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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

ORDER NO. 1328

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 POSTAL SERVICE MOTION
FOR WAIVER OF CERTAIN PROVISIONS
OF COMMISSION RULES 54 AND 64

(Issued October 19, 2001)

In Order No. 1327, the Commission found the procedural rules governing experimental mail classification changes, 39 C.F.R. § 3001.67 through .67d, to be inapplicable to the Postal Service Request before us in this proceeding. That Order also deferred consideration of another Postal Service motion¹ for waiver of certain filing requirements under 39 C.F.R. § 3001.54 and .64 pending the Postal Service's submission of a responsive pleading on Tuesday, October 16. With the receipt of the Service's Reply,² the motion is now ripe for consideration.

In its motion, the Service submits that the nature of its Request renders a number of provisions in Rule 54 (39 C.F.R. § 3001.54) which require detailed cost,

¹ Motion of the United States Postal Service for Waiver of Certain Provisions of Rules 54 and 64, September 20, 2001.

² Reply of the United States Postal Service in Response to Opposition of United Parcel Service to Motion for Waiver of Certain Provisions of Rule 54, October 16, 2001.

volume and revenue information either inapplicable or appropriate for waiver in this case. Inasmuch as “the proposed experiment would, in effect, waive an otherwise existing fee on an experimental basis for a very limited duration[.]” Motion at 3, the Service asserts that its proposal is extremely limited in scope and will have insignificant effect on total costs and revenues. In light of the anticipated *de minimis* effects, and the proposal’s close relationship to the terms and conditions of Delivery Confirmation service established as a result of Docket No. R2000-1, the Service argues that it would be appropriate to rely on the record made in that case, as amended by the testimony and library reference filed with its Request. *Id.* at 4-5. The Service also explains that other information required by some Rule 54 provisions, such as information on the degree of economic substitutability among various classes and subclasses, specific data on the demand for Manual Delivery Confirmation while the fee is waived, and exact weight and shape criteria, are unavailable. *Id.* at 5-6.

No participant opposes the Service’s waiver motion in its entirety. However, in a response³ filed on October 10, intervenor United Parcel Service (UPS) states that, while not opposing the Service’s motion “to the extent these rules require the filing of systemwide data[.]” it believes the Service should be required to supply the information required by sections 54(b)(3), (i), and (j) for Parcel Post, Priority Mail, and Manual Delivery Confirmation service.

The provisions require: (1) “a statement identifying the degree of economic substitutability between the various classes and subclasses” [39 C.F.R. § 3001.54(b)(3)]; (2) a statement of the attributable cost recovery and institutional cost apportionment methods underlying each proposed rate schedule [39 C.F.R. § 3001.54(i)]; and (3) detailed revenue and volume information for each of the specified subclasses or services [39 C.F.R. § 3001.54(j)]. UPS argues that the first category of information should be provided because the proposed fee suspension for Manual Delivery Confirmation“ is likely to affect both Priority Mail and Parcel Post revenues and

³ Response of United Parcel Service in Opposition to Motion of the United States Postal Service for Waiver of Certain Provisions of Rules 54 and 64, October 10, 2001.

volumes[;]” Response at 3, by enhancing the attractiveness of Priority Mail during the experiment. According to UPS, the Postal Service should be required to comply with Rule 54(i) at least to the extent of presenting the rate design criteria underlying the proposed zero fee for Manual Delivery Confirmation, and projecting the fee suspension’s impact on Priority Mail and Parcel Post rates. *Id.* at 3-4. Finally, in light of alleged revenue and volume consequences of the proposed fee suspension on Parcel Post as well as for Priority Mail and the Delivery Confirmation service, UPS claims that the Service should be required to comply with Rule 54(j) “by supplying revenue and volume information for Parcel Post as well as for Priority Mail and Manual Delivery Confirmation.” *Id.* at 4.

In its Reply, the Postal Service reiterates that its proposal would not significantly change cost and revenue relationships for the Priority Mail subclass or the postal system as a whole, nor significantly change cost and revenue relationships for Parcel Post. Even though the Commission has found the experimental classification rules inapplicable, the Service argues, the Commission should nonetheless apply Rule 54 “in a fashion that recognizes the very limited nature and extent of the Postal Service’s proposal.” Reply at 2.

With regard to Rule 54(b)(3), the Service observes that responsive information can be found in evidence it submitted in Docket Nos. R2000-1 and R2001-1, particularly in the testimony of witness Tolley.⁴ Additionally, the Service claims that the substitution effects of the Delivery Confirmation experiment should be very small, and can reasonably be omitted in analyzing the effects of the experiment, because: (1) over 80 percent of total parcel post volume is entered at one of the worksharing rates, rather than at a retail window, and such mail can receive electronic Delivery Confirmation at no additional fee; (2) the Delivery Confirmation fee difference between Parcel Post and Priority Mail is significantly reduced from the 25-cent difference in March, 1999; (3)

⁴ The Service also points out that the portion of witness Tolley’s testimony in Docket No. R2001-1 cited by UPS relates only to the impact on parcel post of the introduction of Delivery Confirmation service in March, 1999. Reply at 3.

Parcel Post entered at retail windows has a less pronounced peak than does Priority Mail, and also exhibits a much lower level of usage of Delivery Confirmation service; and thus (4) "there is unlikely to be significant interplay between the experiment and users of Parcel Post." *Id.* at 3.

The Service further argues that Witness O'Hara has provided information responsive to Rule 54(i)(1) and (2) in his prepared testimony, and that the cost coverages for purposes of Rule 54(i)(3) are the same as those recommended by the Commission in Docket No. R2000-1. The Service also states that witness O'Hara will explicitly address the § 3622(b) pricing criteria in a supplement to his testimony to be filed in advance of the hearing scheduled for October 23. *Id.* at 3.

Regarding the requirements of Rule 54(j), the Service states that, to the extent such information is available, the anticipated revenue and volume effects of the proposed experiment are provided in the workpapers underlying witness O'Hara's prepared testimony. *Id.* at 4.

The Commission agrees with the Postal Service that, notwithstanding the inapplicability of the experimental classification rules to the proposal before us, the requirements of Rule 54 should be applied with a recognition of the limits and objectives of the Postal Service Request. While Rule 54 does not incorporate a waiver provision as such, it does allow the Postal Service to identify information that cannot be made available without undue burden, explain the reasons for its unavailability, and specify how and when such information could be produced. 39 C.F.R. § 3001.54(a)(2). The Commission believes that this provision can be adapted to the special circumstances of a proposed rate experiment, and that the Service has made reasonable efforts to address the provision's requirements in its pleadings and in the direct evidence it filed in support of its Request.

The Service's reference to witness Tolley's testimonies as the best available evidence on the subject of economic substitutability, and its explanation of the likelihood that this issue is of attenuated importance in the context of its proposed experiment, adequately address Rule 54(a)(2) considerations. Additionally, the data

collection effort to be undertaken by the Postal Service in connection with the planned experiment may result in generating information responsive to § 54(a)(2)(iii) and (iv).

As to the rate design underpinnings of the proposed zero fee for Manual Delivery Confirmation, and the fee suspension's likely impact on Priority Mail and Parcel Post rates, volumes and revenues, the Service and its witness have presented estimates and assumptions that other participants can probe—and have probed—through discovery practice. If UPS believes that the discovery process ultimately fails to yield an adequate evidentiary basis for issuance of a Commission decision on the substantive merits of the experiment, it may argue that the experiment should not be recommended. Furthermore, UPS and other interested parties will have an opportunity to rebut the Service's estimates and assumptions in responsive evidence, if they so desire.

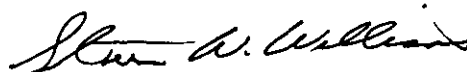
Therefore, the Commission shall grant the Postal Service's motion for waiver with respect to the pertinent requirements of Rule 54. Because the portion of Rule 64 invoked by the Service is inapplicable to the instant Request, its motion with respect to Rule 64 is dismissed as moot.

It is ordered:

The Motion of the United States Postal Service for Waiver of Certain Provisions of Rules 54 and 64, filed September 20, 2001, is granted with respect to Rule 54, and declared moot with respect to Rule 64.

By the Commission.

(SEAL)



Steven W. Williams
Acting Secretary