

DOCKET SECTION

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

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

POSTAL RATE AND FEE CHANGES, 1997

Docket No. R97-1

**OPPOSITION OF UNITED STATES POSTAL SERVICE
TO MOTION OF ALLIANCE OF NONPROFIT MAILERS AND
AMERICAN LIBRARY ASSOCIATION TO STAY PROCEEDINGS
(October 24, 1997)**

On October 16, 1997, the Alliance of Nonprofit Mailers (ANM) and the American Library Association (ALA) moved for a stay of these proceedings under 39 U.S.C. § 3624(c)(2) and Rule 54(s) "until the USPS files an amended request that complies fully with the Commission's evidentiary rules, and interested parties have had a full opportunity to engage in discovery of the Postal Service's amended filing." As set out in detail below, the Motion to Stay is without a legal or factual basis because the Postal Service's filing was and is in compliance with the Commission's rules, because all parties have had an ample opportunity to engage in discovery regarding the Postal Service's filing, and because the Postal Service has complied with all lawful orders of the Commission. Therefore, the Postal Service herein files its opposition to the Motion.

Amidst considerable hyperbole and inaccuracy, ANM/ALA advance six contentions. First, they allege that the Postal Service failed to file with its Request all of the direct evidence upon which it proposes to rely, in accordance with Commission Rule 53. Second, it is claimed that the Postal Service did not comply with Rules 31 and 54, which specify particular documentation to be provided with certain types of studies or analyses. Third, they make the puzzling assertion that the Postal Service has failed to

provide workpapers in this case, and that the information provided in testimony, exhibits and library references does not comply with Rule 54(o). Fourth, they allege that the Postal Service has provided *too much* documentation of its proposals, in the sense that the Postal Service purportedly has “buried” relevant information under a mountain of supposedly unnecessary information. Fifth, they assert that the Postal Service improperly relies on unsponsored material, and that this reliance has denied them a meaningful opportunity to cross-examine regarding the Postal Service’s case. Motion to Stay at 7-16. Finally, they assert that based on these allegations, the Commission is authorized to stay this proceeding for an indefinite period of time, and must exercise that authority, even if it means tolling the statutory ten-month deadline. *Id.* at 16-17. As will be shown below, none of these contentions have merit.

I. The Postal Service’s filing complied with the rules

Any objective observer of Commission rate and classification proceedings must acknowledge that, over time, the filing requirements codified in the Commission’s Rules of Practice and Procedure have grown increasingly detailed, complex and comprehensive. As the Postal Service has noted in recent Commission rulemaking dockets, this progressive expansion of the documentation required to be presented with Postal Service requests threatens to become so burdensome as to encroach upon the ability of the Postal Service to file rate and classification requests in a timely manner. Nevertheless, in this case, as in all others, the Postal Service, employing scores of employees and consultants, diligently and methodically carried out the arduous task of presenting testimony, exhibits, workpapers and other documentation sufficient to meet the Commission’s requirements. The product of this effort was the extensive information filed in the testimony, exhibits, workpapers and library references which accompanied the Postal Service’s Request.

ANM/ALA now come forward with a series of broad complaints that the Postal Service has flagrantly and deliberately violated Commission Rules 53, 54 and 31. Other than a few isolated references buried in footnotes, however, the ANM/ALA motion is devoid of particulars regarding exactly how the Postal Service is thought to have conducted its alleged transgressions. Lacking specific allegations, which it is incumbent upon the moving party to make, the Postal Service and the Commission can only respond generally to the unfounded assertions contained in the ANM/ALA Motion.

- A. *The Postal Service filed with its request all of the information upon which it intended to rely.*

ANM/ALA assert that the Postal Service failed to meet the requirements of Rule 53 that it file "all the proposed direct evidence upon which it proposes to rely." The sole basis given for this charge is the further contention that the Postal Service improperly "supplemented" its case-in-chief as the hearings progressed, by filing errata and by sponsoring library references for admission into the record. Motion to Stay at 7-8.

The weakness of this argument is apparent. It is clear that the copious documentation filed with the Postal Service's Request, including library references incorporated by reference in the testimony, exhibits and workpapers of each witness, were all of the materials upon which the Postal Service proposed to rely in making its case before the Commission. The filing of errata following the filing of the initial request is neither unusual nor unreasonable; indeed, it is necessary if the record before the Commission is to contain the most reliable information possible. Furthermore, it is one of the basic functions of the discovery process to bring errors in calculations or wording to light, so that they can be corrected on the record early in the proceeding, and so that the evidentiary record, upon which the Commission must base its recommendations,

can be clarified.¹ If a party is to be punished for acknowledging error, as ANM/ALA would have it, the Commission can expect fewer such errors to be admitted and corrected, to the detriment of the ratemaking process and the public interest.

ANM/ALA's contention that the process used by the Commission to incorporate certain Postal Service library references into the record works to unfairly surprise the parties and prejudices their ability to inquire and respond to such information, is similarly unfounded. As is noted elsewhere in this pleading, the vast majority of the library references filed by the Postal Service were filed on the very first day of this proceeding, with the Postal Service's Request. When intervening in the case, the parties received explicit notice that such information had been filed and was available, and they had ample opportunity to conduct discovery with respect to any and all such library references. Furthermore, library references were cited in the testimony, exhibits and workpapers of the witnesses who relied upon them, providing even more notice of the significance of such material. Given prior Commission practice, no party, let alone seasoned Commission litigators such as ANM/ALA, can honestly state that they had no clue that some or all of these library references might ultimately become a part of the record upon which the Commission would base its recommendations. Thus, even if certain library references relied upon by Postal Service witnesses technically did not bear the label of "direct testimony," or "documentary exhibit" (as such terms are used in Rule 54), such a difference in labeling cannot be shown to have adversely affected the ability of parties such as ANM/ALA to participate in this proceeding.

¹ ANM/ALA concede this point when they state that a "minimum amount of errors and supplementary filings are almost inevitable in a big case." Motion to Stay at 8. Given the rate at which each successive case is required to be more and more comprehensively documented, the number of such corrections can also be expected to rise over time.

B. The Postal Service's filing complied with rules 31 and 54.

The general claim of ANM/ALA that the Postal Service failed to document its studies and analyses in conformance with Rule 31(k) is completely without merit. Once again, ANM/ALA make a strong assertion of wrongdoing without providing any specific, valid examples which would support its claim. The only items identified by ANM/ALA as deficient are a series of Postal Service library references cited in a footnote. Motion to Stay at 9, note 2.² Even a cursory inspection of these library references, however, reveals that, far from being out of compliance with the Commission's filing requirements, these references demonstrate the lengths to which the Postal Service has gone to meet or exceed the requirements of the rules. Library References H-60 through 62, for example, consist of basic documentation of the CODES-TRACS data system. LR H-60 is simply an overview, or roadmap, of the various library references pertaining to this system. LRs H-61 and 62 are ADP documentation of computerized portions of the TRACS system, as specifically required by Rule 31(k)(3)(e).³ Contrary to the implications of ANM/ALA, these pieces of documentation would not be subject to the general requirements of Rule 31(k)(1), as they would fall under Rule 31(k)(3), *Computer analyses*. For this reason, it is neither surprising nor inappropriate that these library

² ANM/ALA cite LRs 60-62, 77, 78, 105, 106, 113, 130, 134 and 195.

³ Similarly, LR H-78 is a description of the TRACs FY96 sample design, responsive to Rule 31(k)(2)(I), LRs H-105 and 195 are Mail Characteristics Studies documented in compliance with Rule 31(k)(2)(I), LR H-106 is a fully documented development of mail processing unit costs by shape, LR H-113 is a computer model used to develop productivities and accept rates for mailflow models, in compliance with Rule 31(k)(3), and LR H-130 is a fully-documented analysis of 1997 OCR/RBCS accept and upgrade rates. In many cases, machine readable copies of spreadsheets and computer code were provided with the Postal Service's initial filing, although not required to be produced unless requested by a party. See Rule 31(k)(3)(I)(d), (f).

references, and the others cavalierly cited by ANM/ALA, may not contain certain “statistical estimates”, “statements of facts and judgements”, “indications of alternative courses of action”, and the like, as might be appropriate had these materials fallen under Rule 31(k)(1). Had ANM/ALA become even passingly familiar with the rules they seek to enforce, and the library references which they claim to find deficient, the appropriateness of the Postal Service’s documentation would have become manifest. As it is, the Commission has no alternative but to dismiss the ANM/ALA allegations as baseless, misleading, and vexatious.

C. The Postal Service filed numerous workpapers, amply cross-referenced.

Another example of the superficial and unsupported nature of the ANM/ALA contentions is their mischaracterization of the Postal Service’s workpapers. From the text of the Motion to Stay, it appears that these parties are largely unfamiliar with the contents of the Postal Service’s filings in this case, a lack of familiarity which did not deter them from making serious allegations of noncompliance. First, ANM/ALA distort language routinely included in Postal Service compliance statements (which states that “required workpapers are supplied with the testimonies of the Postal Service’s witnesses”) to draw the false inference that the Postal Service intends the testimony of its witnesses to take the place of workpapers required by Rule 54(o). See Motion to Stay at 9. Contrary to ANM/ALA’s misapprehension, the quoted statement plainly means that workpapers were filed *along with* witness testimonies, a fact that could have been readily ascertained by perusing the many workpapers filed with the request.⁴

ANM/ALA seem to acknowledge that the Postal Service did provide workpapers

⁴ See, e.g., Workpapers of Postal Service witnesses Alexandrovich, Tolley, Thress, Musgrave, Tayman, Bradley, Patelunas, Hume, Nelson, Wade, Schenk, O’Hara, Fronk, Taufique, Kaneer, Moeller, Mayes, Adra, Needham, Plunkett and Takis.

as its argument proceeds. For example, on page 10, ANM/ALA express frustration that Postal Service witnesses did cite to library references as the background for certain calculations, but that the references are "vague" in some instances⁵. To this, we can only respond that, among the massive amounts of information provided by the Postal Service in compliance with the Commission's rules, it is conceivable that a reference or two may not be as specific as one would like,⁶ but that the Postal Service, within the limits of its resources and the time available, endeavors to perfect its documentation to

⁵ ANM/ALA, in footnote 5 on page 11, appear to claim that witness Wade's workpapers lacked adequate documentation. But upon closer inspection, the only point made regarding the documentation is that the hardcopy workpapers did not include a printout of the formulas embedded in the spreadsheets. While this complaint might have had some substance if the spreadsheets themselves had not been provided in machine-readable format, it makes no sense when, as in this instance, they were. If ANM/ALA wanted to print out the formulas, all they had to do was use the provided spreadsheets to do so. It would seem obvious that interested parties ordinarily would much prefer to have machine-readable spreadsheets than hard-copy printouts. ANM/ALA also complain that minor errors were detected in the analysis, but the mere fact that parties were able to detect these errors proves that the initial documentation was, in fact, quite adequate.

⁶ Contrary to ANM/ALA's assertion, such is not the case with respect to USPS-LR-H-77. Motion at 10, fn. 3. As indicated in its Table of Contents, USPS Library Reference H-77 is divided into three sections. Section I (pages 1-190) documents the mainframe computer programs used to develop the various piggyback factors by function from witness Patelunas' test year cost estimates. Each program clearly identifies the source data. Section II (pages 191-233) explains the development of the various operation-specific and other piggyback factors, with descriptive text at pages 191, 215, 219, 221, 225 and 230. Section III (pages 234-242) reflects the development of premium pay ratios. A casual glance at the library reference reveals that all three sections of the library reference are heavily documented, giving numerous citations and cross-references to the sources of the numbers therein. Any assertion to the contrary does not withstand even casual scrutiny. Moreover, with respect to witness Daniel's (USPS-T-29) testimony, ANM points to no specific offending citations. ANM/ALA have always been free to seek answers by calling Postal Service counsel or by seeking information such as was provided by witness Daniel in her September 5, 1997, response to OCA/USPS-T29-1.

the greatest extent possible.

To the extent that particular additional references may be useful to the Commission or a party the Commission has already established a means by which such needs may be met: by directing requests for information to the Postal Service and its witnesses. ANM/ALA have had months to pursue this course. Insofar as ANM/ALA have until only recently forgone the opportunity to raise concerns regarding the adequacy of particular documentation, such was their choice, and they cannot now be heard to complain that they were disadvantaged by the action of the Postal Service, the Commission, or anyone else.⁷ The Postal Service has attempted to cooperate fully with

⁷ This is especially the case with respect to the following five instances provided by ANM/ALA as examples of witness Hatfield's supposed failure to provide sufficiently specific H-77 citations: "USPS-T-16 (Hatfield) at 15; USPS-T-26 (Hatfield) at 31 & App I, pp. 6, 10, 37." Each is addressed below:

- (1) Page 15 of USPS-T-16 merely describes the purpose of "[t]he vehicle service driver piggyback factor for parcel post (USPS LR-H-77)" A glance at the H-77 table of contents, meanwhile, leads one directly to pages 103-119, where the Vehicle Service piggyback factors for "fourth-class: zone rate" (and other subclasses and special services) are developed and reported. See, page 103.
- (2) The Postal Service assumes that the reference to "T-26" was intended to be to "T-25." However, the Postal Service is unable to discern why there is a reference to a page 31, which does not exist in either USPS-T-25 or USPS-T-26. Although Appendix 1 of USPS-T-25 contains a page 31, it depicts a mailflow diagram.
- (3) Likewise, there is no reference to H-77 at USPS-T-25, Appendix I, page 6.
- (4) At USPS-T-25, Appendix I, page 10, lines 11-16, witness Hatfield merely states what the purpose of piggyback factors and premium pay factors are. In the footnote at the conclusion of that explanation, he mentions, in passing, that the "[o]peration-specific piggyback factors and premium pay factors are from Library Reference USPS-H-77." The Postal Service suspects that it is not alone in the belief that this reference does not require a section, page, line, and column reference to the development of each piggyback factor and premium pay ratio in LR H-77.
- (5) Although, at USPS-T-25, Appendix I, page 37, fns. 3-13, witness Hatfield gives a general citation to H-77, a quick reference to the premium pay ratio development section III makes clear that the H-77 page/line citation for fn. 3 would be 234/2. A glance at the piggyback factor development section (II) makes clear that the H-77

the Commission and the parties in providing additional information needed to more completely understand its filing, and will continue to do so.

ANM/ALA's final attack on the Postal Service's workpapers concerns the "legibility" of certain workpapers. On page 12 of the Motion to Stay, ANM/ALA assert that because certain machine-readable files are allegedly beyond the technical capabilities of its experts, they are not "legible" within the meaning of the workpaper rule. This claim is absurd. First of all, in alleging that Drs. Musgrave and Tolley use mainframe languages that cannot be read on a PC, the pleading is factually incorrect. All of the work of the Postal Service's three forecasting witnesses (including Thress) is done on PCs. Even if this were not the case, however, it is ludicrous to suggest that mainframe computers produce files which are not "legible." Mainframe computers remain state-of-the-art for many types of large database analyses, and the Postal Service could not operate without them. Furthermore, by specifying ADP documentation and other standards directly applicable to the use of mainframe computers, the Commission's Rules clearly contemplate their use.

ANM complains in particular about the amount of time it took to convert the new mail processing methodology to a PC version. Considering that the Postal Service is unaware that anyone was ever able to convert the *old* methodology to a PC version, the ability to convert the new version should be viewed by ANM/ALA as, if anything, an

page citations for fns. 4-13 would be as follows: footnotes (4) through (8) – page 231; footnotes (9) through (12) – page 233 (lines 1-4); footnote (13) – page 232. (It should be noted that witness Daniel(USPS-T-29) relies on these same inputs.)

Any questions ANM had concerning these citations could have been resolved by a phone call to Postal Service counsel (who was able to trace all of these numbers without the aid of an analyst) or by filing an interrogatory like OCA/USPS-T29-1. Resort to a motion seeking suspension of the case under §3624(c)(2) is unnecessarily extreme.

advance in the utility of the current documentation (although there is absolutely no reason to accept the ability to convert to a PC version as of any relevance to evaluating the merits of one methodology versus the other).⁸ In this regard, as in the others, examination of the contentions of ANM/ALA reveal them to be without merit.⁹

- D. In response to multitudinous requests in prior cases for more and more information, the Postal Service made an effort to provide an abundance of information helpful to the Commission and the Parties - - and should not be punished for its responsiveness.

Failing to develop a coherent argument that the Postal Service has not provided sufficient documentation, ANM/ALA switch tactics midstream, and also complain that the Postal Service has filed *so much material* ("boxcars" full) that they cannot discern without undue effort and delay which portions they consider to be of greatest significance. Motion to Stay at 12.

In an effort to provide complete documentation of its rate request, the Postal Service has indeed provided an enormous amount of material. While the breadth and volume of this material does require the interested participant to invest a significant amount of time to read and absorb it, this investment of time is a necessary consequence of the Commission's extensive documentation rules, and the current complexity of both the rate structure and the Postal Service's operations. It is not, as

⁸ ANM/ALA also make the allegation (footnote 6, pg. 12) that "two solid days of questioning of Mr. Degen's staff were required simply to replicate his results." To the knowledge of Postal Service counsel, questioning of such duration did not take place.

⁹ ANM/ALA also complain, without any citation or support, that many of the Postal Service's electronic workpapers are incomplete. Motion to Stay at 11. Even if one assumes this statement to be true without the necessary showing, the argument lacks force on its own terms, because the very basis for the claim is ANM/ALA's admission that the complete information *was provided in hardcopy form*. This admission undercuts any claim that the Postal Service failed to provide necessary documentation.

baselessly asserted by ANM/ALA, a Postal Service effort to bury critical information. See Motion to Stay at 12.¹⁰

As has been noted elsewhere, the Postal Service's practice of filing library references in this case mirrors the accepted practice in prior cases. See Response of the United States Postal Service to Motions of NDMS and NAA to Strike or Oppose Admission of Specific Portions of Testimony and for Other Relief (October 24, 1997). ANM/ALA, in a transparent effort to delay this case through resort to procedural arguments based on technicalities, seek to place the Postal Service in a Catch-22: on the one hand, they assert that too little information was filed with the request, and on the other, that too much was filed. As the Presiding Officer has observed in a related context, these parties can't have it both ways. See Tr. 4/1842-43. Their argument serves only to obstruct, not to foster an orderly progression of the case.

¹⁰ ANM/ALA complain that "[o]f the first 100 library references, the Postal Service has seen fit to sponsor only *one*." Motion to Stay at 13. Most of the LRs numbered below 100 are clearly labeled as documentation of postal data systems, or consist of similar background material routinely requested by parties or required by the Commission's rules. The parties and the Commission can consult these references or not, as they choose, and there is no chance that important information unrelated to this background information is hidden within as part of a deliberate effort to conceal. For example, LR H-88 consists of a copy of labor agreements currently in effect, an item of information that has been so routinely requested in postal rate cases that the Postal Service has made it a practice to provide this material up front, without waiting for a specific request.

The Postal Service wishes make clear that it does not desire that its efforts to be comprehensive and complete in its documentation should result in the production of a large volume of material of little value to the Commission and the participants. Such a circumstance could not only lead to waste of Commission resources, but also would place an unnecessary burden on the Postal Service in preparing Commission filings. For this reason, the Postal Service has often suggested that the Commission's filing requirements could be clarified or curtailed so as to eliminate the need to provide in each case library references which have over time been shown to be unneeded and unused.

- E. The Postal Service's use of library references is in accord with prior Commission practice and affords ample due process to the parties

ANM/ALA's final effort to demonstrate a violation of the Commission's rules rests on the fact that the Postal Service filed testimony with its request which relied upon and cited certain library references that were not themselves explicitly labeled as sponsored testimony of a particular witness. As is outlined in a related pleading filed today, the practice of filing and relying on technically unsponsored library references has a long history at the Commission, and the Postal Service has conformed its filing to the accepted norm. On prior occasions, the Commission has acknowledged that it is not possible or practical for the Postal Service to determine, before filing a case, which reference materials will become sufficiently important as to require a sponsoring witness. See Presiding Officer's Ruling No. R94-1/32, at 3 ("Considering the breadth of issues raised in omnibus rate cases, the Postal Service cannot be held to a standard of perfect prescience.") When viewed in this context, it is apparent that the Postal Service has complied with the Commission's rules. See Response of the United States Postal Service to Motions of NDMS and NAA to Strike or Oppose Admission of Specific Portions of Testimony and for Other Relief (October 24, 1997).

Moreover, even if some technical noncompliance were found to occur, it is clear that neither ANM/ALA nor any other party have been put at a disadvantage by the Postal Service's practice. ANM/ALA's contention that the admission of this evidence through the explicit sponsorship of a Postal Service witness has come too late in the proceeding is at odds with the facts. First, no material, whether testimony, exhibits or library references, becomes a part of the evidentiary record until admitted by the Commission. This action does not occur at the time of filing of the Request and testimony, it comes months later, during the first round of hearings. Meanwhile, all parties to the proceeding

have had a full opportunity to conduct written cross-examination regarding all of the material filed by the Postal Service, including its library references, and, under established Commission practice, such material, including library references, may be moved into evidence at the hearings. It is absurd in the extreme for ANM/ALA to pretend that they are only now being presented with the information contained in the Postal Service's library references, or with the possibility that they may become evidence.

II. Even If Some Defects In Documentation Might Exist, They Long Ago Could Have Been Cured Without Recourse To The Unauthorized Measures Sought

ANM/ALA contend that, based on the alleged deficiencies in the Postal Service's initial filing, the minimum necessary remedy available to the Commission is to order an indefinite stay of these proceedings under 39 U.S.C. § 3624(c)(2) and Rule 54(s) "until the USPS files an amended request that complies fully with the Commission's evidentiary rules, and interested parties have had a full opportunity to engage in discovery of the Postal Service's amended filing." Motion to Stay at 16. As has been shown above, the premise of the ANM/ALA request, that is, the existence of serious violations of the Commission's filing requirements, has not been established.

Even if such infractions had occurred, however, the necessary legal predicates for such an indefinite stay, and a resultant extension of the 10-month time limit for completion of Commission deliberation, do not exist. Movants can point to no lawful order of the Commission which has been violated, as required by 39 U.S.C. § 3624(c)(2). There has not been a single order of the Commission issued in this proceeding with which the Postal Service has not complied. Thus, the Commission lacks the statutory authority to take any action which would extend this case.

It is not enough to imply or suggest that a supposed violation of Rules 31 or 54 is

sufficient to trigger 39 U.S.C. § 3624(c)(2). The plain language of the provision speaks otherwise: "In any case in which the Commission determines that the Postal Service has unreasonably delayed consideration of a request made by the Postal Service under section 3622 by failing to respond within a reasonable time to any lawful *order* of the Commission, the Commission may extend the 10-month period" The Act does not refer to "lawfully promulgated rule" of the Commission, it explicitly refers to a "lawful order." It is logical and reasonable to conclude that Congress knew the meaning of the words "rule" and "order," and deliberately chose the word "order".¹¹

Finally, even were an indefinite stay authorized, it would not be appropriate in these circumstances, even if the Commission were to find technical defects in the Postal Service's filing. The simple fact exists that in Commission proceeding after Commission proceeding, any perceived documentation defects have been cured in a far less disruptive manner, by the filing of additional information, by the granting of additional opportunity for cross-examination and the like. Given that ANM/ALA have not demonstrated any significant defects in documentation, even these measures are unwarranted. ANM/ALA have already been granted months of time in which they could have fully examined and questioned any of the library references filed by the Postal Service; to grant even more time for discovery and examination would be an unneeded imposition upon the limited time needed by the Commission, the Postal Service and other parties to participate in the remaining phases of this case.

¹¹ Compare 39 U.S.C. § 3603.

III. Conclusion

If ANM/ANA truly had a desire to clarify its understanding of any of the materials filed by the Postal Service with its Request at the outset of this proceeding, it has had ample time and opportunity in which to demonstrate that desire. Unfortunately, given the fact that these parties did not request technical conferences or otherwise conduct substantial discovery relating to the library references they now dispute, one can only conclude that their recent concerns are either dilatory or specious. In any event, the vague, unsupported allegations of Postal Service misconduct now raised by ANM/ALA, and their request for extreme relief when no harm has been demonstrated, do little to foster the orderly disposition of this case.

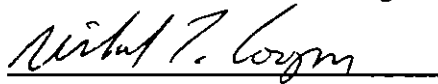
For the reasons set out above, the ANM/ALA Motion to Stay should be denied in its entirety.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.
Chief Counsel, Ratemaking



Richard T. Cooper

475 L'Enfant Plaza West, SW
Washington, D.C. 20260-1137
(202)268-2998/FAX: -5402
October 24, 1997

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.


Richard T. Cooper

475 L'Enfant Plaza West, SW
Washington, D.C. 20260-1145
October 24, 1997