

Separate Views of Commissioners Hammond and Taub

While we joined in signing the certification that this Advisory Opinion conforms to the policies established under title 39, United States Code, we write separately to discuss the Commission's process used to consider the Postal Service's Request. The current advisory opinion process is conducted under rules first written by the former Postal Rate Commission in January 1971. Circumstances affecting the Postal Service have changed dramatically since then. It is imperative that the Commission's rules governing requests for an advisory opinion concerning changes in the nature of postal services be modernized to permit more prompt consideration of such requests.

With passage of the Postal Accountability and Enhancement Act of 2006, Congress did away with the old cost-of-service rate setting system – which was described as a “lengthy, litigious process” that “forces the Postal Service to wait up to 18 months to change rates.”¹²⁸ It is time for the Commission to similarly modernize its own nearly 42 year old rules governing consideration of advisory opinion requests.

We take seriously the Commission's mandate to conduct these proceedings to review proposals by the Postal Service to make changes in the nature of postal services. In this process, we pay particular attention to our responsibility to protect the rights of all affected mail users. That should not change. However, we believe it is legitimate to question the relevancy of advice from such proceedings if the Postal Service does not receive the advisory opinion in a timely fashion.

¹²⁸ See Report of the President's Commission on the U.S. Postal Service, *Embracing the Future: Making the Tough Choices to Preserve Universal Mail Service*, July 31, 2003, at 57; Report of the Committee on Governmental Affairs U.S. Senate to accompany S. 2468 to Reform the Postal Laws of the U.S., Report 108-318, August 25, 2004, at 3-4.

This proceeding has taken nearly 10 months to complete. In our view, that is intolerably long, roughly the same amount of time the former Postal Rate Commission would spend adjudicating and issuing a Recommended Decision on an Omnibus Rate Request from the Postal Service. Taking that amount of time in today's environment may leave a greatly detailed advisory opinion less relevant to the Postal Service, major mailers, and the general public.

We do not dispute, as the Advisory Opinion points out, that the case was "complex," involving 27 participants, ten full days of hearings, and 4,700 pages of transcripts. But this complexity comes with a high cost, not only in terms of the litigation expense but also in delayed consideration of the Postal Service's request. In today's environment, a better balance must be struck. Indeed, the extensive period for consideration itself made this case more complex and drawn out.

The length and complexity of this proceeding convinces us that the Commission needs to concentrate on Docket No. RM2012-4, established April 10, 2012, for the purpose of receiving comments in advance of developing regulations regarding new rules of procedure for evaluating requests for advisory opinions. As stated in Order No. 1309, the Commission's goal is to increase the efficiency and timely resolution of nature of service cases while protecting the rights of all participants, including affected mail users. The Commission received valuable formal comments from eight different parties.

Based on our experience with the advisory opinion process, we believe the Commission owes it to the American public, the Postal Service, all mail stakeholders, the President, and the Congress, to seriously work toward the goal of changes that would increase the efficiency and timely resolution of nature of service cases. After all, the future of a \$65 billion a year government entity, which is a vital component of a mailing industry that supports millions of American jobs, requires that we seriously

consider constructive reform of this process, rather than simply defending what was established in 1971 as being adequate to today's challenges facing the Postal Service.

Tony Hammond, Commissioner

Robert G. Taub, Commissioner