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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

Before the

UNITED STATES POSTAL RATE COMMISSION

In the Matter of: SPECIAL SERVICES FEES AND
 CLASSIFICATIONS

Docket No. MC96-3

VOLUME 1

PREHEARING CONFERENCE

DATE: Friday, July 12, 1996

PLACE: Washington, D.C.

PAGES: 1 - 33

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BEFORE THE
POSTAL RATE COMMISSION

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In the Matter of: :
SPECIAL SERVICES FEES AND : Docket No. MC96-3
CLASSIFICATIONS :
- - - - - X

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

Volume 1
Friday, July 12, 1996

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

BEFORE:

- HON. EDWARD J. GLEIMAN, CHAIRMAN
- HON. W.H. "TREY" LeBLANC, III, VICE CHAIRMAN
- HON. H. EDWARD QUICK, JR., COMMISSIONER, PRESIDING
- HON, GEORGE W. HALEY, COMMISSIONER

1 APPEARANCES:

2 On behalf of the United States Postal Service:

3 DAVID RUBIN, Esquire

4 ANTHONY ALVERNO, Esquire

5 KENNETH HOLLIES, Esquire

6 SUSAN DUCHEK, Esquire

7 United States Postal Service

8

9 On behalf of Advo, Inc.:

10 JOHN M. BURZIO, Esquire

11 THOMAS W. McLAUGHLIN, Esquire

12 Burzio & McLaughlin

13 1054 31st Street, Northwest, Suite 540

14 Washington, D.C. 20007

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16 On behalf of Time Warner, Inc.:

17 JOHN M. BURZIO, Esquire

18 TIMOTHY L. KEEGAN, Esquire

19 Burzio & McLaughlin

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21 Washington, D.C. 20007

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25

1 APPEARANCES: [continued]

2 On behalf of the American Bankers Association:

3 IRVING D. WARDEN, Esquire

4 American Bankers Association

5 1120 Connecticut Avenue, Northwest

6 Washington, D.C. 20036

7

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

9 SUSAN L. CATLER, Esquire

10 O'Donnell, Schwartz & Anderson, P.C.

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12 Washington, D.C. 20005-1426

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14 On behalf of Direct Marketing Association, Inc.:

15 DANA T. ACKERLY, Esquire

16 Covington & Burling

17 1201 Pennsylvania Avenue, Northwest

18 Washington, D.C. 20004

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20 On behalf of Nashua Photo, Inc., and Mystic Color Lab:

21 JOHN S. MILES, Esquire

22 WILLIAM J. OLSON, Esquire

23 William J. Olson, P.C.

24 8180 Greensboro Drive, Suite 1070

25 Mclean, Virginia 22102

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1 APPEARANCES: [continued]

2 On behalf of Newspaper Association of America:

3 WILLIAM B. BAKER, Esquire

4 Wiley, Rein & Fielding

5 1776 K Street, Northwest

6 Washington, D.C. 20006

7

8 On behalf of the Office of Consumer Advocate:

9 DAVID RUDERMAN, Esquire

10 RAND COSTICH, Esquire

11 SHELLEY S. DREIFUSS, Esquire

12 Office of Consumer Advocate

13 1333 H Street, Northwest

14 Washington, D.C.

15

16 On behalf of United Parcel Service, Inc.:

17 JOHN E. MCKEEVER, Esquire

18 KAREN L. TOMLINSON, Esquire

19 Schnader, Harrison, Segal & Lewis

20 1600 Market Street, Suite 3600

21 Philadelphia, Pennsylvania 19103

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RULINGS BY CHAIRMAN:

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Motion for late acceptance and confirmation of
Mr. Carlson as a limited intervenor

9

P R O C E E D I N G S

[9:30 a.m.]

1
2
3 PRESIDING OFFICER QUICK: Good morning, ladies and
4 gentlemen.

5 This is the initial prehearing conference of
6 Docket MC96-3, the Postal Service's request for changes to
7 its special services. My name is Ed Quick. I will be
8 serving as presiding officer of this case.

9 With me are Chairman Ed Gleiman, Vice-Chairman
10 Trey LeBlanc and Commissioner George Haley.

11 This case marks the third state of the Postal
12 Service's classification reform efforts. The Commission has
13 already issued a decision on reclassification proposals for
14 First, Second and Third Class Mail, now known as First
15 Class, Periodicals and Standard Mail.

16 The second step in classification reform, a
17 proposal to adjust the classifications of Preferred Rate
18 Mail to reflect the changes made in our first decision, is
19 pending before the commission. Recently, the participants
20 submitted briefs in that case and the Commission intends to
21 issue a recommended decision shortly.

22 Like these previous cases, the Postal Service has
23 submitted its special services proposal with a "MC" or mail
24 classification designation. But unlike the first two phases
25 of reclassification, the proposals in Docket MC96-3, if

1 approved in their current form, would generate a
2 considerable amount of additional net revenue for the Postal
3 Service, approximately \$340 million. Until now, revenue
4 increases this high have only been seen in omnibus rate
5 cases, whose docket numbers care an "R" designation.

6 This precedent has already caught the attention of
7 some of the Postal community's keen observers. In its June
8 17 issue, Postal World said:

9 "The Postal Service needs bucks to prevent a
10 general rate hike and will seemingly take almost any tack to
11 get it. Now it's after an extra 340 million a year in the
12 new, higher special services rates. Think of it as the dark
13 side of classification reform."

14 Postal World described the proposal as "mostly a
15 rate hike wrapped in the guise of modernization."

16 In its June 17 issue, Business Mailers Review
17 notes that MC96-3 "looks more like a rate case" and says the
18 additional revenue the Postal Service would receive from the
19 proposal is "one-third of the way to the Marketing
20 Department's goal of one billion dollars in new revenue."

21 Let me eliminate any potential misunderstandings
22 concerning the status of this case. Classification aspects
23 of the Postal Service request will be evaluated under the
24 provisions of Section 3623. Rate aspects of the Postal
25 Service request will be evaluated under the provisions of

1 Section 3622. The fact that the case bears an MC
2 designation has no impact on the responsibilities of either
3 the Commission or participants. The designation is a title,
4 nothing more.

5 The fact that the Postal Service request combines
6 rate and classification issues may give rise to certain
7 issues which might not be present in a pure classification
8 case. This should not present a problem. The Postal
9 Service has presented testimony supporting both its
10 classification proposals and its rate proposals. Discovery
11 and rebuttal testimony may address either or both.

12 Similarly, parties may raise concerns about the
13 wisdom of combining rate increases with classification
14 changes. I point out that classification changes have been
15 incorporated in omnibus rate cases in the past. To the
16 extent that this request signals a departure from past
17 practice, the departure is in the Postal Service requesting
18 rate increases for only certain selected services. The
19 justification for the request obviously is an issue in this
20 case. The participants or the Commission itself may choose
21 to pursue that issue.

22 I would now like those present to identify
23 themselves for the record. If you are representing more
24 than one intervenor, please identify all of them when you
25 get up to the mic. We will start with counsel for the

1 United States Postal Service.

2 MR. RUBIN: Good morning, Commissioner Quick.
3 This is David Rubin, representing the Postal Service. With
4 me today are Anthony Alverno, Kenneth Hollies and Susan
5 Duchek.

6 PRESIDING OFFICER QUICK: Thank you.

7 I guess we will use the mic at the desk for
8 identification.

9 Advertising Mail marketing Association.

10 [No response.]

11 Well, I guess they are here in spirit, probably.
12 Advo, Inc.

13 MR. McLAUGHLIN: Commissioner Quick, Thomas W.
14 McLaughlin, representing Advo along with John M. Burzio.
15 Perhaps to speed the process up, I would like to enter an
16 appearance on behalf of Time Warner for John M. Burzio and
17 Timothy L. Keegan.

18 PRESIDING OFFICER QUICK: Thank you.

19 American Bankers Association is here.

20 MR. WARDEN: Irving Warden representing the
21 American Bankers Association.

22 PRESIDING OFFICER QUICK: American Business Press.

23 [No response.]

24 PRESIDING OFFICER QUICK: American Postal Workers
25 Union, AFL-CIO.

1 MS. CATLER: Susan Catler representing the
2 American Postal Workers Union, AFL-CIO.

3 PRESIDING OFFICER QUICK: Thank you.
4 Douglas F. Carlson.

5 Mr. Carlson mailed his notice of intervention to
6 the Commission on July 6, 1996, by Priority Mail, in the
7 belief that that would assure its timely arrival.
8 Unfortunately, it was not received by the Commission until
9 yesterday, July 11, two days after the deadline for
10 interventions.

11 I will construe the motion as including a motion
12 for late acceptance and, absent objection, I will grant the
13 motion and confirm Mr. Carlson's status as a limited
14 intervenor.

15 Is there any objection?

16 [No response.]

17 PRESIDING OFFICER QUICK: Thank you.

18 Mr. Reporter, please index this and all subsequent
19 rulings at the front of today's manuscript.

20 Direct Marketing Association.

21 MR. ACKERLY: Good morning, Commissioner Quick,
22 members of the Commission. Dana T. Ackerly representing
23 DMA.

24 PRESIDING OFFICER QUICK: Greeting Card
25 Association.

1 [No response.]

2 PRESIDING OFFICER QUICK: Mail Advertising
3 Association International.

4 [No response.]

5 PRESIDING OFFICER QUICK: Mystic Color Lab.

6 MR. MILES: Commissioners, my name is John Miles
7 and, together with William Olson, I represent Mystic Color
8 Lab and we also represent Nashua Photo, Inc.

9 PRESIDING OFFICER QUICK: Thank you.

10 National Association of Postmasters of the United
11 States.

12 [No response.]

13 PRESIDING OFFICER QUICK: National Federation of
14 Non-Profits.

15 [No response.]

16 PRESIDING OFFICER QUICK: National Postal Mail
17 Handlers Union.

18 [No response.]

19 PRESIDING OFFICER QUICK: Newspaper Association of
20 America.

21 MR. BAKER: Bill Baker representing NAA.

22 PRESIDING OFFICER QUICK: Office of the Consumer
23 Advocate.

24 MR. RUDERMAN: David Ruderman representing the
25 Office of Consumer Advocate.

1 PRESIDING OFFICER QUICK: David B. Popkin.

2 [No response.]

3 PRESIDING OFFICER QUICK: United Parcel Service.

4 MR. McKEEVER: Good morning, Mr. Commissioner,
5 members of the Commission. John McKeever for the United
6 Parcel Service. Also with me, Karen Tomlinson representing
7 United Parcel Service.

8 PRESIDING OFFICER QUICK: Is there anyone present
9 who is an intervenor or representative of an intervenor
10 whose name I did not call?

11 [No response.]

12 PRESIDING OFFICER QUICK: For those of you who
13 have not already done so, please fill out an appearance form
14 and hand it to the Reporter before you leave today. They
15 are the green sheets available on the side table -- well,
16 they are there somewhere. I don't know where. Okay --
17 there they are, over there, to the left [indicating].

18 I have prepared a proposed hearing schedule for
19 this case. Copies are available at the table near the door
20 in front of the hearing table -- in front of the hearing
21 room.

22 If you don't have one, you might want to get one
23 now. I guess everybody's got one.

24 The Office of the Consumer Advocate's statement of
25 issues for discussion in today's conference included a

1 request that the procedural schedule in this case not be
2 accelerated in any extraordinary way. The Postal Service
3 did not request accelerated treatment and the proposed
4 schedule I have distributed is similar to those used in
5 normal classification cases.

6 I believe it provides adequate opportunity for
7 discovery and for the preparation of testimony.

8 At the same time it should enable the Commission
9 to issue a final recommended decision within 10 months.

10 It occurs to me that it may be possible to
11 expedite a portion of this case. The Special Services
12 reclassification proposal involves changes to the terms of
13 service and rates for post office boxes including color
14 service, certified mail, return receipt service, insurance
15 and registered mail.

16 In addition, it would retain postal cards,
17 "stamped" cards, and treat them as a new special service.

18 Special delivery service would be eliminated.

19 So far the Commission has heard from the following
20 parties on specific issues regarding this case: Nashua
21 Photo and Mystic Color Lab on a proposed modification to
22 business reply mail; The National Association of Postmasters
23 on the proposed increase in post office box rental fees; and
24 the American Bankers Association on changes to post office
25 box fees and certified mail.

1 The Office of Consumer Advocate identified issues
2 concerning box rental fees specifically and cost coverages
3 generally for special services.

4 As of today that means no party has expressed
5 specific interest in return receipt, insurance, registered
6 mail, special delivery or the proposed changes to postal
7 cards.

8 If it can be determined that no participant
9 intends to present evidence or argument concerning one or
10 more of these postal service proposals, it may be possible
11 to arrange for a partial settlement of issues.

12 Mr. Rubin, is there any reason that you can think
13 of why a prompt recommendation on some of your proposals
14 would cause the Postal Service problems?

15 MR. RUBIN: No, that would be something the Postal
16 Service would desire.

17 PRESIDING OFFICER QUICK: Yes, ma'am?

18 MS. CATLER: Susan Catler, representing the
19 American Postal Workers Union, AFL/CIO.

20 The American Postal Workers Union is quite
21 interested in the proposal related to special delivery and
22 believes that it would be inappropriate to resolve that
23 issue through a settlement conference mechanism.

24 PRESIDING OFFICER QUICK: Thank you.

25 MS. CATLER: Thank you.

1 PRESIDING OFFICER QUICK: Well, we'll see if we
2 hear from any other parties on any of the other items that I
3 mentioned.

4 I recognize that the discovery phase has not been
5 completed and some participants may not have determined
6 whether they wish to contest the Postal Service proposal for
7 one of these services.

8 In particular, it appears that the Office of
9 Consumer Advocate may still be developing its position.
10 Nonetheless, I suggest that the Postal Service consult with
11 the Office of Consumer Advocate and other participants to
12 see if it is possible to present a proposed partial
13 settlement in this case.

14 Before we go on, let me point out that the
15 proposed schedule has evidentiary hearings on the
16 case-in-chief of intervenors and the OCA and hearings to
17 receive rebuttal to that evidence, both scheduled to be
18 completed before holiday periods.

19 It may be difficult to delay those hearings.
20 However, if anyone has comments or suggestions for
21 improvement in the hearing schedule, they should be
22 submitted on or before July 19th, 1996. I will review any
23 comments submitted and issue a procedural schedule promptly.

24 I intend to keep the hearing process running
25 smoothly and address any procedural concerns in a timely

1 manner. As has been the case in recent proceedings,
2 hearings for this case will begin promptly at 9:30. We will
3 have a mid-morning break of approximately 10 minutes and a
4 lunch period which we will try to begin no later than 12:30.

5 Afternoon sessions will begin an hour to an hour
6 and a half afterward. Staying on schedule sometimes means
7 having hearings into the evening. I hope to avoid this
8 situation if at all possible. However, if we can't avoid a
9 late session, I ask your cooperation and we'll try to finish
10 as quickly as possible.

11 The Commission will continue to update a recorded
12 message describing the hearing schedule. That message may
13 be reached by calling (202) 789-6874.

14 Those of you who have participated in our last
15 case know this Commission now has an address in cyberspace.
16 The Commission's home page on the World Wide Web will
17 provide access to all documents issued by the Commission and
18 to those submitted by participants in electronic form. The
19 address for our home page is WWW.PRC.GOV. -- I don't know if
20 it is a dot or a period, but --

21 [Laughter.]

22 PRESIDING OFFICER QUICK: I am not real familiar
23 with the cyberspace here, so those of you who are will know
24 what it is.

25 The Commission will also continue to make

1 documents available on the Commission's bulletin board,
2 which is a completely separate system from our home page.

3 Order Number 1115, which provides initial notice of
4 this proceeding, included a set of proposed special rules of
5 practice and asked for participants to provide comments on
6 those rules by July 9th. Several parties provided responses
7 concerning Rule 3(b), the rule addressing the requirements
8 for service of documents.

9 In our last case the Commission experimented with
10 electronic service of documents. Judging from the tone of
11 some comments, that experiment had mixed results. The
12 Commission remains committed to exploring potential ways to
13 reduce the cost of participation in its proceedings.
14 Electronic service should allow parties to avoid copying and
15 postage costs.

16 The Commission also is interested in ways to
17 expedite its cases. Electronic service should enable parties
18 to get documents more quickly, which should allow additional
19 time for analysis and perhaps for actually shortening cases.

20 Because of the importance of these potential
21 benefits, the Commission is committed to exploring all
22 reasonable ways to successfully incorporate the electronic
23 transmission of documents into our procedures.

24 The Direct Marketing Association suggests that a
25 source of problems is the difficulty participants encounter

1 in serving each other electronically. The Newspaper
2 Association of America has identified the same problem and
3 suggests that if parties provide the Commission with an
4 electronic version of a document, the Commission might be
5 able to effect electronic service on other participants.
6 Because the Commission would be serving all electronic
7 documents, only a single set of procedures would have to be
8 learned to send and receive documents electronically.

9 This suggestion appears to have merit. Once a
10 participant has become accustomed to sending and receiving
11 documents from the Commission electronically problems should
12 arise infrequently. Furthermore, the Commission has staff
13 available to advise participants should technical problems
14 arise.

15 This suggestion does present new issues.
16 Essentially the Commission rather than the participant
17 filing the document would become responsible for assuring
18 that electronic addresses on the service list receive
19 service in a timely fashion.

20 In Docket Number MC96-2, the Commission took that
21 role for participants submitting documents on diskettes.

22 The Commission is prepared to undertake a broader
23 responsibility for this one case as a test.

24 Let me restate what I am proposing.

25 The service list will contain electronic addresses

1 of those able to receive service electronically.
2 Participants are to serve hard copy on all individuals on
3 the service list without an electronic address. Those
4 participants with the capability of providing documents in
5 electronic format may either submit documents as required by
6 rules 9 to 12 of our Rules of Practice, or they may submit
7 an original and one hard copy to the Commission along with
8 an electronic version of the document.

9 In such case the Commission will provide
10 electronic service to those on the service list with
11 electronic addresses and the filing participant will provide
12 hard copy service to the remainder of the service list.

13 This system should allow those able to provide the
14 Commission with electronic copy to avoid the expense of
15 preparing multiple copies for the Commission and of mailing
16 copies to those able to receive electronic service.

17 If some participant wishes to object to the
18 Commission undertaking this responsibility I will consider
19 the merits of that objection before establishing a special
20 rule of practice providing the Commission service.

21 Any such objection is to be submitted by July
22 19th, 1996.

23 The Direct Marketing Association also requests
24 that electronic service be extended to more than two
25 addresses per intervenor. This also seems to be a

1 reasonable suggestion. I will allow any intervenor to
2 receive service of documents at up to two hard copy and five
3 electronic addresses.

4 Finally, DMA suggests that the Commission impose a
5 system for standardization of the eight character "name" for
6 electronic documents. Our staff has been working on this
7 problem. To the extent possible, we would like the naming
8 convention to help interested persons to quickly access the
9 documents they seek. We will try to have a convention for
10 use in this case shortly.

11 Before I go on to other aspects of the special
12 rules, does any party wish to comment further on electronic
13 service of documents? Mr. Warden?

14 MR. WARDEN: Irving Warden, American Bankers
15 Association.

16 In the past, at ABA we have tried to deliver
17 documents to various parties in various places
18 electronically with, I guess I should say, mixed success. I
19 was going to inquire or suggest that it might be possible
20 for a party to try it and see if it works. I don't know
21 about the problems of incompatibilities between software,
22 hardware, all that kind of stuff but, you know, some people
23 can get it and some people can't and I was going to inquire
24 if it might be possible in the current system if we could
25 try to do it and then, if it didn't work, revert to the hard

1 copy if there are any problems.

2 PRESIDING OFFICER QUICK: Do you mean if a party
3 wanted to receive it electronically or after the initial
4 service finds that it is not working, that they could then
5 revert to hard copy delivery?

6 MR. WARDEN: Right, right. And I was thinking
7 more of wanted to try to deliver it electronically and,
8 perhaps, for some reason, some of the other parties couldn't
9 read what they got or the messages weren't getting through.

10 PRESIDING OFFICER QUICK: Fine. If you want to
11 elaborate on your observation in writing, we would be happy
12 to have that as quickly as possible.

13 MR. WARDEN: Thank you.

14 PRESIDING OFFICER QUICK: We will certainly take
15 your suggestion under consideration.

16 Does anyone else have any comments from the
17 electronic service of documents.

18 MR. RUDERMAN: Excuse me, Commissioner?

19 PRESIDING OFFICER QUICK: Yes, sir.

20 MR. RUDERMAN: The OCA supports the concept of
21 electronic service and we would like to offer the parties
22 the ability to contact us if they would need any assistance
23 in this area and we will see what we could do in that on
24 their behalf.

25 PRESIDING OFFICER QUICK: Thank you.

1 Two parties discussed proposed Special Rule 3(c)
2 which establishes exceptions to service requirements.
3 Postal Service suggests that the rule require that it
4 receive copies of all discovery-related material. Its
5 request is reasonable and I will make that adjustment.

6 Direct Marketing Association asks that a deadline
7 be established for parties to request service of documents
8 pursuant to this rule. DMA suggests that this would reduce
9 confusion. I understand the basis of DMA's suggestion but I
10 am concerned that this might cause parties to file a
11 protective request lest they be prevented from obtaining
12 service of documents concerning an important issue arising
13 in the case.

14 I will request participants to submit 3(c)
15 requests by July 19, 1996. I also will expect the parties
16 will cooperate so that problems can be minimized. Problems
17 will be minimized if participants talk to one another. The
18 Commission has undertaken to issue lists of documents filed.
19 If you see a document on that list which you want to
20 receive, contact the appropriate counsel and ask for a copy.
21 If you do not receive timely service for whatever reason,
22 raise the issue with the party involved. I am sure they
23 will take steps to ensure the problem does not arise again.

24 Are there additional comments or concerns about
25 the proposed special rules of practice?

1 CHAIRMAN GLEIMAN: Mr. Presiding Officer, if I
2 may?

3 PRESIDING OFFICER QUICK: Yes, Mr. Chairman.

4 CHAIRMAN GLEIMAN: I appreciate the OCA's offer,
5 its support and, ~~its offer and,~~ as we all know, the OCA has
6 been the key party in running the Commission's bulletin
7 board for lo these many years and has done a superb job and
8 continues to do a superb job. I would prefer, however, that
9 if any participant in the case or any other party who has
10 interest in our electronic filing and is not a participant
11 in the case and has questions or concerns that they direct
12 them to our administrative office.

13 We have some highly talented people in that office
14 and, inasmuch as they are running the electronic filing
15 system and the docket room and the Web page, I think it
16 would be best to have questions and concerns directed to the
17 admin office to avoid confusion in perhaps different answers
18 that one might get to questions that arise or concerns that
19 arise. So Mr. Ruderman, I really do appreciate your offer
20 and the OCA's participation and help in this area but, I
21 think, to minimize the potential for confusion we best focus
22 our questions and concerns in the admin office.

23 PRESIDING OFFICER QUICK: Thank you, Mr. Chairman.
24 I agree and I am sorry that I didn't clarify that when
25 acknowledging Mr. Ruderman's offer.

1 Yes, sir, Mr. McLaughlin.

2 MR. McLAUGHLIN: Tom McLaughlin.

3 With respect to the Chairman's comment, is there a
4 specific phone number that we can call directly to reach the
5 computer experts, the E-mail experts at the Commission?

6 PRESIDING OFFICER QUICK: I am sure there is.

7 CHAIRMAN GLEIMAN: I don't have my Commission
8 phone book with me and I am going to ask for the assistance
9 of some staff.

10 6873 and ask for Brenda.

11 MR. McLAUGHLIN: Thank you.

12 PRESIDING OFFICER QUICK: Did everybody get that?

13 CHAIRMAN GLEIMAN: You do know that you have to
14 put digits on the front of that, 789. And if you are
15 outside of Washington, D.C., you have to put a 202 in front
16 of that.

17 PRESIDING OFFICER QUICK: We don't have an 800
18 number here.

19 All right, does that clarify it? Call Brenda at
20 6873?

21 Several parties raised issues for discussion
22 during today's conference. Direct Marketing Association
23 stated it intended to discuss the appropriate test year for
24 this case.

25 Mr. Ackerly, would you like to offer a specific

1 proposal at this time?

2 MR. ACKERLY: Commissioner Quick, I do not have a
3 specific proposal at this time. I simply perceived an issue
4 which I think is a critical issue, especially to the extent,
5 as you previously pointed out, that this proceeding involves
6 important rate issues as well as classification issues.

7 The matter of comparing apples to apples or apples
8 to oranges with respect to data, use of appropriate test
9 years, or base years is not of course new to this
10 Commission. It has happened before when classification
11 matters have occurred in the interim between rate cases.

12 The fact that fiscal year '96 data is available in
13 the docket certainly doesn't preclude comparing apples to
14 apples even though both apples and oranges are before the
15 Commission.

16 I simply thought that it was important given the
17 significance of this issue to raise it as early on in the
18 proceeding as possible, so that all parties can be alert to
19 the problem but the short answer to your question is do I
20 have a specific proposal -- not at this time, no.

21 PRESIDING OFFICER QUICK: Any other comments on
22 that? Mr. Rubin, do you at the Postal Service have any
23 observations or comments on the concerns that Mr. Ackerly
24 has raised?

25 MR. RUBIN: We have no comments.

1 PRESIDING OFFICER QUICK: Well, we will take this,
2 Mr. Ackerly's alert under advisement and thank you very much
3 for bringing up this important matter.

4 Nashua Photo, Inc. and Mystic Color Lab filed a
5 joint statement indicating they intended to raise whether
6 proposals affecting business reply mail could be presented
7 in this case. Do you have -- would you like to discuss this
8 issue at this point, counsel for Mystic and Nashua?

9 MR. MILES: Mr. Quick and members of the
10 Commission, John Miles on behalf of Nashua Photo, Inc. and
11 Mystic Color Lab.

12 We raised the issue because we anticipate filing a
13 motion asking the Commission to expand the docket. The
14 motion actually is in production. We certainly have been
15 exploring alternatives in the Postal Service. We think that
16 this case would be an appropriate case for the Commission to
17 consider such a modification.

18 As to some of the reasons Commissioner Quick has
19 already discussed, it is like, it's almost like an omnibus
20 case. In view of the classification cases submitted by the
21 Postal Service thus far and anticipated to be submitted, it
22 appears that this would be the only opportunity to effect
23 modification of this special service if such a modification
24 is appropriate, so with the Commission's permission, we will
25 certainly defer discussion further than this until our

1 motion is filed but I would be glad to try to respond to any
2 questions.

3 We anticipate filing a motion either today or
4 Monday.

5 PRESIDING OFFICER QUICK: Before I ask for
6 comments on Mr. Miles' statement here, let me ask is there
7 any participant that opposes expansion of the issues in this
8 case to include business reply mail?

9 Mr. Rubin?

10 MR. RUBIN: The Postal Service does oppose the
11 expansion of the docket to issues like business reply mail.

12 We could discuss that a little more now. It
13 probably would make more sense to reply to the motion.

14 PRESIDING OFFICER QUICK: Does any other
15 participant wish to comment on this matter at this time?

16 [No response.]

17 PRESIDING OFFICER QUICK: So you anticipate your
18 motion being filed soon?

19 MR. MILES: Certainly by Monday, Commissioner
20 Quick.

21 PRESIDING OFFICER QUICK: Okay I'll request that
22 participants following the filing of Mr. Miles' motion
23 provide legal memoranda on the principles I should follow in
24 addressing this issue and I'll allow for memoranda on or
25 before July 24th, 1996 with reply memoranda to be submitted

1 on or before July 31st, 1996.

2 MR. MILES: Thank you.

3 PRESIDING OFFICER QUICK: Before leaving this
4 issue, I have one specific question.

5 Mr. Rubin, if the Postal Service should submit a
6 statement on or before July 19th indicating whether it has
7 any plans to submit a classification reform proposal
8 concerning business reply mail, if such plans exist the
9 Service should provide its best estimate of when such a
10 request will be submitted.

11 MR. RUBIN: We can do that.

12 PRESIDING OFFICER QUICK: Okay. Thank you.

13 Next I want to focus attention on the availability
14 of data reporting in Postal Service costs.

15 The Commission issued Order Number 1120 directing
16 the Postal Service to provide additional cost presentations
17 on July 18th, 1996.

18 The Postal Service filed a motion for
19 reconsideration of that order on June 28th, 1996. The
20 Office of Consumer Advocate filed an opposition to that
21 motion on July 8th, 1996. A written disposition of the
22 Postal Service motion for reconsideration should be
23 available shortly.

24 A slightly different problem has arisen in regard
25 to certain Postal Service library references. In Docket

1 Number R94-1 both the Commission and participants had
2 significant problems in using Postal Service library
3 references which contained underlying data and work papers
4 supporting testimony and exhibits sponsored by the Postal
5 Service witnesses.

6 Early in the case the Office of Consumer Advocate
7 requested that the Postal Service be required to provide the
8 data files it had submitted on nine-track tape on CD ROM so
9 that they could be retrieved -- could be reviewed by
10 parties.

11 The Postal Service opposed this motion, claiming
12 it would be burdensome, although it acknowledged that CD ROM
13 was being used widely to store large amounts of data and
14 implied that in subsequent cases it might provide data in
15 this more user-friendly format.

16 While the Presiding Officer denied the OCA motion,
17 he stated, and I quote, "With respect to future documents,
18 the Postal Service is strongly encouraged to arrange to
19 provide at least its larger data files on CD ROM for the
20 convenience of both the Commission and the Intervenors."

21 Other problems with using Postal Service library
22 references arose. Several presiding officer information
23 requests were directed toward obtaining information obscured
24 by Postal Service data tapes. Corrected tapes had to be
25 submitted and eventually a technical conference had to be

1 convened.

2 Later in the case evidence presented by an
3 intervenor was flawed, as I understood it, because data and
4 Postal Service library references were so difficult to
5 access properly.

6 I will not take everyone's time by citing the
7 efforts made by the Commission staff to analyze the data in
8 Docket Number R94-1 and the numerous procedural steps that
9 were necessary before the Postal Service finally provided
10 usable information.

11 The essential point is that after the technical
12 conference of April 22nd, 1994, the Postal Service had
13 actual knowledge of how to make its library references
14 usable to the Commission.

15 Mr. Rubin, I have been told that you personally
16 have been working hard to resolve these problems. I
17 appreciate your efforts.

18 Let me state for the record that I think the
19 Postal Service should be responsible for having some
20 institutional memory. After R94-1 the Postal Service should
21 be ~~award~~^{aware} that neither the Commission nor many participants
22 in these cases have a mainframe computer. I think the
23 Postal Service should prepare library references in usable
24 formats when they are submitted pursuant to the rules
25 applicable to requests for changes in rates or

1 classifications.

2 In this case again the Postal Service has provided
3 a significant number of its backup library references on
4 magnetic tapes. Bearing in mind the problems that arose in
5 R94-1 and the indications both formal and informal that data
6 could be provided in more accessible formats, it is
7 difficult not to suspect that the continued use of magnetic
8 tapes and the continuing inability of the Postal Service to
9 provide programs so that the data on these tapes can be used
10 reflects a conscious attempt to delay or prevent the
11 Commission and the parties from evaluating this information.

12 Obviously the Commission's resources and those of
13 intervenors are not unlimited. The more resources required
14 to understand one set of data, the less resources are
15 available to understand other data sets.

16 Mr. Rubin, I would appreciate it if you would
17 convey my thoughts on this subject to the individual
18 responsible for the preparation and filing of requests with
19 this Commission.

20 Also, please convey my view that to the extent
21 that any such problems remain unresolved or that any new
22 problems of this nature arise I will expect the Postal
23 Service to consider the resolution of these problems a
24 matter of the highest priority.

25 At this time I will direct that Postal Service

1 appear at this hearing room on Wednesday, July 17th, 1996,
2 at 10:30 a.m. for a technical conference.

3 At that conference I will expect the Service to
4 provide a sufficiency of data so that the Commission can
5 access and analyze Postal Service library references using
6 available resources.

7 Does anyone have any comments or suggestions on
8 matters we haven't covered yet?

9 MR. RUBIN: I'd just like to state that we are --
10 we do have people working even this morning on this issue
11 and I am confident there has been no conscious effort to
12 delay analysis of any Postal Service data.

13 PRESIDING OFFICER QUICK: Thank you, Mr. Rubin. I
14 know you are working on this yourself. It is not a
15 reflection on you but it is a problem that we need to
16 address and work out as quickly as possible.

17 CHAIRMAN GLEIMAN: Mr. Presiding Officer?

18 PRESIDING OFFICER QUICK: Yes, sir.

19 CHAIRMAN GLEIMAN: It would seem to me in light of
20 the history associated with this repeating problem,
21 reoccurring problem and in light of the fact that the case
22 before us is primarily a rate case that if the matter is not
23 resolved to the satisfaction of the Commission and to other
24 participants promptly that perhaps a (c)(2) order might be
25 appropriate and, quite frankly, if someone wishes to view it

1 as a threat, they may.

2 I would ask the Presiding Officer personally to
3 consider such an order if this matter isn't resolved. I
4 think it borders on outrageous in light of the fact that the
5 Postal Service was on full notice and had full knowledge of
6 what was necessary, that they continue to provide data to us
7 that is in a format that neither we nor others can very
8 readily use. So while I appreciate the efforts of some in
9 the Counsel's Office to resolve this matter, be apprised
10 that I think that there is a possibility that there could be
11 monkey wrenches in the schedule that you talked about
12 earlier if this isn't resolved.

13 Thank you.

14 PRESIDING OFFICER QUICK: Thank you, Mr. Chairman.
15 Obviously, this is a matter of intense concern here at the
16 Commission and we will look forward to next Wednesday,
17 10:30, hoping to see some progress, permanent progress.

18 Does anyone have any comments or suggestions on
19 matters that we haven't covered?

20 [No response.]

21 PRESIDING OFFICER QUICK: Do any of my colleagues
22 have any comments they would like to make?

23 [No response.]

24 PRESIDING OFFICER QUICK: With that, today's
25 meeting is adjourned.

1 Thank you very much.

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

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