

BEFORE THE
POSTAL RATE COMMISSION

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

COMPLAINT ON CHARGES FOR THE
BULK PARCEL RETURN SERVICE

DOCKET NO. C99-4

REPLY BRIEF OF UNITED PARCEL SERVICE
(March 10, 2000)

United Parcel Service ("UPS") files this brief to reply to certain contentions made in the initial briefs in this case. UPS submits that (1) Section 3662 of the Postal Reorganization Act ("the Act"), 39 U.S.C. § 3662, clearly confers on the Commission the authority to issue a recommended decision concerning rate changes in this complaint proceeding, but that (2) as the United States Postal Service ("Postal Service") and the Office of Consumer Advocate ("OCA") have persuasively argued, the record evidence in this case does not support any change in the existing rates for Bulk Parcel Return Service.

ARGUMENT

- A. There Is No Doubt That Section 3662 Authorizes -- Indeed, It Requires -- the Commission to Issue a Recommended Decision on Rate Changes in a Complaint Proceeding Involving a Claim that Certain Rates Do Not Comply with the Act.**
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In just a few short sentences on page 13 of its initial brief, the Postal Service argues that ". . . the Commission may not, consistent with the statute as it has been

interpreted by the Courts, recommend a new fee at this time.” Initial Brief of the United States Postal Service (“Postal Service Brief”) at 13, *citing Dow Jones, Inc. v. United States Postal Service*, 656 F.2d 786 (D.C. Cir. 1981) (“Dow Jones”). From the context of its statement, the Postal Service is apparently arguing that the Commission never has the statutory authority to issue a recommended decision on necessary rate changes in a complaint case, because only the Postal Service may initiate a rate change proceeding. *Id.* If that is in fact what the Postal Service is suggesting, the Postal Service’s position is flatly contradicted by the clear language of Section 3662 of the Act.¹

After authorizing interested parties to file complaints with the Commission when they believe that “the Postal Service is charging rates which do not conform to the policies” of the Act, Section 3662 gives the Commission discretion to hold hearings on such complaints. The section goes on to provide:

“If the Commission, in a matter covered by subchapter II of this chapter, determines the complaint to be justified, it **shall**, after proceedings in conformity with section 3624 of this title, **issue a recommended decision** which shall be acted upon in accordance with the provisions of section 3625”

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1. In a prior filing, the OCA did not take the position that the Commission may not issue a recommended rate decision in a rate case, but argued that “It is not sound rate-making policy to separate out a particular service for review when the cost of other services are not being reviewed.” Office of the Consumer Advocate Response to Continuity Shippers Association Statement on Proposed Schedule (October 1, 1999) at 4. UPS disagrees with the suggestion that the Commission should be reluctant to recommend rate changes in a complaint proceeding when necessary to bring rates into compliance with the statutory requirements. The complaint procedure exists for the specific purpose of making sure that, when necessary to comply with the Act’s ratemaking criteria, the rates mailers pay are adjusted between major rate cases.

39 U.S.C. § 3662 (emphasis added). There is no doubt about the meaning of this provision. Not only does it authorize the Commission to issue a recommended rate decision in a complaint proceeding when the complaint alleges that rates are contrary to the subchapter II ratemaking criteria and the Commission determines the complaint to be justified, but it actually **requires** the Commission to do so.

The Postal Service relies on language taken out of context from the *Dow Jones* case. But *Dow Jones* presented a vastly different situation from that before the Commission here. It did not even involve a complaint proceeding. Rather, in that case, the Commission had, on its own, initiated a **classification** proceeding under Section 3623(b) to review the propriety of rates for a certain portion of what was then known as second class mail. *Dow Jones*, 656 F.2d at 788, 789. The court held only that the Commission's authority to initiate a proceeding under the classification provisions of the statute did not include authority to issue a recommended decision on rate changes under the ratemaking provisions of the statute. *Id.* at 789, 790.

The court in *Dow Jones* based its decision on the language of Section 3622 and Section 3623; it did not even mention Section 3662. The court stated that "The PRC may not recommend a rate change **of its own motion**. . . ." 656 F.2d at 789, quoting Section 3622(a) (emphasis added). In a complaint case, on the other hand, the Commission does not trigger the rate review proceeding, nor does it recommend a rate change "of its own motion." Rather, it is the action of the complainant in filing its complaint that leads to the recommended decision. The most that *Dow Jones* stands for is that "A valid rate change proposal may not issue **from a classification**

proceeding in the absence of a rate request from the Postal Service.” *Id.* at 791 (emphasis added).

In short, there is absolutely no doubt that under the plain language of the statute, even “as it has been interpreted by the Courts” (Postal Service Brief at 13), the Commission has both the authority and, in fact, the **responsibility** to issue a recommended rate decision in a complaint proceeding initiated by “Interested parties who believe the Postal Service is charging rates which do not conform to the policies” of the statute. 39 U.S.C. § 3662. Otherwise, complaint proceedings would, for all practical purposes, be a meaningless exercise.

B. Complainant Has Not Met Its Burden of Establishing That the Current Rates for Bulk Parcel Return Service Do Not Conform to the Statute.

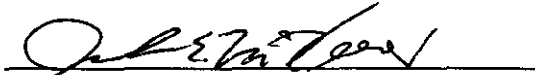
While the Commission has the authority to issue a recommended rate decision in a complaint proceeding that raises matters covered by subchapter II, the record in this case does not support any change in the current Bulk Parcel Return Service rates. We will not review the evidence here, because that has been done in the initial briefs of the Postal Service and the OCA, and such a review would therefore only be repetitive of the points made in those briefs. Suffice it to say that the Postal Service and the OCA have both amply demonstrated that the record lacks sufficient evidence to establish that the current Bulk Parcel Return Service rates “do not conform to the policies set out in [the statute].” 39 U.S.C. § 3662.

Accordingly, the Commission should transmit to the Governors of the Postal Service a recommended decision providing that the existing rates for Bulk Parcel Return Service should remain in effect.

CONCLUSION

WHEREFORE, United Parcel Service respectfully requests that the Commission issue a recommended decision finding that the current rates for Bulk Parcel Return Service are in accord with the statute and should remain in effect.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this date I have caused to be served the foregoing document on all parties to this proceeding by first class mail, postage prepaid, in accordance with Section 12 of the Rules of Practice.



John E. McKeever

Dated: March 10, 2000
Philadelphia, PA