised procedural schedule.

11 One factor which bears on our ability to keep to
12 the procedural schedule deserves particular emphasis. A
13 hearing schedule will be established more than two months
14 before any witness appears, and under this circumstance, I
15 expect witnesses to be available to give direct testimony
16 throughout the period of the hearings that are scheduled to
17 take place.

18 This is particularly important for the Postal
19 Service given that you have 40 witnesses and 42 pieces of
20 testimony. I know that some of these folks are out of town
21 and I think it's important for the Postal Service to ensure
22 at the front end of the process that university professors
23 with teaching obligations and others who are out of town are
24 available for a reasonable amount of time during the
25 several-week period that we will be holding hearings.

1 I'm sympathetic when people have vacations or are
2 going to be out of the country or have other obligations,
3 but this is an important case, so I would request that you
4 pay particular attention early on to assuring that your
5 witnesses are available.

6 In that regard, I would ask that you provide us
7 with an indication of any conflicts that may exist due to
8 teaching schedules and the like by September the 3rd. A
9 complete list of conflicts can then be submitted closer to
10 the beginning of the hearing schedule.

11 I urge participants to have the hearing schedule
12 in mind when they choose witnesses to present their direct
13 evidence, and, again, please try to avoid submitting
14 testimony from witnesses who, for all intents and purposes,
15 are going to be unavailable to appear and respond to oral
16 cross examination during the period set forth for hearings.

17 Does anyone have any additional issues concerning
18 this schedule that they want to raise before we move on?

19 If not, then just let me say that nothing is more
20 central to effective completion of the Postal Rate
21 Commission proceedings than the discovery process.
22 Participants and the Commission both rely on the Postal
23 Service providing complete and cooperative responses to
24 discovery. Without this, neither participants nor the
25 Commission have a meaningful opportunity to evaluate the

1 Postal Service request within the 10-month statutory period.

2 Similarly, we must rely on participants to provide
3 full and complete responses to discovery if we are able to
4 understand and effectively evaluate their presentations.
5 Sometimes the number of discovery requests made during a
6 case seems overwhelming, and this is part of the price for
7 an expedited postal case. Participants with a brief period
8 to study and understand complex questions may submit more
9 questions than would be necessary if they had additional
10 time and could review in a more methodological approach the
11 materials that they receive from others.

12 I urge participants to attempt to avoid discovery
13 which is unnecessarily burdensome. If you have a lot of
14 questions, it might be useful to request an informal
15 technical conference. Of course, the key to effective
16 discovery is a submission of timely and responsive answers.
17 And it seems to me that in recent cases, we have been
18 slipping away from that standard a bit.

19 In Docket MC97-2, a distressing number of
20 discovery responses were filed late by the Postal Service,
21 and in MC97-4, none of the answers to discovery provided by
22 the Postal Service were submitted in a timely fashion, and
23 Presiding Officer Quick had to instruct the Postal Service
24 counsel to convey to management the Commission's deep
25 concern about this situation.

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1 It is essential that the Postal Service commit
2 sufficient resources to meet established deadlines in this
3 case. Therefore, I am going to ask the Postal Service
4 counsel to inform both the vice president in charge of
5 conduct of rate cases before the Commission and the Postal
6 Service general counsel that this Commission considers the
7 submission of timely and responsive answers to discovery
8 requests to be a matter of great importance.

9 Also, at the conclusion of Docket MC97-2, the
10 Office of the Consumer Advocate provided extensive comments
11 on discovery disputes which hampered its participation. I
12 don't intend at this point to address the specifics on any
13 of the particular complaints detailed by OCA. However, the
14 OCA document is instructive and may be worth reviewing.

15 I will say that occasionally one could infer that
16 an overly burdened staff has provided a nonresponsive answer
17 simply because there was insufficient resources to procure a
18 timely and responsive answer, and I trust that will not be
19 the case this time around.

20 The delay in complying with Rule 54(a) is
21 troubling. The notice which accompanied Postal Service
22 request filed July 10th indicated that compliance would be
23 achieved within 10 to 12 days. The most recent notice,
24 which was filed on Monday the 28th, stated that the required
25 information would not be available until the end of this

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1 week, approximately 10 days after the Postal Service
2 initially expected to be able to provide it.

3 I sincerely hope that this slippage is not the
4 result of a commitment of adequate resources. This type of
5 delay cannot be experienced on a regular basis. Otherwise,
6 we are going to have serious problems in meeting the
7 10-month deadline.

8 I also want to share my thoughts on objections to
9 providing data. Objections should not be used
10 unnecessarily. I have in mind our experience in Docket
11 R94-1. There were a number of instances, but one in
12 particular, when the Postal Service claimed that a survey of
13 customer-stamped purchasing preferences contained sensitive
14 business information. After extensive motion practice, a
15 version with three redacted numbers was produced. A
16 significant amount of time and effort could have been saved,
17 had the Postal Service counsel examined the document at the
18 early stage and taken steps to facilitate access, instead of
19 attempting to avoid -- attempting to block access.

20 Comments submitted by OCA at the conclusion of the
21 MC97-2 docket touched on sanctions that could be requested
22 if a proponent fails to provide appropriate discovery
23 responses. Quite frankly, I don't want to have to consider
24 sanctions. The role of the Commission is to evaluate Postal
25 Service requests, not to impose sanctions, but the

1 obligation of the Postal Service is to be as responsive as
2 possible and to do so in a timely manner.

3 The Postal Service has already invested
4 significant resources in preparing its request. The
5 participants and the Postal Service are going to expend
6 enormous amounts of time and, I suspect, money in pursuit of
7 a rational and justifiable recommended decision, and these
8 resources would be wasted if discovery disputes prevent
9 meaningful participation by intervenors, and prevent the
10 Commission from reaching an informed judgment on the merits
11 of the Postal Service case.

12 Turning now to the rules of practice. Several
13 parties indicated an intention to suggest amendments at
14 today's conference. The special rules were published in
15 Order 1186 and additional copies of that order are also
16 available along with other documents at the front table.

17 United Parcel Service expressed an intention to
18 discuss the rules concerning library references. Mr.
19 McKeever, are you prepared to discuss your proposal for the
20 benefit of those who have not seen your July 25th motion?

21 MR. MCKEEVER: Yes, Mr. Chairman. Basically our
22 proposal is that instead of one copy of library references
23 being filed with the Commission, that at least three copies
24 be filed. As you indicated, Mr. Chairman, a crucial part of
25 the case is right at the beginning, analyzing the Postal

1 Service's proposals and finding out their basis and the data
2 that supports them. We have sometimes run into the
3 frustrating experience of finding that much of that support
4 is in library references rather than in Postal Service
5 testimony or even work papers, and we have the need to get
6 the library references quickly as possible so that we can
7 avoid unnecessary discovery and delay in analyzing those
8 proposals.

9 What happens, however, is in attempt to obtain the
10 library reference, we often find that the one copy that is
11 filed has already been obtained by another party, signed out
12 for purposes of being duplicated, because that party also
13 finds that the library reference is key to its concerns in
14 the case, and sometimes there is a delay in obtaining a copy
15 of the library references as a result.

16 Our suggestion is that instead of having only one
17 copy available in the docket room, that can be signed out
18 and be copied, there ought to be more than one. We suggest
19 three. I might point out that a lot of the material in the
20 library references is in the nature of work papers and there
21 the requirement, I believe, is that seven copies be filed.
22 But we are trying to strike a balance because we know that
23 particularly in the case of the Postal Service, that's a lot
24 of paper, and also in the case of the Commission's docket
25 room, because the more paper that the Commission's docket

1 room has to deal with, the more difficult the job is, of
2 course.

3 However, as I said, it is crucial, really, that we
4 obtain library references as timely as possible, and the
5 suggestion is meant to ease the burden of parties who are
6 attempting, in the very short time available to them, to
7 analyze the Postal Service's case and get to the meat of
8 what is at issue and to the data that really matters to
9 them.

10 If I may, Mr. Chairman, mention one or two minor
11 additional thoughts that we had since we filed our notice.
12 We find it might be helpful if either the notice of the
13 library reference or something could indicate how many pages
14 are in the library reference when it is hard copy. That
15 sometimes permits us to make a judgment as to the time
16 involved in copying it and studying it. So if the library
17 reference could indicate the number of pages in a library
18 reference, we would find that helpful. And when the library
19 reference is a computer disk, if perhaps the notice could
20 indicate the files that are on that disk, that sometimes is
21 helpful because we get the disk sometimes and we don't know
22 what's on it until we put it up and run it, and then we find
23 out that something we thought would be on it is not on it,
24 and as I say, that is no one's fault, it's just a matter
25 that disclosure earlier might be helpful to us.

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1 CHAIRMAN GLEIMAN: Thank you.

2 Are there any comments? Mr. Foucheaux? Anyone
3 else?

4 MR. FOUCHEAUX: Yes, thank you, Mr. Chairman.

5 First of all, we are certainly not unsympathetic
6 to the travails of litigators in these cases. Obviously
7 there are many competing demands on a limited amount of
8 resources. We will comment, however, that one copy has been
9 adequate in the past, and I can remember one instance in
10 Docket No. R90-1 case when I believe, before the case was
11 filed, we inquired of the Commission if additional copies of
12 library references were needed and were informed that due to
13 space requirements, mainly, an additional copy would not be
14 requested.

15 I think it is useful to provide context to UPS's
16 motion, however, to note that although one copy of library
17 references is on file with the Commission, the Postal
18 Service library, which is open to the public, has two copies
19 available. The library does have copying facilities, and is
20 willing and quite frequently allows parties to check out
21 those library references for limited periods of time to make
22 their own copies. As far as electronic data is concerned
23 and electronic formats, we observed that some of the parties
24 have been quite successful coming into the library with
25 portable computers and downloading the contents of disks

1 directly in the library.

2 Therefore, while we have no philosophical
3 objection to providing more copies to the Commission, there
4 is an expense involved, perhaps not a great expense in
5 relation to the amount of money at stake in these cases;
6 however, reproduction also takes time, and Postal Service
7 attorneys in the past have been very amenable to requests by
8 counsel to assist when library references have been in short
9 supply or have been missing.

10 I believe just this week we reproduced a library
11 reference for UPS and sent it to that party. Therefore,
12 while we don't think it's necessarily an unreasonable
13 demand, I think the full picture reflects that there are
14 three copies available, and two are readily available in the
15 Postal Service library, and Postal Service attorneys can be
16 contacted if that is not adequate.

17 Thank you.

18 CHAIRMAN GLEIMAN: Thank you.

19 Does anyone else have a comment?

20 Then we will take your suggestion and your
21 comments into consideration in reaching a decision on how to
22 proceed here.

23 Two parties, Douglas Carlson and the Newspaper
24 Association of America, suggested adjustments to section
25 3(c) of the special rules of practice which deals with

1 service of discovery documents.

2 Now Mr. Carlson, who is not here this morning, was
3 concerned with minimizing the cost of participation of
4 individuals, and he suggested that motions to compel
5 interrogatory answers be subject to rule 3(c) and,
6 therefore, exempt from the general service requirement.

7 The Newspaper Association of America has a
8 slightly different suggestion, and Mr. Baker is here, so I
9 will let him speak for the position of NAA.

10 MR. BAKER: Thank you, Mr. Chairman.

11 We endeavored to serve our comments on all parties
12 as soon as we got the service list, and we believe there may
13 have been some later interventions who may not have seen it,
14 although we did not bring extra copies.

15 Our point was centrally one, Mr. Carlson's motion
16 seemed to identify an ambiguity in the way the special rule
17 is written as to the obligation to serve discovery answers
18 on all parties or, rather, only those who had requested
19 them, and our view was simply that while we take no position
20 on whether objections, motions to compel, and responses
21 thereto need to be filed on the parties who are minimal
22 participants or who do not ask to receive it, we do believe
23 that answers to interrogatories should be served on all
24 parties in that they can become evidence in the proceedings,
25 and as a matter of due process, it seems to us that all

1 parties should be aware of at least substantive answers that
2 are being served and should be served on all.

3 CHAIRMAN GLEIMAN: Thank you.

4 Does anyone care to comment?

5 MR. FOUCHEAUX: Thank you, Mr. Chairman. Daniel
6 Foucheaux for the Postal Service.

7 We acknowledge the ambiguity in the special rule.
8 However, our recollection of the history of this provision
9 is consistent with that of NAA's, namely that answers to
10 interrogatories would be served on all parties. While it
11 doesn't gore our ox, since we get everything, we generally
12 concur in the logic of NAA's interpretation of the rule.

13 CHAIRMAN GLEIMAN: Thank you.

14 Any other comments?

15 Moving on, then, to the next suggestion that we
16 have, Nashua District Mystic Seattle -- did I get it right
17 -- commented on rule 4(b), in a written comment submitted
18 July the 25th. It suggested that under some circumstances,
19 the word "service" should be interpreted to mean delivery.
20 It also suggested providing additional notice of the
21 intention to oral cross examination and enforcing strict
22 sanctions on participants who fail to comply with that rule.

23 Taken together, these suggestions would require
24 actual delivery of certain notices 48 business hours in
25 advance.

1 Before asking counsel to provide additional
2 details, I want to clarify my understanding. When a rule
3 uses the word "serve," I interpret it to mean serve, as
4 provided in the rules of practice. If a rule uses the word
5 "deliver," it means actual delivery must be made. Thus, I
6 would interpret the Nashua, et al suggestion as a request to
7 substitute the word "deliver" for the word "serve" in
8 certain instances.

9 Mr. Olson, would you like to explain your proposal
10 further and in particular would you like to comment on the
11 cost to parties and counsel not located in the metropolitan
12 area and how they might be affected on delivery?

13 MR. OLSON: Yes. What -- the genesis of this
14 suggestion came from some problems that have occurred in
15 prior dockets with respect to inadequate notice being given
16 to witnesses and their counsel prior to oral cross
17 examination, and as the rules are currently written, the
18 notice requesting permission to conduct oral cross
19 examination must be served three or more working days, and
20 then if there are complex numerical hypotheticals or
21 intricate or extensive cross references, those would be
22 provided at least two calendar days, including one working
23 day, ahead.

24 There are two thoughts here. The first is that if
25 there is to be a rule, there ought to be perhaps a sanction,

1 or there ought to be the presumption of a particular
2 sanction. If there is no notice, whatever the notice that
3 the Commission requires be given, then the failure to give
4 that notice would result in the ordinary course, in the
5 absence of some extraordinary good cause, it would result in
6 the inability to perform oral cross examination or to use
7 the exhibits with the intricate or extensive cross
8 references or complex numerical hypothetical.

9 So the first proposal really goes to the issue of
10 the existence of a sanction. The failure to include a
11 sanction, we would submit, gives the Chairman or the
12 Presiding Officer of each docket the undesirable selection
13 of options as follows:

14 He can either allow the cross examination to go
15 forward, recognizing that the witness, for example, has not
16 seen the documents; he could defer to another day, perhaps
17 reschedule the witness at great cost and expense,
18 frequently; or disallow the use of the document in cross
19 examination. And we would suggest that that would be the
20 appropriate sanction, and if it was in the rule, then we
21 would have much better adherence to the rule.

22 Secondly, there is another issue with respect to
23 the amount of time given, particularly with the complex
24 numerical hypothetical at each of those documents. Right
25 now the rule says two calendar days, including one working

1 day. Unfortunately, Sunday is a calendar day and Saturday
2 is a calendar day, and very often people aren't at their
3 office, but that becomes a day which is counted toward
4 notice, and I don't think that is reasonable.

5 What we are suggesting that one working day is not
6 enough, and certainly if these were -- if the word "serve"
7 means "mail," that is not adequate. I'm not sure that there
8 isn't a rule in 39 CFR that defines for periods of three
9 days or less that service means deliver. I'm not sure if
10 that is not an even further complicating factor; I'd have to
11 go back and review the CFR.

12 But basically the proposal is that there be a
13 sanction for failure to -- and the sanction ordinarily would
14 be the inability to go forward, absent good cause shown; and
15 secondly, that there would be at least 48 business hours
16 where complex hypotheticals and these other documents that
17 are described as intricate or extensive cross references be
18 given to a witness. Failing them being given to a witness,
19 they could not be used. That would be the proposal.

20 Thank you.

21 CHAIRMAN GLEIMAN: Thank you.

22 Are there any comments?

23 MR. FOUCHEAUX: Thank you, Mr. Chairman. Daniel
24 Foucheaux for the Postal Service.

25 We are reasonably content with the existing rule,

1 and we certainly regret any failure by our representatives
2 to observe it in the past, although I could probably, for
3 every one violation by the Postal Service, cite at least
4 five by counsel for intervenors, and some attorneys seem to
5 be more persistently in violation than others.

6 We don't think it is unreasonable to take account
7 of weekend time, and obviously Mr. Olson's comments are very
8 well taken, but we do work weekends, and so we don't think
9 that an expansion of the rule is mandated by any set of
10 circumstances.

11 We do think that forfeiture of the right to cross
12 examine is probably too harsh a penalty, if a penalty is to
13 be imposed. I think counsel for intervenors and the Postal
14 Service have been reasonably good, in spite of any instances
15 of violation, in observing these rules, and that usually
16 when they are not observed, there are special circumstances.
17 I would think if there is a pattern of flagrant abuse, that
18 could be handled by special motion, rather than having a
19 standing rule that if you don't technically comply, you
20 forfeit the right to cross examine.

21 CHAIRMAN GLEIMAN: Any other comments?

22 I am sensitive to the situation that you describe,
23 Mr. Olson, and Mr. Foucheaux, that you seem to encounter
24 more frequently than perhaps intervenors' counsel, but as I
25 mentioned previously, when we were talking about OCA's

1 thoughts on discovery problems, I am somewhat reluctant to
2 impose sanctions, but certainly we will take the suggestions
3 and your thoughts into consideration and see if we can't
4 address them and make the system work a little bit better
5 for everyone involved.

6 Does any participant want to suggest or discuss
7 any other possible changes in the special rules that were
8 published with the order?

9 Mr. Straus?

10 MR. STRAUS: I am not sure if this is a question
11 on the special rules or not.

12 I noticed when the service list was issued, some
13 people had e-mail addresses who had provided them in
14 accordance with the special rules request that e-mail
15 addressees be provided, and as to other names under the name
16 indicated hard copy.

17 I am hoping that is not an indication that no hard
18 copy need be served on those who provided e-mail addresses.
19 As I understand the rules, there's hard copy service on
20 everybody, whether or not we provided an e-mail address.

21 CHAIRMAN GLEIMAN: Right.

22 MR. STRAUS: And I am confused by the service
23 list.

24 CHAIRMAN GLEIMAN: Right. Right now, that is the
25 case. YOU know, as you are well aware, we have made some

1 attempts to save everyone some money and some paper by
2 electronic service to those who are willing to participate
3 but there being -- I think the word is "plethora" of
4 problems, not here at the Commission but at Intervenors'
5 offices, with respect to what comes out on their end, and
6 until we can find some way to overcome the technical
7 problems, I guess we are stuck with hard copy for the
8 moment.

9 MR. STRAUS: So in other words everyone will be
10 receiving hard copy from each party notwithstanding the
11 availability of an e-mail address?

12 CHAIRMAN GLEIMAN: Unless they don't want hard
13 copy at all, in which case I think they have made that
14 known.

15 MR. STRAUS: Thank you.

16 CHAIRMAN GLEIMAN: The next item on our agenda --
17 are there any others? Any other questions or concerns?

18 MR. FOUCHEAUX: Mr. Chairman, I have been urged to
19 add a comment to Mr. McKeever's suggestion that the contents
20 of notices of library references be more detailed.

21 I would urge the Commission to avoid creating any
22 kind of a formula for the contents of notices of library
23 references. The Postal Service will certainly try to be as
24 specific as possible in the circumstance if we can.
25 However, in the crush of litigation it sometimes is a great

1 hindrance to be real specific about a document which can be
2 easily inspected by the parties, as I said in two places,
3 and I would urge the Commission not to make a requirement
4 that dictates the contents of notices but rather leave the
5 rule as it exists now.

6 CHAIRMAN GLEIMAN: Well, just let me say before
7 Mr. McKeever comments that I would much prefer to have a
8 good faith effort on the part of the Postal Service address
9 the issue that was raised rather than have another
10 Commission rule. It is always better to work things out
11 sensibly and together.

12 Mr. McKeever?

13 MR. MCKEEVER: Yes, Mr. Chairman. My suggestion
14 was very limited and I was not really asking for a change in
15 the special rules, but rather voluntary cooperation on the
16 part of all parties, and the suggestion was only with
17 respect to diskettes.

18 I recognize the problems sometimes in what is an
19 adequate description of a library reference, but at least in
20 the case of a diskette we would find it helpful if the files
21 on the diskette could be listed in the notice of the library
22 reference.

23 We are not asking for or suggesting any change
24 with respect to hard copy documents. We assume that counsel
25 makes every effort to describe the contents of those library

1 references as well as they can in the title of the
2 reference. It is solely with respect to diskettes.

3 If I may for one more moment, Mr. Chairman, this
4 library reference problem is not one that has started only
5 in this case.

6 We have experienced it in past cases. This is the
7 first case in which we really felt a need to bring it to the
8 attention of the Commission, and yes, the Postal Service did
9 very graciously supply us with a diskette when we were not
10 able to obtain it, and we appreciate that.

11 We attempt to keep our requests of that nature to
12 the Postal Service down to a minimum because we know they
13 are very busy, but we don't hesitate to make them if we find
14 that that is the only resource we have.

15 I am glad to know that there are two copies of
16 library references in the Postal Service library. I did not
17 realize that and will perhaps now start making our visits
18 first to their library, since they have two copies, and not
19 only one, but still, as I mentioned, a lot of the library
20 references are in the nature of work papers where seven
21 copies are required to be filed.

22 We only ask that a little bit more access be given
23 here at the Commission as well, but we will take up the
24 Postal Service on its offer to use its duplicating machines
25 in its library with respect to the copies available there.

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1 CHAIRMAN GLEIMAN: Thank you.

2 MR. FOUICHEAUX: Mr. Chairman, one further comment
3 from the Postal Service.

4 We will note that for computer diskettes the
5 listing of the contents is typically included in the
6 diskette itself and we would again suggest that it would be
7 in most circumstances or some circumstances it would be a
8 burden on us to try to list the contents of diskettes in
9 notices of filing library references.

10 CHAIRMAN GLEIMAN: Well, maybe somebody can --
11 since we all want to cooperate and reach a positive end
12 result here without the Commission having rules, maybe
13 somebody can pop the diskette into the machine over at the
14 Postal Service and print out page 1 of what is on the
15 diskette and slap that onto the notice and everyone would be
16 reasonably happy, but if you could examine that and perhaps
17 reach some reasonable middle ground here, that would be very
18 helpful.

19 MR. FOUICHEAUX: We will follow that up.

20 CHAIRMAN GLEIMAN: Mr. Ackerly?

21 MR. ACKERLY: Mr. Chairman, Todd Ackerly for DMA.

22 On the matter of the special rules, it seems to
23 DMA with respect to this question of confidential
24 information and discovery practice with respect to it that
25 the Commission ought to give serious consideration to a

1 standard protective order type of system.

2 Protective orders have been used in the past, of
3 course, but I don't believe that there's ever been a sort of
4 standard system in place, and we would propose within the
5 next week to file a piece of paper detailing our suggestions
6 in this respect.

7 We think that if adopted it might save a great
8 deal of discovery problems and the like. It is a system of
9 course to be used by other agencies in town.

10 I am not asking the Postal Service to respond at
11 the moment. We would propose to put something in writing
12 and that perhaps at some appropriate time in the future it
13 could be added to the special rules in this case.

14 CHAIRMAN GLEIMAN: Thank you.

15 MR. ACKERLY: Mr. Chairman, I have two additional
16 things, I don't know if they are relevant at the moment,
17 having to do with discovery and electronic versions of
18 documents. If this is a subject that you are going to get
19 to later, I will sit down and speak later.

20 CHAIRMAN GLEIMAN: Well, I am going to touch on
21 electronic versions of documents a bit.

22 MR. ACKERLY: On discovery then, I would like the
23 Postal Service to address a problem that we have had in the
24 past, which is that although Postal Service papers are filed
25 on the day in which the certificate of service is signed, we

1 often don't get them for three, four, five days later, and
2 we have been told in the past that the reason is, at least
3 in part, because they are not actually served on the day
4 that the certificate of service is signed because they
5 haven't actually gotten into the mail through the production
6 process. This, of course, creates a huge problem in terms
7 of response.

8 May I --

9 CHAIRMAN GLEIMAN: Well, I will tell you that we
10 generally receive documents over here fairly late in the
11 day, so if they wait until after the documents are filed
12 over here before they put them into the envelopes and put
13 them into the mailstream, I suspect you are not going to get
14 next-day service because it probably comes after the last
15 pickup from wherever. But, Mr. Foucheaux, maybe you can
16 help us out on this.

17 MR. FOUCHEAUX: Well, our practices are dictated
18 by circumstances and not intent, unfortunately, and our
19 problems in this area are probably legendary by now. I
20 think we have surmounted a major obstacle by contracting out
21 the printing and service of documents to a private company,
22 although, as we have experienced in the last year, they are
23 not perfect, either, but we did have a problem at one time
24 with our mail room which was faced with a lot of competing
25 demands within the headquarters building, but I urge you to

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1 continue to bring these problems to our attention, and we
2 will continue to try to address them and deal with them the
3 best way we can.

4 I would observe that most parties that are active
5 -- and DMA is one of those -- share with us the practice of
6 providing documents by messenger when it's feasible.

7 CHAIRMAN GLEIMAN: Mr. Ackerly, just let me
8 mention in connection with your concern, that I would expect
9 that 92 out of 100 times, since you are in town here, you
10 would get the document the next day and not three days
11 later. I think that we are up to 92 percent delivery on
12 overnight mail in the District of Columbia metropolitan
13 area.

14 But separate and apart from that, there is a daily
15 listing of documents on the computer's home page which I
16 think, to the extent anybody is willing to take the time and
17 make the effort to crank it up, at least they will know what
18 was filed the day before, and if it looks like there is
19 something in there that you did not receive, you will -- or
20 that you would like to have faster than it might otherwise
21 get to you, you will be on notice and perhaps you will get
22 it -- call the Postal Service or call our docket room.

23 Anyone else?

24 The next item on the agenda is operations at the
25 Commission. We will begin with hearing room procedures.

1 The Commission has maintained pretty much the same routine
2 through a number of cases and many of the participants in
3 this case are familiar with those practices, and I expect to
4 continue most of them.

5 Hearings will begin at 9:30 a.m. and we will
6 proceed with a 10-minute midmorning break at approximately
7 10:45, approximately a 75-minute lunch break at 12:15 or so,
8 and afternoon breaks are as necessary until we conclude our
9 schedule for a given day.

10 As has been the case in the past, hearings will
11 generally be held five days a week and, if necessary to
12 maintain our schedule, we may also hold evening and even
13 possibly Saturday sessions.

14 Does any participant wish to suggest a change in
15 our traditional hearing room practices?

16 Our docket section is open from 8:00 a.m. to 5:00
17 p.m. for filing of documents and for public review of
18 documents. The Commission will again maintain a recorded
19 telephone message to announce the hearing schedules. The
20 schedules will be updated during hearing breaks so that you
21 can learn how cross examination is progressing, and the
22 updates will be done at approximately 10:45 a.m., 1:00 p.m.
23 and 3:15 p.m. The telephone number is area code
24 202-789-6874.

25 Additionally, as most of you are aware, the

1 Commission's home page on the web will provide access to all
2 documents issued by the Commission and those submitted by
3 participants in electronic form. The address of our home
4 page is www.prc.com. We make a concerted effort to put up
5 as many documents in a case as we possibly can on the web
6 page, and I mentioned earlier the daily listing.

7 I suggest you check the web page for other
8 documents as well. While the Commission cannot promise that
9 all the filings will be available in electronic form, we
10 provide as much access as we possibly can. We are exploring
11 methods of scanning documents, and we hope to provide an
12 effective reference source to any interested member of the
13 public. For example, at this time, a large number of Postal
14 Service library references can in fact be downloaded from
15 the Commission's web page.

16 A recently updated version of the domestic mail
17 classification schedule also is accessible on our web page,
18 as are the Commission's rules of practice.

19 The Commission is also attempting to make
20 electronic access to a complete hearing record feasible. We
21 are attempting to make a laserfeed search system operational
22 in our library. We are pretty close, and we hope in short
23 order to be able to tell you all with some degree of
24 assuredness that there will be a work station in the library
25 and in the reading room which will be accessible to

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1 interested parties to use and to word search this complete
2 database for the case. If the system works, we would also
3 establish a work station, as I said, in our reading room,
4 and I think this is pretty exciting, given the sheer mass of
5 the records and the problems that that causes, the
6 capability to do word searches, even if you have to leave
7 your office, is a step forward.

8 Let me mention one other matter, and that is that
9 as I understand it, we now have the capability to press CDs
10 that contain the data that we put into our laserfeed system
11 so that you can contact the administrative office. If you
12 have the capability, software capability in your own office
13 to do word searches, then perhaps you might consider
14 obtaining CDs that contain the records of the case.

15 Does anyone wish to offer suggestions on how our
16 web page might be made more helpful at this point in time?

17 Does anyone use our Web page? I know one person
18 who does. I don't if you have any suggestions or not at
19 this time, Mr. Ackerly. I don't mean to press you into
20 service.

21 MR. ACKERLY: The thing I would like to say, first
22 of all, Mr. Chairman, is that I think all of us, indeed the
23 public at large, ought to be very grateful for the efforts
24 that you have made electronically. It greatly facilitates
25 access to a record which otherwise is very difficult to try

1 and deal with and particularly for those who are either out
2 of town or the smaller participants in these cases.

3 I think it does a great deal to improve the
4 practical public access to the Commission proceedings and I
5 would like to commend you on behalf of DMA for this.

6 The only suggestion I would have is obviously
7 timeliness of having things posted on the Web page is
8 important. If our experience is any indication, the daily
9 listing is two days behind. In other words, today, this
10 morning, I was able to access July the 28th's list but not
11 July the 29th's.

12 I know there is a significant amount of work
13 involved in getting that list prepared and put on the Web
14 site. If I guess I have a single recommendation it would be
15 that priorities be given to that because it is very helpful
16 in getting a sense of what papers have been filed before the
17 Postal Service brings them in electronic form.

18 Secondly, and I guess this isn't a suggestion to
19 the Commission as much as it is a suggestion to all parties,
20 and that is that I think we all have a stake in the
21 electronic version of these papers. DMA makes an effort to
22 submit electronic versions of everything that it files and
23 although I don't believe there is a requirement in the
24 Commission rules at least in the moment, I would certainly
25 like to encourage all parties to do that for the benefit of

1 everybody else and the public at large, and I guess I would
2 like to ask the Postal Service in light of the problems it
3 has sometimes in getting the hard copy out into the postal
4 stream and in our hands what the Postal Service's policy is
5 going to be with respect to electronic filing?

6 MR. FOUCHEAUX: Our policy is going to be
7 voluntary compliance whenever feasible. As difficult as the
8 problems that face us in delivering hard copy might be at
9 times, sometimes those problems are dwarfed by the
10 difficulties of ensuring the electronic versions of
11 documents that come from disparate sources are consolidated
12 and transmitted in a timely fashion.

13 We do understand the direction that we are all
14 moving in terms of exchanging information of this nature,
15 and we will as we have in the recent past in particular try
16 to make the contents of these documents available
17 electronically whenever we can, but there will be many
18 circumstances in the course of the litigation when we just
19 can't do that in a fashion that is timely enough for parties
20 who are actively litigating but we will try.

21 MR. ACKERLY: Thank you, Mr. Chairman.

22 CHAIRMAN GLEIMAN: Mr. Ackerly, let me mention
23 that I am a bit concerned about the daily listing issue.

24 I was under the impression that it was getting up
25 there in real time when we get it. I know when I turned my

1 computer on this morning our document database in the daily
2 listing was good through last night and I will endeavor to
3 make sure that one of the first things that the folks who
4 deal with the Web do each day is to take what I get at my
5 computer and get it up on the Web so that you have it at
6 essentially the same time that we do.

7 Let me just mention also that our ability to
8 achieve some successes in the area of access, computers and
9 what have you is due in no small part to the assistance that
10 we have gotten over the past couple of years from the Postal
11 Service's Information Resources Group.

12 We have worked closely with them and also I think
13 that there has been a growing level of cooperation between
14 the Postal Rate Commission and the Postal Service Legal
15 Office in resolving issues and attempting to get more and
16 more data in electronic form, so I think that the thanks
17 should go not only to those at the Commission who conceived
18 of getting this material out as quickly as we could, but
19 also to the folks at the Postal Service, both in Information
20 Resources and Legal Counsel who have been more and more
21 cooperative over time in addressing these things.

22 I finally want to thank you for your kind words to
23 us.

24 Mr. Volner?

25 MR. VOLNER: Mr. Chairman, let me second the DMA's

1 comments that your Home Page is very, very useful.

2 On this question of listings, it is however a
3 little disconcerting. Sometimes we find that it runs two
4 and three days behind and what is more disconcerting, and I
5 don't know whether this is a problem with the imperfect
6 state of the electronics or what. When you go on the page
7 and you know a document has been filed and it doesn't show
8 up, you are not certain, since it was filed by a third
9 party, you are not certain whether it didn't get on there
10 because there was some delay in getting it on, or whether it
11 didn't get on there for the simple version of the facts that
12 it wasn't submitted in electronic form.

13 I just don't know, and that leaves you in kind of
14 a state of puzzlement and a state of unease in terms of
15 relying on the Home Page.

16 What I am suggesting, Mr. Chairman, is if there
17 was some way --

18 CHAIRMAN GLEIMAN: I got you.

19 MR. VOLNER: Okay.

20 CHAIRMAN GLEIMAN: My guess is that if it is not
21 there, it's because it wasn't submitted in electronic form,
22 although we do have the capability now, as I said, or we're
23 exploring the capability of scanning in some documents that
24 we get in hard copy, but certainly I think your suggestion,
25 which I short-circuited, makes sense.

1 There is no reason why we can't add a notation, at
2 least that I am aware of -- I'm sure the techies will tell
3 me why we can't -- but we'll give it a shot. Thank you.

4 Mr. Baker.

5 MR. BAKER: Thank you, Mr. Chairman.

6 With respect to the electronic filing, the special
7 rules specify that the files be formatted in Arial 12 font,
8 and I am not aware of a reason why it has to be that way --

9 CHAIRMAN GLEIMAN: I will tell you straight up.
10 We have found through a lot of experimenting that Arial 12
11 scans on most scanning systems almost 100 percent.

12 MR. BAKER: For scanning.

13 CHAIRMAN GLEIMAN: For scanning purposes, and if
14 we want to be able to scan documents in and have a complete
15 set of case documents up on the Web at some point, or if we
16 want to scan it in for some other purpose -- even into
17 laserfiche -- and ultimately if I understand correctly, and
18 I am not sure I am right on this, that is the font of choice
19 of the Government Printing Office also these days in terms
20 of their ability to use new technologies for printing up
21 documents, whether they are Federal Register or --

22 MR. BAKER: My suggestion, Mr. Chairman, though,
23 is if -- I understand how a font is useful for scanning of a
24 hard copy document. I believe if the document is filed in
25 an electronic version in whatever font should not be --

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1 standing should not enter into the process. And we have
2 found that converting from one font to another sometimes
3 changes pagination, it alters the document, and we have
4 chosen not to do that. So as a result we are not now
5 currently filing our documents electronically, and wondered
6 if we were allowed to file electronically in the font that
7 we have if that would help matters.

8 CHAIRMAN GLEIMAN: I will have to find out the
9 answer to that one for you. I don't know.

10 Anyone else? Good. Because I am running out of
11 answers.

12 Next I want to take this opportunity to urge
13 counsel to fully and accurately caption documents. Please
14 include the name of the party or parties filing and the
15 subject matter of the document. Also please strive to
16 actually serve documents on the date recited on the
17 certificate of service, and we have short deadlines
18 frequently, and it is essential that everyone cooperate in
19 this regard. If there is a problem with service to or from
20 a particular party, please attempt to resolve it informally.
21 I know that you have in the past and generally with good
22 results.

23 I hesitate to suggest it, but one way to resolve
24 problems with service is to send facsimile copies, if it's
25 warranted.

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1 I do want to comment that in the last rate case,
2 counsel always seemed to notify other affected parties when
3 they filed a request for expedited consideration or other
4 extraordinary relief, and we found this to be extremely
5 professional. It made life easier for the parties involved
6 and certainly for the Presiding Officer. I want to thank
7 you and urge you to continue the practice.

8 Are there any other matters that anyone wishes to
9 discuss today?

10 Mr. Foucheaux?

11 MR. FOUCHEAUX: Mr. Chairman, Daniel Foucheaux for
12 the Postal Service.

13 I have two more items, if they are not out of
14 order. First of all, in the past the Postal Service has
15 adopted the practice of scheduling technical conferences for
16 parties who were interested in learning more on an informal
17 basis about the contents of our testimony and our
18 methodologies. In the past we have scheduled these in
19 advance and given notice. Unfortunately, in some instances,
20 the level of participation hasn't warranted our scheduling a
21 technical conference. We would urge, therefore, the parties
22 in this case to contact us directly, if you have an interest
23 in conducting a technical conference with us, with our
24 witnesses, and we will schedule those at a time and a place
25 that is the most convenient for the parties who are

1 interested, including the Commission, if it wishes to
2 attend.

3 Secondly, the Postal Service is always very
4 interested in settlement of contentious issues in these
5 cases, and I expressed this interest from the very highest
6 levels of the Postal Service. While it might not seem
7 likely that in a case this complex there would be much
8 common ground for agreement, it is possible, and therefore
9 we would like to pursue that wherever it is possible. If we
10 can make the Commission's job easier by settling or coming
11 to some kind of agreement over particular issues, we would
12 like to do that. That can be pursued in a couple of ways:
13 We could either be contacted directly by attorneys who think
14 there might be issues that could be productively pursued in
15 settlement discussions, or perhaps the Commission could ask
16 for pleadings from parties to indicate areas where there
17 might be areas where we could agree.

18 Obviously we don't want to waste time pursuing
19 settlement just for the show of pursuing settlement. This
20 is going to be a very complex case, and our time and
21 resources are going to be in constant demand, but wherever
22 it is possible, the Postal Service is very interested in
23 settling issues.

24 CHAIRMAN GLEIMAN: Thank you for bringing that up,
25 Mr. Foucheaux. It was something that I should have

1 mentioned as a possibility. It is always something that we
2 would like to see, and I might mention that there are more
3 than words to back up the suggestion because, as some of you
4 may know, there are two cases currently pending before the
5 Commission. They are rather modest compared to the R97-1
6 case, but nevertheless, I think the Postal Service and the
7 parties have shown a great deal of willingness to settle and
8 these cases are moving in what some think is the proper
9 direction with all due deliberate speed. So hopefully we
10 will see more of that.

11 Are there any other matters that anyone wishes to
12 discuss today? My colleagues?

13 If there is nothing further, then this prehearing
14 conference is adjourned. Thank you.

15 [Whereupon, at 10:55 a.m., the prehearing
16 conference was concluded.]

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