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ORDER NO. 1260

POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

Before Commissioners:

Edward J. Gleiman, Chairman;
W.H. "Trey" LeBlanc III, Vice Chairman;
Dana B. Covington, Sr.; Ruth Y. Goldway;
and George A. Omas

Complaint on Charges for the
Bulk Parcel Return Service

Docket No. C99-4

ORDER DENYING MOTION OF
UNITED STATES POSTAL SERVICE
TO DISMISS COMPLAINT AND
NOTICE OF FORMAL PROCEEDINGS

(September 3, 1999)

On June 9, 1999, the Continuity Shippers Association (CSA) filed a formal complaint against the United States Postal Service pursuant to 39 U.S.C. § 3662. Complaint Concerning Charges and Practices Applied to Ancillary Services for Standard (A) Merchandise Mail (Complaint). The Complaint contends that the rate charged for undeliverable merchandise returned to the sender under the Bulk Parcel Return Service (BPRS) is excessive and inconsistent with the cost and non-cost criteria of the Postal Reorganization Act (Act). *Id.* at 1. The Complaint further maintains that the BPRS offered to Standard (A) mailers does not conform to Title 39 policies. */bid.* In response, the Postal Service argues that the attributable costs and mark-up for the BPRS accurately reflect both the underlying costs and the special service provided to mailers by BPRS. Answer of United States Postal Service (Answer), July 9, 1999, at 4-5. The Service suggests that Complainant has reached its erroneous conclusions based in part on a misunderstanding of the cost methodology of a BPRS cost study. *Id.* at 4. Accordingly, the Postal Service requests that the Commission dismiss the

Complaint.’ *Id.* at 5. For the reasons discussed herein, the Commission denies the Service’s motion and initiates formal proceedings to consider the Complaint.

I. BACKGROUND

Under the Domestic Mail Classification Schedule (DMCS), the Postal Service will return to the sender properly endorsed merchandise which has been ordered by consumers but is undeliverable as addressed. For merchandise mail pieces weighing less than one pound that are mailed at bulk Standard (A) rates, qualifying senders may, choose to have the merchandise returned via the Bulk Parcel Return Service (BPRS). Prior to institution of the BPRS, senders could have Standard (A) merchandise returned at the Standard (A) single piece rate. BPRS was implemented on October 12, 1997, and charges the flat rate of \$1.75 for each eligible Standard (A) parcel.

II. SUBSTANCE OF THE COMPLAINT

This Complaint concerns the Postal Service’s return service for merchandise mailed at the bulk Standard (A) rates and electing to use BPRS at the rate of \$1.75 per piece. Complainant CSA² alleges that the BPRS rate is excessive and in contravention of the Act, Complaint at 1. CSA bases its allegations in substantial part on a comparison of the BPRS rate (and cost coverage) with the generally lower Special Standard (B) rates. According to CSA, this comparison is valid as: (1) Special Standard (B) and Standard (A) parcels share several significant characteristics, including the manner in which the

¹Although the Postal Service has not filed a formal motion to dismiss the Complaint, it does request dismissal of the Complaint in its Answer, primarily based on the argument that Complainants allegations of discrimination and other violations of the Act are unsupported. Answer at 5. As such, the Commission construes the Postal Service’s Answer as effectively a motion to dismiss the Complaint.

²CSA states that it is an interested party representing Standard (A) mailers who use the BPRS. Complaint at 2. In its Answer, the Postal Service characterizes the Complainant as “one of a small subset of Standard (A) mailers with particular types of mail, mailing practices, business needs, and experience with the Postal Service, which may differ from those of other Standard (A) mailers.” Answer at 2.

Postal Service processes, transports and delivers these mail pieces; (2) certain mail pieces which are eligible for the BPRS rate also are eligible to be returned to sender at the lower Special Standard (B) rates;³ and (3) the Special Standard (B) attributable cost was used by the Postal Service as a proxy for the BPRS attributable cost in setting the BPRS rate. *Id.* at 2-3.

In support of its claim that the rates charged by BPRS are not “fair and equitable” and therefore contravene 39 U.S.C. §§ 3622(b)(l) and 3623(c)(l), CSA cites the October 1998 Postal Service cost study on BPRS. *Id.* at 4-5. That study, which was completed as a requirement of the original BPRS classification case, Docket No. MC97-4, indicated a BPRS attributable cost of \$0.93 per piece.⁴ *Id.* at 4. With a per piece rate of \$1.75 and a per piece attributable cost of \$0.93, the markup for BPRS would be \$0.82 or 188 percent cost coverage, which CSA argues is unjustifiably higher than the current cost coverage of 106 percent for Special Standard (B) mail. *Id.* at 4-5.

As relief, CSA requests that the Commission institute proceedings to review the adequacy and accuracy of the cost studies underlying the BPRS rate and to consider whether the BPRS rate properly reflects the service’s costs and its value to the sender and recipient. *Id.* at 5-6; Continuity Shippers Association’s Request for Permission to File a Response Opposing the United States Postal Service’s Suggestion Not to Hold Hearings on the Complaint Regarding the Charges for the Bulk Parcel Return Service (CSA Opposition), August 18, 1999, at 2.

³Special Standard (B) mail need not weigh more than 16 ounces. CSA claims that many parcels that weigh less than one pound and are eligible for Special Standard (B) rates are mailed initially at bulk Standard (A) rates, but are returned to the sender under the lower, single-piece Special Standard (B) rates. Complaint at 2.

⁴CSA alleges that, on or around January 1999, the Postal Service announced that the BPRS cost study was flawed, as the attributable cost had been determined using an incorrect methodology. Complaint at 4, n. 1. The Service further stated that application of the correct methodology yields an attributable cost of \$1.07 for BPRS mail pieces. *Ibid.* CSA maintains that this revised attributable cost figure, which remains undocumented despite requests, is the same as that calculated for Special Standard (B) in the Docket No. R97-1 rate case, and results in a BPRS cost coverage of 164 percent. *Ibid.* CSA argues that the widely divergent rates imposed for the BPRS and Special Standard (B) when the costs are the same are in contravention of 39 U.S.C. § 3622(b)(3), which requires that each mail type bear only its direct and indirect attributable costs, plus a reasonable allocation of institutional costs. Complaint at 5.

III. POSTAL SERVICE ANSWER AND MOTION TO DISMISS

The Postal Service Answer denies Complainants allegations that the BPRS rate violates the Act, and also disputes the legitimacy of CSA's comparison of BPRS and Special Standard (B) services. Answer of United States Postal Service (Answer) at I-4. The Answer further asserts that the Complaint should be dismissed as Complainant: (1) misunderstands the original BPRS cost study's methodology, which ultimately results in the erroneous conclusion that the costs of the two subclasses are the same; (2) makes the incorrect assumption that BPRS and Special Standard (B) cost coverages should be equivalent, which ignores the differences between the two mail types and the correct application of the non-cost factors of the Act; and (3) fails to consider "the import of differences between the Postal Service's volume variable analysis and the Commission's attributable cost methodology with respect to the BPRS fee," where a recalculation of the October cost study using Commission R97-1 methodology results in a cost coverage very close to the Commission's original recommended figure (163.5 v. 156 percent). *Id.* at 4-5.

The Postal Service Answer presents arguments against the validity of Complainants claim, and requests that the Commission dismiss the Complaint. The Commission construes the Answer to include a Postal Service motion to dismiss the Complaint, and accepts the responsive CSA Opposition

IV. STATUTORY AUTHORITY TO CONSIDER COMPLAINT AND PROCEDURAL PROCESS

Section 3662 of Title 39 of the United States Code provides in relevant part:

Interested parties who believe the Postal Service is charging rates which do not conform to the policies set out in this title may lodge a complaint with the Postal Rate Commission in such form and in such manner as it may prescribe. The

Commission may in its discretion hold hearings on such complaint.

Section 3001.82 of the Commission's regulations, which addresses the scope and nature of complaints, indicates that the Commission shall entertain complaints which clearly raise an issue concerning whether or not rates or **services** contravene the policies of the Postal Reorganization Act.

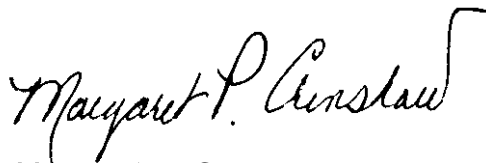
In the instant docket, CSA has filed a complaint alleging that the current BPRS rate contravenes Title 39 policies. While the Postal Service offers varying explanations' for why Complainant is mistaken in its assertion, the Service has failed to provide adequate justification for dismissal of the Complaint without hearings. Accordingly, the Commission will consider the Complaint, although it notes that the recent establishment of the BPRS rate through a settlement agreed to by CSA, and the expectation that an omnibus rate request will be submitted in the near future, would seem to provide a situation where it may be possible for the parties to pursue resolution and settlement of the Complaint through informal procedures, as provided for in Rule 85 of the Commission's Rules of Practice and Procedure.

The Commission will allow until September 17, 1999 for participants to explore the potential for settlement. Discovery may be initiated during this period. If settlement discussions are not productive, Complainant is directed to provide a statement, on or about September 17, 1999, estimating the amount of time it will require to develop and file a case-in-chief. A procedural schedule and special rules of practice, if any, will be considered after this estimate has been submitted.

It is ordered:

1. Proceedings in conformity with 39 U.S.C. § 3624 shall be held in this matter.
2. The suggestion that the Complaint should be dismissed included within the Answer of United States Postal Service, filed on July 9, 1999, is denied.
3. The Commission will sit en *banc* in this proceeding.
4. Ted P. Gerarden, director of the Commission's Office of the Consumer Advocate, is designated to represent the interests of the general public in Docket No. C99-4. Mr. Gerarden is also charged with acting as settlement coordinator, and in this capacity shall encourage parties to reach settlement on this Complaint, as provided for under Rule 85 of the Commission's Rules of Practice and Procedure.
5. Complainant shall provide a statement, on or about September 17, 1999, estimating the amount of time it will require to develop and file a direct case in this proceeding.
6. The Secretary of the Commission shall arrange for publication of this Notice and Order in the *Federal Register* in a manner consistent with applicable requirements.

By the Commission.
(S E A L)


Margaret P. Crenshaw
Secretary