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COMMISSIONER'S RULING

RULING PAGE

Presiding Officer's Ruling To Grant

Postal Service Motion For Waiver 12

## P R O C E E D I N G S

[9:32 a.m.]

1  
2  
3 COMMISSIONER GOLDWAY: Good morning, ladies and  
4 gentlemen. Welcome to the first prehearing conference in  
5 Docket Number MC99-3, considering the Postal Service request  
6 to revise domestic mail classification schedule and rate  
7 schedules to remedy a rate anomaly affecting certain  
8 nonprofit and classroom periodical mailers.

9 Can everyone hear me?

10 I'll try and speak a little more loudly.

11 The Commission has been asked to give expedited  
12 consideration to these changes. My name is Ruth Goldway,  
13 and I will serve as Presiding Officer during this case. I  
14 want to acknowledge first of all that as many of you who  
15 attend Commission meetings regularly know, this is my first  
16 opportunity to serve as Presiding Officer. I am certainly  
17 pleased to have the opportunity, but request your indulgence  
18 as I learn the ropes and the details of the proceedings.

19 With me today are my colleagues, the old-timers  
20 experienced in the matter, Chairman Ed Gleiman and  
21 Vice-Chairman Trey LeBlanc, and -- well, you're pretty  
22 experienced now too, George, having presided over a hearing,  
23 George, and coming soon, our newest Commissioner, Danny  
24 Covington.

25 Before proceeding to substantive matters, I'll ask

1 counsel present here today to identify themselves for the  
2 record.

3 First for the Postal Service.

4 MR. RUBIN: Yes. I am David Rubin for the Postal  
5 Service, and with me today are Susan Duchek and Eric  
6 Koetting.

7 COMMISSIONER GOLDWAY: Welcome. Association of  
8 American Publishers.

9 No one's answering.

10 American Business Press.

11 No response.

12 Alliance of Nonprofit Mailers.

13 Classroom Publishers Association.

14 MR. OWEN: Stephen Owen, representing the  
15 Classroom Publishers.

16 COMMISSIONER LeBLANC: Sir, can you use the mike,  
17 please?

18 MR. OWEN: Yes. Steve Owen, representing the  
19 Classroom Publishers Association.

20 COMMISSIONER LeBLANC: Is it on, sir?

21 MR. OWEN: Can you hear me now? Okay. Steve  
22 Owen, Classroom Publishers Association.

23 COMMISSIONER GOLDWAY: Magazine Publishers of  
24 America.

25 MR. CREGAN: Good morning. Jim Cregan for MPA.

1 I'd like to introduce also for the record my new colleague,  
2 Anne Noble Ervine, who will be with me, and I expect you'll  
3 be seeing more of her later this year or early next year,  
4 whenever.

5 COMMISSIONER GOLDWAY: Thank you.

6 National Federation of Nonprofits.

7 MS. EMIGH: Carolyn Emigh, representing the  
8 National Federation of Nonprofits, and the executive  
9 director of the National Federation of Nonprofits is here,  
10 Lee Cassidy.

11 COMMISSIONER GOLDWAY: Welcome.

12 Office of the Consumer Advocate.

13 MS. DREIFUSS: I'm Shelley Dreifuss, representing  
14 the Office of the Consumer Advocate today. I'd also like to  
15 enter an appearance for Ted Gerarden, the Director of the  
16 OCA.

17 COMMISSIONER GOLDWAY: Thank you.

18 David Popkin.

19 Not here.

20 Time Warner.

21 MR. BURZIO: Good morning. I'm John Burzio. I'll  
22 be appearing for Time Warner, and appearing with me will be  
23 my partner, Tim Keegan.

24 Thank you.

25 COMMISSIONER GOLDWAY: Thank you.

1           Is there any intervenor that I have not mentioned  
2 here today?

3           Would you step up to the microphone, please.

4           MR. ROOS: My name is Joe Roos. I'm the executive  
5 director of the Associated Church Press, but I'm here  
6 representing Dr. John Stapert, and the Coalition of  
7 Religious Press Associations.

8           COMMISSIONER GOLDWAY: Thank you.

9           For those of you who have not already done so,  
10 please fill out an appearance form and hand it in to the  
11 reporter before you leave today. Those forms are available  
12 from the reporter and on the side table behind the Postal  
13 Service counsel.

14           Anyone interested in obtaining a transcript of  
15 today's prehearing conference or any other official  
16 Commission proceeding in this case should make arrangements  
17 directly with the reporting company, Ann Riley and  
18 Associates, Ltd. An order form is available on the bottom  
19 half of the appearance form. Transcripts are also available  
20 on computer diskettes. Please fill out an order form if you  
21 wish transcripts either in hard copy or diskette form.  
22 Anyone needing to make additional arrangements that cannot  
23 be dealt with today through the reporter, please call the  
24 company at (202) 842-0034.

25           I also want to remind counsel that it will help

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1 the reporter greatly if you identify yourself for the record  
2 the first time you speak today or any subsequent day of the  
3 proceedings.

4 In its request for hearing, the Postal Service  
5 asked that the Commission expedite this proceeding. The  
6 Commission is very conscious of the fact that many of the  
7 mailers that are directly affected by the anomaly addressed  
8 in this case are small nonprofit organizations with limited  
9 budgets and many worthwhile competing uses for their limited  
10 funds.

11 The Postal Service stated in its request that if  
12 its proposal in this case is recommended by the Commission  
13 and approved by the Governors, it will refund the difference  
14 between the preferred postage paid and otherwise applicable  
15 postage rate on mailings made on or after April 9, 1999.  
16 Nevertheless, the Commission recognizes that mailers are  
17 currently paying rates that may be higher and/or submitting  
18 dual mailing statements, and that the mailers will be  
19 required to do one or both of these until a decision is  
20 reached in this matter. The prospects of refunds are not  
21 available until after a decision is made. Therefore, a  
22 complete solution for mailers who have scarce resources will  
23 not occur until completion of the hearings.

24 With agreement from my fellow Commissioners, I  
25 will attempt to move this case forward as expeditiously as

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1 at all possible.

2 The Postal Service accompanied its request with a  
3 motion for expedition and a motion for waiver of certain  
4 provisions of Rule 64(h). Order Number 1237, which provided  
5 notice of the Postal Service request in this docket,  
6 directed participants to submit answers to this motion prior  
7 to today's conference. The Office of Consumer Advocate was  
8 the only participant who filed a response addressing the  
9 Postal Service request for a waiver of certain filing  
10 requirements. The OCA did not oppose the request for waiver  
11 of the specified Commission filing requirements.

12 Does any other participant wish to comment on the  
13 request for waiver of filing requirements at this time?

14 Yes, sir. Please come forward.

15 MR. ROOS: Joe Roos, and that's R-o-o-s. I'm  
16 totally new to these proceedings, so I'm sorry, in not quite  
17 sure exactly the question you're asking, but I do know that  
18 the Coalition for Religious Press Associations does intend  
19 to intervene in these hearings. I don't know if that  
20 relates to your question or not.

21 COMMISSIONER GOLDWAY: No, it does not.

22 MR. ROOS: Sorry. Thank you.

23 COMMISSIONER GOLDWAY: Hearing no objection to  
24 this specific request for a waiver, I am granting the Postal  
25 Service's motion for waiver of certain filing requirements.

1           Mr. Reporter, please index this ruling in the  
2 front of today's transcript.

3                                 [Presiding Officer's Ruling To  
4                                 Grant Postal Service Motion For  
5                                 Waiver.]

6           COMMISSIONER GOLDWAY: A number of participants  
7 did comment on the Postal Service request for expedition.  
8 No participant opposed this aspect of the Postal Service  
9 motion, and several agreed that evidentiary hearings might  
10 be unnecessary.

11           However, one party did specifically request that  
12 an evidentiary hearing be held. In response to Order Number  
13 1237, the National Federation of Nonprofits filed a request  
14 that a hearing be scheduled to address the issue of the time  
15 period during which refunds for postage paid will be issued.  
16 There are several points that need to be clarified before we  
17 can evaluate how best to accommodate this request. My  
18 questions will reflect my assumption that the Federation as  
19 the representative of mailers that may be paying postage  
20 that is higher than necessary are at least as interested as  
21 the other parties represented here today in expediting these  
22 proceedings.

23           Ms. Emigh, your request for a hearing did not  
24 comment on the suggestion in Order Number 1237 that the  
25 Postal Service's prepared testimony might be admitted into

1 evidence at today's conference. As a result, I could not  
2 determine whether the Federation is requesting a hearing in  
3 order to have the opportunity to cross-examine Postal  
4 Service Witness Taufique or whether the Federation wants the  
5 opportunity to present one or more witnesses to testify  
6 concerning the Postal Service refund policy.

7 Let me ask you to clarify whether the Federation  
8 wants to (a) cross-examine the Postal Service (b) sponsor  
9 testimony in rebuttal of the Postal Service, or both.

10 MS. EMIGH: Carolyn Emigh. The Federation would  
11 like to do both.

12 COMMISSIONER GOLDWAY: Both. Thank you.

13 Can the Federation be prepared to conduct oral  
14 cross examination two weeks from today? That would be May  
15 17th -- or do you want the opportunity to conduct discovery  
16 on the Postal Service?

17 MR. RUBIN: The Postal Service would like to  
18 comment --

19 COMMISSIONER GOLDWAY: Can I get the answer to the  
20 question first, sir?

21 MR. RUBIN: Yes.

22 MS. EMIGH: The Federation would like the  
23 opportunity to engage in discovery and will be unable to  
24 participate on May 17th.

25 COMMISSIONER GOLDWAY: Thank you. Mr. Rubin, do

1 you want to comment?

2 MR. RUBIN: Yes. I would like to point out that  
3 Witness Taufique does not address in any way the issue of  
4 refunds, and I don't believe a hearing where there would be  
5 questioning of him would help move along the case in any  
6 regard with respect to refunds.

7 In addition, I think discovery on him would not be  
8 effective.

9 CHAIRMAN GLEIMAN: Madam Presiding Officer?

10 COMMISSIONER GOLDWAY: Yes -- any other comments,  
11 Chairman?

12 CHAIRMAN GLEIMAN: Could I ask whether the party  
13 that is requesting the hearing is familiar with the  
14 Commission's decision in Docket Number C98-1, Order 1227,  
15 issued on January 27th, 1999, which at page 7 and 8 states  
16 that "The Commission has no authority to grant the type of  
17 relief specifically requested by Time Life Fitness - a  
18 postage refund"?

19 MS. EMIGH: Mr. Chairman, we are aware of that.  
20 However I feel that the National Federation of Nonprofits  
21 would like an opportunity to explore on the record the  
22 Postal Service's justification or rationale with regard to  
23 refunds during the time period since the rate case took  
24 effect.

25 CHAIRMAN GLEIMAN: But you do understand or at

1 least I understand from this decision that the Commission is  
2 not in a position to rule on the issue of refunds?

3 MS. EMIGH: That is correct.

4 CHAIRMAN GLEIMAN: So all you are looking for is a  
5 soapbox?

6 MS. EMIGH: As I indicated, I think the National  
7 Federation of Nonprofits would like an opportunity to  
8 explore with the Postal Service on the record the Postal  
9 Service's rationale with regard to granting or not granting  
10 the refunds.

11 CHAIRMAN GLEIMAN: I just want to make sure I  
12 understand correctly -- then what you want to do is you want  
13 an opportunity to establish some type of record but you  
14 don't expect the Commission to issue any decision with  
15 regard to the nature of the record that you wish to  
16 establish?

17 MS. EMIGH: With regard to an order requiring the  
18 Postal Service to make a refund it is our understanding that  
19 the Commission feels it does not have that authority.

20 CHAIRMAN GLEIMAN: Thank you.

21 COMMISSIONER GOLDWAY: Is there any other  
22 participant who wishes to make a comment at this time?

23 MR. RUBIN: I guess I do have a few more --

24 COMMISSIONER GOLDWAY: Mr. Rubin.

25 MR. RUBIN: -- comments.

1           COMMISSIONER LeBLANC: Mr. Rubin, will you pull  
2 the mike to you?

3           MR. RUBIN: Sure.

4           COMMISSIONER LeBLANC: Thank you.

5           MR. RUBIN: The Postal Service has proposed a  
6 classification change in this proceeding that would provide  
7 greater access to classroom and nonprofit mailers to the  
8 regular rates and that change would take effect at a future  
9 date, depending on actions by the Postal Rate Commission and  
10 the Postal Service's Governors and Board of Governors.

11           NFN -- the National Federation of Nonprofits has  
12 not opposed any aspect of that proposal and they have also  
13 not raised any issues about the evidence presented by the  
14 Postal Service in this proceeding.

15           Instead, they are raising an issue about a  
16 management decision by the Postal Service to not offer  
17 refunds for the period from January 10th through April 8th.  
18 The Postal Service therefore believes that there has been no  
19 issue raised that needs a hearing in this proceeding.

20           In Order 1237 the Commission stated that it wanted  
21 to handle the Postal Service request for recommended  
22 decision in an expedited manner absent any request for  
23 hearing on a genuine issues of material fact.

24           I don't believe that the National Federation of  
25 Nonprofits has raised any issue of material fact and

1 therefore I would request that the Commission deny the  
2 request for a hearing and move forward to preparing a  
3 recommended decision so that we may grant relief to the  
4 nonprofit and classroom mailers as quickly as possible.

5 COMMISSIONER GOLDWAY: Thank you for your  
6 comments. I would like to ask the Federation whether it --  
7 what I would like is to get some idea of the timeframe that  
8 you have in mind for this proceeding.

9 How much time would you need for discovery and  
10 when would you be prepared to submit your direct case, given  
11 the fact that we are anxious to move forward expeditiously?

12 MS. EMIGH: The Federation believes it would be  
13 prepared in two to three weeks, and it could participate  
14 during the week of May 17th. It's just on that particular  
15 day the Executive Director already has an engagement.

16 COMMISSIONER GOLDWAY: So it could be two weeks,  
17 but two weeks plus one day.

18 Mr. Rubin, would you like to submit any more  
19 argument on this matter in writing or do you think you have  
20 stated your case?

21 MR. RUBIN: Well, I'm not sure what, I think I  
22 don't see a need for something additional in writing right  
23 now, although I am concerned because if we get discovery on  
24 the issue of refunds, I think there's a serious issue of  
25 relevance to this proceeding, and we would probably need to

1 object.

2 COMMISSIONER GOLDWAY: We will take this matter  
3 under advisement and consider the issue and potential  
4 schedule for hearings, and we'll try and make some sort of  
5 decision within the next day or two about the matter.

6 I will remind you at this time that the Commission  
7 has a home page on the World Wide Web, and through it we  
8 provide access to all documents issued by the Commission,  
9 and to most documents submitted by the participants. We  
10 will continue our practice of providing a complete daily  
11 list of all documents filed with the Commission, as well as  
12 all files provided electronically. The address of our home  
13 page is WWW.PRC.GOV.

14 Does any participant have an issue to discuss at  
15 this time?

16 Hearing none, I will thank you for your attendance  
17 and attention, and indicate that there is nothing further  
18 for us to proceed with today. The prehearing conference is  
19 adjourned. I wish you all a good day. Thank you.

20 [Whereupon, at 9:55 a.m., the prehearing  
21 conference was concluded.]

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