

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268

Periodic Reporting Rules	:	Docket No. RM2008-4
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**REPLY COMMENTS OF TIME WARNER INC.
IN RESPONSE TO ORDER NO. 104
(November 14, 2008)**

Time Warner Inc. (Time Warner) respectfully submits these reply comments in response to the initial comments of the United States Postal Service, the Public Representative, and Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. ("Valpak") (all filed October 16, 2008) in response to Order No. 104, Notice and Order of Proposed Rulemaking Describing Form and Content of Periodic Reports (issued August 22, 2008).

1. Time Warner Generally Agrees with the Initial Comments of the Postal Service.

The information provided by the Postal Service for the Annual Compliance Review ("ACR") should include volume and cost data like that provided for base years in omnibus rate cases under the Postal Reorganization Act ("PRA"). This should include both finished reports and the computer programs used to produce those reports, including all input data, such as, for example, tapes of IOCS tallies. Time Warner understands the proposed rules to mean that all of this would be required.

In several instances, however, the proposed rules would require a level of detail considerably beyond what was required in omnibus rate cases, as well as the

provision of data more frequently than once a year. The initial comments of the Postal Service are devoted mostly to identifying such instances and to explaining why it believes them to be excessive or unnecessary. In general, Time Warner is in agreement with the Postal Service. In particular, Time Warner supports the views of the Postal Service on the following points.

a. Time Warner agrees with the Postal Service that it would be premature to adopt a presumption that special studies more than five years old are obsolete.

The Postal Service's initial comments (at 14-22) argue that proposed rule 3050.12, which would create a presumption that special studies more than 5 years old are obsolete, would impose a considerable burden on it. The Postal Service believes that "the Commission has already developed adequate mechanisms through which the obsolescence of special studies and the possible negative impact on results thereof can be addressed," including "mailer comments on the ACR, the Commission's ACD," § 3654(e)'s provision for mailers to petition the Commission to initiate a costing rulemaking, and "the strategic rulemakings . . . which the Commission has suggested be utilized to prioritize cost study updates" (*id.* at 22, 17). The Postal Service states:

[T]o make necessary and reasonable study updates, coordinated efforts should "identify areas in which research is most needed and most likely to bear fruit." Using a strategic rulemaking in this fashion seems like a much better approach than imposing a blanket rule

Id. at 15 (internal citation omitted).

Pending the results of such a strategic rulemaking, the Postal Service argues, "any 'obsolescence' rule would be . . . premature." *Id.*

Time Warner agrees that an obsolescence rule would impose a substantial burden on the Postal Service and that the imposition of such a rule at this time would be premature. Mailers, the Postal Service, and the Commission all agree that one of the highest priorities of the PAEA is to limit rate increases to the CPI cap. Given that the Postal Service is now projecting losses in excess of \$2 billion for FY 2008, it should not be required to spend money at this time on studies that may not be in need of updating.

By providing an opportunity for mailers to petition for rulemaking proceedings and by providing for technical conferences and other informal avenues for discussing the various models used to analyze costs, the Commission makes it possible for parties to raise not only issues of age but other issues relating to reliability and consistency. Time Warner believes that, pending the outcome of a strategic rulemaking for the purpose of conducting a comprehensive review of the timeliness of available data, the existing, more *ad hoc* approach to the issue of data obsolescence would be preferable to that of proposed rule 3050.12.¹

¹ Time Warner notes, with respect to the Periodicals flats model, that even with the modifications just proposed by the Postal Service in Docket No. RM2009-1, the model still contains some productivity rates data that are well over 20 years old (from Docket No. R84-1), and additional data that are over ten years old (from Docket No. R97-1). Whereas a rule requiring all data that is more than five years old to be replaced seems excessive, these much older data, collected in BMC's whose function has since changed dramatically, clearly need to be reviewed, perhaps as part of a future strategic rule making.

b. Time Warner shares the concern of the Postal Service regarding an overly expansive application of the term "analytic principle."

Time Warner shares the Postal Service's concern that an overly expansive definition of the term "analytic principle" in proposed rule 3050.1 could unnecessarily impede advances in Postal Service data collection and general efficiency. See USPS Initial Comments at 30-32.

One example of an item that, according to the Commission, would require advance approval as a change in "accepted analytic principles" involves changes in how MODS determines First Handling Pieces (FHP). The Postal Service states that MODS is "an *operating* data system . . . not under the control of the ratemaking team" and that FHP data from MODS are used mostly "for operating purposes." Initial Comments at 30. Time Warner thinks that the Postal Service's point is well-taken. MODS *is* an operating system, a very expensive one. If the Postal Service has eliminated the requirement that everything to be piece-sorted in a facility first must be dragged across a weight scale, that change in itself ought to save quite a bit of money and simplify the design of new processing facilities. Commission involvement in that type of decision would, on the whole, impede Postal Service efforts to improve efficiency.

The IOCS is an area where too much supervision of Postal Service data collection by the Commission could prove counterproductive. Almost every year, the Postal Service makes changes in the IOCS that are plainly both minor in nature and improvements to the system. To require that every such change be approved by the Commission in advance would serve little purpose, and would retard the pace of improvements to the system. A sounder, more moderate approach would be for the

Postal Service, at the beginning of each fiscal year, to announce changes it is making in the instructions to IOCS data collectors and for interested parties to have an opportunity at that time to petition for the initiation of a rulemaking proceeding to review changes that seem questionable.² Advance knowledge of the changes in format and content of the IOCS sample data would facilitate analysis by the Commission and interested parties of such data when it becomes available after the fiscal year is ended.

c. Time Warner accepts the Postal Service's representations that the burden of producing complete billing determinants on a quarterly basis would outweigh the potential benefit.

Time Warner has no reason to doubt the representations of the Postal Service that "[w]ithout the expenditure of additional resources, it could not produce billing determinant reports on a quarterly basis" and that "[u]nder current procedures, that burden would fall on critical personnel who are also responsible for a wide variety of other pricing functions." Postal Service Initial Comments at 37, 38.

Presumably, the production of quarterly billing determinants for small categories, such as special services, would be especially difficult. Also, Time Warner agrees with the Postal Service that the usefulness of quarterly billing determinants, which would in any event have to be revised at the end of the year, would be limited.

However, Time Warner believes that at least for the bulk mail classes, most of whose volume and mail characteristics data today come from information provided

² The instructions to IOCS data collectors need to be exactly the same during a given fiscal year in order for meaningful conclusions to be drawn from the tallies taken during that year.

electronically by mailers, it should mostly be a matter of computer processing power to provide at least reasonably accurate billing determinant data on a quarterly basis. Although such data, like the quarterly RPW data, may not be completely accurate and is subject to revision at the end of the year, it might be of some value to the Commission and other interested parties. It would, for example, provide indications of the extent to which mailers are taking advantage of the various worksharing discounts offered by the rate structure. That again might indicate the cost trends to anticipate for the various classes of mail.

Mailers and the Commission could understand that final adjustments might have to be made later. The Commission should check with the Postal Service on the feasibility of such an arrangement. If it is feasible, it would help mailers and the Commission analyze developments in something much closer to real time.

d. Time Warner agrees with the Postal Service that advance review should not be required for changes in demand analysis and volume forecasting.

Time Warner concurs with the Postal Service that "the role of volume forecasting was central to the entire ratemaking process" under the PRA, but that this "simply is no longer the case under the PAEA." Postal Service Initial Comments at 22. Time Warner further agrees that

[t]he shift in the relative importance of volume forecasting is a noteworthy aspect of the shift in the Commission's role in ratemaking -- from the active primary designer of recommended rates, to a more passive reviewer of the compliance of rates selected by the Postal Service with specific statutory standards.

Id.

The Postal Service objects to "any suggestion of parity in the Commission's authority to prescribe demand analysis and forecasting methodologies, versus its authority to prescribe costing methodologies," pointing out that "neither demand analysis nor volume forecasting are included within the list of analyses for which the Commission is authorized to prescribe methodologies." *Id.* at 23-24. The Postal Service especially objects to applying "Order No. 104's apparently expansive approach to the process by which analytic changes 'must be reviewed and accepted by the Commission in advance'" to "demand analysis and forecasting matters." *Id.* at 26. The Postal Service reserves what appear its most adamant comments for this issue:

[T]o the extent the proposed rules contemplate that changes in demand analysis (and by implication, forecasting) methodologies would be subject to the same advance approval process as changes in costing methodologies, the Postal Service views such a proposal as untenable. First, the ability to dictate demand analysis procedures is tantamount to the ability to dictate forecasting procedures, and, as noted above, there is no longer any support in the structure of the statute for an alleged intent to expand the areas of Commission oversight to include forecasting. It is vital for the Postal Service to maintain control over the ability to forecast its own future, just as it would be for any large and complex business enterprise.

Id.

As a supporter of the PAEA's enactment, a careful reader of its text, and a "large and complex business enterprise," Time Warner fully agrees with these remarks. Time Warner supports the Postal Service's recommendation that the Commission "exclude demand models" from the scope of analyses to which advance review requirements apply. *Id.* at 29.

Time Warner agrees with the Commission that demand elasticities are important to efficient ratesetting and that estimates of them should be developed. However, under the PAEA's rate cap mechanism, it does not appear likely that the Postal Service will have any meaningful opportunity to recognize elasticities in setting the rates for one class relative to the rates for another class (except, possibly, where the full extent of the cap might be used for one class and rejected for another). Still, if a class is composed of more than one product, the Postal Service will be able to recognize elasticities in selecting the products' relative rates. More specifically, a product with a relatively high markup that is thought to have a relatively high elasticity might be given a lower rate increase than a product with a relatively low markup and low elasticity.

The recognition of elasticities in the way just described, which the Commission agrees would effectuate the new law's emphasis on economic efficiency, does not, however, require forecasting. As explained by Time Warner in earlier comments, setting rates consistent with economic efficiency requires nothing more than *current* elasticities and *current* billing determinants.³ It leaves no role, for example, for selecting a preferred volume outcome and trying to set rates to achieve it. The Postal Service may be interested in projecting volumes for planning and operating reasons, but whether and how to do so are decisions that are best left to Postal Service management. There is no role for forecasting in the regime of rate regulation adopted by the PAEA.

³ See Docket No. RM2007-1, Initial Comments of Time Warner Inc. in Response to Commission Order No. 26 (September 14, 2007), at 6-10.

2. The Initial Comments of the Public Representative Show Little Awareness that the PRA Has Been Superseded by the PAEA.

a. The Public Representative exaggerates the scope of the Commission's jurisdiction in annual determination of compliance proceedings.

As discussed extensively in Time Warner's initial comments in this proceeding, § 3653(b) of the PAEA, which governs the Commission's annual determination of compliance, "requires the Commission to make a determination 'whether any rates or fees in effect during [the previous] year (for products individually or collectively) were not in compliance with applicable provisions of [chapter 36 of title 39] (or regulations promulgated thereunder)'" but does not, and could not without leaving coherence behind, authorize the Commission to make determinations of "compliance" with statutory "goals" or "objectives" or "factors."⁴ Our discussion there was occasioned by the fact that proposed rule 3050.20 and Order No. 104's accompanying discussion created ambiguity on this extremely important point. We concluded:

For the Commission to treat the "Objectives" and "Factors" as constituting, *of their own force*, legal requirements binding on the Postal Service, and as an appropriate basis for the exercise of the Commission's sweeping remedial powers under § 3653(c), would in Time Warner's view represent a misinterpretation of § 3622.⁵

⁴ See Initial Comments of Time Warner Inc. in Response to Order No. 104 (filed October 16, 2007), at 4-11. The quoted matter appears at 4.

⁵ *Id.* at 10. We stated in a footnote to the quoted passage that "[t]he extent to which the Commission may employ the objectives and factors set out in § 3622(b) and (c) as a basis for imposing requirements on the Postal Service, in the exercise of its rulemaking authority under § 3622(a)"--and we should have added, under § 503 as well--"presents a different question."

The initial comments of the Public Representative (at 1) reveal an allegiance to this mistaken interpretation of § 3653. They state:

[T]he PAEA requires the Commission to submit a yearly report, the Annual Compliance Determination, which addresses the results of Postal Service operations. This report requires a determination by the Commission as to whether the Postal Service has met the rate setting, service, and other objectives of the PAEA for the preceding fiscal year.

We will not repeat here the arguments made in our initial comments, but we think it appropriate to observe that the Public Representative's extravagant view of the data requirements that should be imposed on the Postal Service appears to be rooted in an extravagant and mistaken view of the Commission's proper task and authority in performing its Annual Determination of Compliance.

b. The Public Representative over-estimates the importance of annual Commission reports under § 3651 of the PAEA and vastly understates the costs and overstates the utility of requiring the Postal Service to produce oceans of largely suppositious data.

Unfortunately, the Public Representative's extreme views on the subject of periodic reporting requirements also rest on bases that, if not necessarily more mistaken than its view of the annual determinations of compliance, are a good deal more far-fetched. Chief among these is the centrality that the Public Representative gives to § 3651(a)'s provision for an annual report by the Commission to Congress and the President concerning its "operations . . . under this title, including the extent to which regulations are achieving the objectives under sections 3622 and 3633." For a new regulatory agency tasked with the implementation of a new statutory scheme, it is hard to imagine a more un-noteworthy statutory requirement. As far as Time Warner is aware, no party other than the Public Representative has suggested

that § 3651 plays more than a modest supporting role in the overall statutory scheme. Yet, on the basis of nothing more than the use of the present tense in that section's description of the Commission's report concerning how "its operations . . . under this title . . . are achieving the objectives under sections 3622 and 3633"

(emphasis added), the Public Representative concludes:

[T]he Commission's rules should require a Postal Service projection of cost, volume, and revenue for the current year. This information will allow the Commission to more fully assess the regulatory framework in terms of the rate and classification objectives of sections 3622 and 3633, . . . allow . . . interested persons to review estimated current year attributable costs by product and rate category[,] . . . analyze estimated cost functions to identify those that change disproportionately[,] . . . analyze data relating to mail products and categories for unusual changes in attributable costs, as well as ensure that their costs are covered by revenues[,] . . . permit examination of anticipated institutional cost contributions by product[,] . . . assist interested persons in planning for the future, in particular, to draw their own conclusions regarding the need for rate increases . . . [and] allow [] an interested person to determine if a complaint is warranted under section 3662.

Id. at 3-5.

One must torture the words of § 3651(a)'s single, innocent sentence severely-- and utterly ignore two of the Act's main purposes, i.e., the reduction of administrative burden on the Postal Service and the abandonment of cost-of-service ratemaking--to draw anything like that flood of inferences from it.

Yet the Public Representative does not stop there but goes on to argue that these current-year projections alleged to be mandated by § 3651(a)'s use of the present tense

should present the same level of detail concerning products and rate categories as required in the currently proposed data reporting rules [and] should utilize the same analytical principals [*sic*] included in that analysis, since there is no intent to predict

the results of potential proceedings focused on changing those principles.

Id. at 6.⁶

In other words, the Public Representative proposes that the Postal Service be required to provide, in every fiscal year, the equivalent of a traditional roll-forward to a test year in an omnibus rate case, relying exclusively on Commission-prescribed methodologies--an artifact of the PRA that we had not thought Congress intended to perpetuate in the PAEA.

Having advanced this misconceived proposal that is antagonistic to the central purposes of the PAEA, the Public Representative proceeds to describe it in terms that defy credulity. "[A]ny burden on the Postal Service to prepare such information for submission to the Commission should be *de minimus*," according to the Public Representative, because, after all, "[o]bviously, current year projection data are already available since the Postal Service must prepare long-term as well as short-term projections for its budgetary and planning process[, and] [i]t is reasonable to assume that responsible management would have much more detailed projections of the current year than those that the public [i.e., presumably, the Public Representative] suggests should be disclosed here." *Id.* Fear not, however, for the confidentiality of any of the Postal Service marketing plans or strategies, the Public Representative states reassuringly, for "[t]here is no . . . intent

⁶ Why there should be "no intent to predict the results of potential proceedings focused on changing those principles" is a mystery, given the array of purposes that the Public Representative says these projections will serve (unless the reason is simply to assure that the Postal Service does not stray from pre-approved methodologies for any purpose).

to force the Postal Service to disclose their internal planning regarding the next rate change." *Id.* It is simply nonsense to suggest that any properly run business would be expected to expend the amounts of cash and energy necessary to prepare such a Byzantine set of projections for its own internal management purposes, as it is to suggest that any business that actually did so should have no objection to sharing that information with its competitors.

The Public Representative's initial comments almost appear to be premised on the view that the production of information by the Postal Service is costless and that the ideal amount of information for the Commission and the public to have in order to be adequately informed about the Postal Service is an infinitude. It is difficult to imagine whose interests, other than those of the Postal Service's competitors, would in fact be served by following this view--certainly not those of the public, on whom the enormous costs of complying with such requirements (and of dealing with the expected "benefits" in the form of more complaints and more extensive Commission supervision of Postal Service management and planning) would inevitably fall.

The Public Representative fails to point to any benefit that would accrue from the draconian requirements it proposes that is less inchoate than more "assess[ment]," "review," "analysis," and "examination" of the Postal Service's *expectations*. See quoted matter on p. 11 above. Nothing supports its proposal but a fallacious supposition that up-to-the-minute information heavily intermixed with speculation and surmise is a better basis for making judgments about how the

system is working, and for planning for the future, than information that is slightly older but more complete and, most importantly, factual.

3. Valpak's Initial Comments Fail to Address the Issues that its Own Analysis Makes Central.

Valpak's typically extensive and thoughtful initial comments could easily be made the occasion for extensive comments in reply. However, Time Warner believes that the essential fallacy in Valpak's analysis is one that we have pointed to before. We will therefore confine our reply to: (1) very briefly, pointing to it again; and (2) drawing attention to a few specific manifestations of the fallacy that are unique to Valpak's initial comments in this proceeding.

In Docket No. RM2008-3, Time Warner's Reply Comments in Response to Order No. 101 (filed October 27, 2008) argued (at 3) that Valpak apparently harbors "the misconception that the PAEA is intended to preserve the rights to due process that were afforded to mailers by the PRA." We criticized Valpak for its adherence to what we described as a "circular" and "logic-defying argument, namely that because certain due process protections that were afforded to mailers by the PRA are omitted from the PAEA, those protections must somewhere, somehow be implicit in the PAEA." *Id.*

The same criticisms fully apply to the arguments advanced in Valpak's initial comments in this docket. Thus, for example, Valpak states (at 2-3) that its comments "address[] ways to protect the due process rights of mailers with respect to the Commission's Annual Compliance Determination as well as in the procedures for changing accepted analytical principles." Planted in that sentence is the assumption that mailers *have* due process rights in addition to those which may be

found in the PAEA itself, whether expressly, by reference to other law, or by implication. As Time Warner's reply Comments in Docket No. RM2008-3 demonstrated (at 8, n.8), that assumption is contradicted by a wealth of U. S. Supreme Court precedent.

For another example, Valpak compares "due process" under the PRA and the PAEA :

Under PRA, accountability and transparency of the Postal Service were achieved to some degree by a comprehensive and effective (albeit sometimes said to be "cumbersome") pre-implementation rate case process. Mailers had due process rights to participate in those dockets, including discovery, and were able to provide expert testimony, as well as briefs, to the Commission. See former 39 U.S.C. §§ 3622-3625, 3628.

.....
Under PAEA, much of the routine protection for, and protection of the due process rights of, mailers is designed to be achieved in the annual compliance reporting and determination process.

Id. at 8, 9.

That comparison creates the impression of two differing systems designed to protect a single set of rights, but in different ways. Valpak draws on a wide array of sources to bolster its argument that this impression is a correct one. But the one fact it consistently fails to address head-on is that the PAEA consistently and methodically omits from the procedures it establishes all of the requirements for a hearing on the record, with attendant "discovery, . . . expert testimony, . . . briefs," etc., that the PRA consistently and methodically required. Valpak does not answer, because it cannot, the following question: If Congress intended "much of the routine protection for, and protection of the due process rights of, mailers" that was provided under the PRA through pre-implementation review to be provided under the PAEA "in the annual

compliance reporting and determination process," then why did Congress make an opportunity to file written comments on the Postal Service's Annual Report the *sole* method of participation by mailers in that entire process that is guaranteed by law?

Similarly, Valpak devotes extensive verbiage to explaining, defending, and embellishing its two major recommended changes in the rules proposed by the Commission--namely, that part 3001, subpart A, of the Commission's Rules of Practice be made expressly applicable both to annual compliance review proceedings and rulemakings to consider changes in accepted analytic principles--but never squarely addresses the obvious question that its recommendations raise: what difference would these changes make to either the practices the Commission has been following or those it proposes to follow? See Valpak Comments at 8-15. As far as Time Warner is able to discern, the surprising answer to that question is: none.

The only way to find out what difference Valpak's recommended changes would make is actually to look at subpart A and consider what it contains. The answer is that it contains a great deal, some of which applies by its express terms to the two types of proceedings that Valpak is concerned with, some of which, by its express terms, has no application to proceedings of that type. We will not belabor the point but will simply refer the reader to the listing of topics included in subpart A and to the full text of rules 18 and 41 of that subpart (which, for the sake of convenience, we reproduce as an addendum to these comments). It appears to Time Warner that the Commissions proposed rules, and its practice in the one ACR proceeding and the several costing rulemakings it has conducted thus far, closely

follow the terms of section 3001.41, which governs "[r]ulemaking proceedings" and thus already applies, unless and until repealed, to the Commission's ACR and costing rule proceedings.⁷

Valpak's strenuous efforts to pour content into the empty vessel of the changes it recommends are invariably either empty themselves, or simply in error. An example of the first is Valpak's assertion (at 12) that "the protections [provided by the Commission for mailer participation] in Docket No. ACR2007 constitute the bare minimum that appears to be required by the statute, and the Commission should provide for more to get the benefit of mailer input." Where Valpak finds in the law any *requirement* that the Commission arrange informal technical conferences between mailers and the Postal Service (a practice that Time Warner applauds), it does not confide. It will always be the case, of course, that providing more opportunities for participation by mailers will do more to "get the benefit of mailer input." The question that Valpak begs is whether it will always be the case that the benefit of more mailer participation will outweigh the attendant costs.⁸

⁷ To argue that subpart A could be applied *in toto* to any type of proceeding (as Valpak sometimes appears to assume) would involve such patent absurdities as that rule 14's provisions for "[p]rocedure in hearing cases" and "[p]rocedure in non-hearing cases" both apply to the same proceeding. Where, as in proposed rule 3030.1 in Docket No. RM2008-3 ("Rules for Complaints"), a rule states that "[p]art 3001, subpart A, applies [to a type of proceeding] unless otherwise stated in this part or otherwise ordered by the Commission," Time Warner assumes that the Commission intends primarily to establish a rule of convenience or default. Thus, for example, if discovery is permitted, the provisions of subpart A relating to form, timeliness, etc., are assumed to apply (but separate sections of part 3030, which relates exclusively to complaints, determine *whether* discovery will be allowed and *when* it may be commenced).

⁸ An example of parallel efforts that are merely in error is Valpak's suggestion (at 13) that "under PAEA, any determination of noncompliance proceeds as a complaint under 39 U.S.C. section 3662 and, thus, would be subject to the Commission's complaint procedures," so that "it does not appear that implementing [similar] procedures under section 3653 would be particularly burdensome for the Commission at this point." Putting aside the fact that determinations of noncompliance will

[footnote continues]

Time Warner believes that the Commission's conduct of various proceedings under the PAEA thus far has reflected a sound understanding of the requirements of the law, sound judgment about the tradeoffs involved in designing procedures that fulfill the Commission's heavy regulatory responsibilities without disregarding how those procedures may impinge on the even heavier responsibilities of the Postal Service, and a disposition to provide a fair chance for participation in the process on as wide a basis as is consistent with the constraints, and with the regulatory approach, of the new law. Specifically, the Commission has, correctly, been applying the provisions of subpart A of the Rules of Practice that govern notice-and-comment rulemaking proceedings.

presumably form only a tiny subset of matters dealt with by the Commission in an ACR, Valpak is simply in error when it states that a determination of noncompliance under § 3653(c) "proceeds as a complaint." Rather, § 3653(c) provides that, should the Commission make a finding of noncompliance, it shall "take appropriate action in accordance with [the remedial provisions of] section 3622 (*as if a compliant averring such noncompliance had been duly filed and found under such section to be justified*)" (emphasis added). There are *no* relevant procedures that apply to the period *after* the Commission has found a complaint to be justified, since that finding and the mandate of an appropriate remedy would ordinarily appear only in the Commission's *final* order in the proceeding.

Respectfully submitted,

s/ _____
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Addendum

List of Contents of Part 3001, Subpart A, and Full Text of Rules 18 and 41⁹

3001—RULES OF PRACTICE AND PROCEDURE

Subpart A—Rules of General Applicability

- § 3001.1 Construction of rules.
- § 3001.2 [Reserved]
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- § 3001.7 Ex parte communications.
- § 3001.8 No participation by investigative or prosecuting officers.
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- § 3001.29 Settlement conferences.
- § 3001.30 Hearings.
- § 3001.31 Evidence.
- § 3001.32 Appeals from rulings of the presiding officer.
- § 3001.33 Depositions.
- § 3001.34 Briefs.
- § 3001.35 Proposed findings and conclusions.
- § 3001.36 Oral argument before the presiding or other designated officer.

⁹ Source: Postal Regulatory Commission, Rules of Practice and Procedure (effective December 10, 2007).

- § 3001.37 Oral argument before the Commission.
- § 3001.38 Omission of intermediate decisions.
- § 3001.39 Intermediate decisions.
- § 3001.40 Exceptions to intermediate decisions.
- § 3001.41 Rulemaking proceedings.
- § 3001.42 Public information and requests.
- § 3001.43 Public attendance at Commission meetings.

§ 3001.18 Nature of proceedings.

(a) *Proceedings to be set for hearing.* Except as otherwise provided in these rules, in any case noticed for a proceeding to be determined on the record pursuant to § 3001.17(a), the Commission may hold a public hearing if a hearing is requested by any party to the proceeding or if the Commission in the exercise of its discretion determines that a hearing is in the public interest. The Commission may give notice of its determination that a hearing shall be held in its original notice of the proceeding or in a subsequent notice issued pursuant to paragraph (b) of this section and § 3001.19.

(b) *Procedure in hearing cases.* In proceedings which are to be set for hearing, the Commission shall issue a notice of hearing or prehearing conference pursuant to § 3001.19. After the completion of the hearing, the Commission or the presiding officer shall receive such briefs and hear such oral argument as may be ordered by the Commission or the presiding officer pursuant to §§ 3001.34 to 3001.37, and the Commission shall then issue a recommended decision, advisory opinion, or public report, as appropriate, in accordance with the provisions of §§ 3001.38 to 3001.39.

(c) *Procedure in non-hearing cases.* In any case noticed for a proceeding to be determined on the record in which a hearing is not requested by any party or ordered by the Commission, the Commission or the presiding officer shall issue a notice of the procedure to be followed with regard to the filing of briefs and oral argument, and a recommended decision, advisory opinion, or public report, as appropriate, shall then be issued pursuant to the provisions of §§ 3001.34 to 3001.39. The Commission or presiding officer may, if necessary or desirable, call procedural conferences by issuance of a notice pursuant to § 3001.19.

§ 3001.41 Rulemaking proceedings.

(a) *General notice.* Before the adoption of any rule of general applicability, or the commencement of any hearing on any such proposed rulemaking, the Commission will cause general notice to be given by publication in the *Federal Register*, such notice to be published therein not less than 30 days prior to the date fixed for the consideration of the adoption of a proposed rule or rules or for the commencement of the hearing, if any, on the proposed rulemaking, except where a shorter period is reasonable and good cause exists therefor. However, where the Commission, for good cause, finds it impracticable, unnecessary, or contrary to the public interest to give such notice, it may proceed with the adoption of rules without notice by incorporating therein a finding to such effect and a concise statement of the reasons therefor. Advance notice shall not be required for rules subject to 5 U.S.C. § 553(d).

(b) *Contents of notice.* The notice shall include (1) a statement of the time, place and nature of the public rulemaking proceedings; (2) reference to the legal authority under which the rule is proposed; and (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.

(c) *Participation.* After notice given as provided in paragraph (a) of this section, the Commission shall give interested persons an opportunity to participate in the rulemaking through submission of written data, views, or arguments with or without opportunity for oral presentation.

(d) *General statement as to basis and purpose.* After consideration of the relevant matter presented, the Commission shall incorporate in the rules adopted a concise general statement of their basis and purpose.

(e) *Exceptions.* Except when notice or hearing is required by statute, the Commission may issue at any time rules of organization, procedure or practice, or interpretive rules, or statements of policy, without notice or public procedure, and this section is not to be construed as applicable to the extent that there may be involved any military, naval or foreign affairs function of the United States, or any matter relating to the Commission's management or personnel, or to U.S. property, loans, grants, benefits, or contracts.