

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

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

POSTAL RATE AND FEE CHANGES, 2000)

Docket No. R2000-1

ASSOCIATION OF AMERICAN PUBLISHERS
COMMENTS IN RESPONSE TO NOTICE OF INQUIRY No. 1
CONCERNING BASE YEAR DATA

The Association of American Publishers hereby provides comments in response to the Commission's Notice of Inquiry No. 1 ("NOI") dated February 2, 2000. The NOI requests comments on the desirability of obtaining and utilizing FY 1999 data to analyze the U.S. Postal Service's request for a Recommended Decision on changes to rates, and to address how such information might be used by the participants and the Commission in this case.

AAP is the principal representative of the book and journal publishing industry in the United States. Its members include large and small publishing houses as well as university, religious and non-profit publishers. The members of AAP make extensive use of all classes of mail. However, they make particular use of Standard B mail, including the Bound Printed Matter and Special Standard subclasses.

AAP members who use Bound Printed Matter are facing unprecedented increases in rates. The Postal Service has requested increases in certain BPM rates of up 25.9%, the largest increase for any class of mail. This increase is based on FY 1998 data, and does not completely take into account the rate increases that resulted from Docket No. R97-1.

The burden upon the Postal Service to justify such increases is high. It is particularly important to AAP that it have the opportunity to carefully analyze and understand the FY 1999 data and its effect on the Postal Service's requested increases. The Postal Service should be

required to present such information in a manner which integrates the FY 1999 data into its current filing. AAP recognizes that in order for this to occur, the Commission may be required to modify the procedural schedule and perhaps extend the 10-month deadline in which a recommended decision must be issued. AAP believes, however, that the circumstances presented by the timing of the Postal Service's request justify such an extension.

Due Process Requires That FY 1999 Data Be Considered

As noted by the Commission's NOI, Rule 54(f)(1) of the Commission's rules requires the Postal Service to utilize as a base year for its projections "the total actual accrued costs during the most recent fiscal year for which they are reasonably available." By basing its rate case primarily on FY 1998 data, the Postal Service has not complied with the intent of this requirement -- namely that it base proposed rate increases on current and not stale data. Instead, the Postal Service chose to file its request for rate increases only weeks before more recent, and relevant, data could be taken into account. As a result, the Commission and the Intervenors have been placed in the extremely difficult position of determining how the FY 1999 data should be integrated into the current case.

Basic precepts of due process and fairness, common to any administrative law proceeding, require that this information be considered by the Commission. The Supreme Court has determined that ignoring currently available information in these circumstances amounts to a violation of due process and "the rudiments of fair play." As stated by the Court:

Estimates of tomorrow cannot ignore prices of today We have said of any attempt by a utility to favor prophecy in the first place and experience the second, that elaborate calculations which are at war with realities are of no avail. . . . A forecast gives us one rate. A survey gives another. To prefer the forecast to the survey is an arbitrary judgment.

West Ohio Gas Co. v. Public Utilities Commission of Ohio, 294 U.S. 79, 82 (1934) . The Commission also has an obligation to ensure that it acts on a complete record. If that record is not sufficient “it should see that the record is supplemented before it acts.” Scenic Hudson Preservation Conference v. Federal Power Commission, 364 F.2d 608 (2d Cir. 1965).

The FY 1999 Data Must Be Integrated Into the Postal Service’s Filing

Recognizing that FY 1999 data must be considered by the Commission in this case, AAP believes that the Postal Service should be required to do more than just release the billing determinants and the FY 1999 CRA. The Postal Service should be required to clearly and comprehensively integrate the FY 1999 data into its current filing. Two important considerations support this approach. First, the Postal Service concedes that some FY 1999 data is already incorporated into its filing and relied upon by its witnesses. See USPS Status Report at 1. AAP is concerned that the base year data has not been uniformly and consistently applied by USPS witnesses. Without such uniformity, it is possible that anomalies could occur which make true comparisons of data between witnesses difficult.

Second, AAP is also concerned that, by simply releasing the FY 1999 data without integrating the data into the Postal Service’s filing, the Postal Service will force the parties to undertake their own integration of the data. Such an undertaking is not, as the Commission notes, effortless and is likely to be performed inconsistently. Further, such an approach puts the proverbial “cart before the horse” as it would absolve the Postal Service of its responsibility and burden of demonstrating that current financial data support its requested rate increase.

**The Commission Should Modify its Procedural Schedule to Permit
Full Consideration of FY 1999 Data**

AAP recognizes that its suggested approach could result in a delay in the case particularly if the Postal Service will not commit to integrating the FY 1999 data promptly. AAP believes that in order to provide sufficient time for consideration of such data, the procedural schedule should be modified and, if necessary, the case should be extended beyond the 10-month statutorily imposed deadline.¹ Any such modification to the procedural schedule also should allow for additional discovery directed to Postal Service regarding the FY 1999 data.

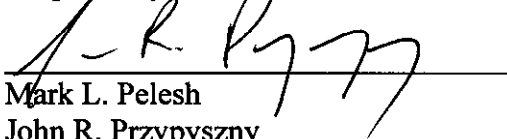
The Postal Service itself has provided a reason for such a delay. It has informed the Commission and Intervenors in this case that the FY 1999 billing determinants will not be available any sooner than the week of March 27, 2000 and that the FY 1999 CRA Report will not be available until April 3, 2000, at the earliest. Interestingly, the Postal Service states that the accuracy of these dates is based on the amount of discovery its witnesses will face. See Status Report of the United States Postal Service Regarding FY 1999 Data in Response to Notice of Inquiry No. 1. The implication of these statements by the Postal Service is that additional time must be provided in the procedural schedule to allow for the possibility that the Postal Service will not be able to provide the information by the dates in question.

Of course, the Postal Service could easily have avoided this result if it had simply waited a brief period and based its filing entirely on FY 1999 data. The difficult choices it posits with regard to the data are entirely of the Postal Service's own making and scarcely justify pushing

¹ If the Postal Service is unable to provide FY 1999 data and information requested by the Commission in a timeframe which allows the case to be completed within the 10-month timeframe, the Commission would have the ability to find that the Postal Service has caused a delay in consideration of the request and, pursuant to 39 U.S.C. § 3624(c)(2), could extend the case for each day of such delay.

forward. It is the Postal Service which has the burden of meeting the Commission's rules on the presentation of a rate case and on justifying its proposals based on the most recent data reasonably available. Moreover, ignoring the FY 1999 data would severely prejudice the Intervenor's rights to a fair hearing. A meaningful consideration of the data will require that it be presented in a usable form upon which the parties can rely and which benefits the Commission's ultimate consideration of this matter. AAP's members and other mailers who are facing extraordinary increases in postage rates are certainly entitled to whatever additional time is necessary to permit a thorough review of FY 1999 information submitted by the Postal Service, even if the ultimate result is that this proceeding must be extended beyond the 10-month deadline.

Respectfully submitted,

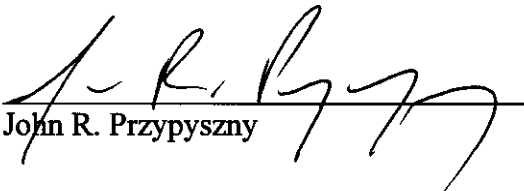


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CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document, by First-Class Mail,
upon the participants in this proceeding.


John R. Przypyszny

Date: February 23, 2000