

(e) *Effect of appeals.* Unless the presiding officer or the Commission so orders, the certification of an appeal or the filing of an application for review shall not stay the proceeding or the effectiveness of any ruling.

(f) *Review at conclusion of proceeding.* If an interlocutory appeal is not allowed or requested, objection to the ruling may be raised on review of the presiding officer's initial decision, or, if the initial decision is omitted, at the conclusion of the proceeding.

(g) *Form, filing, and service of documents.* Requests for certification, applications for review, and any responses shall be in writing and shall be in conformity with §§ 3001.10 and 3001.11. They shall be filed and served pursuant to §§ 3001.9 and 3001.12.

[38 FR 4328, Feb. 13, 1973, as amended at 42 FR 8143, Feb. 9, 1977; 51 FR 8827, Mar. 14, 1986]

§ 3001.33 Depositions.

(a) *When permissible.* The testimony of a witness may be taken by deposition upon authorization by the Commission or the presiding officer on application of any participant before the hearing is closed. An authorization to take the deposition of a witness will be issued only if (1) the person whose deposition is to be taken would be unavailable at the hearing, or (2) the deposition is deemed necessary to perpetuate the testimony of the witness, or (3) the taking of the deposition is necessary to prevent undue and excessive expense to a participant and will not result in undue delay or an undue burden to other participants.

(b) *Application.* An application for authorization to take testimony by deposition shall be filed in duplicate with the Commission or the presiding officer and shall state (1) the name, identification, and post office address of the witness, (2) the subject matter of the testimony, (3) the time and place of taking the deposition, (4) the name, identification, and post office address of the officer before whom the deposition is to be taken, and (5) the reasons why the testimony of such witness should be taken by deposition.

(c) *Authorization.* If the application so warrants, the Commission or the presiding officer will issue and serve or cause to be served on the participants

within a reasonable time in advance of the time fixed for taking testimony, an authorization for the taking of such testimony by deposition. Such authorization shall name the witness, and the time, place, and officer before whom the deposition shall be taken, and shall specify the number of copies of the deposition to be submitted to the Commission. The authorization may include such terms and conditions as the Commission or the presiding officer deems fair and reasonable.

(d) *Qualifications of officer before whom taken.* Such deposition may be taken before a presiding officer or other authorized representative of the Commission, or any officer, not being counsel or attorney for any participant or having an interest in the proceeding, authorized to administer oaths by the laws of the United States or of the place where the deposition is to be taken.

(e) *Oath and reduction to writing.* The officer before whom the deposition is to be taken shall put the witness on oath or affirmation and shall personally, or by some one acting under his/her direction and in his/her presence, record the examination of the witness. The examination shall be transcribed in the form specified in § 3001.10(a), signed by the witness, and certified in the usual form by the officer. The original of the deposition, together with the number of copies required by the authorization to be made by such officer, shall be forwarded by the officer to the Secretary by personal delivery or registered mail. Upon receipt the Secretary shall hold the original for use in the hearing upon request by any participant and shall make copies available for public inspection.

(f) *Scope and conduct of examination.* Unless otherwise directed in the authorization, the witness may be questioned regarding any matter which is relevant to the issues involved in the proceeding. Participants shall have the right of cross-examination and objection. In lieu of participation in the oral examination, participants may transmit written interrogatories to the officer who shall propound them to the witness.

(g) *Objections.* The officer before whom the deposition is taken shall not

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have the power to rule upon procedural matters or the competency, materiality, or relevancy of questions. Procedural objections or objections to questions of evidence shall be stated briefly and recorded in the deposition without argument. Objections not stated before the officer shall be deemed waived.

(h) *When a part of the record.* No portion of a deposition shall constitute a part of the record in the proceeding unless received in evidence by the presiding officer. If only a portion of the deposition is offered in evidence by a participant, any other participant may require him/her to introduce all of it which is relevant to the part introduced, and any participant may offer in evidence any other portions.

(i) *Fees.* Witnesses whose depositions are taken and the officer taking the same shall be entitled to the same fees as are paid for like services in the District Courts of the United States to be paid directly by the participant or participants on whose application the deposition was taken.

[36 FR 396, Jan. 12, 1971, as amended at 58 FR 38976, July 21, 1993; 58 FR 38976, July 21, 1993]

§ 3001.34 Briefs.

(a) *When filed.* At the close of the taking of testimony in any proceeding, the Commission or the presiding officer shall fix the time for the filing and service of briefs, giving due regard to the timely issuance of a recommended decision or advisory opinion to the Postal Service within the contemplation of sections 3641(a) and 3661 of the Act. In addition, subject to such consideration, due regard shall be given to the nature of the proceeding, the complexity and importance of the issues involved, and the magnitude of the record. In cases subject to a limitation on the time available to the Commission for decision, the Commission shall generally direct that each participant shall file a single brief at the same time. In cases where, because of the nature of the issues and the record or the limited number of participants involved, the filing of initial and reply briefs, or the filing of initial, answering, and reply briefs, will not unduly delay the conclusion of the proceeding and will aid in the proper disposition of the proceeding, the participants may

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be directed to file more than one brief and at different times rather than a single brief at the same time. The presiding officer or the Commission may also order the filing of briefs during the course of the proceeding.

(b) *Contents.* Each brief filed with the Commission shall be as concise as possible, within any page limitation specified by the Commission or the presiding officer, and shall include the following in the order indicated:

(1) A subject index with page references, and a list of all cases and authorities relied upon, arranged alphabetically, with references to the pages where the citation appears;

(2) A concise statement of the case from the viewpoint of the filing participant;

(3) A clear, concise and definitive statement of the position of the filing participant as to the proposals of the Postal Service, the subject matter of the complaint, or recommended decision, advisory opinion, or public report to be issued;

(4) A discussion of the evidence, reasons, and authorities relied upon with exact references to the record and the authorities; and

(5) Proposed findings and conclusions with appropriate references to the record or the prior discussion of the evidence and authorities relied upon.

(c) *Incorporation by references.* Briefs before the Commission or a presiding officer shall be completely self-contained and shall not incorporate by reference any portion of any other brief, pleading or document.

(d) *Excerpts from the record.* Testimony and exhibits shall not be quoted or included in briefs except for short excerpts pertinent to the argument presented.

(e) *Filing and service.* Briefs shall be filed in the form and manner and served as required by §§ 3001.9 to 3001.12.

[36 FR 396, Jan. 12, 1971, as amended at 38 FR 4328, Feb. 13, 1973; 51 FR 8827, Mar. 14, 1986]

§ 3001.35 Proposed findings and conclusions.

The Commission or the presiding officer may direct the filing of proposed findings and conclusions with a brief