

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

Periodic Reporting) **Docket No. RM2003-3**
)

**REPLY COMMENTS OF AMERICAN BUSINESS MEDIA
(July 16, 2003)**

Pursuant to Order No. 1377, American Business Media hereby replies to the “Substantive Comments of the United States Postal Service,” filed on July 2, 2003.

The Postal Service occupies a unique role as a regulated governmental service provider that faces strenuous price competition (for a modest amount of its volume). In its comments, it appears to have largely ignored its responsibilities as a government agency providing a public service to the nation’s citizens at what are supposed to be just and reasonable rates. Instead, by arguing that less information in the hands of the regulator and its customers is better than more information, and that providing information later is preferable to providing it earlier, the Postal Service has embraced the position one would expect from a regulated, private sector concern.

Thus, throughout its comments, the Postal Service pays scant attention to the need to improve both the process before the Commission and the rates to be recommended, devoting virtually all of its attention to how its litigating position can best be protected. While this motive is understandable, it is nevertheless inappropriate.

American Business Media will not respond in detail to the thirty-nine pages submitted by the Postal Service, primarily because the Commission’s staff is far more

prepared to deal with that detail than is American Business Media. Instead, we will limit these reply comments to a few general themes.

As stated above, the Postal Service appears to believe that any rules that interfere with its decision-making are objectionable. It summarizes its opposition to the proposed reporting requirements (at page 3) with a shotgun blast: adoption of the proposal, it asserts, would conflict with the Commission's authority and duties, as well as with the Administrative Procedure Act, would impose substantial and unnecessary burdens on the Postal Service, would interfere with prerogatives of management and would impair the Postal Service's competitive position.

To be sure, enlarging the Postal Service's data production requirements would impose a burden (although one that is likely to shrink over time once the appropriate reporting systems are in place). As the Postal Service itself says (at 6), "the amendments would require materials calculated to permit the thorough [sic: review?] of the Postal Service's published reports, each year when a rate case is not pending."

That, of course, is precisely the point. With data available on an on-going basis, not only would the Commission be better prepared for a rate filing, but the Postal Service's customers would not bear the burden of having the ten or twelve feet of papers, plus computer material, dropped on them with the expectation that they can review, understand, question and refute those portions that are relevant in time for the Commission to issue a recommended decision in ten months. If the Postal Service is to

be heard to complain about the burden of assembling the data, perhaps it should pause to consider the burden on its customers.¹

American Business Media submits that not only would the procedures before the Commission be faster if the proposed rules are put in place, the results would be better. Although the Postal Service (at 16-17) mildly disputes the notion that “giving the Commission more access to information might lead to more expeditious proceedings,” its substantive reaction—as opposed to the lead argument that the Commission did not list expedition as one of its goals—is that, in its undocumented experience, when it introduces “increasingly detailed and comprehensive information,” such largesse provokes more discovery and information requests.

American Business Media does not necessarily challenge the notion that the provision of more detailed information can provoke that response, especially the first time that the more comprehensive information is offered. But if the information is useful, and surely the Commission would not ask for it if it were not, the greater documentation that results is a good thing, not a bad one. What the Postal Service is really saying is that if it withholds relevant information, the parties and the Commission will not know what questions to ask, and the case can be over sooner. Perhaps. By this logic, the Postal Service should produce even less information in order to speed up rate cases. We doubt that would be the result, because the first few weeks, or months, would merely be spent seeking the withheld data and fighting over production.

¹ The Postal Service says (at 22) that it must begin to prepare a rate filing six months before the filing date. Again, imagine the burden on ratepayers and the Commission if it produced less information. In any event, the preparation time would undoubtedly shrink if the type of material now produced only to support a rate filing were produced on an on-going basis.

While the Postal Service's added burden arguments have some basis in reality, its contention that the Rate Commission would intrude on the Postal Service's managerial prerogatives does not. Although the Postal Service extensively and largely correctly explains the distinct roles of the Postal Service and the Commission, it fails to explain precisely how the collection of information proposed here "simply is not consistent with the proper exercise of the Commission's limited ratemaking functions."

The Commission's primary function is to recommend postal rates that, in its view, are consistent with the Postal Reorganization Act on the basis of the best available information. The best that the Postal Service can offer in opposition to the proposal are unexplained premises, such as the assertion (at 11) that annual information of the type sought is not necessary, and then conclude that, because the Commission has done its job historically without the data provision arrangement now proposed, the data are, *a fortiori*, unnecessary. This logic would lead the Postal Service to abandon its network integration modeling, scrap all of its automation equipment, do away with motorized routes, and return to the methods of yesteryear.

After much rhetoric, the Postal Service arrives at the heart of the issue at page 34, where it provides its true motivation for its position and, while doing so, explains clearly why that position should not prevail. It states:

At the least, disclosure before the Postal Service was able to develop and present its case 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.

American Business Media submits that what the Postal Service fears is actually the loss of the enormous advantage it obtains by springing mountains of data, new costing methodologies and hundreds of proposed rates upon the Commission and other parties a mere ten months before a heavily litigated case with dozens of active parties must be resolved.²

Although it is axiomatic that regulated entities seek to minimize the scope of regulation, no one, especially an establishment of the federal government charged with rendering a public service, should be taken seriously when it argues that the production of information on which rates will be based sooner, rather than later, deprives it of an “advantage” to which it is entitled.³ As for the final sentence quoted above, in which the Postal Service without citation claims that it has a constitutional right to “the benefits of confidentiality,” American Business Media submits that, despite the recent Supreme

² As American Business Media has demonstrated numerous times, ten months is a remarkably short time for this process to take place. Litigated electric utility rate cases at the Federal Energy Regulatory Commission, which involve fewer dollars and participants, are typically measured in years, not months.

³ To the extent that the Postal Service has legitimate objections to producing information that will hurt its competitive position, appropriate procedures can be developed to shield that information from competitors, as they have been at the Commission and at other regulatory agencies.

Court rulings, the right to privacy does not extend to the Postal Service's desire to withhold information relevant to a rate proposal until the last possible minute.

Respectfully submitted,

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July 16, 2003

CERTIFICATE OF SERVICE

I hereby certify that I have this 16th day of July, 2003, caused a copy of the foregoing document to be served upon the United States Postal Service and the Officer of the Commission.

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