

**BEFORE THE
POSTAL RATE COMMISSION**

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U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Docket No. R2001-1

POSTAL RATE AND FEE CHANGES, 2001

**INITIAL BRIEF OF ASSOCIATION FOR POSTAL COMMERCE,
MAILING & FULFILLMENT SERVICE ASSOCIATION AND
RECORDING INDUSTRY ASSOCIATION OF AMERICA**

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Dated: March 4, 2002

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The Association for Postal Commerce, Mailing & Fulfillment Service Association and Recording Industry Association of America (for convenience, referred to collectively as the PostCom parties) submit this brief in support of the Stipulation and Agreement that all have signed.

The Postal Rate Commission (PRC) need resolve only two issues given the posture of this proceeding.¹ Only one of the many (57) parties to this proceeding interposed an objection to the Stipulation and Agreement. The American Postal Workers Union (APWU) submitted testimony arguing that the settlement rates for First-Class mail testimony violate what APWU witness Riley asserts to be two bedrock precepts of postal rate making. Some of the First-Class² settlement rates pass through, by discounts, more than 100% of the Postal Service costs saved by the worksharing activities giving rise to the discount. The worksharing discounts for First-Class mail also result in the fact that different categories of discounted First-Class mail contribute

¹ The APWU concedes as much. 12 Tr. 4920

² The testimony of witness Riley concerns only First-Class rates.

different per-piece amounts toward defraying institutional costs. Each of these observations is empirically correct but neither of them provides a sound basis for rejecting the settlement rates.

A. Discounts that Pass Through more than 100% of Cost Savings are not just Permissible but Highly Desirable in Certain Circumstances

Mr. Riley begins his testimony with a series of “General Policy Observations”. The PostCom parties submit that general observations on the policies preferred by a lone participant in this proceeding ought not to be given enough weight to supervene the declared preference for settlement shared by every other party to the case. Some of these observations are tinged with truth. The Postal Service is struggling against harsh fiscal realities, though “dire financial straights” may be a somewhat hyperbolic description. It is also certainly true that the “the Postal Service needs a return on its investment in automation equipment.” Mr. Riley never establishes, or even asserts, that this condition is not met under the settlement rates. Equally, it is unarguable that “... automation lowers the cost avoided for presorted and barcoded mail...” but it is not helpful to append to this observation the conclusion that the phenomenon “... should result in lower discounts ...” without some cogent examination of what the discount should be. Mr. Riley offers none.

Other of Mr. Riley’s “policy observations” are highly personal viewpoints. “I would be concerned”, “I would expect”. 12 Tr. 4847.

The well focused testimony of Postal Service witness Moeller makes the twinned points that neither logic nor history supports the absolutist position advocated by Mr. Riley for limiting

worksharing discounts to 100% of costs saved. USPS-SRT-1 at 7-11. There is ample record evidence for the Commission to support the settlement parties' conclusion that the settlement rates are well within lawful limits and should be recommended to the Board of Governors.

B. Equal Per-Unit Contribution Has No PRC Precedent and Is Not Accomplished by the Riley-Recommended Rates

Mr. Riley's conclusion that "each piece of first-class discounted mail should contribute at least as much absolute dollar contribution as each piece of comparable non-discounted mail" has no better foundation. 12 Tr. 4852. Aside from the lack of any authority for this somewhat opaque precept, the rates recommended in Table 1 to Mr. Riley's testimony, 12 Tr. 4865-66 -- the rates that he advocates, Tr. at 4864 -- do not accomplish this outcome. It is arithmetically inevitable that, if one takes a common percentage of a variety of different levels of cost savings, to set rates for each of the various worksharing undertakings, the resultant unit contributions will be different for each of the worksharing mail types.

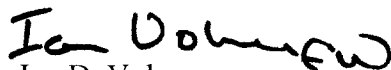
C. Procedural Considerations

Finally, the Commission should consider the procedural consequences of failure to recommend the settlement rates without deviation. The Stipulation and Agreement makes expressed provision for such an occurrence, creating a right for any signatory to withdraw from the agreement "if the Commission adopts a Recommended Decision that deviates from the rates these and classification changes... appended to this Stipulation and Agreement ...". What the Stipulation and Agreement does not do, and probably is without legal power to do, to dictate next

steps in the case if this eventuality were to occur and one or more signatories were to withdraw from the agreement. The PostCom parties submit that only one conclusion that is consistent with due process. Any signatory that withdraws its participation from the Stipulation and Agreement would be entitled to take up litigation of the case as it stood at the time that the initial Stipulation and Agreement was filed on December 17 of last year. If the statutory 10 month period for concluding rate litigation, 39 U.S.C. § 3624(c)(1) applies, and we see no reason that it would not, such an occurrence would require the litigation of the case from cross-examination of the Postal Services witnesses through decision in approximately five months, a daunting prospect.

The analytic flaws in the APWU objections to the settlement, the near-universal endorsement of the settlement rates and the procedural dilemma promised by failure to adopt the settlement rates all counsel that the PRC should endorse the settlement and recommend the rates contained in the Stipulation and Agreement.

Respectfully submitted,



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CERTIFICATION

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.



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