

ORDER NO. 1271

UNITED STATES OF AMERICA  
POSTAL RATE COMMISSION  
WASHINGTON, DC 20268-0001

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POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY

Before Commissioners:

Edward J. Gleiman, Chairman;  
George A. Omas, Vice Chairman;  
Dana B. Covington, Sr., Ruth Y. Goldway;  
and W.H. "Trey" LeBlanc III

Complaint on Charges for the  
Bulk Parcel Return Service

Docket No. C99-4

### ORDER ON FURTHER PROCEDURES

(Issued November 18, 1999)

*Summary.* This order clarifies the procedural status of Docket No. C99-4 and directs the parties to take steps that should enable the Commission to act on the merits of this complaint in a timely fashion.

Complainant Continuity Shippers Association (CSA) and two other parties maintain that the record is sufficiently developed and supportive of their claim that the Bulk Parcel Return Service (BPRS) rate is excessive and in violation of Title 39 policies to allow the Commission to make a recommendation on the merits. The Postal Service counters both that the claim is without merit and that the parties have failed to create any evidentiary record on which the Commission may justly base a decision. The Office of Consumer Advocate (OCA) contends that the matter should be deferred for consideration in the impending omnibus rate case, when the BPRS costs and cost coverage may be more fully explored and considered in conjunction with the cost coverages of other postal services. In the alternative, OCA suggests that a hearing to determine actual BPRS attributable costs and to set an appropriate cost coverage for an interim rate is necessary.

The Commission agrees with the Service that the record is insufficiently developed as it now stands. However, it is eminently reasonable to expect that the cost study on BPRS that was requested by the Commission and approved by the Governors as part of the Docket No. MC97-4 decision would be reviewed by the Commission in any subsequent docket dealing with the appropriate rate for BPRS. Under the limited circumstances of this case, the Commission would be derelict in its duty to act otherwise. For this reason, the Commission directs that by December 2, 1999, the Postal Service is to provide a witness to sponsor the Service's 1998 BPRS cost study and to offer testimony addressing the validity of the study, including revisions necessary to show costs using Commission methodology. All parties who thereafter wish to conduct oral cross-examination or written discovery on the cost study or any other relevant matter, or who wish to file direct testimony, should notify the Commission of their intent to do so by December 8, 1999. If parties choose to forego these options, procedures to conclude this case shall be implemented, as discussed in this Order.

*Background.* The present Complaint,<sup>1</sup> filed by CSA on June 9, 1999, challenges the rate charged for the Postal Service's bulk parcel return service. BPRS charges a flat fee of \$1.75 for undeliverable Standard (A) merchandise meeting certain eligibility requirements to be returned to the sender. Those requirements include minimum annual returns of 10,000 parcels which are machinable and weigh less than 16 ounces, payment of an annual permit fee, and compliance with accounting and auditing procedures. The Complaint maintains that the \$1.75 rate is excessive and inconsistent with the cost and non-cost criteria of the Postal Reorganization Act (Act), and further does not conform to Title 39 policies.

The root of this Complaint stems from the sharp increases in the costs and rates for Standard (A) (then third-class) single piece mail, and spans several proceedings. Prior to the institution of BPRS in October 1997, affected mailers relied upon Standard (A) single piece mail as the sole mailing option for the return of undeliverable

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<sup>1</sup> Complaint Concerning Charges and Practices Applied to Ancillary Services for Standard (A) Merchandise Mail (Complaint).

Standard (A) merchandise. In Docket No. R94-1, the average rate for Standard (A) single piece mail was increased by 43.7 percent, in response to significantly increased attributable costs for the subclass. Some bulk mailers were adversely affected by the rate increase, as the single-piece rate was an essential component of the method then used to assess forwarding and return fees for Standard (A) parcels. That method regarded the forwarding and return services in combination, and assessed return parcels a weighted fee which was based on the Standard (A) single-piece rate multiplied by a forwarding and return ratio. The ratio reflected the Service's average volume experience for forwarding mail compared to returning mail.<sup>2</sup>

On October 30, 1996, Docket No. C97-1 was initiated by a complaint filed by the Advertising Mail Marketing Association (AMMA) pursuant to 39 U.S.C. § 3662. The complaint alleged that the Standard (A) single piece rate charged to mailers receiving returned Standard (A) parcels (established in Docket No. R94-1) violated the policies of title 39 of the United States Code. However, several months later, AMMA filed a motion to hold its complaint in abeyance, in anticipation of impending "omnibus" parcel classification reform. Thereafter, on February 21, 1997, the Postal Service filed Docket No. MC97-2, which proposed the establishment of two new special postal services affecting parcels, the Bulk Parcel Return Service and Shipper-Paid Forwarding (SPF). The Postal Service subsequently withdrew the filing, citing financial circumstances and its intention to consider those services for inclusion in an omnibus rate filing. In response, AMMA filed a notice of intention to proceed with its complaint, and further requested that an informal conference on the matter be scheduled. As a result, settlement talks commenced.

The settlement discussion culminated in Docket No. MC97-4, which was initiated by the Postal Service on June 6, 1997, and consisted of the original BPRS/SPF proposal as well as a proposed settlement stipulation and agreement. A revised

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<sup>2</sup> The forwarding and return ratio was defined as the number of third-class (now Standard A) pieces nationwide which were successfully forwarded for every one piece which could not be forwarded and had to be returned. *United States Postal Service Domestic Mail Classification Schedule (DMCS)*, Section 300.07, Third-Class Mail, Forwarding and Return (March 16, 1992).

agreement, submitted by the parties and adopted by the Commission on September 4, 1997, in relevant part set the \$1.75 rate for BPRS. That rate was based on a projected BPRS total per-piece attributable cost of \$1.1190 and a cost coverage of 156 percent, the system-wide average cost coverage at that time. The underlying agreement included a provision that the Postal Service would undertake a cost study to develop unit volume variable costs for BPRS, as the \$1.1190 per-piece attributable cost was *derived through the use of proxies for the various cost components*. Cost study results were to be submitted to the Commission by October 31, 1998. The Commission accepted the settlement and recommended BPRS to the Governors. The new service was implemented on October 12, 1997.

The Postal Service performed the required cost study and submitted it to the Commission. Its BPRS cost study indicated an attributable cost of \$0.93 per piece. According to pleadings filed by CSA in the current proceeding, that figure was subsequently revised to \$1.039 per piece by the Service on September 16, 1999.<sup>3</sup> Both aforementioned attributable cost figures were derived using Postal Service methodology. In its answer to the CSA Complaint now before the Commission, the Service states that the BPRS attributable cost per piece under Commission methodology is \$1.07.<sup>4</sup>

*Procedural status of case.* CSA filed its complaint alleging that the BPRS rate violates the cost and non-cost criteria of the Act on June 9, 1999. In its July 9, 1999 answer, the Postal Service requested that Commission dismiss the complaint, as the BPRS attributable costs and markup accurately reflect both the underlying costs and the special service provided to mailers. In Order No. 1260, issued on September 3, 1999, the Commission denied the Service's motion and initiated formal proceedings to consider the complaint, including the appointment of a settlement coordinator. The

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<sup>3</sup> See, e.g., CSA Statement on Amount of Time Needed to Develop and File a Direct Case, September 24, 1999.

<sup>4</sup> Answer of United States Postal Service (July 9, 1999).

Commission further requested that CSA provide a statement estimating the amount of time needed to develop and file a direct case in this proceeding.

On September 24, 1999, CSA filed its statement in response to Order No. 1260. According to the statement, the Postal Service had been notified by CSA that CSA would stipulate to a BPRS attributable cost figure of \$1.09 for the year 2000. That value is based on the Service's own revised value of \$1.039 from its BPRS cost study, with the Consumer Price Index Urban (CPI-U) used as a roll-forward factor. Under these circumstances, CSA maintained that no testimony is needed on the cost of BPRS. Likewise, CSA argued that the remaining issue, appropriate cost coverage, does not merit a hearing, as it is a judgmental or legal issue. CSA therefore proposed that the other parties (including the Service) present briefs on the case by October 15, 1999. On its own initiative, CSA filed its brief on October 5, 1999.

In response to CSA's proposed timetable, the OCA identified several objections to proceeding on brief in its October 1, 1999 pleading, including the questionable precedent the Commission could establish by reviewing a rate between omnibus rate cases due to naturally fluctuating costs and revenue. Two alternative courses of action were suggested: (1) that the Commission conduct hearings to determine the appropriate attributable costs and cost coverage for BPRS; or (2) that the issued be deferred for consideration in the forthcoming omnibus rate case, the scenario favored by the OCA.

Both CSA and the Advertising Mail Marketing Association (AMMA) addressed OCA's objections. On October 7, 1999, CSA reiterated its support for timely review of the BPRS rate and relief for affected mailers. It distinguished the current situation, which involves a BPRS cost study which the Commission had requested when the BPRS rate was originally set, from review of the normal flux of a particular service's costs and revenue between omnibus proceedings. AMMA likewise maintained that this complaint case is an appropriate venue for the Commission's limited review of the BPRS rate in light of the cost study results. Those results arguably indicate that a potentially significant amount of rate relief is merited. It is AMMA's position that in the

interest of fairness, timely consideration of the BPRS rate by the Commission is not only justifiable, but obligatory.

On October 8, 1999, Order No. 1265 was issued, addressing further procedures for this complaint case. The Commission reviewed the parties' respective positions and directed that the Postal Service file a statement regarding its interest in presenting evidence. Should the Service decline that opportunity, the due date for responsive briefs was set.

On October 14, 1999, the Postal Service submitted its statement, indicating that it does not intend to file evidence in the case and requesting that the Commission substantively dismiss the Complaint due to a lack of an evidentiary record and the Complainant's failure to meet its burden of proof. The Service argued that as the Complainant has taken no action to create a factual, evidentiary record, the Postal Service has nothing to rebut. It is the Service's position that it would be arbitrary and capricious and a denial of due process for the Commission to issue a decision in the absence of a record and an opportunity for the Service to conduct meaningful discovery and cross-examination. On October 25, 1999, the Postal Service filed another pleading to clarify that its October 14<sup>th</sup> response had indeed asked that the Commission dismiss the Complaint on a substantive basis.

Both AMMA and the Association of American Publishers (AAP) filed responsive pleadings to the Postal Service's renewed efforts towards dismissal of the Complaint. Those parties offered support for CSA's position, arguing that the record is sufficient and that "this matter [appropriate BPRS rate and cost coverage] is ripe for consideration by the Commission."<sup>5</sup>

On November 4, 1999, CSA filed a motion requesting that the Commission admit into evidence, or take official notice of, the following materials: the 1998 Postal Service BPRS cost study, the revision to the BPRS cost study distributed by the Service in September 1999, the Docket No. R97-1 approved cost and overhead percentages for

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<sup>5</sup> Statement of Association of American Publishers (October 21, 1999).

the various classes of mail, and a Consumer Price Index-Urban of 2.6 percent for the 12-month period of September 1998 to August 1999.

On November 15, 1999, the United Parcel Service (UPS) filed a response in opposition to CSA's November 4<sup>th</sup> motion to admit evidence and to request for the Commission to take official notice of certain materials. UPS argued that that the CSA motion precludes the opportunity for the parties to conduct discovery and cross-examination regarding those materials. As such, Commission granting of the CSA motion would deny the parties' due process, be contrary to the Act and established procedure, and would deprive the Commission of the record it needs to reach a reasoned decision on the merits of the case.

*Parties' current positions.* CSA. In both its brief and its October 19, 1999 filing opposing the Service's motion to dismiss, CSA maintains that there currently exists a sufficient record in this case upon which the Commission may issue a decision. According to CSA, the formation of the BPRS rate at issue consists of three elements: the attributable cost, the roll forward factor to adjust for inflation, and the overhead/institutional cost. The BPRS cost study conducted by the Postal Service in response to a Commission Order indicates a revised attributable cost per piece of \$1.039. CSA stipulates to this figure and suggests that the Service also has concurred. As the Postal Service is the sponsor of the study, and neither the Service nor CSA objects to the \$1.039 attributable cost figure, there is no need for cross-examination of a sponsoring witness. The roll-forward factor for the years 1999 and 2000 likewise requires no cross-examination, as the Commission may take official notice of the proposed Consumer Price Index-Urban as that factor. Finally, CSA argues that the remaining element, the appropriate cost coverage, is a judgmental or legal issue which may be resolved upon consideration of the cost coverages of other postal products used for returns, in conjunction with the non-cost pricing factors of 39 U.S.C. § 3622(b). As such, no testimony is required, and the parties' briefing of the issues is a reasonable course of action.

However, while adhering to its earlier contention of the sufficiency of the record, CSA nonetheless has recently filed a motion requesting that the Commission admit into evidence, or take official notice of: the Service's 1998 BPRS cost study, the September 1999 Postal Service revision to that cost study, Docket No. R97-1 approved cost and overhead percentages for various classes of mail, and a CPI-U of 2.6 percent for the 12-month period from September 1998 to August 1999.

*AMMA.* AMMA agrees with CSA that the record is sufficiently developed to allow for Commission summary adjudication of the BPRS rate issue. Thus, an interim BPRS rate more representative of the actual costs of the service may be determined and made effective between omnibus rate proceedings without additional testimony or evidentiary hearings.

AMMA maintains that the representations made by CSA with regard to attributable cost per piece and a roll-forward factor may reasonably serve as a basis for an interim BPRS rate. The revised attributable cost per piece of \$1.04, a figure which both CSA and AMMA will stipulate to for this limited proceeding, is the result of the special BPRS cost study which the Postal Service was directed to complete as part of the Docket No. MC97-4 Revised Stipulation and Agreement. As no party has indicated an interest in cross-examining the study, a sponsoring witness is unnecessary. AMMA concedes that this cost figure has not been admitted into evidence as yet, but sees no impediment to its admittance. In a somewhat different vein, the Consumer Price Index-Urban, the proposed roll-forward factor, is argued as a reasonably accepted fact of which the Commission may take official notice. AMMA notes that the Service was given (and declined) the opportunity to challenge that figure by presenting evidence, thereby satisfying due process requirements.

As for the final determinant, a BPRS cost coverage which reflects an appropriate assignment of institutional costs, AMMA suggests that testimony is unnecessary and that the Commission need look no further than the Standard (A) mail cost coverages determined in the thoroughly litigated Docket No. R97-1. Specifically, AMMA urges the Commission to treat the mail now returning as BPRS the same as when it is first sent



into the mailstream to package recipients as Standard (A) mail. Thus, the Commission should adopt the 135 percent cost coverage currently applicable to that Standard (A) mail outbound leg.

*AAP.* AAP lends support to CSA's position, maintaining that the current BPRS rate and cost coverage appear excessive in light of the \$1.04 attributable cost figure resulting from the Postal Service's 1998 BPRS cost study. Responding to both the Service and OCA's concern about the setting of interim rates between omnibus rate cases, AAP cites Docket No. MC99-3 as precedent for the Commission's granting of interim relief from unjust rates. In that recent proceeding, initiated by the Service itself, the rates for Nonprofit and Classroom Periodicals subclasses of mail were reduced to correct a rate overcharge to mailers which inadvertently resulted from the omnibus rate case Docket No. R97-1. As to the issue of due process, AAP highlights that the Commission properly afforded the Service an opportunity to justify the current BPRS rate, which the Service chose to decline.

*OCA.* OCA objects to Commission consideration of the BPRS rate solely on the parties' briefs at this time, instead encouraging the Commission to either: (1) schedule hearings on the matter in order to determine actual BPRS attributable costs and to set an appropriate cost coverage for an interim rate; or, more preferably (2) defer the issue until the impending omnibus rate case, during which BPRS costs may be more fully explored and appropriate cost coverage may be considered in conjunction with the cost coverages of other postal services.

OCA maintains that Commission recommendation of an interim BPRS rate in this instance, where the costs of other services are not under review, would not be sound rate-making policy. Moreover, while affected parties may experience some short-term rate relief, the degree of relief does not merit disruption of the Commission's orderly administration of the Act. (Using the Service's adjusted BPRS cost figure of \$1.039 per piece, OCA claims that the current per piece cost would be reduced by only \$0.08 under the present cost coverage. Also, recalculation of the cost coverage based on the \$1.039 per piece cost, the current \$1.75 BPRS rate and the proposed CPI-U adjustment

factors for the years 1998-2000 yields cost coverages ranging from 168 percent to 160 percent, not appreciably different from the Commission-approved cost coverage of 156 percent.) Finally, OCA has expressed doubts about the accuracy of the proposed \$1.039 attributable cost figure and indicates that intensive discovery and/or cross-examination may be required to evaluate its validity.

*Postal Service.* The Postal Service contends that the Commission should dismiss the Complaint under 39 U.S.C. § 3662 as there is no evidentiary record (with CSA correspondingly failing to meet its burden of proof), and, in any event, the arguments made do not justify relief. It is the Service's position that those substantive and procedural steps necessary to create an evidentiary record on the merits of this case have not been taken. Specifically, no party has moved to put into evidence the Postal Service's October 1998 BPRS cost study, the revised attributable cost per piece based on Commission methodology and/or the proposed roll-forward inflation factor. Likewise, the rationale for the new cost coverages proposed by several parties based on comparison of BPRS to other mail classes and services should be subject to discovery and cross-examination. Finally, the Service charges that while the Commission has taken official notice of certain facts or evidence from previous proceedings, it customarily has allowed for parties to offer contrary evidence to those facts, or established procedures for parties to move past evidence into the docket record. As none of the aforementioned procedures essential to creating a factual record have been completed, a Commission recommendation at this stage would violate the precepts of due process.<sup>6</sup>

Moreover, should the Commission construe the parties' allegations as a sufficient basis for a recommendation in this case, the Postal Service argues that such "evidence" still would not support the relief requested. While cost coverages "are an issue about which reasonable minds can differ," the Service suggests that actual testimony and

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<sup>6</sup> Only after the dates for filing briefs and reply briefs had passed did CSA file a motion that the Commission admit into evidence, or take official notice of, those facts or past or present evidence which would form the record the Service maintains does not now exist. The Postal Service has not submitted a response to that motion, but UPS identified several flaws in the procedure suggested by CSA.

cross-examination on the matter would still support the higher 168 percent cost coverage (as calculated by OCA), in light of the value of BPRS to both the recipient and the original mailer. As for AAP's contention that Docket No. MC99-3 demonstrates the Commission's willingness to grant interim relief from unjust rates, the Postal Service notes that that case involved a classification change designed to correct a uniformly acknowledged, unintended rate anomaly. In contrast, the BPRS rate at issue in the present proceeding, as well as its cost coverage and relationship with other rates, are not anomalies but rather products of an intentional design.

*Commission determination.* The record, or lack thereof, on which to base a decision is the crux of the matter now facing the Commission. CSA has maintained essentially throughout this proceeding that participants basically agree on the relevant facts, and that this, coupled with consideration of the parties' legal arguments, provides a sufficient basis for a Commission recommendation. Only very recently has CSA filed a motion requesting that the Commission formally admit into evidence, or take official notice of, the Service's 1998 BPRS cost study, the September 1999 Postal Service revision to that cost study, Docket No. R97-1 approved cost and overhead percentages for various classes of mail, and a CPI-U of 2.6 percent for the 12-month period from September 1998 to August 1999. In direct contrast, the Postal Service has argued that there is no record in this proceeding, and as such, it is impossible for the Service to offer rebuttal evidence or otherwise be accorded the requisite due process.

The Commission agrees with the Postal Service that an appropriate evidentiary record for this proceeding is currently lacking. While CSA now acknowledges some concerns about the state of the record and has sought to address these issues, its most recent motion for Commission official notice and admission of certain materials will not completely solve the problem. However, as is well recognized by the federal courts, an agency's role in a proceeding such as Docket No. C99-4 is not merely to "act as an umpire blandly calling balls and strikes for adversaries appearing before it," but to take

an active role to assure that statutory policies are applied.<sup>7</sup> Thus, while the Commission cannot make an assessment on the merits of this case at present, the Commission can and will take the affirmative steps necessary to move ahead with the proceeding.

The stipulation and agreement resulting from Docket No. MC97-4, which was recommended by the Commission and approved by the Governors, specifically provided that the Postal Service undertake a cost study to develop unit volume variable costs for the Bulk Parcel Return Service. While the \$1.75 rate which was reached through use of cost proxies was deemed reasonable and well-founded for the initiation of BPRS, a cost study nonetheless was called for to establish an actual cost base for the service. Under these circumstances, the results of that study should be subject to evaluation by the Commission as part of its review of CSA's complaint.

In its November 4, 1999 motion, CSA requested that the Commission admit into evidence, or take official notice of, the Service's BPRS cost study, its revisions to the study, the Consumer Price Index-Urban for a specified time period and Docket No. R97-1 approved cost and overhead percentages for the various classes of mail. Both official notice and its court counterpart, judicial notice, rely on the proposition that that which is commonly known need not be proven.<sup>8</sup> Thus, official notice allows an agency to accept commonly known facts or technical or scientific facts within the agency's area of expertise without the necessity of having the parties introduce those facts into evidence.<sup>9</sup> Under the precepts of both due process<sup>10</sup> and the Administrative

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<sup>7</sup> *Scenic Hudson Preservation Conference v. Federal Power Commission*, 354 F.2d 608, 620 (2d Cir. 1965), *cert. denied*, *Consolidated Edison Company of New York, Inc. v. Scenic Hudson Preservation Conference*, 384 U.S. 941 (1966). See also *RKO General, Inc. v. F.C.C.*, 670 F.2d 215, 232 (D.C. Cir. 1981).

<sup>8</sup> *Wiscope S.A. v. Commodity Futures Trading Commission*, 604 F.2d 764 (2d Cir. 1979).

<sup>9</sup> *Beth Israel Hosp. v. N.L.R.B.*, 437 U.S. 483 (1978); *Baka v. I.N.S.*, 963 F.2d 1376 (10<sup>th</sup> Cir. 1992); *Wiscope S.A.*, 604 F.2d 764. See also Wigmore, *Evidence* § 2567, at 535 (3d ed. 1940).

<sup>10</sup> *UNA Chapter Flight Engineers' Intern. Ass'n, AFL-CIO v. National Mediation Bd.*, 294 F.2d 905, 909 (D.C. Cir. 1961), *cert. denied*, 368 U.S. 956 (1962); *Rhoa-Zamora v. I.N.S.*, 971 F.2d 26 (7<sup>th</sup> Cir. 1992), as modified on denial of rehearing (Nov. 4, 1992), *cert. denied*, 508 U.S. 906 (1993).

Procedures Act (APA),<sup>11</sup> parties in a proceeding must be notified of an agency's decision to take official notice, and must also be given the opportunity to offer rebuttal evidence to the noticed fact.<sup>12</sup> The Docket No. R97-1 attributable costs and cost coverages for the various classes of mail may reasonably be recognized by the Commission under both the APA precept of official notice and Commission Rule 31(j), official notice of facts.

The Commission does not regard the BPRS cost study as appropriate for official notice. The study is not accepted fact, but rather a Postal Service analysis of the costs of specific operational aspects of a particular type of service, open to interpretation. As such, the cost study, as well as any revisions due to error or analysis under Commission methodology, must be sponsored by a witness. That witness should be able to attest generally to the study's conduct and the reliability of the results in their various iterations, and may be subject to the cross-examination of interested parties (and the Commission) at a formal hearing.

At first blush, the Consumer Price Index-All Urban Consumers (CPI-U) appears to be the type of information appropriate for official notice by the Commission. The CPI-U is an index which reflects the change in price of an established market basket of goods. It is generated monthly by the Bureau of Labor Statistics of the U.S. Department of Labor. In that regard, the CPI-U may be considered as a general economic fact, trend or condition, the type of fact of which administrative agencies have properly taken official notice. However, CSA is essentially asking that the Commission recognize use of the CPI-U as a roll-forward factor for adjustment of the BPRS attributable cost figure. At this juncture in the proceedings, there is no basis to assume that BPRS attributable costs should be adjusted by the CPI-U (which may well be distinguished from generally accepted postal inflation factors) or any other roll-forward factor. Accordingly, while the

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<sup>11</sup> 5 U.S.C. § 556(e); *Heckler v. Campbell*, 461 U.S. 458 (1983); *Sarria-Sibaja v. I.N.S.*, 990 F.2d 442 (9<sup>th</sup> Cir. 1993).

<sup>12</sup> *National Classification Committee v. U.S.*, 779 F.2d 687, 695 (D.C. Cir. 1985); *Sarria-Sibaja v. I.N.S.*, 990 F.2d 442.

Commission may take official notice of the CPI-U to the extent that the figure represents a recognized inflation index, its potential application to the BPRS unit attributable cost remains at issue.

Appropriate cost coverage for BPRS likewise is a matter about which reasonable minds may differ, as the Postal Service correctly asserts. The BPRS cost coverage of 156 percent set in Docket No. MC97-4 by the Commission and approved by the Governors reflects consideration of all relevant cost and non-cost factors. Nonetheless, parties may offer viable arguments in support of other proposed cost coverages.

In light of the aforementioned considerations, the Commission now directs the Postal Service to provide a witness to sponsor the 1998 BPRS cost study by December 2, 1999. That witness need offer only testimony addressing the validity of the study, any necessary revisions, and adjustments to reflect Commission methodology. All parties interested in conducting oral cross-examination or written discovery on the cost study or any other matter, or who wish to file direct evidence, should notify the Commission of their intent to do so no later than December 8, 1999. However, given the informal discovery conducted during settlement negotiations and CSA's earlier express request that the case proceed directly to arguments on brief, the Commission anticipates that limited written discovery and/or minimal oral cross-examination of the cost study witness should suffice without compromise of due process rights.

As to the Commission's official notice of certain facts and past evidence, this Order serves only to set forth generally the Commission's viewpoint on the matter. It is not a Commission ruling on the issue. Parties who wish to move past evidence or facts appropriate for official notice into the record of the current docket should do so by December 2, 1999, and replies to any such motions will be due December 8, 1999. If no requests for discovery, oral cross-examination or the opportunity to submit additional evidence are received, the cost study and sponsoring testimony will be received into evidence and new or supplemental initial briefs may be submitted by December 14<sup>th</sup>, with reply briefs due by December 20, 1999.

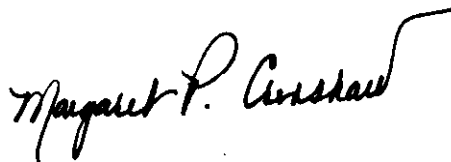
On a final note, as directed by Order No. 1260, the parties initially attempted to resolve the present dispute with the help of an appointed settlement coordinator, albeit to no avail. The Commission appreciates the parties' earlier efforts to this end. It is the Commission's hope that all parties will continue to discuss possible settlement of this case, even as the proceeding moves forward.

It is ordered:

1. The Postal Service shall provide a witness to sponsor the Service's 1998 BPRS cost study by December 2, 1999. That witness need offer only testimony addressing the validity of the study, necessary revisions and adjustments to reflect Commission methodology.
2. Parties who wish to move past evidence or facts appropriate for official notice into the record of the current docket should do so by December 2, 1999, with replies to any such motions due by December 8, 1999.
3. All parties interested in conducting oral cross-examination or written discovery, or filing direct evidence, should notify the Commission of their intent to do so no later than December 8, 1999.
4. If no requests for discovery, oral cross-examination or the opportunity to submit additional evidence are received, new or supplemental initial briefs will be due by December 14<sup>th</sup>, with reply briefs due by December 20, 1999.

By the Commission.

(S E A L)

  
Margaret P. Crenshaw  
Secretary