Anna Marie Schuh, Acting Assistant Director for Merit Systems Oversight, Office of Personnel Management, 1900 E Street, NW., Room 7677, Washington, DC 20415–0001 and
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FOR FURTHER INFORMATION CONTACT: P. Kaziah Clayton on (202) 606–2531.

U.S. Office of Personnel Management.

James B. King,

Director.

[FR Doc. 97–11312 Filed 4–30–97; 8:45 am]

BILLING CODE 6325–01–P

POSTAL SERVICE

Decision of the Governors of the United States Postal Service on the Recommended Decision of the Postal Rate Commission on the Complaint of the Coalition Against Unfair USPS Competition, Docket No. C96–1

AGENCY: Postal Service.

ACTION: Notice of decision.

SUMMARY: Notice is hereby given of the Decision of the Governors in the complaint brought to the Postal Rate Commission concerning the packaging service known as Pack & Send. By direction of the Governors, their Decision is published in the **Federal Register** following this notice.

FOR FURTHER INFORMATION CONTACT: Scott L. Reiter, (202) 268–2999.

Stanley F. Mires,

Chief Counsel, Legislative.

April 8, 1997.

With this decision, the Governors exercise their authority to act in rate complaints brought to the Postal Rate Commission under the Postal Reorganization Act (''the Act''). 39 U.S.C. §§ 3625, 3662. The circumstances in this case are unprecedented and unusual. The complainant challenged rates charged by the Postal Service for a packaging service known as Pack & Send. The complaint's principal allegation was that Pack & Send is a postal service for which a classification and fees must be recommended by the Commission. After hearings, the Commission determined that the complaint was justified, but declined to issue a Recommended Decision to us regarding the status of Pack & Send. Instead, the Commission elected to characterize its conclusion as a ''declaratory order.''

We believe that the Commission's obligation under the Act and its own rules was to issue a Recommended Decision. Taken at face value, the Commission's action would effectively deprive us of our role in the statutory scheme. We have thus construed the Commission's order to be a Recommended Decision. For the reasons expressed below, we hereby reject it. By separate action the Postal Service has decided to discontinue the Pack & Send service.

Statement of Explanation and Justification

Background

This docket was initiated as the result of a complaint filed under 39 U.S.C. section 3662 by the Coalition Against Unfair USPS Competition (''Coalition'' or ''CAUUC''). The Coalition is a trade association representing operators of commercial mail receiving agencies (''CMRAs''), who, among other things, offer mail boxes, shipping services, packaging materials and packaging services in competition with the Postal Service. For the past two years, the Postal Service has offered Pack & Send as a pilot test, extending it over that time to approximately 260 selected postal facilities in a few geographic areas. The Coalition claimed that this service was unlawful, because the Postal Service had not first sought a recommended decision from the Commission to establish it and to set appropriate fees. Conversely, the Postal Service contended that packaging service is not required by the Act to be recommended by the Commission. All parties and the Commission agreed that the only issue that needed to be resolved to determine whether the complaint was justified was whether Pack & Send was a ''postal service.'' According to the Commission, if it made this finding, then the complaint was necessarily justified, because the service had not been established through proceedings before the Commission.

Testimony was filed on behalf of the Coalition and the Postal Service. The Postal Service provided the testimony of its Vice President for Retail, explaining the nature and operation of Pack & Send, and the reasons why it did not have to be recommended by the Commission. The Commission held hearings on the testimony under its rules governing complaints filed under 39 U.S.C. section 3662. The Commission ultimately found that the service was a postal service, and concluded that the complaint was justified. It made this determination in the form of a ''Declaratory Order,'' PRC Order No. 1145, issued on December 16, 1996. The Postal Service moved for reconsideration of the Order. In Order No. 1156, issued on February 3, 1997, the Commission affirmed both its substantive view regarding the status of Pack & Send, and its procedural view that it need not issue a recommended decision.

As had been suggested by the Commission's Office of the Consumer Advocate (OCA), the Coalition threatened to initiate federal court litigation seeking to enjoin the Postal Service from continuing to provide the service in the face of the Commission's findings. (Letter of January 29, 1997, from Chair of the Coalition to Chairman of the Board of Governors.) In part because such litigation would have made resolution of this matter more complicated than it needed to be, the Postal Service, with our concurrence, discontinued offering Pack & Send service as of February 14, 1997.

Statutory Scheme

The Commission's handling of this matter, both substantively and procedurally, raises several serious concerns. Initially, we believe that the form of the Commission's action is fundamentally inconsistent with the statutory scheme governing the Postal Service, and the respective roles of the Commission and the Governors under the Postal Reorganization Act.

The Act gives the Postal Service both general and specific powers, including the specific authority to provide and establish nonpostal services. 39 U.S.C. §§ 401, 404(a)(6). Nowhere in the statute is there any reference to Commission action in connection with nonpostal services. For postal services, the Governors are given the final authority to establish rates, fees, and mail classifications in accordance with applicable provisions in chapter 36, which generally provide for Commission proceedings leading to a recommended decision on these matters for postal services. 39 U.S.C. §§ 3621'3625. The Postal Service alone may initiate proceedings to establish or change postal rates or fees. 39 U.S.C. § 3622. Under section 3662, interested parties may challenge postal rates or services alleged not to be in accordance with the policies of the statute, but there is no explicit reference in that provision to any activity that is not a domestic postal service. The Act, in fact, does not create an explicit mechanism for challenging the legal status of services as postal or nonpostal.

In our opinion, the suitability of section 3662 to challenge the legal status of Postal Service activities only

makes sense if it is done in a way that respects the roles of the Postal Service and the Governors in the statutory scheme.[1] Section 3662 states that in the case of a rate complaint filed with the Commission, if the Commission ''determines the complaint to be justified, it shall, after proceedings in conformity with section 3624 of this title, issue a recommended decision which shall be acted upon [by the Governors] in accordance with the provisions of section 3625 of this title, and subject to review in accordance with the provisions of section 3628 * * *.'' 39 U.S.C. § 3662 (emphasis added). The Commission's own procedural rules state that ''[i]f the Commission determines, after the completion of proceedings which provide an opportunity for hearing, that a complaint is justified in whole or in part, the Commission shall issue a recommended decision to the Postal Service, if the complaint involves a matter of rates and fees or mail classification * * *.'' 39 CFR § 3001.87 (emphasis added).

In this proceeding, the Commission has held hearings in conformity with its rules implementing section 3624. It has made a determination concerning the only question that was before it, and has determined the complaint to be justified. No further issues remain to be determined to reach a final conclusion on the merits of the complaint. The Commission should therefore have issued its finding in the form of a recommended decision to us, as required by the plain language of the statute and its own rules. The action it took does not allow for the exercise of our statutory authority in this complaint case.

The Commission's conclusions regarding the status of Pack & Send raise issues that we would have addressed had the Commission properly issued a recommended decision. Accordingly, we are treating the Commission's Orders as a recommended decision. In this regard, section 3625 gives us a number of options. For the reasons set forth in this Decision, we are exercising our option to reject.

Principles at Issue

The first principle at issue is that we and the Commission are intended to be partners in the ratemaking process. With regard to this relationship, courts have concluded that ''one partner does not regulate another,'' and that ''Congress did not intend that the Postal Rate Commission regulate the Postal Service.'' *Governors of United States Postal Service* v. *Postal Rate Commission*, 654 F.2d 108, 114–15 (D.C. Cir. 1981); *Mail Order Association of America* v. *United States Postal Service*, 986 F.2d 509, 524 (D.C. Cir. 1993). The statute establishes the Commission as the body with primary expertise in classification and ratemaking, but, even on such matters, gives the Governors the authority to make a final decision. There is, however, no basis in the statute or in judicial precedent to support the proposition that the Commission has primary expertise in determining the nature of the services offered by the Postal Service. Indeed, the absence of any provision for it in the statute suggests that the Commission was not intended to play a role in the creation and operation of nonpostal services. It does not have unilateral authority in the area of its primary expertise, but rather shares that authority in a partnership with us. The Postal Service has the primary expertise and authority in determining the nature of the services it offers.

The second principle is one which derives from general notions of public policy: that an administrative agency should attempt to resolve issues before it in a way that avoids needless federal court litigation, or, at the very least, is not designed explicitly for the purpose of fostering such litigation. In this case, the course that the Commission has taken by choosing not to issue a recommended decision appears to respond to the OCA's argument that the Commission should not issue a recommended decision, because of the possibility that the Governors would exercise their lawful statutory option to reject it. According to the OCA, this would leave the complainant with no way to appeal our decision, since a rejection decision is not appealable under section 3628.[2] Instead, the OCA urged the Commission to issue a ''declaratory jurisdictional order'' that could be the basis for the Coalition to ask a federal district court to enjoin the Postal Service from continuing to offer packaging service.[3] That is precisely what the Commission did, and what the Coalition has threatened.

The third principle is that the statutory scheme embodies the Governors' and postal management's responsibilities for managing the Postal Service. If sound policy leads to a determination that section 3662, as a practical matter, should be adapted to enable interested persons to challenge the nonpostal status of Postal Service activities, it must accommodate the authority for making management decisions that the Act entrusts to the Governors and postal management. In this instance, the Commission justified its decision not to issue a recommended decision on its belief that ''there is no substantive recommendation for the Commission to make'' to the Governors. The Commission stated that ''a recommended decision simply declaring that Pack & Send is a postal service, and thus subject to the Commission's jurisdiction, would be a hollow vessel lacking any recommendation of substance upon which the Governors could act under § 3625.'' Order No. 1145, at 24.

It is not clear precisely what is meant by this. If the Commission is suggesting that a recommendation can only pertain to changes in rates or in the Domestic Mail Classification Schedule (DMCS), we do not agree, at least in the context of this complaint.[4] Here, the only issue

[1] The Postal Service did not challenge the Commission's jurisdiction under 39 U.S.C. § 3662 to resolve the question of whether a service is postal or nonpostal within the meaning of the Act. Since the statute contemplates that the Commission's resolution of the proceeding would be in the form of a recommended decision, rather than a unilateral ''declaratory order,'' it expected that the Governors would have an opportunity to act in accordance with sections 3662 and 3625. We do not concede that section 3662 gives the Commission jurisdiction to review new products and services to establish their status as postal or nonpostal service.

[2] The OCA characterized this sequence of events as a ''pit'' that the Postal Service was luring the Commission to ''fall in[to].'' See OCA Response in Support of Complainant's Motion for Summary Judgment at 5–6 (September 27, 1996); OCA Brief at 15–16 (November 22, 1996). The Commission, furthermore, in Order No. 1156, noted that parties aggrieved by the interlocutory Order might avail themselves of the federal district courts. Order No. 1156, at 16 & n. 6.

The OCA's concern was apparently that the Governors would take action under 39 U.S.C. § 3625 that would not be reviewable under § 3628, and that Pack & Send would thereby be immune from judicial review. OCA Motion at 6 & n.2; OCA Brief at 16 n.8. In this regard, we note that courts have been known to assume jurisdiction to review agency action where the claim is made that an agency's conduct exceeds its statutory authority, even where review would otherwise be precluded by statute.

[3] Id.

[4] It is not the case that a meaningful or appropriate recommendation could only be to change rates or classifications. The Commission has often recommended maintaining the status quo, sometimes based on a legal conclusion that a proposal would violate the policies of the Act, or that existing classifications were not unlawful. The Governors, furthermore, have in the past approved such recommendations. E.g., Docket No. MC76–1–4 (The Commission recommended that Mailgram service not be included in the Domestic Mail Classification Schedule; the Governors approved that recommendation.); Docket No. R77–1 (Based in part on a legal conclusion, the Commission recommended to the Governors that the Postal Service's proposed citizens' rate mail not be adopted; the Governors approved). In complaint cases as well, the Commission has based a recommendation on its legal conclusion that a challenged classification did not violate law. Docket

was the legal status of a particular activity, i.e., whether it was postal in nature. The Commission's recommendation and opinion, although embodied in the form of a ''declaratory order,'' created constraints and options for management decisionmaking. In our opinion, this is a situation for which Governors' action responding to the Commission's determination is both logical and mandated under sections 3662 and 3625.

Had the Commission issued a recommended decision, it would have given us a number of options.[5] One that we might have chosen would have been to accept the Commission's recommendation. This would have given the Board the further options of instructing postal management either to discontinue the service or to prepare to file a case seeking the Commission's recommendation of a classification and fees for the service. To assume that we would under no circumstances agree with the Commission that substantial evidence supported its substantive finding, or that we would not seek to exercise a role in the permanent establishment of this service, essentially mischaracterizes the Governors' role with respect to both the Commission and postal management.

A recommended decision affords us other options which the Commission sought to foreclose. We would have had the opportunity to accept the recommendation under protest and return it to the Commission with our request for reconsideration, or clarification, perhaps on bases different from those already expressed by the Postal Service. Alternatively, we could have sought judicial review under section 3625(c). We may or may not have chosen to exercise these options; but we believe we have the statutory right to make that decision.

Finally, we could have rejected the recommendation. Indeed, we have now chosen to do so. In this instance, however, our rejection occurs under circumstances in which the Board and postal management decided to discontinue the challenged service. This action, which effectively afforded the complainant the relief it sought, does not reflect on the merits of their challenge,[6] but is based on a recognition that the short-term and long-term costs of further controversy in this matter may be too high.

Other Considerations

Another serious concern is that the outcome in this case may signal a bias against Postal Service activities that might be considered to be in competition with private sector entities.[7] The general question embodied in the debate over the scope of Postal Service activities involves a complex inquiry into important policy issues. For example, we understand that CAUUC, the complainant in this case, is currently advocating legislation that would curtail the Postal Service from offering services that compete with private businesses. This, in fact, was also a theme running throughout the proceedings before the Commission. In this regard, we acknowledge that those and other issues are matters about which individual Governors might hold differing views. Nevertheless, as officials who are mandated by statute to represent the public interest generally, and not particular interests, we are acutely aware of our duty to ensure that the Postal Service lives up to the obligations and responsibilities conferred upon it by the Postal Reorganization Act. In other words, whether the Postal Service competes with private entities in any given instance is a question of fundamental policy that lies ultimately with Congress. How that policy is manifested in Postal Service activities has been entrusted by the Act to postal management and the Governors.

Scope of Review

Because Pack & Send has been discontinued, we need not engage in a comprehensive analysis and discussion of the record. However, important policy considerations arising in the Pack & Send matter are likely to come up again in the future as new services are developed. As Governors, we have a responsibility to consider and direct the broad objectives of postal operations and policy. As a threshold matter, we reiterate that we do not concede that jurisdiction lies at the Postal Rate Commission by complaint under 39 U.S.C. section 3662 to challenge new products, services, or activities that the Postal Service has determined to be nonpostal. The principal inquiry presented by such a complaint concerns the nature and status of the Postal Service's product offerings, matters that lie outside the Commission's acknowledged primary expertise in allocating costs and recommending rates, fees, and classifications. Even assuming there is jurisdiction, if section 3662 is employed, we believe that the statute requires a joint determination between the two agencies acting as partners, as discussed earlier.

The Governors would prefer to find in the Pack & Send Orders guidance for the formulation and conduct of policy in differentiating postal and nonpostal services for the future. But the Orders seem to us to extend the standard for evaluating whether an activity is a postal service farther than is supported by current caselaw. So too, there are now questions regarding the application of the Commission's prior precedents and opinions. For these reasons, rather than from our independent assessment of the Commission's findings, we must reject the conclusions in these two Orders.[8]

Applicable Standards

The introduction of new services, involving innovative features juxtaposed with existing activities, tests the Governors' ability both to find consistency with what has gone before and to identify firm ground for the future. In our capacity as Governors, we have developed an increasing appreciation for both the challenge of drawing the appropriate lines around some of the forward-looking services which management is developing to serve our customers, and the inescapable need to make these decisions in the interest of a modern, vibrant postal system moving into the twenty-first century, and within the statutory framework currently afforded. We sense that the Commissioners, in their effort to provide verbal yardsticks for measuring the postal or nonpostal character of Pack & Send, have recognized some of the same needs and wrestled with much the same inherent ambiguities.

For judicial assistance, the Commission and the Governors must rely primarily on one case which attempted a definition of postal versus

Nos. C85–2 and C86–1 (The Commission recommended no change based on its legal conclusion that the DMCS did not violate the Constitution.)

[5] In this case, a possible recommendation could have been that the Board should initiate a proceeding under Chapter 36, based on the Commission's legal conclusion that Pack & Send is a postal service.

[6] The Postal Service action was not intended to waive its opposition to the Commission's legal conclusion, or to agree with the Commission's Orders.

[7] We understand that in the course of this litigation the OCA, the only other party to play a significant role in the litigation, sided with the Coalition.

[8] The posture of the case requires that we treat the Commission's action here as a recommended decision for our consideration under 39 U.S.C. § 3625, although not so denominated in the Orders themselves. For the reasons expressed below, we have concluded that the option available to the Governors which best allows us to register our concerns is the statutory option to reject. We also find that the Commission's interpretation of its obligations to issue a recommended decision under 39 U.S.C. § 3662 serves as an independent basis for rejection.

nonpostal as applied to specific services then offered. In *Associated Third Class Mail Users* v. *United States Postal Service*, 405 F. Supp. 1109 (D.D.C. 1975), (''ATCMU''), the district court reviewed the Postal Service's assertion that fees for a group of special services, such as mailing list corrections, registry, and insurance, could be changed without a Commission recommendation. The court concluded that all of the services under consideration were ''postal services,'' because ''nearly all of these other services are very closely related to the delivery of the mail.'' Id. at 1115. The court found that money orders were a ''possible exception * * * since they can be used equally as well without being delivered by mail.'' Id. Nevertheless, the court concluded that money orders would also be treated as postal, since the majority of Postal Service money orders were ''* * * actually'' sent by mail. The court also found that whether the fees set for these services had a ''substantial public effect'' was relevant to whether Congress intended them to be recommended by the Commission. On appeal, the Court of Appeals affirmed the district court's holding, without adopting all of its reasoning. *National Association of Greeting Card Publishers* v. *United States Postal Service*, 569 F.2d 570, 596–96 (D.C. Cir. 1976) (''NAGCP''). The court found that the services in question were postal because ''each clearly involves an aspect in the posting, handling and delivery of mail matter.''[9] As for the money order exception, the court agreed with the district court that, since the majority were mailed, they could be viewed as ''intimately a part of postal services.'' Id. The court did not comment on the district court's ''public effect'' criterion.

Subsequent to the district court decision, but before the NAGCP Court of Appeals affirmance, the Commission in Docket No. R76–1 reviewed the jurisdictional status of a broad range of postal activities and services, referring to the test formulated by the district court. PRC Op. R76–1, Vol. 2, App. F. The Commission concluded that many of these satisfied the general tests outlined by the district court. However, the Commission then questioned the applicability of those tests to several other activities. In particular, the Commission questioned the ''jurisdictionality'' of money orders, ''because of their lack of intrinsic connection with the carriage of mail.'' Id. at 12. Furthermore, in its Opinion in Docket No. R76–1, the Commission elaborated on the standard articulated by the court, in connection with special postal services. The Commission characterized these as:

> services other than actual carriage of mail but supportive or auxiliary thereto. They enhance the value of service rendered under one of the substantive mail classes by providing such features as added security, added convenience or speed, indemnity against loss, correct information as to the current address of a recipient, etc. We believe that this standard is consistent with the decision in Associated Third Class Mail Users, supra, that special postal fees are within the jurisdiction of the Commission.

PRC Op. R76–1, Vol. 1, at 266–67.

We have concluded that the Commission's decision in this proceeding expands this earlier standard. The order identified Pack & Send as ''[i]ntrinsically'' a ''value-added'' service that was ''supportive or auxiliary'' to the carriage of mail. Order No. 1145, at 19.

The order also found the public effect standard applicable to Pack & Send's ''impact on competing stores in the private sector that offer packaging service and access to alternative means of shipping parcels.'' *Id.*

Policy Concerns

The Commission's action raises questions about a broader standard for postal services than the courts have defined. In this regard, several general policy implications emerge.

First, we have concerns about the validity and implications of the ''value added'' standard suggested in the order. The district court in *ATCMU* defined a postal service as ''*closely related* to the delivery of mail.'' 405 F. Supp. at 1115 (emphasis added). The Court of Appeals referred to services ''involv[ing] an aspect in the posting, handling and delivery of mail matter.'' 596 F.2d at 596 (emphasis added). The value added concept differs from these more conventional tests. For our own analysis, we have found it a vaguer standard providing little guidance. Nor does the value added concept necessarily flow logically from either of the courts' definitions.

The Commission's assessment of Pack & Send under this standard was based on its conclusion that ''the locus of the added value is the alternative form of acceptance it provides.'' Order No. 1145, at 19; see *id.* at 15. While we do not address that finding, we note that the observation that packaging amounts to ''mail preparation for a fee'' may imply an overbroad and unworkable formula. The Commission and the Governors had earlier found that the sale of packaging materials did not constitute a postal service. PRC Op. R76–1, Vol. 2, App. F, at 20–21. In this regard, the fact that packaging materials are inventoried, stocked, and sold by postal employees did not change the inherent nature of their sale as a nonpostal service. Furthermore, as a general matter, the performance of a service by a postal employee does not change the essential nature of that service and cannot, merely by virtue of the employee's involvement, make that service a postal service.

Based on the description in Docket No. R76–1, quoted above, the Commission presumably intended the ''value-added'' criterion to be the same as the courts' standards. The concepts of ''value'' and ''enhancement,'' however, may be impractically broad and imprecise considering the variety of support services that are increasingly offered and required as conditions for mailing in an automated operational environment. We are concerned, furthermore, that such a standard could be taken so broadly as to include a range of activities that might be considered ''valuable'' in connection with particular uses of mail, but that do not bear any substantive relationship to mail in an operational sense.[10]

Second, we are concerned with the ramifications of the Commission's use of the money order, or ''frequency of mailing'' rationale that was enunciated early on by the courts, but that has not been consistently applied since that time. The Commission considered in Docket No. R76–1 that photocopying machines in postal lobbies would not be a postal service, even if every copy made were required to be mailed. PRC Op. R76–1, Vol. 2, App. F, at 20. In that case, where the service did not involve a clearly postal-related activity, a complete correlation between the service and mailing could not support a finding that the service is postal. With regard to Pack & Send, the Commission's order concluded that the likelihood of mailing established only ''a dispositive tendency toward a finding'' that packaging service was postal in nature. What emerges from this history is an unreliable guideline. While it may be easy to assume that use of a

[9] Id. at 596. The Court of Appeals stated: ''Since the Act provides no specific definition of 'postal services,' * * * we must construe its meaning within the purposes of the Act, looking to legislative history where the words themselves, read plainly, are inadequate.'' Id.

[10] The Postal Service may find it advantageous in the future to offer services that enhance the value of mail content after it ceases to be mail, or perhaps before mail is produced. In this regard, we are concerned that a ''value-added'' test could extend to Postal Service activities that bear little relation to the actual provision of conventional, core mail services.

service could result in mailing, it is difficult to see how a standard based on frequency of this occurrence can determine Commission jurisdiction.[11]

Finally, the application of the public effect standard in Pack & Send appears to differ from the ATCMU court's original formulation. As described by the district court, the public effect test pertained to the financial consequences of a particular service, as reflected in postal revenues, and the effect on consumers' expenses for the service. 405 F. Supp. at 1115. The court implied that, beyond the simple magnitude of customer expenses, the impact on mailers who had no other alternatives (in the case of money orders) had a bearing on this consideration. The court indicated that the test was related broadly to the policies in the Act favoring the availability of hearings and the opportunity to scrutinize and challenge proposed changes in fees. Again, however, the court indicated that the magnitude as well as the scope of the financial impact ''on sizeable and diverse groups in society'' was a controlling consideration. *Id.* at 1116. In the Pack & Send complaint proceeding, the Commission focused on the potential financial impact on competitors, rather than on the public or customers of the service. Indeed, the Commission properly acknowledged that the impact of Pack & Send in its current form was relatively minor.

It is unclear how a public effect consideration, which includes postal competitors and omits postal customers, is consistent with the standard outlined by the district court. We do not endorse it as a guide to future policy, or as a test of the Postal Service's or the Commission's jurisdiction.

Need for Change

The uncertainties that have complicated the Pack & Send situation amplify the inadequacies of existing administrative mechanisms to accommodate the needs of a modern Postal Service. A modest proposal, such as offering packaging services, should not have to be unduly inhibited or interrupted by potentially lengthy administrative or court proceedings. The Postal Service should be able, quickly and efficiently, to test the viability and design of service offerings that provide service of value to the general public, and that have already been established in the marketplace. In the long run, if the Postal Service is to provide affordable universal service, at uniform rates, it must be able to take advantage of opportunities for new revenues. Furthermore, to keep in step with the continually evolving economic environment, it must be able to provide innovative services quickly. This will require real flexibility to design and test products and to set rates, in accordance with fair, uncomplicated opportunities for review that are appropriate for the circumstances.

We have come to our resolution of this matter with regret. It would be far better if the legal standards were clear, well settled, and universally understood, so that full attention could be given to meeting the real needs of the public.

For the ordinary citizen, the current accumulation of past choices about what has or has not been put in the rate and mail classification schedules, what does or does not have the participation of the Commission, is difficult to comprehend. When a customer makes a photocopy in the lobby to put in his envelope, he uses a service not classified in the schedules. When he buys a money order for the same purpose, the schedules define that service for him. When he purchases philatelic services, the fees are outside the rate schedules, because the Postal Service has separate authority for them under 39 U.S.C. section 404(a)(5). When he buys stamped envelopes, the fees are in the rate schedules, although the Postal Service has separate authority for the service under 39 U.S.C. section 404(a)(4). Mailgrams, delivered in the mailstream, are not classified as mail services. Mailing list services, which correct the customer's address file and do not directly involve the mailstream at all, are classified as mail services.

Perhaps it is too much to expect at this point that the Commission and the Governors should have achieved full congruence and consistency between what is in and what is outside the accumulation of services reflected in the schedules recommended by the Commission and approved by the Governors. Virtually the only judicial assistance for the task has come from one case, litigated more than 23 years ago, early in the history of the reorganized Postal Service. With the benefit of additional years of experience, perhaps it is now time to revisit the drawing of the relevant lines.

Conclusion

In summary, there are important policy considerations raised in the Pack & Send analysis of the postal versus nonpostal nature of a service. The Postal Service has nonetheless discontinued the operation of Pack & Send and is not reversing that action by this Decision. Postal management will, however, continue to study its options regarding packaging service in general or a variant of Pack & Send as a postal service, and, if appropriate, make recommendations to the Board of Governors.

Estimate of Anticipated Revenue

The Postal Reorganization Act requires that our Decision include an estimate of anticipated revenues. 39 U.S.C. § 3625(e). Because the Postal Service has already discontinued Pack & Send service, our Decision will have no effect on anticipated postal revenues.

Order

In accordance with the foregoing Decision of the Governors, the Commission's Orders No. 1145 and 1156, construed as a recommended decision under 39 U.S.C. section 3662, are rejected. This Decision shall be published in the **Federal Register**.

By the Governors:

Tirso Del Junco,

Chairman.

[FR Doc. 97–11379 Filed 4–30–97; 8:45 am]

BILLING CODE 7710–12–P

[11] We must defer to the courts' formulation of the frequency of mailing standard. Nevertheless, we note that in the cases the test was established as an exception for an entrenched existing service, sale of money orders, which did not share the characteristics that the courts concluded established a status as a postal service. Consistent with the Commission's reservations, it is possible that the application of that standard is limited to the unique circumstances in ATCMU, in which the court was asked to consider jurisdiction over existing special services as a group.

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.