

OFFICIAL TRANSCRIPT OF PROCEEDINGS BEFORE THE POSTAL REGULATORY COMMISSION

In the Matter of:)
)
SIX-DAY TO FIVE-DAY STREET) Docket No. N2010-1
DELIVERY AND RELATED SERVICE)
CHANGES 2010)

VOLUME #1

POSTAL REGULATORY
COMMISSION
OFFICE OF THE SECRETARY

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POSTAL REGULATORY COMMISSION

In the Matter of:)
)
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 DELIVERY AND RELATED)
 SERVICE CHANGES 2010)

Suite 200
 Postal Regulatory Commission
 901 New York Avenue, N.W.
 Washington, D.C.

Volume 1
 Tuesday, April 27, 2010

The above-entitled matter came on for hearing,
 pursuant to notice, at 10:03 a.m.

BEFORE:

HON. RUTH Y. GOLDWAY, CHAIRMAN
 HON. TONY L. HAMMOND, VICE CHAIRMAN
 HON. MARK ACTON, COMMISSIONER
 HON. DAN G. BLAIR, COMMISSIONER
 HON. NANCI E. LANGLEY, COMMISSIONER

APPEARANCES:

On behalf of the United States Postal Service:

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 ERIC KOETTING, Esquire
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(No Appearance.)

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On behalf of Douglas F. Carlson:

(No Appearance.)

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On behalf of National Newspaper Association:

TONDA RUSH, Esquire

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On behalf of Parcel Shippers Association:

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On behalf of David B. Popkin:

(No Appearance.)

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On behalf of Jason Treier:

(No Appearance.)

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P R O C E E D I N G S

(10:03 a.m.)

1
2
3 CHAIRMAN GOLDWAY: Good morning, ladies and
4 gentlemen. The hearing will come to order. This is a
5 prehearing conference in Docket N2010-1 concerning the
6 Postal Service's request for an advisory opinion
7 regarding the elimination of Saturday street delivery
8 and related service changes.

9 I am Ruth Goldway, Chairman of the Postal
10 Regulatory Commission. Joining me on the dais this
11 morning are Vice Chairman Tony Hammond and
12 Commissioners Mark Acton, Dan Blair and Nanci Langley.
13 I will serve as presiding officer in this case.

14 I want to alert the audience today that this
15 prehearing conference is being web broadcast. In an
16 effort to reduce potential confusion, I ask that
17 counsel wait to be recognized before speaking and
18 please identify yourself when commenting. After you
19 are recognized, please speak clearly so that our
20 ceiling microphones may pick up your remarks.

21 We have a very large group of postal
22 community participants with us today, and before I
23 begin I wanted to share with you some information I
24 received from our Public Affairs and Government
25 Relations Office just this morning.

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1 Since yesterday afternoon, PAGR, as we call
2 it, has received almost 1,000 additional N case
3 comments, bringing the total comments received so far
4 to over 3,000. As additional information, the
5 comments have been coming in every one to three
6 minutes since midday yesterday and all through the
7 night.

8 We haven't logged all these comments yet
9 officially. They will be, and they appear to have a
10 wide range of interests and concerns to present to us.
11 I think this demonstrates how important the proceeding
12 before us is and how much the public is concerned
13 about how we proceed and how fairly and efficiently
14 and comprehensive our activities are.

15 On March 30, 2010, the United States Postal
16 Service filed a request with the Postal Regulatory
17 Commission asking for an advisory opinion under § 3661
18 of Title 39 on a plan to eliminate Saturday street
19 delivery and adjust postal services therefor.

20 The Postal Service describes its plan as Six
21 to Five-Day Street Delivery and Related Service
22 Changes 2010. The Postal Service's request for an
23 advisory opinion is a necessary step before it may
24 eliminate Saturday delivery and associated supporting
25 mail processing operations.

1 The Postal Service has also communicated to
2 Congress its desire to be relieved of the obligation
3 to provide delivery at 1983 levels. This provision of
4 the recent Appropriations Act limits Postal Service
5 flexibility in this area.

6 The Postal Regulatory Commission intends to
7 carefully evaluate the Postal Service's request, as
8 well as the presentations of formal Intervenors and
9 public commenters, and promptly issue an advisory
10 opinion. We expect our opinion will be helpful to the
11 Postal Service and to Congress as well.

12 The primary purpose of today's conference is
13 to discuss the scheduling and other procedural matters
14 involved. This will involve achieving a careful
15 balance of potentially conflicting goals. As some of
16 you may be aware, during a hearing before the Senate
17 Homeland Security and Government Affairs Subcommittee
18 on Federal Financial Management, Government
19 Information, Federal Services and International
20 Security, Senator Carper urged the Commission to
21 expedite this case so that its opinion would be
22 available as quickly as possible.

23 I and my colleagues are committed to moving
24 quickly. At the same time, however, I am also
25 committed to providing due process to both the Postal

1 Service and the Intervenors.

2 At this time I would like to give my
3 colleagues an opportunity to offer opening remarks.
4 Vice Chairman Hammond? None?

5 VICE CHAIRMAN HAMMOND: No.

6 CHAIRMAN GOLDWAY: Commissioner Acton?

7 COMMISSIONER ACTON: Thank you, Chairman
8 Goldway. I just would like to let everyone know that
9 PAGR, as we affectionately refer to it, is our Office
10 of Public Affairs and Government Relations.

11 CHAIRMAN GOLDWAY: Thank you.

12 COMMISSIONER ACTON: Welcome, everyone.

13 CHAIRMAN GOLDWAY: I think I mentioned that
14 before.

15 COMMISSIONER ACTON: You may have.

16 CHAIRMAN GOLDWAY: But it is worth
17 repeating. We don't have a tendency to go to acronyms
18 as much as the Postal Service does. We are a little
19 bit better than that. Commissioner Blair?

20 COMMISSIONER BLAIR: Thank you, Madam Chair.
21 I think we are not as bad as the Department of
22 Defense, which lives in acronymisms. With that, I
23 just want to welcome everyone here today. I
24 appreciate you taking the time and the effort to
25 attend the Commission's proceedings. This is a very

1 important one for the Commission.

2 We had a case earlier in the year regarding
3 the procedures for the closings of stations and
4 branches and the Commission had issued its opinion,
5 and this seems to be another significant case that we
6 are hearing regarding the elimination of Saturday mail
7 delivery.

8 The Postal Service's request is based on the
9 fact that they have had steadily and sharp decreases
10 in mail volume and an increased use of the internet,
11 and this was part of their 10 year plan and so they
12 proposed this elimination of delivery to us in an
13 effort to right size themselves and meet the demands
14 that they see over the course of the next 10 years.
15 Because of the impact on nationwide service, we are
16 going to be issuing an advisory opinion.

17 The Chairman just referenced Chairman
18 Carper's request that we proceed quickly with the
19 case, and I agree with her that we need to do so in an
20 effort that allows all interested parties the
21 opportunity to be heard. I also want to look forward
22 to hearing the participants' thoughts regarding how
23 this proposal could help or hinder the Postal
24 Service's position as it moves over the course of the
25 next decade.

1 In concluding, I want to make sure that the
2 participants understand that we are hearing this in a
3 fair and impartial manner, that the Commission is a
4 neutral arbiter in this case, so we look forward to
5 hearing from all the participants. Thank you.

6 CHAIRMAN GOLDWAY: Thank you. And
7 Commissioner Langley?

8 COMMISSIONER LANGLEY: Thank you, Chairman
9 Goldway. I too wish to welcome everybody here.
10 Obviously there is a lot of interest. We have a large
11 crowd.

12 Going on what Commissioner Blair said, we
13 are known for our unbiased reviews and ability to
14 analyze without prejudice issues that come before us.
15 I am confident that our evaluation will continue to
16 reflect that legacy, and I say that knowing that
17 reasonable, respected and knowledgeable individuals
18 have differing views on the matter that we are about
19 to embark, but I am confident, as I said, that we will
20 be the neutral individuals in this case.

21 We look forward to hearing your comments,
22 and again as reflected by the large number of people
23 here obviously there will be a lot of comments. Thank
24 you.

25 CHAIRMAN GOLDWAY: Thank you. Now I would

1 like to call upon counsel in the case to identify
2 themselves for the record. Postal Service?

3 MR. TIDWELL: Good morning, Madam Chairman.
4 I'm Michael Tidwell on behalf of the United States
5 Postal Service.

6 I am accompanied by co-counsel Kenneth
7 Hollies to my left, Eric Koetting, James Mecone, Brian
8 Reimer, Nabeel Cheema, and we have one more colleague,
9 Jacob Howley, who had the good fortune of being
10 detained by another project this morning.

11 CHAIRMAN GOLDWAY: Thank you. I won't
12 comment on that last comment. The next participant is
13 Alliance for Nonprofit Mailers?

14 MR. LEVY: David Levy and Matthew Field on
15 behalf of the Alliance of Nonprofit Mailers.

16 CHAIRMAN GOLDWAY: American Business Media?
17 (No response.)

18 CHAIRMAN GOLDWAY: American Postal Workers
19 Union, AFL-CIO?

20 MR. ANDERSON: Darryl Anderson for the
21 American Postal Workers Union.

22 CHAIRMAN GOLDWAY: Association for Postal
23 Commerce?

24 MR. VOLNER: Ian Volner and Matthew Field
25 for Association for Postal Commerce.

1 CHAIRMAN GOLDWAY: Association of Priority
2 Mail Users?

3 MR. OLSON: William Olson and Jeremiah
4 Morgan for APMU.

5 CHAIRMAN GOLDWAY: Bank of America
6 Corporation?

7 MR. SCANLON: Michael Scanlon on behalf of
8 Bank of America.

9 CHAIRMAN GOLDWAY: Direct Marketing
10 Association, Inc.?

11 MR. CERASALE: Jerry Cerasale, DMA.

12 CHAIRMAN GOLDWAY: Direct Marketing
13 Association Nonprofit Federation?

14 MR. CERASALE: Jerry Cerasale, DMA.

15 CHAIRMAN GOLDWAY: Douglas Carlson?

16 (No response.)

17 CHAIRMAN GOLDWAY: Greeting Card
18 Association?

19 MR. STOVER: David Stover for the Greeting
20 Card Association.

21 CHAIRMAN GOLDWAY: Magazine Publishers of
22 America?

23 MR. LEVY: David Levy and Matthew Field.

24 CHAIRMAN GOLDWAY: Mail Order Association of
25 America?

1 (No response.)

2 CHAIRMAN GOLDWAY: National Association of
3 Letter Carriers?

4 MR. DeCHIARA: Peter DeChiara and Bruce
5 Simon from the law firm of Cohen, Weiss & Simon.

6 CHAIRMAN GOLDWAY: National Association of
7 Postmasters of the United States?

8 (No response.)

9 CHAIRMAN GOLDWAY: National Newspaper
10 Association?

11 MS. RUSH: Tonda Rush for the National
12 Newspaper Association.

13 CHAIRMAN GOLDWAY: National Postal Mail
14 Handlers Union?

15 (No response.)

16 CHAIRMAN GOLDWAY: National Postal Policy
17 Council?

18 MR. BAKER: William Baker for the NPPC.

19 CHAIRMAN GOLDWAY: Newspaper Association of
20 America?

21 MR. BAKER: William Baker for the NAA.

22 CHAIRMAN GOLDWAY: Parcel Shippers
23 Association?

24 MR. MAY: Jim May for the Parcel Shippers
25 Association, and I'm accompanied by Pierce Myers.

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1 CHAIRMAN GOLDWAY: Pitney Bowes?

2 MR. SCANLON: Michael Scanlon and Pierce
3 Myers for Pitney Bowes.

4 CHAIRMAN GOLDWAY: Great. And David Popkin?
5 (No response.)

6 CHAIRMAN GOLDWAY: The public
7 representative?

8 MS. GALLAGHER: Patricia Gallagher for the
9 public representative.

10 MR. FENSTER: Larry Fenster, also with the
11 public representative team.

12 MR. MOELLER: Kenneth Moeller, also with the
13 public representative team.

14 CHAIRMAN GOLDWAY: Saturation Mailers
15 Coalition?

16 MR. McLAUGHLIN: Tom McLaughlin for
17 Saturation Mailer Coalition.

18 CHAIRMAN GOLDWAY: Time Warner?
19 (No response.)

20 CHAIRMAN GOLDWAY: Jason Treier?
21 (No response.)

22 CHAIRMAN GOLDWAY: Valassis Direct Mail?

23 MR. McLAUGHLIN: Tom McLaughlin for
24 Valassis.

25 CHAIRMAN GOLDWAY: Valpak Dealers

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1 Association?

2 MR. OLSON: William Olson and Jeremiah
3 Morgan for Valpak Dealers Association.

4 CHAIRMAN GOLDWAY: Valpak Direct Marketing
5 Systems?

6 MR. OLSON: William Olson and Jeremiah
7 Morgan for Valpak Direct Market Systems.

8 CHAIRMAN GOLDWAY: Is there anyone I have
9 missed?

10 (No response.)

11 CHAIRMAN GOLDWAY: Thank you. Thank you for
12 your participation.

13 In Order No. 436, the Commission established
14 this docket and scheduled this prehearing conference
15 and directed that intervening parties appear today
16 prepared to consider the procedural schedule and to
17 discuss proposals for an initial discovery period.

18 Turning first to the issue of discovery, as
19 provided in the Commission's rules of practice
20 participants may begin discovery upon intervention. A
21 number of Intervenors have already submitted discovery
22 requests to the Postal Service, and the Postal Service
23 has started to file responses.

24 I would like the Intervenors here today to
25 address what specific discovery is needed and to

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1 provide an estimate of how much additional time should
2 be allotted towards discovery. Does any Intervenor
3 want to start the discussion? The purpose of this
4 inquiry is to get the parties' assessment on the scope
5 and duration of discovery.

6 MS. GALLAGHER: Madam Chairman, fellow
7 Commissioners, the public representative could offer a
8 statement regarding our intention with respect to
9 interrogatories.

10 We anticipate by this Friday, April 30,
11 having an initial set of interrogatories to the Postal
12 Service, and we would think by mid May, if not sooner,
13 we could have all of our interrogatories submitted to
14 the Postal Service. This is with the understanding
15 that we anticipate working closely with the Postal
16 Service on minor points of clarification to reduce the
17 number of interrogatories.

18 CHAIRMAN GOLDWAY: So is there any comment
19 on whether four weeks would be sufficient for
20 additional discovery time?

21 MR. ANDERSON: Darryl Anderson for the
22 American Postal Workers Union. Madam Chairman and
23 Commissioners, based upon past experience -- and we
24 have looked at the dockets in other N cases -- these
25 proceedings do tend to be somewhat protracted.

1 I know there is a lot of pressure to proceed
2 rapidly with this one, but the pressure to proceed
3 rapidly is proportionate to the importance of the
4 case. We anticipate that two rounds of
5 interrogatories will be necessary. Perhaps that goes
6 without saying, but again this is based upon past
7 experience.

8 Without intending to be pejorative in any
9 way, I just want to observe that the Postal Service
10 kicked this proceeding off with the representation
11 that they might be sustaining a deficit of \$238
12 billion over the next 10 years. I don't think anyone
13 in this room believes that is a real number, and I
14 don't mean to be pejorative, but it indicates the
15 scope and the depth of the issues that are before this
16 Commission. Everything is here.

17 I would also like to point out, as the
18 Commission is well aware I appreciate and I'm sure we
19 all do, the fact that the Commission has scheduled
20 field hearings. Not only are there public interest
21 issues in this case, which the Commission has already
22 recognized by the schedule, but here perhaps the most
23 important and most searching financial inquiry is
24 necessary into the consequences of what is going to
25 occur.

1 Again, with all due respect, it is often
2 difficult to obtain information from the Postal
3 Service in these proceedings. They regularly ask for
4 more time to respond. They regularly give responses
5 that we don't find sufficient, so there may be several
6 rounds of written interrogatories, perhaps motions to
7 compel. There are going to be documents that the
8 Postal Service will wish to keep off the public
9 record, and the Commission is going to have to deal
10 with all of that. That is standard.

11 But 10 months is usually what it takes to
12 conclude on the average one of these N cases and so I
13 would urge the Commission to assume that there are
14 going to be several rounds of written discovery,
15 assume that we are going to need oral cross-
16 examination and proceed accordingly, bearing in mind
17 the intensely important issues at stake.

18 And let me just add, and I'm sorry for
19 filibustering here, but if I may just add the biggest
20 favor that the Commission can do for the Postal
21 Service in this case is to do a very, very searching
22 inquiry of the financial issues here. It is not going
23 to be easy, so I urge you to leave plenty of time.

24 CHAIRMAN GOLDWAY: Do you have a specific
25 suggestion as to how much time would be needed?

1 MR. ANDERSON: I think if we can shoot for
2 oral cross-examination six months from now we'll be
3 doing well. You know, written discovery, the first
4 round of written discovery by the end of May. If we
5 could conclude it by the end of May if the Postal
6 Service will cooperate and give us the answers we can
7 conclude the first round.

8 I'm sure follow up discovery, written
9 discovery will be necessary, and if we are not doing
10 motions to compel and elaborate security precautions
11 for information the Postal Service wishes to keep out
12 of the public record we could conceivably conclude two
13 rounds of discovery in say maybe 120 days instead of
14 180 days, but at that point if we move briskly we
15 might be able to do that and then be prepared for the
16 oral hearings.

17 I would hope that we could, but again these
18 are deep and extremely important issues. I expect the
19 Postal Service to be resistant to some of the
20 discovery that's going to be necessary based upon past
21 experience.

22 CHAIRMAN GOLDWAY: Thank you. Other
23 comments?

24 MS. RUSH: Madam Chairman, National
25 Newspaper Association will be submitting a few

1 interrogatories. We understand the Congress is eager
2 for you to get your work done here and submit the
3 opinion so we don't want to carry this any further
4 than necessary. I would think we could follow the
5 schedule the public representative has suggested.

6 CHAIRMAN GOLDWAY: Thank you.

7 MR. VOLNER: Madam Chairman, PostComm does
8 not have a position on the outcome of this matter, but
9 it seems to us that it's imperative for all concerned,
10 including mailers, that this proceeding be concluded
11 with the utmost dispatch, and we certainly are
12 prepared to live with what the public representative
13 has proposed.

14 CHAIRMAN GOLDWAY: Other comments?

15 MR. DeCHIARA: Good morning, Madam Chairman.
16 Peter DeChiara for the National Association of Letter
17 Carriers. I'd like to largely echo what counsel for
18 the American Postal Workers Union said, which is that
19 this is a case that is of tremendous importance to the
20 Postal Service, to its employees and to its customers.
21 We think it's important that this proceeding not be a
22 rush to judgment.

23 Our position in this case is that
24 eliminating Saturday delivery is an unnecessary step.
25 It's a radical step, and it's a step that in the long

1 run will be bad for the Postal Service, its employees
2 and its customers.

3 We intend to put on testimony, including
4 expert testimony -- economic, financial experts -- and
5 we would need time to confer with our experts, to
6 develop the discovery that we'd like to take and that
7 we believe is necessary in this case, so we believe
8 that a deadline of sometime in May for getting out
9 interrogatories is too soon.

10 In addition, given the experience that
11 counsel for the APWU cited, we believe that this case
12 should be seen as one that will continue and, if
13 necessary, should continue for an ample amount of time
14 for there to be a comprehensive review, and if that
15 takes months we believe that that is what is
16 warranted.

17 CHAIRMAN GOLDWAY: Thank you. Are there
18 other comments? Yes?

19 MR. STOVER: David Stover, Greeting Card
20 Association. GCA very much appreciates the pressures
21 on the Commission and the parties in this case, those
22 from Congress as well as simply the situation in which
23 you find yourselves. As an association with somewhat
24 limited resources, we are certainly prepared to
25 cooperate as far as possible in the expeditious moving

1 of this case.

2 We feel that mid-May may be too short of a
3 time for us to conduct as extensive a discovery
4 program as we feel we need to. We are particularly
5 concerned that the more we can learn on discovery the
6 less demand we will have to make on the Commission and
7 on other participants for oral proceedings so that our
8 suggestion for at least the first round would be
9 rather the end of May than the middle of May, as
10 suggested by the public representative.

11 CHAIRMAN GOLDWAY: Thank you. Other
12 comments? Yes?

13 MR. MAY: Tim May, Parcel Shippers
14 Association. One could suppose that those who are
15 opposed to this proposal would like to see this
16 hearing go on interminably, and nothing would please
17 them more because they don't want it to happen and
18 therefore one could expect that they would want to
19 have a third and a fourth round of interrogatories and
20 push this off as far as possible.

21 That clearly is not what Congress wants, and
22 when Congress is asked by the Postal Service, as they
23 will be this year again, to not include a rider in
24 their appropriation, Congress is going to want to know
25 what this Commission's view of this proposal is.

1 It seems to me that if you are, as we were
2 in the first rate case, say starting a second rate
3 case before we finish the first, I don't think that is
4 going to meet muster so I think the parties can do
5 this as fast as you want or as slowly as you want.

6 CHAIRMAN GOLDWAY: Thank you.

7 MR. TIDWELL: Madam Chairman, Michael
8 Tidwell on behalf of the Postal Service. We recognize
9 the Commission's desire to be fair to all parties and
10 to try to respond to the request from the Hill that we
11 move with as much expedition as possible.

12 We, the Postal Service, having filed this
13 request, stand ready to cooperate with all parties who
14 are prepared to engage in discovery. The key is that
15 the parties have to engage. The request was filed
16 nearly a month ago. Some of the less well-resourced
17 parties in this docket have already apparently
18 aggressively pursued discovery.

19 If there are those who wish to engage in
20 discovery on a variety of issues all we can do is
21 encourage them to expedite and to start making as much
22 progress as possible and pursue the clarification of
23 issues.

24 I would remind counsel for APWU that the
25 service changes in this case do not implicate \$238

1 billion, but merely just over \$3 billion a year, and
2 so the scope of this case that relates to a \$3 billion
3 annual savings under scrutiny and this particular
4 service change is part of a much larger, overarching
5 plan, but that much larger, overarching plan is not
6 before the Commission today. It is this particular
7 set of service changes.

8 CHAIRMAN GOLDWAY: Mr. Tidwell, participants
9 here have mentioned some problems in past cases where
10 questions have been asked and the Postal Service's
11 answers have been deemed to be inadequate and we have
12 had some motion practice in order to get a
13 comprehensive record before us.

14 Do you see any areas where you might be
15 unable to provide responses in a timely fashion, or do
16 you have any other comments with regard to those
17 concerns that have been raised?

18 MR. TIDWELL: I would only comment that
19 those concerns of course relate to the exceptions to
20 the rule. The overwhelming bulk of discovery is
21 responses are ground out on time without controversy,
22 without much trouble, but there will always be
23 exceptions. We could highlight the exceptions, but
24 the exceptions don't prove the rule.

25 The Postal Service can't anticipate where

1 discovery may go. Parties tend to have their own
2 minds about those sorts of issues, and all we can do
3 is to work with them to try to help them focus
4 discovery on matters that are relevant and material to
5 the case.

6 If that happens to a very great degree that
7 should help to push things along fairly rapidly. If
8 the parties want to venture in a lot of other
9 directions or go off on various tangents, that tends
10 to have an adverse impact on things.

11 CHAIRMAN GOLDWAY: Well, there are sometimes
12 disagreements about what a tangent is and what a major
13 concern is. The Postal Service might in the interest
14 of time be willing to consider answering more
15 questions rather than going into motions practice.

16 MR. TIDWELL: That is true. The Postal
17 Service likes to think that it has minimized its
18 motions practice over time, but issues come up and
19 those interests have to be -- reasonable minds will
20 differ on some issues, and interests have to be
21 protected. Fortunately, we have a Commission here to
22 arbitrate and then resolve those issues.

23 CHAIRMAN GOLDWAY: Is there any particular
24 topic on which the Postal Service feels that it might
25 need some additional time, additional research time or

1 preparation itself so that it could respond within the
2 timeframes established by the rules of practice?

3 MR. TIDWELL: We have seen nothing thus far
4 that would suggest that, but I'll let my colleague
5 address that.

6 (Pause.)

7 MR. TIDWELL: Counsel reminds me that there
8 has been some discovery that is requested that we sort
9 of turn back the clock and provide alternative cost
10 estimates for alternative packages of service changes
11 we haven't analyzed or studied.

12 The package that we've submitted to the
13 Commission reflects months and months of analyses and
14 the examination of costs and cost analyses. It would
15 be unreasonable for parties to present to us some
16 alternative package and expect us to turn on a dime
17 and to cost out or produce cost estimates regarding
18 proposals that we have not submitted to the
19 Commission.

20 We are of the view that what is before the
21 Commission is the proposal that postal management, the
22 Board of Governors, have requested an advisory opinion
23 about, and we are seeking the Commission's opinion
24 about that package of service changes and that that
25 would be the proper scope of what would be before the

1 Commission in the docket.

2 CHAIRMAN GOLDWAY: Interesting. Do any of
3 the other participants wish to comment further?

4 MS. GALLAGHER: Madam Chairman, Pat
5 Gallagher, public representative. David Popkin is
6 listening via webcast, and he did call me yesterday
7 and ask to relay on his behalf that he would suggest
8 as a model for scheduling the docket in 2009-1
9 schedule, and that was referenced in Presiding
10 Officer's Ruling Nos. 1 and 11 in that case. Thank
11 you.

12 CHAIRMAN GOLDWAY: Thank you. We'll take
13 that under advisement.

14 MR. ANDERSON: Darryl Anderson for the APWU.
15 Just in shorthand -- and I won't belabor the record on
16 this point -- I disagree with Mr. Tidwell's last
17 comment. I think this Commission needs to examine
18 alternatives to what the Postal Service proposes.
19 That would be a part of the evolving relationship by
20 this Commission as a regulatory body and the Postal
21 Service.

22 So I'll leave that to the good judgment of
23 the Commissioners, but I would like to offer, more
24 germane to today's topic, an example of the kind of
25 problems and the complexities you're dealing with.

1 The Postal Service, as I understand it, began charging
2 a surcharge for Sunday delivery for Express Mail, and
3 it is our understanding that that had a very
4 significant impact on the use of Express Mail and the
5 revenue from that product.

6 As part of their planning in this docket, as
7 I understand what they are planning, they may be
8 planning to impose a surcharge for Priority Mail
9 delivery on Saturday, which we have very serious
10 concerns about. We want discovery into what happened
11 with Express Mail when they put a surcharge on Sunday
12 delivery because it's going to be informative as to
13 what we can expect if regular Saturday delivery is
14 discontinued and a surcharge imposed.

15 We also anticipate the Postal Service will
16 resist that discovery and be reluctant for real and
17 understandable reasons to place that kind of
18 information in the public record because it's business
19 sensitive. But that is the kind of issue that I was
20 alluding to earlier when I said this is going to be a
21 very complicated case, and if you rush to judgment you
22 may be missing what could be a critical element.

23 Priority Mail growth has been a real bright
24 spot for the Postal Service. Saturday delivery is a
25 competitive advantage for the Postal Service. If we

1 cripple or significantly damage Priority Mail by the
2 way they proceed here, that could have long run
3 implications that are very significant for the welfare
4 of the Postal Service, and we want to explore the
5 economics of that.

6 The Postal Service says trust us. We know
7 what we're doing. We don't think we're required to do
8 that. We think we're entitled to discovery into those
9 matters.

10 CHAIRMAN GOLDWAY: Any other comments?

11 MR. SIMON: Bruce Simon for the National
12 Association of Letter Carriers. I'd like to comment
13 first on Mr. May's comment that those who oppose the
14 proposal could be expected to drag their feet and do
15 everything they could to make it go on interminably
16 and then on Mr. Tidwell's suggestion that all you have
17 before you is a \$3 billion item and that you should
18 focus exclusively on that and ignore the Postal
19 Service's projection of \$280 billion of losses over
20 the next 10 years.

21 First of all with respect to Mr. May,
22 paraphrasing him, one might expect those who favor the
23 proposal to move this Commission to go hell bent for
24 leather to deal with this expeditiously to prevent
25 those who oppose it from having a reasonable,

1 realistic opportunity to express their views,
2 introduce evidence and have the Commission proceed
3 with its usual deliberation in an appropriate due
4 process manner.

5 With respect to Mr. Tidwell, it's not
6 surprising that having had the \$283 billion figure
7 roundly disproved by the witnesses appearing before
8 Congress over the last two weeks, he moves to back
9 pedal away from it as fast as he can and ask you not
10 to consider it as you go forward.

11 I would remind the Commission that it was
12 the Postal Service that invoked its Draconian Chicken
13 Little the sky is falling \$283 billion figure in order
14 to move its proposal with respect to five-day. Having
15 done so, it comes with ill grace for the Service to
16 suggest to this Commission now that it should ignore
17 it.

18 Perhaps Mr. Tidwell will say -- and if he
19 does we will then I suppose reconsider our position on
20 that matter -- that the Commission should disregard
21 the \$283 billion projection. It was not accurate, it
22 was a scare tactic and it should not form part of the
23 deliberative process of the Commission. If he were to
24 do so, I will reconsider my remarks.

25 CHAIRMAN GOLDWAY: Does the APWU or NALC

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1 feel that they can begin discovery in the near future?

2 MR. ANDERSON: The APWU has filed several
3 sets of interrogatories already. We are in the
4 process of drafting more. We are rolling and intend
5 to move briskly. This is an issue of grave importance
6 to us, but it is also one in which we take enormous
7 and very deep interest for the welfare of the Postal
8 Service.

9 I mean, we have present today our lead
10 economist and our principal staff consultant, Mr.
11 Topeda. You know, we are bringing every resource we
12 have to bear on the substance of what's before the
13 Commission, and we intend to move without delay. We
14 are moving.

15 MR. DeCHIARA: Peter DeChiara for the
16 National Association of Letter Carriers. Madam
17 Chairman, we too are prepared to move expeditiously.
18 We can begin the process of getting out
19 interrogatories and other discovery. Our concern is
20 there not be a schedule that would bar us.

21 For example, after we retain expert
22 witnesses and in consultation with them formulate
23 additional discovery based on additional theories that
24 we not be barred subsequently from bringing additional
25 discovery if needed. And it's not at all our intent

1 to drag out this process needlessly, but rather it's
2 our request that there be a schedule that allows for a
3 comprehensive record to be formed.

4 CHAIRMAN GOLDWAY: Anyone else?

5 MR. OLSON: Madam Chairman, William Olson
6 for Valpak. We are probably a bit more supportive of
7 the Postal Service's proposal, but we've always
8 supported due process rights for mailers to fully
9 participate and the other Intervenors in the cases.

10 In this case, this was no surprise though
11 that this docket was going to be filed, and people
12 from the get go, from the 30th of March, had the
13 opportunity to file discovery. Of course, Mr.
14 Anderson and some other groups have filed discovery.
15 You could have had two rounds of discovery already.
16 Certainly the end of May gives another two rounds of
17 discovery.

18 There was a time years ago when discovery
19 really didn't begin in earnest until the prehearing
20 conference, until the Commission issued its order, but
21 those days are long past, and if you have an interest
22 in these cases it's incumbent upon the participants to
23 get the experts and to get going, especially when they
24 have a long lead time with the filing of a docket of
25 this sort. So we would suggest that the end of May is

1 a fair compromise for the close of discovery.

2 CHAIRMAN GOLDWAY: Thank you. Well, that is
3 a very interesting and thoughtful discussion about the
4 issues. Let me assure you that we will take
5 everyone's comments under advisement and issue a
6 procedural schedule that establishes a cutoff date for
7 discovery.

8 There will of course be an opportunity for
9 participants to present their own witnesses and
10 testimony as well as the case proceeds. Our rules
11 provide for oral cross-examination when necessary.
12 The Postal Service sponsors 11 witnesses in this case.
13 Each of these individuals has other important
14 responsibilities.

15 The procedural schedule that establishes a
16 cutoff for discovery will also identify a period
17 during which oral cross-examination of the Postal
18 Service's witnesses will take place. It is my hope
19 that cross-examination can be conducted during a
20 reasonably compressed time period so that Intervenors
21 can rapidly proceed with preparing responsive
22 presentations.

23 The scheduling ruling will identify the
24 period during which cross-examination will be held. I
25 will ask the Postal Service to identify the dates

1 within the cross-examination period when each of its
2 witnesses can be available. I'm certain that if it is
3 possible to forego oral cross-examination of one or
4 more of the Postal Service's witnesses they would be
5 grateful.

6 A cutoff date for participants to request
7 oral cross-examination of each individual witness will
8 be established. If neither participants nor the
9 Commission want to orally question one or more of the
10 witnesses, those witnesses will be excused.

11 Regarding possible rebuttal testimony, does
12 any Intervenor anticipate filing rebuttal testimony in
13 this proceeding, and, if so, how soon after the
14 hearing in the Postal Service's case do you expect to
15 be able to file such testimony? Any comments?

16 FEMALE VOICE: I believe we do intend to
17 provide some direct testimony. I'm not sure. I wish,
18 like Mr. Olson, we had a single corporate boss, but
19 since we have an association that has to come to a
20 conclusion about things we may take a little longer
21 than some of the private associations.

22 I would hope that we could provide our
23 direct testimony somewhere between two to three weeks
24 after discovery ends. We don't want to drag the case
25 out.

1 CHAIRMAN GOLDWAY: Any other comments?

2 MR. FENSTER: Madam Chairman, this is Larry
3 Fenster from the public representative team. We hope
4 to put on one to three pieces of direct testimony and
5 so we would request four to five weeks after the close
6 of discovery.

7 CHAIRMAN GOLDWAY: Okay. Anyone else?

8 MR. ANDERSON: Darryl Anderson for the APWU.
9 We anticipate probably two witnesses, certainly one,
10 and we think five weeks would be a minimum. I think
11 60 days after the close would be more appropriate.

12 CHAIRMAN GOLDWAY: Any other comments? Yes?

13 MR. DeCHIARA: Peter DeChiara for the
14 National Association of Letter Carriers. We too
15 anticipate putting on multiple witnesses. We haven't
16 determined exactly how many yet. We would seek at
17 least 60 days following cross-examination of the
18 Postal Service's witnesses to put on our direct
19 testimony.

20 MR. TIDWELL: Madam Chairman, Michael
21 Tidwell on behalf of the Postal Service. The Postal
22 Service suggests that the Commission may find guidance
23 in precedent. We have had a long history of omnibus
24 rate cases that involved much more complex issues than
25 are presented in this docket.

1 It has often only been a matter of several
2 weeks between the end of the presentation of the
3 Postal Service's direct case and the filing of
4 Intervenor testimony. It would seem that that might
5 provide a reasonable guide for how this case may
6 unfold as well.

7 CHAIRMAN GOLDWAY: Again, an interesting
8 group of responses that we will take under
9 consideration.

10 On a separate but related matter, Order 436
11 mentioned that the Commission intends to hold public
12 hearings outside of Washington, D.C. in this matter.
13 The Commission has scheduled seven such hearings for
14 the purpose of developing the record on the attitudes
15 and needs of the postal stakeholders throughout the
16 nation that might be impacted by the elimination of
17 Saturday street delivery and related service changes.

18 Field hearings have been scheduled as
19 follows: Las Vegas, Nevada, on May 10; Sacramento,
20 California, on May 12; Dallas, Texas, on May 17;
21 Memphis, Tennessee, on May 19; Chicago, Illinois, on
22 June 21; Rapid City, South Dakota, on June 23; and
23 Buffalo, New York, on June 28.

24 Counsel for Intervenors will of course be
25 welcome at any such field hearings, but the Commission

1 recognizes that travel to attend such hearings could
2 present financial burdens. I want to assure counsel
3 that their presence is not required and that the
4 Commission will not make final determination on
5 procedural or substantive matters likely to affect the
6 interest of formal Intervenors during the course of
7 the field hearings.

8 Furthermore, witnesses at each of these
9 hearings will testify under oath, and the hearings
10 will be transcribed. The transcript for each hearing
11 will be made available as quickly as practicable.
12 Field hearings were quite helpful during the
13 Commission's consideration of the Postal Service's
14 Stations and Branch Optimization and Consolidation
15 Initiative and caused no procedural or due process
16 problems.

17 Any Intervenor seeking to clarify or comment
18 on evidence received during our field hearings may do
19 so during the rebuttal phase of this case. If the
20 Postal Service wishes to clarify or comment on such
21 evidence, it may do so as part of a surrebuttal. Does
22 anyone wish to comment on the field hearing process?

23 (No response.)

24 CHAIRMAN GOLDWAY: We appreciate everyone's
25 cooperation in this matter as we move to work forward

1 in this process. As I mentioned earlier, the
2 Commission intends to provide its opinion as
3 expeditiously as possible.

4 Counsel is advised that any participant
5 seeking to extend the procedural schedule will be
6 expected to provide detailed justification in support
7 of such motion. Does any participant have a
8 procedural matter to raise at this time?

9 (No response.)

10 CHAIRMAN GOLDWAY: Does any Commissioner
11 wish to offer concluding observations?

12 (No response.)

13 CHAIRMAN GOLDWAY: No? I think we all agree
14 that this is an ambitious and important undertaking,
15 and I appreciate your cooperation and look forward to
16 the information that we will receive as we engage in
17 an effort to make an objective decision on the matter.

18 Thank you. There being nothing further,
19 this prehearing conference is adjourned.

20 (Whereupon, at 10:47 a.m., the hearing in
21 the above-entitled matter was concluded.)

22 //

23 //

24 //

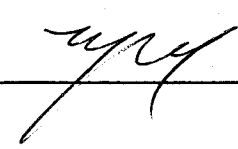
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REPORTER'S CERTIFICATE

DOCKET NO.: N 2010-1
CASE TITLE: 6-Day to 5-day Street Delivery
HEARING DATE: 4/27/10
LOCATION: WDC

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes or digital recording reported by me at the hearing in the above case before the Postal Regulatory Commission.

Date: 4/27/10



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