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PRESIDING OFFICER'S  
RULING NO. R2001-1/27

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

Postal Rate and Fee Changes

Docket No. R2001-1

PRESIDING OFFICER'S RULING  
NOTICING THE SUBMISSION OF  
A PROPOSED STIPULATION AND AGREEMENT  
AND CANCELING HEARINGS ON JANUARY 3, 4, 7 AND 8, 2002

(Issued December 31, 2001)

On September 24, 2001 the Postal Service filed a request for a recommended decision on changes in rates of postage and fees for postal services. The Commission and interested parties have been reviewing that request against the background of business disruption associated with the terrorist attack of September 11, 2001, and the ramifications of the discovery of several anthrax-laced letters in the mailstream. At the first prehearing conference in this docket I urged participants to consider the possibility of settlement in light of the uncertainty of Postal Service financial projections as a result of those factors.

I appointed the Postal Service Chief Counsel for Ratemaking as Settlement Coordinator. Pursuant to my request, he has contacted participants and engaged in extensive discussions aimed toward achieving a negotiated settlement.

On December 17, 2001 the Postal Service submitted a proposed Stipulation and Agreement, and on December 26, 2001 it submitted a revised version.<sup>1</sup> The Postal Service indicates that the Stipulation and Agreement represents its best effort to accommodate both its financial situation and the often conflicting positions of the numerous formal participants in this case. The Postal Service has asked participants

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<sup>1</sup> Motion of the United States Postal Service Submitting Stipulation and Agreement and for the Establishment of a Preliminary Procedural Mechanism and Schedule, December 17, 2001 (Motion); Motion of the United States Postal Service Submitting Revised Stipulation and Agreement, December 26, 2001. Discussion in this ruling relates to the terms of the Revised Stipulation and Agreement.

willing to join it as signatories to the Revised Stipulation and Agreement to indicate that fact by January 3, 2002.

This ruling is premised on the statement of the Settlement Coordinator that “[t]he Postal Service is reasonably optimistic that a majority of participants in Docket No. R2001-1 will appreciate the logic of settlement, and will adhere to the agreement.” Motion at 7. On the assumption that it is appropriate to focus on the potential for the Settlement and Agreement forming the basis for a Commission recommended decision, this ruling establishes preliminary procedures for the prompt consideration of that possibility.

The Postal Service recognizes that some participants may be unwilling or unable to commit to a position on the proposed Stipulation and Agreement by January 3, 2002. Therefore, it suggests preliminary procedures to allow for consideration of a potentially non-unanimous settlement proposal. Additionally, it requests that the procedures established to govern the consideration of the proposed Stipulation and Agreement be consistent with the expeditious completion of these proceedings.

No participant submitted a pleading in direct response to the Postal Service Motion; however, a Motion of Joint Parties to Suspend Hearings Pending Adoption of Procedures for Processing Proposed Stipulation and Agreement (Motion to Suspend) was filed December 26, 2001.<sup>2</sup> The Motion to Suspend proposes an alternative procedural schedule that will be treated as a suggested substitute to the Postal Service’s request.

*Key aspects of the proposed Stipulation and Agreement.* The proposed Stipulation adopts most of the Postal Service’s original proposals for rate, fee, and classification changes. Departures reflect the results of settlement negotiations. Motion at 4. An important provision states that, by signing, participants do not indicate agreement with, or concede the applicability of, “any ratemaking principle, any method

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<sup>2</sup> The participants joining in this filing are: 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 National Retail Federation.

of cost of service determination, any method of cost savings measurement, any principle or method of rate or fee design, any principle or method of mail classification, any terms and conditions of service, or the application of any rule or interpretation of law, that may underlie, or be thought to underlie, this Stipulation and Agreement.” Stipulation and Agreement, ¶ II. 9.

This ruling has been developed in recognition of the fact that the proposed Stipulation and Agreement, as explained by the Postal Service in its motion, contains several date-specific provisions. First and foremost, the proposed Stipulation provides that settlement rates and classifications will not be implemented before June 30, 2002.<sup>3</sup>

The Postal Service emphasizes that it considers the ability to obtain additional revenues from rates and fees as essential. It requests that procedures for the consideration of the proposed Stipulation and Agreement allow for the implementation of new rates by June 30, 2002 (if rates are premised on the Stipulation and Agreement). At the same time, procedures should allow for a timely decision by the Commission should the proposed Stipulation be withdrawn or rejected. The Postal Service states that if it believes that the settlement cannot be implemented by June 30, 2002 it “must take measures at once to ensure that the record reflects its need for a more realistic revenue requirement”. Motion at 11.

A second critical date estimates the time needed to implement rates recommended in a Commission decision. The rates recommended by the Commission in Docket No. R2000-1 were implemented by the Board of Governors approximately eight weeks after the Commission’s November 13, 2000 decision. The schedule offered in the Postal Service motion suggests that the Commission should issue its decision approximately ten weeks before new rates could be implemented. The Revised Stipulation and Agreement provides approximately fourteen weeks. Under the Revised Stipulation and Agreement, signatories may withdraw if a Commission

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<sup>3</sup> The Postal Service states that its Board of Governors concurs with the proposed Stipulation and Agreement. Motion at 4.

recommended decision has not been issued by March 25, 2002. Stipulation ¶ II. 7(c). This date is an apparent oversight that presumably will be corrected.

*Key aspects of the motion.* The motion discusses the importance of establishing a procedural mechanism and schedule for consideration of the proposed Stipulation by January 31, 2002. Signatories to the Stipulation are allowed to withdraw if a procedural schedule to consider opposition to the Stipulation is not in place by January 31, 2002.

The motion recognizes that the Commission has held that participants may not be able to form an opinion on whether a proposed Stipulation is both beneficial and consistent with statutory policies until they have had an opportunity to question the Postal Service on the facts and reasoning offered in support of proposed rates and fees. Therefore, the Postal Service suggests that participants be required to give notice if they intend to oppose the proposed Settlement by January 18, 2002. Hearings to receive the direct case of the Postal Service in support of the pending Request are scheduled to be completed on January 16, 2002.

Finally, the motion suggests that participants be directed to propose procedural mechanisms and schedules for challenging the proposed Settlement by January 21, 2002<sup>4</sup> with responses permitted by January 28, 2002.

The competing Motion to Suspend proposes that evidentiary hearings immediately be suspended, and that participants be required to state by January 7, 2002 whether they oppose settlement premised on the Stipulation and to identify all legal and factual issues they will raise in opposition. Hearings and subsequent procedural steps would be established in light of those binding statements of position. A number of participants have indicated support for this alternative.<sup>5</sup>

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<sup>4</sup> January 21, 2002 is a federal holiday. The filing would be due January 22, 2002.

<sup>5</sup> Answer of Alliance of Nonprofit Mailers, American Business Media, AOL Time Warner, Inc., Dow Jones & Company, Inc., Magazine Publishers of America, Inc., The McGraw-Hill Companies, Inc., and National Newspaper Association In Support of "Joint Parties" Procedural Motion, December 28, 2001; Answer of Advo, Inc. in Support of Motion of Joint Parties to Suspend Hearings, December 28, 2001; and Answer of Saturation Mail Coalition in Support of Motion of Joint Parties to Suspend Hearings, December 28, 2001.

*Discussion.* Regardless of whether the proposed Stipulation ultimately forms the basis for a Commission recommended decision in this case, the Commission recognizes and appreciates the extensive time and effort participants have expended on developing the proposed Stipulation and Agreement.

In establishing procedures for consideration of the proposed settlement it is necessary to accommodate the due process rights of all participants. Participants should have reasonable opportunity to understand the proposed Stipulation and to consider whether to support it or oppose it. The Postal Service has suggested that it is not unreasonable to expect participants to be able to indicate whether they oppose the proposed Stipulation by January 18, 2002 after they have had the opportunity to cross-examine all of the Service's witnesses. That date is a month after the proposed Stipulation was filed with the Commission.

I agree with the Postal Service that steps must be taken to determine whether the proposed settlement provides a promising basis for a recommended decision. By its terms, the proposed Stipulation and Agreement has a limited "shelf life" in that the Postal Service is committed to pursuing other procedural remedies if the proposed settlement does not appear likely to receive serious, timely consideration. The Postal Service hopes that a significant number of participants will join it in support of the proposed settlement, but it recognizes that many participants may not be able to take a position immediately. The Postal Service has undertaken to inform the Commission of participants that have become signatories as of January 3, 2002.

The logical first step in deciding whether to proceed to evaluate potential procedural mechanisms and schedules is to obtain a reading on whether there is substantial support for, and/or substantial opposition to the proposed Stipulation. Participants may be in favor of the proposed Stipulation as filed by the Postal Service, they may be neutral, or they may be opposed to parts or all of the settlement as proposed.

Any potential procedural schedule will be contingent on the scope and nature of the opposition, if any. For example, if there is no opposition to the proposed

Stipulation, or if opposition is premised solely on legal issues, the Commission can evaluate the proposed Stipulation promptly based on participants' briefs. If there is opposition to limited aspects of the proposed Settlement, or if opposition focuses on narrow factual or legal issues, it should be possible to develop the record and evaluate this opposition within the applicable timeframes. In such a situation, the participants' advice on how best to proceed will provide useful guidance. In contrast, if there is widespread opposition premised on challenges to many of the more complex aspects of the evidence identified as justifying the proposed rate and fee changes, it may not be possible to develop an adequate evidentiary record in the time available.

To gauge the breadth of opposition to the proposed Stipulation, participants opposing the Stipulation will be required to file a Notice of Opposition with the Commission as soon as they can reasonably be expected to have formed a position. Participants contemplating opposition to the settlement should have the opportunity to cross-examine Postal Service witnesses.

However, assuming that the Settlement Coordinator has correctly predicted that there will be substantial support for the proposed Stipulation and Agreement, there may be significantly less cross-examination of certain Postal Service witnesses than if no settlement was possible. Therefore, it appears reasonable to briefly suspend the current hearing schedule and to focus on evaluating the extent of opposition to the proposed settlement.

Evidentiary hearings will not take place on January 3, 4, 7, and 8, 2002. Hearings will resume on January 9, 2002.

Participants contemplating opposition to the settlement are to file by January 7, 2002, a Request to Cross-Examine that identifies each Postal Service witness for whom oral cross-examination is sought. The Postal Service shall file on January 7, 2002 any necessary corrections to its November 13, 2001 Report on Availability of Witnesses for Hearings. A revised schedule for the cross-examination of witnesses, and for accepting testimony and written cross-examination into evidence with declarations, will be issued on January 8, 2002. On January 9, 2002 participants should be prepared to cross-

examine both the witnesses currently scheduled to appear on that date and those witnesses currently scheduled to appear on January 3, 2002.

At this time, there is insufficient indication of support for the proposed Stipulation to warrant complete suspension of hearings. It is clear from the Motion that the Postal Service reasonably considers a prompt Commission recommended decision essential should the proposed Stipulation fail. Suspending hearings would disrupt the current procedural schedule and add weeks to this process.

The proposed Stipulation, ¶ II. 3, provides that "the Request, testimony, and materials filed on behalf of the Postal Service" provide substantial evidence in support of the stipulated rate, fee, and classification changes. That proposition can best be tested by evidentiary hearings. Postal Service witnesses will be expected to be familiar with terms of the proposed Stipulation that directly relate to their testimony. After hearings have been completed all participants will have had ample opportunity to evaluate the Stipulation and to reach a position.

Participants intending to oppose any aspect of the proposed Stipulation are to file a Notice of Opposition with the Commission on or before January 18, 2002.<sup>6</sup> For purposes of this Notice, participants are to describe the individual or categories of proposed rates, fees, or classifications they oppose. Additionally, the Notice should state with particularity the nature of the opposition, for example, whether it involves rate design, rate level, or an underlying factor essential to the proposed rates such as cost attribution or avoidance.

The Postal Service requests that participants be instructed to describe generally what testimony they intend to file as their cases-in-chief. Motion at 8. While it might be helpful if this information was available, and participants are welcome to submit this additional detail, it is not required. In the event that considering the proposed Settlement does not appear to be possible within existing time constraints, it might unfairly disadvantage certain parties to have had to disclose the nature of their

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<sup>6</sup> If and when sufficient participants become signatories so as to assure that evaluation of any potential opposition can be dealt with in a timely fashion, this and subsequent procedural dates may be adjusted for the convenience of all concerned.

evidence in advance of other parties. However, Rule 26(a) specifically permits asking participants to identify the subject matter on which witnesses are expected to testify. Participants filing a Notice of Opposition are directed to identify the subject matter of any testimony they intend to submit in opposition to the proposed Stipulation.

The Notices of Opposition will be reviewed to evaluate if there will be sufficient time to give full and fair consideration to all contested issues and still provide a timely recommended decision. A preliminary finding on that issue will be made by January 23, 2002.

The current schedule provides for the filing of the case-in-chief of each participant, including rebuttal to the Postal Service, on January 30, 2002. The same due date will apply to any testimony in opposition to the proposed Stipulation and Agreement. This should impose no additional hardship or burden on any participant since, absent the Stipulation, testimony would otherwise be due on that date.

If the initial review of the scope and extent of opposition indicates that there may be sufficient time to consider the proposed Stipulation, including contested issues, participants are requested to file proposed procedural mechanisms and schedules designed to provide due process to participants that oppose the Stipulation. These suggestions are to be filed on or before January 25, 2002. Participants are urged to consider a schedule that reflects the above date for filing evidence in opposition to the proposed Stipulation, cross-examination of that evidence, briefs, and reply briefs. The need for written discovery, rebuttal testimony, and oral argument also may be discussed. Participants also may comment on the amount of time that should be allowed to implement recommended rates. Any schedule should also provide three weeks for the drafting and printing of a recommended decision.

Responses to proposed procedural mechanisms and schedules may be filed on January 29, 2002. The various procedural suggestions offered by participants will be considered together with the scope of testimony filed on January 30, 2002. If there appears to be adequate time to fairly consider issues and develop a recommended



decision in a timely fashion, an appropriate procedural schedule will be issued on January 31, 2002.

*Alternative procedural steps.* It may be evident from the scope and extent of opposition to the proposed Stipulation that there will not be sufficient time to give full and fair consideration to all contested issues and still provide a timely recommended decision. In that case, the Commission will issue a finding to that effect by January 23, 2002. If the Commission gives notice that it will be unable to consider the proposed Stipulation within the timeframe specified, alternative procedural steps will be necessary. The Postal Service should file by January 25, 2002 proposed procedural mechanisms and a schedule for updating its presentation to reflect its best estimate of test year revenue requirements. Responses to these proposals may be filed January 29, 2002. Appropriate procedural rulings will be issued shortly thereafter.

#### RULING

1. Notice is given that a proposed Stipulation and Agreement for settlement of this case was filed with the Commission on December 17, 2001, and revised on December 26, 2001.
2. Hearings shall not take place on January 3, 4, 7 and 8, 2002.
3. Participants contemplating opposition to the settlement are to file by January 7, 2002, a Request to Cross-Examine that identifies each Postal Service witness for whom oral cross-examination is sought.
4. Participants opposing the Stipulation and Agreement, in whole or in part, shall by January 18, 2002 file a Notice of Opposition as described in the body of this ruling.

5. Proposed procedural mechanisms and schedules for subsequent steps in the case may be submitted by January 25, 2002, and replies may be submitted by January 29, 2002.
  
6. The due date for evidence in opposition to the Stipulation and Agreement is January 30, 2002.

  
George Ormas  
Presiding Officer