

OFFICIAL TRANSCRIPT OF PROCEEDINGS BEFORE THE POSTAL RATE COMMISSION

In the Matter of:)
) Docket No. 2002-02
REQUEST OF THE UNITED STATES)
POSTAL SERVICE FOR A)
RECOMMENDED DECISION ON)
EXPERIMENTAL CHANGES TO)
IMPLEMENT CAPITAL ONE NSA)
POSTAL RATE AND FEE CHANGES)

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OCT 24 2 11 PM '02
POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

Volume: 1
Date: October 23, 2002
Place: Washington, D.C.
Pages: 1 through 27

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ORIGINAL

POSTAL RATE COMMISSION

In the Matter of:)
) Docket No. R2001-1
 REQUEST OF THE UNITED STATES)
 POSTAL SERVICE FOR A)
 RECOMMENDED DECISION ON)
 EXPERIMENTAL CHANGES TO)
 IMPLEMENT CAPITAL ONE NSA)
 POSTAL RATE AND FEE CHANGES)

Suite 300
 U.S. Postal Rate Commission
 1333 H Street, N.W.
 Washington, D.C.
 Volume 1
 Wednesday, October 23, 2002

The above-entitled matter came on for hearing
 pursuant to notice, at 10:03 a.m.

BEFORE:

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

APPEARANCES:

On Behalf of Office of the Consumer Advocate:

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JOHN BURZIO

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DAVID LEVY

On Behalf of the American Postal Workers Union, AFL-CIO:

SUSAN CATLER

On Behalf of AOL Time Warner, Incorporated:

TIMOTHY KEEGAN

JOHN BURZIO

On Behalf of the Association of Priority Mailer Users,
Val-Pak Director Marketing Systems, and Val-Pak Dealers
Association:

WILLIAM OLSEN

On Behalf of Direct Marketing Association, Incorporated:

TODD ACKERLY

On Behalf of National Newspaper Association:

TONDA RUSH

On Behalf of Newspapers Association of America:

WILLIAM BAKER

On Behalf of the Parcel Shippers Association:

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On Behalf of the Parcel Shippers Association: (CONT'D)

JOHN LONGSTRETH

On Behalf of the American Banker's Association:

IRVING WARDEN

C O N T E N T S

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P R O C E E D I N G S

(10:03 a.m.)

1
2
3 CHAIRMAN OMAS: Well, good morning ladies and
4 gentlemen and welcome to the pre-hearing conference. First
5 of all, I'd like to warn you, before we get started, this is
6 a -- I have quite a long statement, because there's a lot of
7 specifics that we need to inform you about. So, with my
8 voice and with a boring statement, please bear with me.
9 But, we'll get through it all together.

10 This pre-hearing conference -- this is a pre-
11 hearing conference in docket MC2002-1, considering the
12 request of the Postal Service for experimental rates in
13 service changes, to implement a negotiated service agreement
14 with Capital One Services.

15 As you all know, I am George Omas, Chairman of the
16 Postal Rate Commission. I will be serving as presiding
17 officer in this case. With me this morning are my long time
18 colleagues Danny Covington and Ruth Goldway should be here
19 shortly. Also, on the bench this morning is our newest
20 Commissioner Tony Hammond. I've known Tony -- Commissioner
21 Hammond for over 25 years. We had -- I have had the
22 opportunity of working with him on the Hill many years ago.
23 And I know he will be a positive addition to the Commission.
24 Welcome, Tony.

25 Commission Order No. 1346 gave notice of the

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1 Postal Service request and granted the motion that Capital
2 One Services, Inc. be admitted as a joint sponsor to this
3 request. The Postal Service and Capital One propose that
4 the Postal Service be authorized to establish rate and fee
5 positions available only to certain mailings of Capital One.
6 In general, under this agreement, Capital One would be
7 eligible for reduced rates for annual volumes of first-class
8 bulk mailings in excess of 1.225 billion pieces. In
9 addition, Capital One would be eligible for electronic
10 address corrections without payment of applicable fees.
11 Capital One would agree to forego the return without charge
12 of bulk first-class mail that was undeliverable as
13 addressed.

14 The Postal Service and Capital One characterized
15 this as a negotiated service agreement. This is the first
16 request presented in a negotiated service agreement that
17 would directly benefit only one mailer. The advisability
18 and the legality of such agreement has been a topic of
19 concern for a number of years. And the press has implied
20 that the Commission decision in this case will establish
21 important precedent.

22 At the outset, it should be stated that the
23 Commission is on record as believing the negotiated service
24 agreements may be legally agreed to by the Postal Service.
25 Nonetheless, the Commission recognizes that this question

1 has not been previously litigated and this is -- and it is
2 prepared to carefully -- the Commission is prepared to
3 carefully and fully consider any legal and policy arguments
4 that participants may present on this subject.

5 When the joint Postal Service and Postal Service
6 Commission task force of the early 1990 suggested that it
7 might be beneficial to its four negotiated service
8 agreements incorporating declining block rates. The Service
9 and the Commission specifically tried that suggestion --
10 tied that suggestion to competitive products. The request
11 before the Commission is applicable to products covered by
12 the Postal monopoly.

13 Furthermore, it should be understood that
14 everyone, that even -- furthermore, it should be understood
15 by everyone that even if a negotiated service agreements are
16 legal in principle, obviously, that does not mean that any
17 and all negotiated service agreements are appropriate. If
18 the Commission recommends the agreement sponsored by the
19 Postal Service and Capital One in this case, that does not
20 mean that every other negotiated service agreement will be
21 approved.

22 Similarly, if the Commission finds that the
23 agreement sponsored by the Postal Service and Capital One is
24 not justified or is for some reason unlawful, it does not
25 mean that every other negotiated service agreement will be

1 rejected.

2 The reporter in this case is Heritage Reporting
3 Company. And there are forms for noting appearance
4 available on the desk, as you enter the hearing room. If
5 you wish to purchase transcripts, you should see the
6 reporter after today's conference or call (202) 628-4888.

7 At this point, I would like to ask counsel to
8 identify themselves for the record. The United States
9 Postal Service?

10 MR. REITER: Good morning, Mr. Chairman. I'm
11 Scott Reiter with Nan McKenzie.

12 CHAIRMAN OMAS: Capital One Services,
13 Incorporated?

14 MR. MAY: Mr. Chairman, Timothy May for Capital
15 One Services.

16 CHAIRMAN OMAS: Advo, Incorporated?

17 MR. MCLAUGHLIN: Mr. Chairman, Tom Mclaughlin for
18 Advo, Incorporated, and appearing with me will be John
19 Burzio. Thank you.

20 CHAIRMAN OMAS: Thank you. Alliance of Nonprofit
21 Mail?

22 MR. LEVY: Good morning. David Levy for the
23 Alliance of Nonprofit Mailers.

24 CHAIRMAN OMAS: American Business Media?

25 (No response.)

1 CHAIRMAN OMAS: American Financial Services
2 Association?

3 (No response.)

4 CHAIRMAN OMAS: American Postal Workers Union,
5 AFL-CIO?

6 MS. CATLER: Mr. Chairman, members of the
7 Commission, my name is Susan Catler and I'm here
8 representing the American Postal Workers Union, AFL-CIO.

9 CHAIRMAN OMAS: AOL Time Warner, Incorporated?

10 MR. KEEGAN: Good morning, Mr. Chairman, members
11 of the Commission. I'm Timothy Keegan and I'll be appearing
12 for Time Warner -- for AOL Time Warner, Inc., with my
13 partner, John Burzio.

14 CHAIRMAN OMAS: Association of Priority Mail
15 Users?

16 MR. OLSEN: Mr. Chairman, William Olsen,
17 representing APMU and, also, Val-Pak Director Marketing
18 Systems and Val-Pak Dealers Association.

19 CHAIRMAN OMAS: Douglas F. Carlson?

20 (No response.)

21 CHAIRMAN OMAS: Direct Marketing Association,
22 Incorporated?

23 MR. ACKERLY: Good morning. I am Todd Ackerly,
24 representing DMA.

25 CHAIRMAN OMAS: Dow Jones & Company, Incorporated?

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On Behalf of Capital One:

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Patton Boggs LLP
2550 M Street, N.W.
Washington, D.C. 20037-1350
(202) 457-6000

1 (No response.)

2 CHAIRMAN OMAS: Financial Services Roundtable?

3 (No response.)

4 CHAIRMAN OMAS: Greeting Card Association?

5 MR. STOVER: Good morning, Mr. Chairman. David
6 Stover, representing Greeting Card Association. With me
7 will be Mr. Sheldon Bierman.

8 CHAIRMAN OMAS: Magazine Publishers of America?

9 (No response.)

10 CHAIRMAN OMAS: Mailing and Fulfillment Services
11 Association?

12 (No response.)

13 CHAIRMAN OMAS: National Association of
14 Postmasters of the United States?

15 (No response.)

16 CHAIRMAN OMAS: National Newspaper Association?

17 (No response.)

18 MS. RUSH: Good morning, Mr. Chairman, Tonda Rush
19 representing NNA.

20 CHAIRMAN OMAS: National Postal Mail Handlers
21 Union?

22 (No response.)

23 CHAIRMAN OMAS: Newspapers Association of America?

24 MR. BAKER: Good morning, Mr. Chairman and
25 Commissioners. William Baker appearing on behalf of

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1 Newspapers Association of America.

2 CHAIRMAN OMAS: The Office of the Consumer
3 Advocate?

4 MR. RAND COSTICH: Good morning, Mr. Chairman.
5 Rand Costich and with me is Shelley Dreifuss, Director of
6 the Office of the Consumer Advocate.

7 CHAIRMAN OMAS: Parcel Shippers Association?

8 MR. MAY: Timothy May, counsel for Parcel Shippers
9 Association.

10 CHAIRMAN OMAS: Pitney Bowes, Incorporated?

11 MR. LONGSTRETH: John Longstreth on behalf of
12 Pitney Bowes.

13 CHAIRMAN OMAS: Would you repeat that again for
14 the recorder, please?

15 MR. LONGSTRETH: John Longstreth.

16 CHAIRMAN OMAS: Thank you. David P. Popkins?

17 (No response.)

18 CHAIRMAN OMAS: Reader's Digest Association,
19 Incorporated?

20 (No response.)

21 CHAIRMAN OMAS: Val-Pak Dealers Association
22 Corporation, Mr. Olsen has already addressed that. Val-Pak
23 Direct Marketing Systems, Incorporated, Mr. Olsen has
24 already identified himself. Is there anyone I have missed?

25 MR. WIGGINS: Mr. Chairman, Frank Wiggins for the

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1 Association for Postal Commerce. I'm also representing the
2 Mailing and Fulfillment Services Association.

3 CHAIRMAN OMAS: Thank you.

4 MR. WARDEN: Mr. Chairman, Irving Warden,
5 representing the American Banker's Association.

6 CHAIRMAN OMAS: Thank you. The intervention from
7 the National Association of Postmasters of the United States
8 was delayed in the mail and received late. That
9 intervention is accepted.

10 The next topic I want to address is the electronic
11 filing of documents. As most of you know, the Commission
12 has been working over a year to develop its filing on-line
13 procedure. A prototype was published this spring and
14 throughout the summer, we have been trying to -- we have
15 been running tests, to get the bugs out and to add new
16 features, to make this system as user friendly as possible.

17 I want to thank all of you in the community, who
18 took time to help us test this system. Your feedback was
19 very helpful and the Commission realizes how fortunate it is
20 to work with such a cooperative bar and we thank you.

21 We think we are just about ready to implement the
22 new system. On Monday, the Commission issued Order No.
23 1349, amending its rules of practice and procedures, to
24 require that after January 7, 2003, all documents are to be
25 filed with the Commission through filing on line. I hope

1 that everyone will carefully review those rule changes at
2 their earliest convenience.

3 Let me restate what I just said. The new rules
4 become effective January 7, 2003. In the interim, the
5 Commission is hoping everyone will become familiar with the
6 new system.

7 I am directing that as special rules of practice
8 in this docket, participants need to file documents using
9 either filing on line or the traditional rule currently
10 codified in the Federal Register.

11 On of the main advantages of filing on line is its
12 service on other participants is achieved by the posting of
13 the document on the Commission's website, www.prc.gov, in
14 the daily listings area. Let me ask, is there any
15 participant that does not have ready access to the
16 Commission's Internet website?

17 (No response.)

18 CHAIRMAN OMAS: For the purposes of this case, I
19 would like to adopt these special rules, that posting of a
20 document that was filed electronically on the Commission's
21 website is effective service on all participants that has
22 not shown that this rule would be -- that constitutes a
23 hardship. Is there any objection?

24 (No response.)

25 CHAIRMAN OMAS: Hearing none, that rule is --

1 hearing none, that rule is adopted.

2 Participants that continue to file documents in
3 hard copy will be expected to continue to provide service on
4 other participants as required by the current Rule 12.

5 Participants that continue to file documents in hard copy
6 will be contacted by Commission personnel, who will offer to
7 assist them in becoming more familiar with filing on line.

8 The participants -- what was so funny, Mr. May?

9 MR. MAY: It's summing up a picture of old lawyers
10 trying to cope with a new world.

11 CHAIRMAN OMAS: That is something, that old people
12 trying to get used to this new way. I belong to that group.

13 Participants that file documents in hard copy will
14 be expected to comply with current rules that require filing
15 during Commission office hours, which are currently 8:00
16 a.m. to 4:30 p.m. Participants that file electronically are
17 able to access the Commission's website 24 hours a day.
18 However, for purposes of determining the date of filing,
19 documents must be received by the Commission by 4:30 p.m.,
20 to be considered filed on that day.

21 Let me explain the reason for this rule.
22 Commission staff must review electronic submissions for
23 compliance, fill out database information, and prepare the
24 daily listings. Experience teaches us that filings
25 frequently arrive at the last minute. And if participants

1 are allowed to file documents in the evening hours, the
2 Commission staff would probably never get home.

3 Many of you have been kind enough to seek out my
4 colleagues and myself and tell us how pleased you are with
5 the Commission's webpage and electronic filing. In
6 particular, we have been told that having a complete daily
7 listing available each morning has been very helpful to
8 counsel. In order to ensure that the Commission will
9 continue to have its daily listings posted by a reasonable
10 time the following morning, we must establish a reasonable
11 cutoff time for electronic filing. Requiring both written
12 and electronic submissions by 4:30 p.m. is, I think, fair
13 and reasonable.

14 The Commission is gratified that many of you
15 report that our efforts to modernize our processes have
16 generated substantial savings of both time and money. If we
17 can successfully implement electronic filing and merge that
18 system with our electronic archives, all of us should
19 benefit tremendously. Please try the new system and if you
20 have any questions at all about the way it works, please
21 contact us.

22 Please note that no question is too small or
23 inconsequential. We want the system to work easily and
24 effectively for everyone. The next two months are the final
25 opportunity to identify problems and make improvements. If

1 you have any questions about filing on line, contact the
2 Commission's docket room at (202) 789-6847. Depending on
3 the complexity of your question, you will be referred to
4 someone, who will walk you through any problem.

5 -- from participants, the system is adopted by the
6 Commission -- that the system adopted by the Commission
7 include some minor changes to the preliminary proposal
8 published in May. Those changes are explained in detail in
9 Order 1347.

10 I want to focus, in particular, on one change. In
11 order to file documents with the Commission electronically,
12 one must register as an account holder with the Commission.
13 The final rule now provides for two types of account
14 holders. Those filings on their own benefit are
15 representing a participant for the Commission, are eligible
16 to be principle account holders. A principle account holder
17 vouches for the authenticity and the accuracy of the
18 document with the Commission. Because attorneys that are
19 principle account holders may wish to authorize colleagues
20 for assistants to submit documents for them, we have
21 established a new category of agent account holder.

22 This is how the system is expected to work.
23 Anyone appearing on their own behalf or of a representative
24 of participant will register as a principle account holder
25 with the Commission. Registration involves completing and

1 signing an application form provided by the Commission. The
2 information on the application form will be used to develop
3 a profile for each account holder. When an account holder
4 logs in on -- to filing on line, the top tool bar will
5 provide access to his or her profile information. Account
6 holders are responsible of keeping the information in their
7 profile accurate and up-to-date.

8 The principle account holder's profile contains an
9 area where they can authorize agent account holders to file
10 documents on their behalf. This is important. To file
11 electronically, one must identify the principle account
12 holder vouching for the authenticity and accuracy of the
13 documents. Someone, who is registered as an agent account
14 holder, will not be able to file documents with the
15 Commission unless the responsible principle account holder
16 has authorized that agent to file on his or her behalf.

17 I emphasize this modification in this system,
18 because it may be necessary for people, who have already
19 registered as account holders, to update their profile, to
20 identify applicable principle-agent relationships. Again,
21 the Commission staff will assist you, to make the necessary
22 additions and corrections, if you'll let them know what you
23 are trying to accomplish.

24 At the close of today's conference, members of the
25 Commission staff will be available in the hearing room, to

1 help any interested person learn about filing on line,
2 modify, or apply for account holder status or otherwise
3 respond to questions about the system.

4 Finally, are there any questions about filing on
5 line?

6 (No response.)

7 CHAIRMAN OMAS: We look forward to working with
8 you all. I think it's a good move and we hope that it will
9 be a successful addition to the Commission's electronic.

10 Order number 1346 requests a participant to
11 comment on several matters associated with this case. The
12 Postal Service submitted a motion for waiver of certain
13 filing questions with its initial request. Participants
14 were allowed until October 17th to file responses to that
15 motion. No participants filed an opposition to the Postal
16 Service's request for waiver. Does any participant here
17 today wish to oppose granting the waiver that was requested
18 by the Postal Service?

19 (No response.)

20 CHAIRMAN OMAS: Hearing no opposition, the motion
21 is granted.

22 Order No. 1346 also invited comments on the
23 appropriateness of proceeding under Rule 67 through 67(d),
24 the Commission rules for hearing experimental cases.
25 Several parties offered their views in writing and two

1 parties have submitted replies -- have submitted comment
2 replies. I grant the Post Com MFSA motion for leave to file
3 an unauthorized pleading, and I accept Capital One's
4 responsive comments.

5 In just a moment I will ask for additional views
6 of some of the issues dealt with in the written comment.
7 Depending on the scope of your statement, it may be
8 necessary to take some of these matters under advisement,
9 but I think I can rule on one of those topics now.

10 Some of the written statements expressed a desire
11 to have a hearing on several non-trivial issues. On the
12 basis of the comments received by October 17th, I find that
13 it will be necessary to hold evidentiary hearings in this
14 case.

15 I would like to hear additional comments
16 participants may have on whether it is wise to apply the
17 rules set out in Section 67 through 67(d) in this case.
18 Does any participant wishes to supplement or reply to the
19 statements we have already received at this point.

20 (No response.)

21 CHAIRMAN OMAS: Thank you.

22 A factor that made there on whether the
23 experimental rules are appropriate in this case is the
24 extent to which discovery is necessary to explore the basis
25 and potential ramifications of this request. Discovery is

1 already available to intervenors. I would like participants
2 who expect to actively participate in the evidentiary
3 hearing to indicate how much time they want for additional
4 discovery.

5 Mr. Baker.

6 MR. BAKER: Thank you, Mr. Chairman. We have
7 asked for one round and are awaiting answers to those, and
8 we are, of course, watching the other discovery that has
9 been asked of the parties by other parties, and watching,
10 you know, the responses to those.

11 We anticipate we will need probably a couple more
12 weeks giving some time for the responses for the
13 interrogatories we have already asked to come in and a
14 chance to look at those, and a follow ups on those. So I'm
15 not sure I can give a better figure than that right now.

16 CHAIRMAN OMAS: Thank you, Mr. Baker.

17 Ms. Catler.

18 MS. CATLER: Thank you.

19 We are preparing our first round of
20 interrogatories at this point. We anticipate that it's
21 likely that we will need a second round, and so we too
22 believe that several more weeks of written discovery will be
23 necessary. Thank you.

24 CHAIRMAN OMAS: OCA?

25 MS. CATLER: Thank you, Mr. Chairman.

1 I think the OCA is a little ahead of the other
2 parties in terms of discovery and we can certainly live with
3 whatever they can live with.

4 CHAIRMAN OMAS: Thank you.

5 Another important factor may be whether any
6 participant will want to present testimony in opposition to
7 the request. I recognize that it may be too early in the
8 case to know whether testimony in opposition will be
9 offered, but it can't hurt to ask.

10 Does any participant currently plan to submit
11 testimony in position to the pending request. Mr. Baker?

12 MR. BAKER: Mr. Chairman, we are considering
13 whether we want to do that, and so we would like to leave
14 that opportunity open.

15 CHAIRMAN OMAS: Thank you.

16 Ms. Catler?

17 MS. CATLER: We too are considering that depending
18 on the responses to the written discovery. We will make our
19 decision.

20 CHAIRMAN OMAS: Thank you.

21 Mr. Costich?

22 MR. COSTICH: Thank you, Mr. Chairman.

23 The OCA would like to leave that possibility open
24 as well, although we continue to have discussions with the
25 Postal Service.

1 CHAIRMAN OMAS: Thank you.

2 In evaluating whether to apply Rule 67 through
3 67(d), I will have in mind the Postal Service's request for
4 expedition. I am sure that both the Postal Service and
5 Capital One are eager to get on with this arrangement and I
6 want to assure them that whether or not the experimental
7 rules are used or not, this case will proceed expeditiously.

8 At the same time I am very aware that this case is
9 viewed by some as a test of the acceptability of negotiated
10 service agreements and the Commission should not rush to
11 judgment without allowing all voices to be fully heard. As
12 most of you know, the Commission's Rule 20(b) allows for
13 those who choose not formally intervene to advocate the
14 Commission with their views. The commission has already
15 received interesting comments under that provision from the
16 United Parcel Service and Fleet Bank.

17 Does any participant have any substantive or
18 procedural matters they wish to raise at this time?

19 MR. REITER: Mr. Chairman?

20 CHAIRMAN OMAS: Yes.

21 MR. REITER: Scott Reiter on behalf of the Postal
22 Service.

23 I wanted to mention that the Postal Services
24 believes that it might be useful to convene some settlement
25 discussions, even if a complete settlement with all the

1 participants isn't possible, I think we have found in the
2 past just having discussions, attempting to define the
3 issues further can be helpful to the Commission in trying to
4 conduct the proceedings efficiently and expeditiously as you
5 indicated.

6 So we intend to file something to you to schedule
7 such a conference and maybe calling upon you to use the room
8 here for that.

9 CHAIRMAN OMAS: Okay. You have the room whenever
10 you wish.

11 MR. REITER: Thank you.

12 CHAIRMAN OMAS: Do any of my fellow commissioners
13 have anything to add to this morning's prehearing
14 conference?

15 MR. REITER: Mr. Chairman, just one other
16 question.

17 Do you have an anticipated time that you will be
18 making a decision on whether you will be applying the
19 experimental rules?

20 CHAIRMAN OMAS: At the present time not, but it
21 should be within the next week or so.

22 MR. REITER: Thank you.

23 CHAIRMAN OMAS: Okay. Thank you, and I will
24 shortly issue a ruling on the outstanding procedural issues
25 and establish a preliminary schedule.

1 Again, please do not forget the Commission staff
2 will be available here in the conference room to walk you
3 through and provide any assistance for filing online.

4 Thank you very much for bearing with me today and
5 this concludes today's prehearing conference. We thank you,
6 and we are now adjourned.

7 (Whereupon, at 10:34 a.m., the hearing in the
8 above entitled matter was adjourned.)

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21 //

22 //

23 //

24 //

25 //

REPORTER'S CERTIFICATE

1
2
3 DOCKET NO.: MC2002-02
4 CASE TITLE: Request
5 HEARING DATE: 10/23/02
6 LOCATION: Washington, DC
7

8 I hereby certify that the proceedings and evidence are
9 contained fully and accurately on the tapes and notes
10 reported by me at the hearing in the above case before the
11 Postal Rate Commission
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14 Date: 10/23/02

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