

ORIGINAL

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

RECEIVED

004895

POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

SPECIAL SERVICES REFORM, 1996

Docket No. MC96-3

MOTION OF THE UNITED STATES POSTAL SERVICE
FOR RECONSIDERATION OF PRC ORDER NO. 1129
OR, IN THE ALTERNATIVE,
FOR SEVERANCE OF CONSIDERATION OF THE NASHUA/MYSTIC PROPOSAL
IN A SEPARATE PROCEEDING
(August 16, 1996)

For the following reasons, the United States Postal Service respectfully requests reconsideration of Postal Rate Commission Order No. 1129 (August 8, 1996), which grants the Motion of Nashua District Photo, Inc. and Mystic Color Lab (hereinafter, "Nashua/Mystic") to expand Docket No. MC96-3 to include consideration of a Business Reply Mail (BRM) proposal. Alternatively, the Postal Service requests that the Commission exercise its authority to initiate a separate classification proceeding for consideration of that BRM proposal.

In accordance with 39 U.S.C. §3622(b), when the Postal Service files a formal Request with the Commission seeking changes in rates and fees, the Commission is required to issue a recommended decision on the Postal Service's Request.¹ The narrow goal of the Postal Service's Request in the instant proceeding is to change the fees and terms of certain discrete special services and to eliminate another. This Request does not encompass any changes to the rates or terms for the classes and subclasses of mail, nor the fees and terms of other special services

¹ Dow Jones v. United States Postal Service, 656 F.2d 786, at 790 (D.C. Cir. 1981).

[Handwritten signature]

not specifically addressed by the Postal Service's proposals.² As further indicated in the Request at page 3, "[w]hile the Postal Service recognizes that there may be . . . special services for which reforms might be advisable, and is actively considering other reforms," it included none of those matters within the scope of its Request.

More specifically, the Postal Service has further indicated that a comprehensive review of Business Reply Mail (BRM) is underway. Statement Of United States Postal Service On Plans For Business Reply Mail Reform (July 19, 1996).

In this regard, at page 10 of its Order No. 1129, the Commission stated that:

[t]he prospect of having access to more BRM cost and operational data in a subsequent case would support deferring consideration of Nashua's proposal if it were coupled with some assurance that there will be a relevant filing in the foreseeable future.

In reaching this conclusion, the Commission emphasized that:

the Postal Service has promised only that it will be in a better position "to take appropriate action" at the end of the year, action which may or may not involve a filing with the Commission. This contrasts with the situation in Docket No. MC95-1 in which the Commission refused UPS's request to include reform of the Priority Mail rate structure. An important factor in that decision was the Commission's belief that issues relating to the structure of Priority Mail would be reviewed in a future docket, based on intentions expressed by the Postal Service to make a relevant filing in the near future. See Docket No. MC95-1, PRC Order No. 1064, citing Tr. 1/30.

PRC Order No. 1129 at 10.

² Docket No. MC96-3, Request Of The United States Postal Service For A Recommended Decision On Special Service Changes, at 1.

In Mail Order Association of America v. United States Postal Service, 2 F.3d.

408, at 423 (D.C. Cir. 1993), the D.C. Circuit Court of Appeals explicitly held that:

a ratemaking . . . is inevitably circumscribed to some extent by the parameters of the Postal Service's request; it is not an open invitation for the Commission to propose wide-ranging and unrelated changes in classifications. To open up these proceedings to extraneous initiatives would undermine the timeliness concerns that govern ratemaking.

Similar, if not identical, considerations ought to control disposition of the instant proceeding. In this respect, in light of the discussion in MOAA, and acknowledging the Commission's authority to pursue classification matters under 39 U.S.C. §3623(b), as well as prerogatives to control the administration of its dockets, the Postal Service believes that there are practical and legal limits on the Commission's authority to turn a Postal Service request into something it was never intended to be. This is particularly pertinent when pursuit of an extraneous proposal in a proceeding initiated by a Postal Service request under 39 U.S.C. §§ 3622 and 3623 has the potential to interfere with the formulation of postal policy involving assessment and determination of the Postal Service's operational capabilities and objectives.

In any event, whether or not a foray into unwanted territory is circumscribed by the statutory scheme, a principle of comity ought to influence the Commission's perhaps understandable inclination to investigate a matter that is unrelated to the Postal Service's proposal, but that is raised by a participant.

At page 9 of Order No. 1129, the Commission emphasized that "since all of the special services are discrete, self-contained services, there is little procedural

- 4 -

efficiency to be lost by considering another discrete special service in this docket." While this might be a valid assessment of the administrative feasibility of litigating another issue within the context of the Postal Service's limited Request, it should not, by itself, settle the question of whether the case should be expanded. Depending on the circumstances, this rationale could justify expanding Docket No. MC96-3 to consider an unlimited number of equally discrete special services classification proposals. In particular, this administrative determination should not -- where, as here, the Postal Service objects to expanding the case -- control the status of the case under 39 U.S.C. § 3623.

Upon review of PRC Order No. 1129, the Postal Service has several serious concerns. First, the Order appears to engraft onto the Court's conclusion in MOAA the condition that the scope of a discrete rate and classification proceeding initiated in response to narrowly-defined Request by the Postal Service will be expanded to consider any unrelated classification proposal of any intervenor, unless that intervenor has extracted an explicit promise from the Postal Service to initiate Commission proceedings relevant to that proposal in the near future. If so, there appears to be no principle on which the Commission can be expected to act to deny the requests of intervenors situated similarly to Nashua/Mystic. There is surely an infinite variety of classification changes which could be proposed in relation to all of the other special services or mail classes which, until PRC Order No. 1129, were not deemed to be potentially at issue in this proceeding.

Second, the Order appears to signal a disregard for postal management's

- 5 -

prerogative to achieve specific operational and revenue goals through limited rate and classification changes. Moreover, in view of the reasoning in MOAA, the Postal Service is disappointed that the Commission would inject itself into what was, until August 8, 1996, a comprehensive internal management review of Business Reply Mail, one goal of which is to determine whether to request authority from the Board of Governors to formally pursue specific rate and classification reform proposals in the near future.

At page 9 of Order No. 1129, the Commission points to the fact that in Docket No. MC78-2, the Governors adopted a recommendation to reconfigure what was then third-class mail, notwithstanding the fact that the proposed reconfiguration was not consistent with the Postal Service's Request in that proceeding.³ It is noteworthy that the Governors expressed the view in that case that their review of recommended decisions under 39 U.S.C. § 3625

ought not be impeded by the Commission expanding the docket and delaying the processing of what should be a straightforward matter, to encompass other proposals that are not essential to what the Commission was requested to consider⁴

³ The Commission's anecdotal reference to Docket No. MC78-2 fails to acknowledge its rather contentious dispute with the Governors on the classification issues in that proceeding. No anecdotal history of Commission classification recommendations which deviated from Postal Service Requests would be complete without reference to the unpleasantness surrounding the ultimate resolution of the Docket No. R90-1 Public's Automation Rate proposal. If anything, both anecdotes serve as reminders that much care should be taken to allow classification reform proposals to develop in a manner which best affords postal management the opportunity to fully consider and review their operational and financial consequences.

⁴ Decision Of The Governors Of The United States Postal Service Regarding
(continued...)

More recent history suggests that the Commission has found a productive and accommodating approach to responding to the need of postal management to thoroughly consider significant classification reform proposals prior to litigation. The Commission's more recent practice of deferring to management's need to thoroughly review the operational and financial aspects of various reforms is one that has worked well to avoid the unfortunately contentious resolution of classification issues than was experienced in Docket Nos. MC78-2 and R90-1.

As an example, one need look back no farther than to the Commission's Docket No. R94-1 approach to consideration of intervenor mail classification reform proposals, when it was known that the Postal Service was engaged in the relatively comprehensive, yet then only vaguely defined, internal classification reform review process which ultimately resulted in the Request filed in Docket No. MC95-1. There was no promise by the Postal Service in Docket No. R94-1 that specific classification proposals would be included in Classification Reform I. Nevertheless, the Commission considered it appropriate to give weight in Docket No. R94-1 to postal management's plans to pursue classification reform in the future when it evaluated intervenor classification proposals in that docket. See, PRC Op. R94-1, at I-4. In Docket No. MC95-1, PRC Order No. 1064 (June 30, 1995) took into account management's ongoing consideration of reform of expedited parcel service as a basis for deferring consideration of Priority Mail

⁴ (...continued)

Recommended Decision Of The Postal Rate Commission On Bulk Third-Class Mail (December 4, 1979).

- 7 -

classification proposals of interest to United Parcel Service. Likewise, the Commission saw the wisdom of deferring consideration of nonprofit rate and classification reform in Docket No. MC95-1, which ultimately became the subject of Classification Reform II, Docket No. MC96-1. See, PRC Op. MC95-1, at V-251-252. To the extent that deferral of Commission action depends upon a commitment to future action by the Postal Service, the Postal Service finds strong similarities between its commitment to explore expedited parcel service reform⁵ -- which was sufficient for the Commission to avoid premature consideration of Priority Mail reform -- and the commitment reflected in its July 19, 1996, Statement On Plans For Business Reply Mail Reform.⁶

PRC Order No. 1129 also can be expected to have a chilling effect, not only on the current review of Business Reply Mail by postal management, but also on the ongoing exchange of ideas between the Postal Service and the universe of Business Reply Mail customers who would be affected by and interested in any changes the Postal Service may be contemplating. A fully robust and candid exchange of pre-decisional views on the future of BRM among postal managers

⁵ See, Docket No. MC95-1, Request Of United States Postal Service For Recommended Decisions On Classification Reform Of First-, Second-, and Third-Class Mail, at 3-4; and Tr. 1/30.

⁶ So as not to preempt the prerogatives of the Board of Governors, which has yet to be asked to consider authorization of the filing of a Business Reply Mail rate or classification case at the Commission, the Statement could not represent categorically that such a case will be filed. So as not to pre-judge the outcome of the internal management review of BRM, the Statement also stopped short of guaranteeing that such authority will be requested.

- 8 -

would in all likelihood be inhibited if every preliminary scribbling or musing could be the subject of discovery in connection with this issue. Moreover, elevation of Nashua's concerns to litigation status will chill exchanges between the Postal Service and other BRM customers who must now choose whether to become litigants in Docket No. MC96-3.

In addition, the conversion of the matter to litigation status could require some interested parties to incur expenses associated with "being heard" in litigation which far exceed those associated with participation in informal dialogue with postal management. Injection of Business Reply Mail issues at this late date in Docket No. MC96-3 could well require parties who have otherwise chosen not to intervene in this proceeding to do so now in order to protect interests they have had no reason to expect could be at stake. Accordingly, it seems that every effort should be made to avoid putting parties at risk of exhausting their limited resources unnecessarily or prematurely.

As matters now stand, there is incongruence between the current Docket No. MC96-3 procedural schedule -- which, without the injection of BRM, shows considerable promise of being brought to a conclusion in an expedited manner -- and the Commission's decision to open the proceeding to consideration of BRM reclassification. The Nashua/Mystic proposal has implications not only for existing BRM categories, but possibly also First-Class Mail as well.⁷

⁷ At page 11 of its Order, the Commission observed that Nashua has disavowed an intent to litigate issues of the appropriate attributable cost and rate for automated BRM.
(continued...)

- 9 -

In opposition to the Nashua/Mystic Motion For Enlargement, both the Postal Service and the OCA expressed concern about the impact that expansion of Docket No. MC96-3 could have upon the current litigation schedule, particularly if discovery on BRM issues becomes contentious or protracted.⁸ Given the breadth of discovery initiated by Nashua/Mystic since the issuance of PRC Order No. 1129, the concerns voiced by the Postal Service and the OCA could be borne out in motion practice in the near future. In addition, because the Postal Service, in organizing for this Docket, had no reason to anticipate the need to assemble resources to deal with unrelated Business Reply Mail issues, the usual standard of efficient and expeditious response to discovery is likely to be difficult to achieve.

The Commission has indicated that:

if, during the course of Docket No. MC96-3, the Postal Service should demonstrate that Nashua's proposal cannot be adequately considered without a wide-ranging reexamination of the structure of BRM fees, and that such consideration must await the outcome of its current investigations, the Nashua proposal can be severed and considered in a separate phase of this docket.

PRC Order No. 1129, at 11. For the reasons stated above, the Postal Service respectfully requests that the Commission reconsider its decision to enlarge this proceeding. While the comprehensive review of BRM is underway by

⁷ (...continued)

That declaration of intent provides little solace to the Postal Service in light of the wide-ranging interrogatories filed by Nashua/Mystic in the past week alone.

⁸ Opposition Of The United States Postal Service To Nashua Photo Inc. And Mystic Color Lab Motion To Enlarge Scope Of Proceeding For Consideration Of Classification Modification With Respect To Business Reply Mail (July 24, 1996); Office Of The Consumer Advocate Response To Motion Of Nashua Photo And Mystic Color Lab To Enlarge Scope Of Proceeding (July 25, 1996).

- 10 -

management, the Postal Service believes that Commission consideration of the Nashua/Mystic proposal should be deferred until either (a) such time as is appropriate in a Commission proceeding initiated by the Postal Service for the purpose of BRM reform or the next omnibus rate case, whichever comes first, or (b) until such time as the Postal Service formally declares that it has no intention of initiating a BRM reform proceeding, at which time the Commission can exercise its authority under 39 U.S.C. §3623(b) to initiate such a proceeding.

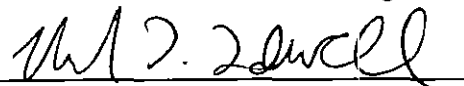
In any event, the Commission should avoid the risk of allowing the BRM "tail" to wag the Docket No. MC96-3 "dog." Should the Commission decline to reconsider its decision to undertake a review of the Nashua/Mystic BRM proposal in the instant docket, based on its authority under §3623(b), the Commission should create a separate docket. Such an approach would permit the Commission and the parties to address the Postal Service's Request on the current schedule, without the risk of having the resolution of non-BRM matters affected by the delayed initiation of consideration of BRM issues.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.
Chief Counsel, Ratemaking

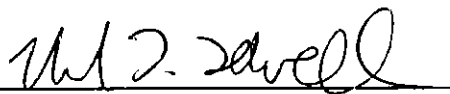

Michael T. Tidwell

475 L'Enfant Plaza West, S.W.
Washington, D.C. 20260-1137
(202) 268-2998; Fax -5402
August 16, 1996

- 11 -

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.


Michael T. Tidwell

475 L'Enfant Plaza West, S.W.
Washington, D.C. 20260-1137
(202) 268-2998; Fax -5402
August 16, 1996