

BEFORE THE  
POSTAL RATE COMMISSION

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EXPERIMENTAL SUSPENSION OF FEE FOR :  
MANUAL DELIVERY CONFIRMATION CATEGORY :

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POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY  
DOCKET NO. R2001-2  
DOCKET NO. MC2001-2

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STATEMENT OF ISSUES AND COMMENTS OF  
UNITED PARCEL SERVICE ON THE NEED FOR  
HEARINGS AND OTHER PROCEDURES  
(October 11, 2001)

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Pursuant to Order No. 1323 (September 25, 2001), United Parcel Service ("UPS") hereby identifies the issues it believes to exist in this proceeding, and provides its comments on the need for hearings and other procedures in this case.

**STATEMENT OF ISSUES**

UPS submits that the Postal Service's request and supporting testimony in this proceeding raise the following issues, all but the first of which present genuine issues of material fact:

1. As a matter of law, may the Postal Service provide a postal service for free to any mailer? See Docket No. R2000-1, *Opinion and Recommended Decision* at 584-85, ¶ 6124 (November 13, 2000) ("Although providing a free service to a mailer may be desirable from the mailer's viewpoint, it does not meet the § 3622(b)(3) requirement that delivery confirmation service bear its own direct and indirect postal cost.")

2. Will the actions proposed by the Postal Service achieve the Postal Service's stated goals?

(a) Will the proposed actions enable the Postal Service to achieve its stated goal of "learn[ing] more about . . . the extent to which modest incentives will induce households to shift their holiday mailing patterns"? Testimony of Donald J. O'Hara on Behalf of United States Postal Service, USPS-T-1 ("O'Hara Testimony") at 3 (lines 18-19).

(b) Will providing Manual Delivery Confirmation to Priority Mail users at no charge enable the Postal Service to achieve its stated goal of "lead[ing] more households and other infrequent users of Priority Mail to purchase Delivery Confirmation in the future"? O'Hara Testimony at 3 (lines 20-21).

(c) Will the proposed fee suspension resolve any other question relevant to a legitimate Postal Service objective?

(d) Is the structure of the proposed actions flawed so as to make any results meaningless?

3. Are there available means other than providing postal services for free that are sufficient to permit the Postal Service to achieve its stated goals?

4. Will the costs and other disadvantages of the proposed fee suspension outweigh its benefits?

5. Has the Postal Service accurately measured the revenue that would likely be lost as a result of the proposed fee suspension?

6. Has the Postal Service accurately estimated the projected additional volume of transactions it will be required to handle?

7. Has the Postal Service accurately measured the additional costs that it will incur in connection with its proposed fee suspension?
8. Has the Postal Service correctly allocated the additional costs it will incur?
9. Would the proposed fee suspension result in the Manual Delivery Confirmation service not covering its attributable costs for FY2002, or not making a reasonable contribution to institutional costs during FY2002?
10. Would the Postal Service achieve any meaningful cost savings as a result of the fee suspension?
11. Has the Postal Service adequately specified the data collection plan it will use during the proposed fee suspension?
12. Has the Postal Service adequately evaluated the effect of the proposed fee suspension on its private sector competitors?
13. Has the Postal Service adequately evaluated the effect of the proposed fee suspension on other services, especially Parcel Post?
14. Is the proposed fee suspension predatory?

**COMMENTS ON THE NEED FOR  
HEARINGS AND OTHER PROCEDURES**

As the above statement of issues indicates, the Postal Service's proposed fee suspension raises a number of factual issues that, in all likelihood, will not be resolved solely through discovery directed to the Postal Service's witness. Moreover, discovery is a poor substitute for oral cross-examination as a process for testing the assumptions and credibility of expert opinions offered by a witness in a prepared statement. See *Chevron USA, Inc. v. Cayetano*, 224 F.3d 1030, 1039 (9th Cir. 2000). That is especially so since the Postal Service, as the proponent of the fee suspension, bears the burden

of proving that the Commission should recommend it. 5 U.S.C. § 556(d), made applicable here by 39 U.S.C. § 3624(a).

Furthermore, Section 3624(a) of the Postal Reorganization Act ("the Act") provides that "the Commission shall not recommend a decision until the opportunity for a hearing on the record under sections 556 and 557 of title 5 has been accorded to" the parties. 39 U.S.C. § 3624(a). Section 556 in turn provides that "A party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts." 5 U.S.C. § 556(d). Failure to observe this requirement is reversible error. *Mail Order Ass'n of America v. United States Postal Service*, 2 F.3d 408, 415-16 (D.C. Cir. 1993).

Not only is cross-examination of the Postal Service's witness required here, but, as noted above, other parties are "entitled to present [their] case or defense by oral or documentary evidence." 5 U.S.C. § 556(d). At the present time, UPS intends to present expert testimony to show that the proposed fee suspension is a seriously flawed proposal, and, if implemented, would violate the most basic ratemaking requirements of the Act. Of course, it will be up to the Postal Service and other parties to determine whether they wish to engage in discovery or cross-examination with respect to that testimony.

The Postal Service proposes a deadline of October 17 for discovery on its testimony. Given the paucity of testimony it has presented, the fact that other parties inevitably start off behind the Postal Service and can obtain expert assistance only once a case like this is filed, and the importance of a proposal to eliminate a fee for a competitive service during the heaviest mailing season of the year, that is not sufficient.

In prior cases where the Commission granted expedited review of experimental proposals that were less ambitious than this one, the Commission has allowed substantially more time for discovery -- from 43 to almost 60 days -- than the 27 days the Postal Service proposes here. See, e.g., Docket No. MC2000-2, Presiding Officer's Ruling No. MC2000-2/3 (December 21, 1999); Docket No. MC96-1, Presiding Officer's Ruling No. MC96-1/1 (January 22, 1996). UPS proposes a deadline of October 31 for discovery on the Postal Service's case. That is still less -- 41 days -- than has been adopted in any other proceeding under the experimental rules.

Finally, UPS submits that the parties are entitled to submit briefs on the serious public policy and other issues raised by the Postal Service's proposal to give away a costly and valuable service for free.<sup>1</sup>

UPS has no desire to delay the disposition of the Postal Service's request. However, as the Postal Service itself has recently stated in another proceeding before the Commission:

the Postal Service fully appreciates the time demands imposed by the Commission's responsibilities under the Act, and acknowledges the Commission's substantial prerogatives in controlling the course of its rate and classification proceedings. We further emphasize that we would not advocate any schedule that would have the practical effect of denying the Postal Service or any other participant the opportunity to be heard under the requirements of due process. Most importantly, we would not seek to limit the Commission's effectiveness in carrying out its important functions

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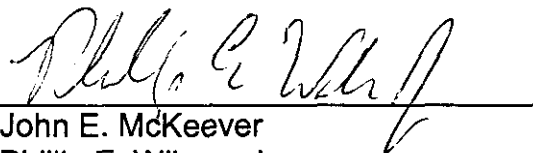
1. The present fee for Manual Delivery Confirmation for Priority Mail users is 40 cents -- six cents more than the cost to mail a First Class Mail letter weighing one ounce. In Docket No. R2001-1, the Postal Service proposes to increase that fee to 45 cents, or eight cents more than its proposed rate for a First Class Mail letter weighing one ounce. See 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 (September 24, 2001).

by depriving it of time needed to fully evaluate the record and formulate its recommendations.

Docket No. R2001-1, United States Postal Service Request for Expedition at 1  
(September 24, 2001).

Unfortunately, the Postal Service waited until a mere 72 days before its requested implementation date to file its request with the Commission, knowing full well that it would also be filing a general rate case within a matter of days. The Postal Service's irresponsible behavior should not be rewarded by permitting it to be used as an excuse for a severely truncated schedule that risks denying other parties their due process rights, or for taking shortcuts on a matter as significant as is presented by the Postal Service's request to give away a service whose fee it is proposing to increase by more than 12% in the general rate case.

Respectfully submitted,

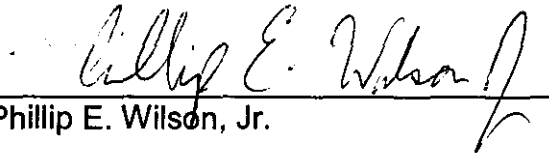


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CERTIFICATE OF SERVICE

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 11, 2001  
Philadelphia, PA