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POSTAL RATE COMMISSION
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**BEFORE THE
POSTAL RATE COMMISSION**

Docket No. R2000-1

POSTAL RATE AND FEE CHANGES, 2000

**REPLY BRIEF OF
THE DIRECT MARKETING ASSOCIATION, INC.**

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POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001**

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**REPLY BRIEF OF
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INTRODUCTION

The Direct Marketing Association, Inc. (“The DMA”) respectfully submits this reply brief, which sets forth The DMA’s views on several significant issues relevant to the pricing of Standard (A) mail.

I. SUMMARY

At the end of this long and in some respects unusually complex case, it is perhaps instructive to take a step back and view the proceeding from the perspective of the entire forest.

Last January, when the Postal Service made its initial filing in PRC Docket No. R2000-1, representatives of The DMA and its counsel were seriously concerned by the apparently discriminatory rate increases that were being proposed for Standard (A) mail. Further analysis revealed that, surprisingly enough, these substantially-above-average increases were not the result of the Postal Service continuing to burden Standard (A) mail with portions of institutional costs inconsistent with the statutory pricing criteria set forth in Section 3622(b) of the Postal Reorganization Act of 1970 (the “Act”). The Postal Service was actually proposing Standard (A) cost coverages that, when compared with those of First Class, seemed to comport reasonably

well with the statutory pricing factors. The causes of the apparently discriminatory treatment of Standard (A) mail seemed to lie in other areas.

Now that the record is closed, The DMA is no happier than it was in January about the rate increases being proposed for Standard (A) mail. It has supported efforts led by other groups to secure relief on a number of issues that would have the effect of reducing the Standard (A) rates from the unreasonably high levels the Postal Service has proposed. However, The DMA has not argued that the cost coverages of Standard (A) commercial mail should be reduced as compared to those of First Class. Could a case be made that the Standard (A) cost coverages are too high? Of course it could, and a strong one at that! Based on the “value of service” and “impact” factors alone, it would be easy to argue that Standard (A) cost coverages should be reduced -- and that the Postal Service and mailers alike would benefit from such a reduction.¹

On balance, however, the DMA believes that, at least as far as the distribution of institutional costs is concerned, the Postal Service has it about right this time, based on the current factual circumstances that bear on all the statutory pricing factors, viewed together as a whole. There are fundamental problems with the proposed Standard(A) rates, but as The DMA surmised in January, they lie elsewhere.

What concerns The DMA the most about pricing issues, as it reviews the record in this case, is the great extent to which other mailers and mailer groups have tried to use Standard (A) mail as the whipping boy.² Instead of dealing with the root causes of their own problems, they

¹ See, e.g., discussion of economically efficient pricing, commonly referred to as “Ramsey Pricing,” in Section III, *infra*, and in MOAA Br. 10-12, and MOAA Reply Brief.

² For example, the ABA&NAPM Brief argues for a 0.634-cent increase in all Standard (A) mail and refers to such an increase as “modest.” ABA&NAPM Br. 25. The DMA respectfully suggests that neither ABA nor NAPM would consider such an increase as “modest” if they were paying it.

have taken the easy (but unjustifiable) route of trying to persuade the Commission to reduce their rates at the direct expense of Standard (A), or to raise Standard (A) rates so that their own competitive position will be improved.³ Many of them have been rather creative in crafting their arguments. Some have spoken of long-term trends; others have raised the spectre of “unfair competition;” and still others have simply shouted “UNFAIR” to the rooftops, as if frequency of repetition would add weight to their cause.

Nowhere, however, has any of these groups been able to support its case for increasing the Standard (A) cost coverages with a responsible analysis of the statutory pricing factors as they apply to current economic and other relevant conditions. Their arguments must be given no weight by the Commission, because the Commission is required by law to justify its rate recommendations through an application of the statutory factors to the evidence of record.

Happily, this record presents a relatively easy solution to the serious concerns being raised by the mailing community. The Postal Service has simply over-reached in the amount of money it is seeking. As has been demonstrated convincingly on this record, the revenue requirement being sought by the Postal Service is excessive, by an amount of at least \$1.3 billion.⁴ When that amount is pared from the revenue requirement, the Commission will be able

³ Symptomatic of this approach is the NAA Brief, which makes the (nearly outrageous) statement that, “It is beyond dispute that First Class mail has consistently paid an excessive share of the institutional costs of the U.S. postal system.” NAA Br. 25. Not only is this assertion vigorously disputed, it is also ironic that it should be made by a party whose main interest is not in lower First Class rates, but rather in higher Standard (A) rates, against which NAA’s members compete. UPS uses the same basic approach for the same competitive purposes, citing broad language from the Act’s legislative history about the need to protect against an exploitation by the USPS of its “monopoly over letter mail,” UPS Br. 5. The difference between the NAA and the UPS arguments, of course, is that both First Class and Standard (A) are subject to the postal monopoly, and therefore parcels become the target.

⁴ *See, e.g.*, the Joint Reply Brief Concerning Revenue Requirement being filed simultaneously herewith by The DMA on behalf of a large coalition of mailers (the “Consortium”).

to reduce the proposed rate increases for most, if not all, classes and subclasses of mail, and it will be able to ameliorate the disproportionately large increases being proposed for Standard (A) mail. The DMA urges the Commission to take these steps.

The remainder of this reply brief will touch briefly on a few of the more important issues affecting the pricing of Standard (A) mail that merit response in light of some of the arguments made in intervenors' initial briefs.

II. THE RECORD CANNOT SUPPORT AN INSTITUTIONAL COST BURDEN FOR STANDARD (A) COMMERCIAL MAIL HIGHER THAN PROPOSED BY THE POSTAL SERVICE.

USPS witness Mayes proposed a cost coverage of 132.9% for Standard (A) Regular Mail and 208.8% for Standard (A) ECR. USPS-T-32 at 35, 38. These proposals are based on an analysis of a substantial amount of evidence relevant to the statutory pricing criteria of Section 3622(b) of the Act. Although they entail price increases substantially in excess of those proposed for First Class, the OCA and several intervenors have taken the position that these cost coverages should be increased. To the contrary, the Standard (A) cost coverages proposed by the Postal Service are the very highest that can be justified on the basis of this record. The Commission should reject any attempts to increase them, and it should make every effort to mitigate the very large (especially in comparison to First Class) price increases being proposed for Standard (A).

Some parties such as OCA and ABA&NAPM base their cases on testimony by witnesses whose testimony refers to only one pricing criterion, Criterion 1 ("Fairness").⁵ Their testimony

⁵ The OCA Brief, at pages 149-152, does include a perfunctory discussion that makes reference to the statutory criteria. This discussion does not purport to analyze the evidence of record relevant to each of the criteria, and, to the extent that it purports to represent the expression of an expert opinion, is inadmissible because it is testimony by counsel.

is devoid, however, of any analysis of record evidence as to why the First Class/Standard (A) rate relationship is unfair. As The DMA pointed out in its initial Brief, DMA Br. 6-7, these witnesses have simply repeated their claims of unfairness over and over again. Repetition adds not one ounce of strength to their arguments. Their assertions should be given no weight by the Commission.

Some witnesses have presented lengthy analyses purporting to show that First Class rates over the past decade have been higher than “intended” by the Commission.⁶ As The DMA demonstrated in its Initial Brief, DMA Br. 7-8, these arguments lack merit. This Commission has recommended exactly what it intended to recommend. If the First Class cost coverages actually realized by each class and subclass in any given year turned out to be different from those underlying the Commission’s recommended rates, it may be the result of a number of factors, including perhaps the impact of Postal Service automation efforts, which have had a greater relative impact on First Class costs than they have had on Standard (A) costs. The impact on Standard (A) costs of management’s decisions concerning automation have been deleterious enough without compounding the problem by penalizing Standard (A) on pricing decisions, as well.

Finally, several parties have followed the decade-old pattern of seeking to rely on Commission statements, first made in Docket No. R87-1, to the effect that First Class cost coverage should be near the system-wide average, while the cost coverage of Standard (A) (at that time Third-Class Bulk Rate Regular) should be only slightly lower than system-wide

⁶ *See, e.g.*, OCA Br. 141, 143-46; *see also* GCA/HCI Br. 3-6.

average.⁷ It is time for these parties to understand that, whatever determination the Commission may have taken on this issue a decade ago, this determination carries no weight today. For the Commission to rely on these decade-old statements in this case would be to commit reversible error, for the following reasons:

1. The referenced statement from the R87-1 Opinion was not supported by an application of the statutory pricing factors to the evidence of record in that case.⁸

2. Even if the Commission's statement had been adequately supported in R87-1, it has no force today, because there have been substantial intervening events, including a decade of postal automation advances, a decade of changes in the general economy, and a series of major classification changes pursuant to Docket No. MC95-1 and other proceedings before this Commission.

3. The Commission has a statutory duty to explain each recommended decision based on the record of the respective case. The evidence of record in this case is substantially different from the evidence in R87-1.⁹

⁷ *E.g.*, OCA Br. 141-42; MMA Br. 4-6.

⁸ Although the R87-1 Opinion contained a substantial discussion of the pricing factors, *see* Op. R87-1 at 366-397, the discussion never explained why the referenced statement was supported by substantial evidence of record. Moreover, the references to this statement in subsequent cases likewise failed to justify its continued validity based on the facts of those cases. Of course, such a justification was not technically required, because the Commission did not actually recommend rates with "nearly equivalent markup indices." *See, e.g.*, Op. MC95-1 at I-8. Thus, again speaking technically, those statements are merely dicta.

⁹ As described by USPS witness Mayes, each of the major pricing factors, as applied to the facts of this case, calls for a substantial difference in cost coverages between First Class and Standard (A). *See, e.g.*, DMA Br. 2-4.

III. THE POSTAL SERVICE HAS PROPERLY UTILIZED RAMSEY PRICING PRINCIPLES.

In their Joint Brief, the Greeting Card Association and Hallmark Cards, Inc. devote a surprising number of pages to an argument against the application of “Ramsey Pricing” in this case. GCA/HCI Br. 16-24. The DMA would have thought that the matter of the proper role of Ramsey Pricing had been determined quite a while ago. The Commission addressed this subject in its R87-1 Opinion. While the record in that case did not contain sufficiently reliable evidence to apply Ramsey Pricing *per se*, Op. R87-1 at 377, the Commission concluded that Ramsey Pricing evidence had a useful role to play as a guide in ratemaking decisions:

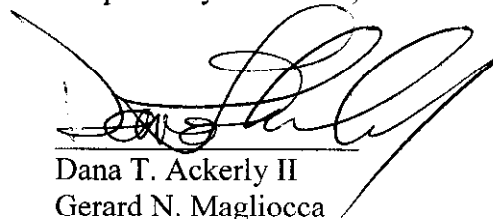
The impossibility of Ramsey pricing in the textbook sense should not preclude us from reflecting demand, where we can do so appropriately, in an ordinal fashion -- seeking to avoid the needlessly inefficient prices that would be implied by attaching a high markup to a class we are reasonably sure has a low relative demand, and vice versa.

Op. R87-1 at 386. The matter of the proper role of Ramsey Pricing principles is addressed in more detail in the Initial Brief and the Reply Brief filed by Mail Order Association of America. The DMA concurs completely with the views expressed on Ramsey Pricing in these briefs and commends them to the Commission.

CONCLUSION

As discussed above and in The DMA's Initial Brief, the Commission should approve Standard (A) rates that reflect institutional cost burdens no greater than as proposed by the Postal Service.

Respectfully submitted,



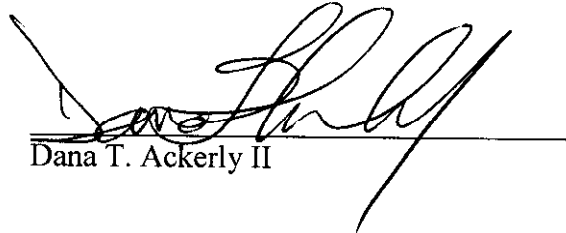
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September 22, 2000

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document in accordance with the Commission's Rules of Practice.



Dana T. Ackerly II

September 22, 2000