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BEFORE THE  
POSTAL RATE COMMISSION  
Washington, D.C. 20268-0001

POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY

SPECIAL SERVICES REFORM, 1996

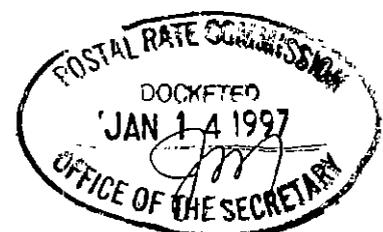
Docket No. MC96-3

BRIEF OF THE  
AMERICAN BANKERS ASSOCIATION

January 14, 1997

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**INITIAL BRIEF**

The American Bankers Association (ABA) submits this initial brief.

ABA brings together all elements of the banking community to better represent the diverse interests of the rapidly changing industry. Its members -- including community banks, regional banks, large bank holding companies, savings and loans, savings banks and trust companies -- make ABA the largest banking trade association in the country.

The banking industry is one of the largest users of First-Class Mail and uses special services, including post office boxes, caller service and certified mail.

## SUMMARY OF ARGUMENT

The financial burden of the Postal Service's proposals will disproportionately and inequitably borne by First-Class Mail.

Increased certified mail fees will unfairly burden mailers who face legal requirements to use certified mail for certain correspondence.

## ARGUMENT

The Postal Service's request in this case raises a multitude of issues which have been addressed at length by the Postal Service, intervenors, and the Commission. This brief is limited to two issues ABA believes have not received the appropriate amount of attention, the disproportionate and inequitable burden the proposal would place on First-Class Mail and the inequity of the requested increase in certified mail rates, which many mailers are legally required to use.

Inequitable Burden on First-Class Mail

As indicated in Postal Service Witness Needham's interrogatory response ABA/USPS-T8-2, certified mail is entirely First-Class Mail. The entire increase in certified mail rates will therefore be paid by First-Class mailers.

Postal Service witness Patelunas' response to ABA interrogatory ABA/USPS-T5-1 indicates that 68.3% of the mail delivered through post office boxes is First-Class Mail. While Mr. Patelunas' response indicates that there are no volume figures available for mail delivered through caller service, the nature of caller service would indicate that it would be expected to have at least the same percentage of First-Class Mail as post office boxes.

Legally Mandated Uses of Certified Mail

There are many legal requirements that certified mail be used for certain types of communications. Mailers using certified mail under legal compulsion will be unable to avoid increased certified

mail fees. Postal Service witness Needham, in her response to interrogatory ABA/USPS-T1-1, stated that, in a survey of customers, "29 percent cited a legal requirement as one reason, among others, for using certified mail."

Requirements for the use of certified mail are often contained in state statutes. The following is a list of some of the statutes of the District of Columbia, Maryland, and Virginia which require the use of certified mail. This list is presented in two sections, statutes which require the use of certified mail and statutes which require the use of certified mail or hand delivery:

STATUTES REQUIRING CERTIFIED MAIL ONLY:

- Consumers who must give notice to manufacturers of cars which do not conform to warranties or are defective, must use certified mail. (D.C. Code Ann. §40-1302 (a) (1996); Md. COMMERCIAL LAW Code Ann. § 14-2004 (c) (1) (1996))
- The State must provide notice, by certified mail, to professionals against whom action is contemplated. This applies to actions against health professionals (D.C. Code Ann. § 2-3305.19 (d) (1996); Va. Code Ann. § 54.1-1-4 (1996)), architects (D.C. Code Ann. § 2-275 (c) (1996)), and barbers and cosmetologists (D.C. Code Ann. § 2-448 (c) (1996))
- Libraries may release confidential circulation records when subpoenaed, but notice must be sent to the patron by certified mail. (D.C. Code Ann. § 37-106.2 (4) (1996)) Similarly, a health care provider shall disclose medical records in accordance with service of compulsory process, but the request must be mailed by certified mail.
- Pawnbrokers must send notice of sale of a pawned item to the pawner by certified mail. (D.C. Code Ann. § 2-1914 (1996))
- Arbitrators must mail notice of designated time and place for hearings to all involved parties by certified mail. (Md. COURTS AND JUDICIAL PROCEEDINGS Code Ann. § 3-213 (a) (1) (1996))

- Drivers intending to use a motor vehicle for vanpooling must notify their insurers via certified mail. (Va. Code Ann. § 38.2-2217.1 (1996))
- Landlords must notify tenants, by certified mail, of inspection dates. (Md. REAL PROPERTY Code Ann. § 8-203 (g) (1) (1996))
- Any operator planning to mine within 500 feet of an oil or gas well must send written notice, maps and plans to the well operator and the Gas and Oil Inspector by certified mail. (Va. Code Ann. § 45.1-161.121 (1996))
- A medical practitioner whose license has been revoked must give notice to all patients to whom he is currently providing care by certified mail. (Va. Code Ann. § 54-1.2920 (1996))
- Notice of sale on a property subject to a lien must be sent, by certified mail, to the debtor and any person known to have or claim an interest in the property. (D.C. Code Ann. § 45-715 (b) (1996); Va. Code Ann. § 63.1-261 (1996))
- Professional corporations must send notice, by certified mail, to any disqualified stockholder, offering to purchase the stock. (Md. CORPORATIONS AND ASSOCIATIONS Code Ann. § 5-114 (b) (1) (1996))
- The Department of Social Services must send notice of intent to suspend or refuse renewal of a driver's license of person delinquent in child support payments by certified mail. (Va. Code Ann. § 46.2-320 (1996))

STATUTES REQUIRING CERTIFIED MAIL OR HAND DELIVERY:

- Notice of the revocation or suspension of a driver's license must be delivered either by certified mail or hand delivery. (Md. TRANSPORTATION Code Ann. § 16-404 (b) (2) (i) (1996); D.C. Code § 40-615 (d) (2) (1996))
- Maryland's rules of civil procedure dictate that any summons must be hand delivered or sent by certified mail. (Md. Rule 3-112 (a) (1996))
- Consumers who wish to cancel a health club services agreement must do so by providing written notice, hand delivered or sent by certified mail, within three days of

signing. (Md. COMMERCIAL LAW Code Ann. § 14-12B-06 (b) (1) (1996))

- Personal representatives of a decedent's estate must provide notice to all interested parties by certified mail or personal delivery when a hearing arises because of questions or controversies regarding a decedent's estate. (D.C. Code § 20-107 (b) (1996))
- Mobile home park owners must give written notice to a resident whose violation will lead to eviction by certified mail or hand delivery. (Md. REAL PROPERTY Code Ann. § 8A-1101 (b) (1996))
- Insurers must send notice to the insured if a policy will be cancelled or renewal will be refused. Notice must be sent by hand delivery or certified mail. (D.C. Code Ann. § 35-2109 (b) and (c) (1996))
- The Electoral Board must give a certificate of election to the person elected and deliver it by hand or via certified mail. (Va. Code Ann. § 24.2-676 (1996))
- Owners and landlords of any residential property that will be subjected to a condominium regime must give written notice to all tenants by hand delivery or certified mail. (Md. REAL PROPERTY Code Ann. § 11-102.1 (b) (1996))
- Employers who require drug tests must inform employees, contractors or other persons who have tested positive for drug use of the result and accompanying information. Notice must be given by certified mail or personal delivery. (Md. HEALTH-GENERAL Code Ann. § 17-214 (c) (2) (i) (1996))

For the wide variety of public and private sector mailers affected by the statutes cited above and similar legal requirements, the requested arbitrary increase in certified mail fees would impose an unfair burden.

## CONCLUSION

In witness Lyons' testimony (USPS-T-1) this request is described as "a move toward more demand-oriented ratemaking." (p.1, line 12.) Witness Lyons goes on to state "the proposals are designed to reflect "marketplace considerations." (p. 2, lines 3-4.) As compelling as the phrases "demand-oriented ratemaking" and "marketplace considerations" might be, they lose much of their force when uttered on behalf of a monopoly. The existence of the Postal Service's monopoly and legal requirements that certain communications use certified mail, mean that much of the "demand" is statutorily compelled and has little do with the "marketplace."

In this request, instead of relying on market forces, the Postal Service has chosen to try to concentrate increased fees on captive portions of the mailstream. Mailers legally bound to use certified mail have either no option or an option, such as hand delivery, which is likely to be operationally and financially more onerous.

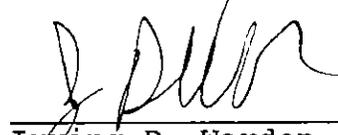
First-Class mailers will bear the entire increased cost of certified mail. First-Class Mail will also bear over two-thirds of the increased post office box fees and a disproportionate share of the increased costs of caller service. As First-Class letter mail is subject to the Postal Service monopoly, much of this extra expense will be imposed on mail which the Postal Service receives under legal compulsion.

The factors cited above demonstrate that this request is an attempt by the Postal Service to raise revenue, primarily at the

expense of users of First-Class Mail. Implementation of this request would be neither fair nor equitable 39 U.S.C. §§ 3622 (b) (1), 3623 (c) (1). For mail which is legally required to be sent via certified mail as well as for mail covered by the Postal Service's monopoly, the Commission should also consider the lack of "available alternative means of sending and receiving letters and mail matter at reasonable costs" 39 U.S.C. § 3622 (b) (5). The lack of available alternatives for many mailers is a factor which the Commission should rely on in denying the request for increased rates in this case.

For the reasons set out above, ABA urges the Commission to deny the Postal Service's request to increase rates for caller service, certified mail, and post office boxes.

Respectfully submitted,



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Irving D. Warden  
Associate General Counsel

## CERTIFICATE OF SERVICE

I hereby certify that I have this date caused the foregoing documents to be served upon all participants of record in this proceeding in accordance with Section 12 of the Rules of Practice.

  
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