

**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

Docket No. R2000-1

**Initial Comments Of Major Mailers Association
Regarding Issues On The Board Of Governors Second Remand**

By Order No. 1305, issued March 9, 2001, the Commission gave notice that, on March 5, 2001, the Postal Service Board of Governors ("Governors") rejected the Commission's Opinion And Further Recommended Decision, issued February 9, 2001 ("Further Recommended Decision") and that, on March 6, 2001, the Postal Service submitted its request for further reconsideration. Pursuant to the procedures established in Order No. 1305, Major Mailers Association ("MMA") hereby submits the following initial comments on the issues presented.

Order No. 1305 requests that the parties comment on the issues before it and the following three questions specifically:

1. Can the Commission lawfully recommend higher rates as requested by the Governors?
2. Should the Commission recommend higher rates as requested by the Governors?; and
3. *If* the answer to the first two questions is yes, how should higher rates be developed?

Order No. 1305 at 2-3 (emphasis added). As set out below, MMA recommends no change from the disposition of issues reflected in its February 9 Further Recommended Decision.¹ MMA does appreciate the Postal Service's need for prompt action and guidance in this proceeding as it prepares its next omnibus rate increase request and trusts that the Commission will act promptly on the latest reconsideration request.

¹ In its Further Recommended Decision, the Commission made two changes to the rates originally recommended in its Opinion and Recommended Decision, issued November 13, 2000. Those changes, which affect Certified Mail and Bound Printed Matter, would have the effect of increasing Postal Service revenues by \$83 million annually. The Governors rejected these changes as well. Governors' Decision at 6. There appears to be no sound logical or policy basis for the Governors' rejection of these two changes that would have a positive effect on the Postal Service's financial picture. Accordingly, MMA

I. The Commission Should Not Recommend Higher Rates As Requested By The Governors

MMA recognizes that the order in which the Commission asked its three questions is different than the order in which MMA is taking up the questions. Nevertheless, MMA respectfully suggests that the **only** question that the Commission need ask itself under the circumstances is “**should** there be any further increase in the revenues for the Postal Service in this proceeding?” The answer to this question, MMA submits, must be “no.”

The reason for reordering the questions and the answer to this the central question should be obvious. The Postal Service, interested parties, and the Commission engaged in the 10-month statutorily prescribed procedure for testing the Postal Service’s request for increased revenues. The outcome of that process was the November 13 Opinion and Recommended Decision (“November 13 Recommended Decision”) in which the Commission determined, based on the record evidence before it, that the appropriate revenue requirement for the Postal Service was \$68.8 billion.² As noted above, the changes made by the Commission in the Further Recommended Decision would have the effect of increasing Postal Service revenues by an additional \$83 millions annually. With those changes, the Service’s total annual revenues should be only slightly less than the Postal Service requested in this case.

In its January 12, 2001 comments in response to the Postal Service’s first request for reconsideration, MMA stated:

MMA’s primary position is that the Commission should reaffirm its decisions on the revenue requirement issues remanded by the Governors. The Commission’s decisions are reasonable and grounded on substantial record evidence. The Postal Service’s December 20, 2000 memorandum in support of higher revenues and adjusted rates and fees provides no logical or factual reasons for the Commission to retreat from its findings and conclusions in the November 13, 2000 Opinion And Recommended Decision. If the Commission does reaffirm the revenue requirement determinations remanded by the Governors, there will be no need to adjust the rates and fees recommended on November 13, 2000.³

recommends that the Commission once again include these changes in its response to the request for further reconsideration.

² November 13 Recommended Decision, Appendix G, Schedule 1.

³ See MMA’s January 12 Comments at 1.

Except for the revenue requirement changes made as part of the rate changes for Certified Mail and Bound Printed Matter, which changes MMA accepts, the Commission reaffirmed its basic determinations on the revenue requirement issues in the February 9 Further Recommended Decision.

Nothing has occurred since then that causes MMA, or should cause the Commission, to change its basic views. There is nothing new in either the Governors' Decision or the Postal Service's pro forma request for further reconsideration that could possibly cause the Commission to change its decisions on the issues placed before it. Neither the Governors nor the Postal Service have responded in a substantive manner to the Commission's offers to present new evidence or point out where the evidence relied upon by the Commission was not probative. Indeed, the only new assertion the Governors make is the statement that:

Last month, the Chief Financial Officer told us that the Postal Service stands to lose between \$2 billion and \$3 billion this fiscal year, which is the rate case test year.

Governor's Decision at 4.

There are several problems with this statement that foreclose the Commission from relying upon it, or even **considering** such "evidence," as the basis for modifying its prior revenue requirement recommendations.⁴ First, the magnitude of newly projected revenue shortfall demonstrates, at least for MMA, that throwing additional revenues at the Postal Service in the short run is not a reasonable solution. Even if the Commission lawfully could turn a blind eye to the substantial record evidence, giving the Postal Service \$800 million more revenue annually clearly will not solve the problem of an alleged \$2-3 billion deficit. Moreover, the size of the projected revenue shortfall proves, if indeed there were any doubt, that the "problem" is primarily one of the Postal Service's inability to make accurate projections of costs and revenues in this proceeding.⁵ More attention to accurately projecting known and measurable changes in

⁴ Aside from the fact that this hearsay statement is inherently unreliable, it lacks context. The Commission and the parties cannot examine the underlying assumptions upon which the statement was predicated. Accordingly, accepting this "evidence" would violate the most fundamental due process rights of affected mailers.

⁵ MMA recognizes that the Postal Service is not alone in failing to anticipate the quickness and depth of the recent national economic reversal of fortunes.

specific costs and revenues rather than wholesale increases in the non-specific contingency factor is the key to addressing that problem.⁶

Finally, no useful purpose will be served by increasing Postal Service revenues at this time in response to belated, unreliable claims that the Service's deficit is ballooning. The Commission must put the Governors' latest claims in their proper perspective. The \$2-3 billion deficit apparently reported by the Chief Financial Officer, while large in the absolute sense, represents only 2.9% - 4.3% of the Postal Service's total revenue requirement --approximately \$69 billion. Neither the Governors nor the Postal Service have alleged, nor could they, that a shortfall of this magnitude poses an imminent threat to the financial viability of the Postal Service or will jeopardize mail service. Moreover, there are measured, responsible steps that can be taken to address the problem. The Postal Service is taking one such action by acting expeditiously to prepare and file a new omnibus rate increase as soon as possible. Getting that process underway as rapidly as possible will allow the Commission and all affected parties to examine and test actual record evidence, i.e., without compromising the parties' due process rights, just as the Postal Reorganization Act intends. Another measured step that can and has been taken is to provide for the timely recovery of a reasonable portion of the losses actually experienced by the Postal Service through the provision for recovery of prior year losses. This relatively unique feature of postal rate making effectively insures that the Postal Service will not suffer any irreparable harm from the deficit it may be running currently.

For all of these reasons as well as those set forth in the January 12 comments of MMA and the Coalition, the Commission should stand firm on its earlier dispositions of the issues for which the Governors continue to seek reconsideration.

II. The Commission Cannot Lawfully Increase Postal Service Revenues To The Full Extent Sought By The Governors

As discussed in the previous section of these comments, the Commission should not increase the revenue requirement of the Postal Service as requested by the

⁶ This is not the first time that inaccurate cost and revenue estimates have played havoc with the ratemaking process. In Docket No. R97-1, the Postal Service severely understated net revenues for the test year, projecting a huge deficit when the actual figures resulted in a huge profit.

Governors. Therefore, it is unnecessary for the Commission to consider in this case whether it has authority to increase the revenues. That "issue" can and should be considered at some future date when the inquiry may be relevant. Nevertheless, if the Commission does find it necessary or appropriate to address this question in this case, MMA believes that the answer is that the Commission does not have the authority to increase the Service's revenues to the full extent requested by the Governors.

As MMA understands the relevant facts, the Postal Service's original rate increase filing was predicated upon test year total revenues of 69.1 billion. That revenue amount was subsequently updated to correct errors uncovered by USPS witness Fronk. The result of reflecting these necessary corrections to the underlying data reduced the total revenue requirement actually requested by the Postal Service to \$69.065 billion.⁷

MMA further recognizes that, in response to Order No. 1294,⁸ the Postal Service did provide updated cost studies that might have supported a higher revenue requirement.⁹ However, it is also important to note that the Postal Service itself did not take the position that its revenue requirement should be set at \$69.8 billion, as now urged by the Governors. Indeed, on brief the Postal Service emphasized that its first choice was for the Commission to use the Service's as-filed cost and revenue presentation, as revised to eliminate the errors described above. At the outset of its Initial Brief, the Postal Service described in detail the problems that occurred as a result of the Commission-ordered updating process:

Attempting to replace the base year . . . has turned out to be a much more complex undertaking than anyone anticipated. Although the Postal Service and the parties have made substantial, good faith efforts, the results have been imperfect.

One inevitable consequence of the complex updating process was to magnify the opportunities that errors would be created and go undetected. In this regard, the materials filed in compliance with Order No. 1294 suffer from certain mistakes and inconsistencies, due primarily to having to

⁷ See Exhibit USPS-32B (Revised 4/21/00). The revised total revenue requirement included \$268 million for recovery of prior year losses, which the Commission later increased to \$311 million in the November 13 Recommended Decision.

⁸ *Postal Rate And Fee Changes, R2000-1*, Docket No. R2000-1, "Order On The Use Of FY 1999 Data," issued May 26, 2000.

⁹ The Postal Service, MMA, and other parties sought reconsideration and clarification of Order No. 1294.

develop massive amounts of information in a short period of time under the normally frenetic conditions of an omnibus rate case.

USPS IB at I-9. After cataloging many other problems and inconsistencies encountered in the updating process, the Service stated:

[T]he Postal Service has concluded that the effort to replace the base year in this case has failed to create an appropriate foundation, either to evaluate the Postal Service's Request, or to afford parties, including the Postal Service, adequate due process in relation to the Postal Service's and other parties' proposals.

USPS IB at I-12. Similarly. Under the heading entitled "The Commission Should Base its Recommended Decision on the Evidentiary Foundation Established by the Postal Service's Request, as Appropriately Developed on the Record," the Postal Service, "urged [the Commission] to recommend the revenue requirement and the rates and fees proposed and supported by the Postal Service in its Request and testimony." USPS IB at I-13.¹⁰ The Service further confirmed that it "seeks only the revenue goals embodied in its Request." Citing testimony of the acting Chief Financial Officer, Richard Strasser, the Postal Service stated unequivocally:

[T]he Postal Service has not abandoned its revenue objectives or, with the aforementioned exceptions, the rate and fee proposals embodied in the Postal Service's Request. ***The Postal Service takes this position, furthermore, notwithstanding the evidence produced pursuant to Order No. 1294 that would support finding a substantial deficit in the test year under the proposed rates.***

USPS IB at I-13-14 (emphasis added).

The statutory framework, under which the Postal Service, the Commission, and affected mailers operate, contemplates that the Postal Service has the right to propose increases in its revenue requirement. The Commission is then charged with determining if the revenue requirement and resulting rates proposed by the Service meet the standards set out in the Act. If and to the extent the revenue requirement proposed by

¹⁰ .The Service noted that its "proposals should be adjusted only in limited respects. The principal exceptions include: (1) adjustments to take account of the additional cost reductions and costing methodology changes primarily identified and introduced into the record as a result of the joint effort of

the Postal Service is not supported by substantial evidence and therefore excessive, the Commission is charged with setting a **lower** revenue requirement and rates that do meet those standards.¹¹

MMA finds nothing in the Act that explicitly or by necessary implication empowers the Commission to set a revenue requirement higher than the \$69.065 billion proposed by the Service. Moreover, both the Postal Reorganization Act and the Administrative Procedure Act, 5 U.S.C. §§ 554, 556, embody certain basic standards of due process, including notice and the opportunity to be heard.¹² Mailers' most basic rights would be vitiated if either the Postal Service or the Commission could effectively move the goal posts in the middle of the game.

For these reasons, MMA believes the Commission has no authority to increase the Postal Service's revenue requirement above \$69.065 billion.

III. MMA's Recommendations In The Event The Commission Does Determine To Increase The Postal Service's Revenue Requirement Further

Based on the foregoing discussion, MMA believes there should be no reason for the Commission to reach the third question posed in Order No. 1305: how should higher rates be developed? Nevertheless, if the Commission does determine that some rates need to be raised in this proceeding, MMA addressed that issue in its January 12 Comments, attached hereto as Appendix A. Subsequent events have not caused MMA to change its positions on the rate design issues.

Conclusion

As discussed above and in MMA's January 12 Comments, the Commission can and should reaffirm its February 9 Further Recommended Decision on the remanded revenue requirement and related issues. Doing so will obviate the need to consider further rate design modifications.

the Postal Service and the Periodical mailers to mitigate the Periodicals rate increase; and (2) revisions to reflect passage of proposed legislation concerning preferred subclasses, if appropriate." *Id.*

¹¹ This discussion does not extend to the further rights and prerogatives of the Commission and the Governors.

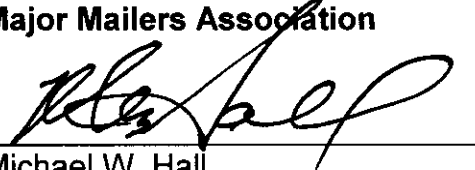
¹² Concern for fairness and mailers' due process rights is also reflected in the Commission's detailed rules regarding the presentation and content of a Postal Service formal proposal for a

If, contrary to MMA's primary position, the Commission finds that the Postal Service is entitled to additional revenues, then MMA still submits that there should be no modifications in First-Class rates. However, if the Commission finds that First-Class rates must be modified, then MMA recommends that the additional ounce rate be increased from 21 to 22 cents and the 4.6 cent heavyweight discount be extended to workshare mail weighing between 1 and 2 ounces.

Respectfully submitted,

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Dated: Round Hill, VA
March 19, 2001

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties to this proceeding in compliance with Rule 12 of the Commission's Rules of Practice.

Dated this 19th day of March, 2001.


Michael W. Hall

Recommended Decision on an increase rates and revenues (see e.g. Rules 53-55) and the sanctions applicable when a proposal does not comply with these requirements (Rule 56).