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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, 2000

Docket No. R2000-1

RESPONSE OF POSTCOM TO ORDER NO. 1305

The Association for Postal Commerce (Postcom) offers these comments on the three questions posed by the Commission in Order No. 1305.

Can the Commission lawfully recommend higher rates? Yes. As Appendix C to the Opinion and Recommended Decision in this Proceeding concisely summarizes, there is record evidence on which the Commission could rely in recommending a revenue requirement above that in the initial USPS request and, therefore, rates above those initially proposed. The choice is not binary. The Commission might opt for a revenue requirement somewhere between that which it earlier endorsed and that which has been advocated (post Order No. 1294) by the Postal Service by excluding particular items or categories of items from the increase. The field reserve is an obvious candidate for such exclusion.

Should the Commission recommend higher rates? Postcom and its members are convinced that the Commission should not recommend higher rates. This position is not merely a matter of preference or perception of sound policy. As a matter of law, the Commission does not have unfettered power to simply change its mind. The standard is clear. It is a basic principle of administrative law that administrative agencies may change their views on issues within their regulatory purview if, but only if, the agency

can and does offer a reasoned explanation for why matters do not appear to them now as formerly they did:

When an agency changes its interpretation of a statute, a reviewing court must determine whether the change was "accompanied by a reasoned explanation of why the new rule effectuates the statute as well as or better than the old rule." New York Council, Association of Civilian Technicians, 757 F.2d at 508 (citing Office of Communication of United Church of Christ v. FCC, 560 F.2d 529, 532 (2d Cir. 1977))

Lehman v. Burnley, 866 F.2d 33, 37 (2d Cir. 1989). Any departure from the two prior decision in this case means that the PRC must explain with reasoned precision why it now believes that it was wrong in its earlier pronouncements on the appropriate level of the revenue requirement. Of course, the reasoning invoked must itself be based on the record in the case and not any extra-record projections or considerations.

How should higher rates be developed? We cannot conceive of a reasoned and reasonable basis for the Commission to overturn its two prior decisions as to the proper level of the overall revenue needs of the Postal Service that is based on the record as it stood when this case was first decided and stands today. Since the Commission cannot, consistent with the dictates of Lehman v. Burnley and kindred cases, increase the overall

revenue requirement we do not believe it necessary to address this question further. We urge the Commission not to do so either.

Respectfully submitted,


A handwritten signature in black ink, appearing to read "Ian D. Volner", with a stylized flourish at the end.

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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.


Ian D. Volner