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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

ORIGINAL

ORDER NO. 1327

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

George A. Omas, Vice Chairman;
Dana B. Covington; Ruth Y. Goldway;
and W.H. "Trey" LeBlanc III

Experimental Suspension of Fee for
Manual Delivery Confirmation Category

Docket No. R2001-2
Docket No. MC2001-2

ORDER ON APPROPRIATENESS OF CONSIDERING
POSTAL SERVICE REQUEST UNDER COMMISSION RULES
APPLICABLE TO EXPERIMENTAL MAIL CLASSIFICATION CHANGES

(Issued October 12, 2001)

In the Notice and Order initiating this case, the Commission apprised interested parties that the Postal Service had invoked the Commission's rules applicable to experimental changes in mail classification, 39 C.F.R. § 3001.67 through .67d, in connection with its Request. Section 67(c) of those rules states that the Commission will entertain representations by parties to the case that the particular Request should not be considered under the rules for experiments. Accordingly, the Commission invited participants to submit comments on this issue by October 10, 2001. Order No. 1323, September 25, 2001, at 2-3.

Intervenor United Parcel Service (UPS) filed comments opposing consideration of the Postal Service's instant Request under the experimental rules, together with a

motion to deny their application in this case.¹ In light of the Service's request for consideration of its proposal on a highly expedited basis, the Presiding Officer instructed interested parties to be prepared to present oral argument on the issues raised in the UPS pleading during the prehearing conference to be held on Friday, October 12.

The Commission heard arguments on this issue during the prehearing conference earlier today. Following that argument, the Presiding Officer certified the issues raised for consideration by the full Commission pursuant to 39 C.F.R. § 3001.32 for expeditious resolution. The Commission accepts certification of those issues.

After reviewing the Postal Service's Request and supporting documentation, and considering the arguments advanced by the Service and UPS, the Commission finds that the proposal before us should not be considered under sections 67 through 67d of the rules of practice. The basis of this finding is the inescapable conclusion that what the Service proposes is not a mail classification experiment, or indeed any form of mail classification change at all.

It is apparent from both their placement and content that sections 67 through 67d are intended to apply exclusively to exercises of the Commission's mail classification authority under 39 U.S.C. § 3623. The rules are contained in Subpart C of the Commission's rules of practice, which is titled "Rules Applicable to Request for Establishing or Changing the Mail Classification Schedule." It is likewise evident that by their own terms the rules apply to Postal Service Request for "a recommended decision pursuant to section 3623 of the Postal Reorganization Act." 39 C.F.R. § 3001.67(a).

Therefore, the Commission agrees with United Parcel Service's premise that sections 67 through 67d "apply to experimental changes in the mail classification schedule...[but] do not apply to pure rate changes." UPS Comments and Motion at 2. Unless a change in mail classification of some form can be found in the substance of

¹ 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.

the Postal Service's proposal, in our view it would be inappropriate to consider the proposal under sections 67 through 67d, however consistent the proposal might be with the "experimental" criteria in section 67 (b).

The Commission cannot make such a finding concerning the Postal Service Request in this case. By its own terms, the substance of the experiment proposed in the Request is to "offer Delivery Confirmation without fee to retail Priority Mail customers from December 1 through 16, 2001." Postal Service Request of September 20, 2001 at 2. Conducting the proposed experiment might very well lead to proposals for classification changes in Delivery Confirmation service and Priority Mail, as counsel for the Postal Service argued. However, the Request before us in these proceedings does not involve any substantive change in the mail classification provisions applicable to the Delivery Confirmation special service or to Priority Mail. In essence, all the Postal Service asks the Commission to do in this proceeding is to recommend the temporary substitution of "\$0.00" for "\$0.40" in the column specifying the fee charged for Manual Delivery Confirmation used in conjunction with Priority Mail. See Postal Service Request, Attachment B. This is not, in our view, the kind of mail classification innovation to which the procedural rules in sections 67 through 67d are intended to apply.

Indeed, as UPS has noted, the Commission has not adopted rules explicitly applicable to consideration of proposed experimental rate adjustments of any kind.² This being the case, it will be necessary to consider the Request before us under the rules generally applicable to proposed rate changes, with appropriate adjustments in keeping with the very narrow and experimental character of the Postal Service's proposal. As we noted in Order No. 1323, extraordinary expedition will be required to enable us to evaluate the Postal Service's proposed experiment prior to this holiday

² Sections 57 through 57c of the rules of practice (39 C.F.R. § 3001.57-57c) were adopted to expedite urgent requests of the Postal Service for permanent changes in Express Mail rates in response to market conditions.

mailing season, but the Commission will make every effort within the bounds of procedural fairness to all parties to do so.

Therefore, the Commission shall grant the motion of United Parcel Service to deny application of sections 67 through 67d of the rules of practice to consideration of the Postal Service Request in this case. An Order dealing with the Postal Service's motion³ for waiver of certain filing requirements under 39 C.F.R. § 3001.54 and .64 will issue following the Postal Service's submission of a responsive pleading on Tuesday, October 15.

It is ordered:

The Motion of United Parcel Service to Deny Application of Rules 67 through 67d in this proceeding, filed October 10, 2001, is granted.

By the Commission.

(SEAL)



Steven W. Williams
Acting Secretary

³ Motion of the United States Postal Service for Waiver of Certain Provisions of Rules 54 and 64, September 20, 2001.