

current financial data—before hearings are held—that would allow the Commission to make informed decisions as to whether such hearings were warranted.

The Commission's duty to determine if hearings are warranted potentially extends to hearings to reclassify rate categories as subclasses, or vice versa, depending, in part, whether they have enough common cost-driving characteristics. The Commission's duty to determine if hearings are warranted also potentially extends to complaints that certain rates or discounts are unfair because there have been major shifts in relative cost savings since rates were last approved. Determining whether such hearings are warranted requires the Commission to make informed judgments about subclass and rate category attributable costs. To exercise the discretion that the Act calls for, the Commission needs access to attributable cost estimates about which it can make some judgments, not just unreviewable, bottom-line estimates based on unknown data sources and estimation methods. The partial CRA documentation required by the Periodic Reporting Rule can fulfill this need.

Section 3603 Authorizes Measures That Make Processing Postal Service Requests More Efficient and More Fair

The more important need that partial documentation of the CRA fulfills relates to the omnibus rate cases that the Postal Service files, and the myriad minor rate and classification cases that it files under abbreviated hearing schedules. The "efficient administration" of those hearings, to quote the Postal Service, is not the Commission's only function. Its function is not just to conduct those hearings "efficiently" in a severely compressed time frame, but to conduct them fairly.

In order to conduct omnibus rate hearings initiated by the Postal Service efficiently, the Commission has to be able to read, comprehend, and in some respects, repair, the Postal Service's "cost attribution engine" before it can address the analytical and policy issues raised by a rate request. For this process not to swallow up the majority of the available hearing time, the Commission needs to begin the process with an understanding of the current CRA. This requires reasonable familiarity with the mechanics of the Postal Service's current cost attribution methods. If it has to devote a major portion of the litigation window to acquiring this familiarity, it may have to give the merits of the Postal Service's cost attribution methods, as well as basic

volume and revenue estimation issues, short shrift. All of these considerations apply equally to intervenors in Commission proceedings. For them to have meaningful due process, they not only need a reasonable chance to understand and respond to the Postal Service's entire case in the time allotted, which they cannot do without the documentation required by the Periodic Reporting Rule, they need a reasonable chance to develop, propose, and defend alternative cost estimation techniques in the time allotted. This they cannot do without the datasets required by the Periodic Reporting Rule.

Section 3603 Authorizes Measures Designed To Expedite Minor Cases

Between omnibus rate cases, the Postal Service often files requests for changes in rates for individual mail categories. When it does, it usually seeks to expedite the case by seeking a waiver of the Commission's normal documentation requirements for rate and classification cases found in rules 54 and 64. These require the Postal Service to provide full documentation of its base year attributable cost, volume, and revenue estimates. The Postal Service usually files these requests under Commission rules that drastically shorten the 10-month period that the statute makes available to intervenors to litigate a rate case. These range from "experimental" cases, which have a 150-day litigation schedule, to Negotiated Service Agreements, for which a 60-day litigation schedule has been proposed.

These rules allow expedition when intervenors raise only issues of limited scope and complexity. The ability of the Commission and the intervenors to process such cases within severely compressed schedules also depends on their ability to do without a fully documented request. If a partially-documented CRA has been filed under the Periodic Reporting Rule for an interim year, the intervenors are much more likely to be able to do without a fully documented base year CRA, and the Commission is much more likely to grant the waivers that expedition requires, and allow cases to proceed under its expedited rules.

The abbreviated hearing schedules provided for by the Commission's expedited rules are Commission attempts to implement the ratemaking provisions of the Act in a manner consistent with modern needs of the Postal Service. The concept behind them is that there is not a need in every case to litigate every issue—including the mechanical structure of the CRA—

from scratch. The Periodic Reporting Rule is based on that concept as well.¹⁷

Section 3603 Is Not Restricted to Measures Whose Need Is "Compelling"

The Postal Service comments that certain information required by the Periodic Reporting Rule is not "strictly needed to conduct rate and classification proceedings" and "not required by a compelling and legitimate function." Substantive Comments at 11, 13. It thereby implies that the statutory threshold for invoking the authority of § 3603 is that a regulation be an indispensable means of achieving a statutory purpose. This is a gloss on § 3603 that cannot be found in the legislative history or inferred from the structure of the Act. The provision authorizes actions that the *Commission* deems to be "necessary and proper to carry out their functions and obligations * * *."

As the Commission has explained, it has an obligation to competently address the full range of issues presented by a rate request in the short time allotted by statute or the even shorter time allotted by special rule. To help do this it must maintain a certain level of expertise in current methods of attributable cost, volume, and revenue estimation. The partial documentation of the CRA required by the Periodic Reporting Rule will help it to maintain this expertise. Maintaining the requisite expertise to do the Commission's job effectively is not a minor consideration in making sure that the Postal Reorganization Act functions as Congress intended. As the Supreme Court, in *National Greeting Card Publishers v. USPS*, observed:

Congress recognized that the increasing economic, accounting, and engineering complexity of ratemaking issues had caused Members of Congress, "lacking the time,

¹⁷ The Commission's expedited rules of practice incorporating abbreviated hearing schedules were adopted at the request of the Postal Service. They strain the due process protections that the Act provides to intervenors to the limit. So far, the intervenors have cooperated in this attempt to accommodate the Postal Service's need for speed and flexibility in ratemaking and classification procedures. The Commission's expedited rules ask the intervenors to assert all of the formal rights that they have under highly abbreviated record hearing procedures in order to meet the Postal Service's need for flexible ratesetting. It is ironic that after receiving the voluntary cooperation of the intervenors in foregoing some of rigidities of the statutory hearing process that benefit them, the Postal Service so adamantly seeks to retain all of the rigidities of the formal hearing process that benefit the Postal Service. These include its perceived right to surprise intervenors with all aspects of its rate requests, thereby maximizing the time pressure under which they must litigate, and minimizing their access to meaningful due process. See Substantive Comments at 36.