

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

POSTAL RATE AND FEE CHANGES  
PURSUANT TO PUBLIC LAW 108-18

Docket No. R2005-1

UNITED STATES POSTAL SERVICE REQUEST FOR EXPEDITION  
AND EARLY CONSIDERATION OF PROCEDURES  
FACILITATING SETTLEMENT EFFORTS  
(April 8, 2005)

**INTRODUCTION**

In authorizing the initiation of proceedings under 39 U.S.C. § 3622 in this case, the Board of Governors has directed Postal Service management to seek maximum expedition in the litigation of its Request for a Recommended Decision. In particular, the Board's decision specifically contemplated that the Postal Service would make every effort to reach a settlement agreement endorsed by all or nearly all of the parties who intervene and participate in the proceedings. As explained in the testimony of Postmaster General Potter in this filing (USPS-T-1), the prospect of settlement is a key element of the Postal Service's approach. Early resolution is critical to achieving the proposal's financial objectives, which in turn are closely linked to the moderate, across-the-board pricing proposals. Furthermore, the Postal Service believes that, in current circumstances, the entire mailing community will benefit from the earliest possible determination of the effective date for the proposed increases.

In this regard, as in the past, the Postal Service fully appreciates the time demands imposed by the Commission's responsibilities under the Act, and acknowledges the Commission's substantial prerogatives in controlling the course of its rate proceedings. We emphasize that we would not advocate any schedule that would

have the practical effect of denying the Postal Service or any other participant the opportunity to inquire and be heard under the requirements of due process. Most importantly, we would not seek to impede the Commission's effectiveness by depriving it of time needed to fully evaluate the record and formulate its recommendations.

Nevertheless, we note that, under the Postal Reorganization Act, as amended, no minimum duration is established for the Commission's proceedings. In Docket No. R2001-1, the Commission managed to lead the participants through all necessary procedural steps, and afford due process, in slightly less than seven months. Compared to past cases, that was a remarkable feat in an omnibus rate case, for which the Commission deserves most of the credit. Relatively early agreement on settlement terms, and the cooperation of all participants, made it possible, but the Commission's willingness to accommodate the Postal Service's and other participants' needs and objectives, and to establish reasonable, progressive procedures and timelines was critical to the outcome. As a consequence, the Postal Service was able to address its financial needs through reasonable rate increases, and keep the postal system on an even keel during the aftermath of a profound national crisis.

Admittedly, in Docket No. R2001-1, the Postal Service and the Commission faced a perilous uncertainty following the terrorist attacks. These circumstances provided a major impetus for settlement. In current circumstances, on the other hand, we face a formidable, but comparatively known financial challenge in the need to fund the escrow requirement that Congress has imposed in connection with changing the Postal Service's liability under the Civil Service Retirement System (CSRS).

Nevertheless, the Postal Service's approach to meeting this financial obligation through its proposals in this case has clear advantages for the mailing community over possible alternatives. As detailed below, the motives for settlement and expeditious resolution of the Postal Service's request remain strong, even in current, less volatile conditions. As in the past, furthermore, we believe that significant potential exists for streamlining these proceedings, consistent with due process and the need to explore fully the Postal Service's proposals.

Early resolution of the Postal Service's request and early implementation are key factors in the Postal Service's proposal. A Recommended Decision ten months after today would fall on February 8, 2006. Allowance for time to permit the Governors to review and act on the recommendations, and a reasonable amount of time to prepare for implementation, would take the earliest effective date into March or April of 2006.<sup>1</sup> This would result in a potential delay in implementing the proposed changes, if recommended, about three months after a possible effective date at the beginning of January. Yet, the financial objectives of the proposed increases are tailored to an expected effective date for the proposed increases in early January 2006. Delay of three months beyond that point would, as a practical matter, reduce by roughly \$1 billion

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<sup>1</sup> In the complex environments in which many industries that rely heavily on mail operate today, two months is commonly regarded as the bare minimum time needed to prepare for global replacement of postal rate schedules. Rate schedules and the accompanying mail preparation requirements increasingly provide customers more options and more details to consider. Accordingly, more time is needed to reprogram computers and make other preparations for the changes. Even considering the absence of any proposed classification or rate structure changes, orderly transition to increased rates and fees is likely to take six to eight weeks.

the revenues that could be earned in FY 2006, and that would be available to meet the escrow requirement. Any compensating adjustment of the Postal Service's rate and fee proposals to account for deferment of increases due to a rate case of typical length would, as a practical matter, increase the Postal Service's rate and fee proposals beyond the moderate range that the Board has adopted as a matter of policy. Any reduction in the revenues realized as a result of the proposed changes would undermine the Board's policy determination to fund the escrow through these rate increases.

Understandably, this docket presents a situation created by the timing and objectives embodied in the Postal Service's proposals.<sup>2</sup> Neither the Commission nor the participants need be held accountable, if this ambitious plan fails because a fair and orderly review of the Postal Service's request, by necessity, takes longer than hoped. Nevertheless, the Postal Service has determined that the ultimate goal is worthwhile, that the Postal Service and the mailing community will benefit, that history shows that it can be done, and that it therefore should be tried.

Accordingly, the Postal Service urges the Commission to give serious consideration to the possibility that the proceedings can be streamlined and expedited, as suggested by the guidelines outlined below. Successful settlement, furthermore, will be the key. The Postal Service is optimistic that a good foundation has already been laid that will lead to a Stipulation and Agreement acceptable to most if not all of the

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<sup>2</sup>The timing of this filing has been influenced by several complex factors. These include unpredictable legislative developments and the substantial time and effort needed to prepare an omnibus rate case for filing.

participants. We therefore suggest that the Commission make the relatively moderate adjustments in its procedures and schedule to facilitate speedy settlement.

### **SETTLEMENT**

In Docket No. R2001-1, the Chairman of the Commission, as Presiding Officer, provided the leadership that first created the impetus for settlement. Fully a month after the Postal Service's request was filed, at the Prehearing Conference on October 25, 2001, he urged the Postal Service and other participants to make serious efforts to settle. Beyond that point, the Postal Service, as settlement coordinator, and, most importantly, the majority of the active participants, worked diligently and unselfishly to bring about an historic agreement. Docket No. R2001-1 became the first omnibus postal rate case in over 30 years to be resolved by Commission recommendations based on a nearly unanimous Stipulation and Agreement. The Presiding Officer's efforts to foster the progress of settlement through enlightened and creative rulings, procedures, and scheduling helped facilitate the eventual outcome.

In several respects, the distinct circumstances of the current case, as well as the nature of the Postal Service's proposals, have improved settlement potential as compared to the posture of Docket No. R2001-1. The Postal Service has already gained a substantial head start in the timing of settlement efforts. For approximately the past two months, the Postal Service has been consulting individually with mailers, mailer associations, and other likely participants in the upcoming proceedings. We have been explaining the details and reasoning supporting the Postal Service's approach to its revenue requirement, as well as the structure of the case, and the

specific pricing proposals. We have been asking the prospective parties to seriously consider the possibility of settling on the Postal Service's proposals and have been exploring possible incentives and obstacles to a successful agreement.

As a final stage, just prior to filing, the Postal Service sent a general letter to all parties of record in Docket No. R2001-1.<sup>3</sup> The letter outlined the Postal Service's proposal, reported on the general state of negotiations with prospective participants up to that point, and invited all prospective participants to engage in further discussions leading to settlement.

The nature of the Postal Service's proposals, furthermore, has greatly enhanced the prospects for settlement. The Postal Service's Request presents a relatively modest revenue goal tied fundamentally to a single, unambiguous financial need in the test year (FY 2006), namely, the escrow requirement established by Congress in Public Law 108-18. The proposals for rate and fee increases sufficient to meet this obligation are simple, straightforward, and equitable. The escrow requirement, in effect, places a uniform burden on the postal system. No specific use for the fund has been either identified or authorized by Congress. Accordingly, the Board of Governors determined as a policy matter that the most reasonable and effective means to produce the needed revenue would be through uniform, across-the-board rate and fee increases. Each rate and fee would be increased by the same percentage. The Board also decided not to propose any classification or rate structure changes in conjunction with the request for rate and fee increases.

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<sup>3</sup> A copy of this letter and a list of recipients is attached.

This approach has the dual advantage of treating all mail categories and services equally, while relegating specific costing issues to a secondary role in the supporting record. Under the across-the-board approach, individual levels of costs, and, accordingly, differences in methodologies through which those costs are determined, need not present controversial obstacles to settlement. Admittedly, costing approaches are still relevant, since they affect comparisons of revenue contribution across classes and subclasses of mail.<sup>4</sup> On the other hand, the across-the-board approach largely holds existing rate relationships constant. This effect, in turn, tends to make the specific rate increases less controversial and more susceptible to settlement. Absence of any classification or rate structure proposals also removes a source of potential disagreement and controversy. A significant number of the difficult issues delaying settlement in Docket No. R2001-1 concerned Postal Service classification proposals in that docket.

In fact, the Postal Service has learned through discussions with a broad spectrum of potential participants that substantial support for settlement already exists in the mailing community, and among others who are likely to intervene. Understandably, many prospective parties have been reluctant to commit formally to settlement in advance of filing. In this regard, the Postal Service did not solicit specific

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<sup>4</sup> The Postal Service has attempted to comply fully with the Commission's rules requiring that cost levels be addressed through record evidence. Accordingly, we have submitted testimony sponsoring the full range of cost studies and supporting data normally submitted in connection with conventional pricing proposals. This information should enable the Commission to evaluate the consistency of the across-the-board approach with statutory standards, in the event a substantial agreement to settle is reached.

agreement or commitment to its proposals prior to filing and intervention. We have, however, gained a strong sense of willingness to settle from a large majority of the participants consulted.<sup>5</sup> Indeed, in light of the advantages of the Postal Service's proposals, some parties even expressed a willingness to settle prior to filing.

As a consequence, the Postal Service believes strongly that considerable interest and momentum toward settlement has already been developed. Compared to Docket No. R2001-1, when settlement was not even discussed prior to the Prehearing Conference, on October 25, 2001, we are far ahead of the progress toward agreement in that case. The strong expressions of support gained so far provide further ample basis for the Commission to assume that settlement will be a major factor in the upcoming litigation, and should be taken into account in fashioning an aggressive procedural schedule, as well as proactive procedures that will facilitate and promote settlement.

The Postal Service therefore requests the Commission to take several modest steps at the outset to foster the direction toward settling this proceeding that has already been established. First, the Commission, in its Federal Register Notice announcing the Postal Service's filing, should outline the progress made so far toward settlement and invite potential participants to engage in prompt consideration of settlement. In Docket No. R2001-1, the Commission's Notice was issued only two days after filing. This timely notification should be repeated.

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<sup>5</sup> The Postal Service has consulted individually 38 out of 64 participants in Docket No. R2001-1, as well as some influential organizations and individual mailers who do not typically intervene separately apart from their membership in associations.

Second, under the Commission's rules and practice, it typically designates a party to serve as settlement coordinator when settlement discussions are expected. Given the nature of this case and the Postal Service's progress so far, it would be logical for the Commission to designate the Postal Service as coordinator in the Notice of filing.

Third, the Postal Service has outlined below guidelines for an expedited schedule that would be consistent with the significant possibility of successful settlement. While we acknowledge that the Commission must take a broad range of factors into consideration in managing this docket, we respectfully request that the Commission give serious consideration to establishing a procedural schedule that accommodates and facilitates the strong prospects for settling and expediting this proceeding.

Fourth, the Commission should encourage early intervention and establish a checkpoint early in the procedural schedule to test whether any participants are predisposed to challenge a settlement agreement, and on what specific basis. In this regard, we would concede that some participants are likely to feel the need to conduct some limited discovery against the Postal Service before they decide how to proceed. Nevertheless, some participants may decide to commit to settlement after having reviewed the filing. The Postal Service suggests that the Prehearing Conference, if it is scheduled early as proposed below, is not too early to ask for expressions of opposition and explanation of the approach to be taken by each individual participant, if it is known.

The Prehearing Conference itself could also be used as an opportunity to discuss the procedural implications of settlement.<sup>6</sup>

Fifth, the Commission and the Presiding Officer should make attempts to surface any inquiries or problems anticipated regarding the potential for settlement on the Postal Service's across-the-board rate and fee proposals, or any other issues, early in the procedural schedule.<sup>7</sup>

Finally, in Docket No. R2001-1, the Presiding Officer established a deadline toward the end of the review of the Postal Service's direct case for him to announce a factual finding indicating whether there would be "sufficient time to give full and fair consideration to all contested issues and still provide a timely recommended decision."<sup>8</sup>

The timing of the ruling creating that procedural step, and the Presiding Officer's subsequent ruling,<sup>9</sup> were influenced by the procedural schedule for hearings on the

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<sup>6</sup>The Postal Service expects that parallel settlement conferences with all interested participants will be conducted and reported at an early stage, even before the Prehearing Conference.

<sup>7</sup> In Docket No. R2001-1, at a relatively late stage in the proceedings, the Commission issued a Notice of Inquiry raising objections to a classification change proposed in the Postal Service's filing. Rather than allow this disagreement to become an obstacle to Commission acceptance of the Stipulation and Agreement, the Postal Service voluntarily withdrew its proposal, necessitating a third revision of the settlement agreement. See Notice of the United States Postal Service Withdrawing Proposals and Submitting Revised Stipulation and Agreement, Docket No. R2001-1 (Feb. 13, 2002). While the Postal Service and other participants were able to react and adjust to that possible impediment in a timely fashion, it would be preferable if such issues were noted at an early stage.

<sup>8</sup> Presiding Officer's Ruling Noticing the Submission of a Proposed Stipulation and Agreement and Canceling Hearings on January 3, 4, 7 and 8, 2002, POR No. R2001-1/27, Docket No. R2001-1, at 8 (Dec. 31, 2001).

<sup>9</sup> The Presiding Officer issued a ruling making an affirmative determination on the issue earlier than anticipated. See Presiding Officer's Ruling on the Status of the Proposed Stipulation and Agreement, POR No. R2001-1/36 (Jan. 17, 2002).

Postal Service's direct case, and the subsequent filing of oppositions to settlement.<sup>10</sup> While it is premature to suggest a specific schedule for a similar finding in the instant proceeding, the Postal Service suggests that the Commission's consideration of schedules and procedures should anticipate incorporating this step as early as practicable. In this regard, it might be worthwhile to establish one or more opportunities for participants to announce their intentions to oppose settlement at as early a stage in the procedural schedule as possible, after the first opportunity is given at the Prehearing Conference, as suggested above. A final deadline for announcing opposition should also be established. The Postal Service further suggests that the Presiding Officer or Commission should incorporate in its findings at that time any preliminary determination that might be warranted on any legal or factual issues that could prevent the Commission from recommending the substance of the Postal Service's proposals, even if a nearly-unanimous settlement agreement is reached. In light of the integral relationship between the schedule for proceeding and the Postal Service's substantive proposals, the Postal Service needs to know as soon as possible whether settlement is likely to fail because of some substantive barrier that will either delay the proceedings or prevent the Commission, as a matter of law or fact, from recommending the changes that the Postal Service has requested.

The Postal Service and other participants will be in a better position to propose specific deadlines and procedures, after the Commission has had a chance to establish

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<sup>10</sup> In Docket No. R2001-1, only one party, American Postal Workers Union (APWU) filed an opposition to settlement asking for an opportunity to be heard. POR No. R2001-1/36, at 1 (Jan. 17, 2002).

a basic schedule for review of today's filing, and more is known about the timing and outcome of ongoing settlement discussions.

### **PROCEDURES AND SCHEDULE**

The Postal Service fully understands and appreciates the Commission's need to manage its proceedings efficiently and effectively, in light of due process requirements and the needs and capabilities of the participants. The instant motion is intended to suggest guidelines that might influence the Commission's determinations. The comments below present considerations that the Postal Service believes the Commission and the Presiding Officer should take into account in fashioning the Commission's schedule and any special procedures. The Postal Service has also attached a suggested schedule. This is intended to be representative of a preferred schedule, or a model for executing the suggestions embodied in the following comments. The schedule is not meant as a motion for establishment of particular deadlines, although the dates suggested could be used for that purpose.

#### ***Proposed Schedule***

We note that, in Docket No. R2001-1, the Presiding Officer issued a proposed schedule two days after filing that responded, in part, to the Postal Service's request for expedition in that case.<sup>11</sup> The purpose of the ruling was to propose a schedule that would "balance the Postal Service's desire for expedition and participants' need for sufficient time to fully understand the Service's request." *Id.* In that proceeding,

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<sup>11</sup> Presiding Officer's Ruling Circulating Proposed Procedural Schedule, POR No. R2001-1/1 (Sept. 27, 2001).

furthermore, the proposed schedule was issued before the suggestion of settlement was advanced at the Prehearing Conference, and before an indication of substantial interest in settlement was discerned.

In the current case, the Postal Service suggests that sufficient interest in a settlement agreement, and sufficient likelihood that it might be achieved, have been represented to warrant a proposed schedule that facilitates settlement as much as possible. Accordingly, the Postal Service requests that a similar proposed schedule be issued in light of the comments above and following.

***Time for Intervention***

The Postal Service understands the critical importance of public notice of its filing to the fairness of the subsequent proceedings. Typically, the Commission permits a full month for potential parties to intervene in an omnibus rate case. In this instance, however, the Postal Service submits that most parties likely to participate have had actual notice of the Postal Service's intentions to file. As noted above, the Postal Service has already contacted parties who intervened in Docket No. R2001-1, either through the attached letter concerning settlement, or through direct settlement discussion. Furthermore, there have been reports for some time concerning the instant filing in the general and trade press, and at events such as the recent Postal Forum. In these circumstances, the Postal Service suggests that a lengthy intervention period prior to the Prehearing Conference should not be necessary. The Postal Service suggests a modest reduction of one week from the typical practice, allowing a three week period, rather than four.

### ***Prehearing Conference***

In accord with the above suggestion, the Prehearing Conference should be scheduled as soon as possible. If the Commission perceives the need to conduct the conference only after the time for intervention has run, it should take place as soon as that deadline passes. Alternatively, there appears to be no legal impediment to an earlier prehearing conference that could serve as a preliminary clearinghouse for issues that might have a bearing on the Commission's ability to expedite proceedings.

As suggested above, the Postal Service believes that the Prehearing Conference should be used as a first test of participants' willingness to expedite or, at a minimum, to ascertain their intentions to oppose settlement, including indications of the basis for opposition. While we anticipate that there might be some reluctance by many parties already predisposed to settlement to announce their intentions, before they have an opportunity to conduct discovery, sufficient interest in settlement and expedition could provide a favorable context for early commitment. Accordingly, the Commission's Notice of filing should request that participants be prepared to respond when asked for their views at the prehearing conference. In this regard, we must emphasize that one of the lessons learned from the settlement experience in Docket No. R2001-1 was that progressive knowledge of the likelihood of settlement during the case can lead to favorable schedule adjustments as the case proceeds.

### ***Discovery***

The Postal Service anticipates that, as in Docket No. R2001-1, the Commission will be committed to affording a reasonable period for discovery against the Postal

Service's direct testimony and exhibits. In that docket, the Commission initially established two discovery deadlines associated with two blocks of time reserved for cross-examining two separate groups of Postal Service witnesses. This approach was dictated by a break in hearings necessitated by the timing of the December-January holidays, and the Commission's fair determination that discovery for the first group of witnesses should not extend beyond their hearing dates. Nevertheless, the result was that the discovery against the second group extended about two weeks longer than discovery against the first group.

In the current case, there will be no need to split the appearance of witnesses in a similar fashion. The discovery period should be uniform. Furthermore, based on the professed interest in settlement reported above, and the nature of the Postal Service's proposals, there might not be a need for as extensive a discovery period as afforded in Docket No. R2001-1. In this regard, we note that the across-the-board pricing approach does not rely on the testimony of many of the costing and other witnesses that the Postal Service has offered. In fact, the Postal Service's decision to provide the information in their testimonies, notwithstanding the limits on the Postal Service's proposals, should obviate the need for discovery seeking access to that information. Moreover, the lack of classification proposals should limit discovery. Finally, provision of a "roadmap" witness by the Postal Service under the Commission's amended rules should reduce the need for much exploratory discovery. Accordingly, the Postal Service suggests that the Commission consider providing guidance to participants who might otherwise use discovery as an opportunity to mine Postal Service data and information,

to balance their legitimate needs against the benefits of expedition, particularly in relation to settlement.

In our view, discovery need not take longer than eight weeks. If all participants indicate lack of need to file direct cases, less time might be warranted.

### ***Hearings***

In Docket No. R2001-1, a total of eight days were eventually scheduled for examination of 43 witnesses. During those hearings, we learned that every day was not fully utilized. In the current case, the Postal Service has presented testimony of only 33 witnesses. Of those, only about one-third might be said to be integral to the Postal Service's proposals. In this light, the Postal Service suggests that no more than five days of hearings might be needed. If preliminary reports of interest in settlement are borne out, less time for cross-examination might be needed.

### ***Other Procedures***

In Docket No. R2001-1, the procedural schedule evolved according to the progress of settlement discussions and participants' intentions regarding willingness to adopt the proposed Stipulation and Agreement.<sup>12</sup> As suggested above, the Postal Service believes that the current momentum of interest in settlement could result in the ability to significantly streamline proceedings in the current case, once the intentions of participants become known. As in Docket No. R2001-1, the Postal Service is prepared to report on the status of settlement at any stage in the proceedings, and will take that initiative whenever it seems prudent and as the Presiding Officer directs. As noted

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<sup>12</sup> See POR No. R2001-1/27.

above, the Commission should also establish relatively early deadlines for participants to give notice of their intentions.

In Docket No. R2001-1, the Presiding Officer established a deadline of one week after the scheduled end of hearings on the Postal Service's direct case for participants to file a Notice of Opposition to settlement. In this case, the Postal Service suggests that three days should be sufficient time for participants to make that determination, if they have not already decided and given notice at earlier scheduled opportunities. In Docket No. R2001-1, the Presiding Officer provided another week for a determination of whether sufficient time would be available for a timely recommended decision, in light of the participants' intentions. The Postal Service suggests that an additional four days, one week after conclusion of hearings, should be sufficient for that determination.

In Docket No. R2001-1, the Presiding Officer invited participants to propose procedural mechanisms and schedules that would afford due process, in the event of opposition to the settlement agreement. An additional four days were allotted for replies to these proposals. The Postal Service believes that similar opportunities to propose procedures and schedules should be allowed in the instant proceeding.

## **CONCLUSION**

We will refrain from further speculation on the evolution of the proceedings, in the event that several intervenors elect to file direct cases, for example, or more than one or two participants oppose settlement. The illustrative schedule that we have attached attempts to outline a possible sequence of timing that might enable the Commission to

meet a deadline of late October in issuing a recommended decision. Admittedly, in imagining such a schedule, we have compromised significantly our understanding of the amount of time that has been needed in the past, and that might be needed in the current case, to deal each subsequent stage of a more conventional case. In this regard, we trust that the Presiding Officer and the Commission will apply sound judgment in adopting a schedule and procedures that fit the circumstances that we might face.

In accord with the above comments, the Postal Service respectfully requests that the Commission seriously consider and adopt fair but aggressive procedures and a schedule that will facilitate settlement and expedite proceedings as much as possible.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorney:

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Daniel J. Foucheaux, Jr.  
Chief Counsel

### **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.

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Daniel J. Foucheaux, Jr.

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April 8, 2005

## **SUGGESTIONS FOR PROCEDURAL SCHEDULE**

April 8	Filing of Postal Service Request
April 11	Proposed procedural schedule issued
April 29	Deadline for interventions
May 2	Prehearing Conference
May 27	End of Discovery against Postal Service
June 6-10	Hearings on Postal Service direct case
June 17	Notice of Opposition to Settlement Agreement
June 20	Preliminary finding of time to issue recommendations
June 27	Direct cases of intervenors or in opposition to settlement due (if needed)
July 16	End of discovery against testimony opposing settlement (assuming no other intervenor testimony filed)
July 22	End of discovery against intervenor cases (if needed)
August 1-5	Hearings on intervenor cases (if needed)
August 12	Rebuttal testimony filed (if needed)
August 18-19	Hearings on rebuttal testimony (if needed)
August 26	Initial briefs due
September 2	Reply briefs due

April 4, 2005

PARTIES OF RECORD, DOCKET NO. R2001-1

SUBJECT: Upcoming Omnibus Postal Rate Case

On March 31, 2005, the Postal Service's Board of Governors directed postal management to initiate an omnibus postal rate case at the Postal Rate Commission (PRC). The proposed increases in rates and fees would serve the primary purpose of producing revenues sufficient to meet an extraordinary statutory financial obligation in Fiscal Year 2006. In Public Law 108-18,<sup>1</sup> Congress changed substantially the Postal Service's liability under the Civil Service Retirement System (CSRS), requiring the Postal Service to place approximately \$3.1 billion in escrow, starting in FY 2006.

The Postal Service will initiate this case within the next week. It will present a relatively straightforward proposal. With limited exceptions, virtually all postal rates and fees would be adjusted upward by the same, uniform percentage, across-the-board. Increases for each current rate and fee would approximate 5.4 percent, with relatively minor variations around that amount due to rounding. We will propose a higher increase for Registered Mail, to cover substantial cost increases since the last case, and lower rates for Within-County Periodicals Mail, as a result of applying specific guidelines dictated by statute. We will not propose new fees for the special service, Confirm, pending a currently-ongoing review of that service, which will be addressed in a separate case in the near future. We will not propose any classification or rate structure changes.

Under this approach, the Postal Service will be able to fund the escrow requirement for FY 2006, only if its proposals can be implemented soon enough to generate adequate revenues next year. Currently, postal management anticipates implementing no sooner than January 1, 2006. A typical rate case,

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<sup>1</sup> The Postal Civil Service Retirement System Funding Reform Act of 2003

however, would take 10 months, and would result in the increases taking effect approximately one year from now. The Postal Service could only meet the escrow requirement in that time frame by proposing increases significantly greater than 5.4 percent. Alternatively, it would propose higher rates based on increased cost levels and financial needs in a FY 2007 test year. In either event, the goal of a moderate, fair interim rate and fee adjustment would be difficult or impossible to achieve, if the case were to take the full time prescribed by statute.

Accordingly, postal management has directed us to use all means possible to expedite proceedings in the upcoming case to permit an early recommended decision. In this regard, we anticipate that a Governors' decision acting on PRC recommendations no later than late October or early November would be necessary. In light of the time it would take to litigate a contested case, we believe that our best chance would be to settle.

As you know, the parties managed to settle Docket No. R2001-1, through an extraordinary showing of unity and cooperation, under very unusual circumstances. The PRC issued its recommended decision just under seven months after the case was filed, and accepted the nearly-unanimous settlement agreement as the basis for its recommendations. We would hope for a similar result in the upcoming case, particularly in light of the relatively modest goals embodied in the Postal Service's proposal.

We intend to make a concerted effort to settle. As many of you know, during the past several weeks, we have discussed our plans with prospective parties individually. If you were not among those consulted, it was only because we ran out of time. We intend this notice, and our future efforts, to help fill in the gaps.

Our individual discussions have revealed substantial agreement among those mailers and organizations who expect to participate in the next case. Almost all of them acknowledged significant benefits from agreeing to the Postal Service's proposal, as described above. These include a moderate revenue objective, a fair, relatively simple approach to proposed increases, and a shortened litigation process. Understandably, however, several mailers and associations have been reluctant to commit formally to settlement prior to actual filing, or until they are convinced that an agreement could be achieved. Furthermore, notwithstanding the Postal Service's modest objectives, many parties have principled disagreements over the escrow requirement that is leading the Postal Service to propose increasing rates and fees at this time. Others have noted the consequences of deferring needed attention to classification, rate structure, and rate relationship issues.

We understand this reluctance to commit to settlement prematurely, but do not believe that it presents an insurmountable obstacle. As in Docket No. R2001-1, we expect that the PRC will afford all parties an opportunity to conduct discovery against the Postal Service and cross-examine its witnesses, if deemed

necessary. We are attempting to provide the PRC with the data and information required by its rules governing general rate cases, even if our proposals do not rely on all of the materials submitted.

We will, however, argue vigorously for expedition. By getting a head start on the settlement process, we hope we have already eliminated significant time from the litigation. As noted, based on our discussions so far, we believe that there is a substantial chance we will be able to settle. Accordingly, we intend to file with our Request and testimony a pleading asking the PRC to give early consideration to an expedited schedule, and appropriate special procedures that will facilitate settlement. Meanwhile, we will continue to talk to intervenors about the Postal Service's proposal, so that we may address their concerns and agree on the across-the-board rates as a sound, reasonable solution to the Postal Service's revenue needs under PL 108-18.

We ask for your assistance in achieving these objectives and welcome your inquiries and further input. Early intervention in the case by participants will promote maximum expedition and perhaps eliminate some of the dead time that usually follows a Postal Service filing. We would also welcome your support for the Postal Service's motion for streamlined procedures to facilitate settlement, once you intervene. Most importantly, we encourage you to contact us to answer any questions you might have about the Postal Service's case, or to discuss settlement further.

I have enclosed a copy of the final Stipulation and Agreement submitted in Docket No. R2001-1. We have not yet attempted to adapt this document for the unique circumstances of the upcoming case and the Postal Service's proposals, although it should provide a sound model for agreement. It is fairly general in many respects. Nevertheless, I am asking for your advice on how it might be improved. Feel free to call or write me with your reactions and suggestions.

Furthermore, if you have any questions, or would like to discuss your status or position, please do not hesitate to call me at (202) 268-2989. My Internet address is [daniel.j.foucheaux@usps.gov](mailto:daniel.j.foucheaux@usps.gov) and my fax number is (202) 268-3084.

Sincerely,



Daniel J. Foucheaux, Jr.  
Chief Counsel, Ratemaking

Enclosure

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

Postal Rate and Fee Changes, 2001

Docket No. R2001-1

STIPULATION AND AGREEMENT

This Stipulation and Agreement is submitted pursuant to Rule 29 of the Postal Rate Commission's Rules of Practice and Procedure, by and between the undersigned parties, through their respective attorneys, and represents a negotiated settlement of the Postal Service's Request for recommendations on changes of postal rates, fees, and classifications. The undersigned parties hereby stipulate and agree to the following:

I. BACKGROUND

On September 24, 2001, the Postal Service filed with the Postal Rate Commission a Request for a recommended decision on new rates and fees, pursuant to 39 U.S.C. § 3622(a). The Postal Service's Request was based on cost, volume and revenue projections using FY 2000 as a Base Year, and a Test Year running from October 1, 2002 through September 30, 2003. The Postal Service proposed rate and fee increases for existing classes of mail and special services, and proposed changes in the Domestic Mail Classification Schedule (DMCS). The Postal Service's Request was supported by the written direct testimonies of 40 witnesses and numerous other documents submitted pursuant to the Commission's Rules.

On September 26, 2001, the Commission issued Order Nos. 1324 and 1325

noticing the Postal Service's Request and designating the instant proceeding as Docket No. R2001-1. The Commission gave interested parties until October 24, 2001, to intervene in the proceeding. Shelley S. Dreifuss, Acting Director of the Office of the Consumer Advocate, was designated as the representative of the general public. Fifty-eight parties have intervened in this proceeding.

On October 25, 2001, during the Prehearing Conference, the Presiding Officer directed the participants to consider the possibilities for settlement. Noting the extraordinary national events experienced during September, and the potential effects that changed circumstances might have on the Postal Service's Request, Chairman Omas requested all participants to consider whether substantial agreement on issues and objectives might permit a beneficial resolution of the proceeding. He asked the intervenors to consider his remarks, and asked the Postal Service to consult with them and report on whether a settlement might be possible.

Counsel for the Postal Service, the Office of the Consumer Advocate, and participating intervenors have discussed the issues presented by this case at conferences, on October 30, and November 16, 2001, to which all intervenors and the Office of the Consumer Advocate were invited. The Postal Service has also consulted with intervenors individually and in smaller groups. The undersigned parties believe that this case can be completed most expeditiously and economically, if the Commission adopts this Stipulation and Agreement as the basis for its recommended decision to the Governors.

## II. TERMS AND CONDITIONS

1. Settlement discussions open to all participants have been held concerning

the matters provided for herein.

2. This Stipulation and Agreement represents a negotiated settlement of the Request of the United States Postal Service for a Recommended Decision on Changes in Rates of Postage and Fees for Postal Services, filed September 24, 2001.

3. For purposes of this proceeding only, the undersigned parties agree that, taken in their entirety, the Request, testimony, and materials filed on behalf of the Postal Service in this docket provide substantial evidence for establishing rates and fees, as agreed to herein and set forth in Attachment B to the Postal Service's Request, as revised, and for establishing the classification changes set forth in Attachment A to the Request, as revised.<sup>1</sup> The undersigned parties stipulate that the Request, the attachments thereto (as revised), and the accompanying testimony and exhibits, to whatever extent not entered into evidence during hearings, be entered into evidence in this proceeding, pursuant to this Stipulation and Agreement.

4. The undersigned parties agree that the rates, fees, and classification changes adopted in this agreement will be implemented no sooner than June 30, 2002. They further agree not to take any action intended to prevent rates, fees, and classification changes that might be recommended and approved pursuant to this agreement from taking effect, as determined by the Postal Service Board of Governors.

5. For purposes of this proceeding only, the undersigned parties agree that, as discussed in USPS-T-28 through T-38, the rates and fees set forth in Attachment B of

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<sup>1</sup> A copy of Attachment A (revised on November 7, 2001), and a copy of Attachment B (revised on November 7 and 21, 2001), which are appended to the Postal Service's Request, filed September 24, 2001, are hereby incorporated in this Stipulation and Agreement. Revised pages in accordance with this Stipulation and Agreement are

the Postal Service's Request, as revised, and the classification changes set forth in Attachment A of the Request, as revised, are in accordance with the policies of Title 39, United States Code, and, in particular, the criteria and factors of 39 U.S.C §§ 3622 & 3623.

6. This Stipulation and Agreement is offered in total and final settlement of this docket. The undersigned parties agree that they will file no pleadings or testimony that opposes this agreement, or that proposes or advocates terms other than those embodied in it.

7. Each signatory reserves the right to withdraw from this Stipulation and Agreement under one or more of the following conditions:

- (a) If the Postal Service withdraws from this Stipulation and Agreement;
- (b) If the Postal Service alters the proposed rates, fees, and classification changes set forth in Attachments A and B, as revised, appended to this Stipulation and Agreement;
- (c) If the Commission fails to issue a Recommended Decision based on the Stipulation and Agreement by March 25, 2002;
- (d) If the Commission adopts a Recommended Decision that deviates from the rates, fees, and classification changes set forth in Attachments A and B, as revised, appended to this Stipulation and Agreement; or
- (e) If the Governors of the Postal Service fail to approve a Commission Recommended Decision adopting the rates, fees, and classification changes set forth in Attachments A and B, as revised, appended to this Stipulation and

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attached.

Agreement.

Any signatory withdrawing under the terms of this paragraph must provide written notice of withdrawal to all parties within five (5) business days of the occurrence of the specified event giving rise to the right to withdraw. Any exercise of such right by one or more signatories shall not affect the operation of this Stipulation and Agreement as to other signatories.

8. The signatories expect the Presiding Officer and the Commission to establish a procedural mechanism and schedule to consider the Postal Service's Request, in light of this Stipulation and Agreement. Each signatory reserves the right to withdraw from this Stipulation and Agreement on February 4, 2002, under the following conditions:

- (a) If the Presiding Officer or the Commission, by January 31, 2002, fails to issue a final ruling establishing procedures and a schedule governing proceedings requested by participants who oppose this Stipulation and Agreement, including participants not adhering to the agreement who propose changes not embodied in this Stipulation and Agreement; or
- (b) If the signatory concludes that its interests are not furthered by settlement under the terms embodied in the Stipulation and Agreement.

Any signatory, other than the Postal Service, intending to withdraw on February 4, 2002, under this paragraph must give notice of its intention no later than January 31, 2002, for withdrawal to be effective. The Postal Service's withdrawal will be effective upon notice given on February 4, 2002.

9. This Stipulation and Agreement pertains only to the proposed settlement of the Postal Service's Request in Docket No. R2001-1. By signing, the parties do not

agree with, or concede the applicability of, any ratemaking principle, any method of cost of service determination, any method of cost savings measurement, any principle or method of rate or fee design, any principle or method of mail classification, any terms and conditions of service, or the application of any rule or interpretation of law, that may underlie, or be thought to underlie, this Stipulation and Agreement.

10. In any future negotiation or proceeding (other than any proceeding involving the honoring, enforcement, or construction of this Stipulation and Agreement), the parties shall not be bound or prejudiced by this Stipulation and Agreement. The undersigned parties also agree that, as the matters presented in the Postal Service's Request, in any Commission Recommended Decision, or in any decision of the Governors of the Postal Service in this proceeding have not actually been litigated, they are not entitled to precedential effect in any other proceeding.

11. The undersigned parties request that the Commission expeditiously issue a recommended decision consistent with this Stipulation and Agreement.

12. This Stipulation and Agreement represents the entire agreement of the signatories, and supersedes any understandings or representations not contained herein.

\*Signature pages are attached.

**Participants in Docket No. R2001-1**

ADP

AOL Time Warner

Advo, Inc.

Alliance of Independent Store Owners and Professional

Alliance of Nonprofit Mailers

Amazon.com, Inc.

American Bankers Association

American Business Media

American Library Association

American Postal Workers Union, AFL-CIO

Association for Postal Commerce

Association of Alternate Postal Systems

Association of American Publishers

Association of Leading AG Media Companies

Association of Priority Mail Users, Inc.

Banta Corporation

Brown Printing Company

Douglas F. Carlson

Classroom Publishers Association

Coalition of Religious Press Associations

Continuity Shippers Association

Direct Marketing Association, Inc.

Dow Jones & Company, Inc.

EDS Customer Relationship Management

Brad A. Eickholt

Envelope Manufacturers Association

Experian

Greeting Card Association

Hallmark Cards, Incorporated

Hearst Corporation, The

KeySpan Energy

Knight-Ridder, Inc.

Lifetime Addressing, Inc.

Long Island Power Authority

Magazine Publishers of America

Mail Order Association of America

Mailing & Fulfillment Service Association

Major Mailers Association

McGraw-Hill Companies, Inc., The

Leonard Merewitz

National Association of Letter Carriers

National Association of Postmaster of the United States

National Association of Presort Mailers

National Federation of Independent Publications

National League of Postmasters

National Newspaper Association

National Postal Mail Handlers Union

National Retail Federation

Newspaper Association of America

Office of the Consumer Advocate

Parcel Shippers Association

Peter J. Moore & Associates, LLC

Pitney Bowes Inc.

David B. Popkin

R.R. Donnelley & Sons Company

Reader's Digest Association, Inc.

Recording Industry Association of America

Saturation Mail Coalition

Stamps.com

United Parcel Service

Val-Pak Dealers' Association, Inc.

Val-Pak Direct Marketing Systems, Inc.

**Participants in Docket No. R2001-1 Consulted  
Individually Prior to Docket No. R2005-1**

AOL Time Warner

Advo, Inc.

Alliance of Independent Store Owners and Professional

Alliance of Nonprofit Mailers

Amazon.Com, Inc.

American Bankers Association

American Business Media

American Library Association

American Postal Workers Union, AFL-CIO

Association for Postal Commerce

Association of American Publishers

Association of Priority Mail Users, Inc.

Classroom Publishers Association

Direct Marketing Association, Inc.

Dow Jones & Company, Inc.

Envelope Manufacturers Association

Greeting Card Association

Hallmark Cards, Incorporated

Magazine Publishers of America

Mail Order Association of America

Mailing & Fulfillment Service Association

Major Mailers Association

McGraw-Hill Companies, Inc., The

National Association of Letter Carriers

National Association of Presort Mailers

National Newspaper Association

National Postal Mail Handlers Union

National Retail Federation

Newspaper Association of America

Office of the Consumer Advocate

Parcel Shippers Association

Pitney Bowes Inc.

R.R. Donnelley & Sons Company

Recording Industry Association of America

Saturation Mail Coalition

United Parcel Service

Val-Pak Dealers' Association, Inc.

Val-Pak Direct Marketing Systems, Inc