

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

REPLY COMMENTS OF THE UNITED STATES POSTAL SERVICE
IN ACCORDANCE WITH ORDER NO. 1305

On March 5, 2001, the Postal Service's Governors decided to reject the Postal Rate Commission's Opinion and Further Recommended Decision (Feb. 9, 2001) in this docket¹. On March 6, the Postal Service resubmitted its Request to the Postal Rate Commission for reconsideration, pursuant to 39 U.S.C. § 3625(d). Order No. 1305² sought comments on the Governors' Decision and the resubmission. The Postal Service and several other participants filed comments.³

¹ Decision of the Governors of the United States Postal Service on the Further Recommended Decision of the Postal Rate Commission on Postal Rate and Fee Changes, Docket No. R2000-1 (March 5, 2001).

² Notice of Submission of Request for Further Reconsideration and Order Establishing Procedures, Order No. 1305, Docket No. R2000-1 (March 9, 2001).

³ In addition to the Postal Service's, seven sets of comments were filed with the Commission. Comments of the Office of the Consumer Advocate on Request for Further Reconsideration; Initial Comments Of Major Mailers Association Regarding Issues On The Board Of Governors Second Remand; Comments of American Bankers Association and National Association of Presort Mailers on Board of Governors March 6, 2001 Request for Further Reconsideration; Response of Postcom to Order No. 1305; Val-Pak Direct Marketing Systems, Inc., Val-Pak Dealers' Association, Inc. and Carol Wright Promotions, Inc. Response to Order No. 1305; and Watchtower Society Response to Order No. 1305 Request for Further Reconsideration; and Consortium Memorandum in Response to PRC Order No. 1305 (The parties included in this consortium are Advo, Inc., Alliance of Independent Store Owners and Professionals, Alliance of Nonprofit Mailers, Amazon.com, Inc., American Business Media, Association of American Publishers, Association of Priority Mail Users, Inc., Coalition of Religious

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After expressing the Commission's intention to review the record evidence again in light of the Governors' Decision, Order No. 1305 sought specific input on three questions: 1) whether the Commission could lawfully recommend rates higher than required to meet the Postal Service's initial Request; 2) whether the Commission should recommend higher rates, in light of statements about the Postal Service's current financial condition and other factors; and 3) if the answer is yes to both questions, how should higher rates be developed? The Postal Service's response affirmed that it believed that the Commission could and should recommend rates consistent with the Governors' previous decisions in this docket. With regard to how rates should be formulated, it referred the Commission specifically to earlier comments in its Memorandum on Reconsideration of December 20, 2000. The other parties filing comments uniformly opposed higher rates and expressed various views on the three questions. We will not comment on each of these views, but will make salient observations below.

On the issue of whether the Commission can lawfully recommend higher rates than originally requested by the Postal Service, the majority of participants providing comments agree that the Commission has the statutory authority, regardless of whether they believe it should be applied in this case. Only Val-Pak/Carol Wright, MMA, and ABA/NAPM take the position that the Commission cannot lawfully recommend higher rates. ABA/NAPM, joined by ABA and several other parties, appear to argue principally

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Press Associations, Dow Jones & Company, Inc., Florida Gift Fruit Shippers Association, Magazine Publishers of America, Major Mailers Association, The McGraw-
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that due process considerations militate against concluding that the Commission would be authorized under the statute to recommend higher rates.⁴ Both MMA and Val-Pak/Carol Wright, furthermore, contend that the Postal Service's original Request under 39 U.S.C. § 3622(a) places a limit on the level of rates at any subsequent stage of the proceeding, and in spite of the development and adoption by the Commission of record evidence supporting higher revenue needs than estimated in the initial Request. MMA, in fact, seems to argue that the statute permits the Commission to lower the Postal Service's revenue requirement, if that finding is established on the record, but that the statute would not authorize raising the revenue requirement, if similarly supported on the record. MMA Comments at 6-7. Val-Pak/Carol Wright argue that the Postal Service's options in pursuing its section 3622 Request are strictly limited, and that the Postal Service is estopped from advocating higher revenue goals during a case, unless it, in effect, initiates a new filing with a new ten-month clock.⁵ Val-Pak/Carol Wright

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Hill Companies, Inc., National Newspaper Association, Parcel Shippers Association, and Time Warner Inc.).

⁴ It is unclear whether ABA/NAPM would conclude that the Commission had the statutory authority to recommend rates at an overall level higher than originally proposed, if they believed there were adequate time and opportunity to review and test new rate proposals.

⁵ Val-Pak/Carol Wright state:

Alternatively, if they [the Governors] determined that the amount requested in their initial filing was insufficient due to a mistake or due to developments occurring after the initial filing, they should have (i) withdrawn the initial request and refiled for a higher amount, or (ii) declared the amendment to be a new filing and requested the Commission restart the 10-month statutory time clock with a new litigation schedule, or (iii) by now should have filed another request for increased rates.

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make the additional argument that higher rates would not be lawful, because the participants were not afforded adequate notice, presumably under a Constitutional due process standard, that "a revised, higher revenue requirement might be considered." *Id.* at 3-4.

None of the parties asserting that the Commission lacks authority to recommend a higher level of rates reflecting higher revenue needs cites any specific statutory language, or makes a logical argument related to the statutory scheme. Nor do they identify specific statutory prohibitions against the Postal Service advocating a higher revenue requirement, if appropriately established on the record. In fact, the Postal Reorganization Act does not explicitly address whether the Commission can recommend rates and fees that are higher or lower than those proposed by the Postal Service, and it does not outline any explicit procedural impediments to Postal Service proposals, particularly in the context of the ten-month limit on the duration of rate cases in 39 U.S.C. § 3624(c). As several parties note, furthermore, the Commission's practice supports the opposite conclusion, namely, that the Commission has interpreted its authority to encompass recommendations based on higher revenue targets than embodied in the Postal Service's Request, as well as lower, for particular subclasses, and for all categories combined.⁶

As we have noted in previous pleadings, the Postal Service strongly disagrees with the view of the statutory ratemaking scheme that makes the Postal Service's

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Val-Pak/Carol Wright Comments at 2.

⁶ See OCA Comments at 3-4; Consortium Comments at 2; Postcom Comments at 1.

revenue requirement essentially the product of Commission determination in hearings under 39 U.S.C. § 3624. Nevertheless, the Postal Service believes that there is no statutory obstacle to the Commission recommending rates based on a revenue requirement supported on an appropriately constituted record, so long as the Commission does not infringe on the Postal Service's and Board of Governors' lawful authorities to establish financial and other policies, and to determine the Postal Service's operational expenses and other specific revenue needs. Accordingly, if the record supports a higher than proposed revenue requirement under these conditions, the Commission is not prevented from recommending higher rates.

With regard to the contentions or implications that the Postal Service is constrained by either its initial Request, or by its positions taken prior to the Commission's Recommended Decision, we must firmly disagree with these characterizations and conclusions. In the proceeding below, the Postal Service did take the primary position that the Commission should recommend rates based on its Request. It took this stance fundamentally as a consequence of serious reservations concerning the procedural and substantive soundness of the process of updating upon which the Commission had embarked. Nevertheless, during the course of the case, the Postal Service in pleadings and in its briefs to the Commission, also took an alternative position. The Postal Service argued that, if the Commission relied upon the updated information supplied pursuant to Order No. 1294, it must rely on that information in a comprehensive, balanced, and fair fashion, including adherence to increases in the Postal Service's revenue requirement that had been established by the updated

information.⁷ Furthermore, the Postal Service asserted that, in recommending rates based on a different revenue requirement, the Commission must not interfere with any management prerogative or the Board's authorities.

Val-Pak/Carol Wright's argument that participants had no notice of a higher revenue requirement is simply wrong. Consistent with the decision of the Court of Appeals in *Dow Jones & Company v. United States Postal Service*, 110 F.3d 80 (D.C. Cir. 1997), the Commission provided notice to the participants at the beginning of this proceeding that it might ultimately recommend rates (and classifications) that differ from those proposed by the Postal Service or any participant. Commission Order No. 1279, at 7 (January 14, 2000). As we noted in our Comments filed on March 19, 2001, the Commission has in the past recommended rates and fees resulting in a both higher and lower revenue requirements than the Postal Service originally proposed. Furthermore, in Notice of Inquiry No. 2, the Commission sought general comments from the parties on the possible consequences of updating the record to incorporate FY 1999 CRA data into an essentially reformulated base year.⁸ In response, the Postal Service noted that substitution of the FY 1999 CRA data would entail reevaluating and changing numerous factors affecting a roll-forward of new test year estimates.⁹ Order No. 1294, in which the Commission responded to and reconciled the various responses to NOI No. 2, contemplated revision of test year estimates, and established procedures that

⁷ See Initial Brief of the United States Postal Service, Docket No. R2000-1, at II-16 to 28 (Sep. 13, 2000); Reply Brief of the United States Postal Service, Docket No. R2000-1, at II-39 to 66 (Sep. 22, 2000).

⁸ Notice of Inquiry No. 2 Concerning Base Year Data, Docket No. R2000-1 (April 21, 2000).

incorporated the conditions expressed by the Postal Service.¹⁰ Moreover, the Postal Service's submissions complying with Order No. 1294 clearly created the record basis for a revenue requirement embodying test year expenses higher than those underlying the Postal Service's initial Request. In light of the positions noted above in the Postal Service's briefs to the Commission, it is hard to imagine how any party could argue that an increased revenue requirement could not have been reasonably anticipated as a possible consequence of updating. Clearly, as a legal requirement, and as a practical matter, participants were put on notice that the revenue requirement could be increased.

Numerous comments have reminded the Commission of its obligation to rely upon the record, and have warned against references in the Governors' Decisions to events occurring after the close of the record. Most of the parties commenting have also reemphasized the Commission's earlier conclusions that the record supports the

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⁹ Initial Comments of the United States Postal Service in Response to Notice of Inquiry No. 2, Docket No R2000-1, at 4-5 (May 8, 2000).

¹⁰ Order on the Use of FY 1999 Data, Order No. 1294, Docket No. R2000-1 (May 26, 2000). In a companion ruling, the Presiding Officer established a schedule that included time to address the Postal Service's conditions. This ruling stated: "The Postal Service may wish to develop additional adjustments to its test year projections, for example, to incorporate more recent inflation forecasts or program estimates." In specifying the schedule, the Ruling further stated:

These dates are postponed to allow for rebuttal incorporating updated test year forecasts, and if desired, rebutting some aspect of the updated test year forecasts. Any participants choosing to amend their case in chief as a result of the revised test year forecasts would do so at this time. Participants, including the Postal Service, may choose to propose different rates or different cost coverages than were proposed in their direct case.

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revenue requirement and rates in the Commission's Recommended Decision, and that the evidence relied upon by the Postal Service should be given little, if any, weight. We will not attempt to retrace the Postal Service's responses to these well-traveled arguments. We simply reiterate the Governors' and the Postal Service's conviction that the record, as it exists, fully supports the result sought by the Governors. Furthermore, we maintain that nothing in the Act or any other applicable law prohibits the Governors from making pertinent observations concerning the Postal Service's financial condition to explain the context of their serious concerns regarding the Commission's inadequate recommendations, as evaluated and determined on the existing record. If the Commission again declines to reassess and change its recommendations, the parties may rest assured that the Governors' response will be based on the record before the Commission and the Governors.

One misleading comment does warrant a specific response. The OCA states that, if the Commission were to reopen the record, it would have to take into account a recently announced \$1 billion reduction in planned test year investment expenditures. OCA Comments at 7. The OCA is mistaken. This announcement concerns a reduction in capital commitments and not a reduction in test year expenses. It would not translate into a commensurate decrease in the Postal Service's revenue requirement.

For the reasons outlined above and in the Governors' Decisions and Postal Service pleadings previously filed, the Commission should reconsider its Recommended Decision and Further Recommended Decision and recommend rates

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Presiding Officer Ruling Revising the Procedural Schedule to Accommodate Actual FY
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and fees consistent with the Governors' determination of the Postal Service's revenue requirement.

Respectfully submitted,

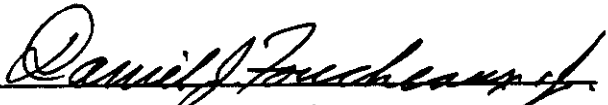
UNITED STATES POSTAL SERVICE

By its attorney:


Daniel J. Foucheaux, Jr.

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.


Daniel J. Foucheaux, Jr.

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March 23, 2001

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1999 CRA Cost Data, Ruling No. R2000-1/71, at 2 (May 26, 2000).