

on April 24, the Office of the Consumer Advocate argues that discovery in this proceeding had been hampered by certain practices of the Postal Service; that the Service has relied on flawed legal premises regarding appropriate use of Motions to Excuse from Answering; that the Commission should make greater use of its authority to suspend proceedings when the Postal Service fails to comply with discovery requests; and that the Commission should consider initiating a rulemaking proceeding to address problems with the discovery process. Response of the Office of the Consumer Advocate to the Notice of Withdrawal of Request for a Recommended Decision and Motion to Close Docket Pursuant to Presiding Officer's Ruling No. MC97-2/7, April 24, 1997. OCA claims that the difficulties it cites "have occurred in many, if not all, ratemaking and classification proceedings in recent memory[.]" and therefore recommends that the Commission take a "fresh look" at its discovery process, perhaps culminating in a rulemaking proceeding. *Id.* at 22.

The Commission shall grant the Postal Service's motion to terminate this proceeding. In view of postal management's determination to discontinue its efforts in support of the proposals pending before the Commission in this docket—an action which the Board of Governors has specifically authorized—continuing these proceedings would appear to serve no practical purpose.

However, while this docket will be closed, the Commission strongly encourages the Postal Service to supply the Commission and participants with as much material responsive to outstanding Presiding Officer's Information Requests and discovery requests as is feasible at this time. Both the Commission and the participants have invested considerable efforts in exploring the factual bases of the Service's mail classification and rate proposals in this case.³ To the extent

limited purpose. Instead, they request "that the Commission exercise its powers pursuant to 39 U.S.C. §3623(b) and, on its own motion, initiate a proceeding to consider whether the maximum weight limitation * * * imposed upon mail otherwise eligible for bound printed matter should be increased to 15 pounds, as the Postal Service has proposed in this proceeding." *Id.* at 1. Because the Joint Motion is intended, by its own terms, as a petition for the Commission's initiation of a special-purpose mail classification change proceeding *sua sponte*, it will be considered independently, rather than ruled upon as a pending motion in this docket.

³OCA's response, *supra*, is indicative of the zealous, but sometimes unavailing, discovery efforts of some participants in this proceeding. In light of the current posture of the case, there is no opportunity to resolve the discovery-related issues

that the Service had undertaken to prepare responses to these discovery efforts prior to the determination to withdraw the Request, failure to produce them would appear wasteful, especially if the same proposals are to likely to be re-litigated in an omnibus rate case or other subsequent proceeding. Consequently, while proceedings will be terminated formally by this order, the Commission urges the Postal Service to provide responses to discovery requests or to outstanding Presiding Officer's Information Requests it might be able to prepare conveniently, in order to avoid needless duplication of effort by the Commission and participants in a putative later proceeding.

The Commission does not believe that terminating proceedings at this time will result in prejudice to the due process rights of any participant. The Complainant in Docket No. C97-1, who moved to hold that proceeding in abeyance pending consideration of the Postal Service's proposed changes in parcel pricing in this case, has resumed prosecution of its Complaint in that docket, and the Commission has granted its request to convene an informal conference to discuss the possibility of settlement. Order No. 1170, Order Granting Request To Schedule Informal Conference, April 18, 1997.⁴ Additionally, as noted earlier, the Commission will consider the joint motion to initiate a new proceeding to consider one proposed mail classification change in the Postal Service's Request—and any other similar motions—independently of this docket.

It is ordered:

1. The Motion of the United States Postal Service to Close Docket No. MC97-2 is granted.
2. In view of the termination of these proceedings, all pending motions in Docket No. MC97-2 are rendered moot.
3. The Secretary shall cause this Notice and Order to be published in the **Federal Register**.

raised by OCA. However, the Commission will continue to bear these considerations in mind in adapting its rules to discovery practice in future proceedings.

⁴The informal conference was held on May 1, 1997. According to a status report subsequently filed by the Postal Service, the consensus of those attending the conference was that there are sufficient grounds for exploring the possibility of settlement, and to that end parties are now engaged in a joint effort to draft a settlement agreement. Status Report Pursuant to Order No. 1170, May 7, 1997.

By the Commission.

Margaret P. Crenshaw,
Secretary.

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POSTAL SERVICE

Sunshine Act Meeting; Notification of Item Added to Meeting Agenda

DATE OF MEETING: May 5, 1997.

STATUS: Closed.

PREVIOUS ANNOUNCEMENT: 62 FR 20227, April 25, 1997.

CHANGE: At its meeting on May 5, 1997, the Board of Governors of the United States Postal Service voted unanimously to add an item to the agenda of its closed meeting held on that date: Consideration of the Report of the Capital Projects Committee on the Tray Management System.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Koerber, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260-1000. Telephone (202) 268-4800.

Thomas J. Koerber,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-22656; 813-150]

The BSC Employee Fund, L.P. and BSCGP Inc.; Notice of Application

May 7, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: The BSC Employee Fund, L.P. (the "Partnership") and BSCGP Inc. (the "General Partner").

RELEVANT ACT SECTIONS: Order under section 6(b) of the Act for an exemption from all provisions of the Act except sections 7, 8(a), 9, 17 (except for certain provisions of sections 17(a), (d), (f), (g), and (j) as described herein), and 36 through 53, and the rules and regulations thereunder.

SUMMARY OF APPLICATION: Applicants request an order to permit the Partnership, and other partnerships offered to the same class of investors (the "Subsequent Partnerships") (together with the Partnership, the "Partnerships"), to engage in certain