Postal Rate Commission
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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

SECOND REPORT OF THE UNITED STATES POSTAL SERVICE
AS SETTLEMENT COORDINATOR
(July 7, 2005)

On June 27, 2005, during hearings in this docket, the Presiding Officer gave notice of his intention to ask, on July 8, 2005, for a report on any progress made toward settlement, and whether settlement of some or all of the issues presented in this case remains a reasonable possibility. Tr. 2/45. In light of that expectation, the Postal Service respectfully submits its second report on the status of settlement.

In its first settlement report, the Postal Service described discussions among various mailers and organizations prior to filing the Postal Service's Request, as well as settlement discussions that took place at a group settlement meeting following the Prehearing Conference, on May 5, 2005.[1] The Postal Service addressed three issues raised by the Presiding Officer: (1) whether settlement appeared unlikely; (2) whether any particular issues were ripe or settlement at that time; and (3) whether settlement might be concluded prior to cross-examination of the witnesses presenting the Postal Service's direct case. *Id.* at 1. The Postal Service reported that settlement did not appear unlikely at that time, but that a number of parties had reserved judgment on the question, pending inquiries into the Postal Service's case during discovery and cross-

[1] First Report of the United States Postal Service as Settlement Coordinator, Docket

examination. The Postal Service could not identify any issues that were ripe for settlement at that time. Finally, the Postal Service expressed the view that settlement was still viable, but that it was unlikely to be concluded prior to cross-examination of Postal Service witnesses. *Id.* at 2-3.

Since the first settlement report, the proceeding has advanced through the discovery stage directed at the Postal Service's case and cross-examination of its witnesses. One more day of hearings remains. Discovery requests from some parties have been robust. By comparison to previous cases in which settlement has not been actively pursued, however, other parties apparently have reserved their efforts, and have not been as active in conducting discovery. Furthermore, there has been limited cross-examination of only some of the Postal Service's witnesses. Based on conversations with participants, the Postal Service believes that the relative inactivity of some of the parties is the result of expectations that ultimately settlement would be worthwhile and possible.

When it presented the first settlement report, the Postal Service anticipated that it would be in a position to submit a Stipulation and Agreement with signatures prior to the end of discovery. *Id.* at 4. That circumstance did not materialize. In efforts to shape a generally acceptable agreement, the Postal Service has discussed provisions and language contained in several drafts of an agreement with counsel representing most of the participants in the case. On Friday, July 1, 2005, the Postal Service circulated a draft agreement to the entire service list. The intent of providing the draft was to solicit suggestions for further refinements, prior to submitting the Stipulation and

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No. R2005-1 (July 8, 2005).

Agreement for signature. The Postal Service is currently discussing suggestions with several of the participants and anticipates filing an agreement early next week.

At this point in time, based on the activities described above and its discussions with a broad spectrum of participants, the Postal Service continues to believe that settlement by a majority of active participants in the case is possible and likely. It now appears, however, that settlement will not be unanimous. While a small possibility exists that a signed settlement agreement could be unopposed by active participants, it is more likely that at least one or two parties, and perhaps more, will oppose the terms of the settlement. Nevertheless, the Postal Service is continuing discussions with the parties who might oppose in an effort to avoid opposition.

Furthermore, based on its discussions, as well as the emergence of issues in the discovery and cross-examination stages of the proceedings so far, it appears likely that at least one or two participants will file significant testimony and materials on July 14, 2005. This testimony will probably be inconsistent with the settlement agreement, or will directly challenge it. The Postal Service, therefore, expects that further proceedings for discovery and cross-examination will likely be necessary. Some rebuttal testimony might also follow. Nevertheless, as in Docket No. R2001-1, which was successfully settled, the Postal Service is hopeful that the new testimony and potential opposition might not present insurmountable obstacles to acceptance of a settlement agreement that would be signed or supported by a majority of the participants.

Finally, the Postal Service believes that adherence to a Stipulation and Agreement, once it is filed, will develop in stages. A number of participants will be able

to sign at once. Other participants will prefer to wait for more information to emerge from discovery and cross-examination of testimony filed on July 14, before signing. The Postal Service does expect, however, that, in light of the existing predisposition toward settlement shared by many parties, activity during the remaining stages of the case will be light, and eventually a Stipulation and Agreement signed or unopposed by a majority of the participants will stand on the record.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorney:

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July 7, 2005

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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