

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

POSTAL RATE AND FEE CHANGES

Docket No. R2001-1

**Motion Of Joint Parties To Suspend
Hearings Pending Adoption Of Procedures For
Processing Proposed Stipulation And Agreement**

Joint Parties¹ hereby request that the Commission suspend the hearings scheduled to begin on January 3, 2002 for approximately two weeks, to give the Commission and all affected parties an adequate opportunity to assess the extent to which parties either support or oppose the Stipulation and Agreement ("Settlement") filed by the Postal Service on December 17, to identify issues of material fact that opponents of the Settlement may raise, and to implement expedited procedures that will protect the due process rights of opponents while at the same time sparing those who support the Settlement the expense and uncertainty attendant upon continuing to litigate matters that may never be placed in controversy.

Joint Parties understand that the Postal Service is today modifying the December 17 Settlement in two important respects. First, the Postal Service will agree to implement the Settlement rates on June 30, 2002, rather than June 2. That is a major concession that Joint Parties believe will increase significantly the support for the Settlement. Second, we understand that the Postal Service will extend from December 28 to January 3, 2002 the date for parties to signify their support for the Settlement.

In view of these important new developments, Joint Parties respectfully request that the Commission:

- (1) suspend existing hearing procedures for approximately two weeks, until January 20, 2002;
- (2) set January 7 as the date for parties who do not signify their affirmative support for the Settlement on or before January 3 to state whether they oppose the

¹ The "Joint Parties" filing this motion are the Alliance of Independent Store Owners and Professionals, American Bankers Association, KeySpan Energy, Long Island Power Authority, Mail Order Association of America, Major Mailers Association, National Association Of Presort Mailers, and the National Retail Federation.

Settlement and identify all legal and material factual issues they will raise and the USPS witnesses they intend to cross examine. Any party who does not file such a statement of opposition by January 7 should be deemed to have waived their rights to oppose the Settlement;

(3) establish January 11 as the date for parties to file their comments and suggestions on streamlined procedures for incorporating noncontroversial USPS evidence into the record without cross examination; and

(4) set January 15 as the date to file reply comments.

Joint Parties further suggest that, having received and reviewed input from the affected parties, the Commission consider prescribing a two track procedural schedule, one track that might lead to prompt consideration and approval of the Settlement for those who either support or do not oppose it and the other track that would protect the due process rights of opponents through focused, full evidentiary proceedings, briefing, and a recommended decision on outstanding issues.

Background

This omnibus rate case was filed over three months ago. Since then, the parties have engaged in lengthy, detailed discovery of the Postal Service's case-in-chief and completed cross examination of twenty USPS witnesses. As a result, the parties already are, or should be, thoroughly aware of the bases for the proposals made by the Postal Service and the issues they will pursue at hearing, if they oppose the Settlement.

While discovery and hearing procedures proceeded, the parties and the Postal Service simultaneously devoted substantial time and effort to reaching mutually agreeable accommodation of their opposing positions and interests. Significantly, they have done so in particularly troubling times for the Nation.

The parties embarked upon these settlement discussions at the specific suggestion of Chairman Omas and with the encouragement of all Commissioners. Now the Commission's hope that parties used to litigating all issues in complex omnibus rate proceedings might find another way has born fruit in the December 17 Settlement. The two modifications that the Postal Service has announced today should, we believe, enhance the prospects that an overwhelming majority of the active parties will support approval of the Settlement.

Expedited Procedures Are Necessary

The procedures proposed by the Postal Service would defer identification of any opposition to the Settlement until after conclusion of the hearings on the Postal Service's case-in-chief. Such drawn out procedures are not in the best interests of any party. Relief from the onerous burden of litigation is one of the primary benefits of a settlement. Removing the uncertainty associated with continuing litigation is another important benefit. Unfortunately, the procedures proposed by the Postal Service deny its own witnesses and the other settling parties the first benefit and only serve to prolong unduly uncertainty for all parties and the Postal Service itself.

There is no good reason to proceed with the hearings as if the Settlement does not exist. Currently, twenty-three USPS witnesses are scheduled to testify commencing January 3, the revised deadline for supporting parties to sign onto the Settlement. Unless the Commission intervenes, all parties, including those who actively support the Settlement, will be forced to proceed with cross examination on all issues as if there will be no settlement.

Whether they support or oppose the Settlement, all parties will be served by adoption of procedures that defer litigation for a short period while parties finally make up their minds about the Settlement and will expedite consideration and approval of the Settlement for those who support it and will also expedite a full and adequate hearing and decision on any issues that must proceed to a decision on the merits. By identifying the issues that must be litigated because they involve genuine issues of material fact, the Commission can, for example, prescribe streamlined procedures for incorporating noncontroversial Postal Service evidence into the record without the need for lengthy cross examination on issues that may never be raised by opponents of the Settlement, if any. Adopting such streamlined procedures will also free up the resources of the Postal Service, any opponents of the Settlement, and the Commission itself for a thorough airing of any issues that must proceed to a full evidentiary hearing.

Joint Parties appreciate that the more drawn out procedures proposed by the Postal Service are informed by unsuccessful efforts to expedite consideration and approval of a settlement in Docket No. R94-1. Nevertheless, Joint Parties believe that the circumstances in this case are far different from those the parties and the Commission faced in R94-1. First, the circumstances facing the Postal Service and the

Nation since September 11 are unique and unprecedented. Second, in this case, the Commission itself provided the impetus for settlement and significant wisdom to guide the parties in their deliberations. As the Commission urged, the parties negotiated diligently and in good faith. Having fostered the parties' efforts to achieve settlement, it is incumbent on the Commission to make sure the Stipulation and Agreement receives the careful consideration it deserves, at the earliest possible time, especially since doing so will not adversely affect the due process rights of any party who might oppose the Settlement.

To insure that all parties have an opportunity to consider and react to the alternative procedures proposed by Joint Parties, we have served all parties by First-Class Mail and email.

Conclusion

For all the foregoing reasons, Joint Parties request that the Commission adopt the alternative procedures suggested herein.

Respectfully submitted,

Joint Parties

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document on all parties to the proceeding in compliance with Rules 12 (b) of the Commission's Rules of Practice.

Dated this 26th day of December 2001.
