

POSTAL RATE COMMISSION**[Docket No. MC2001-1; Order No. 1306]****Notice and Order Concerning Request for Establishment of Experimental Presorted Priority Mail Rate Categories****AGENCY:** Postal Rate Commission.**ACTION:** Notice and order on experimental docket no. MC2001-1.

SUMMARY: This document informs the public that the Postal Service has proposed experimental discounts for presorted Priority Mail. It establishes deadlines for intervention and comments. It sets a date for a prehearing conference. It also addresses other procedural aspects of the filing.

DATES: Notices of intervention are due by April 3, 2001. A prehearing conference is scheduled for April 6, 2001. See **SUPPLEMENTARY INFORMATION** section for other dates.

ADDRESSES: Send comments to the attention of Steven W. Williams, acting secretary, 1333 H Street NW., suite 300, Washington, DC 20268-0001.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202-789-6820.

SUPPLEMENTARY INFORMATION:**A. Authority to Consider the Service's Request**

39 U.S.C. 3623.

B. Background

On March 7, 2001, the United States Postal Service filed a request with the Postal Rate Commission for a recommended decision on a proposed three-year experimental classification change, and related discounts, for certain categories of Priority Mail. Request of the United States Postal Service for a recommended decision on experimental presorted Priority Mail rate categories ("request"). The Service's request was filed pursuant to section 3623 of the Postal Reorganization Act, 39 U.S.C. 101 *et seq.* It was accompanied by a contemporaneous motion seeking waiver of certain provisions of rules of 54 and 64 and by two notices. In addition, in a subsequent errata notice, the Service revised two of the three discounts identified in the initial filing. Notice of the United States Postal Service of errata in its request, March 8, 2001 ("errata notice").

Brief Description of Request

The Service proposes to offer on an experimental basis the following three categories of Priority Mail discounts, distinguished by depth of sort: area distribution center (ADC), with a 12-

cent discount; 3-digit, with a 16 cent discount; and 5-digit, with a 25-cent discount.

Note: As indicated in the errata notice, the 3-digit discount was identified as 15 cents in the initial filing. The 5-digit discount was originally identified as 24 cents.

Errata notice at 1. Eligibility would extend to all Priority Mail prepared in a mailing of at least 300 pieces or at least 500 pounds that is presorted, marked, and presented as specified by the Postal Service, and which meets machinability, addressing, and other preparation requirements specified by the Postal Service. Request at 3. Participating mailers would also be required to pay an annual presort fee of \$125. USPS-T-1 at 13. The Service intends to limit participation in the experiment, at the outset, to about 10 mailers. Id. at 3.

Under the terms of the Service's Request, the proposed discounted rate categories would be additional options offered to qualifying mailers; therefore, existing Priority Mail classifications and rates would remain unchanged. Request at 3.

Rationale for Filing the Request

The Service says the proposed discounts are designed to recognize apparent cost differentials associated with three different levels of presortation of Priority Mail and to encourage mailers to engage in worksharing behavior, when such behavior would be mutually advantageous to the customer and the Postal Service. Id. at 2.

Contents of the Filing

The request's attachments A and B, respectively, contain proposed changes in the domestic mail classification schedule (DMCS) and proposed changes in the rate schedules. Attachment C is the required certification regarding the accuracy of cost statements and supporting data. Attachment D contains the audited financial statements for fiscal years 1999 and 2000. It also includes a statement noting that the cost and revenue analysis reports for fiscal years 1998 and 1999 were filed with the Commission in docket No. R2000-1 (USPS-LR-I-275).

Attachment E contains the testimony and exhibits of witnesses Scherer (USPS-T-1), Levine (USPS-T-2), and Kalenka (USPS-T-3). Witness Scherer, a Postal Service employee, addresses the Service's rationale for proposing this presort discount, for the experimental designation, and for limiting initial participation to approximately 10 mailers. He also addresses a Priority

Mail presort discount that was eliminated in docket no. R97-1; discusses the proposed discounts in terms of cost avoidance estimates; describes estimated volume and financial impacts; and addresses the proposal's conformance with statutory criteria for experimental rules, classification changes and rate and fee changes.

Witness Levine, a consultant, addresses estimated mail processing cost changes and the proposed data collection plan. With respect to the cost savings estimates, Levine notes that the estimates are based on data presented in docket no. R2000-1. USPS-T-2 at 2. However, he asserts that it is important to note that there has been a significant change in Priority Mail processing operations since that case was filed. He attributes this change to the termination of an underlying contract with Emery Worldwide Airlines for processing and transportation of some Priority Mail volume, and the Service's ensuing assumption of direct management of the Priority Mail processing centers. Levine says that to the extent possible, he has incorporated this change in his mail flow models. Id.

Witness Kalenka is an industry witness employed by ADP Financial Information Services, Inc. He discusses how ADP views the limitations of the Service's current service offerings for Priority Mail, and how the proposed discounts would enhance the Service's offering in the competitive expedited delivery market. USPS-T-3 at 3.

Attachment F is the compliance statement the Service has provided in response to Commission rules 54, 64 and 67 (39 CFR 3001.54, 3001.64 and 3001.67).

Related Notices

In notice of the United States Postal Service of filing of USPS library reference MC2001-1/1, filed March 7, 2001, the Service identifies the library reference it has filed in this case (entitled Documentation of Priority Mail Volumes) as a category 2 library reference. It also states that it considers this library reference sufficiently bulky, within the meaning of 39 CFR 3001.31(b)(2)(ii), as to make it unreasonable to require that it be served upon every person who is placed on the service list in this proceeding. It also says that it views the library reference as being of a technical nature, thereby making it reasonable, under the terms of 39 CFR 3001.31(b)(2)(ii)(A), to anticipate that its contents will be of limited interest. In notice of the United States Postal Service regarding arrangements for obtaining request and

attorney/witness assignments, March 7, 2001, the Service addresses several administrative aspects of its request.

Significance of Experimental Designation

The Service notes that its designation of the request as an experiment signals its intention that the Commission apply its expedited rules of practice and procedure for experimental changes in 39 CFR 3001.67–3001.67d. Request at 1. In support of this treatment, the Service asserts that the filing is consistent with the logic of the experimental rules. Id. at 2. It also notes that a preliminary cost study has been prepared, and that more complete data will be gathered during the term of the experiment, with the potential for supporting a request to establish the change on a permanent basis. Id.

Motion for Waiver of Certain Commission Rules

In an extensive motion, the Service seeks waiver of certain provisions of rule 64(h) and related rules that may be deemed applicable to the instant Request. Motion of the United States Postal Service for waiver of certain provisions of rules 54 and 64, March 7, 2001 (“motion for waiver”). As noted therein, rule 64 (h) provides that when requesting a change in the classification schedule, the Postal Service must provide certain rule 54 information if the proposed classification change results in the following: A change in the rates or fees for any existing class or subclass; the establishment of a new class or subclass for which rates are to be established; a change in the relationship of costs to revenues for any class or subclass; or a change in the relationship of total Postal Service costs to total revenues. The Service submits that the proposed changes in the classification schedule in its request do not significantly change any of the referenced rates or cost-revenue relationships. Motion for waiver at 1. Therefore, it says that particular subsections of the rule need not apply to this proposal. Moreover, it asserts that the requirements of rule 64(h) should be interpreted in harmony with rule 67 governing experiments, and that waiver of certain rule 64(h) requirements, and others related thereto, would further the intent of the experimental rules. Id. at 1–2.

The Service also addresses reasons why certain criteria in rule 64(h) do not apply to this request, and further contends that none of the rule 54 requirements should be found to apply. Id. at 2–3. It says all of the rule 54 requirements should therefore be

waived, but that it will provide certain rule 54 information in an attempt to cooperate and assist with consideration of the request. Id. at 3. Interested parties are advised to review the Service’s motion for waiver for additional information concerning the basis for this pleading.

Revenue and Cost Impact

The Service notes that witness Scherer’s testimony indicates that the estimated cost avoidance is anticipated to exceed the loss in revenue from the presort discount, but says the contribution to institutional cost from Priority Mail is projected to increase by only \$2.7 million. The Service says this increase constitutes only 0.12 percent of TYAR total contribution for Priority Mail. Id., citing USPS–T–1 at 13. It further states that projected total cost coverage for Priority Mail will increase only slightly, from 161.9% to 162.0%. Id. The net revenue impact of the proposed presort discount is estimated at approximately –\$2.0 million. USPS–T–1 at 13. The net total attributable cost impact is estimated at approximately –\$4.7 million. Id. at 14. Reliance on docket no. R2000–1 record. The Service contends that the proposed experiment is extremely limited in scope, and that its effect on total costs and revenues will be insignificant. Therefore, it says it believes it would be practical and appropriate to rely on the record of that case, as amended by the testimony and exhibits filed with the instant request, and would be in accordance with the Commission’s recommended decision of November 13, 2000.

Data Collection Plan

The proposed data collection is described in attachment A to witness Levine’s testimony. Phase I assesses preliminary problems with the proposed presort discounts and determines the feasibility of allowing more mailers to enter the experiment. USPS–T–2 at 8. Phase II gathers data for analysis of the cost and revenue impacts of the discount. Id. at 9. Levine’s testimony indicates that a market research study will be conducted to determine the level of demand for each of the three proposed Priority Mail discounts. Id. at 9–10.

Intervention

Those wishing to be heard in this matter are directed to file a written notice of intervention with Steven W. Williams, acting secretary of the Commission, 1333 H Street NW., suite 300, Washington, DC 20268–0001, on or before April 3, 2001. Notices should indicate whether participation will be

on a full or limited basis. See 39 CFR 3001.20 and 3001.20a.

Appropriateness of Proceeding Under the Experimental Rules

The Service asks that the Commission handle this case under Commission rules 67–67d. In determining whether these procedures are appropriate, the Commission will consider the proposed change’s novelty, magnitude, the ease or difficulty of collecting data, and duration.

Participants are invited to comment on whether the Postal Service’s request should be evaluated under rules 67–67d. Comments are due on or before April 3, 2001, and participants should be prepared to discuss relevant issues at the prehearing conference. Pending a determination on this issue, participants should recognize that the motion seeking application of the experimental rules may be granted. The Commission notes that its experimental rules provide that cases falling within this designation shall be treated as subject to the maximum expedition consistent with procedural fairness, and that participants will be expected to identify genuine issues of material fact at an early stage in this case. See rule 67a(b). The schedule ultimately adopted will be established to allow for issuance of a decision not more than 150 days following a determination regarding the appropriateness of applying the experimental rules or the filing of the Request, whichever occurs later. 39 CFR 3001.67d.

Limitation of Issues

Rule 67a provides a procedure for limiting issues in experimental cases. To enable participants to evaluate whether genuine issues of fact exist, the Postal Service shall respond to discovery requests within 10 days. Written discovery pursuant to rules 25–28 may be undertaken upon intervention.

Need for Hearing

A decision on whether there is a need for evidentiary hearings, and the scope of any such hearings, has not been made. Comments on this matter, and other procedural issues raised by the Service’s Request, should be filed no later than April 3, 2001, and participants should be prepared to discuss these matters at the prehearing conference.

Representation of the General Public

In conformance with section 3624(a) of title 39, the Commission designates Ted P. Gerarden, director of the Commission’s office of the consumer

advocate (OCA), to represent the interests of the general public in this proceeding. Pursuant to this designation, Mr. Gerarden will direct the activities of Commission personnel assigned to assist him and, upon request, will supply their names for the record. Neither Mr. Gerarden nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding. The OCA shall be separately served with three copies of all filings, in addition to and at the same time as, service on the Commission of the 24 copies required by Commission rule 10(d) [39 CFR 3001.10(d)].

Prehearing Conference

A prehearing conference will be held Friday, April 6, 2001, at 10 a.m. in the Commission's hearing room.

C. Ordering Paragraphs

It is ordered:

1. The Commission establishes docket no. MC2001-1, preliminarily designated as Experimental Presorted Priority Mail Rate Categories, to consider the request referred to in the body of this order.

2. The Commission will sit en banc in this proceeding.

3. The deadline for filing notices of intervention is Tuesday, April 3, 2001.

4. Answers to the Service's motion for waiver of certain filing requirements are due no later than April 5, 2001.

5. Written discovery pursuant to rules 26-28 may be undertaken upon intervention.

6. The Service shall respond to discovery requests within 10 days.

7. A prehearing conference will be held Friday, April 6, 2001, at 10 a.m. in the Commission's hearing room.

8. Ted P. Gerarden, director of the Commission's office of the consumer advocate, is designated to represent the interests of the general public.

9. The acting secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

Steven W. Williams,

Acting Secretary.

[FR Doc. 01-6890 Filed 3-19-01; 8:45 am]

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POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting

TIMES AND DATES: 10:30 am, Monday, April 2, 2001; 8:30 am, Tuesday, April 3, 2001; and 10 am, Tuesday, April 3, 2001.

PLACE: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., in the Benjamin Franklin Room.

STATUS: April 2 (Closed); April 3—8:30 am (Open); 10 am (Closed).

MATTERS TO BE CONSIDERED:

Monday, April 2—10:30 am (Closed)

1. Financial Performance.
2. Recovery of Prior Years' Losses.
3. FedEx Alliance.
4. Strategic Planning/Postal Reform.
5. Compensation Issues.
6. Personnel Matters.

Tuesday, April 3—8:30 am (Open)

1. Minutes of the Previous Meetings, March 1, and March 5-7, 2001.
2. Remarks of the Postmaster General/Chief Executive Officer.
3. Fiscal Year 2000 Comprehensive Statement on Postal Operations.
4. Quarterly Report on Financial Results.
5. Borrowing Resolution.
6. Quarterly Report on Service Performance.
7. Remote Encoding Center Closings.
8. Tentative Agenda for the May 7-8, 2001, meeting in Washington, DC.

Tuesday, April 3—10 am (Closed)

1. Continuation of Monday's Closed Agenda.

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

David G. Hunter,
Secretary.

[FR Doc. 01-7054 Filed 3-16-01; 3:16 pm]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44061A; File No. SR-Phlx-01-16]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Providing Compensation to Hearing Panelist

March 14, 2001.

Correction

In Release No. 34-44061, issued on March 9, 2001, the title described the filing incorrectly. The title is corrected to read as set forth above.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 01-6802 Filed 3-19-01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44070; International Series Release No. 1248; File No. SR-Phlx-01-06]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Philadelphia Stock Exchange, Inc. to Amend Rule 1063(a) and Options Floor Procedure Advices A-10 and C-1, Relating to Trading in Foreign Currency Options

March 13, 2001.

I. Introduction

On January 11, 2001, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² the Philadelphia Stock Exchange, Inc. ("Phlx") filed with the Securities and Exchange Commission ("Commission") a proposed rule change to provide an exception, limited only to foreign currency options ("FOCs"), from the requirement that a Registered Options Trader ("ROT") be present at the trading post in certain circumstances. The proposed rule change was published for comment and appeared in the **Federal Register** on January 26, 2001.³ The Commission received no comments on the proposal. This order approves the Phlx's proposed rule change.

II. Description of the Proposal

The Phlx is seeking approval of amendments to Phlx Rule 1063(a) ("Responsibilities of Floor Brokers"), Phlx Options Floor Procedure Advice A-10 ("Specialist Trading With Book"), and Phlx Options Floor Procedure Advice C-1 ("Ascertaining the Presence of ROTs in a Trading Crowd"). Phlx Rule 1063(a) provides that Options Floor Brokers shall ascertain that at least one ROT is present at the trading post before representing an order for execution. Phlx Options Floor Procedure Advice A-10 provides that in any instance where a Specialist wishes to participate as principal in a trade with an order placed on that Specialist's

¹ 17 CFR 200.30-3(a)(12).

² 15 U.S.C. 78s(b)(1).

³ 17 CFR 240.19b-4

³ Securities Exchange Act Release No. 43864 (January 19, 2001), 66 FR 7947 (January 26, 2001) (SR-Phlx-01-06).