

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

Docket No. R2000-1

Postal Rate and Fee Changes, 2000

**COMMENTS OF
ALLIANCE OF NONPROFIT MAILERS
AND DIRECT MARKETING ASSOCIATION
ON RECONSIDERATION OF
STANDARD A NONPROFIT RATES**

The Alliance of Nonprofit Mailers ("ANM") and the Direct Marketing Association, Inc. ("DMA") respectfully submit this memorandum on the Postal Service's request for reconsideration of the rates recommended by the Commission for Standard A nonprofit mail. (The undersigned parties are cosponsoring separate memoranda with other parties dealing with the Postal Service's revenue requirement.)

In its December 20 memorandum, the Postal Service contends that the rates recommended by the Commission for Standard A nonprofit mail violate Section 1(d) of Pub. L. No. 106-384, 114 Stat. 1460 (enacted Oct. 27, 2000) (to be codified at 39 U.S.C. § 3626(a)(6)). Section 3626(a)(6)(A) requires the Commission and the Governors to set rates for Standard A nonprofit mail so that the estimated average revenue per piece equals, "as nearly as practicable . . . 60 percent of the estimated average revenue per piece to be received from the most

closely corresponding regular rate subclass of mail.” Section 3626(a)(6)(B) directs that the 60 percent ratio shall be calculated “on the basis of expected volumes and mix of mail for such subclass at current rates in the test year of the proceeding.” The Commission, in applying the 60 percent ratio, used test year after rate (“TYAR”) billing determinants. The Postal Service contends that Section 3626(a)(6)(B) requires the use of test year before rate (“TYBR”) billing determinants. USPS Memorandum at 32-35.

The Postal Service’s statutory interpretation is not unreasonable, and the undersigned parties do not oppose its adoption in future rate cases. In the unique circumstances of this case, however, the relief sought by the Postal Service is unwarranted. The recent amendments to Title 39 did not become law until October 27, 2000—barely two weeks before the deadline for the Commission’s recommended decision under 39 U.S.C. § 3624(c)(1)—and the Commission understandably lacked the benefit of briefing from the parties on the interpretation of the new law. At this point, the modest additional revenue that the Postal Service could anticipate from substituting TYBR for TYAR billing determinants would not justify the administrative and related costs of forcing nonprofit mailers and their vendors to adapt to a second set of new rates within a few weeks.

The Postal Service’s calculations indicate that recalculating the new Standard A nonprofit rates with TYBR billing determinants would generate about \$26 million a year in additional revenue. *See* USPS Memorandum at 35 (revised Jan. 8, 2001). For the nonprofit sector and its mailhouse vendors, however, the costs would be far larger. Postage meters, scales, computers and similar equipment would have to be reprogrammed again, postage-related software would have to be rewritten, and tens of thousands of mailroom personnel in nonprofit

organizations would have to master yet another iteration of the nonprofit rate schedule. Multiplied throughout the United States, the overall costs to the nonprofit sector and its vendors—and, ultimately, to the American public—almost certainly would exceed the modest additional revenue gained by the Postal Service.

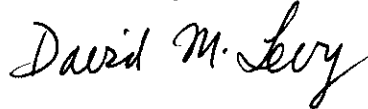
In these circumstances, the Commission plainly has discretion to adhere to the newly implemented rates. The statute does not require nonprofit rates to comply precisely with the 60 percent benchmark; rather, the Commission and the Governors, when establishing new rates, must give effect to the benchmark only “as nearly as practicable.” 39 U.S.C. § 3626(a)(6)(A). As the Commission has recognized in analogous contexts, this statutory language entitles the Commission to temper the ideal of precision in costing and ratemaking with the practical costs of attaining it.

39 U.S.C. § 3621, for example, directs the Commission and the Governors to set rates so that the Postal Service’s estimated overall revenue will “equal as nearly as practical” the Service’s total estimated costs. 39 U.S.C. § 3621. Yet the Commission and the Governors repeatedly approve rate schedules that are expected from the outset to produce produce small surpluses or shortfalls in the test year. *See, e.g.*, R90-1 Order Providing Additional Explanations and Establishing Additional Procedures (Order No. 883) (May 6, 1991), Executive Summary (rates expected to generate overall surplus of \$31 million per year satisfy the “statutorily-required breakeven”); R90-1 Op. and Rec. Decis. Upon Further Consideration (Oct. 4, 1991) at 68 ¶ 424 (test year deficit of “approximately \$40 million” is “equivalent to breakeven under the ‘as nearly as practicable’ standard”).

39 U.S.C. § 3622(b)(3) raises essentially the same problem. Section 3622(b)(3) requires that “each class of mail or type of mail service” recover its attributable costs. Applied literally, the section would require “a separate rate for every group of mailers with special cost savings, no matter how small the group.” *Mail Order Ass’n of America v. USPS*, 2 F.3d 408, 437-38 (D.C. Cir. 1993). The Commission, the Postal Service and the courts have rejected such an interpretation, recognizing that it would “produce a hopelessly complicated rate structure,” *id.* at 437-48.

The undersigned parties do not endorse needless sloppiness or imprecision in ratemaking, and do not ask the Commission to continue using TYAR rate determinants to implement 39 U.S.C. § 3626(a)(6)(B) in future rate cases. In this case, however, theoretical perfection should yield to practicality, and the new rates for Standard A nonprofit mail should remain in effect.

Respectfully submitted,



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CERTIFICATE OF SERVICE

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



January 12, 2001