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SPECIAL SERVICES REFORM, 1996

Docket No. MC96-3

REPLY BRIEF OF
UNITED STATES POSTAL SERVICE

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.
Chief Counsel, Ratemaking

Anthony F. Alverno
Susan M. Duchek
Kenneth N. Hollies
David H. Rubin

475 L'Enfant Plaza SW
Washington, DC 20260-1137

January 21, 1997

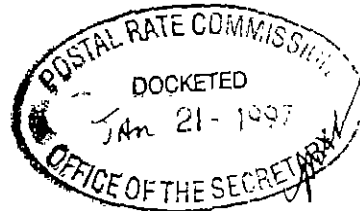


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I. THE PROPOSED CLASSIFICATION AND PRICING REFORMS SHOULD NOT BE SACRIFICED IN ORDER TO WITHHOLD NET REVENUES FROM THE POSTAL SERVICE.

The OCA and the parties focus much of their attack in this proceeding not on the Postal Service's substantive proposals, but instead on the Postal Service's request for these proposals outside of an omnibus rate proceeding. They suggest, first, that the Postal Service does not need the additional revenue, and therefore is seeking revenues in emulation of a "profit-making monopolist". OCA Brief at 1, 23. Second, they allege that the Postal Service is attempting "divide and conquer ratemaking" in order to take advantage of smaller customers. OCA Brief at 45; Carlson Brief at 1.^{1/} Neither of these claims is correct.

A. The Postal Service Is Not Seeking to Maximize Profits; Rather The Net Revenue Sought by The Postal Service Is the Consequence of Justified Classification and Pricing Reforms.

The OCA presents the misguided view that the Postal Service is using this proceeding with the primary goal of achieving as much additional net revenue as possible. OCA Brief at 23. On the contrary, the Postal Service is requesting additional net income only as a consequence of proposals supported by analysis of the statutory pricing and classification criteria. This income is not the "amount of extra net revenue obtainable through monopolistic profit maximization", *id.*, but rather the amount that is justified by analysis of the statutory criteria.

^{1/} Hard copies of Mr. Carlson's brief, with pagination that differed from the electronic copy, arrived in postal counsels' office shortly before this brief was completed. Some citations to that brief may accordingly be a page or so off, although attempts have been made to correct this. No hard copy of Mr. Popkin's brief has yet been received.

In this regard, the Postal Service reduced the amount of extra revenue that might be gained from the targeted special services in order to mitigate the impact on customers. For example, the Postal Service is holding the proposed cost coverage for post office box and caller service to only 128 percent, even though the proposal leaves proposed Group D well below costs, and fees in areas where there are Commercial Mail Receiving Agents (CMRAs) well below the CMRA prices.^{2/} Similarly, the proposed fee for certified mail remains far below the prices for alternative forms of that service provided by competitors, and produces a cost coverage that is well below what could be justified.^{3/}

Nonetheless, the OCA repeatedly charges the Postal Service with "monopolistic profit maximization".^{4/} This ignores the fact that the Postal Service does not make profits; it is a break-even organization. Net incomes in any fiscal period will ultimately hold down rates and fees. While the Postal Service does not, and should not seek to maximize profits, it can emulate some of the businesslike practices of profit-making companies.^{5/} In fact, that may be the only way the Postal Service can ultimately restore all of its prior years' losses.

^{2/} USPS-T-7 at 13, 15-16, 39.

^{3/} Postal Service Brief at 82-84; USPS-T-8 at 71-72.

^{4/} OCA Brief at 23, 33, 43.

^{5/} Despite the efforts of the OCA to read "profit" into every thought of witness Steidtmann, OCA Brief at 32, he expressed a clear understanding that the purpose of the Postal Service is different from that of private companies. Tr. 4/975-77. Moreover, contrary to the assertion by the OCA, in its Brief at 33, witness Taufique likened Postal Service competitors, not the Postal Service, to "McDonald's or Burger King." Tr. 10/3658.

Mr. Carlson argues that the Postal Service is attempting "to raise revenue under the guise of classification reform." Carlson Brief at 1. The OCA suggests that the Commission "adopt worthwhile proposed classification changes while denying the request for additional net revenues." OCA Brief at 30. These claims ignore the fact that the Postal Service's filing is not simply "classification reform". The Postal Service is seeking several pricing reforms in its Request, which involve restoring an appropriate contribution to institutional costs for selected special services.^{6/} For example, the Postal Service is proposing that the certified mail cost coverage be determined based on pure certified revenues and costs. Moreover, the Postal Service seeks a reasonable contribution to institutional costs for certified mail, based on the revised cost coverage calculation, and for post office box and caller service, since its projected test-year cost coverage at current fees would be slightly under 100 percent.

The OCA also argues that the goals for this case presented in witness Lyons' direct testimony can be achieved without increasing net contribution. OCA Brief at 45. These goals include "more market-based prices, [and] more equitable contributions from the services to institutional costs." USPS-T-1 at 2. Witness Needham establishes that these goals require an increase in the cost coverages for post office box and caller service, certified mail, and return receipts.^{7/} Increased contributions to institutional costs necessarily increase net contribution

^{6/} See, e.g., USPS-T-1 at 1.

^{7/} USPS-T-7 at 38-39; USPS-T-8 at 71-72, 92.

and net revenues. The pricing reforms and goals of this filing therefore cannot be achieved on a revenue neutral basis.^{8/}

The OCA recognizes that increased net revenue is acceptable for a new service or a new surcharge (such as the nonstandard surcharge), outside of an omnibus proceeding. OCA Brief at 34. But it argues that the size of the revenue increase in this proceeding is too large to qualify under these conditions, and that the classification changes proposed in this docket are not related to the net revenue increases.^{9/} OCA Brief at 34-35. The latter concern ignores the pricing reforms that are a central component of the Postal Service's proposals in this docket.

Moreover, the nonstandard surcharge that the Commission recommended in Docket No. R78-1 was expected to result in \$80 million in new net revenue. Such an increase almost 20 years ago is proportionately larger than any one proposal in this docket. See Postal Service Brief at 15. In particular, the Postal Service's proposed 2-cent special service fee for postal cards is a new surcharge like the nonstandard surcharge, and involves much less of an increase in net revenues than the nonstandard surcharge. See Exhibit USPS-T-1A. Similarly, the nonresident fee proposal is a surcharge comparable to the nonstandard

^{8/} Thus the OCA is wrong when it claims that the goals of this case do not "justif[y] additional net revenue for the FY96 test year. OCA Brief at 25.

^{9/} It should be noted that the OCA presents no statutory cites to support this analysis, and no statutory basis for its ideas exists.

surcharge, and involves much less than \$80 million in additional net revenues.

Compare Exhibit USPS-T-1C with OCA-LR-3 at 1 (as revised November 5, 1996).

B. Classification Reform Does Not Require Net Revenue Neutrality.

The OCA also refuses to give up its claim that the Postal Service has committed itself to net contribution neutrality in this docket because of its adoption of that limitation in Docket No. MC95-1. Like witness Thompson in her testimony, the OCA in its brief explains the contribution neutral approach adopted near the end of the Postal Service's Docket No. MC95-1 Request. Then it quotes a sentence from three pages earlier in the Request concerning the new framework for classes to maintain the erroneous conclusion of witness Thompson that this framework not only includes contribution neutrality, but applies to Docket No. MC96-3. OCA Brief at 45-46.

Witness Lyons explains in his rebuttal testimony that:

The "framework" for classification reform to which she [and the OCA Brief] refer[] actually relates to redefining the classes of mail to reflect different service levels desired by customers. Docket No. MC95-1 Request, page 2 (Tr. 5/1414). The Postal Service has never committed itself to a policy of net revenue neutrality for all rate cases outside of omnibus cases.

Tr. 9/3351. Moreover, witness Lyons points out that "[w]itness Thompson was unable to identify a specific citation in the MC95-1 Request where the Postal Service explicitly made such a commitment. *See generally* Tr. 5/1437-38, 1446-47, and 1450." *Id.*, n. 3. Specifically, witness Thompson acknowledged that the paragraph which includes the sentence quoted at the bottom of page 45 of the

OCA's brief does not refer to that framework having anything to do with contribution neutrality. Tr. 5/1437.

In Docket No. MC95-1, the Postal Service adopted contribution neutrality in order to avoid the "inter-class cost coverage disputes that generally occur in omnibus revenue cases."^{10/} The major inter-class cost coverage dispute is between First-Class Mail and third-class (Standard A) mail. Because Docket No. MC95-1 concerned First-, second-, and third-class mail, that dispute would have been directly implicated if contribution neutrality had not been adopted in that proceeding. Instead, in Docket No. MC95-1, contribution neutrality was applied on a class-by-class basis, to First-Class Mail, second-class mail, and third-class mail. Within a class, contribution might be shifted between subclasses. But contribution to institutional costs was held constant for each class, rather than shifting contributions from one class to another.

This proceeding does not raise inter-class cost coverage disputes, since it is limited to special services. The Postal Service's proposed special service changes do not shift contributions among the classes of mail in any significant way. Moreover, in some special services, such as certified mail, there is no way to change the fee without also changing the contribution. Unlike classes, which have subclass contributions that can be balanced against each other, the contribution for a special service like certified mail is determined by one fee.

^{10/} Tr. 5/1417. See OCA Brief at 44.

Thus, the goal of contribution neutrality does not make sense for this proceeding.^{11/}

C. The Postal Service Has Justified Its Request For Additional Net Revenues.

The OCA argues that the Postal Service has not justified its request for additional net revenues outside of an omnibus rate case. OCA Brief at 23. Mr. Carlson claims that the Postal Service has not provided a rationale for assigning a greater portion of institutional costs to customers of the special services in this proceeding. Carlson Brief at 2. However, witnesses Lyons, Steidtmann, and Needham provide abundant rationale for the increased assignment of institutional costs to post office box and caller service, certified mail, return receipts, and postal cards.^{12/} E.g., USPS-T-1 at 2; USPS-T-2 at 2-6; USPS-T-7 at 37, 39-40; USPS-T-8 at 71-72, 92-93. These increased contributions necessarily result in the additional net revenues requested by the Postal Service.

OCA seems to be unsure of how the Postal Service will use the additional net revenue that would result from its proposed classification and pricing reforms.

^{11/} The differences in approaches between Dockets No. MC95-1 and MC96-2, and this docket thus are not based on favoritism to big mailers. See OCA Brief at 44.

^{12/} In Docket No. R94-1, the Postal Service stated directly that it saw a need for increased contribution to institutional costs for certified mail, and post office box and caller service, and it was deferring such changes. Docket No. R94-1, USPS-T-11, at 61, 66. Thus, contrary to the OCA's claim, at page 42 of its brief, that the proposals for these services were unpredictable, and therefore arbitrary and capricious, the proposals were explicitly deferred from Docket No. R94-1. The Commission itself recognized in Docket No. R94-1 that its recommended cost coverage for post office box and caller service was below the coverage in the previous omnibus rate case, Docket No. R90-1. PRC Op., R94-1, at V-159.

OCA Brief at 23. Witness Lyons has stated clearly that the net revenue will be used to restore equity. USPS-T-1 at 9-11. The Postal Service's Brief shows the many benefits of restoring equity, and how these benefits extend even to the targeted special services in this docket.^{13/}

The OCA argues that "it is clear that the special services whose fees are to be increased neither caused a need for increased net revenues nor will benefit from the increased fees they pay." OCA Brief at 23. However, some of the special services did contribute to the need for additional revenues by having low cost coverages, e.g., even below 100 percent for certified mail, in prior years.^{14/} Special services like certified mail, and post office box and caller service, have been making a smaller contribution to institutional costs than the statutory pricing criteria would warrant.

Moreover, the Postal Service demonstrates in its brief that these special services will benefit from the increased fees. Postal Service Brief at 13. For

^{13/} Postal Service Brief at 11-14. See also, the Price Waterhouse report in Library Reference SSR-112. The OCA is wrong when it warns of a "double whammy" for the targeted special services. OCA Brief at 26. Witness Lyons has explained that these special services will face lower increases, if any, in the future, if the proposed fees are adopted in this proceeding, since, for example, cost coverages would have already been increased to a more appropriate amount. Tr. 2/217-18.

The OCA is also incorrect when it claims that the number of possible uses for the new net revenue resulting from this docket declined from five in witness Lyons' direct testimony to two in witness Lyons' rebuttal testimony. OCA Brief at 35. Instead, restoration of equity can produce the other benefits, such as maintaining rate stability, refinancing of outstanding debt, and financing a restructuring of the Postal Service.

^{14/} Postal Service Brief at 78-80.

example, post office box service will benefit because the higher fees provide an increased incentive to add boxes to meet customer demand. *Id.* at 58.

D. This Proceeding Is Not A General Rate Case.

The OCA argues that, if the requested reforms resulting in new net revenues are proper, then this proceeding is a general rate case. OCA Brief at 36. No party, however, can dictate the Postal Service's revenue goals under the statutory scheme. This docket is not a general rate case because the Postal Service has requested changes only for a limited number of special services. The Postal Service has clear statutory authority to determine which classes of mail or special services it seeks to include in its request for a recommended decision. Nothing in the statute requires Postal Service management to defer justifiable reforms that result in additional revenues until a future omnibus rate case.^{15/}

The OCA disagrees. The OCA argues, for example, that the post office box cost coverage should only be reevaluated in an omnibus rate case. OCA Brief at 161. But, where that coverage has clearly been suppressed by deferring warranted adjustments, re-evaluation when requested by the Board is consistent with the Postal Reorganization Act. The proposal to increase the post office box and caller service cost coverage to 128 percent is consistent with the decision in

^{15/} Furthermore, as is clear from the detailed scrutiny of the Postal Service's testimony, workpapers, and library references included in this docket, significant resources must be allocated for the preparation of a case involving any particular subclass or service. That resource allocation is a Postal Service management decision.

the last omnibus rate case, and therefore should be adopted. Postal Service Brief at 72-75.

The OCA's view apparently is based in part on the unrealistic belief that only by stabilizing overall contribution levels between general rate cases can the wisdom of the Commission's relative contribution determinations be perpetuated. For example, the OCA, in its less preferred proposal for post office box and caller service, proposes a cost coverage of 101 percent. OCA Brief at 89, 161. The OCA argues that, "[by] proposing a test year cost coverage that is virtually the same as the Commission's in the test year at current fees, witness Callow has effectively adopted the Commission's value of service determinations for post office boxes [in Docket No. R94-1]." OCA Brief at 161. This is nonsense. The Commission's value of service determination in the last rate case contributed to its decision to increase the Postal Service's proposed cost coverage of 112 percent to a 115 percent cost coverage. PRC Op., R94-1, at V-159. A 101 percent cost coverage just does not reflect that evaluation.

E. The Postal Service Is Not Taking Advantage Of Its Smaller Customers.

A final general attack on the Postal Service's proposals in this docket is that they are intended to take advantage of the Postal Service's smaller customers. The OCA charges the Postal Service with "divide and conquer ratemaking". OCA Brief at 45. Similarly, Mr. Carlson says the Postal Service is trying to raise revenues from services whose users do not have enough at stake to warrant active, organized opposition. Carlson Brief at 1.

First of all, the record reflects that the special services included in the Postal Service's Request for this proceeding are not used only, or even primarily by, individuals or smaller customers. Witness Bentley stated that the members of the Major Mailers Association (MMA) "are major users of post office boxes", and also use certified mail, return receipts, postal cards, and registered mail. Tr. 6/1907. The American Bankers Association (ABA) has filed a brief opposing the post office box, caller service, and certified mail proposals, and stated in its July 9, 1996, intervention notice that its members make significant use of these services.

There is, moreover, no evidence that the Postal Service's proposals in this case will have a disproportionate impact on smaller mailers or individuals. In this regard, the special services that are probably the most used by individuals who are not in a position to intervene in a Commission proceeding are money order and C.O.D. services. Ironically, these are the services that the OCA has argued should be included in this filing. It is surprising that the OCA would push for increasing C.O.D. or money order fees when no such increase has been requested by the Postal Service, given that C.O.D. and money order customers tend to be low-income individuals. See, e.g., Docket No. R94-1, USPS-T-11, at 64. Even more perplexing, the OCA advocates these increases despite the fact that the Postal Service has shown, as well as it can before the FY 1996 CRA is available, that money order fees are currently covering costs, and that C.O.D. fees might also cover costs. Tr. 2/57; Tr. 9/3405-07.

The OCA also warns that the Postal Service will tend to discriminate in favor of certain mailers. Thus, in referring to the Postal Service's adoption of demand-oriented pricing, the OCA complains that "the stage has been set for discriminatory pricing." OCA Brief at 43-44. If this complaint refers to the Postal Service's willingness to differentiate in pricing based upon different demands for services, then the OCA misperceives the Postal Service's motives but not its objective.^{16/} The Postal Service's customers, however, should not be concerned. In the broad sense, demand-oriented pricing allows customers who receive more from the Postal Service to pay more, so that other customers can pay less. The break-even requirement insures that customers are protected, and that any surplus will ultimately benefit them.

Third, other than establishing rational fees earlier rather than later, and allocating resources more effectively, in practical terms the Postal Service does not benefit from isolating this case in a separate docket, rather than including it as part of an omnibus rate case. Witness Lyons states that "interim classification filings require additional time, resources, and effort, which tends to make them less convenient." Tr. 2/77. Furthermore, if these proposals had been made as part of an omnibus proceeding, additional intervenors protecting themselves against increases in rates for First-Class Mail, Periodicals, and Standard Mail would very likely not have made any effort to oppose these special service proposals. The OCA, moreover, likely would not have been able to present three

^{16/} This objective would not apply to the uniform rate for First-Class Mail.

or four witnesses solely to oppose the Postal Service's special service proposals, nor file over 90 pages of its brief specifically opposing the Postal Service's special service proposals. In fact, the Postal Service has shown that its proposals are consistent with the results of the last omnibus rate case. USPS-T-1 at 20. Those opposing the Postal Service's proposals, however, have not shown how including these proposals in an omnibus proceeding would affect the Commission's recommendations on them, other than by precluding meaningful reform except for every three or four years. There is no reason to require deferral of these proposals until an omnibus proceeding.

II. THE POSTAL SERVICE HAS PRESENTED VALID COST AND MARKET RESEARCH DATA AND DOCUMENTATION.

A. The Comments Of Direct Marketing Association, Inc., Major Mailers Association, And The Office Of The Consumer Advocate Concerning Use Of Cost Data Are Without Merit.

1. Direct Marketing Association, Inc.'s proposal concerning use of Test Year 1995 data is confusing, comes too late for consideration, and is irrelevant.

In its brief, Direct Marketing Association, Inc. ("DMA") makes a rather confusing argument concerning use of Test Year 1995 data from the last omnibus case. DMA wrongly claims that "the USPS presentation does not include FY 1995 cost data" and is thus "not adequate to permit a meaningful comparison of the proposed institutional cost burdens with the institutional cost burdens for all other services, reflecting the Commission's pricing judgment in R94-1." DMA Brief at 2. The Postal Service did present complete base year, test year before rates, and

test year after rates costs and supporting documentation for all classes and subclasses of mail and all special services using the standard cost methodology reflected in its Cost and Revenue Analysis ("CRA") report. See USPS-T-5.

In fact, DMA elsewhere acknowledges this, but further complains that "those data are plainly inadequate, because they do not allow an apples-to-apples comparison between the cost coverages that would result from the rates proposed in this case and the cost coverages approved by the Commission in R94-1." DMA Brief at 6. DMA then proceeds to make just such comparisons between Test Year 1995 data from the Commission's Recommended Decision in Docket No. R94-1 and USPS-T-5G in this docket for second-class, regular rate (Periodicals) and third-class bulk rate regular (Standard A) and concludes that this provides "a stunning illustration of the obvious fact that attributable costs, revenue and cost coverages for mail classes are not static." DMA Brief at 6-7. It is not clear what point DMA is trying to make.

DMA goes on to claim that "[t]he Commission simply cannot tell from the 1996 data what the cost coverages for the services at issue, after the proposed rate changes, would be based on the costs and revenues for the 1995 Test Year, and thus there can be no comparison with the 1995 Test Year cost coverages approved in R94-1." DMA Brief at 7. DMA concludes that "the Commission should require USPS to submit data for FY 1995 supporting the fairness and reasonableness of the proposed rates."

Assuming that DMA is arguing either that the Postal Service should have used FY 1995 as the test year in this proceeding or that the Postal Service should be required to submit an alternative financial presentation, its motion is, to say the least, untimely. DMA has remained virtually silent throughout the proceedings. Its demands for use or submission of different data must now be disregarded. The Postal Service has presented full cost, revenue and cost coverage data, and has presented testimony, and withstood discovery and cross-examination on it, from which the fairness and reasonableness of its proposals may be evaluated.

2. Major Mailers Association's comments are either irrelevant to or have no basis in the record of this proceeding.

Major Mailers Association ("MMA") has nothing to say of relevance to the Postal Service's proposals in this case.^{17/} Rather, it focuses its argument on the amendment to Rule 54 proposed by the Commission in pending Docket No. RM97-1, which MMA claims "is laudable insofar as it goes," but needs to be strengthened and "made effective expeditiously." MMA Brief at 3. The proper place for MMA's arguments concerning the proposed amendment to Rule 54 is in the docket expressly established for that purpose, not this one.

The Postal Service has fully addressed issues concerning use of the Commission's costing methodology and MMA witness Bentley's analyses in its

^{17/} Although "MMA members are major users of post office boxes" and "also use certified mail, return receipts, postal cards and registered mail frequently as a regular part of business," MMA did not make any specific proposals in any of these areas, nor did it specifically challenge any of the Postal Service proposals. *Compare* Tr. 6/1907 *with* Tr. 6/1908.

brief. See Postal Service Brief at 28-46. Nonetheless, the Postal Service takes issue with several points raised in the MMA Brief.

Due to differences in attributable costs between the Postal Service's and the Commission's costing methodologies, MMA declares that "[t]he Service's methodology is -- and will continue to be -- a device for overcharging First-Class Mail in order to lower rates for other classes of mail." MMA Brief at 2. This melodramatic conclusion finds no support in the record of this proceeding, or of any other Commission proceeding, for that matter. The Postal Service has used its standard CRA costing methodology for a number of years and for a number of purposes, many having nothing to do with proposing rate changes. For example, the CRA is used in connection with the budget process and to assist in evaluating financial and operations proposals and performance. Moreover, the Postal Service's financial reports, including its CRA procedures, are reviewed year after year by independent auditors. As for whether the CRA is a "device for overcharging" First Class or any other category of mail, MMA knows full well that the Postal Service's rates and fees are set in accordance with statutory ratemaking procedures following a recommended decision by the Commission. The results of that process are subject to full judicial review by any aggrieved participant, including MMA.

MMA also concludes that the Postal Service declines to comply with Commission orders "[b]ecause the Commission lacks subpoena power. . . ." MMA

Brief at 2. Again, such statement is extraneous, and has no basis in the record of this or any other Commission proceeding.^{18/}

MMA's comments are not relevant and find no support in the record. As such, the Commission should not take them into account.

3. The OCA's recounting of the costing methodology issues in this docket is not accurate.

The OCA includes in its brief a "Procedural History" of this docket, which, in part, discusses the use of the Postal Service's versus the Commission's costing methodology. See OCA Brief at 7-22. The issues raised by the OCA have, for the most part, been addressed in the Postal Service's brief. See Postal Service Brief at 28-46. A few comments, however, are warranted to correct certain false or misleading statements made by the OCA.

The OCA claims that the Postal Service did not comply with the Commission's Rules of Practice, and that its "initial filing was deficient, seemingly willfully so." OCA Brief at 11. The OCA fails to specify what section of Rule 54 was violated by the Postal Service's initial filing. Of course, the OCA cannot do so because the Postal Service's filing, in fact, was in accord with the provisions of Rule 54. There was thus no "willful" failure to comply.

^{18/} Furthermore, as MMA should be aware, administrative agencies generally cannot enforce their subpoenas -- that is properly the function of a court. The target of a subpoena may, quite legitimately, decline to comply. In order to enforce or invoke sanctions, thereby clarifying the legitimacy of the subpoena, the agency, but not the target of the order, must go to court. At a subsequent court proceeding, the objecting party is provided the opportunity to demonstrate that the subpoena is unlawful or otherwise inappropriate.

The OCA also states that the failure to provide costs according to the Commission's methodology "threatened the due process rights of the participants and the integrity of the Commission's administrative process, delayed resolution of the proceeding, and caused OCA and the public participants to expend resources needlessly." *Id.* It is entirely unclear how the Postal Service's actions in presenting **its** costing methodology, which was subject to full scrutiny on the record, and not presenting parts of the **Commission's** costing methodology, which have yet to be sponsored and tested on the record by anyone capable of fully explaining and defending them, "threatened" anyone's due process rights. Due process rights are threatened by use of costing methodologies that are not subject to record scrutiny.

Moreover, the OCA's statement that resolution of this proceeding has been delayed is blatantly false. Despite the fact that the OCA earlier moved for a day for day extension under 39 U.S.C. 3624(c)(2), the Commission declined to grant any extension at that time and has not subsequently done so. See First Order Setting Out Relief from Postal Service Failure to Comply, Order No. 1134, September 20, 1996.^{19/} Neither the OCA nor any other participant in this proceeding has demonstrated, or can demonstrate, any specific delay caused by inability to challenge the Postal Service's case or to prepare its own case.

^{19/} The OCA does acknowledge this point, stating, "The OCA motion was denied, but without prejudice, and the Commission announced it might later invoke 39 U.S.C. 3624(c)(2) if so required." Clearly, there is no basis for invoking sanctions under 3624(c)(2).

The OCA also characterizes the documentation of the Commission's estimation model, PRC-LR-1 and 2, as employing, "to the extent possible, the roll-forward procedure used by Postal Service witness Patelunas." OCA Brief at 16-17. The fact of the matter, however, is that the rollforward procedure employed by the Commission is markedly different from that used by the Postal Service due to the inclusion in the Commission's cost model of the single subclass costing approach. The Commission, in discussing its development of test year after rates attributable costs, states:

Because the Commission's city carrier street time costs include four additional components (single subclass other load and access and street support single subclass other load and access), the adjustments to city carrier in-office and street costs and rural carrier costs had to be recalculated to account for these extra components.

PRC-LR-2 (revised), Introduction. In fact, those additional four components are just the additional Cost Segment 7 components. There are also additional components in Cost Segments 2, 6, 12, 13 and 20, as well as other piggyback complications. These differences only highlight the fact that due process requires that the Commission's costing methodology be subjected to full scrutiny on the record.

B. The OCA's Comments Concerning The Postal Service's Data Systems Have No Support In The Record And Are Deliberately Misleading.

1. Introduction.

The Postal Service's data systems are sound and fully documented, providing accurate and reliable data for ratesetting purposes. With the submission

of its Request in this docket, the Postal Service filed 121 library references. See Notice of Filing of Library References, June 7, 1996. Eighty-two (82) -- the majority -- of those library references contained documentation related to the Postal Service's data systems, including IOCS, RPW, CCS, Permit and TRACS. This documentation consisted of thousands of pages of hard-copy materials, as well as voluminous information contained in machine-readable form. Preparation of these materials consumed hundreds of hours of Postal Service staff and contractor time. During the discovery period, the Postal Service responded to 73 interrogatories (including 189 subparts), and filed 5 more library references relating to its data systems.^{20/} Preparation of these materials consumed additional hundreds of hours of Postal Service staff and contractor time.

Reading the OCA's comments in its brief, one is left with the impression that the Postal Service has done none of the above. One is left with the impression that the Postal Service's data consist of calculations prepared by a solitary clerk wearing green eyeshades and using nothing more than an abacus. One is left with the further impression that to document the clerk's calculations, the Postal Service has submitted some scrawled notations on the back of an

^{20/} This count refers to interrogatories responded to by the Postal Service as an institution. It does not include an additional 13 interrogatories (including 19 subparts) and 5 Presiding Officer Information Request questions responded to by witness Patelunas (including 7 subparts), which can fairly be characterized as relating to the Postal Service's data systems. Also, it should be noted that the Postal Service expended resources filing objections to a number of data systems discovery requests, on which the Presiding Officer ruled that the Postal Service did not have to respond. For example, see Presiding Officer's Ruling No. MC96-3/19, October 4, 1996.

envelope. The impression created by the OCA's comments is utterly false and misleading.

The OCA characterizes the Postal Service's cost and revenue estimates as "unsubstantiated" and further states that they "cannot be considered substantial evidence to support the Postal Service's Request" due to lack of underlying data systems documentation. OCA Brief at 60. This is baseless misrepresentation.^{21/} There can be no doubt that the information supplied in 87 library references and 73 interrogatory responses "reasonably supports" the Postal Service's cost and revenue estimates in this docket.

The OCA's litany of distorted complaints begins with its paraphrase of Commission Rule 31(k)(2)(i), which contains the documentation requirements for sample surveys. See OCA Brief at 50. The specified documentation is required to be submitted at the time the Postal Service files its Request for a change in rates or fees. The rule provides:

- (i) Sample surveys. (a) A clear description of the survey design, including the definition of the universe under study, the sampling frame and units, and the validity and confidence limits that can be placed on major estimates; and
- (b) An explanation of the method of selecting the sample and the characteristics measured or counted.

^{21/} For example, the "substantial evidence" standard embodied in the Administrative Procedure Act, 5 U.S.C. § 706(2)(E) has been defined consistently over the years by various courts. In *Board of County Commissioners of the County of Adams v. Isaac*, 18 F.3d 1492, 1496, (10th Cir. 1994), the federal appeals court stated, "'Substantial evidence' in 5 U.S.C. §706(E)(2) means more than a mere scintilla but less than the weight of the evidence and refers to relevant evidence which reasonably supports a conclusion."

39 U.S.C. § 3001.31(k)(2)(i). The rule is clear. The Postal Service has complied with its requirements in basically the same fashion in case after case, including this one. *Compare* MC96-3, USPS LR-SSR-90 *with* R94-1, USPS LR-G-127. Despite the clear wording, the OCA presents laundry lists of items omitted from the initial documentation supplied by the Postal Service, implying, quite erroneously, that the Postal Service violated the rule.^{22/}

For the IOCS, the OCA lists the following omitted items:

- First stage universe size by stratum (office universe)
- First stage sample size by stratum (office sample)
- Office selection probabilities
- Second stage universe size by stratum (employee universe)
- Second stage sample size by stratum (employee sample)
- Second stage sampling rates by stratum
- Accurate stratum definitions (including finance number strata and international strata)
- Estimation and variance estimation formulas
- Programs used to produce cost c.v. tables of SSR-90

OCA Brief at 61. One searches the rule in vain for references to these items.

There is nothing in the rule specifically requiring universe or sample sizes, office selection probabilities, sampling rates, formulas or programs for the c.v. estimates.

The Postal Service always intends that any information actually required by the rule will be provided accurately. Commission proceedings are complex

^{22/} All of the items requested by the OCA were supplied by the Postal Service, with the exception of those instances in which the Presiding Officer upheld Postal Service objections. This is precisely what the rule envisions. The rule requires the information needed to establish the accuracy and validity of the sample survey. This information, in and of itself, is relatively detailed. Once the initial information is furnished, participants having questions about it or a desire to examine further detailed information can ask for it through discovery.

undertakings, however, and the Postal Service, the other participants, and the Commission sometimes make mistakes.^{23/} In this instance, a few, small changes were made to SSR-90, in response to an OCA interrogatory, primarily to more accurately reflect sampling strata definitions. See Notice of United States Postal Service of Filing of Revised Pages for Library Reference SSR-90, October 2, 1996; Tr. 8/2899. It is ironic that the OCA now seeks to inflate the importance of these revisions when, in the interrogatory requesting the revisions, the OCA had stated, "Other **minor** inconsistencies between the interrogatory responses and SSR-90 also occur." Tr. 8/2899 (emphasis added). Only one of the nine items listed by the OCA supports a legitimate point, and by the OCA's own admission, there were only "minor inconsistencies."

Regarding the City Carrier Cost System, the OCA decries the lack of the following items in the initial documentation:

- First stage universe size by PQ and stratum (routes)
- First stage sample size by PQ and stratum (route sample)
- Sampling rates by PQ and stratum
- Effective sample size by PQ and stratum
- Formulas for computing weighting factors
- Estimation weights used by PQ and stratum
- Correct sampling errors reported

OCA Brief at 70-71. Again, items such as universe and sample size, sampling rates, weighting formulas, and estimation weights are not specifically required by

^{23/} For example, the OCA revised its computations concerning post office boxes contained in OCA-LR-3 two times. The revisions resulted in cost coverage changes in the OCA post office box proposal. See Notice of the Office of the Consumer Advocate Regarding Filing of Revised Library Reference OCA-LR-3, November 5, 1996.

the rule. Of the seven items listed by the OCA, moreover, only one item raises a genuine issue, and that merely reflected an inadvertent error which had no impact on the cost data itself. The Postal Service moved promptly to investigate and correct erroneous c.v.'s and confidence limits when questions about the sampling errors surfaced. See Tr. 8/2983. Only the sampling errors changed; there was no change in the costs derived from the City Carrier Cost System.

The OCA says that the initial documentation for the Rural Carrier Cost System lacked:

- Universe size by PQ and stratum (routes)
- Sample size by PQ and stratum (route sample)
- Sampling rates by PQ and stratum
- Effective sample size by PQ and stratum
- Formulas for computing weighting factors
- Estimation weights used by PQ and stratum
- C.V.'s consistent with FY 1993 c.v.'s

OCA Brief at 74. None of these items are required by rule 31(k)(2)(i). Beyond this unnecessary catalog, there is not a single valid point raised by any of the OCA's seven items. In fact, regarding the last item, the Presiding Officer specifically ruled that the Postal Service did **not** have to recompute FY 1993 c.v.'s. See Presiding Officer's Ruling No. MC96-3/12, September 12, 1996.

The OCA alleges the following deficiencies with the TRACS initial documentation:

- Universe size by PQ
- Primary sampling units sampled by PQ
- Secondary sampling units sample by PQ
- Sample design changes in FY 1995

- Sampling errors in a format comparable to those of R94-1
- Programs and formulas for production of sampling errors
- Availability and documentation of data files

OCA Brief at 79. Once again, the rule does not require universe size, primary and secondary sampling units by PQ, and programs and formulas for production of sampling errors. The OCA does raise some tenable concerns regarding three of its seven items -- sample design changes, provision of sampling errors, and availability and documentation of data files. The OCA, however, greatly overplays its hand. The Postal Service did inadvertently neglect to file a Library Reference similar to USPS LR-G-106, filed in Docket No. R94-1. As soon as this oversight was pointed out, however, the Postal Service filed Library Reference SSR-143, which discussed sample design changes and provided annual sampling errors. See Notice of United States Postal Service of Filing of Library Reference SSR-143, August 30, 1996.

In evaluating the OCA's comments, it must be kept in mind that even the Presiding Officer recognized that TRACS data and documentation were not significant issues in this proceeding, stating, "neither rural carrier nor transportation costs are central aspects of the Postal Service request in this docket. . . ." Presiding Officer's Ruling No. MC96-3/12, September 12, 1996 at 4.

Nevertheless, the Postal Service currently is working to ensure that, with its next filing, TRACS data for all four PQs will be available, as well as programs encrypting commercially sensitive information. These steps should allow the Commission and intervenors to replicate TRACS results, while at the same time

protecting the Postal Service's competitive business interests. Also, the Postal Service is working to be able to provide certain information in future cases on CD-ROM, as opposed to 9-track tapes.^{24/}

The OCA also implies recalcitrance on the part of the Postal Service in providing data systems information. It repeatedly states, for instance, that various pieces of information were not provided until two or three months into the case. See OCA Brief at 63 and 67. In response, two points should be made. First, as described above, the overwhelming majority of information provided after the initial filing simply was not required and historically has not been included with the Postal Service's initial filing. Second, in this case, the information was timely provided in response to discovery requests. The vast majority of the Postal Service's responses were filed within the deadlines established by the Commission's rules. The remainder were filed, either after the Postal Service had requested and **been granted** brief extensions of time for responding, or shortly after the Postal Service had been directed to produce the information by the Presiding Officer in rulings on discovery disputes. In the latter instance, the Postal Service originally had objected to providing the information, **as is its right under** the Commission's rules. The Postal Service, furthermore, at all times, acted in accordance with established procedures. The OCA expresses outrage that "[t]he record is now closed, but no witness has sponsored the basic evidence

^{24/} Rule 31(k) only requires certain data to be provided in "machine-readable form," without further specification.

needed to evaluate the accuracy and reliability of the Postal Service's cost and revenue estimates." OCA Brief at 50. As the OCA is well aware, the Postal Service as well as other participants routinely use library references to support their proposals, and routinely respond on the record, either through witnesses or through institutional responses, to questions concerning those library references. Moreover, the OCA never moved during the course of the proceeding for a witness or witnesses to sponsor the data systems library references. In the past, the Postal Service has been willing to identify or provide witnesses in response to participants' motions or requests. For example, in Docket No. R94-1, the Postal Service first answered questions concerning its BRM library reference study and ultimately made a witness available for cross-examination. Similarly, in this docket, the Postal Service made Leo Raymond available for cross-examination concerning its post office box proposal implementation plans. See Tr. 8/3210-3321.

Finally, the OCA suggests that the data produced by the Postal Service's statistical systems are irretrievably flawed. Although perfection in data systems is difficult to attain, the real question is whether the data are sufficiently reliable for setting rates and fees. The Postal Service firmly believes that they are. Despite the OCA's arguments on brief, it produced no testimony in this proceeding attempting to demonstrate that any of the proposals in this docket were undermined by inaccurate or unreliable data.

The OCA's eleventh hour and ill-founded attack on the Postal Service's data systems and documentation is misleading and serves no legitimate end. Accordingly, it must be rejected. A detailed point-by-point rebuttal on the various data systems follows.

2. IOCS.

The OCA complains that the initial documentation of IOCS contained in SSR-90 did not contain office universe and sample sizes. OCA Brief at 61. As discussed above, the Commission's documentation rules do not require this. Furthermore, such information is largely irrelevant to the way in which the IOCS estimates costs. The IOCS uses accrued total labor costs. As the Postal Service has noted, labor costs for offices not included in the IOCS sample "are included in the cost based weighting methodology where costs reflect labor costs for all offices within a CAG stratum." Tr. 8/2852.

The OCA further complains that the Postal Service did not provide universe and sample sizes for CAGs A and B separately, but rather provided the information broken out into three groups, CAG A BMCs, CAG A "Large Offices" and CAG B "Other Offices." See OCA Brief at 61-62; Tr. 8/2875-76. Despite the OCA's complaints, these are the relevant groupings used for costing purposes in the IOCS. If the OCA was unhappy with the response provided by the Postal Service, it had further opportunities to follow up or clarify. Further, IOCS information has been presented in the past with CAGs A and B combined. See R94-1, Tr. 1/53-54.

The OCA has pursued the issue of office selection probabilities *ad nauseam* in this proceeding. Office selection probabilities are irrelevant to the estimation process. The Postal Service assumes **for estimation purposes** that the offices within a CAG stratum constitute a simple random sample from that stratum. See Tr. 8/2853. Even if this assumption could be demonstrated to be incorrect -- which it has not been -- it does not follow that the estimates are flawed. The OCA's further statement that "[c]onverting sample data into valid population estimates requires knowledge of selection probabilities as weighting factors" is simply untrue. OCA Brief at 63. Although estimators based on selection probabilities may have certain desirable characteristics in particular circumstances, they are not the only valid population estimates.

With regard to second stage universe and sample sizes, the OCA has the same complaints as discussed above. It laments that the information was not filed with the initial documentation, even though that is not required, and that information was not provided by CAGs A and B separately, even though the OCA never followed up with specific requests on this point. See OCA Brief at 63-64. The OCA also mischaracterizes the situation concerning the Postal Service's September 27, 1996 response providing IOCS employee universe size for a single FY 1995 pay period. OCA Brief at 64. The Postal Service's objections concerning the relevance of providing the employee universe are well documented in other pleadings in this case and will not be repeated here. Nonetheless, it must be pointed out that the Postal Service's provision of the data for a single FY 1995

pay period was in full compliance with the Presiding Officer's ruling on the subject.

The Presiding Officer stated:

[T]he additional benefit of more than one pay period of data does not appear likely to justify the additional burden such work would impose on the Postal Service. Postal Service counsel should identify at least four pay periods which might be compiled and allow OCA to choose the period it considers most likely to be representative.

Presiding Officer's Ruling No. MC96-3/12, September 12, 1996 at 2-3.

The OCA alleges that USPS LR-SSR-90 inaccurately defines the first stage sampling unit as the office, rather than the finance number. OCA Brief at 65-66. Contrary to the OCA's implications, however, this denotes no change. As the Postal Service clearly explained, "The first stage sampling unit **has always been** the finance number, generally referred to as office. The finance number could include a post-office unit, or several organizational units where employees report their labor time to that finance number." Tr. 8/2802. The Postal Service fully responded to questions posed by the OCA on this topic. See Tr. 8/2802-03 and 2809.

The OCA also criticizes the Postal Service because "[t]he second stage sample contained additional levels of sampling strata that were undocumented in the initial SSR-90 documentation." OCA Brief at 65. As discussed previously, the Postal Service promptly moved to make revisions to SSR-90, in response to the OCA's complaints of "**minor** inconsistencies." Tr. 8/2899 (emphasis added). Moreover, the Postal Service provided detailed information about the additional levels of second stage sampling strata, in response to the OCA's questions. This

included information on the sampling rates and the number of pay locations those rates apply to, for the affected 21 of the 504 CAG A/B finance numbers. See Tr. 8/2869-73 and 2900-02. The Postal Service further explained the reasons for choosing particular sampling rates, stating:

For a specific office, the higher sample rate for employees in pay locations with concentrated international activities was determined in combination with the lower 2 percent rate for the other pay locations in such a way as to maintain an acceptable level of data collection burden within a site.

Id. at 2900.

The OCA again drags out its shopworn complaint that the initial documentation was lacking certain, non-required items -- in this instance, various estimation formulas for the IOCS. OCA Brief at 66. The Postal Service responded to the OCA's interrogatory on this point. See Tr. 8/2799-800. The OCA further laments that perhaps the IOCS can be used to produce time proportions, rather than cost, estimates, "but the Postal Service is not inclined to explain how to form such estimates." OCA Brief at 67. As the Postal Service stated, "We have not used the IOCS for these types of procedures. Therefore, we are not in a position to evaluate them." Tr. 8/2842. If the OCA is interested in using the IOCS to produce time proportions, then it should do its own work.^{25/}

^{25/} As the OCA is well aware, the IOCS has been and is used to develop **cost** estimates. The description in USPS LR-SSR-90 is perhaps somewhat inartfully worded. It might be better if it read something to the effect of, "The In-Office Cost System uses a probability sample of employee work time to estimate proportions of costs spent on various activities. . . ." The OCA simply cannot be taken seriously if it is implying that the description in SSR-90 led to any

(continued...)

The OCA asserts that the formulas for the IOCS sampling error estimates were not furnished with the initial documentation. OCA Brief at 67. They were not because the rules do not require such, but the programs used to produce the estimates were ultimately provided by the Postal Service in response to an OCA request. Tr. 8/2824. Moreover, the Postal Service provided a new IOCS data file shortly thereafter, which would allow production of the reliability estimates. Tr. 8/2825. Production of the new IOCS data file required the Postal Service to mask proprietary finance numbers, a task that took additional time.^{26/}

The OCA's final assertion concerning the IOCS is that "it is **possible** that the formulas used by the Postal Service to produce sampling error estimates for

^{25/} (...continued)

misunderstanding on the part of anyone concerning what the IOCS measures. For example, in Docket No. R94-1, witness Steele, in response to an interrogatory from the National Newspaper Association, stated that "IOCS data are used to estimate costs associated with proportions of time identified with various activities" and that "IOCS data are not used to estimate worker hours." R94-1, Tr. 1/25.

^{26/} See Objection of the United States Postal Service to Office of the Consumer Advocate Interrogatories OCA/USPS-36(a) and (b), 37(a) and (b), 42(f), 43(f), and Partial Objection to OCA/USPS-47, August 26, 1996 at 3. The Postal Service does not recall that the OCA or others ever requested this information in previous dockets in order to evaluate rate and classification proposals. See Opposition of the United States Postal Service to Office of the Consumer Advocate Motion to Compel Responses to Interrogatories OCA/USPS-36(a) and (b), 37(a) and (b), and 47, September 4, 1996 at 4. It should be noted that this is an instance where the OCA attempts to paint a portrait of the Postal Service dragging its heels in the provision of needed data. All the Postal Service did in this instance was exercise its rights, in accordance with the Commission's discovery rules, to object to the provision of information it deemed irrelevant and proprietary. Once the Postal Service was ordered to produce the information, with finance numbers masked, it did so. See Presiding Officer's Ruling on Office of the Consumer Advocate Motions to Compel Interrogatory Responses, Presiding Officer's Ruling No. MC96-3/12, September 12, 1996.

the IOCS were not even correct." OCA Brief at 68. First, even as couched by the OCA, this is speculation. Second, the proper way to take issue with the Postal Service's variance formulas is through testimony, not on brief. Nonetheless, the OCA evidently believes that the Postal Service underestimates its c.v.'s, and apparently suggests that the Postal Service should use a formula the OCA has presented in some of its interrogatories. See OCA Brief at 69; Tr.8/2843 and 2905-06. In comparing the OCA formula with that used by the Postal Service, it is not possible to conclude that there is underestimation inherent in use of the Postal Service's formula. In the OCA formula, for most strata, the second term is negligible, since f_1 is small. The first term parallels the formula used by the Postal Service, except that the Postal Service does not use the finite population correction, f_1 , so the Postal Service's formula overestimates the first term of the OCA's formula.

Upon close examination and a fair reading of the record, it is clear that the OCA's complaints about the IOCS and IOCS documentation are insubstantial. As such, they should be disregarded by the Commission.

3. City Carrier Cost System

The OCA repeats its familiar charge that the initial documentation for the City Carrier Cost System did not contain universe and sample sizes, sampling rates by stratum, weighting factors and formulas, and estimation formulas, knowing full well that these items are not required with the initial documentation. See OCA Brief at 71. In fact, the information was provided in response to an

OCA discovery request, which was virtually the same as OCA requests for the information made in Docket No. R94-1. *Compare* Tr. 8/2940-42 *with* R94-1, Tr. 1/83-84; *see also* R94-1, Tr. 1/118-31.

The OCA also complains that no estimation formulas were included in the initial documentation to account for second stage sampling, and further hints that something is amiss concerning second stage sampling. See OCA Brief at 72. Again, estimation formulas are not required to be part of the documentation. Further, as the Postal Service explained, "Since such a small number of routes have parts, there are no additional weighting factors computed to account for second state sampling." Tr. 8/2942. A mere five routes in the sample have multiple parts. Tr. 8/2794. Thus, the OCA's attempts to portray some sort of deficiency are without foundation.

The OCA also insinuates that there is a problem, because the Postal Service neither makes adjustments in the estimation process to account for route attrition, nor does it randomly replace attrited routes. See OCA Brief at 72. As usual, the OCA's efforts to cast suspicion are nothing more than smoke and mirrors. Only four sample routes in FY 1995 were subject to attrition. Tr. 8/2942. Moreover, when one route is non-randomly substituted for another route, because the original route drops out of the sample (e.g., when a carrier refuses to cooperate), there is no need to make adjustments in the estimation process. It is analogous to rescheduling any of the Postal Service's samples. Rescheduling is not done at random. It is done intentionally to obtain a sample as closely

resembling the originally scheduled sample as is possible. Substitution of one sampling unit for another does not result in any change in either the sample size or the population size. Hence, no adjustments are necessary.

The OCA also complains that the FY 1995 c.v. estimates provided by the Postal Service were in error. OCA Brief at 73. This is true. Once the Postal Service became aware of the error, in investigating its response to an OCA interrogatory, it filed corrections. Tr. 8/2938.^{27/} Rather than supporting the OCA's hints of flaws in the process, this example provides evidence of precisely how discovery procedures are supposed to work.

4. Rural Carrier Cost System.

Once again, the OCA asserts that the initial documentation for the Rural Carrier Cost System did not contain information on universe and sample sizes, sampling rates, and weighting and estimation formulas, even though the documentation rules do not require this information. See OCA Brief at 74-75. Once again, the information was provided in response to an OCA discovery request, which was virtually the same as OCA requests for the information made in Docket No. R94-1. *Compare* Tr. 8/2972-73 with R94-1, Tr. 1/81-82.

The OCA once again hints that something is awry concerning second state sampling, without ever specifying just what that might be. See OCA Brief at 75-76. The OCA takes issue with the fact that adjustments are not made "to the

^{27/} Moreover, in response to the OCA's request, the Postal Service provided the programs used to produce the cost and c.v. estimates for the City Carrier Cost System in USPS LR-SSR-144. See Tr. 8/2826.

estimation weights to account for further sampling." *Id.* at 75. As pointed out by the Postal Service, however, not many rural routes serve more than one office. See Tr. 8/2973. The OCA's attempts to portray some undefined deficiency accordingly have no support in the record.

The OCA acknowledges that the Postal Service provided sampling error estimates for FY 1995, and further acknowledges that the Postal Service, in response to an interrogatory, explained that the FY 1993 rural carrier c.v. estimates were inaccurate, as a result of a programming error. See OCA Brief at 76. Astoundingly, however, the OCA goes on to declare that "there is no assurance that the programming errors plaguing the RCS in FY 1993 did not remain for FY 1995." OCA Brief at 77. To the contrary, the Postal Service's interrogatory response, which fully explained what the error was, stated, "There **was** a program error in the software used to produce the FY 1993 c.v. estimates for the Rural Carrier System contained in library reference G-127." Tr. 8/2975 (emphasis added).^{28/} Furthermore, the Postal Service, in response to an OCA request, provided the programs used to produce the cost and c.v. estimates for the Rural Carrier Cost System. See Tr. 8/2827. The OCA has never indicated it found any error in those programs.

The OCA also bemoans the fact that "information to evaluate estimates based on the FY 1995 data has not been routinely included with cost system

^{28/} One can only conclude that the OCA tossed out interrogatories right and left and rarely bothered to read the responses. In this instance, the interrogatory and response are much like ships passing in the night.

documentation." OCA Brief at 77-78. Once again, it is not required by the rules. The OCA further states, "[T]he FY 1995 Rural Carrier sampling error documentation filed with the Commission cannot even be compared with documentation from FY 1993 to determine whether there has been further erosion of estimate reliability." *Id.* at 78; *see also id.* at n.44. In making this comment, the OCA seems to forget that it just acknowledged, on the immediately preceding page of its brief, that the Presiding Officer ruled favorably on the Postal Service's objections that it should not have to provide recomputed FY 1993 c.v.'s. *See id.* at 77. The Presiding Officer found that "neither rural carrier nor transportation costs are central aspects of the Postal Service's request in this docket. . . ." Presiding Officer's Ruling No. MC96-3/12, September 12, 1996 at 4.

Moreover, the entire notion of comparing c.v. estimates over time is not sound. The c.v. itself, rather than any change in the c.v., is the best indicator of reliability. Whether estimates have larger or smaller c.v.'s than they did in some previous filing is not the issue. The issue is whether the **current** data are sufficiently reliable for ratemaking decisions. Current c.v.'s provide the best indicator of that reliability.^{29/}

^{29/} The Commission seems to recognize this, as evidenced by Presiding Officer's Information Request No. 2, December 17, 1996 in Docket No. MC96-2. There, the Presiding Officer solicited discussion on the proper method for reducing sampling errors for classroom publications. The focus there is **not** on what the sampling error was for classroom in some past docket, but rather whether the **current** estimate for classroom is adequate for purposes of setting an appropriate rate.

5. TRACS.

The OCA first states "[t]he 'Statistical System Documentation' library reference (SSR-90) made no reference to the TRACS system." OCA Brief at 79. In fact, TRACS has never been included in the "Statistical System Documentation" library reference because it was developed more recently than the Postal Service's other data systems documented therein. The OCA correctly points out that the Postal Service neglected to file the analog to library reference G-106 from Docket No. R94-1. *Id.* As soon as this accidental omission was pointed out, however, the Postal Service filed library reference SSR-143. See Notice of United States Postal Service of Filing of Library Reference SSR-143, August 30, 1996. As discussed previously, however, the Presiding Officer recognized that transportation costs were not a central feature of the Postal Service's request in this case. Presiding Officer's Ruling No. MC96-3/12, September 12, 1996 at 4.

The OCA criticizes the Postal Service for providing universe and sample sizes in response to an OCA interrogatory, rather than at the outset of the case. OCA Brief at 79-80. As pointed out repeatedly above, inclusion of such items as universe and sample size is not mandatory in the initial documentation under the Commission's rules.

The OCA also expresses great concern over the fact that for the highway, freight rail and passenger air systems, random sampling within each Postal Service district replaced cost stratification. OCA Brief at 80. The OCA acts as if changes in sample selection methodology are inherently bad and should not be

made. If that were the case, improvements to and refinements of sample selection methodologies would never occur. Further, the OCA seemingly implies that this change has thrown the entire TRACS system into disarray. The OCA neglects to mention that several important factors in the sample design did not change. Sample sizes, criteria for identifying the universe, and the definitions of the primary or secondary sampling units remained unaffected. The only changes in the estimation programs were made to reflect the fact that there were no longer cost strata.

The OCA further alleges that "[t]his sample design change was not disclosed until August 30, 1996, after the close of discovery on the direct case of the Postal Service." *Id.* This is untrue. Each of the library references for the sample selection programs, filed with the Postal Service's Request, describes the changes which took place in the sample selection programs. For example, see USPS LR-SSR-79 at 60. Additionally, although discovery on the Postal Service's direct case ended before August 30, 1996, discovery directed to the Postal Service continued until November 15, 1996. The OCA is well aware of this fact, given that it continued to propound discovery to the Postal Service after discovery on the direct case had ended. See Office of the Consumer Advocate Interrogatories to United States Postal Service (OCA/USPS-76-87), September 18, 1996.

The OCA further implies, at one point, that the sample design change has affected data quality due to differences in sampling errors between FY 1993 and

FY 1995. See OCA Brief at 81. As the OCA should know, however, sampling methodology is not the only factor that can have an impact on sampling errors. Population variance can also affect sampling errors. In any event, the OCA has presented no evidence of any kind that the sample design change is the cause of the difference in sampling errors. Elsewhere, the OCA states that it is **not** the sample design change which has caused the sampling error change in the highway system, but rather concludes that "[i]t is more likely due to errors in TRACS estimation programs." OCA Brief at 83. Again, this is a totally unsubstantiated assertion. The highway estimation programs can be found in USPS LR-SSR-82, which was contained in the initial filing in this docket. The OCA points to no errors in those programs.^{30/}

The OCA cites with consternation to increases and decreases in sampling errors for the various TRACS systems between FY 1993 and FY 1995. The OCA intimates that these differences demonstrate that TRACS data are unreliable. This is plainly false. As discussed above with regard to the Rural Carrier Cost System, it is the sampling errors themselves, not changes in them, that indicate reliability. Here, all of the TRACS c.v.'s are still well within the "ballpark" of what is considered reliable.

The OCA also complains that, as initially filed, USPS LR-SSR-86 contained no sampling error estimates for the Eagle Network, and states that for the other

^{30/} While SSR-82 contains the estimation programs for PQ4 only, the programs are virtually identical from quarter to quarter.

TRACS systems, these estimates covered only one quarter of data and thus were not comparable to the annual sampling errors for FY 1993 provided in Docket No. R94-1. OCA Brief at 81-82. The omission of sampling error estimates for the Eagle Network in library reference SSR-86 was an understandable oversight, given that it was the very last of 322 pages. It was corrected by the Postal Service shortly after it was pointed out. See Notice of United States Postal Service of Filing of Additional Page to Library Reference SSR-86, August 30, 1996. At the same time, the Postal Service also filed library reference SSR-143 which provided annual sampling errors after it was discovered that these items had been overlooked. See Notice of United States Postal Service of Filing of Library Reference SSR-143, August 30, 1996.

The OCA also attempts to portray the **very provision** of the sampling error estimates as somehow deceptive. The OCA states, "The initial documentation filed for TRACS highway, rail, and Amtrak contained PQ4 sampling error tables attached as "output" to programs that did not actually produce those tables." OCA Brief at 82. In fact, there was no intention on the part of the Postal Service to imply that the sampling errors were produced by the final estimation program which calculates the distribution keys. The sampling errors were merely presented as additional information to the distribution keys and attached as the following page. Moreover, the formulas for producing the sampling errors -- which are not required by the documentation rules -- were furnished to the OCA when

they were requested. See Notice of United States Postal Service of Filing of Library Reference SSR-143, August 30, 1996.

The OCA makes a variety of further unfounded and unfair assertions concerning TRACS data availability and documentation. The OCA begins by saying:

The first data omission was the lack of data for the full fiscal year. This was the situation for the TRACS highway, rail, and Amtrak samples. This meant that under the best of circumstances, it would not be possible to analyze FY95 transportation cost data.

OCA Brief at 85. The OCA is correct that only fourth quarter data was submitted for the systems mentioned, as well as for air and the Eagle Network. However, the Postal Service has never filed a full fiscal year of TRACS data; in all previous filings involving TRACS only a single quarter was documented, and this has not been seen as cause for alarm.^{31/} The methodology of TRACS does not change from quarter to quarter, and thus only a single quarter is necessary to represent the system. Furthermore, final TRACS results for all quarters are used as CRA inputs and therefore are included in the workpapers for the CRA. See USPS-T-5, WP-B-14. Any interested party accordingly may conduct an analysis using all four quarters of TRACS final distribution keys. Finally, as mentioned previously, the Postal Service is in the process of attempting to ensure that a full fiscal year of TRACS will be available in its next filing, so this issue will become moot in the future. It is important to note, though, that documenting a full fiscal year will

^{31/} In Docket No. R90-1, where TRACS was first unveiled, only one quarter of data was available.

greatly increase the time and burden on the Postal Service personnel and contractors, who already expend hundreds of hours of work to document a single quarter.

The OCA next complains that the TRACS data were provided on 9-track tapes, which it characterizes as possibly "appropriate for mainframe data analysis or for data too unwieldy to be transported otherwise." OCA Brief at 85. The OCA further says that use of 9-track tapes "[u]nfortunately erects needless barricades to use of the data in a PC environment by the OCA, other intervenors, and the Commission." *Id.* The OCA then takes issue with the Postal Service's "vigorous" opposition to its requests to provide TRACS data on CD ROM or diskette. *Id.*

TRACS data has always been submitted on 9-track tapes, and this has not been viewed as an insurmountable problem. Under the Commission's rules, the Postal Service is required to submit the data in "machine readable format", a criterion met by 9-track tapes.^{32/} Indeed, the bulk of TRACS data is "too unwieldy to be transported otherwise." For example, the sixteen TRACS "airweek" files associated with PQ495 are in the neighborhood of 30-50 megabytes apiece, clearly too large to be transported on diskette, and clearly a burdensome challenge to download for inscription to CD-ROM. An entire fiscal year worth of

^{32/} It should be noted that 9-track and 3480 tape cartridge drives are readily available for PCs at a relatively modest price. While those media may not be the most convenient or most commonly found in the PC environment, they are almost universally accessible on a wide range of mainframe and minicomputers, as well as PCs. It is impossible for the Postal Service to provide data in a format to specifically meet every intervenor's hardware and software constraints.

TRACS data will likely require **several gigabytes** of disk storage. For the OCA to say that the Postal Service "erects needless barricades to the use of the data in a PC environment" is simply inaccurate. In actuality, TRACS was never intended to be run in a PC environment. Due to the number and size of the datasets involved, to the fact that they naturally reside, many in dynamic form, on the Postal Service mainframe, and due to the complex processing tasks involved, TRACS is inherently a mainframe application. While the OCA's characterization of the Postal Service's opposition to providing all TRACS data in a PC-friendly medium as "vigorous" may be applicable, the OCA must recognize the incredible burden involved with providing those data in a PC-friendly medium, and must recognize that the data will more than likely be too unwieldy for a "friendly" PC to handle, thus making the difficult and burdensome exercise of providing "PC-friendly data" a potentially wasted effort. See Objection of the United States Postal Service to Office of the Consumer Advocate Interrogatories OCA/USPS-57, 62, 65(d), (e), (f) and (h), 66(a), (c)(i) and (ii), 67(a), (c)(i) and (ii), and 68, and Partial Objection to OCA/USPS-65(a), September 9, 1996 at 3. Nonetheless, the Postal Service is working toward making certain data systems information available on CD ROM.

The OCA further alleges that "[i]t is clear that there was no real barrier to providing the entire FY96 TRACS highway data set on a single diskette." OCA Brief at 86.^{33/} Incredibly, as support for this assertion, the OCA says that the

^{33/} Presumably, the OCA means to refer to the FY95 TRACS highway data set.

"ALAHQN.HIGHWAY.PQ495.SURVEY.TEXT file is about 8.9 megabytes in size, but compresses (using PKZIP) to only 367k" and thus concludes that "[t]he entire PQ495 highway data file would occupy about a quarter of a standard 1.44MB diskette" and that thus "one diskette could contain all four quarters of TRACS highway data." *Id.*

The OCA is correct that the **individual file** ALAHQN.HIGHWAY.PQ495.SURVEY.TEXT is about 8.9 megabytes in size and would compress to fill only one-third to one-fourth of a standard floppy disk. However, this single file is only one of approximately 25 files, of sizes up to 12 megabytes, related to a single quarter's operation of the TRACS highway application. For the OCA to suggest that "there was no real barrier to providing the entire FY96 [presumably, FY95] TRACS highway data set on a single diskette" is ludicrous. Furthermore, ZIPPING (compressing) these files adds a burdensome step in the already time-consuming process of providing the data in machine-readable format, for it requires that the data first be downloaded to a PC rather than being directly written to tape (or CD-ROM) from the mainframe. It also introduces the possibility that any end users of the data will have trouble uncompressing it. Finally, the SURVEY file was not particularly "dense" in terms of varying data patterns over the record length, particularly as the commercially sensitive variables were masked. Thus, it compressed significantly. This compression ratio is not indicative of what is achievable with the overall data. Attachment A shows that a single quarter of highway data will occupy over 50

megabytes of disk space (not including several hundred kilobytes of programs). A full fiscal year will thus require about 200 megabytes -- more than will fit on a single floppy.

The OCA states that "[a]nother obstacle to access to TRACS data files was the fact that many of the files were not the ones actually used by the Postal Service" because "the Postal Service first created 'SAFE' files from the actual TRACS data files. . .with commercial data suppressed and the record length significantly decreased." OCA Brief at 86. The OCA is correct that the Postal Service did create special library reference versions of the files in which **commercially sensitive** (not just "commercial") data were masked. As a business facing fierce competition, the Postal Service maintains the right to withhold data which would adversely affect its competitive position. The Postal Service is working to provide complete files in future filings, with the commercially sensitive data encrypted in a manner such that the files are still useable to recreate the results of the data system. It is important to note, though, that on top of the hundreds of hours already involved with documenting the TRACS system, attempting to successfully encrypt the data is proving to be a monumental task, adding hundreds more hours to the data systems documentation process.

The OCA's comment on the "significantly decreased" record length in SSR-84 creates the implication that the files were deliberately altered to erase pertinent data. This is simply not the case. As the Postal Service previously explained, in some files the record length was reduced where possible in a deliberate effort to

conserve tape space by eliminating excess, **unused** space on the data record.

Tr. 8/2882-84. An appropriate analogy might be reducing the size of your garage to be only large enough for your car. It does not mean that you are stripping your car down to spare parts. Anybody with a beginner's familiarity with SAS would understand that the logical record length only needs to be large enough to include the rightmost variable on the record. In the file originally scrutinized by the OCA, ALAHQN.HIGHWAY.PQ495.SURVEY.TEXT, the record length was reduced from 250 to 180, because the actual data only required a record length of 171. (180 was chosen because it was the smallest possible record length that would accommodate all of the variables and divide evenly into the block size.) Any changes in record lengths had no effect on the execution of the TRACS programs, but only served to reduce the size of the files submitted on SSR-84 by eliminating wasted, **empty space**.

In addition, the OCA asserts that it

was still concerned that the TRACS programs provided to the Commission would not execute properly on the "SAFE" files. In response to this concern, the Postal Service filed SSR-153 which was a SAS log demonstrating that the Postal Service could execute a TRACS highway program (TRACS.EXPAND.HWY.PQ495.CNTL.(SURVEY)) on the corresponding "SAFE" file. . . . Unfortunately, SSR-153 was a mainframe SAS log and shed little light on whether the programs would operate correctly in the Commission's PC environment.

OCA Brief at 86-87.

The OCA said, in interrogatory OCA/USPS-85b.iii., "Please confirm that the program TRACS.EXPAND.HWY.PQ495.CNTL(SURVEY) will not execute properly

on the data file ALAHQN.HIGHWAY.PQ495.SURVEY.TEXT included with SSR-84", implying that OCA had attempted and failed to execute that program with the data itself. See Tr. 8/2909. In response, the Postal Service filed the SAS log in SSR-113, showing that the program did run on the "SAFE" file. The fact that the log was a mainframe log is irrelevant since, once the file references are adjusted for the particular operating system, SAS performs its processing tasks identically in any environment. One need only disregard the mainframe JCL at the front end of the log and consider the rest as a normal SAS log. Nonetheless, because the one program filed in SSR-113 happened to operate without error on the "SAFE" data does not necessarily mean that OCA would be able to replicate TRACS results using the "SAFE" data. Critical origin/destination, supplier, and facility data, which are all commercially sensitive, have been masked in the files submitted in SSR-84, and this prohibits matching TRACS sample data back to the payment frame in the expansion process. As discussed, the Postal Service is working towards a solution to this problem for future filings by developing an encryption process by which the commercially sensitive data will be meaningless to intervenors, but still allow the TRACS results to be replicated.

The OCA's final misleading point is that "[u]nlike the highway and rail data files, the data files for the TRACS air system were provided as SAS data sets on the SSR-84 9 track tapes. . . .Unfortunately, useable SAS data sets were not provided for the TRACS Air system". OCA Brief at 87. This is a flagrant misstatement. While the TRACS programs read the TRACS "airweek" files as

SAS datasets, the versions included on SSR-84 have been converted to ASCII text. Had the OCA bothered to look at the files, it would know this.

C. The OCA's Criticisms Of Witness Ellard's Price Sensitivity Study Are Based Only Upon The Erstwhile Testimony of OCA Counsel But Nonetheless Lack Merit.

OCA criticism of the market research largely builds on what it did not study, rather than any shortcomings of the price sensitivity study of existing boxholders. For example, Mr. Ellard's study was not intended to be a full-blown study of nonresident reactions, although it did ask a question that relating to residency status.

At pages 52-53 of the OCA's Brief, the OCA argues that nonresidents would react differently to the tested fees if informed that a special fee would apply to them. That may be, as Mr. Ellard agreed was possible in the transcript section cited, Tr. 2/394, but the effect on the acceptance rate is unclear. Tr. 8/3012; Tr. 11/3668-70. The price sensitivity study was not designed to probe the depths of nonresidents' reactions, although it did measure the basic economic question of reactions by existing boxholders to a range of price changes that encompasses both the basic box fee increases and the nonresident fee.

At page 54 of the OCA Brief, the OCA criticizes the market research for failing to examine non-boxholders. Since the Postal Service proposes fee increases rather than decreases, there is no *a priori* reason to expect any new boxholders to appear. The OCA's proposal that certain box fees decrease, however, does raise this possibility and the OCA has been justly criticized for

using the acceptance rates from Mr. Ellard's study of existing boxholders to project new boxholders from the very customers it now claims should also have been studied. Tr. 9/3539-43. It appears that the OCA's real complaint is that the Postal Service did not properly anticipate the OCA's box fee proposal, and therefore failed to obtain price sensitivity data regarding the population the OCA needed.

The OCA also criticizes the adequacy of the documentation of the price sensitivity study, OCA Brief at 56, although it appears to concede that it got the necessary documentation, *id.*

In its brief at page 57, the OCA also criticizes the trimming process while conceding that it was needed to address unavoidable variations. The process of trimming was implemented so that boxholders at certain very large post offices did not dominate the findings. While the trimming effort was undertaken as a part of good survey practice, there is no reason to believe that trimming would have an important effect on the result of the price sensitivity study, particularly since the process of post-stratification tends to provide a safeguard against extreme results.^{34/} The OCA provides new unsworn testimony from counsel in its discussion of Design Effect, OCA Brief at 58-59. The OCA quotes the Cochran definition of Design Effect, which is correct, but fails to recognize the serious computational problems it creates since it assumes one knows the variance of the

^{34/} Had the SAS code for post stratification been requested, an objection would have been filed on the grounds that this code is proprietary and therefore privileged.

designed sample. The formula used by Mr. Ellard is routinely used by survey researchers to approximate the Design Effect. Admittedly, it assumes that the sample will not be more efficient than a random one, so the Design Effect will be greater than one.

In order to comprehend this, one must distinguish sample design and weighting. It is possible to have a design more efficient than simple random design (although only in academia), thus generating a Design Effect of less than one. This requires intensely detailed and reliable information about every single unit in the population, and would also require a fairly well-behaved set of respondents. That is, respondents within each stratum should remain faithful to the sampling expectations and respond homogeneously.

Weighting, on the other hand, is a restorative measure, attempting to make the resulting respondents as representative of the target population as possible. Since this restoration can be done with respect to only a few features of the population, the emerging weighted data will be out of balance with respect to some other features of the population -- those not included in the weighting. Considering that the Design Effect is a measure of disparity of the sample and the target populations, it is natural to expect the Design Effect to be at least one.

In conclusion, witness Ellard produced a rather straightforward study, measuring an uncomplicated variable. His survey can be criticized for what it did not study, but so can any study. To the extent the supporting documentation does not meet the standards the OCA would prefer, it is a safe bet that no study

presented in support of Postal Service proposals ever will. On these facts, the price sensitivity study was properly conducted and is properly relied upon by the Postal Service in its box fee proposals.

III. THE POSTAL SERVICE IS PROPOSING IMPORTANT CLASSIFICATION AND PRICING REFORMS FOR THE POST OFFICE BOX AND CALLER SERVICE FEE STRUCTURE.

Both the Postal Service and the OCA recognize significant drawbacks in the current fee design for post office box and caller service. The Postal Service responds by proposing a significant first step in correcting the fee design. The OCA's primary response is to recommend doing nothing.

A. The Postal Service's Post Office Box and Caller Service Proposal Takes an Important First Step in Improving the Current Fee Structure.

The OCA claims that the Postal Service is deferring changes in the existing fee structure. OCA Brief at 93. This criticism ignores a major part of the Postal Service's proposal. Contrary to the OCA's claim, the Postal Service is seeking in this proceeding to begin to correct flaws in the existing fee structure. The Postal Service is proposing to merge the city and non-city delivery fee groups, and establish four fee groups (A through D) to reflect various levels of cost and demand.^{35/} Moreover, the Postal Service is proposing Group D fees that are more consistent with costs than the current Group II fees.

The Postal Service admittedly is not moving offices from their current groupings at this point. Given the large existing fee differences between Groups I

^{35/} See Postal Service Brief at 54-56.

and II (\$40 versus \$8 for size 1 boxes), moving offices around would be inconsistent with the Postal Service's concern about the impact on current boxholders. The Postal Service is first proposing fees that will reduce this percentage discrepancy. If these fees are adopted, more regrouping can be achieved in the future with less extreme fee changes. The Postal Service should not be penalized for trying to correct a fee structure one step at a time so as to minimize the impact on its customers. See OCA Brief at 95.

Because of this concern about customer impact, proposed Group D would still contain all Group II delivery offices. Thus, costs developed by witness Lion still reflect groupings by the type of carrier delivery.^{36/} However, any resulting discrepancies are taken care of through fee design. In arguing that the current groupings of post offices does not reflect cost differences between urban and rural areas, the OCA ignores the facts that Group II fees do not come close to covering costs, and the Postal Service is not proposing that these fees do so. So, even if the cost level is overstated for a purely rural area, as the OCA alleges, there has been no resulting fee penalty. See OCA Brief at 89-92.

Witness Lion presents the Postal Service's attributable costs per box in his direct testimony, by summing costs in three categories: Space Provision, Space

^{36/} Groupings by delivery type were not designed to be homogeneous cost groupings. This grouping reflected the historical variations between levels of service for city delivery and non-city delivery offices. Existing Groups I, II, and III "reflect the degree of convenience afforded by alternative [carrier] delivery services." Docket No. R77-1, USPS-T-68 at 20 (witness Allen). The Postal Service's proposal recognizes that even these distinctions have gone away when comparing city and non-city delivery.

Support, and All Other. Postal Service Brief at 49-50. Considering the size 1 box costs for just the Space Support and All Other categories, it is clear that, regardless of how Space Provision costs are assigned, total attributable costs for even the lowest cost offices will be over \$16. USPS-T-4 at 44. Therefore, given that Group D is designed for those offices exhibiting the lowest cost and/or demand characteristics, it makes no sense to have a Group D fee that is less than \$16. Postal Service Brief at 56. Even if one wants to find a new way to group offices, as the OCA urges, the fee for the lowest cost group nonetheless should be increased to \$16. Therefore, the Postal Service's proposed Group D fee should be recommended, even if one is expecting further changes in the post office box and caller service fee groups.

The OCA complains that the existing fee structure allocates costs in a way that benefits boxholders in more costly urban and suburban locales. OCA Brief at 91. But the Postal Service's proposal provides for higher cost coverage in Groups A through C, which contain most urban and suburban offices, and a much lower one in Group D. Tr. 5/1541.^{37/} The allegation that rural locations are unfairly treated is thus unfounded.

^{37/} The OCA cites to cost coverages presented by witness Sherman, at Tr. 7/2300. OCA Brief at 95. These cost coverages apparently should have been revised. Witness Callow presented similar cost coverages at page 22 of his original testimony, but revised them downward on November 13, 1996. Tr. 5/1541.

B. The OCA's Proposal To Do Nothing Should Be Rejected.

The OCA, instead, proposes in its brief that the Commission should, assuming that information on CAG office groupings is missing, "maintain the status quo". OCA Brief at 88.

1. The OCA's proposal is late and therefore should be rejected.

This late proposal, presented for the first time on brief, should be rejected because it lacks merit, and because it merely contrives a default to escape the OCA's original defective proposal. The OCA's testimony and accompanying trial brief, filed on September 30, 1996, made no mention of maintaining the status quo. Instead, witness Callow made a proposal to change post office box fees. His proposal accepts the current group structure, and ignores the Postal Service's proposal to establish Groups A through D. Tr. 5/1537-48. It is too late for the OCA to change its proposal as it does in its Brief.^{38/} In fact, the OCA has wasted the resources of the Commission, the Postal Service, and intervenors by making what it now deems to be a less preferred approach to post office box fees seem, during the hearing process, to be its only approach.^{39/}

^{38/} Prompted by a Postal Service interrogatory, witness Callow did explain how fee groups could be redefined based on CAG level. Tr. 5/1590. But this response was not filed until less than a week before witness Callow's appearance on the stand, and did not suggest that the OCA would prefer such a redefinition to the proposal presented in witness Callow's testimony. Moreover, the response did not suggest that the status quo should be preserved until information that would underlie this redefinition is developed.

^{39/} See OCA Brief at 11 for the OCA's concern about the waste of resources in another context.

2. The OCA's concept of grouping offices by CAG level lacks merit.

The OCA's new approach advocates that the Commission maintain the current system because it is so flawed that it needs reconfiguration.^{40/} The Postal Service, on the other hand, as described above, recognizes the flaws in the current fee structure, and takes a first step toward reforming that structure.

In fact, the OCA has its own idea for eventually correcting the current fee structure. It proposes using CAG levels to regroup the offices offering post office box and caller service. It claims that CAG groupings will better reflect variations in costs for different offices. OCA Brief at 92-93.

Witness Lyons explains the drawbacks of using CAG level to group offices for fee purposes. First, CAG level is determined by revenues, not costs. Tr. 9/3431. Costs might therefore vary independently of CAG for some offices, especially older ones. Tr. 9/3432. In fact, the relationship between CAG level and space costs is not monotonic, and exhibits little variation between some CAG levels. Tr. 8/2916. To the extent that offices vary in their relative revenue levels from year to year, moreover, CAG groupings would tend to fluctuate. CAG grouping for box fees would then lead to fee changes for particular offices on a

^{40/} The Postal Service recognizes that the OCA is proposing to do nothing only if the Commission finds inadequate information to redesign the post office box and caller service fee structure by grouping offices by CAG level. But it is clear that such information is lacking on the record. Information about the number of boxes by CAG has not been developed. Even if the fee structure could be redone based on CAG level, no fees have been proposed.

year-to-year basis. This would be administratively difficult and lead to customer dissatisfaction.

More significantly, there is no reason for CAG groupings to reflect boxholder needs or demand levels. Some offices that are relatively small have a high demand, such as Middleburg, VA, and San Luis, AZ. Tr. 9/3430-32. These offices are CAG F and CAG G respectively. USPS-T-3 at 3, 5. Thus, the OCA's concept is flawed because it seeks to group offices based only on costs. OCA Brief at 91. Costs have not been, and should not be, the only determinant of post office box fee groupings. The Act sets up many non-cost factors. Thus, for example, the Commission looks for both cost and demand differences in order to establish subclasses. *E.g.*, PRC Op., Docket No. MC95-1, at I-3. The current post office box and caller service fee groupings are not based on cost distinctions, moreover, but rather on distinctions related to the level of alternative delivery service. *See, e.g.*, Docket No. R77-1, USPS-T-68 at 20 (witness Allen).

The OCA's concern about cost variation among the fee groups seems to reflect a belief that post office box and caller service fees are based only on cost levels. OCA Brief at 89. In fact, fees also reflect the other statutory pricing criteria, so that implicit cost coverages vary among the different fee groups. For example, the current Group II fees clearly are not based on Group II costs, since they do not come even close to covering those costs.

The OCA speculates that a reconfigured fee structure might show that current Group II fees actually cover costs in rural areas. OCA Brief at 93. Such

speculation is wrong. The OCA focuses only on Space Provision costs. In witness Lion's and the OCA's attribution of costs to post office boxes, only Space Provision costs vary from office to office.^{41/} Thus, only that category of costs would vary by CAG (or by delivery group).

Witness Lion and the OCA analyzed costs for two other categories (Space Support and All Other). These types of costs do not vary from office to office, so they are the same regardless of the office's CAG or fee group. Those two categories of costs total \$16.44 for a size 1 box, using the FY 1994 costs relied upon by witness Lion. USPS-T-4 at 44. They total \$18.26 in the OCA's test-year (FY 1996) analysis. OCA-LR-3 at 16. Thus, regardless of how one groups offices, by delivery group, CAG, or otherwise, costs will be over \$16 for a size 1 box. Even in the least costly office, costs will be over \$16. Therefore, neither the current Group II fee of \$8, nor even the proposed Group D fee of \$16 will cover costs. A fee increase is thus necessary no matter how one reconfigures the fee groups.

In recommending that the Commission do nothing, the OCA states that current fees would "maintain[] a positive contribution to institutional costs."^{42/} OCA Brief at 89. In fact, the current fees do not maintain a positive contribution to institutional costs. The test-year before rates cost coverage is 99.8 percent.

^{41/} See USPS-T-4 at 44; OCA-LR-3 at 16 (as revised November 5, 1996).

^{42/} If the OCA truly believes that "[t]he existing post office box delivery group fee structure is irrational and unfair," OCA Brief at 88, it is surprising that the OCA is willing to let this structure and its fees persist after this proceeding.

Exhibit USPS-T-1C. A recommendation that the current fees be maintained thus would be contrary to the Postal Reorganization Act.

C. The OCA's Wan Defense of Its Fee Proposal Lacks Merit.

The OCA does present a limited defense of its fee proposal in case the Commission rejects "[t]he best course of action", to do nothing. OCA Brief at 95. Where a response is considered necessary, it is presented below.

1. The OCA's use of witness Ellard's acceptance rates was improper.

The OCA argues that its application of acceptance rates developed from existing boxholders to non-boxholders is appropriate. OCA Brief at 162. The OCA effectively agrees that it merely used what was available, but that does not make it right. The OCA is behaving like the drunk who lost his keys down the street, but looks for them under the streetlight because the light is better there. The OCA asserts that record evidence does not show the two groups to be different. Aside from being wrong, since the only record evidence says they are different, Tr. 9/3539-40, the OCA fails to recognize that its burden of proof includes demonstrating that the two different groups are in fact the same. This is the evidence the record lacks.

2. The OCA's introduction of upper and lower bounds that define overly large ranges has no value; the OCA, moreover, fails to understand that such bounds are appropriate tools only when actual values are unavailable.

The OCA expends several pages of its brief attempting to add confusion and new evidence to the record, OCA Brief at 165-69, where it argues that the OCA's estimate of cost coverage based on its fee proposal is reasonable compared to the Postal Service's low estimate. In a larger sense, the OCA does

not appear to understand the concept or purpose of an upper bound (or lower bound). Upper and lower bounds are useful in estimating the value of a scalar quantity that is impossible to calculate directly (*i.e.*, the cost coverages for proposed box fee decreases^{43/}). Since no study of acceptance of box fee decreases by would-be customers was conducted, it was appropriate to introduce cost coverage bounds as a means of evaluating witness Callow's improper use of Mr. Ellard's acceptance rates.

An upper bound is a value that is **necessarily** higher than the actual value, in order to determine an estimate of that value. The idea then is to determine the **least upper bound** to get the estimate as tightly bound as possible. Tr. 9/3600-01. Thus since it is inherent in past behavior that non-boxholders have less interest in box service than do boxholders, it is correct to label an estimate that assumes they are equally interested as an optimistic upper bound. The fact that the OCA can come up with an even higher upper bound is just so much useless information. One can come up with an infinite number of even higher upper bounds. The least upper bound for cost coverage in the OCA's fee proposal is the 101 percent given in witness Callow's testimony; it therefore preempts all higher values.

On the other end, a lower bound is clearly given by the pessimistic assumption that there will be no new boxholders, which results in a cost coverage

^{43/} Discussion of potential upper and lower bounds of customer reaction to proposed box fee **increases** is unnecessary since witness Ellard's study developed direct measures of customer reactions to them.

of just 95 percent. The conclusion is unavoidable: it is almost certain, if the OCA proposal were to be implemented, that the cost coverage would be less than 101 percent, that boxholders would not make their fair contribution to institutional costs, and that incentives to expand box service where appropriate would be absent.

To argue that the OCA's 101 percent is not an upper bound, one must argue that the elasticity could be even higher than that used by witness Callow, *i.e.*, that non-boxholders are even more sensitive to box fee changes than boxholders. This is absurd.

The OCA's argument fails to recognize that in "bounding" a range, one seeks the narrowest defensible range. The OCA instead seeks the broadest possible range. As explained by witness Lion, "Going for a greatest upper bound just strikes me as meaningless." Tr. 9/3603. In sum, witness Lion's bounds show that the OCA's fee proposal presents a substantial risk of failing to cover costs.^{44/} Tr. 9/3543.

D. Criticisms Of The Nonresident Fee Are Fanciful, Unsound, Or Of Little Or Manageable Significance.

1. The proposed nonresident fee is justified by record evidence.

The Postal Service proposes a new box service fee, most often referred to as a nonresident fee, for box customers who are unable to obtain an exemption

^{44/} The risk that the OCA's fee proposal will fail to cover costs is also accentuated by Witness Lion's demonstration that the use of market-based space provision costs would lower post office box and caller service cost coverages by about 8 percent. Tr. 9/3545-46.

based upon a showing of local residency. The fee is reasonable, fair and equitable, conforms to the statutory pricing criteria, and should be recommended. Postal Service Brief at 66-69. The proposed fee is based upon the high value of and demand for box service, the additional operational burdens to which nonresident boxholders contribute disproportionately, and evidence of demand-based fees in other service industries, *id.*, but is not, for lack of availability, supported by quantified estimates of the actual costs that derive from nonresidents.^{45/} The OCA, Mr. Carlson, and Mr. Popkin all oppose the fee, asserting in various ways that there is no evidence to support it. See, e.g., OCA Brief at 109-11, 123; Carlson Brief at 2-4; "Brief" of David B. Popkin at 2-3. The evidence supporting the nonresident fee exists and has been made part of the record (see Postal Service Brief at 66-69), regardless of its invisibility to the fee's opponents.^{46/}

Several general arguments raised in the Briefs of the OCA, Mr. Carlson, and Mr. Popkin are already addressed, Postal Service Brief at 66-69. These include: there is no record evidence of costs caused by nonresident customers, e.g., OCA Brief at 3; the fairness and equity of the nonresident fee, e.g., Carlson

^{45/} The overall box fee proposal, which includes the nonresident fee, is based upon quantitative data that include costs. USPS-T-4; see also, USPS-T-6.

^{46/} Mr. Carlson argues both that evidence supporting the nonresident fee does not exist, and that witness Ellard testifies that it must exist in order to draw any conclusions, citing to the oral cross-examination of witness Ellard at Tr. 2/385. That transcript page does not support the purpose for which it is cited, since Mr. Ellard testifies only that in order to draw survey-based conclusions, one must have survey data. *Id.*

Brief at 12; and ZIP Codes are an inappropriate means for classifying customers, e.g., Popkin Brief at 4. These arguments are also addressed in the Postal Service Brief at 66-70.

2. The OCA's arguments regarding the contents of the record lack merit.

In its brief at 116, the OCA asserts that witness Needham is not familiar with operating expenses, citing to her statements about lack of familiarity with the counties' capital expenses when on those same pages she explained that she was only talking about operating expenses. On the other hand, Ms. Needham is an economist who appreciates the difference between capital and operating expenses.

In its brief at 123 the OCA asserts that witness Lion is unable "to supply any evidence" that having all installed boxes in use is a "virtual impossibility", citing Tr. 9/3559-66 in which he was orally cross-examined on and explained the various reasons he cites in support of his conclusion. At best, the OCA is implicitly repeating its mantra that if evidence is not quantified to its satisfaction then the evidence does not exist. The OCA fails to acknowledge the evidentiary support witness Lion provides in the cited section and in his testimony, let alone his qualifications to render an opinion as an expert economist.

The OCA employs a rather curious and unusual view of the world when it argues concerning witness Needham's rebuttal testimony that the only way to learn about local government funding of its operations is by working for that government. OCA Brief at 116. The Postal Service expects the Commissioners

will be surprised by this, since application of the same logic would require them to give absolute deference to postal witnesses in rate and classification cases. As with many of the OCA's arguments, this one should simply be ignored.

3. The definition of the nonresident fee has been consistent throughout this proceeding.

One concern expressed during the pendency of this case is that the definition of nonresident has changed since the case was filed. See, e.g., Carlson Brief at 28-30. The definition has not changed substantively, although it now has greater precision, and this is exactly what the Postal Service Request and direct case promised. The nonresident fee was defined by proposed DMCS language and described in the Request (Attachment B at 4-6) and USPS-T-7 (at 2, 24) , together with an indication that the Postal Service's goal was one form of free delivery for all customers (USPS-T-7 at 34), thus indicating further details would be worked out as part of the implementation. This approach is entirely consistent with that taken in previous classification cases wherein changes are proposed in the form of DMCS language with details of the type that appear in the DMM sometimes provided as they develop.^{47/}

^{47/} Rate and classification cases before the Commission are litigation required by statute, which under the traditional principles of administrative law bring to bear the most formal of due process protections. A federal agency typically exercises its own discretion in less formal and costly rulemaking proceedings that protect parties' procedural rights through a notice and comment rulemaking conducted via the FEDERAL REGISTER (especially when the Administrative Procedure Act requires it). The Postal Service's use of such rulemaking procedures means that in appropriate cases there is generally no need to explore DMM issues in rate and classification cases themselves. Mr. Carlson will accordingly have the opportunity
(continued...)

USPS-T-7 uses words of description to convey the basic concept that, if you obtain box service at the same post office that offers you carrier delivery, you are a resident. USPS-T-7 at 2, 24. As the questions raised during this proceeding regarding different permutations and complexities of box service and carrier delivery show, any illustrative description could never be comprehensive. Unfortunately, the specific descriptive words used have been misconstrued by opponents of the fee as words of limitation.

The early descriptions of the nonresident fee in the testimony, but not the Request, indicated it would apply to customers who obtain box service outside the five-digit ZIP Code area in which they reside, USPS-T-7 at 2, 24. These descriptions were and are accurate for a significant proportion of post offices,^{48/} although they are less accurate for both the largest and smallest post offices. But for the simple case of a middle-range post office that offers carrier delivery to all customers who live within its single five-digit ZIP Code area, the initial descriptions are still precisely accurate; they serve as effective vehicles for communicating the

^{47/} (...continued)

he claims to have been denied. See last paragraph of section II of Mr. Carlson's Brief.

^{48/} Both Mr. Popkin and Mr. Carlson question what they understand to be a change in the applicability of the nonresident fee from "post offices" to "finance numbers". Popkin Brief at 3; Carlson Brief at 29. There is no change; post offices, which have unique characteristics including a postmaster, the oversight imposed via 39 U.S.C. § 404(b), and often an exclusive service area, are differentiated within postal data systems by their finance numbers. In Washington, DC, the delivery area single post office happens to overlap with the political boundaries of the city.

substance of the Postal Service's nonresident fee proposal. The Request provided the broad language that will be filled in through rulemaking.

Opponents of the nonresident fee quickly determined that the descriptions could not apply to all possible scenarios, which of course they were never intended to -- or could. See Postal Service Brief at 69. The Postal Service has now provided significant additional details that cover other scenarios. Large, multi-ZIP Code post offices will treat all of their customers the same, as residents, Tr.8/3218, while in the smallest, nondelivery offices, some local customers will be residents but those whose free delivery option arises from another post office will not. Tr. 8/3219. But, since rules are intended to cover the general situations, rather than specific, unusual ones, see Postal Service Brief at 69, there should be no expectation that all possible scenarios would be covered by the rules, let alone in the Postal Service's Request and direct testimony.

The Postal Service has always expected and still expects that the definition of residents will be broad, meaning the number of nonresidents will be comparatively few. See Tr. 3/644. Indeed, in light of the developments reported in the First Status Report and the oral testimony of implementation witness Raymond, Tr. 8/3210-3320, the estimate of the number of nonresidents customers developed from witness Ellard's study looks quite reasonable.^{49/}

^{49/} Witness Ellard's study reported twelve percent of Group I and six percent of Group II customers as nonresidents.

4. The nonresident fee is discriminatory, but not unreasonably so.

The nonresident fee is by economic definition discriminatory, since it charges customers different fees for the same size box in the same facility depending upon where they reside. By distinguishing customers on the basis of the ZIP Code areas in which they reside, however, the proposed fee reasonably distinguishes customers on the same basis as the existing box fee schedule. Tr. 8/3218-20.

Mr. Carlson and the OCA argue that the nonresident fee constitutes unreasonable discrimination under 39 U.S.C. § 403(c) because some customers will have a choice of facilities where they will be residents, but other customers will be eligible for a resident box at only one facility. OCA Brief at 126, Carlson Brief at 15-18. This argument mis-applies the statute, because the critical question is not whether a customer has access to one, or to two or more, facilities without paying the nonresident fee, but whether they have **any** access to a box without paying the nonresident fee. All customers would have such access.^{50/} The logical extension of Mr. Carlson's and the OCA's argument, moreover, would require the immense proliferation of postal facilities, so any construction of section 403(c) to require such un-businesslike behavior would effectively negate discretion

^{50/} As demonstrated by Mr. Carlson's lengthy dissertations on why he values his box service so much, explanations as to why a customer chooses to obtain service at a given facility involve a complex matrix of considerations. For some customers, the nonresident fee will be just one more consideration.

expressly given to the Postal Service by other portions of the Reorganization Act.^{51/}

The OCA also argues that the nonresident fee violates section 403(c) because some nonresident customers do not cause the extra burdens generally associated with nonresident customers. OCA Brief at 125. This argument ignores both the role of demand-based pricing as a fee justification, and the fee's distinguishing customers based upon the ZIP Code area of their residences, a distinction already found in the existing fee schedule. See Postal Service Brief at 66-69.

5. The Postal Service has prepared and provided the required cost, revenue and volume analyses necessary to assure that post office box fees, including the nonresident fee, cover attributable costs.

The Postal Service is, of course, required to estimate volumes and revenues as part of its proposal; as a result of Presiding Officer's Information Requests, two separate estimates now appear in the record. Postal Service Brief at 75-76. Development of specific estimates for the nonresident fee, and for proposed Group E, was complicated by the absence of specific information regarding the number of resident customers or which customers are eligible for delivery from where. See, e.g., Tr. 8/3086-89. The number of nonresident customers was accordingly estimated from a general question that appeared in

^{51/} Mr. Carlson would further require that service at all of these offices be uniform, apparently regardless of its quality. Carlson Brief at 12-14, 27.

the box price sensitivity study, USPS-T-6.^{52/} The Postal Service is not required, as urged by the nonresident fee's opponents, to go beyond these estimates and provide the detailed volumes, revenues and costs they would prefer.

At page 108 of its brief, the OCA relies on section 3622(b)(3) to argue that the Postal Service must base its proposed nonresident fee on quantified additional costs caused by nonresidents. But that section only requires that post office box and caller service cover its attributable costs. The Postal Service's proposal would cover costs, and the nonresident fee proposal helps it do so. That requirement extends no further. Therefore, it allows the Postal Service and the Commission discretion to apply the other factors flexibly in designing the various post office box and caller service fees. A particular fee, such as the current Group III fee of \$2, is not required to cover its costs.

Moreover, there is no evidence that the \$36 proposed nonresident fee would not cover its attributable costs. *But see*, OCA Brief at 114, n.81. Therefore, it can lawfully be recommended under the statute, based on the other pricing criteria, such as value of service. The OCA brief consistently ignores the value that nonresident boxholders place on their boxes.

^{52/} Using assumptions developed from knowledge of our customers and the existing box fee structure -- Group III customers are generally ineligible for delivery, while Group II customers generally are eligible -- estimates of the revenue impact of the Group E fee were similarly developed. See, e.g., Tr. 8/3086-89.

6. The Postal Service has provided significant additional implementation details that permit customers and participants to evaluate the likely impact of the fee.

Because of the high value that many customers place on box service, the Postal Service expected when filing its Request that box customers and participants would want to know whether they are subject to the nonresident fee. Accordingly, this case, like Docket MC95-1, is of the type in which some public comment on the development of definitions to appear in the DMM is appropriate. Comments have been facilitated through responses to interrogatories and Presiding Officer's Information Requests, status reports and the appearance on the stand of witness Raymond.

7. Box capacity constraints are widespread and significantly impair customer choice and satisfaction.

The OCA claims that there is no nationwide box shortage. OCA Brief at 3, 116-20. The Postal Service has demonstrated only that shortages exist and that capacity utilization of boxes is high. Since shortages tend to cluster together, there has been no attempt to prove a nationwide shortage. The Postal Service has shown that there are many measures of capacity, Tr. 9/3559, and that all of the installed boxes are difficult to put in use at one time, Tr. 9/3559-66, so that many offices which do not report all boxes in use are effectively at capacity, Tr. 9/3577-79. The high capacity utilization of boxes is especially important because it serves to limit customer choice and therefore customer satisfaction. Tr.9/3533. The proposed nonresident fee would help alleviate box shortages. Postal Service Brief at 68.

8. The OCA's arguments on box expansion uniformly lack merit.

The acute insensitivity of the OCA to the need for the Postal Service to pay close attention to the costs of doing business and generally to behave in a business-like fashion is demonstrated by its assertion that the Postal Service should finance box expansion prior to seeking fee increases. OCA Brief at 101. On the other hand, if box fee increases are implemented, there would be a much greater economic incentive to expand box sections. Tr. 9/3544-47.

While the OCA may feel that the introduction of market-based costs of box service is "unnecessary", OCA Brief at 99, that sentiment has no bearing on the utility of the information to justify higher box fees or to illustrate weaknesses in the OCA's own proposal. See, e.g., Postal Service Brief at 58.

The OCA's creative argumentation extends further down page 101 of its brief, where it argues that the Postal Service has only addressed the initiation of decisions to expand box sections. Aside from being flat wrong on the facts, Tr. 3/695 (district officials approve box expansion), this argument fails to consider that district officials are unlikely to approve box expansions that are economically unwise, and local officials are unlikely to request approval of uneconomic box expansions.

The OCA then erects and knocks down its own straw man by arguing that the Postal Service has not formulated policy changes for the installation of new boxes. OCA Brief at 102. If the financial incentive to expand box sections is

improved, existing policies and procedures will themselves lead to box expansion.

Thus, the need for policy changes has not been established.

9. The OCA's view of the evidence necessary to evaluate the effect of the box fee proposal on the general public is so broad as to be unworkable.

The OCA argues that the paucity of evidence precludes Commission evaluation of the effect on the general public. OCA Brief at 128-29. To make this argument, the OCA first generalizes from the supposed inability to evaluate the effect upon nonresident customers. Witness Ellard's price sensitivity survey provides evidence on the response of both resident and nonresident customers to a range of fee increases that encompasses the nonresident fees, USPS-T-6, so there is evidence of the effect upon nonresident customers. Under the OCA's view, the Postal Service must define nonresidents, count them, evaluate their reaction to a new fee, quantify it, ask them why, and only then ask the Commission for classification and fee changes. This is not what the Reorganization Act requires, even if the OCA may think so. This OCA argument is both factually wrong and specious, since much of the record of this case can be used to evaluate this statutory criterion.

- E. The OCA's Criticism Of The Calculation Of Space Provision Costs Is Unsupported By Record Evidence And Wrong.

The OCA presents new testimony, unsworn even by counsel, in its criticism of the calculation of space provision costs. OCA Brief at 103-06. Specifically, the OCA asserts that space provision costs should be allocated based on the ratio of total rental costs to total area rather than the average of facilities' cost per square

foot. In calculating the average ratio of a series of data elements, there is often the issue of whether to use the ratio of the averages of the average of the ratios. Witness Lion chose to use the latter, while the OCA asserts that the former should have been used. The OCA's belief that only their approach is proper lacks record support or justification. The method used by the OCA will result in a few large facilities dominating the calculation. Specifically, the source data were total square feet, not square feet dedicated to post office boxes, so with the OCA's preferred approach a single large processing facility with few or nor boxes could have a disproportionate impact on the resulting calculations. However, the basic unit of this analysis is the post office, so it is better to use the average of ratios thus treating each facility as a unit.

The scenarios used by the OCA to illustrate its argument also use extreme outliers, which witness Lion eliminated from his study. Tr. 8/2915. The data necessary to perform the OCA's new calculation are missing from the record simply because the OCA never requested that it be made available to support its erstwhile testimony.

Finally, the calculation of space provision costs was apparently adequate for the OCA's own fee proposal. See Tr. 5/1537. The OCA's proposal and the lack of any record evidence indicating that space provision costs were calculated incorrectly are further evidence that the OCA's arguments lack any merit.

F. The ABA's Claim That The Post Office Box And Caller Service Fee Proposal Will Discriminate Against First-Class Mail Users Is Wrong.

Based on the fact that 68.3 percent of the mail delivered through post office boxes is First-Class Mail, and the similar nature of caller service, ABA argues that First-Class Mail will bear over two-thirds of the increased post office box fees and a disproportionate share of the increased charges for caller service. ABA Brief at 3, 7. This argument makes no sense. The increased fees for post office box and caller service will be paid by post office boxholders and caller service customers, not by the senders of First-Class Mail. In fact, the users of First-Class Mail are among the beneficiaries of the Postal Service's proposals, since a share of institutional costs that would be borne by mail classes would be picked up by special services.

As witness Taufique explains in his rebuttal testimony, moreover, the Postal Service is not taking advantage of any monopoly in proposing increased post office box and caller service fees. Tr. 10/3643-49. Similar services are offered by CMRAs, and carrier delivery is generally available as an alternative at no charge. USPS-T-7 at 39-40.

G. Higher CMRA Prices Support The Postal Service's Proposed Fee Increases.

Mr. Carlson and Mr. Popkin both argue that the fact that CMRA prices are generally higher than post office box fees does not support the Postal Service's proposed fee increases. They both focus on the extra services and convenience that some CMRAs offer. Carlson Brief at 32-34; Popkin Brief at 4. In some ways,

however, CMRAs offer less than the Postal Service. CMRA boxes tend to be smaller than post office boxes. USPS-T-4 at 23. The Postal Service offers earlier access to the mail than CMRAs. CMRAs are more likely to close and force their customers to change their address, and they do not offer forwarding. They offer less security, given the direct transfer of mail into post office boxes. Tr. 2/120-21.

Mr. Carlson argues that CMRAs must offer far more than the Postal Service because rational consumers are willing to pay the higher prices at CMRAs. Carlson Brief at 33. However, that line of reasoning would also support a high value for post office box service, because customers are willing to pay box fees even though they can get carrier delivery at no charge. It appears that price is only one factor in customer choices.

The fact that CMRA prices are so much higher than post office box fees does suggest that the Postal Service's fees are too low. Moreover, CMRA prices provide an indication that box service fees are below the competitive level for such fees. Tr. 10/3647-49. The Postal Service does not propose to raise its fees to the levels of CMRAs. But it makes no sense to ignore these fees as an indicator of an appropriate level for Postal Service fees.

IV. THE COMMISSION SHOULD DISMISS INTERVENORS' ARGUMENTS IN OPPOSITION TO THE POSTAL SERVICE'S CERTIFIED MAIL PROPOSAL.

A. The OCA's Attempt To Postpone Consideration Of A Fee Increase For Certified Mail Is Entitled To No Weight.

The OCA opposes the Postal Service's proposal to increase the fee for certified mail. The central theme of the OCA's criticism is that the Postal Service

has failed to adequately document the existence of past errors in setting the certified mail fee. In the hope of postponing consideration of an increase in the certified fee, the OCA offers a litany of misleading and unfounded objections. Under scrutiny, all of the OCA's criticisms fail.

First, the OCA claims that a clear explanation of "of how errors such as these could be perpetuated for more than a decade" is lacking. OCA Brief at 134. Nothing could be farther from the truth. Witness Needham's direct testimony, responses to written and oral discovery, and rebuttal testimony document, with citations to appropriate sources, the underlying errors committed in the calculation of cost coverages for certified both by postal pricing witnesses and by the Commission. See, e.g., USPS-T-8 at 71; Tr. 4/1072-75, 4/1125-27; USPS-RT-4 at 1-5, Tr. 9/3448-3453. Not only has a cogent explanation of past practices been furnished, but all of the information needed to verify the existence of errors is on the record in past proceedings, as witness Needham testifies. Tr. 9/3404-05.^{53/}

^{53/} Witness Needham explained during redirect examination that:

all of this is on the record [in past dockets]. You would really have to look, first, the CRA, the Commission bases it on the CRA. There is an inconsistent treatment of revenues and costs and the Commission followed the same methodology that was in the -- that the CRA used as far as the revenues with ancillary service revenue over the -- just the pure certified cost.

* * * * *

You could look at Appendix G, Schedule 1 [of past PRC Recommended Decisions], and then also the Schedule 2, whatever the appropriate pages are for whichever docket of -- for certified mail.

(continued...)

As much as the OCA feels that feigning ignorance of the existence of a record on this subject will cause the Commission to reject the fee proposal, the fact is that abundant information and explanations are on the record. Simply put, the OCA's argument is nothing more than a failed attempt to divert attention from the development of evidence concerning historical practices.

Second, OCA's claim that the Postal Service has "stubbornly resisted" efforts by the OCA to explore this matter further are unfounded. OCA Brief at 135. The Postal Service provided meaningful and insightful responses to all discovery on this subject and Postal Service witnesses were subjected to cross-examination on this point. Indeed, the Postal Service offered to receive requests for further clarifications on this topic, beyond the normal discovery period, early on during hearings on the Postal Service's direct case:

[MR. RUDERMAN:] Let me just leave it at that. If there are further problems with regard to our calculations, I assume you would have no problem if we contacted you or your counsel and requested clarifications?

MR. ALVERNO: I can receive those communications.

MR. RUDERMAN: Thank you.

Tr. 4/1201. The Postal Service received no informal requests for clarification from the OCA. Tr. 9/3506. Rather than endeavoring to ascertain for itself the veracity of the Postal Service's presentation, the OCA instead decided to wander down the path of self-professed ignorance. See Tr. 5/1735-36.

^{53/} (...continued)

Third, there is nothing so earth-shattering about witness Needham's contradiction of prior pricing witnesses concerning the calculation of certified mail cost coverages. Cf. OCA Brief at 140.^{54/} Witness Needham points out that the underlying source of the problem is systematic:

Historically, the CRA has included ancillary service revenues, which include revenues for return receipts and restricted delivery associated with certified mail, in certified mail revenues. In order to evaluate prices for certified mail with precision, it is incumbent upon the pricing witness to first subtract all ancillary service revenues from the revenue figure shown in the CRA. If ancillary service revenues are not removed, the certified mail cost coverage is inflated. Recommended fees that are based on such inflated cost coverages will likely be too low.

Tr. 9/3449. Moreover, given the nature of the CRA's inconsistent treatment of certified mail costs and revenues, errors by one pricing witness were apt to be replicated in subsequent cases.

Fourth, if the OCA expects the Postal Service to provide even more documentation to establish that the certified mail cost coverage calculated needs to be corrected, OCA Brief at 141, then one may reasonably question whether the OCA would ever be satisfied with any Postal Service proposal that would justify increased fees on the basis of historical errors. The Postal Service submits it has provided ample evidence of the past errors, and how to correct them. The OCA would apparently prefer to perpetuate past errors rather than support responsible

^{54/} Indeed, witness Needham was not the only witness to have represented the existence of past errors. Witness Lyons even admitted that errors occurred in Docket No. R84-1, when he was the special service pricing witness. Tr. 2/153-54.

measures to remedy past errors. Finally, the OCA's claim that the fee increases amounts to an exercise of monopoly is unsubstantiated. As explained in witness Taufique's testimony, in order for market power involves more than the mere power to raise price; rather, it is exhibited when the firm has the ability to raise price above competitive levels without losing market share" Tr. 10/3644. No evidence of the Postal Service's ability to raise certified mail prices above competitive levels exists on this record. Indeed, the evidence supports a contrary conclusion. Witness Taufique observes that the fee increases in this docket "are being raised to achieve modest objectives, *i.e.*, to cover their attributable costs or provide a reasonable contribution to institutional costs, or both." Tr. 10/3640. This is hardly the exercise of monopoly power; rather, it is simply an exercise in conformance with 39 U.S.C. § 3622(b)(3).

B. Alternatives To Certified Mail Exist, Even In Some Cases To Satisfy Legal Requirements.

ABA argues against adoption of the proposed certified mail fee on grounds that certified mail is required by law for some mailers for the transmission of specified types of communications. ABA Brief at 7. ABA concludes that the fee increase would amount to "an unfair burden" on these mailers. ABA Brief at 6. ABA's claims are entitled to no weight. First, while the effect on the general public and business mail users is one criterion among others the Commission must consider under 39 U.S.C. § 3622, ABA has failed to provide any support for the proposition that the cost coverage for certified mail must be held artificially low

by virtue of the fact that some mailers use certified mail to satisfy a legal requirement. See Tr. 4/1005, 4/1008-09.

Secondly, ABA's argument could just as easily be applied to other categories of postal services, such as First-Class Mail. Despite the fact that a subset of mailers must use First-Class single-piece to satisfy a legal requirement, the cost coverage for the Letters and Sealed Parcels Subclass has historically been much higher than the proposed cost coverage of 139 percent for certified mail, and about 30 times the before-rates certified mail markup of approximately 2.1 percent. Compare Tr. 8/3020-23 and Tr. 9/3452 with Docket No. R94-1, App. G., Schedule 1 (First-Class letters cost coverage of 174.5 percent) and Docket No. R90-1, App. G., Schedule 1 (First-Class letters cost coverage of 161.8 percent). Thus, the mere fact that some customers must use certified mail in satisfaction of a legal requirement is no reason for preserving the *status quo*.

Thirdly, the proposed certified mail fee for mailers that use certified mail to meet a legal requirement will certainly not be unreasonable or onerous. The proposed fee is a mere fraction of the price of alternatives. USPS-T-8 at 67; USPS LR-SSR-110. Moreover, as explained in witness Needham's rebuttal testimony, certified mail users have enjoyed the benefits of exceptionally low fees due to errors committed in calculating the certified mail cost coverage. Tr. 9/3452-53. It would therefore be manifestly unfair to permit certified mail users to continue to reap the benefits of past errors that have contributed to certified mail fees that have been well below costs. *Id.*

Finally, it is important to bear in mind that efforts to relax requirements to use the mails for transmission of various types of communications have been enjoyed some measure of success. One significant example is section 1210 of the Taxpayer Bill of Rights, Pub. L. No. 104-168, 110 Stat. 1452 (1996), which authorizes the Secretary of the Treasury to prescribe rules for the delivery of documents to the Internal Revenue Service via private carrier, and to prescribe rules for determining equivalents to registered and certified mail. This demonstrates that laws requiring certified mail use have been, and are likely to continue to be, relaxed to permit the use of alternative delivery services.

V. THE COMMISSION SHOULD DISMISS INTERVENORS' CRITICISMS OF THE POSTAL SERVICE'S RETURN RECEIPT PROPOSAL.

A. The OCA's Position On Return Receipt Classification Changes Suffers From Internal Inconsistencies.

All participants that addressed the return receipt proposal on brief either support or express no opposition to the Postal Service's proposal to combine the basic and enhanced options for nonmerchandise return receipts.^{55/} Indeed, Mr. Carlson endorses the classification changes for both merchandise and non-merchandise return receipts. Carlson Brief at 43. The OCA favors classification changes for nonmerchandise return receipts, but oddly opposes classification changes for merchandise return receipts. OCA Brief at 152-53, 173. The only

^{55/} As defined in the Postal Service's Brief, the term "enhanced service" refers to the existing return receipt service that provides the sender with signature, date, and address; the term "basic service" refers to the existing return receipt service that provides the sender with the signature and date. USPS Brief at 89.

reason the OCA offers for its inconsistent treatment of merchandise and nonmerchandise return receipts is that merchandise return receipt customers opt for the enhanced option in greater proportions. OCA Brief at 153. Therefore, according to the OCA, merchandise return receipt customers "might value the ability to choose to receive the delivery address for all deliveries more than would non-merchandise return receipt customers." OCA Brief at 153.

The OCA's reasoning is unavailing. If merchandise return receipt customers select the enhanced option in greater proportions, then they should welcome the combined service^{56/} because it offers them service that is essentially equivalent to the enhanced option.^{57/} Under the combined service, a

^{56/} As defined in the Postal Service's Brief, the combined service refers to the Postal Service's proposed return receipt service which provides the sender with the date, signature, and address (if different). USPS Brief at 89.

^{57/} OCA witness Collins' claims (1) that the combined service would be more analogous to the basic service and (2) that the enhanced service would cease to exist are not credible. Tr. 5/1778, 5/1795, 5/1799. In fact, these allegations are contradicted by another OCA witness' testimony. OCA witness Sherman perceives the proposal to eliminate the basic service option and preserve the enhanced option:

the fee stays the same for that slightly changed service. The main feature of the return receipt proposal is that it would eliminate one of the choices that is presently offered. The restructuring produces no genuinely new service. . . . [T]he no-address option will no longer be an option.

Presently the mailer has two return receipt options: (1) to learn to whom and on what date the item was delivered, or (2) to learn to whom, on what date, and to what address the item was delivered. The address option, (2), has a higher rate. Under the proposal, the mailer must choose the address option, (2), (with the address to be provided only when it is different rather than in every case as it is

(continued...)

return receipt with a blank address block would signal to the sender that the piece was delivered to the address written by the sender on the piece, thereby giving the sender *de facto* confirmation that the address information applied to the piece was correct. Tr. 4/1070; *see also* Tr. 7/2420-21. A return receipt bearing the sender's new address, on the other hand, would indicate to the sender that the address which the piece bore was incorrect. USPS-T-8 at 86. Thus, adoption of the combined service option would not, as the OCA suggests, deprive return receipt mailers of the enhanced option; rather, it would continue to provide these mailers with service essentially equivalent to the enhanced option.

OCA witness Collins further recognizes the logic in giving parallel treatment to merchandise and non-merchandise return receipts from customers' and the Postal Service's perspectives. Tr. 5/1803. She acknowledges that adoption of the classification changes for merchandise return receipts could serve the objective of improving address hygiene, and would probably aid in simplifying the fee schedule. Tr. 5/1802-03. As such, the OCA cannot deny that amending the classification for merchandise return receipts would serve the same worthwhile objectives as those put forth for the classification changes for nonmerchandise return receipts.

^{57/} (...continued)

presently) and will no longer be allowed to choose (1) because it will no longer be offered. . . . the main feature of the proposal is elimination of the no-address option.

Tr. 7/2333-34.

Adoption of the OCA's approach would, moreover, frustrate the Postal Service's stated goals. As explained in Dr. Steidtmann's testimony, the combined service creates an administrative benefit for the Postal Service in that it "reduc[es] transaction time for both the consumer and retailer." USPS-T-2 at 5. Consequently, "window clerks would no longer need to explain the different service levels and associated fees and delivery of mail with return receipts would be streamlined and simplified for carriers." USPS-T-8 at 93; see also Tr. 4/1080. Combining the enhanced and basic options for nonmerchandise return receipts alone, as the OCA proposes, OCA Brief at 153 and 173, would make administration of return receipt service even more confusing, particularly for delivery employees. Retention of the basic and enhanced options for merchandise return receipts alone would require that carriers familiarize themselves with three different delivery procedures (with regard to address information): one for nonmerchandise return receipts; a second for merchandise basic option; and a third for merchandise enhanced option. The Postal Service's proposed change for both merchandise and nonmerchandise return receipts is far superior, because it simplifies delivery procedure for **all** return receipts by making the delivery procedure more uniform. USPS-T-8 at 87, 88-89, 93. This, in turn, minimizes the chance for errors and reduces costs, since employees will not waste time familiarizing themselves with the different options and determining the type of service which must be provided with each return receipt. *Id.*

B. Intervenor Criticisms Of The Proposed Fees For Return Receipts Are Not Convincing.

Mr. Carlson and the OCA claim that the proposed fees of \$1.50 and \$1.65 for combined return receipt service and return receipt for merchandise service, respectively, are not justified because the cost of providing return receipt service will increase only slightly over the existing basic service option. OCA Brief at 173; Carlson Brief at 40.^{58/} Although the effect on costs of the classification changes is relevant to the Postal Service's proposal, as demonstrated in witness Needham's testimony at 86-87 and 91-94, the cost effect alone does not serve as the sole justification for the proposed fees. Rather, the Postal Service considered all relevant factors in 39 U.S.C. § 3622(b) in setting the fee for the combined service, and, as discussed in the Postal Service's Brief, the outcome of that analysis demonstrates that the proposed fees will be in accord with and further the criteria of the Act. USPS Brief at 91-93.^{59/} Consequently, that the cost of

^{58/} Mr. Popkin adopts a more radical view. Apparently, he believes that every change in fees must be premised on a change in costs. Popkin Brief at 6. Mr. Popkin has misinterpreted the Act. The Act does not require that every change in fees at the subclass level be premised on changes in costs; it only sets a floor under which prices may not fall. 39 U.S.C. § 3622(b)(3). Indeed, Mr. Popkin's reading of the Act would render the Commission's Express Mail Market Response Rate Request rules nugatory. 39 C.F.R. § 3001.57 *et seq.*

^{59/} An additional justification for the proposed cost coverage of 171 percent is that most return receipt customers have been paying **certified mail** fees that have been below cost. As witness Needham shows in her direct testimony, roughly 90 percent of return receipts are used in conjunction with certified mail. USPS-T-8 at 81. Thus, most return receipt customers have benefited from exceptionally low fees for certified mail for the better part of the decade. This docket thus serves as an appropriate time for this subset of mailers to begin making reasonable contributions to institutional costs in conformance with 39 U.S.C. § 3622(b)(3).

providing the combined service is only slightly higher than the cost of providing basic option service does not serve as a basis for rejecting the proposed fees.

C. Intervenor's Proposal To Provide Combined Service At Basic Service Fees Is Not Justified.

The Commission should reject the OCA's and Mr. Carlson's proposal to recommend the combined service at the existing fees for basic service. The intervenors' proposal suffers from evidentiary deficiencies, including the total absence of volume and revenue data evaluating the impact of their proposed change, and of testimony demonstrating compliance with section 3622(b), including justification for a low cost coverage for return receipts. In addition, the intervenors' proposal completely disregards the fact that the combined service would provide service essentially equivalent to enhanced service, and, under the proposal, there would be an unjustified fee **decrease** for customers who now select the enhanced option. USPS-T-8 at 86. That the Postal Service is proposing a more efficient, less costly means of providing enhanced service does not imply that fees should be reduced to basic service levels. Indeed, the Postal Service should be commended for proposing efficient methods of providing improved service to customers.

D. Messrs. Popkin And Carlson Draw Unsubstantiated Conclusions About Quality Improvement Efforts.

On brief, Messrs. Popkin and Carlson state that the proposed fees for return receipts should not be recommended because the Postal Service is allegedly committing "misdeeds" in connection with the provision of the service.

Carlson Brief at 42; Popkin Brief at 7. Specifically, they believe that efforts recently undertaken by Headquarters to improve return receipt service do not expressly proscribe unauthorized procedures for providing return receipt service. Carlson Brief at 42; Popkin Brief at 7. Messrs. Carlson and Popkin claim that an August 1, 1996, memorandum to district managers^{60/} leaves open the possibility that unauthorized arrangements for delivery of return receipt mail may continue. *Id.* In particular, they claim that the statement in the Headquarters memorandum that "[l]ong standing, unofficial arrangements that promote exceptions to stated procedures for 'convenience' need to be reviewed and voided if necessary" leaves open the possibility that field managers may review procedures and determine to continue unauthorized delivery procedures. *Id.*

Messrs. Popkin's and Carlson's argument rests on mere conjecture. The source of their concern appears to be based on the proximity of the phrase "if necessary" to the term "voided." See Tr. 4/1306-07. The phrase "if necessary," however, more logically modifies the entire sentence. Thus, the memorandum does not permit unauthorized arrangements to continue unabated; rather, it is intended to communicate to district managers that if a review of delivery procedures reveals the existence of unauthorized return receipt delivery arrangements, then such procedures must be voided. This is consistent with the essence of the Headquarters memorandum and the most recent communication to employees about the proper method of providing return receipt service. The

^{60/} This document was entered into evidence at Tr. 4/1306-07.

Headquarters memorandum emphasizes that "carrier supervisors review the proper procedures for obtaining a signature on accountable mail with the delivery personnel in their office." Tr. 4/1306. The Headquarters memorandum also directs delivery personnel to advise mailroom and reception employees of high volume delivery points of proper procedures for providing return receipt service. Tr. 4/1307. If Headquarters had not intended that informal arrangements be corrected to conform to authorized operating procedures, then what purpose would be served by having delivery supervisors review "proper procedures" with carriers and by having field employees engage in an educational campaign on proper delivery methods with recipients? The Headquarters memorandum dispels any implication that unauthorized procedures that promote convenience are permissible; in fact, such practices "should not be tolerated." Tr. 4/1307.

The most recent edition of the POSTAL BULLETIN notice further dispels Messrs. Popkin's and Carlson's unfounded beliefs. The POSTAL BULLETIN stresses that return receipts **must** be completed in the presence of a delivery employee, in conformance with postal operating procedures:

Delivery employees must complete all Forms 3811, *Domestic Return Receipt*, when delivering accountable mail. The delivery employee must obtain the recipient's printed name and signature and enter the delivery date on the back of the form if the recipient did not do so. Federal or state officials or large, well-known companies or organizations may use a signature stamp on the return receipt as an authorized signature. The delivery employee must also enter the delivery address if the customer requested and paid for that service.

POSTAL BULLETIN No. 21936 at 7 (January 2, 1997). In sum, the Postal Service has taken its responsibility to improve return receipt service seriously, and its

mandate that deviations from standard operating procedures be corrected contradicts Messrs. Popkin's and Carlson's claim.

E. Mr. Popkin's Address "Check-Off" Proposal Is Not Ripe For Consideration.

Mr. Popkin claims that during this proceeding, "recommendations were made to the Postal Service to improve the quality of [return receipt] service" but the Postal Service "ignored these suggestions and requests." Popkin Brief at 7. Mr. Popkin claims such "recommendations" were raised in his interrogatory DBP/USPS-T1-8(c), which asks, "[a]re there plans to add [a place to indicate that the delivery address was the same as shown] to the [return receipt] form?" (hereinafter "check off" proposal). In response to that interrogatory, witness Needham stated that the Postal Service had not had occasion to consider this idea. Mr. Carlson shares Mr. Popkin's interest in the address "check off" idea, and expresses dismay at the Postal Service's "dismissive[] reject[ion of] such good suggestions." Carlson Brief at 42. Based on the Postal Service's response to this interrogatory, Messrs. Carlson and Popkin argue that the proposed fees should be rejected for return receipts. Carlson Brief at 41-43; Popkin Brief at 7.

Messrs. Carlson and Popkin draw more fiction than fact from the Postal Service's response to interrogatory T1-8. First, there is no address "check off" proposal on the record. No participant offered testimony in support of a proposal to change the DMCS to accommodate Mr. Popkin's idea. Indeed, no participant even bothered to designate the response to interrogatory DBP/USPS-T1-8 for inclusion in the evidentiary record. Messrs. Popkin and Carlson evidently believe

that proposals for changes in the DMCS can be buried in undesignated interrogatories and surfaced for the first time on brief. It seems hardly worth repeating that these furtive attempts to introduce proposals are completely unavailing. Suffice it to say that the Commission's rules provide for the submission of intervenor testimony, and if Messrs. Popkin and Carlson believed that this proceeding was an appropriate forum for floating their proposal before the Commission, then their opportunity to introduce this proposal through timely filed testimony has long expired.

Both Messrs. Popkin and Carlson draw unfounded conclusions from the response. The response simply states that the Postal Service has not had occasion to consider the address "check off" proposal. See Response of Witness Needham to DBP/USPS-T1-8 (filed August 23, 1996). The conclusion to which Messrs. Popkin and Carlson jump, *i.e.*, that the Postal Service has rejected this idea,^{61/} is without merit. The response merely indicates that consideration of this concept has not yet occurred. This is neither nefarious nor "dismissive;" rather, it is entirely consistent with witness Raymond's testimony that it would be premature for the Postal Service to have reached final decisions on the mechanics of implementation. Tr. 8/3213-14. The address "check-off" proposal contemplates changes in the return receipt form, PS Form 3811, the contents of which have not been prescribed by the DMCS. Since the proposal essentially involves a modification to the return receipt form, consistent with witnesses Raymond's and

^{61/} Carlson Brief at 41-42; Popkin Brief at 7.

Lyons' testimony, this idea becomes ripe for consideration when the Postal Service publishes its proposed rules to implement the classification changes for return receipts. Tr. 8/3213-14; USPS-T-1 at 16.

VI. MR. POPKIN'S CRITICISMS OF THE POSTAL SERVICE'S INSURANCE PROPOSALS ARE WITHOUT MERIT.

The Postal Service's insurance proposal has been well received by participants submitting briefs. Only Mr. Popkin offers some criticisms of the proposal on brief. Popkin Brief at 8-9. Mr. Popkin raises several unsubstantiated objections to the Postal Service's proposal. He argues that the Postal Service has "failed to justify" its 90 cent fee for each value increment and believes that it was chosen "at the whim of the pricing witness" and suggests that the fee is too high. Popkin Brief at 8. The record is to the contrary. Witness Needham offers a convincing and well-documented explanation for the fee. Specifically, witness Needham testifies that the proposed fee "extends the existing incremental charge for insured mail above \$100" that was recommended by the Commission in Docket No. R94-1. USPS-T-8 at 51. Moreover, witness Lyons' workpapers demonstrate that the fee is priced appropriately, since revenues are not excessive in comparison to paid claims costs. Lyons WP A at 4-5.^{62/} Indeed, the incremental fee is reasonable, because the overall insured mail cost coverage of 148 percent will still be below the systemwide cost coverage recommended in Docket No. R94-1. See Exhibit USPS-T-1C.

^{62/} Revenue for the new increments is estimated at \$13.5 million. Claims costs for the new value increments are estimated at \$6.7 million. Lyons WP A at 4-5.

That registry fees will be lower than Express Mail insurance fees, as Mr. Popkin observes, is neither surprising nor unwarranted. Popkin Brief at 8. The record demonstrates that the level of security for insured Express Mail pieces would be more analogous to insurance for First-Class and Standard Mail, than to registry. Witness Needham explains that the security and accountability measures for registry that contribute to its relatively low insurance fees could not be changed in a manner "to facilitate the expeditious and guaranteed service offered by Express Mail." Tr. 4/1092. Consequently, Express Mail insurance claims for the new value increments are more likely to emulate insured mail claim patterns, since insured mail offers fairly comparable security and accountability.^{63/} For this reason, it is appropriate to extend the 90 cent fee to Express Mail. Mr. Popkin's contention that the fee is unsupported accordingly fails.

Mr. Popkin is also wrong to suggest that the record lacks evidentiary support for the proposed limit of \$500 for document reconstruction insurance. Popkin Brief at 9. Witness Needham carefully evaluated customer indemnity through examination of paid claims data and found that the proposed \$500 limit would exceed the average paid document reconstruction claim by several multiples. USPS-T-8 at 56. Witness Needham's responses to discovery on this subject further demonstrate that approximately 99 percent of paid document reconstruction claims would be unaffected by this proposal. Tr. 8/3158, 8/3178,

^{63/} Unlike numbered insurance and registry, Express Mail gives the sender the option of requiring or waiving the recipient's signature. Tr. 4/1034.

8/3190. In sum, the record demonstrates that the Postal Service thoroughly analyzed the impact of the proposed limit, and it is reasonable and supported by substantial record evidence.

VII. MR. POPKIN'S PROPOSAL IN FAVOR OF A UNIFORM UNINSURED REGISTRY FEE IS FLAWED AND MUST BE REJECTED.

On brief, Mr. Popkin proposes a uniform fee for uninsured registry, without regard to value. Popkin Brief at 9. This proposal must be rejected. Mr. Popkin's proposal ignores the greater value of service for higher value articles, and is based on the mistaken assumption that the "cost for providing the secure transmission for [a registered] article . . . is the same for all articles" *Id.* The record in this proceeding contradicts Mr. Popkin's ill-conceived belief. Witness Needham testifies that "registered mail handling procedures vary depending upon the declared value of the article" Tr. 8/3148. For instance, postal regulations provide that hand-to-hand procedures must be employed for higher value registry articles. Handbook DM-901 § 432, Tr. 8/3151. Higher value registered mail shipments are also subject to special handling procedures that are even more secure than those for lower value registry shipments. Handbook DM-901 §§ 432, 460, 483, Tr. 8/3151-52. Higher value registered mail shipments also are restricted to more secure transportation methods. See Handbook DM-901 §§ 440, 450, Tr. 8/3152. Registry shipments valued in excess of \$1000 or more must be stored in safes, vaults, separate cages, or locked containers and require additional accountability. Handbook DM-901 §§ 537, 732, Tr. 8/3153-54. These factors demonstrate that the handling procedures for registered mail vary with

value, and, as such, it is reasonable to conclude that costs of handling registered mail can vary directly with value. See Tr. 8/3148. There is simply no evidentiary support for Mr. Popkin's belief.

Mr. Popkin's proposal also suffers from serious procedural defects. Once again, Mr. Popkin attempts to circumvent the Commission's rules for receipt and consideration of intervenor testimony by using his brief as a springboard to float new ideas before the Commission. The record is devoid of testimony or other evidence supporting the proposal. Indeed, even OCA witness Sherman comments that "no basis is providing for evaluating" a similar proposal made by Mr. Popkin in Docket No. R94-1, because the record lacks evidence supporting a uniform fee for uninsured registry. Tr. 7/2287, 7/2327. Aside from the absence of supporting record evidence, the participants have not been accorded their due process right to test the proposal under cross-examination. For these reasons, Mr. Popkin's uninsured registry proposal is without foundation and cannot be recommended.

VIII. THE COMMISSION SHOULD DISMISS INTERVENORS' ARGUMENTS IN OPPOSITION TO THE POSTAL SERVICE'S PROPOSAL TO ELIMINATE SPECIAL DELIVERY.

The Postal Service's proposal to eliminate special delivery was unchallenged in the evidentiary record, and has been met with only token opposition on brief by two participants, APWU and David Popkin. Both Mr. Popkin's and APWU's arguments are riddled with inaccurate representations and lack evidentiary foundation.

A. APWU's Objections Are Pointless And Erroneous.

1. APWU misinterprets the Act's history.

APWU alleges that the legislative history of the Act demonstrates Congress' intent to retain an expedited delivery service. In support of this novel proposition, APWU offers nothing more than its unsupported assertion that the "[a] number of bills were filed in the House of Representatives that sought to maintain the current level of special delivery service." APWU Brief at 3. No such provision, however, was incorporated in the Act. Rather, the Act manifests Congress' intent to remove itself entirely from the process of establishing mail classifications through delegation of this function to the Commission and the Governors under 39 U.S.C. §§ 3621 and 3623.^{64/} In any event, if APWU's claim that competing bills provided for retention of special delivery is, in fact, true, then the complete absence of such provision in the Act gives rise to the presumption that Congress did **not** intend to extend special delivery into perpetuity. Indeed, the Act shows that Congress intended that the Postal Service concentrate its resources on developing **overnight** mail services, not special delivery: "programs designed to achieve overnight transportation to the destination of important letter mail to all parts of the Nation shall be a primary goal of postal operations." 39 U.S.C. §

^{64/} In the few instances where Congress intended to require the continued provision of a specific type of service, it narrowly circumscribed the classification in the Act. Specifically, Congress mandated the retention of "one or more classes of mail for the transmission of letters sealed against inspection" available at a uniform domestic rate, 39 U.S.C. § 3623(d), and specified the creation of reduced rates for nonprofit categories in 39 U.S.C. § 3626.

101(f). In short, APWU can take no comfort in the Act's legislative history. At best, it shows that Congress rejected efforts to arbitrarily preserve the special delivery classification.

2. APWU misrepresents the record for its own ends.

APWU misrepresents special delivery's financial and market profile. First, APWU cites Exhibit USPS-T-1A in support of its claim that the "elimination of special delivery would result in a net loss to the USPS." APWU Brief at 5 (emphasis in original). Although it is correct that special delivery provides a positive contribution to institutional costs in the TY, APWU errs in suggesting that the record reveals the proposal is a money-losing proposition. In fact, witness Lyons shows that **net** contribution will be increased through elimination of special delivery because some special delivery service customers are expected to make greater contributions by migrating to Express Mail. Lyons WP B; Tr. 2/71-72, 2/98. Because Express Mail's per-piece contribution is almost double that of special delivery, Exhibit USPS-T-5G at 24 (special delivery before-rates contribution \$1.89), Exhibit USPS-T-5J at 16 (after-rates Express Mail contribution of \$3.50), overall net contribution would increase. Tr. 2/98. Thus, elimination of special delivery will improve postal finances. No weight should be given to APWU's representations concerning special delivery volume trends. Specifically, APWU characterizes special delivery volume growth from 1990 to 1991 and from 1993 to 1994 as "remarkable." APWU Brief at 12. In light of special delivery's long-term downward decline, these two minor deviations are inconsequential.

Special delivery's volume history is remarkable only in that it has sunk to nearly zero, dropping 99 percent since 1970 from 110 million to a mere 300,000 transactions in FY 95. USPS-T-8 at 125-26. In short, APWU's myopic observations camouflage the fact that special delivery has reached the late stages of its life cycle. USPS-T-2 at 8.

APWU also cites the absence of an updated "marketing study" as proof of the proposal's infirmity. APWU Brief at 4-5.^{65/} APWU would have the Commission believe that the Postal Service's proposal is built upon "theory, not evidence." APWU Brief at 5. APWU grossly mischaracterizes the record. The testimony of five professional witnesses provides the Commission with abundant quantitative and qualitative evidence to enable it to meet its statutory responsibility under 39 U.S.C. § 3623. USPS-T-1 at 5; Tr. 2/71-72, 2/98; Lyons WP B; USPS-T-2 at 7-8; Exhibit USPS-T-5A *et seq.*; USPS-T-8 at 116-36; Tr. 4/1010-61; OCA-T-100 at 12. The testimonies of witnesses Lyons, Needham, Steidtmann, Patelunas, and Sherman, moreover, provide abundant market information, including the fee, volume, and revenue history of special delivery, usage patterns, and economic market analysis. In view of special delivery's precipitous decline in

^{65/} APWU further criticizes support for the proposal, suggesting it is based on flimsy and outdated evidence, including a study of special delivery conducted in 1975, marked as Library Reference SSR-107. APWU Brief at 4. APWU misapprehends the study's purpose and value here, for the Postal Service has not purported to use the 1975 study as a definitive source for special delivery's current market profile. As made clear in witness Needham's testimony, Library Reference SSR-107 shows that, **as early as 1975**, the Postal Service envisioned special delivery's ultimate demise. USPS-T-8 at 132-33.

volume and revenue, USPS-T-8 at 123-26, it is unknown what additional purpose APWU's "marketing study" would serve. Suffice it to say that neither the Commission's rules nor the Act require the filing of a *pro forma* marketing study to satisfy APWU's appetite for special delivery information. In any event, the fundamental issue here involves a policy determination, so the contents of a "marketing study," to the extent APWU intends that it contain something other than the witnesses' testimonies, would add no value to the Commission's evaluation of the statutory criteria under 39 U.S.C. § 3623.

APWU also misrepresents efforts undertaken by the Postal Service to promote special delivery. APWU misuses witness Patelunas' testimony in support of its incredible allegation that special delivery usage has declined because the Postal Service has deliberately chosen to shift "consumer attention through the use of advertising from special delivery service to express mail service" APWU Brief at 6. APWU misrepresents the state of the record. Witness Patelunas merely reports that postal cost data show no expenditures for advertising costs for special delivery in recent years. Tr. 2/244. This, however, does not imply that the Postal Service has determined to promote Express Mail at special delivery's expense. Witness Needham confirms that the Postal Service promotes both Express Mail and Special Delivery. Tr. 4/1060. In particular, special delivery is promoted to postal customers in Publication 201, A CONSUMER'S GUIDE TO POSTAL SERVICE AND PRODUCTS, USPS LR-SSR-141, and through INFORMATION DESK. Tr. 4/1030. In fact, the Postal Service goes so far as to

promote special delivery in a Spanish language publication, GUÍA PARA EL CONSUMIDOR DE SERVICIOS Y PRODUCTOS POSTALES. Tr. 4/1030; USPS LR-SSR-142. Thus, that no advertising expenditures are reported for special delivery does not imply that the Postal Service has determined to "de-emphasize" special delivery, or promote Express Mail to the exclusion of special delivery, as APWU suggests. Tr. 4/1060.

3. APWU's comparison between Express Mail and special delivery is flawed.

APWU fails in its attempt to prove that Express Mail is not a substitute for special delivery. The gist of APWU's argument is that special delivery is unique in that it provides for expeditious delivery. APWU Brief at 10. APWU's conclusion is inconsistent with the record and postal regulations.

First, APWU's claim that postal regulations do not provide for expedited delivery of Express Mail is erroneous. Handbook DM-201, which forms part of the regulations of the Postal Service, 39 C.F.R. § 211.2, clearly provides that "Express Mail Service is the Postal Service's premium service and must be given **expeditious** distribution, dispatch, and **delivery** over all other classes of mail." Handbook DM-201 § 110 (emphasis added).

APWU's attempt to controvert witnesses Steidtmann's and Needham's testimony that Express Mail provides more expeditious delivery is fundamentally flawed. APWU Brief at 9-10.^{66/} It belies reality to suggest that special delivery is

^{66/} Evidently, APWU applies a myopic definition of "delivery" in the context of
(continued...)

more expeditious than Express Mail, because Express Mail is transported on a dedicated, overnight, nationwide network, whereas special delivery travels with mail of the corresponding class of service. Tr. 4/1011, 4/1035, 4/1057, 8/3168.^{67/} Express Mail, moreover, has advantages over special delivery within the delivery function. Postal regulations provide that delivery of Express Mail is to be "effected in the normal course of delivering other mail on all delivery routes . . . **when delivery can be accomplished by 3:00 p.m. . . .**", or by noon.

Handbook DM-201 § 242.11, Tr. 8/3196 (italics omitted); DMM Quick Service Guide § 500 (Express Mail "offers next day delivery 12 noon to most destinations."). Express Mail is unquestionably preferred in delivery, because Express Mail, unlike special delivery, is guaranteed to be delivered by a specific time of day. Tr. 8/3184. In any event, the probability that special delivery would be delivered before Express Mail destined to the same delivery point is "highly unlikely." Tr. 8/3195. This is because **both** special delivery and Express Mail can be, and often are, given to regular carriers for delivery during the normal course of their routes. Tr. 4/1035, 4/1021-22; Handbook DM-201 § 242.11, Tr. 8/3196.

^{66/} (...continued)

Express Mail. In the context of the testimony to which APWU cites, the concept of "delivery" extends from the from the moment of acceptance to the moment of delivery.

^{67/} APWU further goes on to justify the need for special delivery based on a preposterous scenario whereby the Express Mail transportation network would cease to exist. APWU Brief at 6. The Postal Service chooses not to indulge in this meaningless hypothetical exercise.

Furthermore, where special delivery messengers are available,^{68/} they can deliver **both** special delivery and Express Mail. Tr. 4/1014; Tr. 4/1021-22; Handbook DM-201 § 242.11, Tr. 8/3196. Thus, as witness Needham observes, there would no reason for a special delivery piece destined to the same address as an Express Mail piece to be delivered before Express Mail, even if both arrived at the delivery unit on the same day, since both can be given to the carrier or messenger for simultaneous delivery. Tr. 8/3195.

APWU also errs in stating that with respect to special delivery, "[t]here is no other existing delivery service that offers Sunday and holiday deliveries" and that postal regulations "provide no Sunday or holiday service for Express Mail." APWU Brief at 10-11, 12. APWU apparently believes that a calendar year consists of more than 365 days, because Express Mail Next Day service provides for next day delivery "365 days a year with no extra charge for Saturday, Sunday, or holiday delivery." DMM Quick Service Guide § 500. Postal regulations plainly state, without equivocation, that Express Mail Next Day Service "will be delivered (or delivery will be attempted) by 3 p.m. **the next day** (Post Office to Addressee Service)" Handbook DM-201 § 210. Sundays and holidays are no exception. Indeed, had the Postal Service intended to exclude Sunday and holiday delivery of Express Mail Next Day Service, it would have qualified its

^{68/} There is no record support for APWU's allegation that special delivery messengers are found in "every major market delivery area that is served by the dedicated Express Mail transportation network" and that these markets "account for a significant percentage of mail volume." APWU Brief at 9.

regulations to provide that Express Mail is delivered the next "post office delivery day" or "post office business day." This is evident from postal regulations in Handbook DM-201, which provide that Express Mail Post Office to Post Office service is "available for claim at a designated facility by 10 a.m. **of the next day the facility is open for retail business . . .**" Handbook DM-201 § 210 (emphasis added). In addition, postal regulations specify that Express Mail destined to post office boxes is guaranteed to be delivered by "3 p.m. of the **next post office business day** of the destination post office . . ." Handbook DM-201 § 222.2 (emphasis supplied). Had the Postal Service intended to limit delivery of Express Mail Next Day service on Sundays and holidays, it would have written its regulations accordingly. In short, APWU is wrong to suggest that special delivery is the only postal service that provides for Sunday and holiday delivery.

Finally, APWU's incredible allegation that "no dramatic shift in fundamental technology caused Express Mail use to eclipse Special Delivery" cannot be taken seriously. APWU Brief at 8. Economies of scale associated with the production of the jet propulsion engine and the transportation of matter by air, which made possible the overnight long-haul transportation of mail matter feasible, has enabled Express Mail to become a premium, expeditious service. This fundamental change in technology, in combination with the dedicated network for Express Mail, has enabled Express Mail to supersede special delivery in virtually all respects.

- B. Mr. Popkin's Objections To The Special Delivery Proposal Are Unfounded And Contrary To Record Evidence.

Mr. Popkin's objections to the special delivery proposal directly conflict with the record in this docket. Popkin Brief at 10. Mr. Popkin's bare assertions that special delivery is needed because it is "required for both those that desire same day delivery and for delivery of international Express [Special Delivery] mail" do not withstand scrutiny. Popkin Brief at 10. Witness Needham testified that, due to the creation of processing and distribution centers, the circumstances in which a special delivery piece would be delivered the same day are extraordinarily rare. Tr. 8/3194; *see also* Tr. 4/1035. To receive same day delivery, a special delivery piece would have to be accepted at the delivery unit early in the delivery day and be addressed to a delivery point that is served by the outlet where the piece is accepted. Tr. 8/3194. In that instance, in order to receive same day delivery, it would further have to be identified as locally addressed and be given to responsible delivery personnel before they have left the office. Tr. 8/3194. Nothing, however, precludes First-Class Mail from receiving the same treatment. Moreover, in circumstances in which a special delivery piece is sent to a delivery point that is not co-located with the point of acceptance, special delivery would still be transported with other mail to the processing and distribution center, Tr. 4/1035; consequently, it would receive same-day delivery only to the extent that all other mail of the same class would receive same day delivery. Tr. 8/3195. As a result, special delivery possesses little advantage over First-Class Mail in achieving same day delivery. Mr. Popkin's bare assertion that special delivery is needed for same day delivery is contradicted by the record.

The record also shows that, contrary to Mr. Popkin's claim, special delivery is not necessary to maintain international inbound expès mail. Witness Needham testifies that inbound expès mail is independent of special delivery. Tr. 4/1023, 4/1025. Consequently, elimination of special delivery will not preclude the Postal Service from offering reciprocal service for expès mail.

IX. INTERVENOR OBJECTIONS TO THE STAMPED CARD FEE PROPOSAL ARE WITHOUT MERIT.

A. The OCA's Objections To The Stamped Card Classification Have No Logical Appeal.

The OCA maintains that the stamped card fee proposal "bears a superficial resemblance to the fee charged for a stamped envelope." OCA Brief at 154. The similarities between postal cards and stamped envelopes are far more than "superficial." Stamped cards and envelopes share the same functional characteristics. First, both provide the sender with postal stationery that the mailer would otherwise have to purchase from a private retailer. USPS-T-8 at 114. Second, both provide postal stationery with a postage indicium pre-affixed. *Id.* This is one of the principal advantages of stamped stationery, because, as witness Needham observes, this feature saves mailers the time and cost of having to apply postage to pieces. USPS-T-8 at 113. Indeed, postal cards provide one additional feature over and above stamped envelopes through provision of stationery for correspondence. USPS-T-8 at 115. Even the Commission has acknowledged that the postal cards are sufficiently similar to stamped envelopes to warrant consideration of a special service fee for cards. In its Docket No. R76-

1 Opinion, the Commission expressly encouraged the Postal Service to consider "treating the sale of postal cards as a special service much as it treats the sale of stamped envelopes as a special service." PRC Op. R76-1 at 174, n.2. The Request in this docket accepts the Commission's entreaty.

The OCA points to the envelopes and cartons furnished to Priority and Express Mail customers as evidence that mailers receive free materials in other contexts. OCA Brief at 155. OCA witness Sherman, however, retreated from this argument during oral cross-examination:

- Q Do [Express and Priority] envelopes have postage affixed to them?
- A No, it has to be added.
- Q Okay, so there is a distinction then between Priority Mail envelopes and Express Mail envelopes; isn't that correct?
- A Yes, yes.
- Q So isn't it fair to say that the analogy between stamped cards and stamped envelopes is more compelling than any analogy that you have drawn between Priority Mail envelopes and Express Mail envelopes?
- A It is closer, yes.

Tr. 7/2479. More importantly, Express and Priority Mail containers and envelopes are available to all users of Express and Priority Mail. By contrast, postal cards are not available to **all** users of the Postal and Post Cards Subclass, including private postcard users, who can claim absolutely no entitlement to free stationery for which they pay. Tr. 4/1138; USPS-T-8 at 110. Thus, the analogy between stamped cards and Priority and Express Mail envelopes is not compelling.

Finally, the OCA's fears that the creation of a stamped card fee classification would produce "uneconomic" results, OCA Brief at 157-59, is

illusory. OCA claims that a 2 cent fee for stamped cards would cause customers to switch to card products that are more costly to process. Witness Needham rejects this contention, principally because the price of alternatives and the cost of preparing them for mailing would exceed the 2-cent stamped card fee. She explains:

I do not believe that customers would be driven to alternatives. The alternatives to postal cards are post cards with postage indicia printed or affixed thereon. Even if customers must pay a fee of \$0.02 for stamped cards, that price is a relative bargain, well below the market price of any private postcard, which can be purchased for several multiples of the proposed fee--as much as \$0.45 when sold in bulk. See USPS LR-SSR-106 at p. 5. In addition, through use of stamped cards, customers avoid all of the costs associated with separately obtaining and applying postage through alternative means, such as meter rental and/or resetting fees, permit fees and permit indicia printing fees, and/or costs associated with obtaining stamps. Also, the cost of affixing postage is avoided through use of a stamped card. For these reasons, I do not believe customers would be driven to alternatives.

Tr. 4/1144. Witness Sherman also testifies that the low-cost characteristics exhibited by postal cards "could also be exhibited by privately printed post cards used by today's customers of postal cards." Tr. 7/2337. As such, this proposal is anything but "uneconomic." Total Postal and Post Cards Subclass Costs should remain unchanged, because postal card users either would continue to purchase postal cards at bargain fees, or, in the alternative, would switch to private postcards, but continue to exhibit low-cost characteristics in their usage of that product. As a result, there should be no effect on total attributable costs for the Postal and Postcard subclass.

B. The OCA's Contention That Postal Card Manufacturing Costs Will Be Double Counted Is Inconsequential.

The OCA claims that the proposed stamped card fee would result in double counting of the manufacturing costs of postal cards. OCA Brief at 155-56. This claim is trivial. As witness Needham explains, the Postal Service proposes to shift the manufacturing costs of postal cards from the Postal and Post Cards Subclass to a separate special service classification.^{69/} That costs are being shifted from the Postal and Post Cards Subclass to a new special service category would ordinarily imply that the attributable costs, and corresponding rates, of the Postal and Post Cards Subclass should be adjusted accordingly. That outcome will certainly be reflected in any future proposal to change rates in the Postal and Post Card Subclass. Assuming adoption of the stamped card fee, in future rate proceedings, the Postal Service will propose rates for the Postal and Post Cards Subclass based on attributable costs excluding the manufacturing costs of postal cards. With respect to the instant proceeding, rates in the Postal and Post Subclass need not be adjusted to reflect the shift of manufacturing costs of postal cards to a special service fee because the manufacturing costs constitute a tiny fraction of total subclass attributable costs. Tr. 5/1740-41.^{70/} The testimony of OCA witnesses Collins and Sherman is consistent with this conclusion. Witness

^{69/} She states that, "the proposal in this filing is for a new special service, namely, a stamped card fee and the resulting proposed revenues and costs are not intended to be a part of the postal card revenues and costs." Tr. 4/1142.

^{70/} Manufacturing costs reported by witness Needham constitute a mere 0.8 percent of the total subclass attributable costs. Tr. 5/1740-41.

Sherman acknowledges that, in relation to other attributable costs the Postal and Post Cards Subclass, the manufacturing costs of postal cards "are quite small. They're a small portion." Tr. 7/2496. Witness Collins further concedes that a reduction in Postal and Post Card Subclass attributable costs on the order of 0.8 percent of total subclass costs would be insufficient to cause a change in Postal and Post Cards Subclass rates:

Q What about in this circumstance when we have a shift of about \$4 million proposed, in that range?

[Ms. Collins] In that range, out of -- I think it was on the order of 600 or 700 million in the subclass.

Q I think it amounts to about .6 to .8 percent, in that range, of the total subclass costs.

[Ms. Collins] Right. That would not generally cause a change in rate.

Tr. 5/1867. In short, the OCA's objection to double counting crumbles under the weight of its own witnesses' testimony. Simply put, postal card manufacturing costs are sufficiently small, in relation to the entire subclass attributable costs, so as to preclude the need for revisiting postal and post card rates to account for the shift in manufacturing costs to a special service fee category for postal cards.

C. Mr. Carlson's Allegation That Postal Card Manufacturing Costs Are Attributed To Postal Cards Was Proven To Be Incorrect.

On brief, Mr. Carlson quotes witness Collins for the proposition that "manufacturing costs are already included in the attributable costs for postal cards." Carlson Brief at 44 (quoting Tr. 5/1711). Cross-examination on this topic, however, revealed that this conclusion is erroneous. OCA witness Sherman

concedes that the manufacturing costs of postal cards are shared by all users of the Postal and Post Cards Subclass, including private postcard users. When asked if private post card users could be supporting the manufacturing costs of postal cards, Dr. Sherman conceded "It's possible, yes." Tr. 7/2475.

Consequently, postal card users do **not** directly bear the manufacturing costs of postal cards alone; rather, all users of the Postal and Post Cards Subclass bear these costs. USPS-T-8 at 110.

This demonstrates the logical appeal of the Postal Service's proposal. By shifting the manufacturing costs from the Postal and Postcard Subclass to a stamped card fee, the stamped card fee would require users of the mails that receive the additional benefits of postal cards to directly bear the manufacturing costs, which are unique to postal cards. Tr. 4/1138; USPS-T-8 at 110. In addition, private postcard users, who do not receive free stationery and affixation of postage, would no longer support the manufacturing costs of postal cards.

D. The Stamped Card Fee Does Not Contravene Title 18.

Messrs. Popkin and Carlson object to the stamped card fee proposal on the grounds that, if implemented, the fee would cause postal employees to engage in conduct violative of 18 U.S.C. § 1721. Carlson Brief at 46-48; Popkin Brief at 5.^{71/ 72/} Mr. Popkin raised this argument initially in his Motion to Dismiss filed

^{71/} Section 1721 provides in pertinent part that:

Whoever, being a Postal Service officer or employee, knowingly and willfully: . . . sells or disposes of postage stamps or postal cards for

(continued...)

on August 9, 1996. The Presiding Officer denied Mr. Popkin's Motion, holding that Mr. Popkin could raise this argument on brief. P.O. Ruling MC96-3/11. Messrs.

^{71/} (...continued)

any larger or less sum than the values indicated on their faces . . . or sells or disposes of postage stamps, stamped envelopes, or postal cards, otherwise than as provided by law or the regulations of the Postal Service; shall be fined under this title or imprisoned not more than one year, or both.

18 U.S.C. § 1721.

^{72/} Mr. Popkin also complains that pricing of commemorative card sets contravenes section 1721. Popkin Brief at 6. As explained in the Postal Service's Answer in Opposition to Motion of David B. Popkin to Dismiss (filed August 16, 1996), the Commission dismissed Mr. Popkin's complaint regarding this subject matter in Docket No. C95-1. PRC Order No. 1088 at 4. Furthermore, the Commission recently reaffirmed the right of the Postal Service to offer philatelic services in PRC Order No. 1145:

The Postal Service is explicitly authorized "to provide philatelic services" in a provision that is separate from the grant of power to provide all aspects of mail service. 39 U.S.C. § 404(a)(1), (a)(5). Courts presented with controversies regarding philatelic services have generally interpreted these portions of the Reorganization Act to mean that the Postal Service has authority to exercise broad and unilateral discretion over philatelic operations. They have also found that the rights and procedural safeguards provided for users of the mail in the Reorganization Act do not extend to users of philatelic services.

Order No. 1145 at 9 (footnotes and citations omitted). In addition, Mr. Popkin's argument is premised on the misleading assumption that "[w]itness Needham indicated that philatelic card products meet all of the requirements of the Classification Schedule for Stamped Cards." Popkin Brief at 6. Witness Needham testifies that philatelic card products are philatelic services, since they may not necessarily be used or intended to be used for the transmission of messages. Canceled commemorative card sets undoubtedly may not be used for transmission of messages. Tr. 8/3181. Uncanceled sets, on the other hand, are philatelic products principally intended for use by collectors for the enjoyment and informative value of collecting, Tr. 8/3181-82; consequently, the Postal Service has appropriately exercised its discretion in setting prices for these products.

Popkin and Carlson have failed to refute the Postal Service's arguments demonstrating the inapplicability of section 1721 to the stamped card fee, and have not raised any arguments sufficient to overcome the Postal Service's position. Consequently, the Commission can safely recommend the stamped card fee in accordance with the law.

The claim that the proposed fee for stamped cards, if implemented, would cause postal employees to engage in violations of 18 U.S.C. § 1721 is completely without merit. A stamped card fee would not give rise to a violation of section 1721, since, if implemented, it would be entirely consistent with the policies of Postal Service management, and therefore would not result in the unauthorized sale of postage at inflated rates. It is evident that Congress did not intend the restrictions in 1721 to apply to pricing policies recommended by the Commission, approved by the Governors, and implemented by postal management, since, simultaneously with the enactment of conforming amendments to section 1721 adopted in connection with the Postal Reorganization Act and 39 U.S.C. § 410(b)(2), Congress contemplated that mail classifications such as postal cards would be subject to change, as it created an elaborate scheme for the implementation of and changes to the Domestic Mail Classification Schedule. See 39 U.S.C. §§ 3623, 3625.^{73/}

^{73/} In addition, Congress granted broad authority to the Service "to provide and sell postage stamps and other stamped paper, cards, envelopes" 39 U.S.C. § 404(a)(4).

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^{73/} In addition, Congress granted broad authority to the Service "to provide and sell postage stamps and other stamped paper, cards, envelopes" 39 U.S.C. § 404(a)(4).

This conclusion is consistent with the statute's legislative history. The conduct that section 1721 protects against is fraudulent salary inflation by postal employees. Compensation for postmasters was and still is determined in part by the total receipts of the office in which they are employed. See S. Rep. No. 2720, 84th Cong., 2nd Sess. (1956), *reprinted in* 1956 U.S.C.C.A.N. 3814, 3815; H.R. Rep. No. 555, 84th Cong., 1st Sess. (1955). Section 1721 thus serves to deter postmasters and supervisory employees from inflating their salaries through manipulating office revenues by overcharging customers for postage stamps, stamped envelopes, and postal cards. That section 1721 is intended to apply to the unauthorized acts of postal employees is manifest from the legislative history of a 1956 amendment to the statute. At that time, Congress passed legislation broadening the class of postal employees to which section 1721 applies. The House Report emphasized that Congress intended to:

broaden the class of postal employees who are prohibited by existing law from inducing or attempting to induce any person to purchase postage stamps, stamped envelopes, or postal cards **for the purpose of increasing the emoluments or compensation** of the postmaster or any employee of any post office or any station or branch thereof

H.R. Rep. No. 555, 84th Cong., 1st Sess. (1955) (emphasis supplied).

Finally, the interpretation of the statutory predecessor to section 1721 further demonstrates that the provision was not intended to apply to official acts of the Post Office Department. See 6 Op. Solicitor of the Post Office Dep't. 652 (1918). The underlying issue there was a proposed Postmaster General order which provided that the United States postal agent at Shanghai could sell stamps

to the public in exchange for foreign currency, on the basis of its value at the prevailing daily rate of exchange for U.S. currency. Since at that time exchange rates apparently could not be ascertained when banks were closed, it was questioned whether sale of stamps during such time would conflict with the predecessor to section 1721. In upholding the proposed order, the Solicitor concluded that there would be no violation of the criminal provision. In support of this conclusion, the Solicitor reasoned in part that:

this is a criminal statute, and in order to constitute a violation a criminal intent is necessary, and while it is well established that intent may be presumed from the commission of the acts prohibited, the circumstances in this case would negative the existence of such intention, **especially should the procedure be authorized by the department** [T]he purpose of the law is not to secure an exact return, for accounting purposes or otherwise, . . . but to regulate and control postal employees in their handling of stamped papers

6 Op. Solicitor of the Post Office Dep't at 655 (emphasis supplied). In short, the Solicitor's interpretation of the predecessor to section 1721 makes clear that the legislation is aimed at the unauthorized conduct of postal employees, and establishes that the statute is inoperative against acts authorized by the institution. Thus, assuming the stamped card fee is recommended by the Commission, approved by the Governors, and implemented by postal management, postal employees would not engage in violations of section 1721 when customers paid stamped card fees.

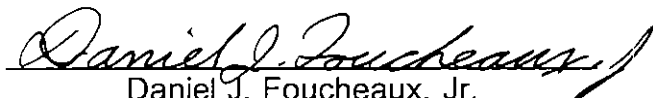
CONCLUSION

For the foregoing reasons, the Postal Rate Commission should make and submit a recommended decision to the Governors recommending the proposed revisions to the Domestic Mail Classification Schedule and its attendant fee and rate schedules set forth in Attachments A and B to the Request.

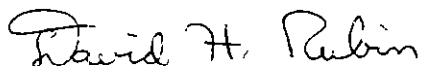
Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:



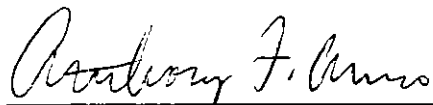
Daniel J. Foucheaux, Jr.
Chief Counsel, Ratemaking



David H. Rubin
Attorney



Susan M. Duchek
Attorney



Anthony F. Alverno
Attorney



Kenneth N. Hollies
Attorney

475 L'Enfant Plaza West, S.W.
Washington, D.C. 20260-1137
January 21, 1997

Attachment A

FILE	LRECL	Approx. OBS	BYTES	KB
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ACR.INTRASCF.BOXDEL.TEXT	20	7630	167860	163.9
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MILES.UPDATE.PQ495.TEXT	80	178	14596	14.3
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document on all parties of record in this proceeding in accordance with section 12 of the Rules of Practice.

David H. Rubin
David H. Rubin

475 L'Enfant Plaza West, S.W.
Washington, D.C. 20260-1137
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