



POSTAL RATE COMMISSION

Washington, DC 20268-0001

Office of the Secretary

October 29, 2004

Mary Anne Gibbons  
Senior Vice President, General Counsel  
United States Postal Service  
175 L'Enfant Plaza, SW  
Washington, DC 20260-1100

Dear Ms. Gibbons:

I am writing on behalf of the Commissioners in response to the letter I received from you on September 17, 2004 regarding the Postal Service position on providing information called for by the Commission's periodic reporting rules.

The Commissioners are concerned and disappointed by your statement that the Postal Service will not provide certain data and information as required by 39 C.F.R. § 3001.102, the Commission's periodic reporting rules. These rules were developed to facilitate expeditious and efficient rate and classification cases. Should the Postal Service continue to withhold this basic, explanatory material, it will seriously hamper the Commission in the exercise of its obligations under current law. This would be directly contrary to frequent Postal Service statements recognizing that our organizations have distinct but complementary functions under current law, and must respect each other's duties and obligations. It is also contrary to the broad public policy consensus on the benefits of increased Postal Service transparency.

The Commissioners also are concerned about your statement that "the Commission has not been willing to discuss" measures to protect sensitive information produced as periodic reports. They are unaware of any instance when the Commission refused to discuss such matters, and are troubled that your statement reflects a misapprehension within Postal Service management that should not be allowed to continue.

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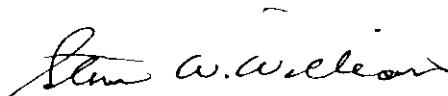
In particular, your attention is directed to PRC Docket No. RM99-2. In that docket the Commission proposed new rules to clarify and extend procedures to protect from disclosure materials containing sensitive information. The Postal Service neither criticized the proposed rules nor offered suggested improvements. In adopting the rules, which remain in effect today, 39 C.F.R. § 3004.8, the Commission made it clear that the issue of protecting sensitive information that is provided in response to periodic reporting rules would be handled by the same procedures that apply in formal Commission proceedings. See Order No. 1267 at 4, and 39 C.F.R. § 3001.31a. Under these procedures, the Commission balances the need for the subject information to meet Administrative Procedure Act fair hearing standards, against the potential commercial or other harm disclosure might cause the entity providing the information. A wide range of measures are available under these rules that allow protections to be tailored to meet the needs of each particular situation.

The Commission is certainly aware that the Postal Service considers it important to shield from public scrutiny sensitive business information, and the Commission recognizes the validity of that principle. The Commission, however, does not believe that Congress enacted, or ever intended to enact, legislation that would encourage or allow the Postal Service to act unilaterally to prevent the Commission and the public from participating meaningfully in the ratemaking process. Refusing to comply with reasonable periodic reporting rules is likely to have that effect.

Your letter concludes by stating that the Postal Service is open to dialogue on this issue. The Commission welcomes further communication to help resolve this impasse. Toward that goal, it soon will issue an Advance Notice of Proposed Rulemaking seeking input from the public on this general topic. Hopefully the Postal Service will make a positive contribution to that discussion.

Additionally, the Postal Service may wish to assure itself that it correctly understands how current Commission rules applicable to sensitive information are designed to work. If that is the case, I urge you to contact your counterpart at the Commission, Stephen Sharfman, at (202) 789-6820. Clarifications seem likely to narrow areas of contention, and may help foster a satisfactory resolution of this matter.

Sincerely,



Steven W. Williams

cc: Postmaster General John E. Potter