

BEFORE THE
POSTAL RATE COMMISSION

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

EXPERIMENTAL PRESORTED PRIORITY
MAIL RATE CATEGORIES, 2001

DOCKET NO. MC2001-1

MOTION OF UNITED PARCEL SERVICE TO DENY
EXPERIMENTAL TREATMENT FOR PROPOSED
PRESORT RATES
(April 3, 2001)

Pursuant to Commission Order No. 1306, United Parcel Service ("UPS") hereby moves that the Commission deny the request of the United States Postal Service ("the Postal Service") to apply the Commission's rules governing experimental changes to the Priority Mail presort rates proposed in this proceeding.

INTRODUCTION

The Postal Service requests that the Commission use the procedures provided in Commission Rules 67-67d, governing experimental changes, to evaluate the Postal Service's proposed establishment of three presort rate discounts for Priority Mail based on depth of sort -- Area Distribution Center ("ADC"), three-digit, and five-digit. Request of the United States Postal Service for a Recommended Decision on Experimental Presorted Priority Mail Rate Categories filed March 7, 2001 ("Request") at 3. For presort to the ADC level, the discount would be 12 cents per piece; for 3-digit presort, 15 cents per piece; and for 5-digit presort, 24 cents per piece. *Id.*

The proposed worksharing discounts are not the type of proposal for which the rules for experimental services were intended. Presort worksharing discounts are not new or innovative, and the proposed “experiment” is longer than necessary for a presort discount proposal. To apply here the abbreviated schedule and truncated procedures allowed by the experimental rules would result in less scrutiny of the level of the requested discounts than is appropriate, especially since the Postal Service requests that the discounts remain in effect for three years.

As a result, the Commission should deny the Postal Service’s request to apply these rules in this instance and should instead consider the proposed rate discounts under the normal procedures for rate and mail classification changes.

ARGUMENT

The Rules for Experiments Are Not Intended To Be a Vehicle to Bypass the Normal Procedures for Evaluating Rate and Classification Proposals.

The purpose of the rules for experimental changes is to permit the Postal Service to offer innovative and unique services without the full proceedings normally required for a change in the Domestic Mail Classification Schedule. *Rules of Practice – Experimental Proposals*, Docket No. RM80-2, Order No. 363, Order of the Commission Adopting Rules for Expedited Procedures for Experimental Classification Requests (Dec. 12, 1980). See also *Destination-BMC Parcel Post Classification and Rate Changes (Experiment)*, 1985, Docket No. MC86-1 (“MC86-1”), Opinion & Recommended Decision (Nov. 8, 1985), at 2, ¶ 102.

As relevant here, an experiment is “[a] test under controlled conditions that is made to . . . determine the efficacy of **something previously untried,**” or “[a]n

innovative act or procedure” *American Heritage Dictionary of the English Language*, 3rd ed. (1992) at 645 (emphasis added). This emphasis on new, untried and innovative service offerings is repeated throughout Commission decisions involving requests for experimental classifications. See, e.g., MC86-1 at 19 (approving use of experimental rules because of the “operational innovations of the proposal”); *Renewal of Experimental Classification and Fees for Weight-Averaged Nonletter-Size Business Reply Mail*, Docket No. MC99-1, Order No. 1235, Order on Postal Service’s Request for Application of Experimental Rules (April 9, 1999) at 2 (extending a feature of the experiment approved in Docket No. MC97-1 due to “the novelty of the accounting alternative being tested”).

It is evident from the Postal Service’s Request and the testimony of its witnesses that, at its core, this proposal is not about innovation. Rather, it is an effort to shortcut the normal procedures for evaluating the propriety and magnitude of Priority Mail worksharing discounts in order to put the proposed discounts in place as soon as possible and thereby give rate relief to certain large mailers. The Postal Service expressly offers as justification for its request to proceed under the experimental rules that “[t]he expedition allowed by the experimental rules is appropriate in light of the intense competition in the market for expedited delivery service” and provides a means “for the Postal Service to retain Priority Mail volumes in the face of increasing competition.” Request at 5. Postal Service witness Kalenka states that “presort discounts will go far to helping the Postal Service maintain Priority Mail volume in the increasingly competitive market for expedited, 2-3 day delivery service.” USPS-T-3 at 7.

There is nothing wrong with legitimate Postal Service efforts to compete as long as those efforts are made within the framework of the statutory safeguards created by Congress to ensure that the Postal Service competes fairly, and within the rules established by the Commission to implement those safeguards. The rules for experimental services were not adopted to expedite the adoption of rate decreases in order to “undo” for some mailers a recent rate increase recommended by the Commission.

The Commission has just recently applied the statutory ratemaking factors to Priority Mail and determined that a substantial rate increase was needed to meet those requirements.¹ The new rates were implemented a little more than two months ago. Yet, the Postal Service now seeks to reduce those rates substantially for larger mailers, under the guise of conducting an “experiment.” As Postal Service witness Scherer himself states, “the proposal offers some measure of rate relief” to large Priority Mail users. USPS-T-1 at 6.

The Postal Service’s proposal to use the rules for experimental changes is nothing more than an effort to negate the recent rate increase for Priority Mail for a few large users of that service, without adequate scrutiny due to an abbreviated schedule and truncated procedures. The rules for experimental services are not meant to be

1. In that same case, the Commission also rejected, in the context of the full set of procedures normally applied to rate and classification change proposals, an intervenor’s proposal for a different form of Priority Mail worksharing discounts. *Postal Rate and Fee Changes, 2000*, Docket No. R2000-1, Opinion and Recommended Decision (Nov. 13, 2000), at V-319.

used where, as here, the Postal Service's reason for expedited treatment is not to try something new, but rather to provide rate relief for its preferred Priority Mail customers.

The Instant Proposal Does Not Meet the Criteria of Commission Rule 67(b).

Since the Postal Service's proposed presort discounts are not the type of proposal for which the experimental rules were intended, it is not surprising that the proposal does not meet the specific criteria set forth in Rule 67(b). That rule provides the following criteria for evaluating whether a proposed change in the domestic mail classification schedule should be considered on an experimental basis:

In determining whether the procedures for experimental cases may be used in a particular case, the Commission will consider:

- (1) The novelty of the proposed change;
- (2) The magnitude of the proposed change, including its effect on postal costs, postal revenues, mailing costs and practices of users of the mails, and persons or firms offering services competitive with or alternative to the service offerings of the Postal Service;
- (3) The ease or difficulty of generating or gathering data with respect to the proposed change; and
- (4) The desired duration of the experiment as indicated by the Postal Service in its request and, specifically, in its proposed Domestic Classification Schedule language.

39 C.F.R. § 3001.67(b)(1)-(4).

1. There Is Nothing Novel About Presort Discounts, Or About the Proposed Priority Mail Presort Discounts.

Presort discounts are far from novel. Some were offered even before postal reorganization in 1970. See *Postal Rate and Fee Changes, 2000*, Docket No. R2000-1, USPS-LR-I-118, at 30, 34. And the Commission was able to evaluate presort discount proposals without the need for a prior experiment as early as Docket No. MC73-1, which was initiated in 1973 to establish the first mail classification schedule under the Postal Reorganization Act. *Mail Classification Schedule, 1973*, Docket No. MC73-1, Phase I, Opinion and Recommended Decision, (April 15, 1976) at 11-19 (recommending First Class Mail presort rates); see also Docket No. R2000-1, USPS-LR-I-118, at 30, 34 (Domestic Mail Rate History) (showing long history of evaluation of new or modified presort discounts). As a result, there now are numerous presort discounts, including presort discounts for First Class Mail; for Standard Mail (A); for Periodicals; for Standard Mail (B) Media Mail; for Bound Printed Matter; and even for Parcel Post. In short, the Postal Service and the Commission both have extensive experience with calculating presort discounts similar to those proposed here without the need to conduct long-term experiments beforehand.

Even the concept of a presort discount for Priority Mail is far from innovative. As the Postal Service recognizes (Request at 2, n.1), it actually offered a substantially similar discount during most of the 1990s. That discount was first adopted in Docket No. R90-1. See *Postal Rate and Fee Changes, 1990*, Docket No. R90-1 ("R90-1"), Opinion and Recommended Decision (Jan. 4, 1991), at V-99-100, ¶ 5225. Like the

present presort proposal, each mailing had to contain at least 300 pieces.² As the result of a survey of "heavy users of Priority Mail," the Postal Service's witnesses in support of the earlier discount concluded that "interest in the proposed rate by these mailers was quite high," and the Postal Service predicted volume of approximately 10 million pieces in the first year. Direct Testimony of Postal Service Witness Ellard in R90-1, USPS-T-4, at 20; Direct Testimony of Postal Service Witness Lyons in R90-1, USPS-T-18 at 129-31.³

The earlier discount was first available to mailers in 1991 and was in place until January 10, 1999 -- as recently as two years ago. It was discontinued at the request of the Postal Service in Docket No. R97-1. *Postal Rate and Fee Changes, 1997*, Docket No. R97-1 ("R97-1), Opinion and Recommended Decision (May 11, 1998), at V-353, 355. The Postal Service cited lack of market response as one of the reasons supporting its discontinuance.⁴ Direct Testimony of Postal Service Witness Sharkey in R97-1, USPS-T-33, at 31.

In its Request, the Postal Service attempts to minimize the significance of its previous extensive experience with a Priority Mail presort discount, accumulated over a recent eight year period. For example, in a classic example of understatement, it states

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2. The present proposal would require the mailer to tender either 300 pieces or 500 pounds of Priority Mail. USPS-T-1 at 3.
 3. Unlike in R90-1, the Postal Service apparently did not bother to perform such a survey here. At least it has not sponsored such a survey as part of its direct case.
 4. ADP -- the only mailer to sponsor testimony in support of the present proposal -- was "one of the few mailers that heavily utilized the [prior] discount." USPS-T-3 at 5 n.2. ADP now makes a veiled threat to take its business elsewhere if a presort discount for Priority Mail is not resurrected. USPS-T-3 at 6-7.

that it has had "some experience" with Priority Mail discounts. See Request at 2 n.1. However, the Commission cannot ignore the fact that, while the discounted rate structure is different, the fundamental aspects of both the prior discount and the proposed discounts are the same. Thus, cost savings calculations based on the prior experience should be available and helpful here.

In short, there is nothing novel about the Postal Service's proposal that justifies expedited adoption of a three year experiment.

2. The Magnitude of the Proposed Changes Cannot Be Reliably Determined on the Basis of the Testimony Presented.

Under the rules for experimental proceedings, the Commission must also consider "The magnitude of the proposed change, including its effect on postal costs, postal revenues, mailing costs and practices of users of the mails, and persons or firms offering services competitive with or alternative to the service offerings of the Postal Service" 39 C.F.R. § 3001.67(b)(2).

While the Postal Service asserts that "the proposed experiment offers no appreciable risk of significant, negative financial results or harm to either the Postal Service, mailers using the service, or other mailers," Request at 4, it is difficult to evaluate the accuracy of this assertion. The Postal Service bases its argument that the magnitude of the changes will be minimal on the testimony of witness Scherer. USPS-T-1 at 15-16. While Mr. Scherer suggests that the impact on revenues, costs, and volume will be minimal, the fact of the matter is that the Postal Service has not made any reasonable effort to predict the possible magnitude of the changes its proposal would effect. Instead, its predictions are based solely on experience with the earlier

discount, which was abandoned in part because the structure of the discount did not attract enough volume. That failing is one of the very weaknesses which the Postal Service seeks to alter with its new discount structure. Given those facts, predictions of mailer response based on the prior discount structure are suspect at best.

All that is really known is that the size of the proposed discounts are relatively substantial -- ranging from about 3% for two pound pieces at the lowest discount level to more than 7% for one pound pieces at the highest discount level.⁵ Given its experience with the earlier, abandoned Priority Mail discount, it is surprising that the Postal Service has not presented at least some sort of market survey (as it did to support the earlier discount) in an effort to judge the possible magnitude of the changes its new discount structure would effect. That certainly could be done (and should have been done) without the need for a three year marketplace experiment.

The Postal Service has noted that its revenue per piece has been declining even though overall mail volume and costs are increasing. "Higher costs, the need to build growth and postal reform, key issues for PMG," *Postal World*, February 5, 2001, at 1 (quoting Postmaster General Henderson). It has suggested that this is due to increasing volumes of Standard Mail (A). Id. One possible factor contributing to this development is a proliferation of worksharing discounts based on overly optimistic cost avoidance estimates and overly high passthroughs. Under these circumstances, new discounts should not be implemented without careful and full review of their cost bases.

5. In FY1999, more than 39% of Priority Mail volume weighed two pounds or less. *Postal Rate and Fee Changes, 2000*, Docket No. R2000-1, PRC-LR-13, File "LR13Pri.xls", Worksheet "Weight".

The Postal Service simply has not made a sufficiently strong showing that the magnitude of the proposed changes will be small enough to support evaluation under abbreviated procedures and an abbreviated schedule.

3. The Postal Service Has Considerable Experience With Generating Data on Presort Cost Savings and Likely Mailer Response in the Absence of Experimental Rate Changes.

The data to support a proposal for permanent Priority Mail presort discounts is certainly not difficult to obtain. See 39 C.F.R. § 3001.67(b)(3). The Postal Service has routinely proposed new, or changed existing, presort discounts based on market surveys or using data from its established data systems, without the need for experimental implementation of actual discounts.

The Postal Service claims that it cannot now do so for Priority Mail because of the termination of the Emery PMPC contract and the uncertainty in mail processing costs which that termination causes. But even during the Emery contract the Postal Service itself processed large volumes of Priority Mail outside the PMPC network. The Postal Service clearly has the necessary data from the non-PMPC portion of the Priority Mail mailstream. See USPS-T-1, at 8 (where Mr. Scherer notes that “the cost avoidance estimates in Witness Levine’s testimony rely on Postal Service data that are mainly exclusive of the PMPC network”). Moreover, the Emery contract was not fully operational until mid-1998. Thus, the Postal Service should have relatively recent Priority Mail processing cost data that can be updated for use in estimating current mail processing cost avoidance.

The Commission has previously held that the abbreviated procedures for experimental changes are not necessary where cost studies of current operations could

supply satisfactory estimates of the cost savings on which proposed discounts are to be based. *Destination-BMC Parcel Post Classification and Rate Changes (Experiment)*, 1985, Docket No. MC86-1, Opinion and Recommended Decision (June 5, 1986), at 75-76, ¶¶ 513-518. As the Postal Service acknowledges, the experimental rules are designed to be used “in the *absence* of historical cost, volume, revenue and other data that normally would underlie a request for a permanent change in mail classifications.” Request at 2 (emphasis added).

While the currently proposed discount *rate* structure is somewhat different from the earlier discount rate structure, Request at 2 n.1, that difference does not in any way affect the *costs* that are needed to determine if the proposed rate structure makes sense. Those costs are easily gathered, as the history of the Postal Service's and the Commission's experience with presort discounts shows.

4. The Desired Three Year Duration of the Experiment Militates Against Use of the Rules for Experimental Changes.

The Postal Service wishes to leave the proposed discounts in effect for three years. See USPS-T-1 at 16; see also 39 C.F.R. § 3001.67(b)(4). That is as long as (or longer than) permanent rates are usually in effect.

There are good reasons to reject three-year “experiments.” First, the risk of the potential drain on revenues is greater. Second, the longer the experiment, the more likely the relevant costs will change substantially, thereby undermining the usefulness of the experiment. Moreover, long experiments are likely to span two different rate cycles. This consideration is particularly significant here, where an omnibus rate case is apparently looming on the not-so-distant horizon. Were the Commission to proceed

under the experimental rules in this case, it is likely that the data on which it would be relying would be overcome almost immediately by the updated data used in the omnibus rate case.

That an omnibus rate case appears to be imminent creates another practical difficulty. Under the rules for experimental proposals, the Commission attempts to reach a decision “not more than 150 days from the determination of any issue as to the propriety of experimental treatment . . . in a sense favorable to such treatment” 39 C.F.R. § 3001.67d. Were the Commission to determine by mid-April that this case qualifies for experimental treatment, its decision deadline would be sometime in mid-September. Assuming an omnibus rate case is filed in June, as has been reported, the Commission would be faced with the need to provide expedited treatment for this case while it would also be facing the rigors of an omnibus rate case. To handle an omnibus rate case and even one other non-expedited proceeding at the same time taxes the resources of the Commission and the participants. To provide expedited treatment to this case while at the same time conducting an omnibus rate case would even further strain the resources of both the Commission and the participants, and would likely compromise the ability of all involved to properly participate in both cases.

The bottom line is that a three year “experiment” is not an experiment at all. Clearly, the Postal Service’s proposal calls for more than an experimental change.

CONCLUSION

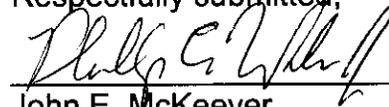
The rules for experimental changes are intended to provide the Postal Service with an opportunity to test new and innovative services without the necessity of a full Commission proceeding. The Priority Mail presort discount proposal in this case is

neither new nor innovative. The Postal Service has had substantial experience with an almost identical discount that was adopted in 1991 and abandoned in 1999 after eight years. Furthermore, there is no information the Postal Service can gather during the experiment that it does not already have or cannot obtain by, for example, a well-designed market survey.

The driving force behind the Postal Service's proposal appears to be to provide rate relief from the recent increase in Priority Mail rates to a small subset of large Priority Mail users. The rules for experimental changes are not intended to give the Postal Service a "fast track" to discounted rates.

WHEREFORE, United Parcel Service respectfully requests that the Commission deny the request of the United States Postal Service that this proceeding be conducted pursuant to the Commission's rules governing experimental changes.

Respectfully submitted,



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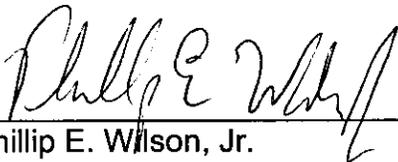
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Dated: April 3, 2001

CERTIFICATE OF SERVICE

I hereby certify that on this date I have caused to be served the foregoing document by first class mail, postage prepaid, in accordance with Section 12 of the Rules of Practice.


Phillip E. Wilson, Jr.

Dated: April 3, 2001
Philadelphia, PA

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