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

Before Commissioners:

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

Postal Rate and Fee Changes

Docket No. R2000-1

ORDER RESOLVING PROCEDURAL ISSUES ARISING FROM
NOTICE OF INQUIRY NO. 3

(Issued July 31, 2000)

On June 30, 2000 the Commission issued Notice of Inquiry No. 3 requesting participants to provide comments or testimony on two items surfaced in a discovery response provided by the Postal Service.¹ The two issues were the First-Class revenue adjustment factor (the subject of OCA/USPS-106(d)) and the method for projecting test year First-Class additional ounces.

The Notice of Inquiry provided that comments or testimony should be submitted by July 17, 2000, and that any testimony submitted would be received into evidence on July 21, 2000. Three participants submitted comments,² and one participant, the Postal Service, submitted testimony by witness Fronk in the format of a statement.

¹ See Response to Interrogatory OCA/USPS-106(d) [Fronk]. The Postal Service filed errata to the testimony and workpapers of witness Fronk (USPS-T-33) together with this response.

² Comments of the Office of the Consumer Advocate in Response to Notice of Inquiry No. 3, filed July 17, 2000; Comments of Major Mailer's Association on the Commission's Notice of Inquiry No. 3, filed July 17, 2000; and Comments of American Banker's Association and National Association of Presort

At the hearing on July 21, 2000 Major Mailer's Association (MMA) objected to the receipt of witness Fronk's statement into evidence. The Presiding Officer admitted this testimony into evidence subject to the objection, and allowed MMA to provide additional written arguments. The Presiding Officer also granted the additional request of Major Mailer's Association that its objection, and other contentions raised regarding proper procedural status of responses to Notice of Inquiry No. 3 be certified to the full Commission. Tr. 34/16532.

The other issues placed before the Commission by the Presiding Officer's certification include arguments presented by American Banker's Association and National Association of Presort Mailers (ABA/NAPM), and the opposition of the Postal Service to a statement of intent from the Officer of the Consumer Advocate (OCA) that it would file testimony on this subject on August 14, 2000. Comments on these issues were due on July 27, 2000.

Postal Service testimony in response to Notice of Inquiry No. 3. MMA and ABA/NAPM both contend that the Postal Service should not be allowed to file testimony supporting a change in the method for projecting First-Class additional ounce volume. Neither party objects to the change in the First-Class revenue adjustment factor submitted by the Postal Service. The change in the First-Class revenue adjustment factor reduced the test year revenue requirement of the Postal Service. The alternative method for projecting First-Class additional ounce volume served to largely offset the revenue adjustment factor correction.

Both MMA and ABA/NAPM contend that the Postal Service combined the two adjustments during a period when multiple documents dealing with a variety of complex issues were being filed on a daily basis, and that this procedure served to hide the

offsetting nature of the two corrections. They believe this procedure effectively denied due process to participants with limited resources, and should not be permitted by the Commission.

These arguments are not persuasive. Even assuming that the Postal Service combined these changes in an attempt to disguise their offsetting impact, all participants were given clear notice of the separate impact of these two changes when the Commission issued its Notice of Inquiry No. 3, which set out this information with detailed supporting attachments.

Notices of Inquiry are significant documents in Commission cases. They are requests from the full Commission to all participants for advice on issues of particular importance. Few Notices of Inquiry are issued in any case, and the publication of the Commission's request for comments or testimony on the First-Class additional ounce projection methodology eliminates any justification for a claim that the Postal Service prevented participants from becoming aware that changes had been suggested.

The Commission is responsible for developing recommended decisions on Postal Service requests that are based on record evidence. When the Commission is concerned about the sufficiency of the evidentiary record on an important issue it may provide participants with the opportunity to submit additional testimony. That is what led to Notice of Inquiry No. 3. Participants may take advantage of such opportunities or not as they see fit. Similarly parties may choose whether or not to submit testimony or rebuttal testimony on particular topics. The Commission recognizes that trial strategy can be an important consideration affecting whether and when a party presents evidence on any particular issue. However, when the Commission determines the evidentiary record would benefit from additional testimony on a subject, and requests testimony as it did in Notice of Inquiry No. 3, it will not refuse to accept any proffered testimony into the record absent extraordinary circumstances. No such circumstance has been shown here.

MMA and ABA/NAPM contend that the Postal Service should be limited in its opportunities to adjust methods for projecting test year results. Wholesale methodological changes could change a Postal Service Request into a moving target and seriously disadvantage participants. In this instance, the Postal Service contends that recent actual results made it question its initial methodology for estimating First-Class additional ounce volume. This single change does not transform the Postal Service Request into a moving target.

MMA and ABA/NAPM are correct in their allegations that the impact of this change was masked to some degree by its combination with the offsetting adjustment to the revenue adjustment factor. It is possible, although not certain, that the Postal Service intended to minimize public awareness of the offsetting effect of its adjustments. However, Notice of Inquiry No. 3 should have made all participants fully aware of the implications of each aspect of the Postal Service adjustments.

Responsive testimony from the Office of the Consumer Advocate. OCA included within its Comments in response to Notice of Inquiry No. 3, a statement indicating its intention to file testimony on this issue on August 14, 2000, the date when participants are to file final rebuttal testimony. The Postal Service objected that any testimony responsive to Notice of Inquiry No. 3 was to be filed on July 17, 2000, and that allowing OCA to submit testimony 28 days late would prevent the Postal Service from responding.

OCA then offered to provide its testimony on or before July 31, 2000, so that the Postal Service would be able to provide responsive testimony along with its other surrebuttal testimony, on August 14, 2000. On July 27, 2000, OCA provided its views on the issues certified to the Commission, and filed testimony rebutting the Postal Service response to NOI No. 3 along with a motion for leave to file rebuttal testimony.³

³ Office of the Consumer Advocate Conditional Motion for Leave to File Rebuttal Testimony, filed July 27, 2000.

The Postal Service was apparently made aware that OCA would follow this path. Its response to the issues certified to the Commission argues that OCA should be prevented from filing any rebuttal.⁴

The OCA rebuttal testimony will be accepted. Postal Service contention that OCA waived its opportunity to rebut other participants when it failed to provide testimony on July 21, 2000 has no basis.⁵ OCA has recognized the Postal Service's interest in submitting surrebuttal on this issue, and has provided its testimony as promptly as possible after the Postal Service filed its response to Notice of Inquiry No. 3. The Postal Service will be able to review this material, cross-examine it during the hearings scheduled for August 3-4, 2000, and prepare whatever surrebuttal it deems necessary for submission on August 14, 2000.

As a result of following this procedure, the Commission will have a complete and balanced record before it on the appropriate method to use to project First-Class additional ounce volumes in the test year.

It is ordered:

1. The Major Mailer's Association objection to admission into evidence of Postal Service witness Fronk's testimony in response to Notice of Inquiry No. 3 is denied.
2. Requests from Major Mailer's Association and American Banker's Association/ National Association for Presort Mailers that all testimony, cross-examination, and legal argument relating to Notice of Inquiry No. 3 be stricken from the record is denied.

⁴ Response of the United States Postal Service to Intervenor Pleadings Related to Notice of Inquiry No. 3, filed July 27, 2000, at 10-11.

⁵ OCA could have made a serious case for its right to provide rebuttal testimony even as late as August 14, 2000. Certainly, if the Postal Service had not provided testimony on July 21, 2000, but some other participant had, the Service could have submitted rebuttal testimony on August 14, 2000.

3. The 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 filed July 20, 2000, is denied.

4. The Office of the Consumer Advocate Conditional Motion for Leave to File Rebuttal Testimony, filed July 27, 2000, is granted.

By the Commission.

(SEAL)

A handwritten signature in black ink, reading "Margaret P. Crenshaw". The signature is written in a cursive, flowing style.

Margaret P. Crenshaw
Secretary