

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

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POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY

CLASSIFICATION AND FEES FOR WEIGHT-AVERAGED  
NONLETTER-SIZE BUSINESS REPLY MAIL, 1999

Docket No. MC99-2

**MOTION FOR CONSIDERATION OF STIPULATION AND AGREEMENT**  
(June 1, 1999)

The United States Postal Service and each of the signatories to this motion (collectively, with the Postal Service, the "settlement parties") hereby submit an executed Stipulation and Agreement, representing a negotiated settlement by the signatories of all issues raised in this proceeding. The settlement parties request that the Postal Rate Commission issue an opinion and recommended decision which is based upon the evidentiary record developed in this proceeding and which incorporates the Domestic Mail Classification Schedule and Fee Schedule changes requested by the Postal Service in this proceeding, as reflected in the Attachment to the Stipulation and Agreement appended hereto.

After a review of the Postal Service's March 10, 1999, Docket No. MC99-2 Request and supporting materials and as a result of off-the-record discussions, the settlement parties agree that there is substantial record evidence to support the permanent Domestic Mail Classification Schedule and Fee Schedule changes proposed by the Postal Service. The following parties, all of the full participants in Docket No. MC99-2, have authorized the Postal Service to represent that each supports, without reservation, the Stipulation and Agreement: the Office of the Consumer Advocate, District Photo, Inc.; Mystic Color Lab; Seattle FilmWorks, Inc.; Time Warner, Inc.; York

Photo Labs. Their signature pages are attached, along with the signature page of a limited participant who supports the Stipulation and Agreement, Mr. Douglas Carlson.

The following limited participators have authorized the Postal Service to indicate that each supports the Stipulation and Agreement: Brooklyn Union Gas Company, Key-Span Gas East Corporation, Long Island Power Authority.

Finally, two limited participators, Advertising Mail Marketing Association and Mr. David Popkin, have authorized the Postal Service to indicate that they do not oppose the Stipulation and Agreement.

Given the sometimes competing interests of the various members of the mailing community, unanimity on issues before the Postal Rate Commission is understandably rare. The Postal Service considers that the interests of the mailing public are best served best when diverse parties take full advantage of opportunities to work constructively to expedite the resolution of postal rate and classification litigation in a manner which not only conserves their own resources, but also the limited resources of the Commission. The Postal Service expresses its gratitude to all of the parties who have contributed to the expeditious resolution of Docket No. MC99-2.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.  
Chief Counsel, Ratemaking

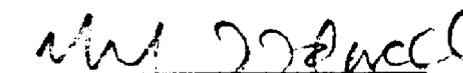


Michael T. Tidwell

475 L'Enfant Plaza West, S.W.  
Washington, D.C. 20260-1137  
June 1, 1999  
(Tel: (202) 268-2998/ FAX: -5402)

#### CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing documents upon all participants of record in Postal Rate Commission Docket No. MC99-2 in accordance with section 12 of the Rules of Practice and Procedure. Now it's off to Paris on my honeymoon. Thanks, everybody!



Michael T. Tidwell

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Washington, D.C. 20260-1137  
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June 1, 1999

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Docket No. MC99-2

**STIPULATION AND AGREEMENT**

This Stipulation and Agreement is submitted pursuant to Rule 29 of the Rules of Practice and Procedure of the Postal Rate Commission, 39 C.F.R. § 3001.29, by and between the undersigned parties or through their respective attorneys. It is a negotiated settlement of all issues raised in the above-captioned docket. The undersigned parties hereby stipulate and agree to the following:

**I. BACKGROUND**

On March 10, 1999, pursuant to 39 U.S.C. §§ 3622 and 3623, the United States Postal Service filed with the Postal Rate Commission a request for a decision recommending the establishment of a permanent classification and fees for nonletter-size Business Reply Mail (BRM) for which the accounting function is performed through the use of a weight averaging method. The request was designated as Docket No. MC99-2 by the Commission.

The basis for the request is explained in the Docket No. MC99-2 direct testimonies of Postal Service witnesses Rometta Shields (USPS-T-1), Timothy Ellard (USPS-T-2), Leslie Schenk (USPS-T-3), and James Kiefer (USPS-T-4).

## II. TERMS AND CONDITIONS

1. This Stipulation and Agreement represents a negotiated settlement of all issues raised by the Docket No. MC99-2 Request of the United States Postal Service for a Classification and Fees For Weight-Averaged Nonletter-Size Business Reply Mail.

2. The undersigned parties agree, for purposes of this proceeding only, that the Docket No. MC99-2 direct testimonies<sup>1</sup> of Postal Service witnesses Rometta Shields (USPS-T-1), Timothy Ellard (USPS-T-2), Leslie Schenk (USPS-T-3), and James Kiefer (USPS-T-4), should be entered into the evidentiary record in this proceeding. These testimonies, together with the Docket No. MC99-2 interrogatory responses of witnesses Ellard and Schenk,<sup>2</sup> and the Postal Service's Docket No. MC99-2 Request and the attachments thereto, provide sufficient reasons and substantial evidence justifying a decision recommending the changes to the Domestic Mail Classification Schedule (DMCS) § 931 and the DMCS Fee Schedule 931 sought by the Postal Service in Docket No. MC99-2, which are attached to this Stipulation and Agreement. The undersigned parties stipulate that any of the aforementioned materials not heretofore entered into the Docket No. MC99-2 evidentiary record be so entered.

3. On the basis of such record, for purposes of this proceeding only, the undersigned parties stipulate that the DMCS and Fee Schedule changes set forth in the Attachment to this Stipulation and Agreement are in accordance with the policies of title

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<sup>1</sup> And any materials incorporated therein by reference.

<sup>2</sup> The April 29, 1999, interrogatory responses of witness Ellard to interrogatories OCA/USPS-T2-1 through T2-11; and the May 5, 1999, responses of witness Schenk to interrogatory DFC/USPS-T3-1. All responses were filed with the Commission and served on the parties.

39, United States Code, and in particular, the criteria and factors of 39 U.S.C. §§ 3622 and 3623.

4. This Stipulation and Agreement is offered in total and final settlement of this proceeding. The undersigned parties agree that they will file no further pleadings or testimony with the Commission in this proceeding, with the exception of: (a) pleadings or testimony explicitly requested by the Commission or in reply to such pleadings; (b) pleadings or testimony opposing pleadings or testimony filed in opposition to this Stipulation and Agreement; or (c) pleadings, testimony or comments in support of this Stipulation and Agreement.

5. If the Commission adopts a Recommended Decision that deviates from the classification and fees proposed in this Stipulation and Agreement, or if the Governors of the Postal Service fail to approve the Commission's Recommended Decision, then each signatory reserves the right to withdraw from this Stipulation and Agreement. Any signatory withdrawing under the terms of this paragraph must provide written notice of this fact to all parties within five (5) business days of the occurrence of the specific event giving rise to the right to withdraw. Any exercise of such right by one or more signatories shall not affect the operation of this Stipulation and Agreement as to other signatories.

6. This Stipulation and Agreement pertains only to the instant proceeding. The parties shall not be considered as necessarily agreeing with or conceding the applicability of any principle, or any method of classification or ratemaking or cost of service determination, or design of rate or fee schedule or term and conditions of service, or the application of any rule or interpretation of law, that may underlie, or be

thought to underlie, this Stipulation and Agreement.

7. In any future negotiation or proceeding (other than any proceedings involving the honoring, enforcement, or construction of this Stipulation and Agreement), the parties shall not be bound or prejudiced by this Stipulation and Agreement, nor shall any party rely for any purpose on the fact that another party entered into or did not oppose this Stipulation and Agreement. The undersigned parties also agree that, to the extent that matters presented in the Docket No. MC99-2 Request, in any Commission Recommended Decision on that Request, or in any decision of the Governors of the Postal Service in this proceeding have not actually been litigated, the resolution of such matters will not be entitled to precedential effect in any other proceeding.

8. As fully stated above, the agreement of the parties is intended to relate exclusively to the specific weight-averaged nonletter-size Business Reply Mail proposals reflected in the proposed Domestic Mail Classification Schedule and Fee Schedule provisions attached hereto, and is not intended to bind or prejudice the parties in any other proceeding. This understanding of the intended consequences of the agreement applies equally to all constituent parts of the agreement.

9. The undersigned parties request that the Commission expeditiously issue a decision recommending adoption of the DMCS and Fee Schedule provisions appended to this Stipulation and Agreement, and that such decision propose that the applicable classification and fees be made effective upon termination of the extension of the nonletter-size Business Reply Mail weight averaging experiment implemented by the Postal Service Board of Governors as a consequence of Docket No. MC99-1.

10. This Stipulation and Agreement represents the entire agreement of the

signatories, and supersedes any understandings or representations not contained herein.

\* Signature pages are attached.

*The proposed changes to Domestic Mail Classification Schedule § 931 and Fee Schedule 931 are based upon the provisions implemented as a result of May 26, 1999, Decision of the USPS Governors in Docket No. MC99-1. Some DMCS subsections are renumbered to eliminate "RESERVED" sections which result from the June 7, 1999, expiration of provisions related to the experimental reverse manifest accounting method.*

[Proposed additions are underlined. Proposed deletions are stricken through.]

930        **PAYMENT ALTERNATIVES**

931        **BUSINESS REPLY MAIL**

931.1     **Definitions**

931.11    Business reply mail is a service whereby business reply cards, envelopes, cartons and labels may be distributed by or for a business reply distributor for use by mailers for sending First-Class Mail without prepayment of postage to an address chosen by the distributor. A distributor is the holder of a business reply license.

931.12    A business reply mail piece is nonletter-size for purposes of this section if it meets addressing and other preparation requirements, but does not meet the machinability requirements specified by the Postal Service for mechanized or automated letter sortation.

~~This provision expires February 29, 2000, or upon implementation of permanent fees for nonletter-size business reply mail, whichever comes first.~~

931.2     **Description of Service**

~~931.21~~    The distributor guarantees payment on delivery of postage and fees for all returned business reply mail. Any distributor of business reply cards, envelopes, cartons and labels under any one license for return to several addresses guarantees to pay postage and fees on any returns refused by any such addressee.

931.3     **Requirements of the Mailer**

931.31    Business reply cards, envelopes, cartons and labels must be preaddressed and bear business reply markings.

931.32    Handwriting, typewriting or handstamping are not acceptable methods of preaddressing or marking business reply cards, envelopes, cartons, or labels.

**931.4 Fees**

- 931.41 The fees for business reply mail are set forth in Fee Schedule 931.
- 931.42 To qualify as an active business reply mail advance deposit trust account, the account must be used solely for business reply mail and contain sufficient postage and fees due for returned business reply mail.
- 931.43 An accounting fee as set forth in Fee Schedule 931 must be paid each year for each advance deposit business reply account at each facility where the mail is to be returned.

**931.5 [RESERVED]**

~~931.6 Experimental Weight Averaging Fees~~

~~931.61 [RESERVED]~~

- ~~931.62~~ A nonletter-size weight averaging monthly fee as set forth in Fee Schedule 931 must be paid each month during which the distributor's weight averaging account is active.

~~This fee applies to the (no more than) 10 advance deposit account holders which are selected by the Postal Service to participate in the weight averaging nonletter-size business reply mail experiment.~~

~~This provision expires February 29, 2000, or upon implementation of permanent fees for nonletter-size business reply mail, whichever comes first.~~

**931.76 Authorizations and Licenses**

- 931.761 In order to distribute business reply cards, envelopes, cartons or labels, the distributor must obtain a license or licenses from the Postal Service and pay the appropriate fee as set forth in Fee Schedule 931.
- 931.762 Except as provided in section 931.73, the license to distribute business reply cards, envelopes, cartons, or labels must be obtained at each office from which the mail is offered for delivery.

- 931.763 If the business reply mail is to be distributed from a central office to be returned to branches or dealers in other cities, one license obtained from the post office where the central office is located may be used to cover all business reply mail.
- 931.764 The license to mail business reply mail may be canceled for failure to pay business reply postage and fees when due, and for distributing business reply cards or envelopes that do not conform to prescribed form, style or size.
- 931.765 Authorization to pay ~~experimental~~ nonletter-size business reply mail fees as set forth in Fee Schedule 931 may be canceled for failure of a business reply mail advance deposit trust account holder to meet the standards specified by the Postal Service for the weight averaging accounting method.

~~This provision expires February 29, 2000, or upon implementation of permanent fees for nonletter-size business reply mail, whichever comes first.~~

**FEE SCHEDULE 931****BUSINESS REPLY MAIL**

	<b>Fee</b>
Active business reply advance deposit account:	
Per piece	
Qualified	\$0.05
Nonletter-size, using weight averaging ( <del>experimental</del> )	\$0.01
Other	\$0.08
Payment of postage due charges if active business reply mail advance deposit account not used:	
Per piece	\$0.30
Annual License and Accounting Fees:	
Accounting Fee for Advance Deposit Account	\$300
Permit fee (with or without Advance Deposit Account)	\$100
Monthly Fees for customers using a reverse manifest or weight averaging for nonletter-size business reply	
Nonletter-size, using weight averaging ( <del>experimental</del> )	\$600

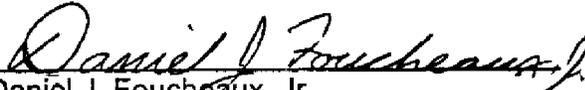
~~Note: Experimental per piece and monthly fees are applicable only to participants selected by the Postal Service for the nonletter-size business reply mail experiment. The experimental fees expire February 29, 2000, or upon implementation of permanent fees for weight-averaged nonletter-size business reply mail, whichever comes first.~~

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**SIGNATURE PAGE FOR STIPULATION AND AGREEMENT**

  
Daniel J. Foucheaux, Jr. \_\_\_\_\_ Date 5/1/99  
Chief Counsel, Ratemaking  
United States Postal Service

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Ted P. Gerarden  
Director  
Office of the Consumer Advocate  
Postal Rate Commission

*June 1, 1999*  
Date

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WASHINGTON, D.C. 20268-0001

CLASSIFICATION AND FEES FOR WEIGHT-AVERAGED  
NONLETTER-SIZE BUSINESS REPLY MAIL, 1999

DOCKET NO. MC99-2

SIGNATURE PAGE FOR STIPULATION AND AGREEMENT

District Photo Inc.  
\_\_\_\_\_  
Name of Intervenor

May 26, 1999  
\_\_\_\_\_  
Date

  
\_\_\_\_\_

[Signature of Representative]

William J. Olson

John S. Miles

Alan Woll

WILLIAM J. OLSON, P.C.

8180 Greensboro Drive, Suite 1070

McLean, Virginia 22102-3823

(703) 356-5070

Counsel for District Photo Inc., York Photo Labs,  
Mystic Color Lab, and Seattle FilmWorks, Inc.

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Mystic Color Lab

May 26, 1999

\_\_\_\_\_  
Name of Intervenor

\_\_\_\_\_  
Date



\_\_\_\_\_  
[Signature of Representative]

William J. Olson

John S. Miles

Alan Woll

WILLIAM J. OLSON, P.C.

8180 Greensboro Drive, Suite 1070

McLean, Virginia 22102-3823

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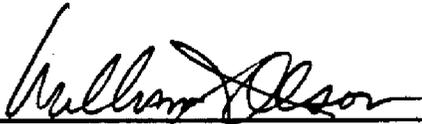
SIGNATURE PAGE FOR STIPULATION AND AGREEMENT

Seattle FilmWorks, Inc.

May 26, 1999

Name of Intervenor

Date



[Signature of Representative]

William J. Olson

John S. Miles

Alan Woll

WILLIAM J. OLSON, P.C.

8180 Greensboro Drive, Suite 1070

McLean, Virginia 22102-3823

(703) 356-5070

Counsel for District Photo Inc., York Photo Labs,  
Mystic Color Lab, and Seattle FilmWorks, Inc.

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**SIGNATURE PAGE FOR STIPULATION AND AGREEMENT**

Time Warner Inc.  
Name of Intervenor

May 13, 1999  
Date

Timothy L. Keegan  
[Signature of Representative]  
Timothy L. Keegan

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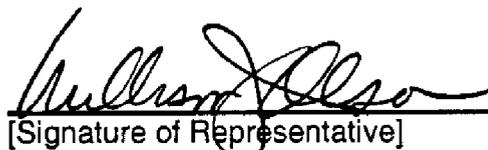
**SIGNATURE PAGE FOR STIPULATION AND AGREEMENT**

York Photo Labs

May 26, 1999

\_\_\_\_\_  
Name of Intervenor

\_\_\_\_\_  
Date



\_\_\_\_\_  
[Signature of Representative]

William J. Olson

John S. Miles

Alan Woll

WILLIAM J. OLSON, P.C.

8180 Greensboro Drive, Suite 1070

McLean, Virginia 22102-3823

(703) 356-5070

Counsel for District Photo Inc., York Photo Labs,  
Mystic Color Lab, and Seattle FilmWorks, Inc.

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**SIGNATURE PAGE FOR STIPULATION AND AGREEMENT**

Douglas F. Carlson

May 28, 1999

\_\_\_\_\_  
Name of Intervenor

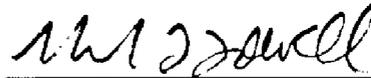
\_\_\_\_\_  
Date



\_\_\_\_\_  
[Signature of Representative]

## CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing documents upon all participants of record in Postal Rate Commission Docket No. MC99-2 in accordance with section 12 of the Rules of Practice and Procedure. Now it's off to Paris on my honeymoon. Thanks, everybody!



Michael T. Tidwell

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June 1, 1999