

**POSTAL RATE COMMISSION**

[Order No. 1323; Docket Nos. R2001-2 and MC2001-2]

**Experimental Suspension of Manual Delivery Confirmation Fee**

**AGENCY:** Postal Rate Commission.

**ACTION:** Notice and order on experimental filing.

**SUMMARY:** This document informs the public that the Postal Service has proposed temporary experimental suspension of the manual delivery confirmation fee used in conjunction with Priority Mail. It notes the Service's interest in settlement negotiations. It also establishes several procedural deadlines and sets dates for settlement and prehearing conferences.

**DATES:** October 10, 2001: Deadline for notices of intervention, answers to motion for waiver of filing requirements, and comments on rule 67-67d treatment. October 11, 2001: Deadline for issue statements and comments on evidentiary hearings. October 12, 2001: Prehearing conference (10 a.m.). See **SUPPLEMENTARY INFORMATION** section for information on other dates.

**ADDRESSES:** The prehearing conference will be held in the Commission's hearing room, 1333 H Street NW., suite 300, Washington, DC 20268-0001. 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, 202-789-6824.

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

39 U.S.C. 3622 and 3623.

**B. Background**

On September 20, 2001, the United States Postal Service filed a request with the Postal Rate Commission for a recommended decision on a proposed temporary experimental suspension of the fee charged for the manual delivery confirmation special service when it is used in conjunction with Priority Mail. Request of the United States Postal Service for a recommended decision on experimental delivery confirmation special service category and fee ("request"). The Service's request was filed pursuant to chapter 36 of the Postal Reorganization Act, 39 U.S.C. 3601 *et seq.*

It was accompanied by contemporaneous motions seeking

waiver of certain provisions of rules 54 and 64 of the Commission's rules of practice<sup>1</sup> and asking for establishment of procedural mechanisms to encourage parties to consider expeditious settlement of issues in this proceeding,<sup>2</sup> as well as by a notice of the Service's intention to convene an informal settlement conference on October 11, 2001.<sup>3</sup> All these documents are available for physical inspection in the Commission's docket section during regular business hours, and for internet access on the Commission's Web site at: <http://www.prc.gov> within the search field "docket no. MC2001-2."

*Brief Description of Request and Its Rationale*

The Service proposes to offer the manual version of delivery confirmation service to retail Priority Mail users without charge for a period beginning December 1 and ending December 16, 2001. Request, attachment B. The current fee for manual delivery confirmation service when used in conjunction with Priority Mail is 40 cents. An electronic, non-retail version of the service is currently available to Priority Mail users at no additional charge. *Ibid.*

The Postal Service anticipates two direct benefits from this proposal. First, it believes that the experiment would give postal customers an incentive to mail packages before the busiest week of the holiday mailing season, and thereby reduce demand on its resources during the peak period following December 16. Second, the Service expects that the proposal would introduce the retail delivery confirmation service to customers who otherwise would not be aware of it. Additionally, the Service anticipates that its experiment would provide valuable experience with more flexible approaches to pricing. Request at 2-3.

*Significance of Experimental Designation*

By designating its request as one that involves an experimental change, the Postal Service signals its intention that the Commission apply its expedited rules of practice and procedure for experimental changes in §§ 3001.67 through 3001.67d of title 39, CFR. Request at 1. In support of this

<sup>1</sup> Motion of the United States Postal Service for waiver of certain provisions of rules 54 and 64, September 20, 2001.

<sup>2</sup> Motion of the United States Postal Service to establish procedural mechanisms concerning settlement, September 20, 2001.

<sup>3</sup> Notice of the United States Postal Service concerning settlement discussions, September 20, 2001.

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 and revenue analysis has been prepared and included in the testimony supporting its request, 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. *Ibid.*

The proposed temporary suspension of a currently applicable rate represents a novel form of experiment under sections 67 through 67d of the Commission's rules. 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 desired duration. 39 CFR 3001.67(b).

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 October 10, 2001, and participants should be prepared to discuss any 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. 39 CFR 3001.67d. This rule also prescribes adoption of a procedural schedule that will 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.

Under the terms of its request, the Postal Service asks that the Commission issue its recommended decision in sufficient time to enable it to implement the proposed experiment 72 days after the submission of its filing. Achieving the implementation date proposed by the Postal Service will require extraordinary expedition, but the Commission will endeavor to do so within the bounds of procedural fairness to all participants.

*Motion for Waiver of Certain Commission Rules*

As noted above, 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, September 20, 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 changes proposed in its request do not significantly change any of the referenced rates or cost-revenue relationships, except in the delivery confirmation special service. Motion for waiver at 1–2. Further, even if the experiment is implemented, the Service states that it expects that delivery confirmation service will cover its volume-variable costs and make a contribution to institutional costs. *Id.* at 2.

The Service also presents reasons why certain criteria in rule 64(h) should 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 asserts that all of the rule 54 requirements should therefore be waived, but also undertakes to provide certain responsive 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 bases for its request.

#### *Proposed Procedural Mechanisms and Limitation of Issues*

In its motion to establish procedural mechanisms concerning settlement, the Service asks the Commission to adopt procedural mechanisms it suggests to encourage participants to reach an expeditious resolution of issues in this proceeding through a stipulation and agreement, which the Service proposes and appends to its motion. Motion of the United States Postal Service to establish procedural mechanisms concerning settlement, September 20, 2001. In a separate notice, the Service states its intention to convene an informal, off-the-record settlement conference among all participants of record in this proceeding on Thursday, October 11, 2001, at 2 p.m. Notice of the United States Postal Service concerning

settlement discussion, September 20, 2001.

In its motion, the Service notes that its proposal is time-sensitive, and recognizes that the timing of its request "puts a premium on the Commission's ability to expedite this proceeding in a manner that respects the due process rights of those who may intervene" in the case. Motion to establish procedural mechanisms at 1–2. At the same time, the Service submits that the "very limited scope and simplicity" of its proposal offers an opportunity for the parties to proceed toward a resolution of any material issues by means of a stipulation and agreement. *Id.* at 2.

In order to proceed with maximum expedition to this resolution, the Service asks the Commission to issue an order at the outset of this case that would establish procedures to govern its conduct. The Service anticipates that any discovery regarding the proposed experiment might be relatively limited in duration and scope, and suggests that participants be allowed to begin their discovery immediately upon intervention. *Ibid.* This is a useful suggestion, and the Commission shall so order. Additionally, the Service proposes the adoption of special procedures that would:

(1) Enter the Postal Service's request (with associated attachments), the testimony and library reference filed with this request, and the stipulation and agreement into the record in this docket;

(2) Give parties until October 10, 2001, to intervene and October 17, 2001, to complete discovery;

(3) Require that objections to any discovery request be filed within 3 workdays days after whichever comes later, the date on which such a request is filed with the Commission or posted on the Commission web site;

(4) Require that all answers to discovery requests be filed no later than five workdays after such posting;

(5) Give notice of a formal prehearing conference to be convened on October 15, 2001, at 1:00 p.m.;

(6) Make the Commission hearing room available to the Postal Service and the participants on that date at 10:30 a.m. as the venue for an informal off-the-record meeting to discuss the proposed stipulation and agreement and related matters in advance of the pre-hearing conference;

(7) Provide notice to intervenors that, if they wish to contest the Postal Service's request and the proposed stipulation and agreement, they must, by October 17, 2001, file a statement of their intention to do so. Any such statement should identify

with specificity the issues contested, and state whether the intervenor intends to offer evidence on any such issues; and

(8) Establish subsequent procedures to resolve any genuine issues of material fact should a participant contest the Postal Service's request. Motion at 3–5.

The Commission will adopt some of the suggested procedural mechanisms in this order, but finds insufficient justification for others. For example, receiving the Postal Service's request and supporting documents into the record at this time, prior to any opportunity for exploration by potentially interested parties, would be premature. Additionally, more flexibility may be required in crafting procedures for resolving any factual issues that may be identified, and thereafter reaching an expeditious decision on the Service's request.

At this juncture, the Commission will undertake to maximize expedition consistent with procedural fairness by providing for prompt intervention, expedited discovery if participants so desire, and early identification of any legitimate issues of material fact that may require resolution, either through written discovery efforts or in hearings.

#### *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 October 10, 2001. Notices should indicate whether participation will be on a full or limited basis. See 39 CFR 3001.20 and 3001.20a.

#### *Discovery and Limitation of Issues*

In order to identify and address any factual issues in this case expeditiously, parties may initiate any desired discovery on their intervention. As the Postal Service requests, objections to any discovery request shall be filed within three workdays of its filing or posting on the PRC website, whichever occurs later. All answers to discovery requests shall be filed no later than 7 days following their posting on the Commission's web site.

Rule 67a provides a procedure for limiting issues in experimental cases. In this proceeding, the Postal Service's proposed experiment may involve issues arising under the criteria of 39 U.S.C. 3622(b), 3623(c), or other guiding provisions in the Postal Reorganization Act. To enable the Commission and participants to evaluate whether there are genuine issues of fact requiring resolution in this proceeding, parties

shall file statements of any such issues they believe to exist by October 11, 2001, and be prepared to discuss those statements in the prehearing conference to be held the following day.

#### *Need for Hearing*

A decision on whether there is a need for evidentiary hearings, and the scope of any such hearings, cannot be made at this time. Comments on this matter, and other procedural issues raised by the Service's request, should be filed no later than October 11, 2001, and participants should be prepared to discuss these matters at the prehearing conference.

#### *Representation of the General Public*

In conformance with § 3624(a) of title 39, the Commission designates Shelley S. Dreifuss, acting 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, Ms. Dreifuss will direct the activities of Commission personnel assigned to assist her and, upon request, will supply their names for the record. Neither Ms. Dreifuss 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, October 12, 2001, at 10 a.m. in the Commission's hearing room. At the conference, the Postal Service will be expected to report on the progress made in the off-the-record settlement conference it has announced for the preceding day. The Service and other participants should also be prepared to address the procedural matters discussed above.

#### *Ordering Paragraphs*

It is ordered:

1. The Commission establishes docket nos. R2001-2 and MC2001-2, preliminarily designated as experimental suspension of fee for manual delivery confirmation category, 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 Wednesday, October 10, 2001.

4. Answers to the Service's motion for waiver of certain filing requirements and comments on the appropriateness of considering the request under sections 67 through 67d of the rules of practice are due no later than October 10, 2001.

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

6. Objections to written discovery requests shall be filed within 3 workdays, as specified in the body of this order.

7. The Service shall respond to discovery requests within 7 days, as specified in the body of this order.

8. Interested parties shall file statements of issues they perceive in the case, in accordance with 39 CFR 3001.67a(b), and comments on the need for evidentiary hearings, and the scope of any such hearings, by October 11, 2001.

9. A prehearing conference will be held Friday, October 12, 2001, at 10 a.m. in the Commission's hearing room.

10. Shelley S. Dreifuss, acting director of the Commission's office of the consumer advocate, is designated to represent the interests of the general public in this proceeding.

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

Dated: September 27, 2001.

**Steven W. Williams,**

*Acting Secretary.*

[FR Doc. 01-24639 Filed 10-2-01; 8:45 am]

**BILLING CODE 7710-FW-P**

## **POSTAL RATE COMMISSION**

### **Postal Facility Tour**

**AGENCY:** Postal Rate Commission.

**ACTION:** Notice of commission visit.

**SUMMARY:** On September 26, 2001, the Commission issued a notice in Docket No. R2001-1 concerning a postal facility tour. It informs participants that members of the Commission accompanied by advisory staff will tour the Postal Service's Baltimore General Mail Facility on October 10, 2001, beginning at 7 p.m. Arrangements for this visit were initiated prior to the filing of the Postal Service request in this docket.

**DATES:** The tour is scheduled for October 10, 2001; this notice was issued September 26, 2001.

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

Dated: September 27, 2001.

**Steven W. Williams,**

*Acting Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-44857; File No. SR-NASD-2001-61]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Provide Nasdaq Issuers Temporary Relief From Listing Requirements Relating to the Bid Price for Continued Inclusion and the Market Value of the Public Float**

September 27, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 26, 2001, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq asserts that the proposed rule change meets the criteria set forth in Rule 19b-4(f)(6),<sup>3</sup> which renders this proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule**

Nasdaq has filed with the Commission a proposed rule change to temporarily suspend, through January 2, 2002, the application of the continued inclusion bid price and market value of public float requirements set forth in NASD Rules 4310(c)(4), 4310(c)(7), 4450(a)(2), 4450(a)(5), 4450(b)(3), and 4450(b)(4).

#### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 240.19b-4(f)(6).