

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

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POSTAL RATE AND FEE CHANGES, 2001

Docket No. R2001-1

MOTION OF THE UNITED STATES POSTAL SERVICE FOR THE ESTABLISHMENT
OF A PROCEDURAL MECHANISM AND SCHEDULE GOVERNING FURTHER
PROCEEDINGS IN LIGHT OF SETTLEMENT
(January 22, 2002)

In Ruling No. R2001-1/27,¹ the Presiding Officer foresaw the current situation, in which the level of opposition to the settlement efforts in this case would be limited, and the expectation that conclusion of the proceedings within the time frames contemplated in the Stipulation and Agreement would be realistic. In fact, only one participant, American Postal Workers Union (APWU), gave notice that it intends to oppose the settlement.² To date, 55 participants out of 62 have submitted facsimile or original signatures adhering to the Stipulation and Agreement.³

In light of this opposition, on January 17, 2002, the Presiding Officer made a preliminary finding that it would be possible to consider the proposed settlement,

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, Docket No. R2001-1 (Dec. 31, 2001).

² Notice of Opposition of the American Postal Worker's Union, AFL-CIO, Docket No. R2001-1 (Jan. 22, 2002).

³ A list of current signatories is attached. On January 17, 2002, the Postal Service submitted a second, revised Stipulation and Agreement, noting that under its terms signatories could withdraw from the agreement by giving written notice to all parties within 5 business days of the revision. Based on the absence of communications regarding withdrawal so far, and the limited scope and nature of the revision, the Postal Service does not anticipate significant defections.

including the issue raised by APWU,⁴ in time to provide a timely Recommended Decision.⁵ Presiding Officer's Ruling No. R2001-1/30 established January 22, 2002, as the date for submission of suggestions for procedural mechanisms and schedules to consider the opposition.⁶ The Postal Service hereby submits its suggestions.

Procedures For Consideration Of APWU Testimony

Like the Presiding Officer, the Postal Service is optimistic that proceedings in the instant docket can be shortened to accommodate a need for expedition, in light of the timing embodied in the Stipulation and Agreement. The Presiding Officer has not disturbed the originally scheduled date of January 30, 2002, for filing of any testimony that APWU might submit, and the Postal Service agrees that he need not do so. The Postal Service also believes that the Commission has certain latitude to fashion procedural mechanisms and a schedule that would depart from the expected course of events originally scheduled and commonly experienced in omnibus rate proceedings.⁷ The Postal Service submits, however, that the Commission need not eliminate any stages providing due process to APWU, but can shorten the time needed with the cooperation of the participants interested in APWU's opposition. Pending subsequent

⁴ APWU raised only one issue related to the proposed rate design for First-Class Mail, "because the proposed discounts exceed cost-avoided." *Id.* APWU did not indicate the scope or nature of testimony, if any, that might be filed, or whether its testimony might consist predominantly of policy conclusions based on contrary interpretations of facts already established on the record.

⁵ Presiding Officer's Ruling on the Status of the Proposed Stipulation and Agreement, POR No. R2001-1/36 (Jan. 17, 2002).

⁶ Presiding Officer's Ruling Adjusting the Hearing Schedule and Other Procedural Dates, POR No. R2001-1/30 (Jan. 8, 2002).

⁷ For example, certain procedural steps might be curtailed or eliminated in appropriate circumstances. *See, e.g., Natural Resources Defense Council v. EPA*, 859 F.2d 156,

(continued...)

review of APWU's submission, the following suggestions take into account these considerations:

February 8	Deadline for filing of written discovery and notices of intent to conduct oral cross-examination on any APWU direct testimony
February 12	Hearings on APWU testimony
February 14	Deadline for notice of intent to file rebuttal testimony
February 19	Filing of rebuttal testimony
February 25	Hearings on rebuttal testimony
February 28	Initial briefs
March 4	Reply briefs

Should APWU file no direct testimony, the Commission could direct the parties to file initial briefs in the latter part of February and reply briefs by the end of that month. If such circumstances arise, the Postal Service proposes that initial briefs be due on February 22nd and that reply briefs be due February 28th. In the event that APWU files testimony on January 30th, but no other party files rebuttal testimony, the Postal Service proposes the same briefing schedule.

Proceeding on an expedited schedule would require that the deadlines that ordinarily apply be modified. Accordingly, except for good cause shown, the Postal Service proposes special rules be adopted for consideration of APWU testimony requiring that:

(continued...)

193 (D.C. Cir. 1988)(cross-examination); *Cellular Mobile Systems of Illinois, Inc. v. FCC*, 782 F.2d 214, 224 (D.C. Cir. 1986)(surrebuttal).

in addition to service under the ordinary rules of practice, the parties participating in the resolution of issues raised by APWU testimony filed on January 30th shall exchange all documents in native format by e-mail on the date such documents are filed with the Commission;

no later than January 29th, parties wishing to be subject to such e-mail exchange should register their interest in a formal notice filed with the Commission;

all testimony, exhibits, workpapers, and library references shall clearly set forth all calculations involved in deriving outputs and the record sources for all inputs to such calculations;

all interrogatory responses shall be due on the fifth day after the questions were served;

all objections to discovery requests shall be due on the third day after service of the interrogatories at issue;

all motions to compel would be due on the third day after service of any objections;

all replies to such motions would be due on the third day after service of the motion.

Should any deadline implied by these special procedures fall on a weekend or holiday, the filing at issue shall be due on the next non-holiday weekday.

Discovery Directed At The Postal Service

Finally, the Postal Service notes that, in spite of the status of these proceedings, the progress made in settlement efforts, and the limited nature and scope of the opposition identified, there continues to be significant activity by a few participants pursuing discovery, as if the purpose of discovery, namely, to lead to the creation of testimony relevant to contested issues, were still germane. In light of the settlement agreement and the limited opposition, however, the focus of this proceeding has now narrowed to a very limited range of issues. The Postal Service questions the necessity

of continued work – some of it burdensome -- to answer inquiries that have been rendered substantially moot. Furthermore, continuing demands on the Postal Service's resources to pursue these matters are counterproductive, in light of more pressing needs related to the other challenges currently facing the Postal Service. In this regard, the Postal Service notes that some demands have been created by requests for information from the Commission itself. In more normal circumstances, such reasonable requests would be valuable, if not essential to the Commission's functions. In the current situation, however, the Postal Service respectfully suggests that the Presiding Officer and the Commission might, for the time being, be willing to observe a practical distinction between (a) information that would be necessary to evaluate the settlement agreement, in light of the opposition, and render a recommended decision thereon, and (b) information that might have been more useful if certain avenues of inquiry and challenge had not been closed by the agreement to support, or at least not oppose, the Postal Service's proposals. As a practical matter, there are very few inquiries that appear to fall within the latter category, and they should be assessed on a case-by-case, question-by-question basis. The Postal Service would be in a position to apprise the Commission quickly with regard to which inquiries might be candidates for deferral.

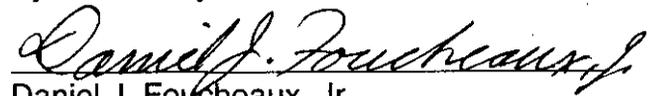
Accordingly, in light of the above, the Postal Service moves that the Presiding Officer suspend further discovery efforts not related to the focus of APWU's opposition. Such a suspension would apply to further inquiries, as well as to burdensome or otherwise objectionable efforts to respond to outstanding discovery. The suspension, furthermore, would be potentially only temporary -- at least during the course of

proceedings to consider APWU's opposition -- in the event that the settlement agreement were to dissolve through defections, or to the extent that prospects for successful settlement were to diminish substantially. If settlement were to substantially succeed, such inquiries might ultimately be moot.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorney



Daniel J. Foucheaux, Jr.
Chief Counsel, Ratemaking

LIST OF SIGNATORIES

1. ADP
2. AOL Time Warner
3. Advo, Inc.
4. Alliance of Independent Store Owners and Professionals
5. Alliance of Nonprofit Mailers
6. Amazon.com
7. American Bankers Association
8. American Business Media
9. American Library Association
10. Association for Postal Commerce
11. Association of Alternate Postal Systems
12. Association of American Publishers
13. Association of Leading AG Media Companies
14. Banta Corporation
15. Brown Printing Co.
16. Classroom Publishers Association
17. Coalition of Religious Press Associations
18. Continuity Shippers Association
19. Direct Marketing Association
20. Dow Jones & Co.
21. EDS Customer Relationship Management
22. Envelope Manufacturers Association
23. Experian
24. Greeting Card Association
25. Hallmark Cards, Inc.
26. The Hearst Corporation
27. Keyspan Energy
28. Knight-Ridder, Inc.
29. Lifetime Addressing, Inc.
30. Long Island Power Authority
31. Magazine Publishers of America
32. Mail Order Association of America
33. Mailing and Fulfillment Services Association
34. Major Mailers Association
35. McGraw-Hill Companies, Inc.
36. Leonard Merewitz
37. National Association of Letter Carriers
38. National Association of Presort Mailers
39. National Association of Postmasters of the United States
40. National Federation of Independent Publications
41. National League of Postmasters
42. National Newspaper Association
43. National Retail Federation
44. Newspaper Association of America
45. Office of the Consumer Advocate
46. Parcel Shippers Association
47. Peter J. Moore & Associates
48. Pitney Bowes, Inc.
49. Reader's Digest Association
50. Recording Industry Association of America
51. Saturation Mail Coalition
52. Stamps.Com
53. United Parcel Service
54. Val-Pak Dealers' Association, Inc.
55. Val-Pak Direct Marketing Systems, Inc.

CERTIFICATE OF SERVICE

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


Daniel J. Foucheaux, Jr.

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