

OFFICIAL TRANSCRIPT OF PROCEEDINGS
BEFORE THE
POSTAL RATE COMMISSION

In the Matter of:)
NETWORK REALIGNMENT) Docket No. N2006-1
)

VOLUME #1

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POSTAL RATE COMMISSION

In the Matter of:)
) Docket No. N2006-1
NETWORK REALIGNMENT)

Suite 200
Postal Rate Commission
901 New York Avenue, N.W.
Washington, D.C.

Volume 1
Friday, March 24, 2006

The above-entitled matter came on for hearing pursuant to notice, at 9:32 a.m.

BEFORE:

HON. GEORGE A. OMAS, CHAIRMAN
HON. DAWN TISDALE, VICE-CHAIRMAN
HON. RUTH Y. GOLDWAY, COMMISSIONER
HON. TONY HAMMOND, COMMISSIONER

APPEARANCES:

On behalf of the United States Postal Service:

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(No Appearance.)

On behalf of Direct Marketing Association, Inc.:

(No Appearance.)

On behalf of Discover Financial Services, LLC:

(No Appearance.)

On behalf of Magazine Publishers of America:

(No Appearance.)

On behalf of Mail Order Association of America:

(No Appearance.)

On behalf of National Association of Letter Carriers:

(No Appearance.)

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APPEARANCES: (Cont'd.)

On behalf of National Association of Postal Supervisors:

(No Appearance.)

On behalf of National Association of Postmasters of the United States:

(No Appearance.)

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(No Appearance.)

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On behalf of David B. Popkin:

(No Appearance.)

On behalf of Newspaper Association of America:

(No Appearance.)

On behalf of Time Warner, Inc.:

(No Appearance.)

On behalf of Valpak Dealers Association, Inc. and Valpak
Direct Marketing Systems, Inc.:

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P R O C E E D I N G S

(9:32 a.m.)

1
2
3 VICE CHAIRMAN TISDALE: Good morning. This
4 is a prehearing conference in Docket N2006-1
5 considering the request of the Postal Service for an
6 advisory opinion on changes in postal services.

7 I am Dawn Tisdale, presiding officer in this
8 case. With me today are Chairman George Omas,
9 Commissioner Ruth Goldway and Commissioner Tony
10 Hammond.

11 The reporter in this case is Heritage
12 Reporting Corporation. There are forms for noting
13 appearances available on the table as you enter the
14 hearing room. If you wish to purchase transcripts,
15 you should see the reporter after today's conference
16 or call (202) 628-4888.

17 As many of you know, last summer the
18 Commission moved to new offices. This hearing room is
19 equipped with ceiling microphones, and as a result
20 counsel should no longer have to move to the front of
21 the room in order to use the microphone. When you
22 want to say something for the record just stand and
23 speak clearly, and the ceiling microphones should
24 enable the reporter to record your statement.

25 Ms. Reporter, if you have trouble please let

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1 me know.

2 Also, as is our practice, we will be
3 webcasting today's conference. We will monitor the
4 webcast to make sure that everybody's comments are
5 understandable, and if there's any problem we'll try
6 to deal with it.

7 Now, to state the obvious, it's best if
8 several people don't talk at the same time. As topics
9 arise, I promise to give everyone a chance to be
10 heard. Again, when it is your turn just stand and
11 speak clearly.

12 As a first order of business, I will ask
13 counsel to identify themselves for the record. United
14 States Postal Service?

15 MR. TIDWELL: Michael Tidwell, United States
16 Postal Service. I will be assisted by my colleague,
17 Sheela Portonovo.

18 I'll repeat that just in case it wasn't
19 picked up. Michael Tidwell for the United States
20 Postal Service. I will be assisted by my colleague,
21 Sheela Portonovo.

22 VICE CHAIRMAN TISDALE: Alliance of
23 Nonprofit Mailers?

24 MR. LEVY: Good morning. David Levy for the
25 Alliance of Nonprofit Mailers. I'll also be assisted

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1 in this proceeding by my colleague, Richard Young.

2 VICE CHAIRMAN TISDALE: American Business
3 Media?

4 (No response.)

5 VICE CHAIRMAN TISDALE: American Postal
6 Workers Union, AFL-CIO?

7 MR. ANDERSON: Darryl Anderson for the
8 American Postal Workers Union. I'm accompanied by my
9 colleague, Jennifer Wood.

10 VICE CHAIRMAN TISDALE: Association for
11 Postal Commerce?

12 MS. BRICKMAN: Rita Brickman of Venable,
13 accompanied by my colleague, Ian Volner.

14 VICE CHAIRMAN TISDALE: Association of
15 Priority Mail Users, Inc.?

16 MR. MILES: John Miles for APMU. With me on
17 the case are William Olson and Jeremiah Olson, but not
18 here today.

19 VICE CHAIRMAN TISDALE: Bank of America
20 Corporation?

21 MR. LEVY: David Levy for Bank of America,
22 again with Richard Young.

23 VICE CHAIRMAN TISDALE: Douglas F. Carlson?
24 (No response.)

25 VICE CHAIRMAN TISDALE: Direct Marketing

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1 Association, Inc.?

2 (No response.)

3 VICE CHAIRMAN TISDALE: Discover Financial
4 Services, LLC?

5 (No response.)

6 VICE CHAIRMAN TISDALE: Magazine Publishers
7 of America?

8 (No response.)

9 VICE CHAIRMAN TISDALE: Mail Order
10 Association of America?

11 (No response.)

12 VICE CHAIRMAN TISDALE: National Association
13 of Letter Carriers, AFL-CIO?

14 (No response.)

15 VICE CHAIRMAN TISDALE: National Association
16 of Postal Supervisors?

17 (No response.)

18 VICE CHAIRMAN TISDALE: National Association
19 of Postmasters of the United States?

20 (No response.)

21 VICE CHAIRMAN TISDALE: National Association
22 of Presort Mailers?

23 MR. THOMAS: Joel Thomas for the National
24 Association of Presort Mailers.

25 VICE CHAIRMAN TISDALE: National Newspaper

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1 Association?

2 MS. RUSH: Good morning. Tonda Rush for
3 National Newspaper Association.

4 VICE CHAIRMAN TISDALE: National Postal Mail
5 Handlers Union.

6 MR. LERNER: Good morning, Mr. Chairman.
7 Bruce Lerner on behalf of the National Postal Mail
8 Handlers Union.

9 VICE CHAIRMAN TISDALE: Netflix, Inc.?
10 (No response.)

11 VICE CHAIRMAN TISDALE: Newspaper
12 Association of America?

13 (No response.)

14 VICE CHAIRMAN TISDALE: Office of the
15 Consumer Advocate?

16 MR. RICHARDSON: Kenneth E. Richardson, and
17 appearing with me is April E. Boston, the officer of
18 the Commission in this proceeding.

19 VICE CHAIRMAN TISDALE: Parcel Shippers
20 Association?

21 (No response.)

22 VICE CHAIRMAN TISDALE: Pitney Bowes, Inc.?

23 MR. SCANLON: Good morning. Michael Scanlon
24 on behalf of Pitney Bowes.

25 VICE CHAIRMAN TISDALE: David B. Popkin?

1 (No response.)

2 VICE CHAIRMAN TISDALE: Time Warner, Inc.?

3 (No response.)

4 VICE CHAIRMAN TISDALE: Valpak Dealers
5 Association, Inc.?

6 MR. MILES: John Miles on behalf of Valpak
7 Dealers Association, Inc., Mr. Chairman, and also on
8 behalf of Valpak Direct Marketing Systems, Inc.

9 VICE CHAIRMAN TISDALE: Is there anyone whom
10 I've omitted?

11 (No response.)

12 VICE CHAIRMAN TISDALE: Thank you.

13 Next I would like to turn to the procedural
14 schedule in this case. The Postal Service suggested
15 that we impose a highly expedited schedule that would
16 allow little time for discovery.

17 While the Commission appreciates that the
18 Postal Service would like the benefit of the
19 Commission's advice as soon as possible, we feel that
20 our advice will be far more valuable if it is based on
21 a careful analysis of a fully developed evidentiary
22 record. As a result, the Postal Service's proposed
23 schedule will not be used.

24 As part of its proposal, the Postal Service
25 suggested special rules that would reduce the time

1 allowed for responding to discovery requests and for
2 filing and answering motions to compel.

3 I noticed that the Postal Service had
4 submitted some filings before the due dates
5 established in our rules. However, I also noticed
6 that it had submitted a number of motions to permit
7 late filings.

8 Late yesterday the Postal Service submitted
9 a fairly lengthy reply to other participants' comments
10 on the procedural schedule which, among other things,
11 offered excuses for its inability to provide some
12 responses in a timely manner.

13 The Commission appreciates that in some
14 instances the Postal Service was able to provide
15 responses to interrogatories before they were due. We
16 don't want the Postal Service to stop doing that.
17 However, there does not appear to be a substantial
18 benefit in reducing the allowable time for responses
19 if the Postal Service will not be able to meet those
20 deadlines.

21 At the same time, let me suggest that the
22 deadlines in our rules of practice do not seem
23 unreasonable to me, and I've been surprised at how
24 frequently pleadings to this Commission have not been
25 filed within existing deadlines. I urge Postal

1 Service counsel to give additional focus to timely
2 filings of both discovery and legal pleadings.

3 The Commission is pleased to see that,
4 consistent with our rules, discovery is already
5 underway. Most participants have already filed
6 interrogatories and also submitted comments indicating
7 how much additional time they expect to need for
8 discovery.

9 Does any other participant intend to submit
10 discovery requests to the Postal Service? If so,
11 approximately how much time do you think you will
12 need?

13 MR. LEVY: Commissioner Tisdale, David Levy
14 for the Alliance of Nonprofit Mailers. We may file
15 discovery, and if so we will do so within the next
16 couple of weeks.

17 MR. MILES: Commissioner Tisdale, on behalf
18 of APMU we intend to file discovery early next week,
19 some interrogatories.

20 The Valpak companies also intend to file
21 additional interrogatories also next week.

22 MS. BRICKMAN: Commissioner, Rita Brickman
23 on behalf of PostCom. We intend to file
24 interrogatories next week.

25 MS. RUSH: Commissioner, the National

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1 Newspaper Association plans to file some
2 interrogatories probably early next week.

3 MR. THOMAS: Joel Thomas for the National
4 Association of Presort Mailers. We probably will file
5 some discovery, but we were hoping to get some
6 indication of the scope of discovery that will be
7 allowed so that we would know better what kind of
8 questions to put to the Postal Service in this
9 proceeding before filing.

10 VICE CHAIRMAN TISDALE: Anyone else?

11 (No response.)

12 VICE CHAIRMAN TISDALE: The Commission has
13 noticed in various pleadings that there is not real
14 agreement among participants as to the scope of the
15 Commission's proper inquiry in this case. The Postal
16 Service in last night's reply recognized this and
17 attempted to provide additional clarification of its
18 position.

19 Many of you may not have had sufficient
20 opportunity to review those Postal Service comments,
21 but if anyone would like to respond at this time they
22 may do so.

23 MR. ANDERSON: Darryl Anderson for the APWU.
24 I'd like to make a response, Mr. Chairman.

25 I think that there are probably as I see it

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1 two pretty important fundamental issues raised by the
2 exchange of motions for the parties, either motions or
3 responses. I would urge the Commission to address
4 those. I'd like to just try to identify what they
5 are.

6 One of them, it seems to me, has to do with
7 whether the Commission should make findings about when
8 the END program was developed and when it was
9 implemented. By way of context, let me explain.

10 The APWU, in the form of my motion, has been
11 accused of I think innuendo, and coming from the
12 midwest I've always thought my problem in this town
13 was that I wasn't capable of the subtlety ordinarily
14 used for expression in Washington, D.C. Not innuendo,
15 but I want to be perfectly clear. It's our view that
16 END is a continuation of a program really begun in
17 2001-2002.

18 I won't bore you with reiterating what's in
19 the parties' papers, the written exchange of views on
20 that, but that's our view. I think that while the
21 Commission may not have the authority -- you may want
22 to consider whether you do or not -- to do anything
23 about it, it's our view that the Postal Service is
24 probably in violation of 3661 of the Act because in
25 fact some of the changes they've already made were

1 made pursuant to this program that was actually begun
2 as NIA and is now called END.

3 That may not be within your discretion to do
4 anything about that, but I think one policy
5 consideration from the Commission is whether it wants
6 to make observations and findings about that fact
7 because I think it's a serious matter if the
8 Commission concludes that we're right about that.

9 We've engaged in some discovery to ascertain
10 that. For example, we've asked who's made the
11 decision to conduct these AMPs, the 24 that were
12 stayed? Who initiated those? We think they were
13 probably initiated in Washington as part of the NIA
14 now END program, but the Postal Service is resisting
15 discovery on that point, and their contention may be
16 -- well, I'm not going to argue it. I just want to
17 state what the issue is. I think the Commission
18 should consider that issue.

19 Another fundamental issue that I know the
20 Commission has to consider is the scope of its
21 authority, as the Chairman has already indicated.
22 That's on the table. I see it as a continuum.

23 I'll use three data points for points I
24 continue to illustrate as what's before the
25 Commission. One is the Postal Service's position,

1 which is you should do this in the abstract.

2 They've told you, as I read it, very little
3 more than that they intend to cut costs by
4 consolidating their network and that they recognize
5 that there will be service changes, and they intend to
6 consider all that in making their decisions about
7 which facilities to close.

8 That's very abstract. As I read it, that's
9 where they are. They want you to do this in the
10 abstract without really knowing what the service
11 impacts are going to be.

12 Our view of the world is that given the
13 state of the record now the Commission should permit
14 discovery into exactly what has been done in the 10
15 that they've submitted and probably beyond that so
16 that you will have a true understanding of what impact
17 this is going to have on service changes.

18 One issue we've raised, for example, is
19 whether there's going to be a pattern of service being
20 degraded for individuals and small businesses because
21 these are, after all, consolidations mostly from rural
22 areas and small facilities into larger facilities
23 where they're drop shipping and where the large
24 mailers will continue to receive excellent service.

25 Since the Postal Service hasn't submitted

1 voluntarily information that will reveal the pattern
2 of service changes that will be imposed, we think the
3 Commission really has no choice the way this is
4 shaping up now to actually permit discovery and look
5 for itself and see what it is.

6 It's not as the Postal Service would have it
7 that we're asking you to step into their shoes or
8 second guess their facility-by-facility decisions.
9 That's not what we're asking. We're saying given what
10 they've submitted so far, which is completely
11 abstract, the only way to figure out what the service
12 impacts are going to be is to be able to look and see
13 what they were and how they got there. That's the
14 state of the bidding at this point.

15 The middle ground on this continuum, Point
16 B, is perhaps the Postal Service will in fact really
17 share with us -- they say it's the Commission's
18 business -- what types of mail are going to be
19 impacted. They haven't told us. We'd like to know
20 what types of mail are going to be impacted, what the
21 service changes are going to be, what the criteria are
22 going to be for weighing the cost savings against the
23 service change.

24 I submit to you that right now it's possible
25 to tell how the Postal Service intends to weigh those

1 things. I submit to you you don't want to pick
2 Position A, which is you're going to pick their
3 workforce, and they're going to give appropriate
4 weight to cost versus service.

5 The Commission is charged with the
6 obligation of giving advice about whether this is
7 consistent with the policy of the Act. When Congress
8 enacted 3661 it was a very serious matter. It had the
9 unusual provision that each Commissioner has to
10 certify as to whether they view this program as
11 consistent with the policies of the Act.

12 This isn't a once-over-lightly or rubber
13 stamp procedure, and you can't just take their word
14 for it. The Commission will decide what it can and
15 can't do, so pardon me if I'm overstepping my bounds,
16 but you'll decide that.

17 My view is that 3661 requires you to
18 understand how they're going to weigh these things;
19 not just that they're going to weigh them, but how
20 they're going to weigh them. Once they come forward
21 with that kind of information you don't have any
22 choice, mind you, except to go and dig into the
23 details and see what's going on. That's the second
24 policy issue, the scope and the nature.

25 Finally there's a third issue, which I think

1 is extremely important as well, and that is sort of a
2 subsidiary issue, but I think it's extremely
3 important.

4 " What role does the public play in all of
5 this? In the process that the Postal Service has laid
6 out we see no role for public input here, for a
7 citizen to express their concern to the Postal Service
8 and have it registered. I know the OCA has raised
9 some of these questions too.

10 We think that it would be inconsistent with
11 the policies of the Act for the Postal Service to
12 adopt a program for nationwide network realignment
13 which doesn't include as an important element citizen
14 input because the Postal Reorganization Act, a very
15 fundamental policy is that mail service is supposed to
16 be universal and provided to all citizens on a fair
17 basis.

18 The Postal Service can't make a decision
19 about what it's doing is fair just by looking at the
20 costs or by some abstract notion of whether it's fair
21 to change service standards from three days to two
22 days or one day to three days. It needs to know what
23 the impact is going to be on real people.

24 I think that as you examine the model that
25 hopefully they will eventually feel compelled to show

1 you that if a part of that model is not citizen input
2 then that's not consistent with the policy of the Act,
3 and I think you should so find.

4 And now finally I'll come to my point. I
5 know you're getting impatient. I appreciate that the
6 Chairman showed forbearance here for an overly long
7 speech.

8 The point is that the Commission has
9 important, fundamental issues it needs to address. As
10 the gentleman behind me -- excuse me; I can't say the
11 name off the top of my head, but as the gentleman
12 behind observed, the parties won't know how to proceed
13 up here with discovery unless we have guidance from
14 the Commission on this.

15 I would submit to you the Commission may
16 want to even instruct the parties to file a round of
17 briefs on the fundamental issues. Should the
18 Commission make a finding with regard to when the Act
19 began and what should the Commission's role be?
20 Should it be deciding in the abstract?

21 I think it would be well within the interest
22 of the Commission -- it would serve the interest of
23 the Commission and the parties -- for the Commission
24 to instruct the parties to brief that issue.

25 You've heard only from a few of the parties.

1 I feel a little bit like I'm walking in the woods, but
2 I can't see any of the animals. I know they're there,
3 but they're not making any noise or moving around.
4 I'd sort of like to know what everybody else thinks
5 about this too, and I would think the Commission
6 would.

7 With that, thank you, Mr Chairman, for your
8 indulgence.

9 VICE CHAIRMAN TISDALE: Thank you.

10 Anyone else?

11 (No response.)

12 VICE CHAIRMAN TISDALE: The Commission has
13 not held very many cases to evaluate changes in the
14 nature of postal services.

15 In an attempt to clarify exactly what we
16 should be evaluating in this case, the Commission will
17 shortly issue a notice of inquiry asking all the
18 interested participants to comment on the proper scope
19 to put before the Commission. Hopefully we will be
20 able to use your comments to better structure this
21 case.

22 I also expect your comments to be useful to
23 me when I have to evaluate motions relating to the
24 proper scope of discovery in this case.

25 Are there any matters that participants wish

1 to raise at this time?

2 (No response.)

3 VICE CHAIRMAN TISDALE: Thank you. We will
4 evaluate the written and oral comments concerning
5 discovery and issue a procedural schedule shortly.

6 I have nothing further. This prehearing
7 conference is adjourned.

8 (Whereupon, at 9:54 a.m. the hearing in the
9 above-entitled matter was concluded.)

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REPORTER'S CERTIFICATE

DOCKET NO.: N2006-1
CASE TITLE: Network Realignment
HEARING DATE: 3/24/06
LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Postal Rate Commission.

Date: 3/24/06



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