

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

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U.S. DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

POSTAL RATE AND FEE CHANGES, 2001

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:
: Docket No. R2001-1

JOINT REPLY BRIEF
OF
MAIL ORDER ASSOCIATION OF AMERICA,
THE SATURATION MAIL COALITION, AND
ADVO, INC.

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BEFORE THE
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JOINT REPLY BRIEF OF THE MAIL ORDER ASSOCIATION OF
AMERICA, THE SATURATION MAIL COALITION, AND ADVO, INC.

As signatories to the Stipulation and Agreement (Settlement Agreement), the Mail Order Association of America, the Saturation Mail Coalition and ADVO, Inc. agreed to forego the opportunity to litigate this case further -- waiving their rights to contest the proposed settlement rates, to rebut arguments of opponents to the original rates, to present alternative rate proposals, or to present additional testimony in support of the originally-proposed rates. Moreover, we, like all signatories, have agreed to the stipulation that the truncated record in this proceeding supports the proposed settlement rates.

In their initial briefs, NAA and Val-Pak, as signatories to the Settlement Agreement, express their full endorsement of the proposed rates and urge that those rates be recommended by the Commission without change. As Val-Pak states:

"Now that a virtually unanimous settlement between the Postal Service, the OCA, and almost all mailers . . . has been reached, Valpak urges the Commission to honor the collective judgment of all mailers, who, in good faith, participated in the settlement process, and to adopt the totality of the settlement rates without change in its Opinion and Recommended Decision in this docket." Val-Pak Brief at 3.

However, those parties then proceed to criticize the Postal Service's originally-proposed rates for Enhanced Carrier Route (ECR) mail. NAA, for example, suggests that the ECR pound rate agreed upon by the parties in the interest of achieving a settlement is "more consistent with the record" than the originally-proposed pound rate. Similarly,

Val-Pak describes arguments and criticisms it would have made of the Postal Service's original proposal had this case been litigated. This kind of argumentation about "what might have been" is unnecessary and counterproductive.

It is important to distinguish the "record" that forms the basis for settlement in this case from the kind of record that is normally developed in fully-litigated cases. For the uncontested settlement rates, including the ECR rates, the record is "complete" and "sufficient" only for the purposes of settlement and decision. It cannot, and should not, be used to make findings that the settlement rates are "better" or "more consistent with the record" than any other set of rates, including those originally proposed by the Postal Service. Indeed, in the context of the settlement, such a finding would be inappropriate and prejudicial, because parties like MOAA, SMC and Advo, who might otherwise have supported the USPS-proposed rates or alternative rates, were obliged by the settlement to forego their normal due process rights to contest the settlement rates or present intervenor testimony. *All* of the parties to the settlement have, to various degrees, agreed to a set of rates that they may believe to be different from the rates they might have achieved through full litigation of the case.

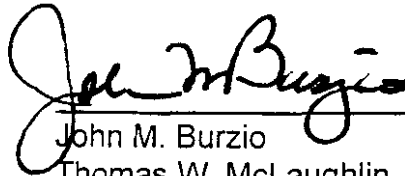
In conclusion, the Mail Order Association of America, the Saturation Mail Coalition and Advo concur with NAA and Val-Pak only to the extent that the record that has been developed provides sufficient evidence to support the settlement rates. However, we strongly disagree to the extent that they suggest this record can or should be used to make further findings that the uncontested settlement rates are more consistent with the record than other proposals. We urge the Commission to recommend to the Governors adoption of the rates and classifications set forth in the Settlement Agreement in their entirety, on the basis that they are supported by the stipulated record.

Respectfully submitted,

 *TCM*

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CERTIFICATE OF SERVICE

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


Thomas W. McLaughlin

March 8, 2002