

SERVED: July 8, 2020

**U.S. DEPARTMENT OF TRANSPORTATION
OFFICE OF HEARINGS
WASHINGTON, DC**

In the Matter of:)	
)	Docket No. FAA-2017-0922
UNITED PARCEL SERVICE, INC.)	
)	Case No. 2015-GL-70-0123
Respondent)	

**ORDER SETTING A RULE 16 LITIGATION
SCHEDULING CONFERENCE, AND DIRECTING THE PARTIES TO
CONFER AND FILE A RULE 26(f) PROPOSED DISCOVERY PLAN**

On June 4, 2020, an Order on Consent of the Parties to Extend Time to Respond to Complaint was filed. This Order extended to June 30, 2020, the deadline for the Respondent, United Parcel Service, Inc. ("UPS, Inc.") to file an answer to the Complaint.

On June 25, 2020, an Order Temporarily Modifying Filing and Service Requirements to Include Voluntary Use of Email was filed. Among other things, this Order authorized the parties file a Notice of Consent to receive service by email.

On June 30, 2020, UPS, Inc. filed the following documents: 1) United Parcel Service, Inc.'s Answer to Complaint and Affirmative Defenses; and 2) Notice of Consent to Service by Email.

On July 6, 2020, the Office of Hearings ("OH") staff informally communicated by email with the parties and asked the FAA if it would like to consent to service by email. That same day, on July 6, 2020, the FAA filed the Complainant's Notice of Consent to Service by Email.

1. Rule 16 Litigation Scheduling Conference

Pursuant to 14 C.F.R. § 13.205 and Federal Rule of Civil Procedure 16, the parties shall appear by telephone on **Thursday, September 17, 2020, at 10:00 a.m. Eastern time** for a Rule 16 Litigation Scheduling Conference. During this Conference, the parties will discuss the issues

in dispute, their jointly submitted proposed scheduling/discovery plan (see paragraph 2 *infra*) and respond to any questions regarding disagreements not resolved in the proposed plan, so that a final scheduling/discovery plan may be ruled upon, as well as any other related matters pursuant to Rule 16(c). The parties shall access the Conference by dialing 888-278-0296, and when prompted, entering access code 5851842.

2. Parties' Rule 26(f) Planning Meeting and Proposed Discovery Plan

Pursuant to 14 C.F.R. § 13.205(a)(6) and Federal Rule of Civil Procedure 26(f), *prior* to convening with the Judge for the Rule 16 Litigation Scheduling Conference, the parties shall privately conduct a Rule 26(f) planning meeting and prepare a jointly written proposed scheduling/discovery plan, which must be completed and filed with the undersigned Judge **on or before Thursday, September 10, 2020** (i.e. at least seven (7) calendar days before the Conference). The attorneys of record and any unrepresented parties are jointly responsible for arranging the Rule 26(f) planning meeting, and for attempting in good faith to agree on the proposed discovery plan.

A. Good Faith Discussion

The parties' Rule 26(f) planning meeting shall include a good faith discussion about the nature and basis of each party's claims, the possibility of resolving all or part of the case, the scope and type of discovery (including electronic discovery), and the venue for hearing. During this meeting, the parties shall discuss matters identified in 14 C.F.R. § 13.217 and Rule 26(f)(2) as part of developing their proposed scheduling/discovery plan.

The parties' Rule 26(f) planning meeting should also include discussion about the sequence and timing of follow-up discovery, including whether that discovery should be conducted in phases to prepare for any filing of particular motions (e.g., limiting scope of trial, dispositive motions, etc.).

B. Mutually Agreeable Dates

The proposed discovery deadlines in the parties' proposed scheduling/discovery plan should be mutually agreeable, with a view to achieving case resolution with a minimum of expense and delay.

C. Unresolved Matters and/or Disclosure of ADR Services

The parties should clearly identify in the proposed plan any unresolved scheduling/discovery disputes, as well as any current or planned use of Alternative Dispute Resolution (“ADR”) services, so the Judge may address these matters during the Rule 16 Litigation Scheduling Conference.

3. Filing and Serving Documents, and Using a Certificate of Service

Pursuant to 14 C.F.R. § 13.211(a), a copy of any document a party files with the Federal Aviation Administration Hearing Docket (“Hearing Docket”) must also be concurrently and separately filed with the Judge, and served upon the opposing party.

Pursuant to the June 25, 2020 Order, the parties may file documents with the FAA Hearing Docket and this Court by email.¹ (June 25, 2020 Order 2, ¶¶ 1-2.) The Court’s email is M20.HrgDocs@dot.gov. Pursuant to 49 U.S.C. § 46103 and 14 C.F.R. §§ 13.202 and 13.211(b), parties may also file and serve documents by personal delivery, or mail (i.e., U.S. first-class, priority, certified, or registered mail; or the use of an overnight express courier service). Pursuant to 14 C.F.R. § 13.211(c), the parties are strongly encouraged to attach a signed Certificate of Service to each filing, stating the date and method of service.

4. Court-Ordered Deadlines and Filing Materials with the Court

Whenever the Judge orders the parties to meet certain motion deadlines, or to file documents by a specific deadline date (see, e.g., paragraph 2 above) such deadline date is the date by which the documents must be date-stamped received at the Office of Hearings. Pursuant to the June 25, 2020 Court Order, each party may voluntarily file documents with this Court by email. If a party does not wish to voluntarily file documents with the Court by email, the party must file documents by mail or personal delivery, as described in Paragraph 3 above.

¹ Each party may also file a Notice of Consent (“Notice”) to receive service of Court orders by email. (June 25, 2020 Order, 2-3 ¶ 3.) In the absence of a Notice, the Court will continue to serve a party by U.S. Mail.

A. Mailed Documents and Courtesy Fax Copy


Documents mailed by first-class mail to the Court are subject to government security measures before delivery, which delays delivery. To ensure compliance with this and any future Orders setting deadlines, a party that files documents by regular mail (as opposed to email or personal delivery) is strongly encouraged to also provide a courtesy copy of its documents to the Office of Hearings by facsimile (Fax: 202-366-7536) on or before the deadline date.

B. Filing by Close of Business:

Documents filed with the Court on the deadline date must be filed prior to the close of business (i.e., 5:00 p.m. Eastern time). Any documents filed after the close of business will be date-stamped the next day, when the Office of Hearings reopens. Failure of a party to timely file documents by the court-ordered deadline could lead to the party's position not being considered.

5. Conflicts with the Rule 16 Litigation Scheduling Conference Date

If a party has an unavoidable conflict with the Rule 16 Litigation Scheduling Conference set in paragraph 1 *supra*, and wishes to modify the date/time of the scheduled Conference, **the party shall first confer with opposing counsel about mutually agreeable alternate dates**, and then contact Mr. Charles Boebinger, Judicial Staff Assistant, at the Office of Hearings (202-366-2132) as soon as possible after the receipt of this Order, with at least three (3) mutually-agreed, proposed alternate dates/times for the Judge's consideration.



Judge J.E. Sullivan
U.S. Administrative Law Judge

Attachment: Service List

FILING AND SERVICE LIST

Federal Aviation Administration
800 Independence Avenue, S.W.
Washington, DC 20591

Attention: Hearing Docket Clerk, AGC-430
Wilbur Wright Building—Suite 2W1000¹
EMAIL: 9-AGC-FAA-HearingDocket@faa.gov

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U.S. Department of Transportation
Office of Hearings, M-20
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¹ This address is for service by U.S. Mail. For service in person or by expedited courier, use the following address:
Federal Aviation Administration, 600 Independence Avenue, S.W., Wilbur Wright Building—Suite 2W1000,
Washington, DC 20591; Attention: Hearing Docket Clerk, AGC-430.