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POSTAL RATE AND FEE CHANGES, 2000 : Docket No. R2000-1

COMMENTS OF AMERICAN BANKERS ASSOCIATION AND NATIONAL ASSOCIATION OF PRESORT MAILERS ON BOARD OF GOVERNORS MARCH 6, 2001 REQUEST FOR FURTHER RECONSIDERATION
(March 19, 2001)

The American Bankers Association ("ABA") and the National Association of Presort Mailers ("NAPM"), participants in R2000-1, file these Comments pursuant to Commission Order No. 1305, in which the Commission invited participants to file comments upon the March 6, 2001 Board of Governors Decision on the Commission's Further Recommended Decision. In particular, the Commission asked participants to address three questions in their comments. Those three questions, and the responses of ABA & NAPM are set forth herein.

1. Can The Commission Lawfully Recommend Higher Rates As Requested By The Governors?

The Commission asked whether there are any statutory or procedural impediments to the Commission's recommending rates designed to produce the higher revenue amount of $69.8 Billion when the initial rate request sought by the Postal Service would have generated only $69.0 Billion.

As is evidenced by Appendix C to the original Commission Recommended Decision herein, the main reason for the increase in the revenue requirement to $69.8 Billion was Commission Order No. 1294 which required the Postal Service to update its original filing to include 1999 Actual Cost Data. The Postal Service continually took the position that it preferred its original filing over updated information filed by it in response to Order No.

1294.[1] Furthermore, the Postal Service expressly declined to change its proposed rates, notwithstanding its filing of updated cost information in response to Order No. 1294.

Yet now the Postal Service is asking this Commission to establish new higher rates, 14 months after the filing of this proceeding, in large part on the basis of the $69.8 Billion revenue requirement which resulted from the Postal Service's response to Order No. 1294. The Postal Service declined to propose new higher rates at a time in the proceeding which would have afforded intervenors the opportunity to comment upon such rates, but is now asking the Postal Rate Commission to recommend new rates at a time and in a manner which would deprive participants of the opportunity to review and comment upon such rates. If the Postal Rate Commission were to take such action it would raise significant due process considerations which, even if not so severe as to make such action illegal, would certainly be significant enough to be considered by the Postal Rate Commission as an important factor dictating against the advisability of recommending further rate increases at this time.

Furthermore, the Commission has twice now found that the rates recommended by it are adequate to cover the revenue requirement (with modest adjustments for Certified Mail and Bound Printed Matter). How can the Commission now, without any additional evidence, conclude that these same twice-recommended rates are now inadequate?

2. Should The Commission Recommend Higher Rates?

No. For the reasons explained in our January 12, 2001 comments upon the Initial Board of Governors Decision Requesting Reconsideration, ABA & NAPM believe that the revenue requirement recommended by the Commission is the product of reasoned administrative judgment applied to the record before it. Even though we believe it was not necessary for the Commission to revise its $97 Million reduction in supervisor costs as it did in its February 9, 2001 Opinion and Further Recommended Decision, ABA &NAPM still

1 See August 25, 2000 Supplemental Response of Postal Service to POR No. R2000-1/116 and Postal Service Initial Brief at Page I-13.

believe that taken as a whole that February 9, 2001 Commission Opinion and Further Recommended Decision was the product of reasoned administrative judgment based upon the record before the Commission.

The Board of Governors has expressly advised the Commission that it does not need to reopen the record; yet at the same time the Board of Governors would have the Commission selectively look outside of the record to an unsworn statement of the Postal Service CFO projecting that the Postal Service may have substantial losses in this fiscal year. Of course, this testimony of the CFO was not under oath, was not subjected to cross examination, and none of the participants have had any opportunity to provide rebuttal testimony to this projection.[2]

What the Postal Service is asking the Commission to do would set an undesirable precedent. If more than four months after the closing of the record in a rate case, the Postal Service CFO made a statement predicting that Postal Service profits would be substantially larger than that predicted by the Postal Service in the rate case, would the Postal Service appear before this Commission, and tell the Commission not to reopen the record, but to reduce rates on the basis of such projections. We don't think so.

Postal Rate cases are by statute 10 month proceedings. At some point in time, the Commission has to close the record and apply reasoned administrative judgment to that record to issue a decision. The Commission should be reluctant to consider newer data, so late in the game at a point when such data does not have the benefit of discovery and rebuttal testimony. What is gained from the newness of data is lost by accuracy of data and lack of due process. Indeed, ABA & NAPM believe that the benefit of the updated data resulting from the well intentioned Commission Order No. 1294 was far outweighed by the potential inaccuracy and lack of due process necessarily resulting from the compressed timeframe within which such data could be considered. What the Postal Service is now

2 It is also worth noting that the Postal Service's projected budget deficit is a moving target which has continually changed in the past five months.

suggesting is that the Commission make substantial changes in rates based upon unsworn predictions of Postal Service officials made more than four months after the record in the rate case has been closed and without the benefit or opportunity for any discovery or rebuttal by other participants. This is a clear case where any possible benefit from consideration of new information is far outweighed by the detrimental effect of untested data and loss of due process.

3. How Should Higher Rates Be Developed?

If notwithstanding the reasons set forth above, the Commission should choose to recommend further increases in rates, ABA & NAPM urge the Commission not to attempt to do so on the back of First Class Letter Mail. We refer the Commission to pages 4-10 of the January 12, 2001 comments of ABA & NAPM upon the initial decision of the Board of Governors requesting reconsideration, for a detailed discussion of the following reasons which dictate against the Commission recommending any further increases in First Class Letter Mail:

A. First Class Mail continues to carry a highly disproportionate institutional cost burden under the rates currently recommended by the Commission (i.e., under the Commission recommendation First Class Mail would represent 51.4% of mail volume and would contribute 71.45% of total institutional costs, compared to the next highest contributor, Standard Mail, which would represent 42.4% of total mail volume, yet would contribute only 20.5% of total institutional cost).

B. Any further increase in First Class rates would be contrary to the position taken by the Postal Service in its December 20, 2000 Postal Service Memorandum on Reconsideration wherein it suggested that rates should move in the direction which is consistent with the attributable cost increases reflected in Appendix J to the Commission Decision. That Appendix J at page 7 demonstrates that attributable costs for First Class letters rose at a rate well below the Commission recommended 1.8% increase for First Class letters.

C. Any attempt to raise additional revenue by increasing First Class Mail rates will increase electronic diversion of First Class Mail, thereby reducing the volume of the class of mail which has the highest institutional cost contribution and which the Postal Service can therefore least afford to lose.

B. There is no cost justification in the record for setting the First Class Additional Ounce Rate any higher than 21 cents, and to do so would exacerbate the disproportionate institutional cost burden and first class electronic diversion problems noted above.

C. Not even the Postal Service has suggested that net revenue could be increased by reducing First Class workshare discounts. Such discounts are covered 100% by cost savings determined by the Commission on the basis of the record in this case. Furthermore, any increase in First Class workshare rates would further exacerbate the disproportionate institutional cost burden and First Class electronic diversion problems noted above.

Respectfully submitted,

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Date: March 19, 2001
Washington, D.C.

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the instant document on all participants of record in this proceeding in accordance with Section 12 of the Rules of Practice.

Henry A. Hart

March 19, 2001