

DOCKET SECTION

POSTAL RATE COMMISSION

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:

POSTAL RATE AND FEE CHANGES

)
) Docket No. R2001-1
)

Pages: 1 through 46

Place: Washington, D.C.

Date: October 25, 2001

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ORIGINAL

POSTAL RATE COMMISSION

In the Matter of:)
) Docket No. R2001-1
POSTAL RATE AND FEE CHANGES)

Suite 300
Postal Rate Commission
1333 H Street, N.W.
Washington, D.C.

Volume 1
Thursday, October 25, 2001

The above-entitled matter came on for prehearing
conference, pursuant to notice, at 10:00 a.m.

BEFORE:

HON. GEORGE A. OMAS, VICE-CHAIRMAN, PRESIDING
HON. DANA B. "DANNY" COVINGTON, COMMISSIONER
HON. RUTH Y. GOLDWAY, COMMISSIONER

APPEARANCES:

On behalf of the United States Postal Service:

DAN FOUCHEAUX, Esquire
ERIC KOETTING, Esquire
SUSAN VICHEK, Esquire
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APPEARANCES: (cont'd.)

On behalf of ADP; EDS; KeySpan Energy; Long Island Power Authority; Major Mailers Association:

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34693 Bloomfield Road
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On behalf of Advo, Inc.; AOL Time Warner, Inc.; Saturation Mail Coalition:

JOHN M. BURZIO, Esquire
TIMOTHY L. KEEGAN, Esquire
TOM MCLAUGHLIN, Esquire
Burzio & McLaughlin
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On behalf of Alliance of Independence Store Owners and Professionals:

(No Appearance)

On behalf of Alliance of Nonprofit Mailers; American Library Association:

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On behalf of Amazon.com, Inc.; Association of Priority Mail Users, Inc.; Val-Pak Dealers Association, Inc.; Val-Pak Direct Marketing Systems, Inc.:

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APPEARANCES: (cont'd.)

On behalf of American Bankers Association:

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On behalf of American Business Media:

(No Appearance)

On behalf of Association for Postal Commerce; R.R. Donnelley & Sons Company, Inc.; Mailing & Fulfillment Service Association; Recording Industry Association of America:

IAN D. VOLNER, Esquire
N. FRANK WIGGINS, Esquire
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On behalf of Association of Alternate Postal Systems:

(No Appearance)

On behalf of Association of American Publishers:

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On behalf of Association of Leading Ag Media Companies:

(No Appearance)

On behalf of Banta Corporation:

(No Appearance)

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APPEARANCES: (cont'd.)

On behalf of Brown Printing Company:

(No Appearance)

On behalf of Douglas F. Carlson:

(No Appearance)

On behalf of Classroom Publishers Association:

STEPHEN F. OWEN, JR., Esquire
Classroom Publishers Association
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On behalf of Coalition of Religious Press Associations;
National Federation of Independent Publications:

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On behalf of Continuity Shippers Association:

(No Appearance)

On behalf of Direct Marketing Association, Inc.:

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APPEARANCES: (cont'd.)

On behalf of Dow Jones & Company, Inc.:

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On behalf of Brad A. Eickholt:

(No Appearance)

On behalf of Greeting Card Association:

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On behalf of Hallmark Cards, Inc.:

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On behalf of Hearst Corporation:

(No Appearance)

On behalf of Knight-Ridder, Inc.; Newspaper Association of America:

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On behalf of Lifetime Addressing:

(No Appearance)

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APPEARANCES: (cont'd.)

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On behalf of Mail Order Association of America; Parcel Shippers Association:

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DAVID TODD, Esquire
Patton Boggs, L.L.P.
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On behalf of McGraw-Hill Companies, Inc.:

TIMOTHY W. BERGIN, Esquire
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On behalf of Leonard Merewitz:

(No Appearance)

On behalf of Peter J. Moore & Associates, LLC:

(No Appearance)

On behalf of National Association of Letter Carriers:

(No Appearance)

On behalf of National Association of Postmasters of the United States:

(No Appearance)

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APPEARANCES: (cont'd.)

On behalf of National Association of Presort Mailers:

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On behalf of National League of Postmasters:

(No Appearance)

On behalf of National Newspaper Association:

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Also on behalf of the National Newspaper Association:

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On behalf of National Postal Mail Handlers Union:

(No Appearance)

On behalf of Newspaper Association of America:

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APPEARANCES: (cont'd.)

On behalf of the Office of the Consumer Advocate:

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On behalf of David B. Popkin:

(No Appearance)

On behalf of Reader's Digest Association, Inc.:

(No Appearance)

On behalf of Stamps.com, Inc.:

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On behalf of United Parcel Service:

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P R O C E E D I N G S

(10:00 a.m.)

VICE-CHAIRMAN OMAS: This hearing will come to order. Good morning.

This is the first prehearing conference in Docket R2001-1 to consider the request of the United States Postal Service for rate and fee changes. I am George Omas, Vice-Chairman of the Postal Rate Commission. With me today on my left is Danny Covington, Commissioner Covington, and to my right is Ruth Goldway.

Our fourth Commissioner, as you all know, Trey LeBlanc, will be leaving the Commission next month after 14 years of service. His attention to detail and common sense will be missed here at the Commission. During his tenure, Commissioner LeBlanc has made significant contributions to the postal world. For example, his focus on the need to properly deal with provisions for prior year losses ultimately led to the Governors adopting a resolution that changed postal policy.

On a more personal note, when I arrived at the Commission, Commissioner LeBlanc showed me it was possible to argue strongly for positions, but still accommodate conflicting views and reach collegial decisions. Except for his total irrational belief that the LSU football team will go undefeated, he has been a tremendous asset to the

1 Commission, and we all thank you, Trey.

2 We have a number of topics here today to discuss
3 at today's conference. First, I intend to review some
4 general procedural matters that I hope will make this
5 proceeding go more smoothly. After that, I will raise
6 several substantive matters. I intend to allow counsel a
7 full opportunity to discuss each of these issues. If
8 participants have one or more other issues to raise, we will
9 discuss them all as well. Finally, we will turn to the
10 issue of procedural dates for the conduct of this case.

11 The first order of business today is to mention
12 that yesterday the Commission had to post notice on its
13 website that mail service to and from the Commission's
14 office has been temporarily suspended. We do not know how
15 long the suspension will last. The Commission has made
16 arrangements to have its outgoing mail trucked to mail
17 facilities so that it can be delivered to participants.
18 However, the Commission is not receiving mail.

19 Participants will be expected to arrange to have
20 their filings delivered to the Postal Rate Commission. We
21 have very limited capacity for receiving documents via
22 facsimile. The Commission will accept documents by
23 facsimile or e-mail or any other reasonable means. Filings
24 received by the Commission will be posted on our website,
25 www.prc.gov.

1 Is there any participant here that does not have
2 access to the Commission's website?

3 (No response.)

4 VICE-CHAIRMAN OMAS: Fine. I will now request
5 that counsel representing intervenors who are present today
6 introduce themselves for the record. My list includes
7 notices of intervention received in our docket room through
8 October 24, 2001. If I neglect to mention any intervenor,
9 please speak up.

10 Who here is appearing on behalf of the United
11 States Postal Service?

12 MR. FOUCHEAUX: My name is Dan Foucheaux, Mr.
13 Chairman. With me at the table are Eric Koetting and Susan
14 Vichek.

15 We also have several other attorneys in the room.
16 Rather than try to list all of them, because I'm not sure I
17 can identify all of them right now, I would refer you to the
18 front page of the Postal Service's request where they are
19 all listed.

20 I would make one exception to that. We have two
21 new attorneys who have not appeared at the Commission
22 before. One, Mr. Brian Reimer, is not here. The other, Ms.
23 Nan McKenzie, is here, so I would like to introduce her.
24 She will be appearing on behalf of the Postal Service.

25 VICE-CHAIRMAN OMAS: Thank you.

1 Now I will proceed alphabetically. ADP?

2 MR. HALL: Thank you, Mr. Chairman. Mike Hall for
3 ADP. I would also like to make your job easier, or perhaps
4 more difficult, if I can --

5 VICE-CHAIRMAN OMAS: I'll accept that.

6 MR. HALL: -- and enter appearances for EDS, Major
7 Mailers Association, Long Island Power Authority and KeySpan
8 Energy.

9 VICE-CHAIRMAN OMAS: Thank you.

10 Advo, Inc.?

11 MR. BURZIO: Good morning, Mr. Chairman, members
12 of the Commission. For the record, I am John Burzio. I
13 will be appearing both for Advo, Inc., and AOL Time Warner.

14 Appearing with me for Advo will be Tom McLaughlin
15 and for AOL Time Warner, Tim Keegan.

16 VICE-CHAIRMAN OMAS: Thank you.

17 Alliance of Independence Store Owners and
18 Professionals?

19 (No response.)

20 VICE-CHAIRMAN OMAS: The Alliance of Nonprofit
21 Mailers?

22 MR. LEVY: Good morning. David Levy for the
23 Alliance of Nonprofit Mailers. I will also be appearing for
24 the American Library Association.

25 VICE-CHAIRMAN OMAS: Amazon.com?

1 MR. MILES: Good morning, Mr. Chairman, members of
2 the Commission. My name is John Miles. I'll be appearing
3 on behalf of Amazon.com, Inc., which has intervened as a
4 limited participator.

5 My co-counsel, William Olson, could not be here
6 today. Mr. Olson and I will also be representing in this
7 proceeding Val-Pak Direct Marketing Association or Val-Pak
8 Dealers Association and Val-Pak Direct Marketing Systems,
9 which will be proceeding jointly. We also represent the
10 Association of Priority Mailer Users, Inc.

11 All of the foregoing, except for Amazon, will be
12 intervening as full participators.

13 VICE-CHAIRMAN OMAS: Thank you.

14 American Bankers Association?

15 MR. WARDEN: Good morning. I'm Irving Warden
16 appearing for the American Bankers Association.

17 VICE-CHAIRMAN OMAS: American Business Media?

18 (No response.)

19 VICE-CHAIRMAN OMAS: The American Library
20 Association? I think he has already introduced himself.

21 AOL Time Warner has already introduced themselves.

22 Association for Postal Commerce?

23 MR. WIGGINS: Frank Wiggins for Post Comm.

24 VICE-CHAIRMAN OMAS: Association of Alternate
25 Postal Systems?

1 (No response.)

2 VICE-CHAIRMAN OMAS: Association of American
3 Publishers?

4 MR. PELESH: Good morning. My name is Mark Pelesh
5 appearing on behalf of AAP. With me is my colleague, John
6 Przypyszny.

7 VICE-CHAIRMAN OMAS: Thank you.

8 The Association of Leading Ag Media Companies?

9 (No response.)

10 VICE-CHAIRMAN OMAS: The Association of Priority
11 Mail Users has already introduced themselves.

12 Banta Corporation?

13 (No response.)

14 VICE-CHAIRMAN OMAS: Brooklyn Union Gas, et
15 cetera, et cetera. Mr. Hall has introduced himself.

16 Brown Printing Company?

17 (No response.)

18 VICE-CHAIRMAN OMAS: Douglas F. Carlson?

19 (No response.)

20 VICE-CHAIRMAN OMAS: Classroom Publishers
21 Association?

22 MR. OWEN: Mr. Chairman and Commissioners, good
23 morning. Steve Owen representing Classroom Publishers
24 Association.

25 VICE-CHAIRMAN OMAS: Thank you.

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1 Coalition of Religious Press Associations?

2 MR. FELDMAN: Good morning, Mr. Chairman and
3 Commissioners. I am Stephen M. Feldman. I am appearing
4 today on behalf of the Coalition of Religious Press
5 Associations. Also, John Stappert will be representing them
6 in this case. He can't be here today.

7 I will also be representing the new group, the
8 National Federation of Independent Publications.

9 VICE-CHAIRMAN OMAS: Thank you.
10 Continuity Shippers Association?

11 (No response.)

12 VICE-CHAIRMAN OMAS: Direct Marketing Association?

13 MR. ACKERLY: Good morning, Mr. Chairman, members
14 of the Commission. My name is Todd Ackerly. I'll be
15 representing Direct Marketing Association in this case.

16 VICE-CHAIRMAN OMAS: Thank you.

17 R.R. Donnelley & Sons Company?

18 MR. VOLNER: Good morning, Mr. Chairman. Ian
19 Volner on behalf of R.R. Donnelley & Sons, which is
20 appearing as a limited intervenor.

21 Since I'm here, I may as well tick off the rest of
22 the list. We will also be appearing, Mr. Wiggins and I, on
23 behalf of the Recording Industry Association and the Mailing
24 & Fulfillment Services Association. It is likely that the
25 latter of these two will jointly participate with the

1 Association for Postal Commerce.

2 VICE-CHAIRMAN OMAS: Thank you.

3 Dow Jones & Company?

4 MR. MCBRIDE: Good morning, Mr. Chairman, members
5 of the Commission. I am Michael F. McBride. With me is
6 John W. Lawrence. We represent Dow Jones & Company, Inc.

7 VICE-CHAIRMAN OMAS: Thank you.

8 Brad Eickholt?

9 (No response.)

10 VICE-CHAIRMAN OMAS: Greeting Card Association?

11 MR. SWENDIMAN: Good morning, Mr. Chairman,
12 members of the Commission. My name is Alan Swendiman, and I
13 will be appearing on behalf of the Greeting Card
14 Association.

15 VICE-CHAIRMAN OMAS: Thank you.

16 Hallmark Cards, Inc.?

17 MR. STOVER: Good morning, Mr. Chairman and
18 Commissioners. David Stover representing Hallmark Cards,
19 Inc. With me for Hallmark will be Mr. Sheldon L. Beerman.

20 VICE-CHAIRMAN OMAS: Thank you.

21 Hearst Corporation?

22 (No response.)

23 VICE-CHAIRMAN OMAS: Knight-Ridder, Inc.?

24 MR. BAKER: William Baker appearing on behalf of
25 Knight-Ridder, which is a limited participant in this

1 proceeding.

2 While here, let me also notice my appearance on
3 behalf of the Newspaper Association of America, in which for
4 that client I'll be assisted by Robert Brinkmann, the vice-
5 president and counsel of NAA.

6 VICE-CHAIRMAN OMAS: Thank you.

7 Lifetime Addressing?

8 (No response.)

9 VICE-CHAIRMAN OMAS: The Long Island Power
10 Authority? Mr. Hall.

11 Magazine Publishers of America?

12 MR. MYERS: Good morning, Mr. Vice-Chairman,
13 Commissioners Goldway and Covington. I am Pierce Myers. I
14 will be appearing on behalf of the Magazine Publishers of
15 America.

16 VICE-CHAIRMAN OMAS: Thank you.

17 Mailing & Fulfillment Service Association? Yes.
18 I'm sorry. Mr. Volner.

19 Mail Order Association of America?

20 MR. MAY: Apparently my partner isn't here. David
21 Todd, my partner, and I, Timothy May, will be counsel for
22 the Mail Order Association.

23 VICE-CHAIRMAN OMAS: Thank you. Would you state
24 your name, please? I know you want to go incognito.

25 MR. MAY: Timothy May. Thank you, Mr. Chairman.

1 VICE-CHAIRMAN OMAS: Thank you, Mr. May.

2 MR. MAY: While I'm here, I am also counsel for
3 the Parcel Shippers Association.

4 VICE-CHAIRMAN OMAS: Thank you.

5 McGraw-Hill Companies?

6 MR. BERGIN: Good morning, Mr. Chairman, members
7 of the Commission. My name is Tim Bergin, and I will be
8 representing the McGraw-Hill Companies in these proceedings.

9 VICE-CHAIRMAN OMAS: Leonard Merewitz?

10 (No response.)

11 VICE-CHAIRMAN OMAS: Peter J. Moore & Associates?

12 (No response.)

13 VICE-CHAIRMAN OMAS: The National Association of
14 Letter Carriers?

15 (No response.)

16 VICE-CHAIRMAN OMAS: The National Association of
17 Postmasters of the United States?

18 (No response.)

19 VICE-CHAIRMAN OMAS: National Association of
20 Presort Mailers?

21 MR. HART: Good morning. My name is Henry Hart.
22 I'll be representing the National Association of Presort
23 Mailers as a full participant. Thank you.

24 VICE-CHAIRMAN OMAS: Just to go back, I sort of
25 got mixed up here with Mr. May. Did Major Mailers

1 Association identify themselves? All right. Thank you.

2 That's Mr. Volner. Thank you.

3 National Federation of Independent Publications?

4 All right. Mr. Feldman.

5 National League of Postmasters?

6 (No response.)

7 VICE-CHAIRMAN OMAS: National Newspaper

8 Association has already identified themselves. Oh, no.

9 That's somebody else.

10 MS. BOONE: Good morning, Mr. Chairman and
11 Commissioners. Senny Boone on behalf of the National
12 Newspaper Association, NNA. Also appearing on behalf of NNA
13 will be Tonda Rush.

14 VICE-CHAIRMAN OMAS: I apologize.

15 The National Postal Mail Handlers Union?

16 (No response.)

17 VICE-CHAIRMAN OMAS: Now we turn to the Newspaper
18 Association of America. Mr. Baker has identified himself.

19 The Office of Consumer Advocate?

20 MS. DREIFUSS: I'm Shelley Dreifuss representing
21 the Office of Consumer Advocate. Appearing with me in this
22 proceeding will be Rand Costich, sitting on my left, Kenneth
23 Richardson and Frederick Dooley.

24 VICE-CHAIRMAN OMAS: Thank you.

25 The Parcel Shippers Association has already

1 identified themselves.

2 David B. Popkin?

3 (No response.)

4 VICE-CHAIRMAN OMAS: The Reader's Digest
5 Association?

6 (No response.)

7 VICE-CHAIRMAN OMAS: The Recording Industry
8 Association of America has identified themselves.

9 The Saturation Mail Coalition?

10 MR. MCLAUGHLIN: Good morning. I'm Tom
11 McLaughlin. I'm representing the Saturation Mail Coalition.
12 With me will be John Burzio.

13 VICE-CHAIRMAN OMAS: Stamps.com?

14 MR. HENDEL: Good morning My name is David
15 Hendel. I'll be representing Stamps.com, Inc.

16 VICE-CHAIRMAN OMAS: Thank you.
17 The United Parcel Service?

18 MR. MCKEEVER: Good morning, Mr. Commissioner,
19 members of the Commission. My name is John McKeever
20 representing United Parcel Service. Also appearing on
21 behalf of United Parcel Service will be my colleague,
22 Phillip Wilson.

23 VICE-CHAIRMAN OMAS: Thank you.

24 Val-Pak Dealers Association has already identified
25 themselves, as well as Val-Pak Direct Marketing Systems,

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1 Inc. Thank you.

2 Is there anyone else who has filed a notice of
3 intervention whose name I have not called?

4 (No response.)

5 VICE-CHAIRMAN OMAS: For those of you who have not
6 already done so, please fill out the appearance form and
7 hand it to the reporter before you leave today. The forms
8 are available on the small table at the front entrance to
9 the hearing room.

10 Anyone interested in obtaining a transcript of
11 today's prehearing conference or any other official
12 Commission proceeding in this case should make arrangements
13 directly with the reporting company. Heritage Reporting
14 Corporation is the reporting company. It's a new one.
15 Order forms are available on the bottom half of the
16 appearance form.

17 Transcripts are also available on computer
18 diskettes. Please fill out an order form if you wish
19 transcripts either in hard copy or diskette form. Anyone
20 needing to make additional arrangements that cannot be dealt
21 with today through the reporter, please call the company at
22 (202) 628-4888.

23 I also want to remind counsel that it will help
24 the reporters greatly if you identify yourself for the
25 record the first time you speak on any given day.

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1 The cost per page for transcripts in this case
2 will be higher than they have been in the past. However,
3 for the first time the Commission will be able to put
4 transcripts up on our website. The transcripts will not
5 appear on our website until seven days after the hearings
6 take place. The electronic version should be searchable,
7 which should facilitate counsels' work.

8 The next item on our agenda is the operations at
9 the Commission. We will begin this morning with our hearing
10 room procedures. The Commission has maintained the same
11 routine through a number of cases, and many of the
12 participants in this case are familiar with those practices.
13 I expect to continue those.

14 Hearings will begin at 9:30 a.m. and will proceed
15 with a ten minute morning break at approximately 10:45 a.m.
16 A 75 minute lunch break will be given at approximately, give
17 or take, 12:00 to 12:15, and afternoon breaks will be given
18 as necessary. As in the past, hearings will generally be
19 scheduled five days a week. If necessary, to maintain our
20 schedule, we will hold evening and/or Saturday sessions.

21 Does any participant wish to suggest a change to
22 our traditional hearing room procedures?

23 (No response.)

24 VICE-CHAIRMAN OMAS: Our docket section at the
25 Commission is open from 8:00 a.m. to 4:30 p.m. for filing of

1 documents and for the public review of documents.

2 The home page of the Commission's website has a
3 scrolling message. On the days when hearings are scheduled
4 to take place, the message will indicate the order of
5 appearance of witnesses who have not yet testified. It will
6 be updated at breaks so that interested persons can quickly
7 ascertain which witnesses still have to present testimony.
8 Additionally, the Commission plans to make our hearings
9 accessible via real audio. Thank you.

10 Now let's turn to some procedural matters that
11 should facilitate the proceedings or hopefully will
12 facilitate the proceedings. First, the Commissioners have
13 been struck by the substantial number of acronyms that have
14 been used in various discovery documents. We request that
15 any time an acronym first appears in a document that you
16 will fully reference to which the acronym is used and also
17 appears.

18 Some acronyms such as UPS, USPS and CRAs are
19 already understandable to everyone. The potential for
20 confusion arises when different types of machines,
21 facilities, organizations or data collection systems are
22 being referenced.

23 Next, I want to request your cooperation when you
24 are preparing designations of written cross-examination for
25 incorporation into our transcripts. The system that we have

1 developed works well when parties take the time to make it
2 easy for the Commission staff to collate the many varied
3 designations that are received in any one given day.

4 This is our request. Please provide a separate,
5 discrete document containing the designation of each
6 witness. If you are designating written cross-examination
7 for five witnesses, all of whom are scheduled to appear on
8 the same day, we would still like you to prepare five
9 separate notices, accompanied by five separate packages of
10 designated written cross-examination.

11 Participants may continue to combine multiple
12 statements of intent to conduct cross-examination into one
13 single document. Our problem has been assuring that all
14 designated written cross-examination is identified and
15 incorporated into the package provided to witnesses at the
16 beginning of the hearings. Your cooperation in this matter
17 will save time during the hearings and result in a more
18 useful hearing record.

19 Are there any questions at this point regarding
20 this request?

21 COMMISSIONER GOLDWAY: I would just like to
22 reiterate that our concern with regard to acronyms involves
23 interrogatories that are filed, those documents, and
24 responses to interrogatories. Especially the brief
25 documents would benefit from the explanation of what the

1 acronyms are.

2 VICE-CHAIRMAN OMAS: Thank you.

3 In the last case, participants were urged to
4 include the word errata in the title of any document
5 correcting the previous submission. We again ask you to
6 include the word errata when correcting or replacing a
7 previously filed document. This enables the Commission to
8 identify and properly sort documents that make related
9 filings easily accessible on our website.

10 Another area of concern for our administrative
11 staff is dealing with materials that are to be treated as
12 confidential. Participants providing confidential material
13 or submitting legal documents making specific references to
14 confidential material must submit such filings in a separate
15 sealed envelope marked clearly with notice that the envelope
16 contains material under seal. Please note that Commission
17 Rule 31(a) describes the treatment of in camera information.
18 It is important that participants adhere to these rules so
19 as to assure that the material under seal are not
20 inadvertently disclosed.

21 I also have some comments concerning protective
22 conditions. In several instances, participants and the
23 Postal Service have avoided or at least deferred controversy
24 by agreeing to protective conditions applicable to
25 responding to discovery. I appreciate the benefits of

1 deferring and perhaps avoiding motion practice. At the same
2 time, I urge participants to avoid unnecessarily
3 complicating our procedures with extensive use of protective
4 conditions.

5 The Commission is charged with holding open public
6 proceedings. This charge may be frustrated by extensive use
7 of protective conditions, especially in the briefings and
8 the decision writing phase of this case. Without prejudging
9 any specific factual situation, I think it might be
10 difficult to justify protective conditions regarding
11 provisions of the monopoly services.

12 Next I want to discuss electronic filing.
13 Yesterday, the Commission issued a notice initiating a test
14 of electronic filing. Additional copies of that notice are
15 available on the table at the door as you enter the hearing
16 room.

17 As you all know, the Commission initiated a
18 ruling, Docket No. RM2001-2, this summer to explore the
19 possibilities of submitting electronic filing for hard copy
20 filing and service of documents. The potential benefits of
21 electronic filing include more rapid and certain filing of
22 documents with the Commission, the elimination of the need
23 to provide multiple copies of documents to the Commission
24 and to the Postal Service and relief from having to provide
25 service on other participants.

1 During a conference in the rule making docket,
2 there was a broad agreement that the potential savings in
3 time and money justified an attempt to develop a system of
4 filing documents electronically. We at the Commission and
5 its staff have been working very hard to develop a system
6 that will allow electronic filing and will also provide
7 parties with documents that can be electronically searched
8 and that can be easily copied and inserted where
9 appropriate.

10 The Commission is asking all participants to test
11 this new system over the next several weeks. When you file
12 a document with the Commission, please also attempt to use
13 the e-file system to submit the document electronically.
14 All of the details of this system are set out in the notice
15 we distributed yesterday. I believe this system is simple
16 and straightforward. Notwithstanding that, I am probably
17 not the best person to answer any of your questions about
18 how the system is supposed to work. The notice contains a
19 phone number and a web page address to use to ask any of
20 your questions.

21 At the conclusion of today's prehearing
22 conference, the Commission will provide a brief informal
23 presentation on how to use the new electronic filing system.
24 At that time, staff will be available to walk you through
25 the process and to answer any questions you might have. We

1 will set up a computer and go through this presentation
2 approximately 15 minutes after this conference is adjourned.

3 Again, the Commission believes that a successful
4 electronic filing system will provide substantial benefits
5 in time and money. Had this system been in place last week,
6 the disruption in mail service I mentioned at the start of
7 today's hearing would have had a much more minor impact on
8 these proceedings.

9 I urge everyone to test this system and to let us
10 know of any problems you have and of any improvements you
11 might suggest to us. Over the next two to three weeks, we
12 will evaluate our system and attempt to improve it. I
13 expect to issue a progress report sometime in the middle of
14 next month. If the test is successful, I will distribute
15 for comment a proposal for using electronic filing during
16 subsequent stages of this case.

17 The Order providing the notice of the Postal
18 Service request in this case directed parties to provide
19 answers to a number of Postal Service motions by the close
20 of business yesterday. In particular, the Postal Service
21 submitted five motions requesting waivers of Commission
22 rules.

23 No opposition to these motions have been filed by
24 the end of last week. Because of the disruption in the mail
25 service, I will allow any interested participant to comment

1 further this morning if necessary. Are there any comments
2 on any of these motions for waivers?

3 (No response.)

4 VICE-CHAIRMAN OMAS: The Commission has also asked
5 parties to comment on the Postal Service's request for
6 expedition. Comments were filed by Post Comm, the
7 Periodical Coalition, the Newspaper Association of America,
8 the Office of Consumer Advocate, the American Bankers
9 Association, National Association of Presort Mailers, Val-
10 Pak Direct Marketing System and Val-Pak Association, and the
11 Postal Service. The Postal Service's comments include a
12 proposed procedural schedule designed to expedite a
13 Commission decision.

14 Other participant comments may have been delayed.
15 Does any participant wish to expand upon its comment or
16 respond to comments of any other participant?

17 Mr. Levy?

18 MR. LEVY: Thank you. David Levy for the Alliance
19 of Nonprofit Mailers.

20 The Periodicals Coalition, when we filed our
21 comments, did not have before it the specific procedural
22 schedule alternative that the Postal Service has
23 subsequently filed. On behalf of the Alliance and the
24 Periodicals Coalition, I would like to expand on our
25 comments in light of that specific schedule.

1 We believe that the revised schedule proposed by
2 the Postal Service should not be adopted for two general
3 reasons. One is that we believe that its schedule would
4 prejudice the rights of intervenors, and, second of all, we
5 believe that there are no offsetting exigent circumstances
6 that warrant such an extreme remedy.

7 If you look at the specific alternative schedule
8 that has been proposed, the Postal Service proposes to
9 eliminate ten days from the start of the hearings. That
10 would be ten days that we would otherwise be using to try to
11 understand the large and complex case before we cross-
12 examine their direct witnesses.

13 The Postal Service does not propose to reduce the
14 time it would have to engage in discovery against the
15 intervenors -- that remains at 28 days -- and would reduce
16 by only three days the time that it has to understand any
17 testimony we might file; that is, the date hearings start on
18 the intervenors' cases.

19 The alternative proposal would also reduce the
20 time that we have to prepare our direct testimony by 16
21 days; that is, from 128 days in the Commission's proposed
22 schedule to 112 days in the Postal Service alternative
23 proposal. Of course, the Postal Service would generously
24 give us the holiday period to work while they get to eat
25 turkey and watch baseball games, a point that my client

1 specifically asked me to raise.

2 As Post Comm and NAA have pointed out in their
3 comments, prompt Postal Service responses to discovery
4 requests would suggest a good faith effort to expedite, but
5 the analysis that our people have done, our consultants,
6 indicates that through yesterday more than 90 percent of the
7 responses that the Postal Service -- I'm sorry. Not
8 yesterday. A couple of days ago. The Postal Service has
9 not responded to them until the last day, the fourteenth
10 day, or has filed responses late. The average number of
11 days that it has taken to respond is 13.99. That's not much
12 expedition.

13 The members of the Commission have participated in
14 one or more omnibus cases in the past, so I needn't remind
15 you that discovery tends to be a contentious, time consuming
16 process. Often times it requires more than one round of
17 questions to get the information. In saying that I am not
18 pointing fingers at anyone. That is just the nature of
19 complex discovery, and the same goes for the necessary
20 motion practice.

21 We believe that the truncation of the schedule
22 would impose hardship, that the existing schedule that the
23 Commission has proposed is extraordinarily tight as is,
24 tight as required by the statute, but let's not make it
25 tighter.

1 The offsetting countervailing arguments that the
2 Postal Service has suggested do not justify the extreme
3 remedy that is being proposed. I would just like to
4 summarize three points we made, and I will be brief about
5 that, and then add something that was not in our paper.

6 The first reason given by the Postal Service was
7 that a ten month recommended decision would leave the
8 Governors with insufficient time to "accommodate an
9 implementation date that conforms to the test year
10 assumptions in this case." If we understand what that
11 means, we think it means that they're saying that the new
12 rates might not take effect until after the beginning of the
13 Fiscal Year 2003 test year.

14 It's not uncommon, and it's certainly not
15 impermissible, for rates to be implemented after the
16 beginning of the rate case test year. Indeed, the Postal
17 Service has indicated that that might be a desirable outcome
18 if they could afford to do so.

19 Second of all, the Postal Service argues that its
20 financial goals could be substantially undermined by loss of
21 expected revenue. We think they have it backwards. I want
22 to focus on the word expected. One thing that is to be
23 expected in postal rate cases is that they take about ten
24 months. That's been the norm for over a decade; indeed, for
25 most of the Commission's history. The one anomaly in this

1 last decade was a simplified case in R-94, so that it is not
2 a ten month cycle that would break expectations. It would
3 be a truncated cycle that would be contrary to expectations.

4 Now, perhaps the Postal Service has in mind, and
5 here I am speculating, that there are some exigent financial
6 circumstances relating to the recent newspaper headlines
7 that might warrant special treatment. The Commission should
8 not give weight to any such speculation. The Postal Service
9 has not made such an assertion. They have not backed it up
10 with the kind of financial data that will allow the parties
11 notice and an opportunity respond.

12 Unless and until such a claim is formally made,
13 the Commission should not give that kind of speculation
14 weight. If and when such a claim is made then the parties
15 can respond appropriately about what relief, whether here or
16 in some other form, is appropriate, but that is completely
17 premature now. Unless and until such a claim is made, we
18 ought to presume that the existing statutory remedies, the
19 allowance for prior year losses and the contingency
20 provision are adequate.

21 Finally, the Commission should give no weight to
22 the suggestion that the Postal Service might refrain from
23 accelerating the effective date of rate changes even if the
24 Commission were to issue a decision early. If the Postal
25 Service is seriously considering this option, that indicates

1 they really don't need the extra cash flow from an earlier
2 decision.

3 On the other hand and in any event, there has been
4 no commitment from the Postal Service that they will delay
5 their decision or hold their decision steady in time if the
6 Commission were to issue its decision early. There is no
7 binding commitment. To the contrary, they have expressly
8 reserved their right to defer their decision without the
9 timing of the rate cases, of the rate changes, until after
10 this Commission issues its recommended decision. For those
11 reasons, we do not believe that the extraordinary relief
12 that has been proposed here is justified.

13 Finally, one last point. One could take a couple
14 of weeks off the schedule by not having oral argument, as
15 has been the case in the last case, but that's a decision
16 that the Commission can confront further down the road.

17 Thank you.

18 VICE-CHAIRMAN OMAS: Thank you.

19 Mr. Wiggins?

20 MR. WIGGINS: Frank Wiggins for the Association
21 for Postal Commerce. Post Comm endorses Mr. Levy's offer to
22 the Commission. It obviously is at your discretion to do
23 away with the time necessary for oral argument unless the
24 Commission thinks that it is sufficient helpful to warrant
25 that time.

1 We would go a step further and suggest that unless
2 the Commission finds briefing really important to the
3 decisional process, Post Comm would be willing to forego the
4 opportunity to do trial briefs. Unless they serve as a
5 helpful road map to the Commissioners, we would be willing
6 to sacrifice that little piece of time.

7 Those things aside, in my parsing of the two
8 schedules, and Post Comm incidentally endorses the schedule
9 proposed by the Commission over that proposed by the Postal
10 Service. The primary reason for that is that as I parse
11 through the two documents there are a lot of similarities
12 between them. The major difference, the place at which the
13 two documents get off track one from the other, is that the
14 Postal Service proposes the conclusion of discovery by
15 intervenors, such as Post Comm, in its case on November 23.
16 The Commission schedule gives until December 10 to conclude
17 that intervenor discovery of the Postal Service case.

18 Now, I wouldn't suggest that the Postal Service is
19 trying to hide something or preclude the opportunity for
20 necessary intervenor discovery, but I do believe that that
21 is the effect of the schedule that it has proposed. This is
22 a complicated case. It is a big case. There are a bunch of
23 witnesses. There is already, before the Commission has even
24 formally initiated the discovery process, been a fair line
25 of interrogatory practice.

1 Post Comm has been among those who have started
2 off early trying to move this process along by beginning to
3 interrogate by written interrogatories Postal Service
4 witnesses. We have a bunch of them outstanding. We've
5 actually even got a few answers back, good answers, but the
6 process cannot be curtailed over much.

7 I would just suggest that the difference between
8 the reasonable schedule proposed by the Commission and the
9 truncated discovery period proposed by the Postal Service
10 just doesn't give adequate time fully to ventilate the
11 complexities of the presentation that the Postal Service has
12 made in its case in chief and that the schedule that the
13 Commission has proposed, though it's going to make us work
14 awful hard, as we have already begun to do. The schedule
15 that the Commission has proposed is much more reasonable in
16 permitting intervenors their day in Court.

17 Thank you.

18 VICE-CHAIRMAN OMAS: Thank you, Mr. Wiggins.

19 Mr. Volner?

20 MR. VOLNER: Mr. Chairman, obviously the Recording
21 Industry Association supports the position taken by the
22 Association for Postal Commerce.

23 I would like to add two --

24 VICE-CHAIRMAN OMAS: Surprise.

25 MR. VOLNER: If I expect to get out of my office

1 alive tonight.

2 I would like to add two points. The Postal
3 Service, in its schedule which was produced in part I think
4 in response to Post Comm's comments, raises a concern with
5 the Commission's schedule which bifurcates or distinguishes
6 between complex issues and issues which are not complex.

7 We think that the Commission has actually,
8 although they have not defined it, come up with a very
9 effective way of dealing with what has been a problem in
10 prior cases. The term complex issue is not self-defining,
11 but it appears to me that there are two general principles
12 that can be applied. There are in this case some very new
13 proposals, very novel rate design issues in particular. By
14 definition, those are complex because we have not seen them
15 before. The fact is that IRRA and Post Comm both are
16 dealing with several of those issues.

17 There are other kinds of issues, and the OCA has
18 dealt with it in a somewhat different way by identifying
19 particular witnesses. There are other kinds of issues or
20 witnesses, if you will, where what we are required to do is
21 manipulate a large amount of data. The classic example in
22 my mind is Dr. Tolley's analyses.

23 If those witnesses are not able to respond to
24 interrogatories well in advance of the hearing date, what
25 happens is that the hearings become chaotic and less than

1 satisfactory. If we get responses at the hearing, and the
2 Postal Service has been assiduous in the past in at least,
3 even when they're late, getting us the interrogatories the
4 day the witness arrives. On the day the witness arrives, it
5 doesn't give us a lot of time to analyze that data, and the
6 oral cross becomes more extended than it needs to be. The
7 length of time and the confusion in the record becomes more
8 complicated than it needs to be.

9 We endorse the Commission's schedule, and we think
10 that you should not under any circumstance abandon the
11 thought that you have advanced to distinguish between
12 complex discovery and less complex discovery. There may be
13 some contention, but I think you'll find that most of us
14 recognize when an issue is complex, and most of us recognize
15 when it is not. When it is not, we are perfectly willing to
16 cut off discovery on the earlier date.

17 Thank you.

18 VICE-CHAIRMAN OMAS: Thank you, Mr. Volner.

19 Anyone else?

20 (No response.)

21 VICE-CHAIRMAN OMAS: Thank you for your comments.
22 Please know I will take all of these comments under
23 advisement and issue a procedural schedule shortly.

24 Having said that, I must say that I feel a little
25 uncomfortable about where we are today. Using what might be

1 an unfortunate metaphor, I do not want to think of
2 developing a procedural schedule in this case as being
3 similar to arranging deck chairs on the Titanic, but there
4 are certain similarities.

5 We are meeting at a time when unique and
6 unprecedented challenges are facing the Postal Service. Its
7 business was disrupted first by the events of September 11
8 and now, even more critically, by the use of the mail system
9 for spreading disease. None of us can know what impact
10 these events will have on the public's perception of the
11 Postal Service, and none of us can know the impact these
12 events may ultimately have on the health of the Postal
13 Service.

14 In our last case, the Commission took notice of
15 actual costs incurred by the Postal Service that had not
16 been reported when the Postal Service initially submitted
17 its request for a recommended decision. It may happen in
18 this case as well. Important facts may come to light while
19 this case is pending, and the Commission may have to decide
20 whether to take them into account in developing its
21 decision.

22 The Commission is prepared to consider such
23 issues. That is part of our job. As I read the various
24 comments on the Postal Service's request for expedition, I
25 was left with the impression that each of you representing

1 your various clients were doing your job; that is, you were
2 attempting to represent the interest of your clients, much
3 as you have in the past Postal Rate Commission proceedings.

4 But, I wonder whether recent events make it
5 appropriate to think about alternative ways for us to do our
6 job. Ten days ago, I was at the Postal Forum in Denver.
7 Many of the people in this room were also at that forum.
8 Everyone there, whether they worked for the Postal Service
9 or for other organizations, was concerned about whether and
10 how the Postal Service can meet the current crisis.

11 I want to assure you all that this Commission is
12 prepared to hear all of the evidence and make a reasoned,
13 recommended decision to the Governors on the appropriate
14 rates for test year FY 2003. At the same time, I want to
15 ask everyone at this conference whether that is the best way
16 to assure the Postal Service gets through the current crisis
17 intact.

18 I have often heard it said that there could never
19 be a settlement in an omnibus rate case. There are too many
20 conflicting interests and too much money at stake. It seems
21 to me that if there was ever a time when business as usual
22 was not the attractive course of action and when cooperative
23 efforts to promptly resolve issues through a settlement
24 might be the right course of action at this time.

25 If history teaches us anything, it indicates that

1 in nine or ten months the Commission will recommend higher
2 postal rates. We don't know how high. We don't know if one
3 or the other class of mail will avoid a significant portion
4 of the increase proposed by the Postal Service. I suggest
5 that participants concerned with the justification for the
6 request currently before the Commission consider the
7 potential for new information that might justify higher
8 rates. I also suggest that the Postal Service consider
9 steps it could take to ease the impact of large increases
10 and minimize disruption.

11 None of us want to be here in May arguing about
12 this case, knowing that the Postal Service is at risk and is
13 preparing to file an additional request to make up for
14 losses incurred while this docket was going forward. I urge
15 all participants to recognize the extraordinary times
16 warranted by extraordinary acts.

17 I will appoint Daniel Foucheaux, Postal Service
18 Chief Counsel, Rate Making, to act as the settlement
19 coordinator. I ask Mr. Foucheaux to give participants 72
20 hours to consider my remarks here today and then to contact
21 participants to determine if a settlement can be arrived at
22 in this case.

23 Further, I ask that Mr. Foucheaux report to the
24 Commission by November 2 whether a settlement might be
25 possible and what steps the Commission might take to

1 facilitate such an outcome.

2 I hope that the participants will take this
3 opportunity seriously. Think about whether phase rates and
4 expected implementation dates might allow mailers and the
5 Postal Service to focus more on more important problems in
6 the coming months.

7 If the Postal Service is not financially sound
8 after this crisis is over with, it will not be the fault of
9 the statutory system for changing rates. Any fault will lie
10 with those people who fail to recognize that the innovative
11 actions were both possible and necessary.

12 I urge everyone connected with this process --
13 those of you here today, those at L'Enfant Plaza and those
14 in the board rooms around the nation -- to be statesman-like
15 and to work together proactively to meet the serious
16 challenges facing the postal system.

17 Are there any comments?

18 (No response.)

19 VICE-CHAIRMAN OMAS: Does anyone have any other
20 matters they wish to discuss today? Yes?

21 COMMISSIONER GOLDWAY: I'm afraid I don't have
22 remarks that are quite as eloquent as Commissioner Omas, but
23 I do think it's important in the one public forum that the
24 Postal Rate Commission has to express our deepest sympathies
25 for the men and women at the Postal Service who are now on

1 the front lines of a war against terrorism.

2 Whether that terrorism is related to the events of
3 September 11 or comes from some other cause, clearly the
4 Postal Service is now at risk, and the people who work there
5 are taking risks. We should express our sympathy and our
6 thanks for them personally, as well as institutionally.

7 I want to make it quite clear that I personally
8 believe the Postal Service is a vital function of the United
9 States in its role as the leading democracy in the world. I
10 want it to function and thrive, but I think it is also
11 important to recognize that our role as the Postal Rate
12 Commission is to look at the entire mailing community and to
13 make sure that the economy that the Postal Service supports
14 is healthy as well.

15 We have to look at both sides. In our
16 deliberations, if anything, I think this crisis shows that
17 the need to look at the biggest picture possible, which is
18 what we do at the PRC, is more important than ever so that
19 the Chairman's comments about everyone participating in a
20 statesman-like way and trying to assure that decisions are
21 made in a fair and open and reasoned manner is very
22 important now more than ever.

23 In looking at what we have seen so far in this
24 proceeding, it seems to me that there have been many cases
25 in which the Postal Service is taking a long time to respond

1 to questions and filing motions with objections, which make
2 it difficult for us as the PRC to have the full range of
3 information we need to make decisions. On the other hand,
4 we do want to work effectively and efficiently with the
5 Postal Service and make these decisions as quickly as
6 possible. The more information we have the more quickly,
7 the better.

8 I think it's very important in any discussions
9 that occur within the next 72 hours for the Postal Service
10 to determine whether rather than proceeding with this case
11 and some settlement on the lines of the financial analysis
12 presented whether there is some emergency case that needs to
13 be brought to us in an entirely different way and,
14 therefore, a delay on the regular case.

15 If that's an emergency, and especially if it's an
16 emergency, such situation will require Postal Rate
17 Commission review. I think we are going to be flexible as
18 Commissioners, but I think it will take a great deal of
19 flexibility and innovation and creativity and cooperation
20 among the mailing community and the Postal Service to come
21 up with some responses to the crisis that may be different
22 from what is necessary over the long term, and some very
23 clear thinking and difficult thinking is going to have to
24 happen.

25 I simply want to support the efforts that you will

1 be making in the next few days to think of new ways to
2 approach this and to offer that the Postal Rate Commission
3 will be as flexible as we can be, given this principle that
4 we have of making sure that we have to look at the big
5 picture, not just the Postal Service.

6 VICE-CHAIRMAN OMAS: Thank you, Commissioner
7 Goldway.

8 That brings the prehearing conference to a close,
9 but, as I mentioned earlier in my one hour statement, and
10 I'm sorry I bored you all, but those are things that must be
11 said, and they must go on the record. I'm not the greatest,
12 most exciting speaker, but I think we should all give a
13 round of applause to Commissioner Trey LeBlanc, who is
14 leaving us after 14 years.

15 (Applause.)

16 VICE-CHAIRMAN OMAS: I would hope if you can join
17 us this evening from 5:30 to 7:30 at the club.

18 Again, just a reminder. Please remember that
19 there will be a training session on electronic filing in
20 approximately 15 minutes. I want you all to know that I
21 look forward and I know the other Commissioners look forward
22 to working with you during the coming months.

23 This conference is adjourned. Thank you.

24 (Whereupon, at 11:02 a.m. the hearing in the
25 above-entitled matter was concluded.)

REPORTER'S CERTIFICATE

DOCKET NO.: R2001-1
CASE TITLE: Postal Rate and Fee Changes
HEARING DATE: October 25, 2001
LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Postal Rate Commission.

Date: October 25, 2001


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