

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

EXPERIMENTAL RATE AND SERVICE CHANGES
TO IMPLEMENT NEGOTIATED SERVICE AGREEMENT
WITH CAPITAL ONE SERVICES, INC.

Docket No. MC2002-2

**MOTION OF THE UNITED STATES POSTAL SERVICE
TO TEMPORARILY REOPEN THE RECORD
FOR THE PURPOSE OF REMOVING PAGES
OR, IN THE ALTERNATIVE, TO STRIKE
(March 31, 2003)**

Earlier today, the Office of the Consumer Advocate moved that pages 7/1390-96 of the transcript be removed from the record, since the OCA withdrew its proposal to adopt its proposed classifications and rates found at those pages in accordance with the Stipulation and Agreement filed today. The Newspaper Association of America filed a response in opposition to that motion, on the grounds that the record has already been closed.

Closing of the record is an administrative device within the discretion and control of the Commission. The Commission normally closes the record in a docket at the time it no longer expects any additions to the record. Nevertheless, the Commission also has re-opened the record as necessary to take account of supervening events. See, e.g., Order No. 371, Docket No. R80-1, at 3 (March 23, 1981) (citing *ICC v. Jersey City*, 322 U.S. 503, 514-15 (1944) ("It is well established that it is within the discretion of an administrative agency whether or not to reopen the administrative record, even where new facts of circumstances have arisen after the record has been formally closed.")).

In the current extraordinary situation, the party sponsoring a proposal has withdrawn its sponsorship and support of that proposal and seeks to remove it from the record. The Postal Service believes it is perfectly appropriate, in this unusual instance, for the Commission to temporarily re-open the record, solely for purposes of removing the pages at issue, and then re-close the record, and formally moves that the Commission do so. In the alternative, if the Commission does not find the OCA's request sufficient, then the Postal Service moves that the pages containing the proposal be stricken on the grounds that its proponent has withdrawn its support.

Moreover, the Postal Service notes that the Commission may need to re-open the record to take account of the fact that the Postal Service has revised its proposed DMCS language and its data collection plan, the latter of which was originally contained in Postal Service witness Plunkett's testimony, which is part of the evidentiary record. Although previous settlements have occurred earlier in the proceedings, the Commission's administrative process should be flexible enough to accommodate the current situation of a settlement at the latter stages of the case. It does not serve the process well for settlement to be discouraged or made difficult, even at this stage.

For these reasons, the Postal Service moves that the record be re-opened for purposes of granting the OCA's motion, or moves, in the alternative, that the pages at issue be stricken from the record.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys :

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Scott L. Reiter

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.

Scott L. Reiter

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