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BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

DEPARTMENT OF TRANSPORTATION

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DOCKET SECTION

OST-95-578-2

Electronic Filing of Property
and Passenger Tariffs)

) Docket 48385
)

REQUEST OF AIRLINE TARIFF PUBLISHING COMPANY
FOR DELAY IN RESPONSE DATE; PUBLIC MEETING
AND DISCLOSURE OF COST STUDIES

Communications with respect to this application should be sent
to:

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Publishing Company

October 28, 1992

8 pp

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REQUEST OF AIRLINE TARIFF PUBLISHING COMPANY
FOR DELAY IN RESPONSE DATE: PUBLIC MEETING
AND DISCLOSURE OF COST STUDIES

Airline Tariff Publishing Company (ATPCO) requests that the Department of Transportation (DOT) take the following actions as it may relate to its Notice of Proposed Rulemaking (NPRM) in this docket published in the Federal Register on October 16, 1992.p

1. Extend the comment period from November 16, 1992 to January 16, 1993;
2. Immediately schedule a public meeting for all interested parties to have an opportunity to ask questions of DOT personnel familiar with the NPRM to clarify the meaning and intent of the NPRM;

1/ At least 60 air carriers attending ATPCO's air carrier meeting held on October 27, 1992 concur in ATPCO's filing of this request.

3. Immediately place in the public docket all cost studies relied upon by DOT that relate in any way to the increased fees that are proposed in the NPRM. Included in such information should be all budget information or projections as they may relate to cost recovery or use of fees collected from electronic tariff filings.

BACKGROUND

ATPCO has, over the course of several years, filed three (3) Petitions for Rulemaking addressing the conversion of DOT's tariff system filed at DOT from a paper environment to an electronic environment. DOT, in response to ATPCO's original Petition for Emergency Rulemaking filed in 1987, and with the assistance of an industry Advisory Committee, published and finally put into effect an electronic tariff filing system in 1989. ATPCO, responsive to the needs of its customers, including the carriers and the CRS systems, has developed its present extensive and highly effective electronic system required by Subpart W of Part 221 (14 CFR § 221 et. seq.). That system was developed by ATPCO at great cost to the industry and reflects the considerable time and expertise developed over several decades of experience in publishing and distributing tariff information in both printed and electronic format. A preliminary assessment of the NPRM by ATPCO, based upon ATPCO's present understanding of the proposed rulemaking, indicates that, considering the

programming changes alone, conversion to the proposed system would involve approximately 5.25 person years of labor. That preliminary estimate of the costs is only a fraction of the total cost to ATPCO, the carriers, the CRSs and to the traveling public which ultimately benefits from the ATPCO system for filing tariffs both at DOT and with foreign governments. Because of the very complex and highly technical nature of the ATPCO system, the extent of the impact of the proposed rule upon the industry, both from a practical operational standpoint and from a cost standpoint, cannot be ascertained without detailed analysis of the NPRM which cannot be accomplished in a period of thirty days.

As far as ATPCO can ascertain, there have been no consultations, as there were in prior rulemakings through the Advisory Committee, with the carriers, industry organizations or any foreign governments concerning the reason for or impact of the NPRM. This is so even though the highly technical rulemaking will significantly impact each of these groups both substantively and financially. There are provisions in the rulemaking which would appear to require the re-creation of tariff pages, an anachronism that was done away with in December of 1989. Why this provision of the NPRM may be necessary and for whose benefit this is being done is not clear. ATPCO is unaware of any public audience requesting access to tariff pages. ATPCO is also unaware of any existing statutory or regulatory authority requiring the filer, as opposed to the carrier, to comply with

posting requirements. The major benefit of the original rulemaking, of course, was to do away with tariff pages. One must wonder whether DOT is taking a step backwards or whether there is a purpose to the NPRM that is not apparent from a review of the preamble published in the Federal Register.

For all the years of tariff regulations (both for paper and electronic tariffs), fares files have been maintained separately from rules files and footnote files. This design allows for great efficiency since, for example, the meaning of a footnote, applicable to thousands of fares, may be changed without processing those thousands of fares at great expense. It seems that the NPRM does not recognize that point for the rulemaking apparently requires the marriage of the footnote and the rule to the fare thereby requiring the republication of the fares each time the footnote or rule is changed. Without some dialogue, ATPCO is unable to assess exactly what is contemplated.

ATPCO also questions the intent of the hierarchy of rules information suggested in the NPRM. Besides not understanding what is being proposed, there is no indication of the relationship of such a proposal to the filing requirements of various foreign governments especially those officially accepting the system.

With that in mind, and referenced only as examples of the issues that need to be discussed, ATPCO respectfully suggests that the following requests are reasonable, indeed necessary, for

the Department to be able to receive meaningful comments from the carriers, the public and ATPCO to assist it in the rulemaking process.

DELAYING THE COMMENT PERIOD UNTIL JANUARY 16, 1993

The original thirty-day comment period contained in the NPRM would appear to be inadequate for a meaningful review and comment on the proposed rule given the complexity of the issue and the cost associated with the proposed changes. At this writing, ATPCO has numerous questions concerning the meaning and purpose of not only the language, but the substantive provisions of the NPRM. Given a very real inability to give meaningful comments based upon ATPCO's understanding of the NPRM and its belief a dialogue with DOT will assist the comment process, a reasonable delay is justifiable. As set out below, ATPCO believes that DOT should schedule an immediate public meeting to explain the issues and then provide for a reasonable comment period thereafter. We believe this can be accomplished by January 16, 1993.

PUBLIC MEETING

ATPCO believes that a public meeting that can be recorded for the docket is essential to a meaningful comment process. See 49 C.F.R. § 5.5 (holding rulemaking open to the public; "The Secretary [of DOT] may initiate any further

rulemaking proceeding that he finds necessary or desirable. For example, he may invite interested persons to..., participate in conferences,... or participate in any other proceeding.") Until all parties are fully apprised of the intent of the NPRM, no one can comment in a meaningful way. ATPCO believes that it can contribute more meaningfully if it has a chance to clarify several substantive and technical issues that appear to be raised in the NPRM. We would suggest that such a meeting take place within thirty days.

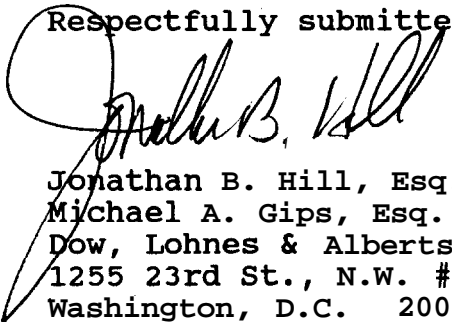
COST STUDIES

The NPRM proposes maior fee increases for the filing of fares, rates and rules.^{2/} A meaningful and lawful rulemaking can only be undertaken and user fees established, or, as in this case increased, if the back-up cost studies are available for public review and scrutiny and the fees comply with the user fees statute. See 31 U.S.C. § 9701 (1982); Circular No. A-25 re User Charges, Transmittal Memorandum No. 2, Office of Management and Budget (April 16, 1974) at 1, ¶¶ 1, 2(a)(2) (requiring preparation of separate cost report for services for which "charges have been changed," and for special services "for which existing charges are producing less than full cost recovery"). These studies should immediately be placed in the docket for

^{2/} The fee increases for fare filings are double current levels. The fee for rules filings may be three times more than current levels.

public review. Additionally, since Congress has authorized the Department to credit "electronic tariff filing user fees and other fees" to the Department's appropriations for "aviation information management", the budget for this year and the coming year reflecting these planned recoveries for the relevant office should be made available.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jonathan B. Hill". The signature is written in a cursive style and is positioned over the typed name and address.

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October 28, 1992