

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

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POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY

COMPLAINT OF THE CONTINUITY  
SHIPPERS ASSOCIATION

Docket No. C99-4

REPLY BRIEF  
OF THE UNITED STATES POSTAL SERVICE

UNITED STATES POSTAL SERVICE

By its attorneys:

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March 10, 2000

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**I. THE COMPLAINANT HAS FAILED TO SHOW, OR EVEN ALLEGE, THAT THE CURRENT FEE IS UNLAWFUL**

The complainant's initial brief<sup>1</sup> is filled with incorrect facts, mischaracterizations, and extra-record contentions. Its truly fatal flaw, however, is that it never even attempts to show that the complainant has met its burden of proof in this case, that of demonstrating that the BPRS fee at issue "do[es] not conform to the policies" of the Act, as required under 39 U.S.C. § 3662. Indeed, the record would not support such an argument because the complainant has failed to provide sufficient evidence showing that the current fee is unlawful.

**A. This is a Complaint Case, Not *De Novo* Ratemaking, And a Threshold Showing of Nonconformance Is Required**

The complainant's brief, in its introductory paragraphs, mischaracterizes the very nature of this proceeding. The complainant argues that the "parties have essentially agreed upon two of the three elements for determining the BPRS rate — the attributable costs and roll forward"<sup>2</sup> but that "[t]he parties disagree on the appropriate cost coverage." Complainant's Brief at 1.

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<sup>1</sup> Brief of the Continuity Shippers Association, the Direct Marketing Association and the Association for Postal Commerce (March 3, 2000).

<sup>2</sup> While it is true that the Postal Service has not, in the context of this complaint case, affirmatively contested the complainant's cost projection, it has by no means agreed to it. The complainant alleges that it accepts, with qualifications, the Postal Service's attributable cost estimate for FY 1998 and states that its witness has projected an FY 2000 cost of \$1.112. It points out the Postal Service's estimate in Docket No. R2000-1 is \$1.105. The Postal Service's cost figure in Docket No. R2000-1 is not based on the same methodologies. Nor is it on the record of the instant docket, and it still remains subject to litigation in the rate case. Accordingly, consistent with due process, the Commission could not rely on that number at this point as part of a ratemaking or rate evaluation exercise.

While the three-step process outlined by the complainant may be a correct summary representation of the ratemaking process, this is not a ratemaking case, but rather a complaint case. Such a case does not begin (or end) with the construction of a new rate. Rather, it must begin (and end) with a showing that the rate at issue (or fee, in this case) does not conform to the policies of the Act. As the Postal Service argued in its initial brief, the complainant cannot support its complaint merely by presenting evidence that another fee would be in conformity with the Act and by arguing that that fee would, in its view, more closely align with the ratemaking criteria. Rather, it must make an affirmative showing that the current fee is NOT in conformity with those criteria and other applicable policies. Postal Service Initial Brief at 9-11.

Instead of an argument that such a showing has been made, the complainant's brief consists almost entirely of a *de novo* cost coverage analysis and an argument about what the cost coverage for BPRS "should" or "could" be, in the complainant's view. See Complainant's Brief at 3, 7. Nowhere does the complainant even state its belief that the current cost coverage is unlawful. Nowhere does the complainant demonstrate the particular policies of the Act to which it believes the fee fails to conform and why. It does not do this because it cannot do it. In the absence of such a showing, the Commission must find that the complaint is not justified under section 3662.

#### **B. The Complainant Is Mistaken About the Origin of the BPRS Fee**

A major flaw in the complainant's argument is its misunderstanding concerning the development of the BPRS fee. The complainant would have the Commission believe

that the current fee sprouted fully formed and fully armored, like Athena from the brow of Zeus. The reality is much less mythological.

The complainant's brief states at page 2:

The Postal Service and PostCom [then AMMA] negotiated a price of \$1.75 per BPRS return. The parties did not discuss (or agree upon) the attributable cost or the cost coverage. Resp. USPS/CSA-TI-6.<sup>3</sup> It is not known whether the Postal Service determined the attributable cost first and then solved for the cost coverage, or vice versa. Whichever way the Postal Service reached the \$1.75, the Postal Service ultimately arrived at \$1.119 in attributable costs (using proxies) and a 156% cost coverage.

A review of the record of Docket No. MC97-4 shows something quite different. Witness Pham had presented a cost study calculating a unit attributable cost of \$1.119; this was not a product of a mathematical exercise, as CSA surmises, but the *starting point* of the fee design process, based on a study of costs by proxy.<sup>4</sup> Witness Adra explained that the \$1.75 fee the Postal Service proposed was "based on the cost estimates developed by witness Pham, and that "[u]sing witness Pham's \$1.12 per

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<sup>3</sup> This citation to this interrogatory response, which can be found at Tr. 1/52, is disingenuous at best. Witness Buc actually stated:

*I do not have any understanding for the basis for establishing the original BPRS cost coverage at 156%. I have been informed that the BPRS rate of \$1.75 was the result of a negotiation between the Postal Service and the Association for Postal Commerce (formerly the Advertising Mail Marketing Association). The attributable cost and cost coverage to comprise that \$1.75 was not part of the negotiation. After the parties agreed to the \$1.75 figure, the Postal Service derived cost figures and cost coverage figures that appeared in the MC97-4 case."* (emphasis added.)

The witness's answer cannot be relied on. First, he disavowed knowledge of the matter. Second, the second-hand (mis-)information that he is offering is contradicted by the record of that case.

<sup>4</sup> USPS-T-1, at 16, cited by the Commission at PRC Op., MC97-4, at 5.

piece cost estimate, the flat fee of \$1.75 yields a cost coverage of 156 percent.<sup>5</sup> Thus, it is clear that the cost estimate was not the fallout of long division, as the complainant's brief implies. Moreover, the negotiation process was not simply between the Postal Service and AMMA, but was among *all* the participants, including CSA.<sup>6</sup>

Furthermore, witness Adra's testimony specifically considered the appropriateness of the fee with respect to other cost coverages:

The proposed fees and fee levels were selected with the existing cost coverages and rate structures of related services in mind. At these fees, the cost coverage for BPRS is 156 percent. This cost coverage level is close to the systemwide cost coverage ....

Docket No. MC97-4, USPS-T-1, at 16.

The record of this case shows that the Postal Service's estimate of FY 1998 unit attributable costs using the Commission's methodology, adjusted by the inflation factor calculated by witness Buc, yields a cost of \$1.112 (Tr. 1/12) which, at a fee of \$1.75, results in a current calculated cost coverage of 157 percent. USPS-RT-1, at 7. This is

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<sup>5</sup> Testimony of Mohammad Adra on Behalf of United States Postal Service, Docket No. MC97-4, USPS-T-2, at 13, cited by the Commission at PRC Op, MC97-4, at 5.

<sup>6</sup> Having been a party to the Stipulation and Agreement, CSA should have been aware that it signed a document explicitly referring to the source of this fee development process:

The undersigned parties agree, for purposes of this proceeding only, that the Docket No. MC97-4 direct testimony of Postal Service witnesses Pham (USPS-T-1) and Adra (USPS-T-2), any designated interrogatory responses provided by them or by the Postal Service, and other designated materials filed on behalf of the Postal Service in this docket, including the Postal Service's Request and the attachments thereto, provide sufficient reasons and substantial evidence for establishing the new classifications, services, and fees ....

PRC Op, MC97-4/C97-1, App. A, Revised Stipulation and Agreement, at 3. (Sept. 4, 1997).

one percentage point greater than the cost coverage of the fee recommended by the Commission in establishing BPRS, which the Commission and the signatories of the Stipulation and Agreement found to be in conformance with the Act.<sup>7</sup> In the absence of any changed circumstances,<sup>8</sup> the fee remains lawful.

**C. The Complainant's Fee Design Analysis Is Flawed**

Even if one were engaging in a *de novo* fee design exercise, the complainant's brief does not properly analyze the ratemaking criteria and does not consider all relevant factors. With regard to fairness and equity (criterion 1), the complainant's brief fails to consider that BPRS is a special service, as witness Mayo testified, and cannot be equated simply to another subclass of mail.<sup>9</sup> In addition, BPRS is the only service whereby opened and resealed parcels are returned on the same basis as undeliverable

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<sup>7</sup> *Id.*

<sup>8</sup> On rebuttal, witness Mayo testified:

I am aware of no intervening circumstances that have changed since BPRS was established that would make a lower cost coverage appropriate now, compared to what it was when established by the Commission. To the contrary, the recent enhancements of the service, allowing the use of return labels at no additional fee and authorizing return of opened and resealed parcels without return labels in certain circumstances, add considerably to the value of service.

USPS-RT-1, at 10.

<sup>9</sup> Witness Mayo testified:

The Commission's Recommended Decision clearly identifies BPRS as a special service. BPRS was not designed as a subclass of Standard Mail (A) or any other class of mail. In fact, BPRS is a special service specifically designed to provide a simple means for high volume Standard (A) bulk parcel shippers to obtain parcel returns. It was also not designed for low volume shippers and would not be considered a useful service for the majority of Standard Mail (A) mailers.

USPS-RT-1, at 4.

as addressed pieces, with no need for the recipient to pay postage or for anyone to incur additional fees for the return.

With respect to value of service (criterion 2), the complainant's argument ignores the value of the merchandise and any customer payment or information that is returned with the parcel.<sup>10</sup> Moreover, its analysis also fails to recognize that, by definition, BPRS mailers receive individual attention from local postal facilities regarding issues related to pickup or delivery service. See Domestic Mail Manual § S924.2.1(d).

In addition, the complainant's argument that the return leg is less intrinsically valuable because it represents "an unsuccessful business transaction,"<sup>11</sup> reflects a significant problem in this proceeding concerning the representativeness with regard to other BPRS mailers of the views put forth by the complainant.<sup>12</sup> The testimony of the complainant's witness in this case is based only on the specific business needs and concerns of Cosmetique.<sup>13</sup> Witness Buc spoke directly only with Cosmetique and based his testimony that the return of a parcel (via BPRS) usually "marks the conclusion of a business relationship" only on Cosmetique's experience. Tr. 1/15,

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<sup>10</sup> Docket No. MC97-4, USPS-T-1, at 4.

<sup>11</sup> Complainant's Brief at 7.

<sup>12</sup> The complainant, the Continuity Shippers Association, is composed of only two entities. Tr. 1/27. Of the two, only Cosmetique is a BPRS mailer. Of the list of "nonvoting participants at CSA events" provided by witness Buc, Tr. 1/27, none is a BPRS mailer. All of the quantitative and almost all of the qualitative information upon which witness Buc relied in his testimony relates specifically to Cosmetique. See, e.g., Tr. 1/14-15, 34, 35, 38, 39, 42, 43, 45, 47, 49, 51. The record provides no basis for concluding that the experience of other BPRS mailers is similar.

<sup>13</sup> It is understandable, of course, that other BPRS mailers are unlikely to object to an attempt by one BPRS mailer to get them all a lower fee.



1/106. Cosmetique's experience, due to the nature of its business—sending out periodic mailings to customers who have agreed to purchase only the first item in the series—is likely to be different from that of other BPRS mailers, who are “negative option” or “fulfillment” mailers and would seem more likely to maintain a business relationship following a return.<sup>14</sup> One would surmise that mailers who value customer service over discouraging returns and avail themselves of the BPRS label feature (unlike Cosmetique) do not view the return leg as the termination of a business relationship. See Tr. 1/50-51.

The complainant then makes the astonishing argument that the recent enhancement of BPRS (Docket No. MC99-4) has not increased the value of BPRS (based on statistics only from Cosmetique, as shown above).<sup>15</sup> No weight should be given to this argument since the record shows that Cosmetique fails to take advantage of the enhancement. Tr. 1/43. It is not surprising that Cosmetique has not found changes in its statistics regarding return of opened parcels. Cosmetique has chosen to continue to rely on choices by postal personnel regarding what is efficient and

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<sup>14</sup> Fulfillment mailers who send out merchandise specifically ordered by their customers obviously do not view returns as the termination of a business relationship, but as an opportunity to provide the customer a preferable size, color or item in hopes of maintaining the business relationship. Negative option mailers may experience returns of shipments of book, record, or other club items, but such a return is much less likely to be the end of the business relationship, since customers are often obligated to buy a certain number of items before terminating their membership, or are perfectly happy to continue their membership, but are simply returning one item they received because they forgot to return the reply post card.

<sup>15</sup> Complainant's Brief at 8-10.

practicable.<sup>16</sup> There is no reason to think these operational choices would have changed significantly as a result of the authorization to apply the BPRS fee to opened returns once they make it back to the original mailer's post office. Moreover, it is hard to understand the complainant's contention that a significant reduction of the authorized fee for a returned parcel with a label is not an enhancement of the value of BPRS.

Complainant's Brief at 9-10.<sup>17</sup>

Moreover, the argument is based only on the statistics of Cosmetique,<sup>18</sup> and there is no showing that Cosmetique is representative of other BPRS mailers. The fact that Cosmetique chooses not to take advantage of the enhancement does not undermine the value of the enhancement for other mailers or in general. BPRS mailers other than Cosmetique, who wish to maintain a business relationship by making it easier for customers to return merchandise so that it might be exchanged for merchandise better fitting the customer's desires, have reasons to put a great value on the recent enhancement.

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<sup>16</sup> See Tr. 1/43, 50-51. Without a return label, opened and resealed BPRS parcels are returned directly to the original mailer only when it is inefficient or impracticable to return them to the recipient for payment of return postage. DMCS § 935.11

<sup>17</sup> After the implementation of the changes resulting from Docket No. R97-1, but before the recent enhancement of BPRS resulting from Docket No. MC99-4, the appropriate rate for a returned Standard Mail (A) parcel with a merchandise return label would have been the applicable First-Class Mail rate plus the fee for Merchandise Return Service, contrary to the statement in the complainant's brief at page 9. This is the rate Cosmetique should technically have been charged when it received the opened parcels it advised its customers to return without payment of postage before the most recent change. But the difficulty of separating opened from unopened returns often resulted in the application of the BPRS fee to opened BPRS parcels as well.

<sup>18</sup> See Tr. 1/50-51

Complainant's brief misinterprets criterion 4, which considers the effect of "rate increases" upon the general public, business mail users, and competitors. The only argument Complainant makes is that the establishment of BPRS "only provided interim relief" with respect to the earlier increases in third-class single-piece rates.

Complainant's Brief at 5. BPRS was established as a permanent service to address the needs of mailers with large quantities of Standard Mail (A) parcels returned. The relief was not "interim." Inasmuch as the establishment of BPRS resulted in an absolute decrease, and the complainant now seeks a further fee decrease, it is not clear that criterion 4 regarding the effect of rate "increases" applies at all in this instance. In any event, it is clear that, while users of a service might always prefer to pay lower rates and fees, doing so is not necessarily in the general public interest and is certainly not in the interests of competitors who are already significantly disadvantaged in this market by the noncompensatory rates these parcels pay on their outbound leg. See PRC Op., R97-1, Vol. 1, at 426-27. With respect to the return leg, the record shows that there is no alternative to BPRS.<sup>19</sup> Pricing BPRS even lower would merely exacerbate the lack of competition.

With respect to criterion 5, which addresses the availability of alternative means, the complainant argues that the lack of economically realistic alternatives supports a lower cost coverage. The lack of alternatives in this instance is essentially an artificial one, caused by the noncompensatory rates charged outgoing Standard Mail (A)

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<sup>19</sup> The Postal Service agrees with witness Buc's evaluation that "[t]here is no economically realistic alternative to the Postal Service return of BPRS parcels" or for the outbound Standard Mail (A) leg either. Tr. 1/17, 31. It disagrees that these facts mean the BPRS fee should be lowered even further.

parcels. In light of this fact, criterion 5 would not support mitigation of the cost coverage.

"The degree of preparation of mail for delivery into the postal system performed by the mailer" (criterion 6) is generally reflected in the rate design where discounts are a factor, rather than in the rate level. It also does not technically apply in this case with respect to BPRS. The complainant's brief refers to the "bulk processing of BPRS parcels, the requirement for machinability of the parcels and the fact that half of the BPRS mailers pick up the BPRS returns." BPRS parcels are not processed in bulk. The only bulk handling is at the postage calculation and delivery stages.<sup>20</sup> The savings resulting from this are already reflected in the BPRS cost, and should therefore not affect the cost coverage.

These factors, when properly analyzed support the current cost coverage. See USPS-RT-1, at 9-10. They could arguably also support a slightly lower or even a slightly higher cost coverage. They in no way show, however, that the current fee is not in conformity with the Act.

#### **D. The Comparisons the Complainant Makes to Other Services Are Not Valid**

The comparison drawn by the complainant between BPRS and Standard Mail (A), as well as to Bound Printed Matter (BPM) and Merchandise Return Service (MRS),<sup>21</sup> are not valid comparisons. The complainant tries to justify a low cost coverage for BPRS by arguing that BPRS is like a subclass of mail, on the one hand, or like a

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<sup>20</sup> See Docket No. MC97-4, USPS-T-1; Postal Service October 1998 BPRS Cost Study.

<sup>21</sup> Complainant's Brief at 4, 6, 10-11.

special service, on the other. BPRS is actually a hybrid, with a fee that covers some costs that are typically covered by postage, and other costs that are typically covered by a special service fee. Thus, the determination of an appropriate cost coverage must be done by a direct analysis of the pricing criteria, rather than by adopting a pre-existing cost coverage for a subclass or special service.

While it is true that all BPRS parcels originated as Standard Mail (A), the characteristics of the two legs are very different. The cost structure is different, the operations are different in significant respects, and parcels make up such a small percentage of Standard Mail Regular to begin with that the comparison is not valid, as witness Mayo testified. USPS-RT-1, at 5-6.

It makes no more sense to apply the Merchandise Return Service (MRS) cost coverage to BPRS. Merchandise Return customers currently pay a fee in addition to postage. Both the fee and the postage provide a contribution. But for BPRS, the fee provides the only source of contribution. (In addition, both Merchandise Return and BPRS are used on mail that has paid postage on an outgoing leg, although in the case of MRS, it is far more likely to have provided a contribution from this outgoing leg than BPRS.) The merchandise return fee covers costs that are above and beyond the costs for the underlying mail, while BPRS covers all costs for the returned mail. The MRS cost coverage thus should not be applied to BPRS.

The complainant's reliance on the Commission's recommended decision to apply to Standard Mail (A) Regular a cost coverage similar to that of Bound Printed Matter<sup>22</sup> is

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<sup>22</sup> The complainant's brief characterizes Bound Printed Matter as a "similar return  
(continued...)"

also misplaced. The quotation in complainant's brief itself belies the applicability of either subclass as a model for BPRS. The Commission described BPM as "another subclass used for bulk national mailings of (among other things) advertising materials." Complainant's Brief at 4, quoting PRC Op., R97-1, Vol. 1, at 434. No explanation is made by complainant as to why the Commission should apply a cost coverage applicable to "subclass[es] used for bulk national mailings of ... advertising materials" to BPRS, a special service used for the return of undeliverable or unwanted merchandise that had been solicited by the recipient.

E. In A Moment of Unintended Candor, the Complainant Points Out the Incongruousness of Its Position

Complainant concludes its cost coverage argument with the following statement: "As discussed above, the correct comparison is BPRS parcels to outbound Standard A *parcels*. This true comparison shows that they should carry the same cost coverage." Complainant's Brief at 11 (emphasis added). If BPRS had the same cost coverage as the implicit cost coverage for Standard A parcels, BPRS's cost coverage would be negative.

The complainant's faux pas spotlights the incongruity of its position. While in the abstract, the implicit cost coverage for outgoing Standard A parcels might be a relevant factor for setting the BPRS cost coverage, in light of the current failure of Standard

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<sup>22</sup> (...continued)  
service[ ] to BPRS" Complainant's Brief at 4. Although some items sent out as BPM may return as BPM, this is true of most classes of mail. Using this logic, one could pick out any subclass of mail by which returns are sent back and claim it is similar to BPRS. But BPRS, unlike those others, functions *only* as a return service. There is, therefore, no justification for setting BPRS at the same level as any particular class of mail.

Regular rates to be compensatory with respect to parcels, this analysis must await the future time that Standard Regular parcels begin making a reasonable contribution to attributable costs. Once that happens, it may be that other carriers will be able to compete for Cosmetique's business,<sup>23</sup> which will require a reconsideration of criteria 4 and 5.

**III. THE COMPLAINANT'S APPEAL FOR A LOWER COST COVERAGE CAN BEST BE ADDRESSED IN THE ONGOING OMNIBUS RATE CASE**

Witness Buc has agreed that the optimal way of balancing the relative value of different services is to balance them altogether. In light of the continued conformity with the Act of the current fee, its reevaluation should be done only in the context of the omnibus rate case.

In addition to the balancing of cost coverages, the issue of the applicability of other fees is also relevant to determining an appropriate BPRS fee for the future. As witness Mayo testified:

[I]n Docket No.R2000-1, I am proposing an annual advance deposit account fee for BPRS. The current absence of this fee for BPRS suggests that the cost coverage should not be lowered, until such a fee is added.

USPS-RT-1, at 10.

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<sup>23</sup> Cosmetique does not use private parcel delivery firms "[b]ecause the Postal Service's price is better. [I]f UPS's price were better I would bet that Cosmetique would go talk to them." Tr. 1/133.

CONCLUSION

For the reasons stated above, the complainant has failed to meet its burden of showing that the BPRS fee does not conform to the policies of the Act, as required under 39 U.S.C. § 3662.

WHEREFORE, the Commission should decline to issue an affirmative recommendation in this case and simply issue an order dismissing the complaint with prejudice for failure to meet the applicable statutory standard of section 3662, noting that the pending rate case will provide a better opportunity for resolution of issues regarding cost coverages for BPRS and other related services.

Respectfully submitted,

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# **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.

A handwritten signature in black ink, appearing to read "Scott L. Reiter", is written over a horizontal line.

Scott L. Reiter

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