

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

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POSTAL RATE AND FEE CHANGES, 2000

Docket No. R2000-1

POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY

MOTION OF THE UNITED STATES POSTAL SERVICE  
REGARDING THE OFFICE OF THE CONSUMER ADVOCATE DECLARATION OF  
INTENT TO FILE TESTIMONY 28 DAYS OUT OF TIME  
IN RESPONSE TO NOTICE OF INQUIRY NO. 3  
(July 20, 2000)

In accordance with Rule 30(g) of the Rules of Practice and Procedure, the United States Postal Service hereby moves that the Commission deny the Office of the Consumer Advocate permission to file testimony 28 days out of time in response to Notice of Inquiry (NOI) No. 3.

Issued on June 30, 2000, Notice of Inquiry No. 3 solicited either comments or testimony from the parties on the subject of the First-Class Mail Revenue Adjustment Factor (RAF) Error and Additional Ounce Method Change filed by the Postal Service on April 17, 2000. In issuing its Notice of Inquiry, the Commission was clear about its intentions. Parties desiring to file comments or testimony had to do so no later than July 17, 2000. All testimony responsive to the issues raised in the NOI would be subject to cross-examination on July 21, 2000. Accordingly, on July 17<sup>th</sup>, the Postal Service filed testimony; two parties, the Major Mailers Association and the Office of the Consumer Advocate, elected to file comments. However, in its July 18<sup>th</sup> Request to Conduct Oral Cross-Examination on the Postal Service's NOI No. 3 testimony, the OCA appended a Notice Of Intent To Submit Rebuttal Evidence concerning NOI No. 3 on August 14, 2000. Permission to do so should not be extended to the OCA or to any party.

One day after the July 17<sup>th</sup> filing deadline, without so much as a request for permission, the OCA unilaterally declares that it will extend that deadline for its own benefit by 28 days. In support of such an extraordinary declaration, the OCA makes no effort to show cause why it should be excused from the July 17<sup>th</sup> testimony deadline by one day, much less four weeks. In the absence of any showing of good cause, and with a schedule as tight as the remainder of Docket No. R2000-1, it would be patently unfair to provide one party 45 days to prepare testimony in response to NOI No. 3 when all other parties were bound by a 17-day deadline.

By electing to file comments in response to NOI No. 3 on July 17<sup>th</sup> -- instead of testimony -- the OCA has waived its right to file testimony responsive to the NOI. The OCA's declaration of intent to file its NOI No. 3 testimony on August 14<sup>th</sup> in the form of "rebuttal" to the July 17<sup>th</sup> testimony of Postal Service witness Fronk is no more than a pretext for taking another 28 days to accomplish what the Commission required all other parties to accomplish three days ago. If allowed, this unilateral rescheduling of the OCA's response to NOI No. 3. also would grant the OCA the unjust benefit of developing such testimony on the basis of cross-examination conducted on July 21<sup>st</sup>, when the Postal Service -- which took the Commission at its word -- had to develop its NOI No. 3 testimony without the benefit of an opportunity to cross-examine intervenor witnesses.

If the OCA were granted its requested August 14<sup>th</sup> "bite" at the NOI No. 3 "apple," the Commission would be required by considerations of due process to allow other parties an opportunity to prepare and file surrebuttal testimony in response to the OCA's August 14<sup>th</sup> "rebuttal" testimony. However, the present schedule does not

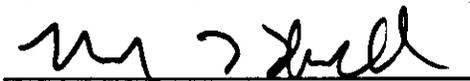
appear to permit any realistic opportunity for the due process which would be triggered by granting the OCA permission to file its July 17<sup>th</sup> testimony on August 14<sup>th</sup>. Hearings on testimony filed on August 14<sup>th</sup> begin on August 23<sup>rd</sup>. To ensure due process, the Commission would need to permit parties to cross-examine the OCA's rebuttal witness and then give those parties a reasonable opportunity to prepare surrebuttal testimony for which, a reasonable opportunity for cross-examination would have to be provided. Other parties should not be put in the extraordinary position of juggling such additional burdens at the same time that they are already simultaneously preparing witnesses for scheduled rebuttal, cross-examining other parties' witnesses and writing briefs.

This is not a situation where the OCA was unaware of the subject matter of the NOI until its June 30<sup>th</sup> issuance. These matters were brought to their attention on April 17<sup>th</sup> in response to their interrogatories. The OCA elected not to address the issues in the seven testimonies it filed on May 22<sup>nd</sup>. Given an extraordinary second opportunity to address these issues in testimony responsive to NOI No. 3 on July 17<sup>th</sup>, the OCA again declined. Accordingly, in the absence of any compelling justification, the OCA should not now be permitted a belated third opportunity to bite the very apple it has twice refused.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

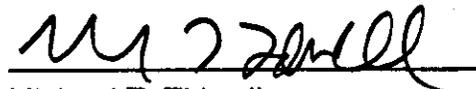
By its attorney:



Michael T. Tidwell

**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.

A handwritten signature in black ink, appearing to read "M. Tidwell", written over a horizontal line.

Michael T. Tidwell

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