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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001

Docket No. R2001-1

Postal Rate and Fee Changes, 2001

**COMMENTS OF PERIODICALS COALITION
ON USPS REQUEST FOR EXPEDITION**

On September 24, 2001, the Postal Service filed a Request for Expedition asking the Commission to shorten the ten-month period specified by 39 U.S.C. 3624(c)(1) for issuing a recommended decision in a rate case. The Service suggested that a nine-month period might be appropriate, but did not identify where, or how, a full month should be removed from the normal statutory period.

Three days later, the Presiding Officer circulated for comment a proposed procedural schedule that appears to contemplate the issuance of a recommended decision within ten months, not nine, particularly if the Commission hears oral argument. Under the proposed schedule, for example, reply briefs would be due on May 23, 2002—nearly eight months after the filing of the Postal Service's request—and oral argument, if any, would take place on June 4-5, 2002, approximately two weeks later. Presiding Officer's Ruling No. R2001-1/1 (issued September 27, 2001). Pursuant to Order No. 1324 (issued September 26, 2001), the undersigned intervenors respectfully urge the Commission not to accelerate the procedural schedule proposed in Presiding Officer's Ruling No. R2001-1/1.

(1)

The Postal Service disavows any intent to deny any participant “the opportunity to be heard under the requirements of due process” or to deprive the Commission of “time needed to fully evaluate the record and formulate its recommendations.” USPS Request for Expedition at 1. The truncated period for adjudication and decision requested by the Postal Service, however, would have precisely those consequences, particularly if the Commission were to shorten the period from the Service’s initial request through the filing of reply post-hearing briefs.

With only one exception, omnibus postal rate cases and major classification cases during the past decade have required virtually the entire ten-month period for adjudication and decision:

Docket	Days from Request to Recommended Decision
R90-1	303
R94-1	267
MC95-1	307
R97-1	304
R2000-1	305

The one exception, Docket No. R94-1, involved “unique” circumstances. In that docket, the Postal Service proposed essentially a “simple across-the-board” rate increase, with changes in classification and rate design deferred to later dockets. The Service provided “virtually no new studies of its costs, or updates of its previous analyses of its operational flows or productivities,” and sponsored only

eleven pieces of direct testimony, compared with 23 pieces of direct testimony in the previous omnibus rate case, Docket No. R90-1. Moreover, many intervenors entered into a stipulation supporting the proposed rate changes, and the volume of intervenor testimony was likewise much smaller than normal. PRC Op. R94-1 ¶¶ 1000-1008 (Nov. 30, 1994).

The Postal Service's current request is not akin to the streamlined filing in Docket No. R94-1; in several respects, it is as complex as any omnibus rate request since 1970. The Service's case-in-chief includes, for example, 44 pieces of direct testimony—*four times* the number submitted in Docket No. R94-1, and nearly twice the number filed in Docket No. R90-1. Workpapers and other supporting documentation are correspondingly voluminous and elaborate.

Filings of this complexity, and the discovery disputes they generate, have rendered problematic even the full statutory period. It has become increasingly difficult for intervenors to evaluate the Postal Service's case-in-chief, pursue two rounds of discovery, prepare two rounds of responsive testimony, participate in three rounds of hearings, and submit two rounds of post-trial briefs in time for the Commission to assimilate the record and render a decision sufficiently well reasoned to withstand administrative and judicial review.

Under the circumstances, the Commission and the other participants have the right to ask the Postal Service—or any other proponent of shortening the statutory period for decision—to propose a specific alternative schedule, with specific filing dates and other intermediate deadlines, so that affected parties may know precisely how a shortened schedule will affect their procedural rights. The Postal Service has proposed no alternative schedule, however. Indeed, it has offered not a hint as to where 30 days could be eliminated from the time previously thought necessary by nearly every other stakeholder in the ratemaking process. Until the Postal Service proposes a specific alternative

schedule, its bald assertion that “significant potential exists for streamlining these proceedings” cannot be taken seriously.¹

(2)

Equally insubstantial are the supposed benefits to “the mailers” (Request for Expedition at 1) or the “Commission” from an “early Recommended Decision” (*id.* at 4). First, the Service asserts that a ten-month recommended decision will leave the Governors insufficient time to “accommodate an implementation date that conformed to the test year assumptions in the case” (Request for Expedition at 2). In plain English, however, this means only that new rates might not take effect until after the beginning of the FY 2003 test year. Nothing in the Postal Reorganization Act forbids the Governors from postponing the effective date of rate changes until after the beginning of the test year. Indeed, the Postal Service suggests that this may be the “preferred result” when the Service’s revenues permit. *Id.* at 4. In any event, the Postal Service has substantial control over the timing of a rate request as well as the choice of the rate case test year. Having exercised its discretion over both, the Service has no right to complain about the consequences of its choices. It certainly has no right to seek relief at the expense of intervenors, who have no control over either variable.

The Postal Service’s further claim that its “financial goals” could be “substantially undermined by loss of expected revenue” should the Commission allow the full ten-month period for a recommended decision (Request for Expedition at 2) has it backwards. The statutory ten-month deadline, and the Commission’s policy of using the full statutory period, have been prominent

¹ One way to short the period for adjudication would be to eliminate oral argument, as the Commission did in Docket No. R2000-1. The Commission need not consider whether to do so, however, until much later in this case.

features of the ratemaking landscape for most of the Postal Service's history. Nothing in Commission precedent gives the Service any ground for basing its "expected revenue" on the assumption that this case would be decided more quickly than normal. It is the rush to judgment sought by the Service, not its denial by the Commission, that would overturn settled expectations.²

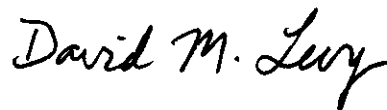
Finally, the Commission should give no weight to the Postal Service's suggestion that it may refrain from accelerating the effective date of rate changes even if the Commission issues its decision early (Request for Expedition at 3-4). If the Postal Service is seriously considering this option, it does not need an expedited Commission decision. In any event, the implied *quid pro quo* is meaningless: as the Postal Service acknowledges, the Board of Governors have not committed to such a delay, have not waived their discretion over the timing of implementing a recommended decision, and have no intention of deciding the matter "until the Commission issues its Recommended Decision." *Id.* at 3. In exchange for the Commission's sacrifice of its limited decisional period, the Postal Service has offered nothing.

² The Postal Service does not—and cannot—contend that unexpected *exogenous* changes in the economy justify abrogation of other parties' due process rights. The existing ratemaking scheme gives the Postal Service two independent tools for dealing with unexpected economic downturns: *ex ante*, the contingency provision authorized by 39 U.S.C. § 3621; *ex post*, the allowance for recovery of prior year losses.

CONCLUSION

For the foregoing reasons, the Postal Service's request for expedition should be summarily denied. If and when the Service submits a specific schedule showing precisely how the Service would modify the procedural intervals proposed in Presiding Officer's Ruling No. R2001-1/1, the undersigned parties will respond further.

Respectfully submitted,



David M. Levy
Sidley Austin Brown & Wood
1501 K Street, N.W.
Washington, DC 20005-1401
(202) 736-8214

*Counsel for Alliance of
Nonprofit Mailers*

John M. Burzio
Timothy L. Keegan
Burzio & McLaughlin
Canal Square, Suite 540
1054 31st Street, N. W.
Washington, D.C. 20007-4403

Counsel for AOL Time Warner Inc.

David R. Straus
Thompson Coburn
1909 K Street, N.W.
Washington, DC 20006-1167
(202) 585-6921

*Counsel for American Business
Press*

Stephen M. Feldman
601 Pennsylvania Ave. N.W.
South Building, STE 900
Washington, D.C. 20004
(202) 463-4960

*Counsel for Coalition of
Religious Press Associations*

Michael F. McBride
John W. Lawrence
LeBoeuf, Lamb, Greene &
MacRae, L.L.P.
1875 Connecticut Ave., N.W.
Suite 1200
Washington, D.C. 20009-5728

*Counsel for Dow Jones &
Company, Inc.*

Timothy W. Bergin
Squire, Sanders & Dempsey L.L.P.
1201 Pennsylvania Ave., N.W.
P.O. Box 407
Washington, D.C. 20044-0407

*Counsel for The McGraw-Hill
Companies, Inc.*

James Pierce Myers
Attorney at Law
1617 Courtland Road
Alexandria, VA 22306
(703) 660-1002

*Counsel for Magazine Publishers
of America, Inc.*

Tonda Rush
King & Ballou
P.O. Box 50301
Arlington, VA 22205
(703) 534-5750

*Counsel for National Newspaper
Association*

October 22, 2001

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document on all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.

David M. Levy

October 22, 2001