information is set out in Commission Paper—SECY–28–273, ''Potential Funding Assistance for Agreement States for Closure of Formerly Terminated NRC Licenses'' dated November 20, 1998. In this paper, the NRC staff reports on Agreement State and NRC staff actions and presents options and recommendations for funding Agreement States' efforts in addressing this issue.

The Commission responded to this paper through issuance of a Staff Requirement Memorandum (SRM) for SECY–98–273. In this memorandum, the Commission approved the NRC staff recommendation to continue Agreement State jurisdiction over formerly licensed sites and to develop a grant program to make funds available to Agreement States for file review and remediation in certain cases. The recommended option is to pursue a separate appropriation from the General Fund. This separate appropriation, if approved, would fund Agreement States, through grants, to assist in completing file reviews and the remediation of formerly NRC-licensed sites in certain cases. Such cases include sites when no responsible party can be located, or the responsible party does not have the resources to conduct the remediation, and the site does not qualify for cleanup under the Comprehensive Environmental Response, Compensation, and Liability Act.

In the SRM for SECY–98–273, the Commission directed the staff to seek stakeholder views before pursuing a General Fund appropriation. Public comments are requested on:

- The option of pursuing a separate appropriation from the General Fund to establish a fund for use by Agreement States through grants to assist in file reviews and, when necessary, the remediation of formerly NRC-license sites.
- Aspects that should be considered in development of a decision framework that describes how NRC would allocate the appropriated funds, if approved, to individual Agreement States.
- Aspects that NRC should consider in development of a grant program for providing funds, if approved, to individual Agreement States to ensure a relatively fair and equitable allocation of available funds. For example, the funds could be provided to individual Agreement States based on the estimated cost for each site to comply with a 25 millirem/year public dose standard. Additional risk-ranking of the sites may also be necessary in the event that appropriated funds are less than requested.
- Additional information on cost estimates for site remediation (See cost estimates stated in SECY–28–273. Also see all Agreement States letter SP–99–016.)

The above three documents, SECY–28–273, SRM–SECY–28–273 and SP–99–016, are available on the NRC homepage at: *http://www.hsrd.ornl.gov/nrc/agstates/program/sp99016.pdf*

Dated at Rockville, Maryland, this 18th day of May 1999.

For the Nuclear Regulatory Commission.

Paul H. Lohaus,

Director, Office of State Programs.

[FR Doc. 99–13020 Filed 5–21–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Thermal-Hydraulic Phenomena; Revised

A meeting of the ACRS Subcommittee on Thermal-Hydraulic Phenomena is scheduled to be held on Wednesday, May 26, 1999, 8:30 a.m., Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The meeting agenda has been revised to delete discussion of the resolution of Generic Safety Issue (GSI) 23: Reactor Coolant Pump Seal Failure due to the unavailability of NRC staff documents pertaining to this matter. Notice of this meeting was published in the **Federal Register** on Monday, May 3, 1999 (64 FR 23690). All other items pertaining to this meeting remain the same as previously published.

For further information contact: Mr. Paul A. Boehnert, cognizant ACRS staff engineer (telephone 301/415–6888), between 7:30 a.m. and 4:15 p.m. (EDT).

Dated: May 17, 1999

Richard P. Savio,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 99–13019 Filed 5–21–99; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of a Revised Information Collection: Standard Form (SF) 3102

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management has submitted to the Office of Management and Budget a request for review of a revised information collection. The SF 3102, Designation of Beneficiary, is used by employees and annuitants covered under the Federal Employees' Retirement System to designate a beneficiary to receive any lump sum due in the event of his/her death. Approximately 1,273 SF 3102 forms are completed annually. Each form takes approximately 15 minutes to complete. The annual estimated burden is 318.25 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov

DATES: Comments on this proposal should be received on or before July 23, 1999.

ADDRESSES: Send or deliver comments to—

John C. Crawford, Chief, FERS Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3313, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Cyrus S. Benson, Budget and Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–12971 Filed 5–21–99; 8:45 am]

BILLING CODE 6325–01–P

POSTAL RATE COMMISSION

[Docket No. C99–1; Order No. 1239]

Complaint Case

AGENCY: Postal Rate Commission.

ACTION: Notice of new complaint docket.

SUMMARY: This order announces a formal complaint docket related to a pilot program entailing electronic delivery service. It also addresses related procedural matters. These actions allow issues raised by the Service's participation in this program to be addressed.

DATES: See **SUPPLEMENTARY INFORMATION** section for dates.

ADDRESSES: Address all communications regarding this notice to the attention of Margaret P. Crenshaw, Secretary of the Commission, 1333 H Street NW., Suite 300, Washington, DC 20268–0001.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 1333 H Street NW., Suite 300, Washington, DC 20268–0001.

SUPPLEMENTARY INFORMATION: On Oct. 5, 1998, United Parcel Service (UPS) submitted a formal complaint against the United States Postal Service (Postal Service or Service) pursuant to 39 U.S.C. 3662, claiming that the Service's introduction of a service offering called Post Electronic Courier Service (Post ECS) violates various procedural and substantive requirements of the Postal Reorganization Act. In response, the Postal Service challenged the merits of each of complainant's claims and moved to dismiss the complaint.[1] For the reasons presented herein, the Commission denies the Service's motion and initiates formal proceedings to consider the complaint.

Factual Background

The facts recited in the following summary are not in dispute. They are derived either from assertions in the complaint that the Service has not contested, or from the Service's own filings in this docket to date.[2]

In May 1998, the Service began its participation in a pilot program to introduce a service under arrangements made with Canada Post Corporation (Canada Post), France's LaPoste (LaPoste), the International Postal Corporation (IPC), and a software supplier. The service offered in the pilot program is called Post ECS and its availability is limited to 3,500 licensees. To date, the Service has licensed between 25 and 100 U.S. companies to use Post ECS; 40 of these companies are dispersed through 15 states.

Post ECS is an all-electronic service designed to transmit documents securely from a sender to an intended recipient. Licensees access the service from a computer terminal by contacting a Postal Service electronic commerce server through the Internet, entering an assigned password, specifying the intended recipient of the document, and transmitting it electronically to the server. The Postal Service notifies the addressee by e-mail that the document is available at a specified URL address, and states that it can be retrieved using the Internet within a specified amount of time. The addressee—who may be located in the United States or elsewhere—uses a computer terminal to access the Internet site specified in the Postal Service's e-mail message, enters an assigned password, and downloads the document. At present, the Postal Service is providing Post ECS service free of charge to its licensees.

Post ECS, which is currently being provided in the status of an operations test, has never been the subject of a formal request of the Postal Service lodged with the Commission under 39 U.S.C. 3623 or 3622, nor of a Postal Service proposal to the Commission to make a substantially nationwide change in the nature of postal services under 39 U.S.C. 3661. According to the Postal Service, Post ECS is scheduled to continue at least through mid-June 1999, and there are no current plans to request approval from the Board of Governors for an extension, nor does the Service contemplate that any such request would be necessary or appropriate at this juncture.

Substance of the Complaint

The complaint of UPS is grounded in three separate claims. One claim alleges a substantive deficiency in the free rate associated with Post ECS service. The other two claims involve the lack of a regulatory pedigree for Post ECS under the provisions of 39 U.S.C. chapter 36.

The initial claim is premised on an allegation that Post ECS is a class of mail or type of mail service which may be established by the Governors of the Postal Service only in accordance with the provisions of chapter 36 of the Reorganization Act. Inasmuch as the Postal Service has not requested the Commission to recommend establishment of Post ECS as a classification of mail pursuant to 39 U.S.C. 3623, nor to recommend an associated rate or fee for the service pursuant to section 3622, UPS claims that there has been no showing that provision of Post ECS is in accordance with the policies of the Reorganization Act and the factors prescribed in sections 3622 and 3623. Accordingly, UPS argues, the Service's provision of Post ECS violates the Postal Reorganization Act. Complaint at 2.

A separate claim likewise involves the service's lack of regulatory pedigree, and also is premised on an assertion that Post ECS is a postal service. Because Post ECS allegedly is being used by a substantial number of companies to send documents nationwide, UPS claims, providing the service could impact on mailers' use of other mail services such as registered and certified mail. Consequently, UPS argues, the Postal Service's institution and continuing provision of Post ECS constitutes a change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis. In light of the Postal Service's failure to submit a proposal to the Commission within a reasonable time prior to making such a change, as 39 U.S.C. 3661 requires, UPS claims that the Service's provision of Post ECS violates section 3661. Id. at 3–4.

The complaint's substantive challenge to Post ECS service relies on the requirement in 39 U.S.C. 3622(b)(3) that each class or type of mail service bear the costs attributable to it plus a reasonably assignable portion of other costs, together with the impact consideration in 3622(b)(4). By providing Post ECS at no charge, UPS alleges, the Postal Service violates the prohibition in section 3622(b)(3) against providing a class or type of mail service at no charge, and introduces a cross-subsidy of users of that service by other mail users. Inasmuch as Post ECS competes with a similar service UPS offers, it also argues that the Postal Service's provision of Post ECS at no charge constitutes unfair competition in violation of section 3622(b)(4) of the Act, and may deprive UPS of customers for its similar service, with a consequent loss of revenue. Id. at 3.

Postal Service Answer

The Postal Service filed its answer to the UPS complaint on Nov. 5, 1998.[3] With respect to the factual allegations made in the complaint, the Service generally does not contest them, with two exceptions. The Service denies that Post ECS is a ''document delivery service,'' in the sense of there being any hard-copy delivery of documents or letters. Additionally, the Service denies that ''substantial numbers'' of

[1] Motion of the United States Postal Service to Dismiss, Nov. 5, 1998. As provided in order no. 1221, complainant filed the answer of United Parcel Service in opposition to motion of United States Postal Service motion to dismiss complaint on Dec. 16, 1998.

[2] In addition to its answer to the UPS complaint filed on Nov. 5, 1998, the Postal Service has filed responses to most of a series of questions directed to it by the Commission in order no. 1229, issued Feb. 17, 1999. Partial Response of United States Postal Service to Commission Order No. 1229, March 3, 1999. In response to a Postal Service motion for reconsideration of order no. 1229, the Commission has deferred action on documents and other information responsive to question 4(a) in that order, in view of commercially sensitive information the Service claims would be contained in a response. Order No. 1230, Order Denying Motion of United States Postal Service for Reconsideration of Order No. 1229 and Directing Immediate Provision of Responses to Questions 1, 2, 3 and 4(b), March 2, 1999.

[3] Answer of the United States Postal Service, Nov. 5, 1998.

companies are using Post ECS, or that its usage can be characterized as ''nationwide.'' Id. at 2, 4.

The Postal Service's affirmative allegations include a characterization of Post ECS as a limited test of a totally electronic secure document delivery system under the auspices of IPC. The Service represents that Post ECS does not use the Postal Service's physical retail, mail processing, or delivery networks, and thus is not a ''postal service'' under the statutory provisions invoked by UPS. Therefore, the Service alleges, it was not required to submit a request for a recommended decision or advisory opinion from the Commission prior to offering Post ECS service. Id. at 6–7.

The Postal Service's answer also claims that the Commission has no subject matter jurisdiction over the complaint. Finally, citing the Governors' decision in docket no. C96–1, the Service asserts that the section 3662 complaint procedure does not provide a means for interested persons to challenge the status of products as ''postal'' or ''nonpostal'' services. Id. at 7.

Postal Service Motion To Dismiss

On the same date it filed its answer, the Postal Service submitted a motion to dismiss the complaint.[4] As the first ground for dismissal, the Service claims that the Commission lacks statutory authority to resolve a complainant's challenge of a Postal Service determination not to seek a recommended decision before introducing a new service alleged to be ''postal'' in character. According to the Service, complaint proceedings before the Commission were not intended to be, and are not, appropriate for resolving issues as to whether the Postal Service has acted beyond its lawful authority by offering a service. Rather, the Service argues, a United States district court is the appropriate forum for considering any such claims, as has been done in prior controversies. Id. at 1–6.

Even assuming that the Commission has authority to address the question of whether Post ECS is a ''postal'' or ''nonpostal'' service, the Service further argues, the complaint should still be dismissed because that service is both nonpostal and non-domestic. Courts, the Commission and the Governors have assessed the ''postal'' character of services by investigating their relationship to the Postal Service's hardcopy delivery network. Inasmuch as Post ECS is a totally electronic service, with no relationship to traditional functions such as collection, acceptance, processing, handling, transportation and delivery afforded hardcopy mail, the Service argues that it is not a ''postal'' service as the term has been defined to date. Moreover, because Post ECS is a global service being tested jointly with the Canadian and French postal administrations, and international electronic document transfers are expected to constitute a significant component of Post ECS transactions, the service is not a domestic postal service within the purview of the Commission's jurisdiction. Id. at 7–16.

Responses of Complainant and Intervenor Coalition Against Unfair USPS Competition (CAUUC)

Both UPS and CAUUC[5] filed responses in opposition to the Postal Service's motion to dismiss.[6] On the subject of the Commission's jurisdiction to consider the complaint, UPS cites the judicially-established principle that regulatory agencies have authority initially to determine the scope of their jurisdiction. Applying the principle to this controversy, UPS asserts that the Commission clearly has authority to determine whether Post ECS is, or is not, a ''postal'' service that falls within its jurisdiction to render a recommended decision. Furthermore, UPS observes, the Commission has consistently exercised this authority to determine whether a given service offering falls within its jurisdiction in past complaint and other proceedings, most recently in docket no. C96–1. Finally, UPS argues that nothing in the Reorganization Act, nor in a complaining party's ability to seek redress in a federal district court, precludes the Commission from making a determination of its authority over a challenged new service under the section 3662 complaint procedure. UPS Answer at 2–6.

CAUUC also asserts that the Commission has authority to determine whether Post ECS is a ''postal'' service, arguing that a plain reading of section 3662 clearly demonstrates that the Act specifically contemplates complaints regarding the improper offering of a postal service and its associated rates. CAUUC cites the Commission's determination in order no. 1145 of the same issue with respect to the Pack & Send service in the C96–1 complaint proceeding, and argues that the congressional intent to enable citizens to initiate such complaint procedures before the Commission makes its exercise of statutory authority a duty in this and similar cases. CAUUC Answer at 2–5.

Regarding the potentially ''postal'' character of Post ECS, UPS asserts that the service clearly meets the tests previously established by courts and the Commission for reaching an affirmative determination. Because Post ECS serves exactly the same function as traditional, hardcopy mail, UPS argues that the service is not only closely related to delivery of mail, it is the delivery of mail. Citing two decisions of U.S. district courts which have equated e-mail services such as Post ECS with traditional forms of mail, UPS asserts that prior judicial and Commission decisions do not suggest that hard copy delivery is necessary for a service to be classified as ''mail,'' or ''postal'' in nature. UPS Answer at 6–9.

Even assuming the relevance of a linkage to hard copy mail in defining postal services, UPS further argues, Post ECS has an extremely strong structural relationship to such traditional forms of mail because it is both the functional equivalent of written mail and a potential substitute for it. UPS notes that the Postal Service has described Post ECS as an extension of its traditional paper mail services, and equated electronic mail with traditional forms of mail in statements made by Postal Service officials and a witness in docket no. MC98–1. Id. at 9–12.

UPS also asserts that there are strong policy reasons for concluding that Post ECS is a postal service. Given Congress' paramount concern in adopting the ratemaking provisions of the Reorganization Act that the revenues paid by one class of users—especially First Class letter monopoly mailers—not be used to cross-subsidize other Postal Service customers, and the Postal Service's record of losses in connection with its electronic service offerings to date, UPS argues that excluding Post ECS from the Commission's jurisdictional purview would create a large loophole and defeat the congressional intention that all Postal Service customers be treated fairly. Id. at 11–13.

CAUUC also asserts that Post ECS is a postal service subject to the Commission's jurisdiction, arguing that it is not fundamentally different from the mailing online service currently

[4] Motion of the United States Postal Service to Dismiss, Nov. 5, 1998.

[5] Two parties, CAUUC and the Association of Online Professionals, have filed motions to intervene in this case. As the Commission has determined to hear the UPS complaint, the motions will be granted.

[6] Answer of United Parcel Service in Opposition to Motion of the United States Postal Service to Dismiss Complaint, Dec. 15, 1998. Answer of Intervenor CAUUC in Opposition to Motion of U.S. Postal Service to Dismiss Complaint, Dec. 15, 1998.

being considered before the Commission in docket no. MC98–1. CAUUC Answer at 5–6. The Coalition also cites statements made by the Postmaster General and others to the effect that the Postal Service views its entry into electronic services as an extension of its core business, the delivery of traditional mail. Id. at 7–9.

Finally, UPS challenges the Postal Service's argument that Post ECS is outside the Commission's purview because it is an international service. UPS notes the Service's implicit admission that Post ECS is not entirely an international service, only a ''significant component'' of total Post ECS transactions. To the extent the Postal Service is delivering electronic messages from domestic senders to domestic recipients, UPS argues, the Commission has jurisdiction over those transactions. UPS Answer at 13.

Statutory Authority To Consider Complaint

The challenge of the Commission's authority to consider the UPS complaint made in the Postal Service's motion to dismiss requires consideration of the appropriate ambit and application of the statutory complaint provision, 39 U.S.C. 3662. Following a general exploration of the provision's scope, it will be possible to assess its applicability to the instant complaint.

By its terms, the complaint procedure provided in section 3662 is available to two categories of persons: (1) Interested parties who believe the Postal Service is charging rates not in conformity with the policies set out in title 39; and (2) interested parties who believe that they are not receiving postal service in conformity with the policies in title 39. The second category is restrictive, in that an interested party's complaint must be directed to a service or services it is receiving (or allegedly should be receiving), rather than some generalized complaint about postal service. However, the first category contains no such restriction; the only implicit qualification is that a party challenging a rate or rates have an ''interest'' in the subject of the complaint.

Once a qualifying complaint has been lodged, section 3662 commits to the Commission's discretion a choice whether to hold hearings on the complaint, or not. Generally, the Commission has exercised this discretion on a case-by-case basis. However, early in its institutional history the Commission adopted a rule to guide the discretionary exercise, which states:

> The Commission shall entertain only those complaints which clearly raise an issue concerning whether or not rates or services contravene the policies of the [Postal Reorganization] Act; thus, complaints raising a question as to whether the Postal Service has properly applied its existing rates and fees or mail classification schedule to a particular mail user or with regard to an individual, localized or temporary service issue not on a substantially nationwide basis shall generally not be considered as properly raising a matter of policy to be considered by the Commission.

39 C.F.R. 3001.82. While the Commission has not used this regulation to bar absolutely any consideration of individual or localized rate and service complaints—especially where the Postal Service allegedly acted in an arbitrary, discriminatory, capricious or unreasonable manner—it has served as a basis for declining to conduct hearings on controversies that did not raise questions of general postal policy.[7]

If the Commission exercises its discretion to hold hearings on a complaint, section 3662 directs the Commission to proceed down one of two specified paths. If the subject raised by the complaint is ''a matter covered by subchapter II of this chapter''—*i.e.*, the provisions of 39 U.S.C. 3621 through 3628 governing permanent rates and classes of mail—the Commission is directed to conduct formal hearings in conformity with section 3624, as it does in rate and mail classification dockets. If the Commission determines the complaint to be justified, section 3662 instructs it to issue a recommended decision to be acted upon by the Governors of the Postal Service.

However, if the matter is not covered by subchapter II, section 3662 directs the Commission to hold a hearing of an unspecified degree of formality. If after this hearing the Commission finds the complaint to be justified, section 3662 directs it to render a public report to the Postal Service, which shall take such action as it deems appropriate.

It is clear from this review of the mechanisms prescribed for complaint proceedings in section 3662 that the statute—in addition to investing the Commission with discretionary authority to consider a wide range of rate and service complaints—also obliges the Commission to interpret the Reorganization Act and its applicability as part of the complaint process. The Commission is called upon to identify the rate or service issues presented by a given complaint; to determine its relationship to the policies of title 39 generally; and to determine whether the complaint's linkage to the policies of the Reorganization Act is sufficiently strong to warrant further investigation in the form of hearings.

Section 3662 also obliges the Commission to interpret whether the substance of a given complaint is ''a matter covered by subchapter II''—a topic governed by the ratemaking and mail classification functions familiarly performed under sections 3622 and 3623—or outside these regulatory mechanisms. Where the subject of a complaint is a new and unreviewed service offering of the Postal Service and its associated rates, as is the case here, it is impossible to conceive how the Commission can perform this required interpretation without considering the ''postal'' character of the service—which would render it a subchapter II matter—or its ''nonpostal'' quality, which would put it outside the subchapter's regulatory regime.

Where the rate being charged for a new service is the focus of a complaint, as it is here, the Postal Service would have the Commission shirk this interpretive function, under its view that: ''Rate complaints were intended to allow interested parties to challenge the rates being charged, presumably in accord with previous action by the Commission and the Governors, for existing postal services.'' Motion to Dismiss at 2. But there is nothing in the language of section 3662 or its legislative history to suggest that Congress intended any such restriction to rates for services already established under subchapter II. On the contrary, the House Report on H.R. 17070, in which the concept of a rate board independent of the Postal Service (ultimately to become the Postal Rate Commission) originated, included its description of the bill's complaint provision corresponding to section 3662 in a section headed *Procedures for changes in postal service*[,] and contemplated that one possible outcome of finding a complaint to be meritorious would be that ''the Board may recommend litigation of an appropriate change[.]'' H.R. Rep. No. 1104, 91st Cong., 2d Sess. 19, 20 (1970).

The Postal Service characterizes the Commission's review of the ''postal'' or ''nonpostal'' character of services challenged in complaint proceedings as an exercise of ''authority to declare independent actions of the Postal Service to be either lawful or unlawful[,]'' which it argues Congress did not intend to grant the Commission. Motion to dismiss at 3. But this characterization misconstrues the Commission's function in considering a complaint of this type. In determining whether a previously unreviewed

[7] *See, e.g.*, docket no. C98–1, order no. 1227 (dismissing complaint) at 7–9.

service challenged by the complaint of an interested party is appropriate for consideration under the regulatory procedures specified in subchapter II, the Commission is engaged essentially in exercising its mail classification authority, under which it is assigned primary responsibility for interpreting the status of services either proposed or offered by the Postal Service.[8] This assessment was required by the district court's decision that at least some of the special services offered by the Postal Service were subject to the Commission's ratemaking authority. *See Associated Third Class Mail Users* v. *U.S. Postal Service,* 405 F. Supp. 1109 (D.D.C. 1975), *affirmed,* 569 F.2d 570 (D.C. Cir. 1976), *vacated on other grounds,* 434 U.S. 884 (1977). The statutory function performed by the Commission in this setting is essentially identical to the analyses of the various special services offered by the Service in appendix F to the Commission's opinion and recommended decision in docket no. R76–1.[9] The lawfulness of the independent actions by which the Postal Service implemented a service is simply not an issue before the Commission, particularly because the Commission has no equitable powers to enjoin or reverse those actions.

Nor is a potentially aggrieved party's opportunity to pursue an action against the Postal Service in a U.S. district court a basis for concluding that the Commission lacks authority to consider such claims, or should decline to consider them pending judicial action. As UPS points out, while a party may seek redress in federal court in such instances, nothing in the Reorganization Act restricts its right to invoke the Commission's jurisdiction under section 3662.[10] Especially in view of the Commission's judicially-recognized authority on issues of mail classification, it would be unjustifiable to force aggrieved parties to elect a judicial remedy by declining to consider such complaints.

As noted earlier, the complaint filed by UPS directs three charges against the Postal Service's provision of Post ECS service: (1) That it has not been scrutinized under sections 3623 and 3622; (2) that its zero rate contravenes subsections 3622(b)(3) and (4); and (3) that it has not been scrutinized as a service change under section 3661. For the reasons discussed above, the Commission concludes that it has authority to consider the first claim, as it did in docket no. C96–1 with respect to the complaint of CAUUC regarding the Pack & Send service.

The claim charging that the rate associated with Post ECS service is uncompensatory and a potential cause of competitive harm is also of a type familiar in complaint proceedings, including Docket No. C96–1. There is no question that the Commission is authorized to consider such claims in connection with a service that falls within its ratemaking authority under 39 U.S.C. 3622.

The last claim, citing the Postal Service's failure to request an advisory opinion on Post E.C.S. pursuant to 39 U.S.C. 3661, may be viewed as an alternative theory to be considered if the first claim fails. Under this claim, even if it is not established that Post ECS is a ''postal'' service,[11] UPS alleges that introducing and rendering Post ECS could have sufficient impact on mailers' use of hardcopy-related postal services that doing so constitutes ''a change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis,'' triggering the requirement of a Postal Service filing of a proposal pursuant to section 3661(b). Because the Service has not submitted a proposal, UPS contends that providing Post ECS violates section 3661. While this claim is novel in the context of a complaint proceeding, there is no apparent reason to conclude that considering it would exceed the scope of the Commission's authority under section 3662. On the contrary, to the extent that the section 3662 complaint mechanism has been viewed as a remedial supplement to the review of substantially nationwide service changes required under section 3661,[12] consideration of a Postal Service action purportedly in violation of section 3661 in a complaint proceeding appears compatible with the statutory scheme of the Reorganization Act.

For the reasons presented above, the Commission concludes that consideration of the complaint of United Parcel Service is authorized under 39 U.S.C. 3662.

Other Grounds for Dismissal

In addition to its claim that the Commission lacks authority to consider the instant complaint, the Postal Service advances two other arguments intended to demonstrate that particular characteristics of the Post ECS service render it inappropriate for consideration in a section 3662 complaint proceeding. One of these arguments challenges the status of Post ECS as a domestic service. The other portrays Post ECS as a ''nonpostal'' service beyond the purview of the Commission's rate and mail classification scrutiny.

Multinational Sponsorship and Operation of Post ECS

The Postal Service seeks to infuse Post ECS with an international character—and thereby support its claim that the service is not domestic—by citing the multinational origins of the service and noting that international electronic document transfers are expected to constitute a significant component of Post ECS transactions. Notwithstanding these aspects of the service, available information does not support a conclusion at this time that Post ECS constitutes a wholly non-domestic service outside the purview of the Commission's mail classification and rate jurisdiction.

First, the status of Post ECS as a putative international postal service has not been clearly established in the responsive materials provided by the Postal Service to date. Question (1)(b) in order no. 1229 asked the Service to describe the status of Post ECS and specify the authority under which it is being provided. In its partial response of March 3, the Service states that Post ECS is being provided, in operations test status, under arrangements between and among itself, LaPoste, Canada Post, the IPC, and a software supplier. However, the Service cites 39 U.S.C. 404(a)(6)—

[8] *See United Parcel Service v. U.S. Postal Service,* 604 F.2d 1370, 1381 (3d Cir. 1979), *cert. denied,* 446 U.S. 957 (1980).

[9] PRC Op. R76–1, Vol. 2, Appendix F, at 1–5. This assessment was required by the district court's decision that at least some of the special services offered by the Postal Service were subject to the Commission's ratemaking authority. *See Associated Third Class Mail Users* v. *U.S. Postal Service,* 405 F. Supp. 1109 (D.D.C. 1975), *affirmed,* 569 F.2d 570 (D.C. Cir. 1976), *vacated on other grounds,* 434 U.S. 884 (1977).

[10] The Commission agrees with UPS' inference that 39 U.S.C. 409—which confers ''original but not exclusive jurisdiction over all actions brought by or against the Postal Service'' on the federal district courts in postal matters—suggests that the Commission and the courts share concurrent jurisdiction over some matters, including potential subjects of complaints under section 3662.

[11] Complainant's first allegation in support of its third claim is that ''Post ECS is a postal service.'' Complaint at 3, para. 19. However, it is not apparent that this allegation is necessary to support a claim based on 39 U.S.C. 3661. If Post ECS is found to be a ''postal'' service, its introduction would signify a change in mail classification, to which the requirements of section 3623 would apply, rather than a change in the nature of postal services subject to the requirements of section 3661.

[12] *See Buchanan* v. *United States Postal Service,* 508 F.2d 259, 264 (5th Cir. 1975): ''Section 3662 complements section 3661, and together they form a harmonious scheme * * *. Although section 3662 is a more limited remedy, it insures that an unexpansive interpretation of section 3661 will not leave remediless the postal user dissatisfied by changes that do not rise to the level of those covered by section 3661.''

which authorizes the Postal Service ''to provide, establish, change, or abolish special nonpostal or similar services''—rather than 39 U.S.C. 407(a), which authorizes the Service to negotiate and conclude international postal treaties and conventions, and to establish rates of postal and other charges applicable to mail conveyed between the U.S. and other countries.

Similarly, question (4)(a) asked the Service to provide a copy of each convention, memorandum of understanding, or other instrument governing the joint provision of Post ECS under the international arrangement cited by the Service. For reasons presented in it motion for reconsideration of order no. 1229, the Service did not submit documents responsive to that part of the question. However, it did summarily describe documents it had identified as being responsive to the request; that description did not include any treaty or convention materials that would appear to constitute a governing instrument executed by the Postal Service pursuant to 39 U.S.C. 407.

Furthermore, even assuming that the status of Post ECS as an international service were firmly established, there apparently exists a subset of Post ECS transactions that both originate and terminate within the United States, thereby constituting a domestic segment of Post ECS arguably subject to the ratemaking and mail classification provisions of chapter 36. Question (2)(b) in order no. 1229 asked the Service to separate and report the percentages of Post ECS document transmissions originated by U.S. licensees directed to recipients in the U.S., and those directed to recipients in other countries. The Postal Service response did not provide proportions of each kind of transmission, stating that it has no reliable means of determining with certainty where Post ECS transactions originate or destinate geographically. However, the response also stated, on the basis of ''customer feedback and informal interviews with end users, [that] it is known that transactions are originated and directed to recipients within the U.S.'' Postal Service Partial Response of March 3, 1999 at 3. This domestic segment of Post ECS transactions apparently would not be within the bounds of the Postal Service's authority to establish and adjust rates for international mail services, and accordingly would be within the purview of the Commission's regulatory authority under chapter 36.[13] Consequently, the international origins and operations of Post ECS do not provide a basis for dismissing the entire complaint.

Lack of Connection to Hardcopy Postal Network

The Postal Service's primary argument for dismissal of the complaint on the merits is that Post ECS necessarily is a ''nonpostal'' service because it lacks a physical relationship to the network with which the Service transmits hardcopy mail from senders to recipients. The Service observes that the Commission, the Governors, and reviewing courts have evaluated the ''postal'' character of services by reference to functions performed in the hardcopy postal network—*i. e.*, collection, acceptance, processing, handling, transportation and delivery of tangible mail pieces. As an ''unbundled completely electronic service,'' the Service argues, Post ECS lacks a relationship to any of these physical functions. Therefore, the Postal Service concludes, ''Post ECS does not fall within the definition of ''postal services'' as defined by the courts, the Commission, and the Governors.'' Motion to Dismiss at 15.

The premise of the Postal Service's argument is largely correct, but the conclusion it urges does not necessarily follow. It is true, as the Service claims, that ''[a]bsolutely none of these [judicial and other] authorities has concluded that completely electronic services are ''postal'' in nature[.]'' Id. at 8. However, analogous claims could be made with respect to the legal status of First-Class Mail transported by air prior to 1955,[14] or messages received in post offices by telegraph prior to 1970.[15] As the decisions described in the footnotes illustrate, the Postal Service's adoption of new technologies into its operations can generate controversies that the body of pre-existing legal authority cannot resolve. This is the current state of the controversy with respect to any end-to-end electronic service offered by the Postal Service, such as Post ECS.[16]

Furthermore, applying the criteria that were used in assessing controversial services in the past does not necessarily compel a conclusion that the all-electronic Post ECS service is ''nonpostal.'' In addressing a similar Postal Service claim with respect to the Pack & Send service in docket no. C96–1, the Commission found:

> Determining whether the Pack & Send service is 'postal' or 'non-postal' in character requires the application of legal standards to the available facts. While it has been stated in a variety of ways, the primary standard that has been applied in analyzing different services is: * * * the relationship of the service to the carriage of mail. Those which can fairly be said to be ancillary to the collection, transmission, or delivery of mail are postal services within the meaning of § 3622. PRC Op. R76–1, Vol. 2, Appendix F at 3. Application of this standard looks not only at the intrinsic features and terms of the service, but also considers the extent to which use of the service culminates in use of the mails.
>
> PRC Op. R76–1, Vol. 2, Appendix F at 3. Application of this standard looks not only at the intrinsic features and terms of the service, but also considers the extent to which use of the service culminates in use of the mails.

Order No. 1128, July 30, 1996, at 10. (Footnotes omitted.) Significantly, while the guiding standard focuses on ''the carriage of mail'' and its functional components, it is not restrictive as to the technological means used to perform any of those functions. Thus, the fact that a given service accomplishes one or

[13] *See Air Courier Conference* v. *U.S. Postal Service*, 959 F.2d 1213, 1221 (3d Cir. 1992): ''In giving the Postal Service the authority to 'establish' international mail rates, section 407(a) is just as specific about international rates as chapter thirty-six is about domestic rates. Section 407(a) tells us how international postage rates are to be set and who sets them. Chapter thirty-six tell us how domestic postage rates are to be set and who sets them.''

[14] Congress created air mail in the Air Mail Act of 1925, 43 Stat. 805 (1925). In *Atchison, Topeka & Santa Fe Railway Co.* v. *Summerfield*, 229 F.2d 777 (D.C. Cir. 1955), several railroads challenged an experimental program wherein the Post Office Department tendered ordinary First-Class Mail to air carriers for transportation. The court held that the Postmaster General had authority to conduct the experimental carriage of First-Class Mail by air without charging the higher airmail rate.

[15] Western Union Telegraph Company, in cooperation with the Post Office Department, began to offer Mailgram service on an experimental basis on January 1, 1970. In *United Telegraph Workers* v. *F.C.C.*, 436 F.2d 920 (D.C. Cir. 1970), the union representing Western Union's employees challenged, among other aspects, the Post Office Department's participation in the experiment, wherein postal employees (rather than Western Union employees) scanned and enveloped messages received by teleprinter in post offices. The court, citing the earlier decision in *Atchison, Topeka & Santa Fe, supra*, found the postmaster general had authority to assign postal employees to participate in the experiment.

[16] Complainant notes that recent federal court decisions have equated e-mail services such as Post ECS with traditional forms of mail. UPS answer in opposition to motion to dismiss at 8. However, the decisions cited by UPS did not involve any Postal Service e-mail service offering, nor its status in the context of title 39. In *Governors of the U.S. Postal Service* v. *Postal Rate Commission*, 654 F. 2d 108, 110 (D.C. Cir. 1981), the court reviewed one aspect of the Commission's decision in docket no. MC78–3 with respect to a proposed Electronic Computer Originated Mail (E–COM) service. Early in that decision, the court referred to the E-COM request as ''a postal service proposal to enter the field of electronic mail[.]'' However, the electronic components of the E-COM service did not extend to the delivery function, and thus it was a hybrid electronic/hardcopy service. Nor was the ''postal'' or ''non-postal'' character of the E–COM service in controversy in that case.

more functional components of ''the carriage of mail'' by means that do not involve a physical object does not necessarily support a conclusion that the service is ''non-postal.'' The Governors'' submission of requests for decisions recommending establishment of the mailing online service in docket no. MC98–1, and earlier for the electronic computer originated mail (E–COM) service in docket no. MC78–3, is consistent with this observation.

Despite the Post ECS service's lack of dependence on the hardcopy postal network, complainant has made a colorable claim that it not only is very closely related to the carriage of mail, it is the delivery of mail because it accomplishes by electronic means all the functions that would otherwise be performed by conveying a physical message or document. UPS Response in Opposition to Motion to Dismiss at 8–10.

Furthermore, a number of Postal Service statements concerning Post ECS in particular, and describing its electronic mail initiatives in general, are consistent with this claim. In announcing the operations test of Post ECS, deputy postmaster general Coughlin described the service as ''a logical evolution of our original charter to provide seamless communications to our customers.'' U.S. Postal Service Press Release No. 98044, May 28, 1998 (attached to answer of UPS in opposition to motion to dismiss as exhibit C). The Postal Service promotional material included as exhibit A to the complaint characterizes Post ECS as ''the 21st-century document-delivery system that is superior to current delivery options[,]'' and states that it ''combines the advantages of couriers, fax and the Internet with the protection of the United States Postal Service '' .'' With general regard to the electronic commerce services it is developing, the Service has stated that it is doing so ''through an extension of its traditional paper mail services'' to ''enable and enhance the development of commerce by electronic means.'' It also stated that such services ''will provide security and integrity to electronic correspondence and transactions, giving them attributes usually associated with First-Class Mail.'' [Citation omitted.] Similarly, the recent General Accounting Office report on new postal products states that the Postal Service ''views its entry into the electronic commerce market as an extension of its core business—the delivery of traditional mail. According to service officials, electronic mail has the same attributes as traditional mail.'' Report on New Postal Products, GAO/GGD–99–15 (Nov. 25, 1998) at 36–37.

These and similar statements the Postal Service has made in other proceedings call into question its position that Post ECS necessarily constitutes a ''non-postal'' service simply because of its all-electronic configuration.[17] In light of these characterizations of Post ECS, together with the theoretical considerations previously discussed, in the Commission's opinion dismissing the complaint on the basis of the Postal Service's claim of its ''non-postal'' character would not be justified. However, the Commission is not prepared at this time to declare that Post ECS is, or is not, postal in character, or to what extent Post ECS transactions are subject to the Commission's mail classification and ratemaking authority under subchapter II of title 39, chapter 36. This determination is made without prejudice to the Postal Service's position that Post ECS is a ''nonpostal'' service, and is not intended to preclude an ample opportunity for all parties to present additional evidence and argument on this issue during the proceedings in this docket.

Proceedings To Consider Complaint

In addition to the somewhat abstract questions the instant complaint poses concerning the postal character of Post ECS, it also raises more concrete questions regarding the potential effects of the service—together with its currently free rate—on the rest of the postal system. The Commission undertook to obtain some general information bearing on these questions in order No. 1229, which asked in question 3 whether Post ECS is being offered as a substitute for Express Mail or any other service currently provided by the Postal Service, and to what extent U.S. companies licensed to use Post ECS have substituted use of the service for Express Mail or other service they previously used.

The Postal Service response stated that, ''Post ECS lacks certain characteristics to make it a direct substitute of Express Mail or any other hardcopy postal service[,]'' and gave examples of purported deficiencies. It also said the Service has no quantified data regarding substitution. Postal Service Partial Response to Order No. 1229 at 5. The Commission finds this response to be, on the whole, inconclusive, and believes that further inquiry is warranted into the extent to which the provision of an electronic service such as Post ECS could affect Postal Service revenues generally and the volumes of higher-priority subclasses such as Express Mail and Priority Mail in particular.

For all the above reasons, the Commission has determined under section 86 of the rules of practice that a formal proceeding pursuant to 39 U.S.C. 3624, with an opportunity for hearing, should be held in this docket. This process will enable the complainant and other interested parties to adduce additional facts through discovery and to make evidentiary presentations, as well as providing the Postal Service an opportunity to present its response.

As noted earlier, the Postal Service has asked the Commission to reconsider whether information responsive to question 4(a) posed in order no. 1229—some of which allegedly is commercially sensitive—should be provided at all, or only in redacted form. The Commission took no action with respect to these materials in order No. 1230. Complainant subsequently filed a motion for leave to conduct discovery on the issues raised by the Postal Service's motion to dismiss the complaint, but only ''as a protective matter,'' should the Commission not agree with UPS that available information militates against dismissal. UPS motion for leave to conduct discovery, March 17, 1999. Inasmuch as the ultimate relevance of potentially sensitive documents responsive to question 4(a) to issues to be resolved in this proceeding cannot be assessed at this point, the Commission will not direct production of these materials now. However, this determination is not intended to foreclose any legitimate discovery requests directed toward these materials or related information.

In order to develop a procedural schedule for this docket, complainant is directed to provide a statement, due 10 days from the issuance of this order, estimating the amount of time it will require to develop and file a case-in-chief. The Commission will thereafter issue a procedural schedule and special rules of practice, if any.

It is ordered:

1. The Postal Service's motion to dismiss, filed Nov. 5, 1998, is denied.

2. Proceedings in conformity with 39 U.S.C. 3624 shall be held in this matter.

3. The Commission will sit *en banc* in this proceeding.

[17] In docket no. MC98–1, when Postal Service witness Garvey was asked whether a portion of his testimony meant that he regarded the bits of electronic data that would ultimately become printed messages as pieces of mail, he replied: ''In my mind I think of them as mail pieces.'' Tr. 7/1718.

4. The motion for intervention by CAUUC, filed on Oct. 27, 1998, and the motion of the Association of Online Professionals to intervene as a limited participator, filed Dec. 21, 1998, are granted.

5. 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. C99–1.

6. Complainant shall provide a statement, due May 13, 1999, estimating the amount of time it will require to develop and file a direct case in this proceeding.

7. 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.

Authority: 39 U.S.C. 3662.

Dated: May 19, 1999.

Cyril J. Pittack,

Acting Secretary.

[FR Doc. 99–13042 Filed 5–21–99; 8:45 am]

BILLING CODE 7710–FW–P

DEPARTMENT OF STATE

[Public Notice #3040]

Overseas Presence Advisory Panel (OPAP); Closed Meetings

The Department of State announces two meetings of the Overseas Presence Advisory Panel: One on Wednesday, June 2, 1999, and the other on Thursday, June 17, 1999, both from 9 a.m. to 1 p.m. in the Principals' Conference Room at the U.S. Department of State. The Panel is charged with advising the Secretary of State with respect to the level and type of representation required overseas in light of new foreign policy priorities, a heightened security situation and extremely limited resources. Pursuant to section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c)(1), it has been determined that the meetings will be closed to the public. The agenda calls for discussion of classified and sensitive information relating to the Panel's ongoing findings and recommendations concerning Embassies and Consulates overseas; this would include, but not be limited to, intelligence and operational policies, and security aspects of all the U.S. Government agencies the Department of State supports abroad.

For more information, contact Mr. William Duffy, Overseas Presence Advisory Panel, Department of State, Washington, DC 20520; phone: 202–647–6427.

Dated: May 14, 1999.

Ambassador William H. Itoh,

Executive Secretary, Overseas Presence Advisory Panel.

[FR Doc. 99–13024 Filed 5–21–99; 8:45 am]

BILLING CODE 4710–35–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Advisory Committee on Trade Policy and Negotiations (ACTPN)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice that the June 10, 1999, meeting of the Advisory Committee on Trade Policy and Negotiations will be held from 8:00 a.m. to 1:00 p.m. The meeting will be closed to the public from 8:00 a.m. to 12:30 p.m. and open to the public from 12:30 p.m. to 1:00 p.m.

SUMMARY: The Advisory Committee on Trade Policy and Negotiations will hold a meeting on June 10, 1999 from 8:00 a.m. to 1:00 p.m. The meeting will be closed to the public from 8:00 a.m. to 12:30 p.m. The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the Trade policy of the United States. The meeting will be open to the public and press from 12:30 p.m. to 1:00 p.m. when trade policy issues will be discussed. Attendance during this part of the meeting is for observation only. Individuals who are not members of the committee will not be invited to comment.

DATES: The meeting is scheduled for June 10, 1999, unless otherwise notified.

ADDRESSES: The meeting will be held at the USTR ANNEX Building in Conference Rooms 1 and 2, located at 1724 F Street, NW, Washington, DC, unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Ladan Manteghi, Office of the United States Trade Representative, (202) 395–6120.

Charlene Barshefsky,

United States Trade Representative.

[FR Doc. 99–12993 Filed 5–21–99; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currenly approved collections. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 12, 1999, (64 FR 12399).

DATES: Comments must be submitted on or before June 23, 1999. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Airport Operating Certificate.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0063.

Form(s): FAA Form 5280–1.

Affected Public: Airport operators.

Abstract: To operate an airport serving certain air carriers, a person must obtain and maintain an Airport Operating certificate. The applicatioin initiates the certification process including airport inspection and documentation of safe airport operations and equipment. The certification remains valid if safety standards are maintained as verified by inspections, records and reports.

Estimated Annual Burden Hours: 174,151 burden hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.