

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001

Postal Rate and Fee Changes

Docket No. R2006-1

PRESIDING OFFICER'S RULING
ALLOWING SUPPLEMENTAL TESTIMONY OF
GRAYHAIR SOFTWARE

(Issued November 29, 2006)

On November 22, 2006, the Postal Service filed an objection to the filing of the Supplemental Testimony of Cameron Bellamy on Behalf of GrayHair Software dated November 20, 2006.¹ The Postal Service contends that this untimely filing of testimony is not authorized by Commission rule, not in conformance with the procedural schedule, and not accompanied by any motion for late acceptance. The Postal Service further argues that the testimony is not in rebuttal to the cases-in-chief of participants other than the Postal Service, but is in response to the Postal Service's responses to Presiding Officer's Information Request No. 12. Finally, the Postal Service cites the potential for prejudicing the due process rights of other participants, including the Postal Service, if this material is relied upon by the Commission.

GrayHair Software, Inc., joined by seven other participants, filed an answer to the Postal Service's Objection on November 29, 2006.² GHS asserts that this testimony is

¹ Objection of the United States Postal Service to Untimely Filing of Supplemental Testimony by GrayHair Software, Inc., GHS-ST-1, November 22, 2006 (Objection).

² Answer of GrayHair Software, Inc., American Bankers Association, Association for Postal Commerce, Mail Order Association of America, Mailing & Fulfillment Services Association, National Association of Presort Mailers, National Postal Policy Council, and Office of Consumer Advocate to Objection of United States Postal Service to Filing of Supplemental Testimony of Cameron Bellamy (GHS-ST-1), November 29, 2006. (The parties collectively will be referred to as GHS for the purposes of this ruling.)

in response to the answers of Postal Service witness Mitchum to Presiding Officer's Information Request No. 12, Questions 5 through 7 (POIR). GHS argues that it could not have filed testimony in response to the POIR answers until October 16, 2006 when the responses were entered into the record. It notes that at this time six weeks had elapsed since the deadline for filing intervenors' testimony.

GHS further argues that witness Bellamy made essentially the same points, in less detail, in his direct testimony, GHS-T-1, and that the Postal Service had an opportunity to cross-examine him, but chose not to do so. However, GHS notes that the Postal Service did file rebuttal testimony (Mitchum, USPS-RT-13) responsive to GHS-T-1, which GHS asserts covers the same subjects as GHS-ST-1. Thus, GHS contends that the Postal Service has offered no reason to believe that receipt of the testimony would prejudice its rights.

Finally, GHS argues that no other participant should be prejudiced because no other participant supports the Postal Service's proposal to eliminate the unlimited-scan tier of Confirm service.

Discussion. The Supplemental Testimony appears to rebut the Postal Service's responses to Presiding Officer's Information Request No. 12, Questions 5 through 7, which is technically part of the Postal Service's direct case. This testimony presents an unusual situation because the responses to the POIR were provided after the hearings on the Postal Service's direct case, and after the deadline for participants to file their direct cases. If this testimony is not allowed, GrayHair Software, Inc. will not have another effective opportunity to rebut the Postal Service's positions presented in its direct case. The Postal Service does not claim that the Supplemental Testimony includes new factual propositions that it needs to rebut. On balance, due process appears better served by allowing presentation of the Supplemental Testimony. For these reasons, the objection to the filing of the Supplemental Testimony of Cameron Bellamy will not be sustained.

RULING

The Supplemental Testimony of Cameron Bellamy on Behalf of GrayHair Software, dated November 20, 2006, may be offered into evidence.

George Omas
Presiding Officer