

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

Periodic Reporting

Docket No. RM2003-3

SUBSTANTIVE COMMENTS OF
THE UNITED STATES POSTAL SERVICE

(July 2, 2003)

On January 8, 2003, the Postal Rate Commission issued Order No. 1358, soliciting comments on proposed changes in Rule 102 regarding periodic reporting requirements. After a number of procedural steps taken to clarify the intent of the proposal and allow Postal Service management adequate time for consideration,¹ the

¹ On February 10, 2003, the Postal Service filed initial comments limited to a request for informal discussions with the Commission's staff regarding technical and other issues. The Postal Service indicated that it would file substantive comments following the informal talks. On February 12, 2003, the Commission issued Order No. 1360, authorizing the Postal Service to hold an informal technical conference "with the Commission's technical staff and the interested public." On March 11, 2003, the Postal Service hosted the informal conference, which helped to clarify the intent behind specific requirements of the proposed rules, the scope and breadth of information likely to be needed to satisfy the new rules, and the extent to which the Commission expected to publicly disclose the information produced. On March 14, 2003, the Commission issued Order No. 1363, directing the Postal Service to file a second set of comments addressing the Notice of Proposed Rulemaking, and reflecting the information gained at the technical conference by April 3, 2003. The Commission also requested that the Postal Service address in its comments a number of additional items not included in the Notice of Proposed Rulemaking. On April 2, 2003, and on May 8, 2003, the Postal Service moved for extensions of time to file its comments on the proposed rule, and on April 8, 2003 and May 19, 2003, the Commission granted the extensions.

Postal Service, on June 6, 2003, moved for an additional extension of time, to permit the Board of Governors to consider the soon-to-be released report of the President's Commission on the United States Postal Service when formulating comments on the proposed information requirements. On June 25, 2003, the Commission issued Order No. 1377, denying the Postal Service's request, and requiring the Postal Service to file its comments no later than July 2, 2003.

Although the Postal Service continues to believe that consideration of the report of the President's Commission prior to commenting on the significant rule changes proposed by the Commission in this docket would have been highly beneficial, and that no compelling need exists for its comments to be submitted in advance of the release of that report, the Postal Service nevertheless hereby files its substantive comments on the proposed periodic reporting rules.

The Postal Service's comments, which are explained at length in the following pages, can be summarized as follows: The Postal Service does not oppose many of the updates and minor revisions to the existing periodic reporting rules proposed by the Commission. However, after extensive consideration at all levels of the organization, the Postal Service finds that it must strongly oppose the general thrust of the current proposal. The Commission's apparent goal of annually auditing, replicating, investigating and manipulating the Postal Service's CRA report, and making public all of the information needed to pursue this goal, is not consistent with the limited functions and authority given to the Commission in the Postal Reorganization Act; would conflict with the Commission's duties under that Act as well as under the Administrative

Procedure Act (APA); would preempt the legislative reform process; would transgress on the managerial prerogatives of the Postal Service; would impose significant and unnecessary recurring burdens of production on the Postal Service; and would substantially impair the Postal Service's ability under the Act to protect sensitive commercial and other information against unwarranted public disclosure.

A. THE BROAD WORDING OF THE PROPOSED RULE, THE SPECIFIC NEW REPORTS REQUESTED, AND STATEMENTS MADE BY THE COMMISSION'S REPRESENTATIVES AT THE TECHNICAL CONFERENCE, ALL SUPPORT THE CONCLUSION THAT THE EFFECT OF THE PROPOSED RULE WOULD BE TO ENABLE THE COMMISSION TO OVERSTEP ITS STATUTORY BOUNDS AND INTRUDE ON THE PREROGATIVES OF POSTAL SERVICE MANAGEMENT

The wording of the proposed rule is very broad, and could potentially call for the production of virtually all information used in the production of the CRA report, from secondary, tertiary and lower inputs to the CRA model and its inputs to raw data collected by the Postal Service's data collection systems. Among the new reports sought by the Commission are:

All input data, all processing programs that have changed since the most recently completed general rate proceeding, and all computer programs used to attribute mail processing costs to subclasses, if they are used to produce the Cost and Revenue Analysis Report (CRA). Each change in attribution principles or methods from the previous report will be identified. The Postal Service shall submit a CRA-USPS Version, followed within two weeks by a CRA-PRC Version.

The proposed rule goes on to specify particular reports sought by the Commission, including spreadsheet workpapers underlying the development of segment costs by cost component with updated factors and data from the IOCS,

MODS, CCCS, RCCS systems and the Rural Mail Count, various reports underlying the Cost Segments and Components Report, the USPS Integrated Financial Plan, and quarterly RPW reports by rate category and special service.

The proposed new rule also would require the Postal Service to provide all periodic reports in a machine-readable form compatible with PCs (as opposed to the mainframe computers often used by the Postal Service). Finally, the Commission proposes to update the wording of the existing rule to match the types of reports now produced by the Postal Service.

Despite the Commission's representation that the new information to be produced is intended to be limited in scope and would not be unduly burdensome to produce,² these conclusions are not supported by the language of the proposed amendments. The Postal Service, furthermore, remains concerned that, in practice, the new rule inevitably would lead to the production of documentation on a scale and scope appropriate only for omnibus rate cases. This conclusion stems initially from the wording of the rule itself, which, as has been noted, is quite expansive in scope, and from the specific reports mentioned in Order No. 1358:

² For example, on page 5 of Order No. 1358, the Commission states:

The Postal Service typically prepares all of this documentation as support for its base-year costs in rate cases. It also produces most of it routinely each year, either in the preparation of the CRA-USPS Version, or in the preparation of the material required by Rule 103. Therefore, the revisions that the Commission proposes to Rule 102(a)(1) should not impose a significant additional burden on the Postal Service.

In a later section, the burden issue will be addressed, with a conclusion different from that reached by the Commission.

- (1) Spreadsheets supporting the CRA. (The “B” workpapers found in USPS-LR-J-57 in Docket No. R2001-1)
- (2) The CRA Model. (Filed as UPSP-LR-J-6 in Docket No. R2001-1)
- (3) Output data file and a description of the file structure for the In-Office Cost System (IOCS). (Found in USPS-LR-J-10 in Docket No. R2001-1)
- (4) The MODS-based costing spreadsheets, and SAS mail processing attribution and distribution programs needed to produce output for the “B” workpapers. (USPS-LR-J-55 in Docket No. R2001-1)
- (5) Spreadsheets that develop equipment and facility-related costs. (USPS-LR-J-54 in Docket No. R2001-1)
- (6) Output data file and a description of the file structure for the City Carrier Cost System (CCCS). (The “Z” file, found in USPS-LR-J-12 in Docket No. R2001-1)
- (7) Supporting material, including spreadsheets, programs, and documentation for load time variabilities.
- (8) The underlying route-type data needed to produce the in-office worksheets in the “B” workpapers.
- (9) Output data file and a description of the file structure for the Rural Carrier Cost System (RCCS), and the Rural Mail Count. (USPS-LR-J-71 in Docket No. R2001-1)
- (10) The fiscal-year reconciliation of statement of revenue and expenses to audited financial statements and reallocation of expenses by component. (USPS-LR-J-8 in Docket No. R2001-1)
- (11) Transportation workpapers 31 and 57.

Order No. 1358 at 5.

This itemized list of computer program documentation, data on current operations and finances, and other resources far exceeds the Commission’s needs, in light of its limited responsibilities outside the context of an omnibus rate case that only the Board of Governors may initiate under the statutory scheme. The amendments

would require annual public disclosure of materials that are calculated to provide much more than just information clarifying the status of the Postal Service's finances, and the relationships among costs, volumes, and revenues of its many products and services. Indeed, the CRA and Cost Segments and Components (CSC) reports themselves, which have long been made public annually, as well as the financial reports and statements already provided under the existing periodic reporting rules, provide far more detailed financial and product information than is publicly disclosed by the vast majority of private and public economic enterprises, whether regulated or not. Rather, the amendments would require materials calculated to permit thorough of the Postal Service's published reports, each year when a rate case is not pending. The materials also appear intended to enable the Commission or other parties to conduct hypothetical exercises involving alteration of key inputs and reanalysis of underlying cost behavior. In other words, the required materials appear intended to provide all the tools necessary to speculate on the effects of various alternative cost relationships, and to formulate and propose alternative rate levels, rate designs, and classification changes. These may or may not be appropriate objectives for the Commission to pursue in developing recommendations in a rate case when requested to do so by the Board of Governors, under statutory limitations. They are, however, neither necessary nor appropriate goals when the Postal Service is operating under rate schedules and classifications established, and in many cases successfully defended in court, pursuant to prior exercise of the Postal Service's and the Commission's respective functions in the statutory scheme.

Nothing in the statutory framework authorizes this level of oversight responsibility or activity for the Commission outside of a rate case. From the standpoint of public scrutiny or “transparency,” furthermore, there is no reasonable need to provide the wherewithal to permit rate case-level inquiries every year when substantial information about finances and products is already provided. Congress in the statute has already provided for audits and reports on ongoing postal finances, operations, and other matters, by certified private auditors and public institutions such as the General Accounting Office, the Inspector General of the Postal Service, and Congress itself. Beyond those reasonable limitations, Congress intended the day-to-day monitoring of detailed operations and finances to be left to the Board of Governors and postal management in an economic environment with constraints and freedoms similar to those experienced by other businesses and public entities.

The intrusive nature of the proposed rule is reinforced by comments made by the Commission’s staff during the informal technical conference held on April 3, 2003. Members of the Commission’s staff indicated that they were seeking documentation of sufficient detail and comprehensiveness to enable the Commission to replicate the production of the CRA, and test the validity of the underlying calculations and analyses. They also envisioned the establishment of a process whereby the Commission, and others, could direct questions concerning the documentation provided to the Postal Service to receive further explanation of the CRA’s development.

The Postal Service is deeply concerned that the proposed rule, both by its terms and in its likely effect, would, if put into effect as proposed, significantly disrupt the

carefully-balanced ratemaking structure established in the Postal Reorganization Act, by leading the Commission into roles and activities not authorized or contemplated under that governing statute.

1. The Commission's role is limited.

As has been emphasized repeatedly in judicial decisions, the ratemaking role of the Commission is a carefully circumscribed one. Chairman Omas succinctly put it in his recent testimony before the President's Commission on the Postal Service:

The PRC primarily is charged with reacting to requests from the Postal Service. It has no continuing responsibility to investigate, evaluate, or advise on matters that inevitably affect domestic mail rates.

Testimony of Postal Rate Commission Chairman George Omas Before the President's Commission on the Postal Service (February 20, 2003) at 18.³ While no permanent rate or classification change can be put into effect without the Commission's recommendation, the Commission does not have final ratemaking authority, which rests exclusively in its partner agency, the Postal Service.⁴ Furthermore, the Commission has no authority to initiate a proceeding to change postal rates; it must await the action of the Board of Governors, which possesses exclusive authority to initiate such proceedings through the filing of a request for changes in rates. The responsibilities of

³ Chairman Omas went on to request legislative changes which would enable the Commission to become a more active investigative and regulatory body. The proposed rules can, therefore, be interpreted as an attempt to achieve the same result without the legislative change previously acknowledged as necessary.

⁴ The Governors act upon Commission recommendations, choosing either to accept the recommendations, allow them to go into effect under protest, reject them, and, in certain circumstances, modify them. Decisions regarding the implementation date for rate, fee and classification changes are made by the full Board of Governors.

the Commission “are strictly confined to relatively passive review of rate, classification, and major service changes, unadorned by the overlay of broad FCC-esque responsibility for industry guidance and of wide discretion in choosing the appropriate manner and means of pursuing its statutory objective.” *Governors of the USPS v. PRC*, 654 F.2d 108, 117 (D.C. Cir. 1981) (quoting *United Parcel Service, Inc. v. USPS*, 455 F. Supp. 857, 83 (E.D. Pa. 1978), *affirmed*, 604 F.2d 1370 (3d Cir. 1979), *cert. denied*, 446 U.S. 957 (1980)).

Once a rate request has been made, moreover, the Commission’s conduct is constrained by a number of statutory safeguards and limitations. The Commission is to consider such requests promptly, and must issue its recommended decisions within ten months from the date of a request. 39 U.S.C. §§ 3624(a), (c). Before issuing a decision, furthermore, the Commission is required to conduct a trial-type administrative hearing on the record under sections 556 and 557 of the Administrative Procedure Act (“APA”). 5 U.S.C. §§ 556, 557. The hearing must give users of the mails, the Postal Service, and the OCA an opportunity to be heard. 39 U.S.C. § 3624(a). The evidentiary record of such hearings must provide the basis for the Commission’s recommended decision. *See Newsweek, Inc. v. USPS*, 663 F.2d 1186, 1205 (2d Cir. 1981), *affirmed sub nom. National Association of Greeting Card Publishers v. USPS*, 462 U.S. 810, (1983).

The proposed rule threatens to undercut many of these statutory provisions. Much of the new financial and operations information sought by the Commission is of such a detailed and comprehensive nature that it would permit the Commission to do far

more than merely better analyze and evaluate “trends in operating results,” a motive suggested in the order initiating this docket. See Order No. 1358 at 1. The information requested, which typically is produced only in support of Postal Service rate requests, is so comprehensive and detailed that it would enable the Commission, outside of any pending case, to attempt to annually investigate and test the accuracy and validity of one of the Postal Service’s most important financial reports. Indeed, this was one of the goals of the rulemaking indicated by Commission staffers during the informal technical conference.

More significantly, as the Commission’s staff confirmed, the new requirements are designed to allow the Commission to completely re-run the most recent, updated CRA model based on new or alternative inputs, and thereby give the Commission the capacity to develop anticipatory rate recommendations without any formal request or policy guidance from the Postal Service. To the extent that new variability analyses are conducted by the Postal Service and made part of the CRA between rate cases, the Commission’s staff made it plain that these too would be expected to be documented in such a fashion that they could be subjected to advance, off-the-record scrutiny by the Commission (and, if made public, by any interested party), including possible reanalysis of input data, respecification of regression equations, and, ultimately, generation of new variability results.

The periodic collection of information of such scope and detail simply is not consistent with the proper exercise of the Commission’s limited ratemaking functions. Although the Postal Service has for many years cooperated with the Commission’s

requests for limited amounts of information to be provided to on a periodic basis, it is not clear that all of the information currently provided under the periodic reporting rules is strictly needed by the Commission to properly conduct rate and classification proceedings or otherwise carry out its duties under the statute. It *is* clear, however, that annual or more frequent provision of the new information sought -- such as load time variability documentation, underlying route-type data needed to produce the in-office worksheets in the "B" workpapers, output data files for the Rural Carrier Cost System, and the like -- are *not* necessary for the proper exercise of the Commission's legitimate functions. The Commission has been carrying out those duties for decades without having routine and frequent access to such information.

Furthermore, while the provision of such information might be appropriate to a regulator with expansive oversight authority or investigative powers, as noted earlier, the Commission is not such an agency. The Commission is not charged with auditing the Postal Service's books on a regular basis. The Postal Service is empowered to establish and maintain its own system of accounts, without direct Commission involvement. 39 U.S.C. § 401. To the extent that an auditing function is needed, it is appropriately fulfilled by other means not involving the Commission. For example, the Postal Service regularly submits the CRA for review by outside auditors. The accounts and operations of the Postal Service also may be audited by the Comptroller General and reports thereon made to the Congress to the extent and at such times as he may determine. 39 U.S.C. § 2008(a). Postal Service data collection and reporting are also audited by Postal Service's OIG, and reviewed by the GAO.

2. The proposed rule makes vulnerable future Governors' decisions by creating the appearance that the Commission's recommended decisions are the product of extra-record considerations.

Most importantly, the Commission is not authorized to go off on its own, outside the constraints of formal, on-the-record, APA proceedings, and tinker with the fundamental cost and revenue information of the Postal Service in ways that could compromise the legitimacy of its recommended decisions, and, potentially, make vulnerable to attack the final ratemaking decisions of the Governors. On past occasions in which the Commission has demonstrated an inclination towards extra-record investigation, the courts have been quick to remind the Commission of its limitations. In Docket No. R80-1, for example, the Commission slashed \$143 million from the Postal Service's revenue requirement by recalculating Postal Service productivity using two methods not introduced during the hearings.⁵ On appeal, the reviewing court remanded, saying:

We conclude that the PRC's action violated the mandate contained in 39 U.S.C. § 3624(a) that the PRC base its decisions upon materials presented at record hearings conducted pursuant to 5 U.S.C. §§ 556 and 557. Since the PRC's productivity adjustments were not based on record evidence, they must be set aside. On remand the PRC is directed to subject its productivity adjustment rationale to the same hearing process as all other materials upon which it bases its recommended decisions.

Newsweek, Inc. v. USPS, 663 F.2d 1186, 1205 (2d Cir. 1981), *affirmed sub nom.*

National Association of Greeting Card Publishers v. USPS, 462 U.S. 810, (1983).

⁵ The Commission had sent out a Notice of Inquiry concerning its recalculation eleven days after the evidentiary record had closed and gave the parties seven days to file briefs and twenty days to comment. No discovery or cross-examination of Commission analysts was permitted.

Similarly, in Docket No. R90-1, the Commission sought to adjust the attribution of city carrier access costs via an extra-record method devised solely by the Commission and disclosed to participants only in its initial recommended decision. When the Governors of the Postal Service, in their decision remanding the issue back to the Commission for reconsideration, questioned the evidentiary and procedural validity of the Commission's cost adjustment, the Commission, in a second recommended decision, belatedly offered the parties an opportunity to file additional comments or testimony regarding the Commission's approach. Ultimately, after the issuance of additional decisions on the part of both the Commission and the Governors, the propriety of the Commission's actions was subjected to judicial review. The reviewing court concluded that the Commission's approach was procedurally defective in that it failed to provide the on-the-record scrutiny required by sections 556 and 557 of Title 5, and that the Commission's belated offer of an additional opportunity for testimony was an inadequate cure. *Mail Order Association of America v. United States Postal Service*, 2 F.3d 408, 427-430 (D.C. Cir. 1993).

To make readily and frequently available to the Commission the large amounts of detailed financial and operational information now requested, when not required by a compelling and legitimate Commission function, would be to unnecessarily create the possibility, or, at least, the appearance, that such information will be put to the illegitimate purposes condemned by the *Newsweek* and *MOAA* courts, and thereby create a potential basis for challenge to subsequent decisions of the Governors of the Postal Service. The Postal Service does not wish to add this vulnerability to an already

difficult statutory ratemaking process.

Although the Commission is empowered, under 39 U.S.C. § 3603, to promulgate rules and regulations it deems necessary to carry out its statutory functions, free from any change or supervision by the Postal Service,⁶ such authority, though broad, is not so expansive as to impinge on other sections of the Act which directly relate to the Commission's ratemaking functions. For example, in the context of ratemaking and classification, the Act specifies the types of rules that were contemplated:

In order to conduct its proceedings, with utmost expedition consistent with procedural fairness to the parties, the Commission may (without limitation) adopt rules which provide for –

- (1) the advance submission of written direct testimony;
- (2) the conduct of prehearing conferences to define issues, and for other purposes to insure orderly and expeditious proceedings;
- (3) discovery both from the Postal Service and the parties to the proceedings;
- (4) limitation of testimony; and
- (5) the conduct of the entire proceedings off the record with the consent of the parties.

39 U.S.C. § 3624(b). By the very nature of the examples enumerated, the Commission's rulemaking authority is shown to be simply that necessary to implement its limited statutory role: the efficient administration of a hearing after it has been appropriately initiated under sections 3622 and 3623. The rules now contemplated go far beyond this intended role.

⁶ “The Postal Rate Commission shall promulgate rules and regulations and establish procedures, subject to chapters 5 and 7 of title 5, and take any other action they deem necessary and proper to carry out their functions and obligations to the Government of the United States and the people as prescribed in this chapter. Such rules, regulations, procedures, and actions shall not be subject to any change or supervision by the Postal Service.” 39 U.S.C. § 3603.

3. The proposed role impinges on the powers of the Governors.

The proposed regular and frequent provision of comprehensive cost and revenue information also could impinge upon the power invested in the Board of Governors of the Postal Service to initiate rate proceedings through the filing of a formal request with the Commission. If a large amount of the information needed to analyze current Postal Service costs, revenues and volumes, and develop rate recommendations from them, were made readily available to the Commission and others, the filing of a request under § 3622(a) would become, in many important ways, a mere formality. While it would still be true that the Commission would have to await such a request before issuing a recommended decision under § 3624, virtually all of the analytical activity necessary to formulate those recommendations could become an ongoing activity of the Commission's staff. This would especially be true, if, as anticipated by the Commission's staff, mechanisms are established whereby ongoing questioning of Postal Service experts was conducted. In a sense, the possibility of an open-ended, "perpetual" rate-case is raised by the proposed new reporting rules.

Hand in hand with the Board's power to initiate rate cases is the requirement that the Commission issue its rate recommendations within 10 months. The potential undermining of this statutory constraint posed by the proposed rule is apparent. If the Commission were to possess year-round the types of financial and operations information heretofore provided only in support of Postal Service rate requests, the 10-month limitation on rate case activity would effectively evaporate. Some might contend that this is a good thing; that giving the Commission more access to information might

lead to more expeditious proceedings, and rate recommendations sooner than 10 months after the request. In this regard, it is notable that expedition in future rate proceedings was not mentioned in Order No. 1358 as an intended objective or result of the new requirements.⁷ Furthermore, the Postal Service does not believe that the provision of additional information would lead to shorter proceedings. Over the course of omnibus rate proceedings dating back several decades, the Postal Service has, often at the Commission's direction, provided increasingly voluminous amounts of supportive documentation when initiating such proceedings. It has been the experience of the Postal Service that provision of such increasingly detailed and comprehensive information has, more often than not, given rise to increased numbers of discovery requests, increasingly detailed evidentiary presentations by participants requiring rebuttal, increased numbers of information requests from presiding officers, and increased demands for evidentiary roadmaps and other documentation of the documentation. Expanded documentation generally has not led to shorter proceedings, and the Postal Service would not expect expedition in future cases to flow from the proposed new requirements.

Regardless of whether expedition would be served by the provision of detailed and comprehensive financial and operating information, any such prospects would only be attained due to a fundamental, *de facto*, unauthorized restructuring of the statutory ratemaking framework. Under the existing framework, it must be emphasized, the

⁷ It was only later, in the context of ruling on a Motion to Extend filed by the Postal Service, that the possibility that the new rule might increase the prospects for the granting of waivers in future cases was raised. See Order No. 1367 at 3.

Board is empowered to control the timing of omnibus rate proceedings, and is entitled to expect that the work of the Commission will be concentrated within a timeframe lasting no more than 10 months.

The Postal Service, and all participants, are also entitled to expect that the primary function of the Commission will be carried out in accord with the due process standards set out in the Act. The Postal Service and all other participants are entitled to a hearing on the record, with a decision based on the record of that proceeding. If the very staff that are replicating, validating, and otherwise manipulating the fundamental financial and operating information sought in this rulemaking are inevitably forming impressions and conclusions from their investigations, what is to prevent those impressions and conclusions from influencing the outcome before anyone has had their opportunity to persuade? No safeguards exist which would prevent such contamination of the hearing process, and it is difficult to imagine how such safeguards could be implemented in a practical manner.⁸ The Governors are entitled to a recommended decision free from any hint of extra-record determinations, and which gives appropriate recognition to the respective statutory roles of the Governors, the Board of Governors, and the Commission.

⁸ It is conceivable that the Commission could assign to certain staff the sole responsibility of working with periodic reporting information, while completely disassociating such staff from participation in rate and classification proceedings. Such an arrangement would hardly be practical, and would serve little purpose.

B. THE PROPOSAL IS AN UNTIMELY DISTRACTION FROM BUSINESS TRANSFORMATION AND OTHER CRITICAL GOALS OF THE POSTAL SERVICE, AND ALSO WOULD PREEMPT THE LEGISLATIVE REFORM PROCESS

With the recent signing into law of the Postal Civil Service Retirement System Funding Reform Act of 2003 (S. 380 - Public Law 108-18), the Postal Service, together with the mailing community, has gained vitally important breathing room to meet the important operational and financial challenges that the Postal Service faces in the modern communications marketplace. This reprieve from looming rate increases also should provide to the mailing community an unprecedented opportunity to revitalize the use of the mail as an engine for economic growth during times of economic uncertainty. As the Postmaster General recently told attendees at the Postal Forum:

For the next 2 1/2 years, at least, we can focus our attention where it belongs. Think about that. Let's put talk about rate increases aside. Let's focus on what we all need to do to recover from the recession and grow the business.

Remarks By Postmaster General/CEO John E. Potter, National Postal Forum, New Orleans, Louisiana (April 14, 2003).

This vitally important reprieve from ratemaking concerns is now threatened by the spectre of year-round rate-making style data-production, documentation, and, perhaps more significantly, ongoing inquiries by the Commission, Postal Service competitors, and any other interested party with the time and resources necessary to pursue such activities. At precisely the time that the Postal Service has set out to take advantage of the ratemaking hiatus to focus all of its resources on the important tasks at

hand, the Commission is contemplating an unprecedented, unwarranted and unauthorized increase in the Postal Service's regulatory overhead.

The proposed expansion of the Commission's limited statutory role is doubly ill-timed in light of the ongoing effort to secure legislative reform of the current framework for setting rates. The important work of the President's Commission on the United States Postal Service is ongoing. Among the ideas presented to that Commission for consideration is the suggestion that the Commission's limited statutory role be expanded from that of a responsive ratemaking partner to a more powerful regulator with ongoing oversight and subpoena authority. The President's Commission will soon issue its report on this and other matters, and the issues involved in reworking the current ratemaking mechanism will return to the Congress for further debate and consideration, and, it is to be hoped, legislative action. As the Congress goes about the challenging work of adapting the Postal Service's governing statute to the demands of the modern communications marketplace, a number of competing interests and objectives undoubtedly will be weighed in the balance. Among these, certainly, will be elements such as the Postal Service's need for flexibility and rapid responsiveness to the fast-moving markets in which it competes, and the appropriate mix of powers and responsibilities of the Postal Rate Commission in a new ratemaking regime.

The periodic reporting rules now proposed by the Commission would preempt this ongoing legislative process, in favor of a self-initiated, immediate attempt to bootstrap increased oversight, data collection, and investigatory powers for the Commission. If put into effect as proposed by the Commission, the proposed revisions

would secure for the Commission objectives that it simultaneously seeks in the legislative arena. See Testimony of Postal Rate Commission Chairman George Omas Before the President's Commission on the Postal Service (February 20, 2003) at 18.⁹

The Postal Service strongly opposes this extra-legislative approach to postal reform. The Postal Service firmly believes that if the balance of powers between the two federal agencies charged with requesting, recommending and deciding upon new rates and classifications is to be fundamentally altered, those alterations should be

⁹ In his testimony before the President's Commission, Chairman Omas expressed the following concerns regarding the Commission's statutory authority:

Moreover, I believe the President's Commission should examine the balance of responsibilities between the PRC and the Postal Service, and consider whether adjustments in four specific areas might be beneficial.

(1) The PRC primarily is charged with reacting to requests from the Postal Service. It has no continuing responsibility to investigate, evaluate, or advise on matters that inevitably affect domestic mail rates. Giving the PRC authority to review and report as necessary on Postal Service efficiency and data collection would benefit all concerned.

(2) The PRC does not have authority to subpoena the Postal Service to produce existing information the PRC needs to meet its obligations under the Act. This can prevent the PRC from successfully evaluating issues properly raised in its proceedings.

(3) The PRC presently can not direct the Postal Service to collect essential information. In 1987 the PRC strongly urged the Postal Service to collect certain data necessary to accurately allocate the costs of city delivery carriers. Now, after more than 15 years and repeated requests, the over \$10 billion of annual city carrier costs still are allocated using the same data found inadequate in 1987.

(4) Lastly, I urge this Commission to focus on two flaws in the current complaint procedure, 39 U.S.C. § 3662. The current law allows aggrieved mailers to engage in a potentially long and expensive procedure after which they may get no relief, even if their claim is found valid.

made in the context of the legislative process which is now underway.

C. THE PROPOSED RULE WOULD IMPOSE SIGNIFICANT, UNNECESSARY, AND RECURRING BURDENS ON THE POSTAL SERVICE

The Postal Service is also concerned about the potentially large burden of production inherent in the proposed rule. The rule would have the direct and immediate effect of significantly increasing the resource and time burden imposed on the Postal Service to produce information for the Commission's use. In the context of omnibus rate and classification proceedings before the Commission, the Postal Service produces tens of thousands of pages of documentation, data and testimony, much of which is devoted to explanation of its cost, revenue and volume estimates. The burden of producing this information is so heavy that the Postal Service must begin its preparation approximately six months in advance of a case filing in order to ensure that it is ready for the filing.

To this already onerous burden, the Commission now proposes to add the *annual* (or, in some cases, more frequent) obligation to produce similar documentation underlying two versions of each year's Cost and Revenue Analysis Report. In the course of the informal technical conference with the Commission's staff, it became clear that the intention of the proposed rule is to allow the Commission, even in years in which no proceedings are pending, to easily audit, replicate and manipulate key financial data of the Postal Service, including all new or revised data collection systems, special studies, or costing methods employed in the CRA for any given year.

Although the Commission has indicated in written and verbal comments that it is

initially interested only in documentation that is routinely produced by the Postal Service, and readily available, it is apparent to the Postal Service that both the broad wording of the proposed rule, and the expressed intentions of the PRC staff, make it inevitable that documentation of the type normally provided only in rate proceedings will be required to fulfill the Commission's goal of auditing and replicating the CRA report. This burden is further compounded by the Commission's requirement that all documentation be provided in a format which is easily utilized on personal computers.

In the days following the informal technical conference, Postal Service staff has attempted to quantify the additional burden that the new rule would impose. At this time, the best available estimate indicates that a minimum of 78 ½ additional person-days would be required to comply, assuming that no special studies are undertaken in the relevant year and incorporated in the CRA. This effort would be borne every year under the rule, in conjunction with the production of the CRA report.

As noted, however, this estimate is very conservative because it does not include the effort needed to document any special cost studies undertaken to update cost variabilities and other key information used in the production of the CRA. Under the proposed rule, any such study would need to be extensively documented in order for its new data and methods to be understandable to and useable by the Commission. For example, the Postal Service is currently updating the costing information relating to facility costs, as well as the costs of city delivery. It is estimated that for these studies to be sufficiently documented, another 6 person-months will be needed for the city carrier study, and 12 person-months for the facility study. Additional resources may be

required to produce PC-readable versions of certain data, as well as to redact or recode certain information to protect confidential or sensitive information, as is commonly done with documentation provided in Commission proceedings. It can be readily seen that the additional burden of documentation imposed by the rule will, at the very least, create a disincentive to incorporate new study results in the CRA outside of formal rate proceedings.

Finally, it is likely that, having received the information required annually by the new rule, the Commission, and others, will wish to direct questions to the Postal Service regarding that information. At the informal technical conference, the PRC staff indicated that they would be interested in developing a mechanism whereby such questions would be answered by the Postal Service, even when no Commission proceeding is pending. Because such ongoing inquiries outside the context of a pending Commission proceeding are not contemplated by the current statutory scheme, no procedures exist to accommodate such questioning, and no track record exists which would allow an estimate of the associated burden to be reliably estimated. If such pseudo-discovery were similar to that encountered by the Postal Service in omnibus rate cases, one would expect the burden associated with responding to questions on new cost studies to be very large indeed. The very open-endedness of such extra-record questioning not only raises serious concerns regarding the potential burden involved, but reinforces the fundamental objection that the Postal Service and the Commission should not be spending their time and resources devising ratemaking procedures that not only are unsupported by our governing statute, but actually conflict

with that statute.

D. THE PROPOSED RULE WOULD SUBSTANTIALLY IMPAIR THE POSTAL SERVICE'S ABILITY UNDER THE ACT TO PROTECT SENSITIVE COMMERCIAL AND OTHER INFORMATION AGAINST UNWARRANTED PUBLIC DISCLOSURE

Just as the proposed amendments would tend to subvert the respective roles of the Postal Service and the Commission in the statutory scheme, they would also substantially impair a critical component of the Postal Service's status and functions under the Act. The proposed amendments would significantly undermine, if not nullify in certain respects, the structure of the Act, insofar as it enables the Postal Service to protect sensitive information from unwarranted public disclosure.

As noted above, the Act authorizes the Commission to require the production of Postal Service data and information only in the limited context of the exercise of its functions under Chapter 36. Section 3624(b) authorizes the Commission to create rules governing the disclosure of information in its proceedings. Section 3603 also gives the Commission general authority to adopt rules necessary to carry out its functions, as defined in the Act. Significantly, however, nowhere does the Act authorize the Commission to require that the Postal Service report or publicly disclose information pertaining to its activities, except in connection with Commission proceedings under Chapter 36.¹⁰ Similarly, nowhere does the Act give the Commission general oversight authority over the conduct of Postal Service business, or list the Commission as one of the entities with responsibility for auditing or reviewing postal finances or operations.

¹⁰ Section 404(b) also gives the Commission certain functions in connection with the closing or consolidation of postal facilities.

Furthermore, section 3624 directs the Commission to conduct proceedings under specific provisions of the Administrative Procedure Act (APA, 5 U.S.C. §§ 556-557) as a prerequisite to recommending changes proposed by the Postal Service. Both section 3624 and the APA, however, ensure that the Postal Service will be afforded the rights and status of a party to the proceedings entitled to due process, including the opportunity to object to unwarranted disclosure of information.

With respect to the public disclosure of information pertaining to Postal Service activities generally, the Act explicitly applies the Freedom of Information Act (FOIA) to the Postal Service. 39 U.S.C. § 410(b)(1). As with other federal entities, under the FOIA, the Postal Service is expected to carry out a general policy favoring public disclosure of information when it is requested, except as specifically exempted in the FOIA. Except in certain respects unrelated to the specific substance of each agency's functions, moreover, the FOIA itself does not dictate what reports or information each agency must routinely publish.¹¹

In recognition of the Postal Service's distinct status,¹² the Act creates specific exemptions from mandatory disclosure. Two of these exemptions are tailored to take account of the Postal Service's character as a commercial enterprise expected to

¹¹ For example, the FOIA generally directs agencies to publish final opinions, policy statements, indexes and administrative staff manuals and instructions affecting members of the public. See *generally* 5 U.S.C. § 552(a)(2).

¹² As both a public agency and a distinct commercial enterprise, the Postal Service was given considerable freedom and authority. Consistent with reasons justifying postal reorganization, Congress freed the Postal Service from many of the statutory obligations that apply to other federal government entities. It specifically applied other laws selectively in 39 U.S.C. § 410 and elsewhere.

operate like a business, and as a party in Commission proceedings. Subsection (2) of 39 U.S.C. § 410(c) provides that the FOIA shall not require the disclosure of

Information of a commercial nature, including trade secrets, whether or not obtained from a person outside the Postal Service, which under good business practice would not be publicly disclosed.

Subsection (4) exempts

Information prepared for use in connection with proceedings under Chapter 36 of this title.

Nothing in the Act suggests that Congress intended to qualify or limit the Postal Service's ability to exercise its discretion in interpreting and applying these provisions, which were clearly intended to be integral to the Postal Service's status and functions under the statutory scheme. Nothing in the Act, furthermore, explicitly gives the Commission the authority to decree or determine the disclosure of information outside the exercise of its specific functions in rate and classification proceedings. Yet, that result is the likely, if not inevitable, consequence of the Commission's proposed amendments. Under the logic of the Commission's approach in these rules, the Commission, as a practical matter, may conclude that any information and material deemed to be pertinent to the Commission's functions in rate and classification proceedings routinely must be made public when those proceedings are not pending, even if the Postal Service has determined that the information is exempt from public disclosure under the Act and the FOIA.

The Commission's practice and pronouncements regarding periodic reports and its application of the FOIA amplify this conclusion. First, the Commission's longstanding

policy and practice is to make public all of the materials currently furnished by the Postal Service under current Rule 102. The Commission has, furthermore, repeatedly characterized the materials it proposes to add to the periodic reports in this rulemaking as information that should and would be made publicly available.¹³ This expectation was reinforced by statements made by its staff during the informational conference held early in this docket. In fact, the Commission has cast the key issue presented by the current rulemaking as “how much financial transparency is appropriate between omnibus rate proceedings, and whether the Commission should play a passive or active role on costing methodology issues between proceedings.” *Id.* at 2.

Second, even if the Commission were to consider maintaining the confidentiality of the materials provided, its previous approach to requests under the FOIA for Postal Service records in its custody suggests that the Postal Service’s preferences for non-

¹³ See Order Denying Postal Service Motion for Further Extension, Order No. 1377, Docket No. RM2003-3, at 1 (June 25, 2003):

Among other things, these amendments ask the Postal Service each year to provide the Commission *and the public* with documentation of its routine financial reports at a moderate level of detail similar to the documentation that accompanies its requests for changes in rates.

(emphasis added)). See *also* Order Lengthening the Time for Answers to the Postal Service Motion to Further Extend, Order No. 1375, Docket No. RM2003-3, at 1 (June 12, 2003)

The immediate issue raised by this rulemaking is whether certain routinely generated financial reports that the Postal Service provides to the public during omnibus rate proceedings *should also be provided to the public* between those proceedings.

(emphasis added)).

disclosure may not be followed. In this regard, the current rulemaking may be compared and contrasted to the Commission's and the Postal Service's experiences under 39 U.S.C. § 3663.

In section 3663, Congress required the Commission to produce an annual report on international mail. Subsection (b) provided:

[T]he Postal Service shall provide to the Postal Rate Commission such data as the Commission may require to prepare the report ...

Early in the first docket established to develop the Commission report to Congress for FY 1999 international mail activities, United Parcel Service (UPS) attempted to persuade the Commission to establish rules dictating provision of particular records to the Commission, and later to convert the exercise into a forum for public disclosure of commercial information relating to the Postal Service's competitive international mail business.¹⁴ The Commission deferred creation of rules applicable to the pending docket,¹⁵ and it declined to incorporate a process for public disclosure within the report docket, but it adopted as a mechanism for disclosure the procedures for production of records under the FOIA.¹⁶ This determination was followed by several requests under the FOIA from UPS and a trade publication for disclosure of the Commission's report to

¹⁴ See Petition Of United Parcel Service to Institute Rulemaking Proceeding to Study International Costs and Revenues (Dec. 16, 1998); Motion of United Parcel Service to Provide Public Access to International Mail Data Requested in Order No. 1228 and for Opportunity to Provide Public Comment, Docket No. IM99-1 (March 26, 1999).

¹⁵ Order Addressing Petition of United Parcel Service for Rulemaking, Establishing International Mail Docket and Soliciting Comments, Order No. 1226, Docket No. IM99-1, at 2 (January 15, 1999).

¹⁶ Order Denying United Parcel Service Motion to Provide Public Access to International Mail Data, Order No. 1245, Docket No. IM99-1, at 4-5 (May 21, 1999).

Congress (which contained commercially sensitive information obtained from the Postal Service), and for disclosure of all Postal records provided to the Commission to aid in developing its report.¹⁷ Although the Commission consulted the Postal Service regarding its views on disclosure of data and information contained in the Commission's report to Congress, it refused the Postal Service's request that it refer internal Postal Service records to the Postal Service for determination and reply. This referral procedure would have followed Department of Justice guidance to government agencies on FOIA procedures. Rather, the Commission took the position that any Postal Service records coming within its custody could be disclosed by the Commission in its own discretion.

The Commission faced the same issues involving disclosure of Postal Service records pertaining to international mail in a rulemaking proceeding it initiated to create procedures to implement 39 U.S.C. § 3663.¹⁸ In that rulemaking, the Commission established rules that itemized Postal Service reports and materials that it needs to develop the annual report to Congress. The Commission again declined to incorporate a process for disclosure of data and information, relying once again on FOIA procedures to determine public disclosure.¹⁹ It did, however, address a debate over the appropriate standards for disclosure of commercial information under the FOIA and

¹⁷ See Notice of Proposed Rulemaking Concerning Commission Reports Prepared under 39 U.S.C. § 3663, Docket No. RM2000-1, at 10-11 (Nov. 18, 1999).

¹⁸ Notice of Proposed Rulemaking Concerning Commission Reports Prepared under 39 U.S.C. § 3663, Docket No. RM2000-1 (Nov. 18, 1999).

¹⁹ See Department of Justice, Office of Information 1 (Nov and Privacy, *OIP Guidance: Referral and Consultation Procedures*, FOIA Update, Vol. XIII, No. 3 (Summer 1991).

under 39 U.S.C. § 410(c)(2). In practice, the Commission has rejected the Postal Service's interpretation of the standard applicable to disclosure of sensitive commercial information.²⁰

The principal difference of opinion between the Postal Service and the Commission over the exempt status of commercial information lies in their respective interpretations of 39 U.S.C. § 410(c)(2). The Postal Service believes that Congress intended in that provision to place the Postal Service on an equal footing with private commercial enterprises. According to this view, the Postal Service is entitled to withhold information and data if good business practice would not dictate disclosure. The Postal Service believes that standard business practice, particularly that of its competitors, provides reliable guidance on whether disclosure would be mandated. By contrast, the Commission would adhere to a higher, narrower standard. Under the Commission's view, the Postal Service must demonstrate a likelihood of particular commercial harm from disclosure in order to justify not disclosing information requested

²⁰ Notice and Order Adopting Final Rule 103, Order No. 1285, Docket No. RM2000-1, at 28-33 (Feb. 15, 2000). The Commission has subsequently changed its position on the processing of FOIA requests for Postal Service internal records within its custody as a result of the international mail report development process, and it is now willing to refer such requests to the Postal Service. Furthermore, in acting on the requests arising out of Docket No. IM99-1 and subsequent dockets, the Commission has largely taken positions consistent with the Postal Service's views regarding the exempt status of the commercially sensitive records that were requested. Nevertheless, the Commission continues to hold the view that it has the discretion to take responsibility for answering FOIA requests for Postal Service records, without following the DOJ guidance on referral to the agency that produced the records. Moreover, although the Commission agreed with the Postal Service in determining not to disclose a substantial amount of the international mail information requested by UPS, in some respects it disagreed, and disclosed information contrary to the Postal Service's views.

under the FOIA. In other words, if the Commission were faced with a request for Postal Service data, it could require that the Postal Service convince the Commission that the information is exempt by demonstrating to the Commission's satisfaction that a specific harm would follow disclosure. This approach would transform the disclosure of Postal Service commercial information and data, in effect, into a regulatory appeal process, in which the Commission sits as arbiter of what Postal Service information should be made public. Alternatively, the Commission could reserve the right to determine disclosure unilaterally.²¹

The Postal Service believes that, with some exceptions, the majority of the

²¹ Apart from a possible deliberate determination by the Commission to provide Postal Service records under the FOIA, or to publish them without a request, the Postal Service believes that adequate precautions to prevent inadvertent disclosure should be taken for exempt materials that remain in the Commission's custody. In this regard, we note that the Commission has refused Postal Service requests that Postal Service records provided pursuant to 39 U.S.C. § 3663 be returned after they have been used. As a result, substantial international mail records, and, under the proposed amendments, other records pertaining to the domestic CRA and CSC reports, would remain in the Commission's custody indefinitely. This contrasts with procedures in Commission rate and classification proceedings where materials provided under protective conditions are typically returned to the Postal Service following termination of the case.

In the international area, the Postal Service's concern has been amplified by at least two instances in the recent past when confidential information has been posted on the Commission's public web site. In one instance, the Commission developed an exhibit summarizing sensitive cost data and placed it on the web site. In the limited time the summary remained available to the public, before the Postal Service brought the situation to the Commission's attention, a competitor of the Postal Service gained access to the information. As late as last week, the Commission inadvertently posted on its public web site a complete copy of its Report to Congress on international mail for FY 2002 containing confidential data and information.

information designated by the Commission's proposed rules consists of commercial information that would not be disclosed under good business practices. For the most part, the materials the Commission would establish as new periodic reports consist of documentation and data related to reports that, at a higher level of aggregation, the Postal Service already voluntarily makes public. As noted above, the information currently provided in the CRA and CSC reports and other reports meets or exceeds the types of data normally publicly disclosed by most commercial entities, even those subjected to federal or state regulation. The materials the Commission is proposing to add to periodic reports, however, embody detailed information concerning highly disaggregated elements of the Postal Services finances and operations, including information specific to particular facilities. They would provide valuable information and insights to competitors in many of the Postal Service's product lines. Furthermore, to the extent that the program documentation and current operating data underlying the published reports reflect changes the Postal Service may propose in subsequent proceedings initiated under Chapter 36, premature disclosure could interfere with existing business relationships with customers and competitors. At the least, disclosure before the Postal Service was able to develop and present its case to the Commission could compromise the Postal Service's position as a litigant by creating an unfair advantage for participants who might oppose the Postal Service in the litigation. Premature disclosure would also deprive the Postal Service of the benefits of confidentiality to which it is entitled under due process.

Eventual disclosure of the same or similar information in a rate case, once it is

filed, does not invalidate either the logic of non-disclosure when a case is not pending, or the Postal Service's authority to withhold the information from public disclosure. Under existing rate and classification case filing requirements and procedures, the Postal Service is required to provide full documentation and data supporting for the CRA and CSC reports incorporated in a base year consisting of a single fiscal year. For over thirty years, the Commission has found that level of production adequate to perform its functions under the Act. By contrast, the Commission's proposed rules would require the same level of production every year, whether a case is filed or not. In light of the potential for complication, confusion, or commercial damage resulting from premature disclosure during non-rate-case years, as well as the impairment of the Postal Service's status as a litigant in future proceedings, the Postal Service believes that disclosure would not be warranted, and that the materials would be exempt from mandatory public disclosure.

In the context of public disclosure and the FOIA, therefore, the Postal Service believes that the Commission proposed amendments raise several troubling implications. First, the Commission's views on its authority and responsibility under the FOIA could eviscerate the protections against unwarranted public disclosure that Congress carefully crafted in the Act. The Postal Service was given distinct prerogatives to exercise its own discretion in determining whether public disclosure of information relating to its operations and finances is warranted. Congress established the good business practice standard as a companion to the Postal Service's unique status and responsibilities under the statutory scheme, not the Commission's. It is the

Postal Service, furthermore, that has decades of practical experience operating as a competitive commercial entity, not the Commission. Yet, the Commission's interpretation of its own authority would arrogate to it the power to take the Postal Service's discretion out of its hands by establishing procedures which, if followed, would give the Commission physical custody of Postal Service records that the Postal Service has long believed should not be disclosed prematurely when a rate case is not pending. The Commission's comments in this rulemaking suggest strongly that the Commission may have already prejudged whether these data and materials should be made available to competitors and potential adversaries. Even if that is not the case, the Commission's prior views and practices in handling FOIA requests for Postal Service commercial records would, in effect, establish an unwarranted bureaucratic mechanism leading to the "adjudication" by the Commission of requests for Postal Service records outside of Chapter 36 proceedings. Just as Congress never intended to give the Commission a wider oversight or regulatory role than is currently embodied in the Act, it patently never intended to create such a mechanism.

Second, the Postal Service and the Commission disagree in critical respects on the proper standard justifying non-disclosure under 39 U.S.C.410(c)(2). In the past, the Commission has maintained that typical business practice does not equate to "good business practice" under the Act. The Commission, furthermore, has been inclined to inject its own policy judgments in applying the standard to requests for Postal Service records. In any event, the Commission has continued to maintain that the burden is on the Postal Service to demonstrate that disclosure would cause commercial harm, and

that it must articulate the logic of its position with regard to particular consequences. In several instances in the past, however, the Postal Service has strongly disagreed with the Commission's, analysis, reasoning, and conclusions in this regard. The Postal Service's contemporaneous and continuous interpretations of section 410(c)(2) in a variety of commercial settings over thirty years have established a reasonable and workable interpretation of the exemption. In many situations, by virtue of the nature of the commercial environment, good business practice is precisely what other businesses typically do. In other words, the mutual consequences of deviating from those practices would result in situations that Congress intended to allow the Postal Service to avoid, namely, giving other firms an unfair advantage. The result would be amplified in circumstances where only one firm, the Postal Service, was required to disclose. Furthermore, one reason that competing firms are so careful about disclosing commercial information is that they often cannot predict precisely what uses a creative and aggressive competitor might make of commercial information, particularly if it were combined with other information that might be obtained from public or private sources.

Finally, with regard to the materials identified as future periodic reports, the Commission's proposed amendments could virtually nullify the exemption provided in section 410(c)(4) for information prepared for use in connection with Commission proceedings under Chapter 36. Clearly, that provision was included in the Act to protect the Postal Service's status as a litigant in upcoming Commission proceedings. Yet, the thrust of the proposed rules, as well as the comments by the Commission's staff during the technical conference, demonstrate that one of the primary motives of the proposed

amendments is to take the pressure off the ten-month limit on rate proceedings by permitting premature exposure of the basis for proposed changes to create a “head start” on analyzing and formulating responses to the Postal Service’s proposals. That determination directly conflicts with the Postal Service’s determination that premature disclosure could compromise its position as a litigant.

E. FINAL CONSIDERATIONS

While the Postal Service has grave concerns about the broader implications of some aspects of the proposed rules, the Postal Service does not oppose all portions of the proposal. For example, within subsection (a) (Annual Reports) of Rule 102, the problems appear in proposed paragraphs (1) and (2). On the other hand, the Postal Service does not oppose the proposed changes in paragraph (10), concerning Billing Determinants, or the addition of paragraph (11), concerning the Postal Service’s Integrated Financial Plan. (Paragraphs (3) through (9) appear to remain unchanged.) Also, with respect to Annual Reports, in Order No. 1363 (March 14, 2003), the Commission solicited comments on an additional change to the rule, which would add to the required information the set of input data and calculations used to produce annual Total Factor Productivity estimates. The Postal Service has been voluntarily providing the Commission with that information on a regular basis, and would not object to an extension of the proposed rule to incorporate such a provision. Similarly, with respect to subsection (b) (Quarterly Reports), the Postal Service supports the proposal to eliminate paragraph (3) concerning Investment Income Statements, to leave paragraph (2) concerning ODIS unchanged, and to expand paragraph (1) to provide finer level of

detail in quarterly RPW reports. And in subsection (c) (Accounting Period Reports), the Postal Service does not object to the addition of paragraph (4), relating to OPRES (On-Rolls and Paid Employee Statistics).²²

F. CONCLUSION

For the reasons stated above, the Postal Service opposes the proposed changes to the Commission's periodic reporting rules, with the exception of the minor updates and revisions indicated.

Respectfully submitted,

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July 2, 2003

²² Conversely, the Postal Service does not perceive any need for routine submission of the so-called HAT report, relating to the Postal Service's Active Employee Statistical Summary. The HAT report includes a good deal of miscellaneous information about postal employees, such as tax-withholding status, savings bond purchases, breakout by state, and life insurance options. Most of this information has no apparent relationship to ratemaking.

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document in accordance with Section 12 of the Rules of Practice.

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