

ORDER NO. 1373

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

Before Commissioners:

George Omas, Chairman;  
Dana B. Covington, Sr., Vice Chairman;  
Ruth Y. Goldway; and Tony Hammond

Experimental Parcel Return Services

Docket No. MC2003-2

NOTICE AND ORDER ON FILING OF REQUEST FOR  
EXPEDITED DECISION ON EXPERIMENTAL PARCEL RETURN SERVICES

(Issued June 3, 2003)

On May 28, 2003, the Postal Service filed a request seeking a recommended decision approving an experimental change in the Domestic Mail Classification Schedule (DMCS) to establish rate categories, including rates and fees, for certain parcels and bound printed matter that are returns from customers to merchants.<sup>1</sup> The Request, which includes six attachments, was filed pursuant to Chapter 36 of the Postal Reorganization Act, 39 U.S.C. § 3601 *et seq.*<sup>2</sup>

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<sup>1</sup> Request of the United States Postal Service for a Recommended Decision on Experimental Parcel Return Services, Docket No. MC2003-2, May 28, 2003 (Request).

<sup>2</sup> Attachment A contains the proposed classification schedule provisions; Attachment B sets forth the proposed rate and fee schedules; Attachment C contains the certified financial statements for the years ending September 30, 2001 and September 30, 2002; Attachment D is the certification required by Commission rule 54(p); Attachment E is an index of testimonies; and Attachment F is the statement addressing compliance with various filing requirements.

In contemporaneous filings, the Postal Service requests expedited consideration of its proposal, including establishment of settlement procedures,<sup>3</sup> and a conditional motion for waiver of the filing requirements.<sup>4</sup> The Postal Service's request for expedition is in addition to that generally available under the Commission's experimental rules [39 CFR §§ 3001.67-3001.67d]. The Request, accompanying testimony of witnesses Gullo (USPS-T-1), Eggleston (USPS-T-2), Kiefer (USPS-T-3), and Wittnebel (USPS-T-4), and other related material are available for inspection in the Commission's docket room during regular business hours. They also can be accessed electronically, via the Internet, on the Commission's website ([www.prc.gov](http://www.prc.gov)).

#### I. Proposed Parcel Return Services

The Postal Service proposes an experimental bulk parcel return service applicable to merchandise returned as either Parcel Post or Bound Printed Matter (BPM) mail. Collectively, the experimental changes are referred to as Parcel Return Services, comprised of Parcel Select Return Service (PSRS) and Bound Printed Matter Return Service (BPMRS). Witness Kiefer sponsors the proposed rates and classifications. See USPS-T-3. The proposed rates are based on workshare savings for returned parcels retrieved in bulk by shippers (or their agents) at designated delivery units or bulk mail centers.

PSRS adds two rate categories to the Parcel Post subclass, Parcel Select Return Delivery Unit (RDU) and Parcel Select Return Bulk Mail Center (RBMC). The proposed RDU rate for mail retrieved in bulk at delivery units is \$2.00 per parcel. The proposed RBMC rates for parcels retrieved in bulk at the first BMC they reach range

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<sup>3</sup> United States Postal Service Request for Expedition and Establishment of Settlement Procedures, May 28, 2003 (Request for Expedition).

<sup>4</sup> Statement of the United States Postal Service Concerning Compliance with Filing Requirements and Conditional Motion for Waiver, May 28, 2003 (Conditional Motion).

between \$0.86 and \$1.51 below the non-workshared rates for regular-sized parcels.<sup>5</sup> *Id.* at 2.

BPMRS adds one rate category to the BPM subclass, Bound Printed Matter Bulk Mail Center (RBMC). Similar to Parcel Select Return Service, the RBMC rate is applicable to BPM parcels retrieved in bulk at the first BMC they reach. The proposed rates are \$0.24 below the non-workshared BPM rates. *Id.*; see also Request at 2.<sup>6</sup>

Witness Kiefer's proposed rates are based on cost data supplied by witness Eggleston. See USPS-T-2. The Postal Service indicates that the cost avoidance measures underlying its proposed rates are estimated using the same cost base supporting the Commission rate recommendations in Docket No. R2001-1. In addition, the Postal Service states that the proposed experiment will not materially affect its overall revenues. Request at 2-3.

In support of its proposal, the Postal Service also submits the testimony of witness Gullo (USPS-T-1), who describes the proposed Parcel Return Services products, and witness Wittnebel, who discusses, from a mailer's perspective, the processing of returns and the benefits associated with the experiment (USPS-T-4).

*Experimental designation.* By designating its proposal as experimental, the Postal Service seeks consideration of its Request under rules 67-67d. The Postal Service suggests that these rules are appropriate as they contemplate review of proposed experimental classifications in the absence of historical data that normally underlie requests for permanent classification changes. While acknowledging that it lacks data about the potential response to the experiment, the Postal Service states that it intends to gather more complete data during the proposed term of the experiment. It says this effort may support a request for a permanent classification. *Id.* at 3-4. The Service proposes that the experimental classification be in effect for two years, but also seeks approval of a provision that would allow for a brief extension if

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<sup>5</sup> Nonmachinable RBMC Parcel Post mail is subject to nonmachinable surcharges. See proposed DMCS § 521.7.

<sup>6</sup> BPM mailers are eligible for RDU service and rates if they so choose.

permanent classification authority is sought while the experiment is pending. The Postal Service proposes to limit the number of participants to 20 in the first year of the experiment, enlarging it by 10 in the second year. USPS-T-1 at 16.

The Service says the expedition allowed under the experimental rules is appropriate in the interest of putting the proposed services into effect in time for the 2003 holiday mailing season. Request at 5.

## II. Conditional Request for Waiver of Certain Filing Requirements

The Postal Service avers that its filing complies with applicable Commission filing requirements, but, as a precautionary alternative, seeks waiver of various filing requirements should the Commission conclude otherwise.<sup>7</sup> In support of its Request, the Postal Service says its Compliance Statement (Attachment F to the Request) addresses each filing requirement and indicates which parts of the filing satisfy each rule. It also notes that it has incorporated by reference pertinent materials from Docket No. R2001-1, the most recent omnibus rate case.<sup>8</sup> It states that incorporation satisfies the filing requirements pertaining to classes of mail and special services. In addition, the Postal Service contends that the experimental Parcel Return Services will not materially alter the rates, fees and classifications established in Docket No. R2001-1. It concludes that its proposal will have only a limited impact on overall postal costs, volumes, and revenues. *Id.* at 1. It also asserts that there is substantial overlap between information sought in the general filing requirements and the materials provided in Docket No. R2001-1. *Id.* at 2.

Notwithstanding its principal position, the Postal Service recognizes that the Commission may find that it has failed to comply with the filing requirements. Accordingly, the Postal Service requests a waiver of certain filing requirements if the

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<sup>7</sup> The Request (at 5) limits the waiver request to rules 54 and 64. While the Conditional Motion also references rule 67 (at 4), the relief requested is limited to rules 54 and 64. Conditional Motion at 5, n.4.

<sup>8</sup> Conditional Motion at 1 and 3.

Commission concludes that the materials incorporated from the omnibus case are not sufficient to satisfy those requirements. *Id.* at 4. Responses to the Postal Service's Conditional Motion are due on or before June 27, 2003.

III. The Postal Service Requests Expedition, Suggesting Several Specific Procedures, Including Settlement Procedures

In support of its request for expedition beyond that contemplated by the rules governing experimental classifications, the Postal Service asserts that the proposed classification change is straightforward, and of limited scope and duration. It also states that the proposed Parcel Return Services would have an insignificant effect on overall volumes, revenues, and costs. Further, it states that, based on discussions with industry representatives, the proposal has widespread support and should have no significant adverse impact on competitors. The Postal Service believes there is a distinct possibility for settlement.<sup>9</sup>

In lieu of proposing a specific schedule, the Postal Service identifies four procedures the Commission could employ to expedite the proceeding. These include setting a relatively short intervention period and requiring participants to identify, in their notices of intervention, whether they intend to seek a hearing and to identify any genuine issues of material fact that may warrant such a hearing. In addition, the Postal Service requests that a settlement conference be scheduled as quickly as possible following the deadline for intervention. Finally, it suggests that the time allotted for discovery, if found to be necessary, be abbreviated and limited to matters related directly to its proposal. *Id.* at 2-3.

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<sup>9</sup> Request for Expedition at 1-2.

## IV. Commission Ruling

*Proceeding under the experimental rules.* The Postal Service's Request was filed pursuant to the Commission's rules 67-67d involving experimental classification changes. Formal status as an experiment under these rules is based on an evaluation of factors such as the proposal's novelty, magnitude, ease or difficulty of data collection, and duration. A final determination regarding the appropriateness of the experimental designation and application of Commission rules 67-67d will not be made until participants have had an adequate opportunity to comment. Participants are invited to file comments on this matter by June 18, 2003. See rule 67(c).

*Postal Service's request for expedition.* The Postal Service requests that the Commission expedite this proceeding, advancing several reasons to support its request. First, the Postal Service states that the proposal is straightforward and has a limited scope and duration, as explained in the testimony of witness Gullo and in its Request. Further, the Postal Service contends that the proposed changes would not significantly effect its overall revenues, volumes, or costs. Finally, the Postal Service states that industry representatives support the proposal, concluding that it should have no adverse effect on competitors.<sup>10</sup>

To expedite the proceeding, the Postal Service suggests several procedures for the Commission's consideration, including establishing a relatively short intervention period, requiring the prospective participants to request a hearing and identify any issues of material fact in their notices of intervention.<sup>11</sup> In addition, the Postal Service requests that a settlement conference be convened at an early date, and further that the time allotted for discovery, if necessary, be abbreviated.<sup>12</sup>

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<sup>10</sup> Request for Expedition at 1-2.

<sup>11</sup> *Id.* at 2-3.

<sup>12</sup> *Id.* at 3.

The reasons offered by the Postal Service in support of expedition are essentially the same as advanced in prior requests.<sup>13</sup> This undercuts the claim for expedition since there is nothing to distinguish this proceeding from any other. Moreover, it gives the appearance that such requests have become routine. In any event, the reasons advanced to accelerate this proceeding are not particularly compelling.

It would appear to be axiomatic that any proposed experiment would have the characteristics that the Postal Service offers to support an expedited schedule. For example, presumably all experimental changes would have a limited scope and duration, be sufficiently explained by supporting testimony, and be supported by industry representatives. Even taking these as a given, they fail to warrant accelerating this proceeding in the manner suggested by the Postal Service.

The Postal Service requests a relatively short intervention period. The Postal Service does not suggest a specific deadline, creating some uncertainty as to what might satisfy its request since the Commission's rules do not specify an intervention deadline. Deadlines for interventions in the last three proceedings under the experimental rules were 22 days (Docket No. MC2002-3), 28 days (Docket No. MC2002-2), and 20 days (Docket No. MC2001-2).<sup>14</sup> In any event, it would appear that the request is designed to compel potential participants to evaluate the merits of the proposal in an even shorter time. Under the circumstances, that result would be inappropriate.

By statute, the Commission is required "to conduct its proceedings with utmost expedition consistent with procedural fairness to the parties."<sup>15</sup> Accordingly, the

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<sup>13</sup> Compare United States Postal Service Request for Expedition and Establishment of Settlement Procedures, Docket No. MC2002-3 September 26, 2002; and Motion of the United States Postal Service for Expedition, and Waiver of Certain Provisions of Rule 161 and Certain Provisions of 64(h), Docket No. MC2000-1, September 27, 2000.

<sup>14</sup> See PRC Order No. 1347, October 2, 2002, PRC Order No. 1346, September 24, 2002, and PRC Order No. 1323, September 25, 2001, respectively.

<sup>15</sup> 39 U.S.C. § 3624(b); see also *id.* at § 3624(a) ("The Postal Rate Commission shall promptly consider a request made under section 3622 or 3623 of this title, . . .")

Commission will conduct this proceeding with dispatch. Moreover, assuming this case is considered under the experimental rules, nothing in those rules precludes an adoption of a recommended decision in advance of the 150-day deadline. See rule 67d.

The Postal Service indicates it wishes to implement this program in time for the 2003 holiday mailing season, suggesting an early October effective date would be necessary.<sup>16</sup> This is a reasonable goal, but the Service does not provide any explanation of when a recommendation would have to issue to enable the Service to achieve that goal. The Postal Service controls its own calendar. It is the Commission's understanding that this proposal has been under development for some time, perhaps 12 months or more.

The due date for notices of intervention is June 18, 2003. Any person wishing to intervene must file a notice electronically via the Commission's Filing Online system in conformance with the Commission's rules 9 through 12. See 39 CFR §§ 3001.9-3001.12. Notices should indicate whether participation will be on a full or limited basis. See 39 CFR §§ 3001.20 and 3001.20a.

Turning to the balance of the Postal Service's suggestions, participants should indicate in their notices of intervention whether they request a hearing and, if so, they should identify all issues of material fact that may warrant such a hearing.<sup>17</sup> Given the due date for interventions established by this order, prospective intervenors will have sufficient time to review the Postal Service's proposal and formulate a position on whether or not to request a hearing. No decision has been made at this point on whether a hearing will be held in this case.

Settlements are to be encouraged. Given the Postal Service's representations that the proposal is widely supported and should not adversely affect competitors or other mailers, the Commission will authorize settlement negotiations in this proceeding.

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<sup>16</sup> Request at 4-5; Request for Expedition at 2.

<sup>17</sup> Notices of intervention not addressing these issues will be deemed not to have requested a hearing.



It appoints Postal Service counsel as settlement coordinator. In this capacity, Postal Service counsel shall file periodic reports on the status of settlement discussions. The Commission authorizes the settlement coordinator to hold a settlement conference on June 23, 24 or 25, 2003, at 10:00 a.m. in the Commission's hearing room.

Authorization of settlement discussions does not constitute a finding on the proposal's experimental status or on the need for a hearing.

Finally, under the Commission's rules, discovery is permissible upon intervention. The Postal Service suggests that time limits for discovery be abbreviated without suggesting specific time limits. At this stage of the proceeding, the Commission is unable to determine whether and to what extent, if any, discovery may ensue. Nonetheless, to facilitate resolution of this proceeding, participants desiring to engage in any discovery are encouraged to submit it promptly and to be prepared to discuss the need for additional discovery at the prehearing conference. Postal Service's responses will be due within ten days after the filing of the discovery. Objections, if any, should be filed within seven days of the filing of the discovery. Motions to compel, if any, should be filed within seven days of the filing of the relevant objection.<sup>18</sup>

*Representation of the general public.* In conformance with section 3624(a) of Title 39, the Commission designates Shelley S. Dreifuss, director of the Commission's Office of the Consumer Advocate (OCA), to represent the interests of the general public in this proceeding. Pursuant to this designation, Ms. Dreifuss will direct the activities of Commission personnel assigned to assist her and, upon request, will supply their names for the record. Neither Ms. Dreifuss nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding.

*Prehearing conference.* A prehearing conference will be held June 25, 2003, at 2:00 p.m. in the Commission's hearing room. Participants shall be prepared to address matters referred to in this ruling.

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<sup>18</sup> Participants may, if desired, file comments concerning these deadlines. Such comments should be provided on or before June 24, 2003.

It is ordered:

1. The Commission establishes Docket No. MC2003-2, Experimental Parcel Return Services, to consider the Postal Service Request referred to in the body of this order.
2. The Commission will sit en banc in this proceeding.
3. The deadline for filing notices of intervention is June 18, 2003.
4. Notices of intervention shall indicate whether the participant seeks a hearing and, if so, identify with particularity any genuine issues of material fact that may warrant a hearing.
5. Responses to the Postal Service's Conditional Motion for waiver of certain filing requirements are due on or before June 27, 2003.
6. The United States Postal Service's Request for Expedition and Establishment of Settlement Procedures is denied, in part, and granted, in part, as set forth in the body of this order.
7. Postal Service counsel is appointed to serve as settlement coordinator in this proceeding.
8. A prehearing conference will be held June 25, 2003 at 2:00 p.m. in the Commission's hearing room.
9. Shelley S. Dreifuss, director of the Commission's Office of the Consumer Advocate, is designated to represent the interests of the general public.

10. The Secretary shall arrange for publication of this notice and order in the *Federal Register*.

By the Commission.

(S E A L)

Steven W. Williams  
Secretary