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

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POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY

SPECIAL SERVICES REFORM, 1996

Docket No. MC96-3

OPPOSITION OF UNITED STATES POSTAL SERVICE TO OFFICE OF THE  
CONSUMER ADVOCATE MOTION UNDER 39 U.S.C. § 3624(c)(2) FOR  
DAY-FOR-DAY EXTENSIONS  
(August 22, 1996)

The United States Postal Service hereby oppose the Office of the Consumer Advocate motion under 39 U.S.C. § 3624(c)(2) for day-for-day extensions.<sup>1</sup> The OCA's motion for sanctions is not well founded and must be denied for several reasons.

I. BACKGROUND.

On June 7, 1996, the Postal Service filed its Request for a Recommended Decision on various special service proposals, including post office boxes, certified mail, return receipts, insured mail, postal cards, registered mail, and special delivery. No changes in rates for the classes and subclasses of mail or in the fees for other special services were proposed. Nonetheless, the Postal Service still provided full base year and test year costs and related documentation for all classes and subclasses of mail and all special services using the standard cost methodology reflected in its Cost and Revenue Analysis report ("CRA").

On June 18, 1996, the Commission issued Order No. 1120, directing the Postal Service "to submit cost presentations that reflect the Commission's Docket

<sup>1</sup> Office of the Consumer Advocate Motion Under 39 U.S.C. § 3624(c)(2) Day Extensions in the Procedural Schedule and the Ten-Month Decisional Deadline, August 12, 1996 ("OCA Motion").

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No. R94-1 attribution methodology," specifically ordering the Postal Service to produce new versions of Exhibits USPS-T-5A through J and of Exhibit C of USPS-T-1 by July 5, 1996.<sup>2</sup> On June 28, 1996, the Postal Service moved for reconsideration of Order No. 1120, but also filed a partial response, providing a comparison of Base Year 1993 costs under the Postal Service's CRA methodology and the Commission's Docket No. R94-1 Further Recommended Decision.<sup>3</sup>

On July 19, 1996, the Commission issued Order No. 1126, denying the Postal Service's motion for reconsideration and directing the Postal Service to provide costs under the Commission's cost methodology by August 5, 1996.<sup>4</sup> On August 2, 1996, the Postal Service filed a statement offering to provide costs, if the Commission so requested, using the Commission's methodology in all respects, with the exception of single subclass costs.<sup>5</sup>

On August 12, 1996, the OCA filed its motion to extend under section 3624(c)(2). On August 13, 1996, American Bankers Association and the Newspaper Association of America filed comments stating that "the conditions

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<sup>2</sup> *Order Directing the Postal Service to Provide Additional Cost Presentations, Order No. 1120, June 18, 1996.*

<sup>3</sup> *Motion of the United States Postal Service for Reconsideration of Order No. 1120, and Partial Response, June 28, 1996.*

<sup>4</sup> *Order Denying Motion to Reconsider Order No. 1120, Order No. 1126, July 19, 1996.*

<sup>5</sup> *Statement of the United States Postal Service Concerning Order No. 1126, August 2, 1996.*

appear fully satisfied for imposition of sanctions pursuant to Section 3624(c)(2)."<sup>6</sup>

II. THE POSTAL SERVICE HAS FURNISHED SUFFICIENT INFORMATION TO ALLOW THE COMMISSION AND THE PARTIES TO FULLY EVALUATE THE LIMITED PROPOSALS PRESENTED.

With its initial filing, the Postal Service presented full Base Year 1995 and Test Year 1996 before and after rates costs for all classes and subclasses of mail and all special services. Cost and revenue data were presented with the filing which would allow comparisons of cost coverages between and among all mail classes and subclasses and special services for base year and test year before and after rates. Although the Postal Service does not agree that a comprehensive examination of all rates and fees is required for a proper evaluation of the circumscribed changes proposed in this docket, its initial filing clearly provided all of the information needed for such an examination.

Moreover, with its motion for reconsideration, the Postal Service provided a comparison of Postal Service versus Commission costing methodologies for Base Year 1993. As the Postal Service stated, ratios reflecting the differences in 1993 costs under the differing methodologies could be applied to the Postal Service's costs and cost coverages in this docket to indicate what comparable costs and cost coverages would look like under the Commission's methodology. Also, the Postal Service has stated that it will provide costs in this docket incorporating the

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<sup>6</sup> *Comments of the American Bakers Association and the Newspaper Association of America on "Statement of the United States Postal Service Concerning Order No. 1126," August 13, 1996.* This Opposition should also be considered an opposition to ABA's and NAA's Comments.

Commission's methodology except for single subclass costs, if requested to do so. It would be surprising if any changes in cost coverages which would result from application of the single subclass analysis would have any effect whatsoever on the Commission's recommended decision.

Both OCA in its motion and ABA-NAA in their comments, fail to address what the Postal Service has, and is further willing, to provide. The OCA's statement that the Postal Service has refused "to furnish the tools needed to compare MC96-3 and R94-1 cost coverages" is thus demonstrably incorrect. *See OCA Motion, at 4.*<sup>7</sup> Accordingly, there is simply no basis for imposition of sanctions where the information needed by the Commission and the parties to accomplish their declared objective of an extensive comparison of costs and cost coverages for all classes, subclasses and special services has been made available.

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<sup>7</sup> OCA's further argument concerning Ramsey pricing is puzzling. On the one hand according to OCA, the Commission needs to compare cost coverages for all classes and subclasses and special services so that it can apply the "principle" of "simultaneous markups" as in Ramsey pricing in an omnibus rate case. OCA states that Ramsey prices "can only be accomplished if all rates are set simultaneously, in relation to one another." On the other hand, the OCA admits that "the Service is not espousing Ramsey pricing in this docket" because "[i]f it were "this would be a general rate case." *Id.* OCA then goes on to say that it never has agreed with the Postal Service's position on demand pricing. The Postal Service does not know how to respond to this circular and confusing argument.

III. EVEN IF THE POSTAL SERVICE PRODUCES COSTS USING THE COMMISSION'S METHODOLOGY, A SPONSORING WITNESS WILL STILL BE REQUIRED.

Neither the OCA nor ABA-NAA offer any helpful information addressing the issue of who is supposed to sponsor any costs presented using the Commission's costing methodology. In fact, they fail to even mention *Mail Order Association of America v. United States Postal Service*, 2 F.3d 408 (D.C. Cir. 1993). It is clear, however, that under *MOAA*, due process requires that the proponent of a particular costing approach must fully articulate and rationalize it on the record.<sup>8</sup> Sanctions under section 3624(c)(2) would contribute nothing toward resolving this issue and thus would serve no useful purpose. The obvious solution is for the Commission or an interested party to produce such costs and sponsor a witness defending them.

IV. SANCTIONS UNDER SECTION 3624(c)(2) ARE NOT AUTHORIZED WHERE THE POSTAL SERVICE'S INITIAL FILING WAS IN FULL COMPLIANCE WITH THE COMMISSION'S RULES, NECESSARY DATA HAVE BEEN PROVIDED, AND NO DELAY HAS BEEN SHOWN

The extraordinary relief made available under Section 3624(c) has been carefully circumscribed by Congress. First, such relief is only available with respect to requests made under section 3622. Second, the relief may be had only in narrowly defined circumstances. It must be shown that the Postal Service has

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<sup>8</sup> The ABA-NAA suggestion that the Postal Service produce costs using the Commission's cost methodology and then sponsor a witness *attacking* those costs is certainly novel. Unfortunately for ABA-NAA, it also runs afoul of the APA requirement that "the *proponent* of a rule or order has the burden of proof." 5 U.S.C. § 556(d) (emphasis added). If the Commission takes the Postal Service up on its offer to produce "Commission" costs except for single subclass costs, the Postal Service plans to provide these costs in a library reference, without a witness to sponsor them.

unreasonably delayed consideration of the rate request by failing to respond within a reasonable time to a lawful order of the Commission. Furthermore, the showing of delay may not be nebulous or speculative, it must be well-founded and definite. The Commission may extend the 10-month period only for a limited, specific time, that is, by one day for each day of delay shown to have directly resulted from the Postal Service's actions. 39 U.S.C. § 3624(c)(2).

Even assuming that relief under Section 3624(c) were available with respect to the present filing under section 3623, which we do not concede,<sup>9</sup> no party has made, or can make, a showing that the Postal Service has definitely caused a specific delay in the consideration of this case, as required by section 3624(c), let alone that the Postal Service has acted unreasonably. For example, unlike in Docket No. MC78-1, no party in recent pleadings invoking this section has made a credible argument that any cross-examination or other procedural event has been delayed, or that any case preparation has been slowed.

The Postal Service has not delayed, much less "unreasonably delayed" consideration of this case. The costing presentations presented by the Postal Service with its initial filing were in full compliance with the Commission's Rules of Practice and Procedure. In particular, Rule 54(f)(1) and (2) requires presentation of total actual and estimated accrued costs for various years. That is all the rule requires. It does not specify any particular manner of presentation or any particular

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<sup>9</sup> The Postal Service is aware that the Commission has concluded otherwise in the past. See *Docket No. MC78-1, Order Declaring Status of Proceeding Pursuant to 39 U.S.C. § 3624(c), Order No. 280, May 18, 1979.*

costing methodology.

Further, costs were presented for all classes and subclasses of mail as well as all special services, even though the proposals made in this docket are quite narrow. The Commission and the parties can compare costs and cost coverages using this information. Of course, if other parties or the Commission wish to propose their own single subclass analysis, the Postal Service has provided the data necessary to do so. The Postal Service's response to Order Nos. 1120 and 1126 has not impeded anyone else's ability to use the available information and conduct their own analysis.

Moreover, the Postal Service provided a partial response to Order No. 1120, which demonstrated, for the most part, only minor differences in the special services affected by this case regardless of whether the Postal Service's or the Commission's cost methodology was used.<sup>10</sup> The Postal Service also has offered to produce a "Commission version" of costs without incorporating the single subclass analysis.<sup>11</sup> The fact that the Commission or certain parties may prefer that the Postal Service adopt a different costing approach does not support an argument that the Postal Service has "unreasonably delayed" consideration of its

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<sup>10</sup> The cost comparisons presented by the Postal Service in response to Order No. 1120 used Base Year 1993. As the Postal Service pointed out, however, ratios developed from those data could be applied to the costs and cost coverages presented in this case to demonstrate how costs and cost coverages would appear under the Commission's methodology.

<sup>11</sup> The Governors of the Postal Service have rejected single subclass costs and have expressed an intent to continue to oppose this costing approach.

Request.<sup>12</sup> A finding of unreasonable delay is particularly unwarranted where the Commission could produce and sponsor costs under its methodology.

Thus, it is clear that the hearing is proceeding according to schedule, and, there is no reason why this case cannot continue to proceed to its scheduled conclusion. The Commission has repeatedly demonstrated in past cases that, despite the continued existence of a fundamental dispute over correct attribution of city carrier costs, it is able to produce recommended decisions without requiring the Postal Service to provide analyses of published data which attempt to replicate the Commission's single subclass costs. The Commission did so in Docket Nos. R90-1, R94-1, MC95-1, and MC96-2. The lack of a Postal Service analysis conforming to the Commission's preferred method did not require any delay. The same reality applies in equal or greater force in this instance, where the difference in disputed methodologies would yield a *de minimis* difference in results, where the data necessary to perform the requested analysis have been made available to all, and where the Commission itself is ideally positioned to perform the analysis and sponsor it on the record.

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<sup>12</sup> The conclusions of Order No. 280 are inapposite. In that instance, the Commission found that numerous changes in the testimony of Postal Service witnesses as well as the Postal Service's failure to produce certain information contributed to delay in the hearings schedule and frustrated the attempts of parties to prepare counter-proposals and rebuttal testimony. *See Order No. 280, at 25 and 27.* Neither OCA nor ABA-NAA have argued credibly in their papers requesting sanctions that they are unable to prepare for hearings or that they have been hampered in preparing whatever testimony they might submit. In fact, OCA has filed preliminary estimates of the amount of oral cross-examination it has for the Postal Service's witnesses. *Office of the Consumer Advocate Notice of Expected Amount of Oral Cross-Examination, August 14, 1996.*



In this regard it again must be emphasized that the Commission order in question does far more than merely request the provision of data or information. Rather, the Commission again has requested that the Postal Service take publicly available data, and apply to that data algorithms created by the Commission, but never sponsored or defended by the Commission on the record. The *MOAA* decision, which required the Commission to sponsor and defend such methods, supports the reasonableness of the Postal Service's response to the order.

Given the lack of a showing of any delay actually necessitated by the Postal Service's conduct, any attempt to invoke Section 3624 in these circumstances could only be interpreted as a punitive or disciplinary act, made in response to the Postal Service's continued, legitimate insistence that the Commission, and not the Postal Service, develop, document and sponsor on the record the single subclass methodology that the Commission favors, and the Postal Service rejects as unsound and invalid. Such a purpose was not contemplated by the Congress in the passage of section 3624, and would not be lawful.

In light of the above, the Postal Service does not believe that the Postal Service's response to Order Nos. 1120 and 1126 authorizes extension of this case as a result of failure to respond to a lawful Commission order. Nor would application of 39 U.S.C. § 3624(c)(2) be warranted in circumstances where the proceeding has not been delayed.

#### V. CONCLUSION

By declining to respond in full to Order Nos. 1120 and 1126, the Postal

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Service intends no disrespect to the Commission or to the ratemaking structure established by the Act. Rather, this is a disagreement over the appropriate scope of the Commission's rules, and over the appropriate entity to produce and sponsor disputed costing methodologies.

For all of the reasons cited herein, the Postal Service respectfully requests that the OCA motion be denied.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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August 22, 1996

## 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.



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