

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

Experimental Rate and Service Changes
To Implement Negotiated Service
Agreement with Capital One Services, Inc.

Docket No. MC2002-2

PRESIDING OFFICER'S RULING
DENYING MOTIONS TO REOPEN AND REMOVE
PAGES FROM THE EVIDENTIARY RECORD

(Issued April 2, 2003)

On March 31, the Office of the Consumer Advocate filed a motion to remove seven pages from a volume of the evidentiary record made in this proceeding.¹ OCA asks that these pages, which contain the Domestic Mail Classification Schedule language and the rate schedule proposed by OCA in the testimony of witness Callow, be stricken because OCA has withdrawn its earlier proposal in favor of a stipulation and agreement² it reached with the Postal Service and co-proponent Capital One Services, Inc. to settle the case. OCA's motion discusses the perceived advantages of the settlement approach,³ and states its position that the evidence it furnished in support of its direct case "should now be construed as supporting the type of approach embodied

¹ Office of the Consumer Advocate Motion to Remove Pages Tr. 7/1390-96 from the Record, March 31, 2003.

² Stipulation and Agreement, March 31, 2003.

³ OCA Motion, *supra*, at 3-6.

in the Stipulation and Agreement.”⁴ However, should the Commission reject that agreement, OCA further asks “that its former classification proposal be reinstated.”⁵

Intervenor Newspaper Association of America (NAA) opposes OCA’s motion. NAA argues that, “[t]he motion cannot be granted because the record in this proceeding is closed.”⁶

The Postal Service supports removal of the identified pages from the record in a separately filed motion.⁷ The Service observes that closing an evidentiary record “is an administrative device within the discretion and control of the Commission[,]”⁸ and argues that temporarily re-opening the record solely for the purpose of removing the pages at issue is appropriate in this unusual instance. In the event the Commission finds OCA’s request insufficient, the Service “moves that the pages containing the [OCA] proposal be stricken on the grounds that its proponent has withdrawn its support.”⁹

I shall deny the OCA and Postal Service motions, as I find the relief they request to be both unnecessary and inappropriate. The intended effect of OCA’s motion is clear: to indicate support of the outcome provided in the stipulation and agreement while preserving its initial proposal should the Commission not accept the settlement. It is not necessary to remove the transcript pages containing OCA’s earlier proposal from the record to accomplish this objective. The Commission is capable of taking official notice of supervening events—such as a post-hearing settlement agreement—and informing its deliberations accordingly, as it found in Order No. 371.¹⁰ Removing the

⁴ *Id.* at 6.

⁵ *Id.* at 7.

⁶ Opposition of Newspaper Association of America to Office of the Consumer Advocate Motion to Remove Pages, March 31, 2003, at 1.

⁷ 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.

⁸ *Id.* at 1.

⁹ *Id.* at 2.

¹⁰ Docket No. R80-1, Order No. 371, Request for Comments on Financial Data and Status of Appropriation Process, March 23, 1981, at 3.

pages as requested at this time, with the possibility of restoring them depending on the Commission's eventual decision, would be a futile and administratively cumbersome act.

Further, striking the pages at issue from the record with finality, as the Postal Service alternatively requests, would inappropriately foreclose the Commission's deliberations in this proceeding. Should the proposed stipulation and agreement not be acceptable, the Commission will be tasked with considering all proposed outcomes on their merits, including OCA's initial proposal.¹¹

RULING

1. The Office of the Consumer Advocate Motion to Remove Pages Tr. 7/1390-96 from the Record, filed March 31, 2003, is denied.
2. The Motion of the United States Postal Service to Temporarily Reopen the Record for the Purpose of Removing Pages or, in the Alternative, to Strike, filed March 31, 2003, is denied.

George Omas
Presiding Officer

¹¹ See PRC Op. R2001-1, March 22, 2002, para. 2016: "As in Docket Nos. R74-1 and R94-1, the resulting dispute on issues of material fact requires that the settlement be treated as one competing proposal on the merits."