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MODERNIZATION OF CONTRACT MAIL ROUTE PROCEDURES

GOVERNMENT
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HEARING BEFORE THE COMMITTEE ON OFFICE AND CIVIL SERVICE HOUSE OF REPRESENTATIVES EIGHTY-SEVENTH CONGRESS SECOND SESSION ON

H.R. 10936, H.R. 11951, and similar bills
BILLS TO PROVIDE FOR THE MODERNIZATION OF CONTRACT
MAIL ROUTE PROCEDURES

JUNE 28, 1962

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Committee on Post Office and Civil Service



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SUBCOMMITTEE APPOINTED TO CONSIDER H.R. 10936, H.R. 11951, AND SIMILAR BILLS

RICHARD H. ICHORD, Missouri, *Chairman*

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MODERNIZATION OF CONTRACT MAIL ROUTE PROCEDURES

THURSDAY, JUNE 28, 1962

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE OF THE
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
Washington, D.C.

The subcommittee met at 9 a.m., in room 215, House Office Building, Hon. Richard H. Ichord (subcommittee chairman) presiding.

Mr. ICHORD. The committee will come to order.

This subcommittee was appointed by Chairman Murray to consider H.R. 10936 and H.R. 11006, identical bills to permit the Postmaster General to extend contract mail routes up to 100 miles during the contract term, and also H.R. 11951 and H.R. 11998, identical bills to provide for the transportation of mail by aircraft upon star routes within the Commonwealth of Puerto Rico.

(The bills, H.R. 10936 and H.R. 11951, follow:)

[H.R. 10936, 87th Cong., 2d sess.]

A BILL To permit the Postmaster General to extend contract mail routes up to one hundred miles during the contract term

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the second sentence of subsection (a) of section 6424 of title 39, United States Code, is amended by striking out "fifty miles", and inserting in lieu thereof "one hundred miles".

[H.R. 11951, 87th Cong., 2d sess.]

A BILL To provide for the transportation of mail by aircraft upon star routes within the Commonwealth of Puerto Rico

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 6303(c) of title 39, United States Code, is amended to read as follows:

"(c) The Postmaster General may not consider a bid for a contract under this section unless the bidder is a resident of or qualified to do business as a common carrier in a State within which one or more points to be served under the proposed contract are located. As used in this subsection, the term 'State' includes the District of Columbia and the Commonwealth of Puerto Rico."

Mr. ICHORD. The members of the subcommittee are Mr. Beckworth, Mr. Moeller, Mr. Cunningham, and Mr. Derwinski, and I was designated as chairman.

H.R. 10936 and H.R. 11006 were introduced by Chairman Murray and Mr. Corbett, respectively, based on an official request of the Postmaster General submitted on March 20, 1962; H.R. 11951 and H.R. 11998 also were jointly sponsored by the same Members pursuant to the Postmaster General's official request submitted on April 12, 1962.

H.R. 10936 and H.R. 11006 would modernize the law relating to contracts for the transportation of mail so as to authorize the Postmaster General to extend any contract mail route during the contract term provided the increase in the one-way length of the route does not exceed 100 miles. Present law permits such extension but not to exceed 50 miles.

H.R. 11951 and H.R. 11998 would merely change the definition of the word "State" as contained in present law, so that the definition will include not only the 50 States and the District of Columbia, as now provided, but also the Commonwealth of Puerto Rico.

The witnesses this morning will be officials of the Post Office Department and a representative of the National Star Route Mail Carriers Association. The Honorable A. Fernós-Isern, Resident Commissioner from Puerto Rico, has indicated he would like to file a statement for the record of the hearing, but information he wants to present to the subcommittee has been detained due to the Eastern Air Lines strike. However, we will be happy to include his statement in the record of the hearing at this point as soon as it is available.

(The statement follows:)

STATEMENT BY HON. A. FERNÓS-ISERN, RESIDENT COMMISSIONER
FROM PUERTO RICO

I appreciate the opportunity to present my views with reference to H.R. 11951, which would authorize the transportation of mail by aircraft upon star routes within the Commonwealth of Puerto Rico.

San Juan, the capital of Puerto Rico, is the receiving center for outside mail coming to Puerto Rico, especially from mainland United States. In turn, it is the distributing center of such mail to the rest of the island. It is also the collecting center for mail from all over the island intended for transportation to continental United States. Surface transportation from San Juan to and from the rest of the cities and towns of Puerto Rico delays distribution, especially in respect of the southern part of the island where Ponce, the second largest city, is located and in the western end of the island, where Mayaguez, the third largest city, is situated.

By transporting by air, to Ponce and to Mayaguez, mail addressed to the cities and towns located to the southern and western regions of the island, valuable time may be saved in the way of distribution. There exists continuous air service from San Juan to Ponce and from San Juan to Mayaguez. I am informed that approximately 24 hours could be saved in distribution if air transportation were used to transport mail to Ponce and Mayaguez from San Juan.

In connection with my study of H.R. 11951, I asked Mr. M. F. Varela, postmaster of San Juan, P.R., whether the authority granted by the bill to transport star route mail within Puerto Rico by aircraft would substantially improve mail service between the points above mentioned, and he has affirmed that this would most definitely be the case. He was enthusiastic that the authority to be given by H.R. 11951 would result in better, more reliable, and faster mail service within the Commonwealth of Puerto Rico.

Accordingly, I give my endorsement to his views and I hope the committee will see fit to report the bill favorably.

Mr. ICHORD. Our first witness this morning will be Mr. Frederick E. Batrus, Acting Assistant Postmaster General, Bureau of Transportation, accompanied by Mr. Adam Wenchel, Associate General Counsel.

STATEMENT OF FREDERICK E. BATRUS, ACTING ASSISTANT POSTMASTER GENERAL, BUREAU OF TRANSPORTATION, ACCOMPANIED BY ADAM WENCHEL, ASSOCIATE GENERAL COUNSEL

Mr. BATRUS. Thank you, Mr. Chairman.

I will first address my comments to the two bills which relate to the modification of the star route laws and then give a short statement with respect to the bills that would modify the air star route law.

Mr. ICHORD. Will you identify yourself for the record?

Mr. BATRUS. My name is Frederick E. Batrus, Acting Assistant Postmaster General, Bureau of Transportation, Post Office Department.

The purpose of this legislation, H.R. 10936 and H.R. 11006, is to modernize the law relating to contracts for the transportation of mail to permit the extension of contract mail routes from "up to 50 miles" to "up to 100 miles" during the contract term.

Under present law, 39 U.S.C. 6424(a):

The Postmaster General, in cases where the mail service would be improved, may obtain additional service or extend routes under contract. Extensions ordered during a contract term may not, in the aggregate, increase the one-way length of a route more than 50 miles.

In the past there have been several instances when it would have been sound business practice to extend truck routes. Such extension with the present contractor was prohibited by this law. It was necessary to readvertise the service or add a new contract in each case to cover the extension. If the Postmaster General is vested with discretionary authority to permit extension of star routes up to 100 miles, operations could be handled more efficiently and quickly and there would be some savings to the Department. With the improvement of highways and the greater distances over which mail is now being trucked, the Postmaster General should have more flexibility in making extensions of such routes.

With respect to H.R. 11951 and H.R. 11998, the purpose of this legislation is to clarify the Postmaster General's authority to contract for the transportation of any class of mail by aircraft upon star routes within the Commonwealth of Puerto Rico.

Under the present law 39 U.S.C. 6303 (a):

The Postmaster General may contract for the transportation of any class of mail by aircraft upon star routes—

- (1) whenever he finds it to be in the public interest because of the nature of the terrain or the impracticability or inadequacy of surface transportation; and
- (2) where the cost is reasonably compatible with the service to be performed.

Also, under the present law (39 U.S.C. 6303(c)), the Postmaster General is precluded from considering the bid for a contract for the transportation of any class of mail by aircraft upon star routes—

unless the bidder is a resident of or qualified to do business as a common carrier in a State within which one or more points to be served under the proposed contract are located. As used in this subsection, "State" includes the Territory of Hawaii (now State of Hawaii) and the District of Columbia.

The Post Office Department takes the position that, for practical purposes, it is in the public interest that section 6303 of title 39, United States Code, include the Commonwealth of Puerto Rico.

It could be argued that section 6303(c) is a restriction upon the Postmaster General's authority, intended to limit air star routes to those routes serving one or more points within the 50 States or the District of Columbia. The enactment of the proposed legislation would remove any basis for the latter contention.

Accordingly, we have asked that this bill be enacted in order to make certain there is no misunderstanding with respect to the meaning as it may apply to the Commonwealth of Puerto Rico.

These are our statements with respect to these two bills. If there are any questions, we would be very happy to answer them.

Mr. ICHORD. We will take the bills up one at a time.

First, H.R. 10936. Does the gentleman from Illinois have any questions?

Mr. DERWINSKI. I have two questions.

You state there would be some savings to the Department. Do you have any idea as to what the savings would actually be?

Mr. BATRUS. We cannot give any estimate as to the total amount of savings, but the savings would be derived in situations such as where we have a contractor now operating under a 4-year contract, and we would like to extend his contract 54 miles. Under the law we would not be able to do that unless we arranged for advertising for bids, probably for a separate contract. This may mean we would be denied the benefits which would result from having the existing contractor extend his existing operation which may be less costly than if we were to establish two separate contract operations.

Mr. DERWINSKI. One other question. If this 50-mile limitation is inflexible, as it obviously is, why have any limitation at all? Why use up to 100 miles? Why not give you an open-end provision?

Mr. BATRUS. I believe the provision implements the basic provision of the law, which requires advertising for bids for this kind of service. If there is to be major change, a very substantial change in the service, then basically we would be required to advertise for bids. That is the fundamental principle on which this law is based.

It first had a provision, if I recall correctly, allowing extensions up to 25 miles in the early years of this law, which dates back, as a matter of fact, to about 1845. This was extended then to 50 miles, and with the growth of highway operations and the growth of the postal service, we feel now this should be extended to 100 miles.

Mr. ICHORD. Mr. Batrus, over how long a period of time are these star route contracts let?

Mr. BATRUS. Under the law, a maximum of 4 years, and most are for a 4-year term.

Mr. ICHORD. The Congress has written into the law relating to star routes considerable security provisions for your star route carriers.

For my own information, actually there is no open competitive bidding insofar as the contract is concerned for a star route carrier who has been carrying the mail for a great many years?

Can you tell the committee how the contracts are let, and what security the star route carriers have?

Mr. BATRUS. The contract is let after advertising for bids, and then it is awarded to the lowest responsible bidder. This is usually for a 4-year term.

Mr. ICHORD. If I may interrupt, the Post Office Department can let the contract for a shorter period than 4 years if it so desires?

Mr. BATRUS. It may under the law, but it is usually a 4-year term. When the contract is about to expire, the Department may either advertise it for bids, or may renew it with the existing contractor at the end of the term. Basically, we have been, by and large, renewing the majority of the contracts with the existing contractor unless there is good reason not to.

Mr. ICHORD. I presume they are usually let on a per mile basis, are they not?

Mr. BATRUS. They are usually let on what we call an annual rate of compensation for the services.

Mr. ICHORD. If there was any change in the annual rate, you would have to put it up for competitive bidding?

Mr. BATRUS. Not exactly. There is a provision in law which provides for increasing the rate if changed conditions caused an increase in his costs and there is sufficient justification for this, the rate can be increased.

Mr. ICHORD. During the contract term?

Mr. BATRUS. Yes. Also, in some situations, there may be minor changes in the operation and the rate may be changed, sometimes increased because of increased services that he is performing, increased number of trips, for example, or it may be decreased. The determination still must be made, however, at the end of the contract term as to whether the contract should be renewed or advertised.

Mr. ICHORD. The Post Office Department is granted by law considerable discretion on how much it pays a star route carrier?

Mr. BATRUS. In the first instance, it has no discretion at all. It goes to the lowest responsible bidder.

Mr. ICHORD. Of course, the Post Office Department can change that later on by reviewing the route and finding that the star route carrier is not getting sufficient compensation?

Mr. BATRUS. It could only change it when, under the law, there are changed conditions since the date he entered into the contract which were not foreseen and which increased his cost.

For example, if he were to have a substantial change in the taxes that he is required to pay which could not be foreseen at the time he entered into the contract, he would make a claim to the Department and ask that this cost be recognized, and that we adjust his rate of compensation accordingly.

Mr. ICHORD. In the Midwest many of these star route carriers, rather than carry mail from post office to post office, are actually performing the services of a rural mail carrier. They actually deliver mail to patrons. I know in Missouri, most of the work is involved in delivering mail to patrons between the two post offices.

You refer in your testimony here to truck routes. Does this apply only to truck routes, or will this apply also to star routes that are involved in delivering mail to patrons?

Mr. BATRUS. It will apply to the latter as well. It will apply to all contracts entered into under the star route law.

Mr. ICHORD. Thank you very much.

Does the gentleman from Illinois have any questions on H.R. 11951?

Mr. DERWINSKI. I have a question.

I do not see any objection to the bill, yet I cannot quite miss the opportunity to comment that your statement in support of the bill seems to miss a point.

For example, if the present law, by the use of the word "State," excludes Puerto Rico from this program by which transportation of mail by air is provided, why was not this adjusted much earlier, and why was it not taken into consideration at the time Puerto Rico was excluded?

Mr. BATRUS. Mr. Congressman, we are informed by our general counsel that there is merely a question that could be raised as to whether this basic law does cover the territory of Puerto Rico because it refers to a State. For this reason, it is felt by the Department, and advocated by our general counsel, that we have this bill enacted in order to make doubly sure there is no doubt about this. So it is just a question of a doubt having arisen as to whether this might include the Commonwealth of Puerto Rico.

Mr. DERWINSKI. Are you providing transportation of mail by air and star routes in Puerto Rico at the present time?

Mr. BATRUS. Yes, sir.

Mr. DERWINSKI. All you are doing is asking for complete legal protection for something you are doing anyway?

Mr. BATRUS. Yes, sir; that is what I would conclude.

Mr. DERWINSKI. The reason I raise the question, I noticed in most of our legislation we automatically include the Commonwealth of Puerto Rico. We do that regardless, whether or not the program would seem to cover it. I wonder why this oversight occurred.

Mr. WENCHEL. This law goes back to 1938, before Puerto Rico was a Commonwealth.

Mr. DERWINSKI. I see.

Mr. ICHORD. Where is this route by air transportation?

Mr. BATRUS. Between San Juan and Viequez and Culebra. These are two islands within the Commonwealth.

Mr. ICHORD. Let me ask you this. Perhaps I should direct this question to Mr. Wenchel.

We have had this matter arise several times before this committee where the Department believed the law should be interpreted in such a way and then takes action and then comes before the Congress to get assurance that is the way the law is, or get protection on the way they are operating.

What is your procedure on a matter such as this within the Post Office Department? What is the actual process of making your decision whether to go into these things or not?

Mr. WENCHEL. I am not sure of the history of this particular route, but I assume what happened is, at the time the service was commenced the people who made the decision did not realize there was any legal question involved and went forward with it. Then subsequently, I gather, someone thought there might be a question and therefore this proposal.

Mr. ICHORD. Any further questions?

Thank you very much.

We have as a witness from the National Star Route Mail Carriers Association, Mr. Charles D. Ablard.

STATEMENT OF CHARLES D. ABLARD, ATTORNEY FOR NATIONAL STAR ROUTE MAIL CARRIERS ASSOCIATION, ACCOMPANIED BY LAWRENCE E. ERNST, GENERAL MANAGER, NATIONAL STAR ROUTE MAIL CARRIERS ASSOCIATION

Mr. ABLARD. Mr. Chairman and members of the subcommittee, my name is Charles D. Ablard, a partner in the law firm of Ablard & Harrison, 930 Federal Bar Building, Washington, D.C. Our firm is counsel to the National Star Route Mail Carriers Association. I was the first judicial officer and Chairman of the Board of Contract Appeals of the Post Office Department from 1958 to 1960. I appreciate very much the opportunity of appearing before this committee to testify in support of H.R. 10936, and the identical companion bill, H.R. 11006.

Accompanying me is Mr. Lawrence E. Ernst, general manager of the National Star Route Mail Carriers Association, who has had many years of experience in this area and was formerly the Director of Railway Transportation in the Post Office Department.

H.R. 10936 would grant authority to the Postmaster General to extend a star route up to 100 miles without readvertisement of the route. Under existing law the Postmaster General cannot extend a star route more than 50 miles without readvertising the route.

In a day when transportation was slower and roads were shorter, extensions of routes in excess of 50 miles were infrequent. Today extensions are much more common and 100 miles is a considerably more realistic figure.

If the Post Office Department and the star route carrier agree, as they usually do, it is to their mutual advantage to extend a route rather than to readvertise. The advantages of an extension of a route by negotiation rather than by readvertising are as follows:

1. The Post Office Department has greater flexibility.
2. This will enable the Post Office Department to continue to contract for the service with an experienced contractor.
3. A star route carrier, who is performing competently pursuant to his contract, knows that his contract will not be terminated because the Post Office Department needs to extend the length of his route.
4. The star route carrier, who successfully bids on a contract, knows that he will be permitted to perform pursuant to that contract as long as his performance is good. He need not worry that a competitor will be given a chance to underbid him by a very insignificant sum of money simply because the Post Office Department needs to extend the route by 60 or 70 miles.
5. A star route carrier can plan ahead. He knows that a 4-year contract is more likely to last 4 years.

If the rationale for the present law, which permits a 50-mile extension by negotiation, is sound, and I believe it is, then that same rationale soundly applies to the 100-mile extension provision of H.R. 10936, which is nothing more than an updating in view of modern fast transportation.

H.R. 10936 is consistent with the comparable provision contained in H.R. 6695, which pertains to highway post offices and which was passed by the House in the last session and has just recently been reported by the Senate Committee on Post Office and Civil Service.

The Postmaster General supports H.R. 10936. The National Star Route Mail Carriers Association which represents over 6,000 individual star route carriers all over the country, supports H.R. 10936. We respectfully urge your committee to report favorably H.R. 10936.

I would be happy to attempt to answer any questions.

Mr. DERWINSKI. How often during the course of a year has it been necessary to readvertise for extension of star routes?

Mr. ABLARD. This is not a frequent thing, Mr. Derwinski. I think the Post Office Department would back me up on this, it does not happen too frequently.

Our feeling is, if it happens just once, this is sufficient reason to change this provision because it is a more realistic figure, and I think the extension from 50 to 100 miles would lessen the likelihood by a considerable degree of it even happening once in the course of a year.

Mr. DERWINSKI. I notice in your statement representing the national star route carriers, you naturally emphasize the benefits to them of this proposal. I wonder how great a problem this is.

Mr. ABLARD. As I say, if you are looking at it in depth, I do not think it is a great problem in volume of change. It could conceivably become one.

Our thinking again, as I say, is if it affects one or two adversely, this is sufficient reason to give the Postmaster General this flexibility.

Mr. DERWINSKI. There are 6,000 star route carriers, and over 6,000 contracts. How many are for 4 years?

Mr. ABLARD. There are about 10,000 total contracts let by the Post Office Department, and 6,000 are in our organization. Ninety-five percent are for 4 years at least.

Mr. ICHORD. You say you have approximately 10,000 star route carriers?

Mr. ERNST. Between 10,000 and 12,000. It varies.

Mr. ICHORD. What percentage of these star route carriers actually deliver mail to patrons? Do you have any information on that?

Mr. BATRUS. 40 to 50 percent of the routes have some delivery service to patrons.

Mr. ICHORD. Really, this authority is probably needed more in the case of star route carriers who deliver mail to patrons than it would be from post office to post office; is that not so?

Mr. BATRUS. No, sir. It would be needed more in cases where we have an extensive contract operation, a large-scale operation, rather than the smaller contract-type operation which is the kind that serves the patron. It would be more applicable to trucking operation rather than the type which includes delivery to patrons.

Mr. ICHORD. The contracts are let on an annual basis?

Mr. BATRUS. On a 4-year term. Compensation is based usually on an annual compensation that will be paid monthly for the services they perform.

Mr. ABLARD. Every year one-fourth come up.

Mr. ICHORD. How are star route carriers paid under the contract?

Mr. BATRUS. An annual rate of compensation that is determined under the contract. We advertise for bids on an annual rate basis for specified services. The services are described fully in the advertisement.

Mr. ICHORD. Let's assume that the Congress enacts this legislation and you wish to extend the route 75 miles. What will be the process in determining the remuneration under the contract?

Mr. BATRUS. In the first instance, we would determine whether we should negotiate with the existing contractor. This law would permit us to do it. Under the existing law, we would have to advertise for bids. Then we would determine from our own experience what the rate of compensation for the additional mileage should be, and discuss this with the existing contractor. This may be a prorate of the existing annual compensation when it is broken down to the rate per mile that we are actually paying him. In some instance, it could be less than the existing prorate of the mileage under the existing contract.

So it would depend upon the circumstances, Mr. Chairman, as to what the rate of compensation would be. This would be done by negotiation with the carrier and would depend upon the circumstances.

Mr. ICHORD. Mr. Derwinski.

Mr. DERWINSKI. If an existing star route carrier did not wish to negotiate with you for the extension of his present route, you would have no alternative than but to advertise under your present procedure?

Mr. BATRUS. That is correct. His contract would not require him to do this.

Mr. DERWINSKI. Would we be setting up a situation here by which it would become almost mandatory for the star route carrier to accept your terms in negotiations?

Mr. BATRUS. No, sir. This is completely discretionary on our part, and it would have to be by mutual agreement on his part.

Mr. DERWINSKI. That is not my point. If you have an existing star route contract, and in this particular case if you intended to extend the route by negotiations, as we will permit you to do, and the star route carrier in this specific instance would not see fit to extend his route, would this not in effect be setting up a situation that might work against his interest at the time his contract expired?

As I see it, the moment you decide you want to extend an existing route, he would have to accept your negotiation terms, or he would be out of business when his contract ended.

Mr. BATRUS. It is possible, depending upon the circumstances and the kind of transportation requirements we would have in that area, that the extension may be handled as a separate contract and advertised as such, in which case his contract would remain intact.

Mr. DERWINSKI. For the duration of the term.

Mr. BATRUS. Of the term. There is a possibility it would continue as it had been operated under the contract terms. The new operations following the 4 years may be the same.

Mr. DERWINSKI. I presume this section of the Code does cover the Commonwealth of Puerto Rico.

Mr. WENCHEL. Yes.

Mr. ICHORD. Mr. Batrus, when the contract expires, then you have the discretion to lengthen the route under the present law?

Mr. WENCHEL. During the second contract term we could extend it again.

Mr. ICHORD. At the expiration of the contract term, you could completely reorganize all your routes and let them on a new basis?

Mr. WENCHEL. Provided we put them out on competitive bidding.

Mr. ICHORD. Mr. Ernst, do you wish to testify before the committee?

Mr. ERNST. I have no prepared statement.

Mr. ICHORD. Will you identify yourself for the record?

Mr. ERNST. I am Lawrence E. Ernst, general manager of Star Route Mail Carriers Association at 301 East Capitol Street, Washington, D.C.

Mr. ICHORD. Do you concur in the statement as presented by Mr. Ablard?

Mr. ERNST. I do.

May I make a reference to the extension and the position of the contractor?

I know of no instance where a contractor has refused to negotiate for an extension of his route. He already has money invested in expensive equipment, and this provides the facilities for greater utilization of the equipment and it would naturally increase his earning power. I am sure this would not be used to the contractor's disadvantage.

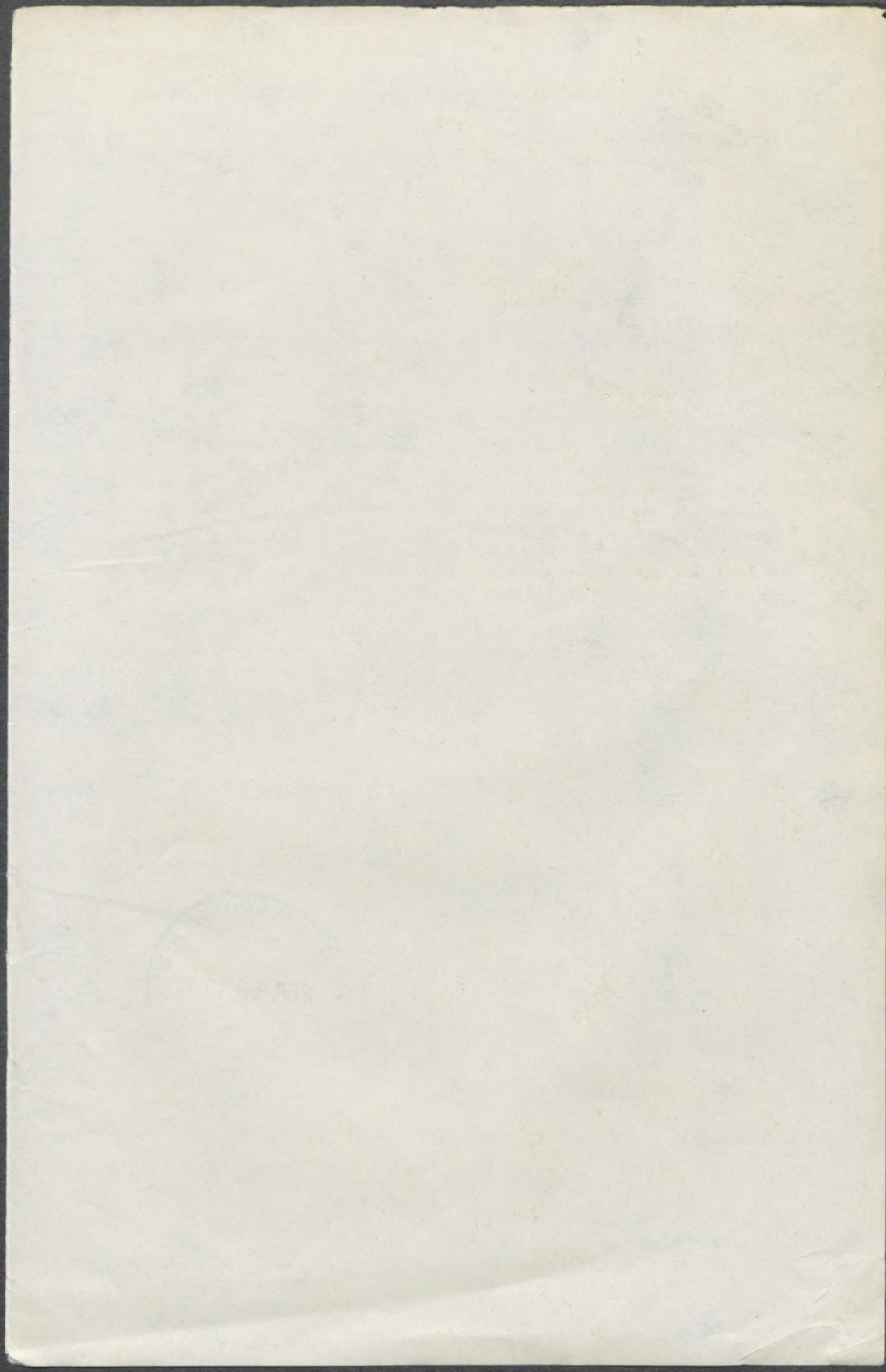
Mr. ICHORD. The star route carrier could always refuse to negotiate if it were not to his advantage and carry the mail for the length of the contract.

Mr. DERWINSKI. No further questions.

Mr. ICHORD. The subcommittee will now go into executive session.

(Whereupon, at 9:50 a.m., the committee proceeded to executive session.)





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