

**BEFORE THE
POSTAL RATE COMMISSION**

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

**EXPERIMENTAL SUSPENSION OF FEE FOR
MANUAL DELIVERY CONFIRMATION CATEGORY :**

**DOCKET NOS. R2001-2,
MC2001-2**

**COMMENTS OF UNITED PARCEL SERVICE ON THE
APPROPRIATENESS OF CONSIDERING THE POSTAL
SERVICE'S PROPOSAL UNDER RULES 67 THROUGH 67d,
AND MOTION TO DENY APPLICATION OF THOSE RULES
(October 10, 2001)**

INTRODUCTION

Pursuant to Order No. 1323 (September 25, 2001), United Parcel Service ("UPS") submits its comments in opposition to the request of the United States Postal Service that the Postal Service's proposal to suspend the fee for Manual Delivery Confirmation for Priority Mail users be considered under the expedited procedures for experimental classification changes set forth in Commission Rules 67 through 67d, and UPS moves that the Commission deny the Postal Service's request to treat this pure rate change under rules that are designed for classification cases.

Commission Rules 67-67d are limited to classification cases; they do not provide for expedited consideration of a request solely to change rates, which the Postal Service's proposal is. Even if this were a classification case, this proposal to provide Manual Delivery Confirmation service for free to certain users is not appropriate for expedited consideration under the criteria established by Rules 67 through 67d,

because the suspension of a fee is not “novel” within the meaning of the rules, and the magnitude of the impact the proposed drastic rate reduction would have on postal costs, on postal revenues, and on firms competing with the Postal Service has not been adequately evaluated. Furthermore, the way the suspension would be implemented will not make it possible to collect meaningful data in the two weeks proposed. See 39 C.F.R. §§ 67(b)(1)-(4).

ARGUMENT

A. Rules 67-67d Apply to Experimental Classification Proposals, Not to Pure Rate Changes Such As That Proposed Here.

Rules 67-67d apply to experimental changes in the mail classification schedule. They do not apply to pure rate changes.

These rules are part of Subpart C of the Commission's Rules of Practice and Procedure. That subpart is entitled, “Rules Applicable to Requests for *Establishing or Changing the Mail Classification Schedule*” (emphasis added). Moreover, Rule 67(a) explicitly states that “This section and § 3001.67a through § 3001.67d apply in cases where the Postal Service requests a recommended decision *pursuant to section 3623* of the Postal Reorganization Act,” the mail classification section of the statute. 39 C.F.R. § 3001.67(a) (emphasis added). Compare 39 U.S.C. § 3623 (entitled “Mail classification”) with *id.* § 3622 (entitled “Rates and fees”). Rule 67(a) goes on to state that it applies where “the *new service* or change in an existing *service*” is experimental in nature. 39 C.F.R. § 3001.67(a) (emphasis added). See also 39 C.F.R. §§ 3001.67(b) (rules “not intended to substitute for the rules generally governing requests for changes in the *Domestic Mail Classification Schedule*,” and Commission may elect to apply normal procedures for cases “under section 3623”) (emphasis

added), (b)(4) (referring to the proposed “Domestic Mail Classification Schedule language”), and (c) (Commission may follow “the normal mail classification change procedures”).

The Postal Service’s proposed “experiment,” however, is a request for a rate change, without any classification elements to it. Quite simply, the Postal Service is proposing to reduce the fee for Manual Delivery Confirmation service to zero for Priority Mail users during two of the busiest mailing weeks of the year. The proposal has none of the characteristics of a *classification* change, which involves changes in the way a mail service or services are grouped based on “size, weight, content, ease of handling, and identity of both posting party and recipient.” See *National Retired Teachers Ass’n v. United States Postal Service*, 430 F. Supp. 141, 146-147 (D.D.C. 1977), *aff’d*, 593 F.2d 1360 (D.C. Cir. 1979). See also *Pitney Bowes, Inc. v. United States Postal Service*, 27 F. Supp.2d 15, 22 (D.D.C. 1998). The Postal Service does not propose any changes in how delivery confirmation service would be offered to the public, or in the types of services for which it is to be available. All that is involved is a change in how much the service will cost.

The only Commission rules that allow for expedited review of rate change requests are those for “Market Response Rate Requests for Express Mail service,” which, as the name indicates, are limited to certain types of Express Mail rate requests. 39 C.F.R. §§ 3001.57-57c. In fact, the Commission has specifically declined the Postal Service’s request in Docket No. RM2001-3 to expand the scope of the Express Mail market response rules to other competitive services. Order No. 1322 at 7, Docket No. RM2001-3, Review of Sunset Rules (September 24, 2001).

The Commission has always limited Rules 67 through 67d to classification cases. In its Notice of Proposed Rulemaking regarding these rules, the Commission described them as an "effort to streamline the processing of *mail classification change requests* made by the Postal Service under 39 U.S.C. 3623." Docket No. RM80-2, Notice of Proposed Rulemaking, 45 Fed. Reg. 48663, 48664 (July 21, 1980) (emphasis added). And in its Order adopting Rules 67 through 67d, the Commission stated that Rule 67

delimits the cases to which the new procedures apply. It states, explicitly, that the new sections are applicable *only to classification cases* denominated by the Postal Service as experiments.

Order No. 363 (December 12, 1980) at 6 (emphasis added), Docket No. RM80-2, Rules of Practice – Experimental Proposals. It is classification cases, not rate cases, that are the subject of these rules.¹

The Commission's rules restrict expedited review of experiments to proposed experimental classification changes for good reason. The issues raised by pure rate changes make such changes ill-suited for expedited treatment. Oversight of the proper *relationship between the rates for the Postal Service's different services and their costs* is probably the most important role the Commission performs. The factors set forth in Section 3622(b)(3) require the Commission to undertake a particularly careful examination of the interrelationships among all relevant rates.

Especially challenging in a truncated proceeding would be a determination of whether a rate is sufficient to cover the mail service's attributable costs, as required by

1. Of course, a proposed classification change may have a rate change associated with it. In the present case, however, there is no classification element to the Postal Service's proposal to suspend the Manual Delivery Confirmation fee for Priority Mail users.

39 U.S.C. § 3622(b)(3). Attributable cost determinations are factual matters that are often highly technical and require careful consideration after an adequate opportunity for discovery and hearings. Similarly, determinations of how much of the institutional cost burden a particular service should shoulder often implicates other rates and rate relationships. Rate decisions involving competitive services have even greater policy implications.

On the other hand, classification changes can be minor and may have no effect on the rates mailers pay -- unlike this case, where a huge rate change (a fee reduction of 40 cents) is proposed, albeit for a limited time (during peak mailing season). Every rate change, however, is significant.

The evidence the Postal Service has offered in this case is sparse. It does not discuss the statute's ratemaking criteria. The absence of that discussion highlights the importance of ensuring that there is a full opportunity to develop an adequate record and exploring the implications of the Postal Service's sharp discount for this service, rather than rush a fee suspension through merely because the Postal Service waited too long before its desired implementation date to file its proposal.

This case is a good example of the incongruity of giving a Postal Service request for a pure rate change expedited treatment as a classification experiment. The Postal Service requests that the Manual Delivery Confirmation fee be reduced, for Priority Mail users only, by 40 cents, to zero, during the heaviest mailing season of the year. Yet, the Postal Service is presently operating at a deficit and is simultaneously proposing in another case filed only days later that the fee of 40 cents be *increased* by 12.5%, to 45 cents. Docket No. R2001-1, Request of the United States Postal Service for a Recommended Decision on Changes in Rates of Postage and Fees for Postal Services

and Request for Expedition, Attachment B, at 69. The Postal Service nevertheless wants expedited review of its rate suspension “experiment” with a competitive service offering, while its request to increase this competitive service’s price will not be decided for months.

Expedited review of rate “experiments” is inappropriate because there is no reason to “experiment” in the case of pure rate changes. Whether rates should be increased or decreased almost always turns on whether costs have increased or decreased, or on whether a service should be required to bear a lesser or a greater share of institutional costs. These are not the type of “novel” issues that require an experiment, as may be the case when a new service is proposed, or when a change in the terms of an existing service needs to be evaluated.

In any event, the language of Rule 67 is clear: only certain types of *classification* changes are eligible for expedited treatment under that rule. This, on the other hand, is a *pure rate change*. Accordingly, the Commission should deny the Postal Service’s request to expedite this case under Rules 67-67d.

B. This Case Does Not Pass Muster Under the Rule 67(b) Factors for Determining Whether Expedited Treatment Is Appropriate.

Even if this were a classification case, the Postal Service’s proposal does not meet the criteria for expediting experimental classification changes.

The Commission has set forth four factors for determining whether a proposal is a true “experiment” – the novelty of the proposed change; its magnitude; the ease or difficulty of generating data during the experiment; and the duration of the proposed experiment. All of these factors weigh against treating this proposal as an experiment to be reviewed on an expedited basis.

- (1) The Postal Service's Proposal to Offer a Competitive Service for Free Is Not "Novel" Within the Meaning of the Rules.

A proposal to offer a service for free is not the type of novel idea for which the rules governing classification "experiments" were designed. The experimental rules were developed for "*innovative services* responding to apparent public need." Docket No. RM80-2, Notice of Proposed Rulemaking, 45 Fed. Reg. 48663, 48663 (July 21, 1980) (emphasis added). There is nothing "innovative" about the idea of giving something away for free, and the only "need" being addressed is the Postal Service's desire for increased volume of its Delivery Confirmation service.

Indeed, if the Postal Service really wanted merely to find out whether more household Priority Mail users would purchase Manual Delivery Confirmation if they were aware of it, all it needs to do is instruct its window clerks to tell mailers about that service when they come to mail a piece of Priority Mail; it does not have to both tell them, and also give the service away for free. On the contrary, giving it away for free will obscure rather than help determine whether mailers are willing to purchase the service.

(2) The Magnitude of the Effect of the Proposed Change
Is Too Speculative.

The Postal Service has not provided enough information to be able to evaluate its proposal's effect "on postal costs, postal revenues, . . . 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).

Postal Service witness O'Hara has little to say about the effect on competitors of giving away a competitive service for free. His entire discussion of the subject is limited to four sentences, unsupported by any study or data. USPS-T-1, at 14 (lines 1-8). Also absent is any discussion of the impact of the proposal on Parcel Post. Yet, the Postal Service's own witness in Docket No. R2001-1 states that Delivery Confirmation

makes Priority Mail a more attractive alternative and, holding other factors constant, would be expected to cause some mailers to shift from Parcel Post to Priority Mail. To account for this shift, a delivery confirmation 0-1 variable was included in the Parcel Post equation. Table 15 shows that an 8.30 percent decline in Parcel Post volume is attributed to the introduction of Priority Mail delivery confirmation.

Docket No. R2001-1, Direct Testimony of George S. Tolley on Behalf of the United States Postal Service, USPS-T-7 at 136.

The Postal Service does not propose to provide Manual Delivery Confirmation service for free for Parcel Post users. Will those who go to the post office to mail a package as Parcel Post switch to Priority Mail when they see that they can get Delivery Confirmation service for free by doing so? What impact will that have on Parcel Post? And how much more in costs will be incurred if that happens?

The cost "data" the Postal Service's witness does provide has limited usefulness because of his assumption that the fee suspension will not attract any new volume,

whether from Parcel Post or from competitors. See USPS-T-1, at 14. That is a highly speculative assumption, at best.

The Postal Service's failure (or unwillingness) to present any meaningful data on the magnitude of the impact of this fee suspension does not prove that there will be no substantial adverse effect. Rather, it shows that the Postal Service's proposal has not been well-thought out, or that the Postal Service does not care about the effect of its proposal.

The magnitude of this rate change is substantial. A reduction of 40 cents in any postal rate -- more than the cost of a First Class Mail letter weighing one ounce -- is huge. A discount of 40 cents for a competitive service made available during the heaviest mailing season of the year is a particularly dangerous proposal. Since the magnitude of this rate change is so large, it would be a mistake to accept the Postal Service's estimate of the impact on revenues and costs in a truncated proceeding conducted while a general rate case is also underway.

(3) The Difficulty of Generating Useful Data With Respect to the Proposed Change Weighs Against Expedited Treatment.

The Postal Service's stated goals for its proposal are to determine whether giving away Manual Delivery Confirmation service for free to Priority Mail users for a substantial part of the holiday mailing season (1) will increase later demand for Manual Delivery Confirmation after the fee suspension ends when customers have to pay for the service again, or (2) will "noticeably smooth[] holiday mailing patterns." USPS-T-1, at 7.

To achieve its first goal, the Postal Service merely proposes to use its existing data collection sources to compare weekly volumes for the first six months of Calendar

Year 2002, with volume data for the same period of Calendar Year 2001." USPS-T-1, at 12. However, the Postal Service is silent as to how it will determine what, if any, volume increase is a result of the "experiment." To determine that, the Postal Service would have to generate data on *why* later purchasers of Manual Delivery Confirmation purchased that service after the fee suspension ends. Nowhere does the Postal Service propose to do that.

To evaluate the second stated goal of the fee suspension -- to shift holiday mailing patterns -- the Postal Service merely proposes to compare volume data for December 2001 on a week-by-week basis to that for the corresponding period in December, 2000. USPS-T-1, at 11. This "analysis" ignores a universe of other reasons why people might mail early or late. The Postal Service must somehow account for those reasons when it does its comparison, if the results are to have any meaning. Yet, the Postal Service has provided no indication that it will perform any analysis to determine what, if any, causal relationship exists between the fee suspension and the hoped-for shift in mailing patterns.

In short, the Postal Service has not suggested any methods for gathering data that will provide a reliable basis for drawing conclusions about the effect of its proposed "experiment."

- (4) The Two Week Period of the Experiment Will Not Yield Results Applicable to Delivery Confirmation Users Generally.

This two-week experiment covers such an atypical period of Priority Mail use that it cannot possibly provide insight into whether Priority Mail users will increase their use of Manual Delivery Confirmation in the future during other times of the year, when the

fee is reactivated. Moreover, a two-week “snapshot” is just too short to collect any meaningful data.

The Postal Service’s primary argument in favor of expedition boils down to its desire to implement its proposal on December 1. This “need” for expedition is an emergency of the Postal Service’s own making; it should have filed its proposal earlier, rather than waiting until the last minute. The Postal Service’s delay is not a reason to apply rules providing for expedited review, let alone accept a 72 day schedule that cuts in half the 150 day period those rules provide. See 39 C.F.R. § 3001.67d.

CONCLUSION

The Postal Service’s proposed fee suspension is not a classification change, nor is it an “experiment” within the meaning of the experimental classification rules. The only way a rate change of this magnitude should be implemented is after proper exploration of the ratemaking standards of the statute using the procedures required by the Commission’s rules for rate cases.

WHEREFORE, United Parcel Service respectfully requests that the proposal of the United States Postal Service to treat its Request in this case on an expedited basis under Commission Rules 67-67d be denied.

Respectfully submitted,

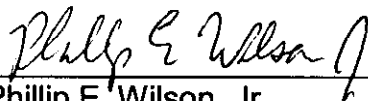


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CERTIFICATE OF SERVICE

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: October 10, 2001
Philadelphia, PA

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