

UNITED STATES OF AMERICA  
Before The  
POSTAL RATE COMMISSION  
WASHINGTON, D.C. 20268-0001

Customized Market Mail )  
Minor Classification Changes )

Docket No. MC2003-1

OFFICE OF THE CONSUMER ADVOCATE  
RESPONSE TO MOTIONS FOR WAIVER, EXPEDITION, AND  
SETTLEMENT PROCEDURES AND  
MOTIONS TO REJECT REQUEST TO APPLY MINOR  
CLASSIFICATION RULES, SUSPENSION OF PROCEEDINGS,  
AND TO DEFER THE TIME TO REQUEST HEARING  
(April 3, 2003)

Pursuant to the Commission's Notice and Order<sup>1</sup> concerning the Postal Service's minor classification request in the above-styled proceeding, the Office of the Consumer Advocate ("OCA") hereby responds in opposition to the Postal Service's motion for waiver of certain filing requirements.<sup>2</sup> The OCA also responds to the Postal Service's request for expedition and establishment of settlement procedures.<sup>3</sup> In addition, the OCA moves for (1) a denial of the application to consider the Request pursuant to the minor classification rules and for suspension of the proceedings and (2) deferral of the time by which to request a hearing in this matter.

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<sup>1</sup> "Notice and Order on Filing of Request for Expedited Decision on Minor Classification Change Implementing Customized Market Mail," Order No. 1365, March 19, 2003.

<sup>2</sup> "Motion of United States Postal Service for Waiver," March 14, 2003.

<sup>3</sup> "United States Postal Service Request for Expedition and Establishment of Settlement Procedures," March 14, 2003.

The Postal Service filed a Request on March 14, 2003<sup>4</sup> seeking to establish a minor classification change in Standard Mail for a new service for irregular shape mail referred to as Customized Market Mail (CMM). Concurrently, the Postal Service filed the motion and request for relief. The Commission's Notice and Order provided for responses to those documents and the submittal of any request for hearing no later than April 3, 2003.<sup>5</sup>

For the following reasons, the OCA opposes the motion for waiver. OCA also moves for a denial of the request to apply the minor classification rules and moves for suspension of the proceedings pending Postal Service submission of appropriate data required by the minor classification rules or pending the re-filing of the CMM Request pursuant to appropriate Commission market test, provisional service or experimental change rules.

In OCA's view, the request for expedition is beside the point given the lack of data to support the minor classification request. Expedition is useful where there is a demonstrated need to reach a ready market or to meet other exigencies that will benefit from an expedited decision. The Postal Service has not made that showing.

OCA sees no reason for settlement at this time but does not oppose establishing settlement discussions.

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<sup>4</sup> "Request of the United States Postal Service for a Recommended Decision on Customized Market Mail Minor Classification Changes," March 14, 2003.

<sup>5</sup> The Commission Rule 69b(e) provides that the Notice shall afford all interested parties 26 days after filing of the Postal Service's request within which to submit responses to the Postal Service's request for consideration under the minor classification rules. The Notice and Order No. 1365 provides for a prehearing conference on the 26th day (April 9) and that is presumed by OCA to be the date by which parties may submit responses to the use of the minor classification rules. OCA would not oppose the use of minor classification rules in this proceeding, if the Postal Service were able to provide meaningful cost, volume and revenue estimates.

The OCA also requests deferral of the opportunity to request a hearing pending the Commission's ruling on the Postal Service's motion for waiver and a ruling on OCA's motion herein to deny the request for minor classification rules treatment and suspension of proceedings. However, at the present time, based upon the Postal Service responses to interrogatories to date, it does not appear that a hearing would elicit useful cost, volume or revenue information that would assist the Commission in its review of the Request.

OCA's dominant concern about the Postal Service's decision to proceed with the proposed change as a minor classification change is the fact that the rate fixed upon for the new service -- 57.4 cents (the Standard Mail basic presort rate plus the residual shape surcharge) -- is a rate for a grouping within Standard Mail (non-letter/non-flat) that is heavily subsidized by other shapes of Standard Mail. Because of concerns about rate shock to the residual-shape mailers, the Commission is moving very slowly toward setting a surcharge that fully reflects the costs of handling this type of mail. It would be imprudent to encourage additional new volume of non-letter/non-flat mail that does not pay a rate high enough to cover its costs and that would impose an additional burden on other shapes of Standard Mail. Without a credible cost estimate for this irregularly shaped, DDU-entered mail, particularly one that demonstrates that the unit cost for handling this mail is well under 57.4 cents, OCA must protest serious consideration of this proposal for recommendation as a new service under the minor classification rules.

It is important to bear in mind that if the minor classification change is made as requested by the Postal Service, the Postal Service is not likely (nor has it proposed) to

analyze separately for future ratemaking proceedings the unique costs of CMM. It is possible that the new CMM service will not cover its costs and will exacerbate an already undesirable situation, *i.e.*, that non-residual-shape pieces have to pay even higher rates than they are already paying for the current residual-shape mailstream.

The harm is compounded by making the change a permanent one. At least under market test, provisional, or experimental rules, the costs may be studied and isolated so that a determination can be made whether an existing rate covers the costs of the new service. Proceeding under the minor (permanent) classification rules, will never allow a firm conclusion to be drawn whether this new mailstream covers its costs and contributes additional institutional cost or is a new burden imposed on other mailers.

Without a credible cost estimate for CMM, the Commission is unable to fulfill its duty under §3622(b) of title 39. Rather, unwittingly, it may wind up applying the perverse maxim, “Each piece loses money, but the Postal Service makes it up on volume.”

#### I. OCA Motion to Deny Application of Minor Classification Rules

The Commission's Rule 69b(f) provides for consideration of a request pursuant to the minor classification rules if the Commission finds that: (1) the change is minor in character and (2) the effects of the change are likely to be limited in scope and overall impact. Further, Rule 69b(g) provides that if the Commission finds that it is not appropriate to consider the Request pursuant to the minor classification rules then the Request will be considered in accordance with other appropriate provisions of the rules.

For the reasons discussed below with respect to the Postal Service motion for waiver of certain filing requirements, it is apparent that the Postal Service has failed to comply with the minimal minor classification filing requirements in Rule 69a(a). The Postal Service has failed to provide:

An estimate, prepared in the greatest level of detail practicable, of the overall impact of the requested change in mail classification on postal costs and revenues, mail users, and competitors of the Postal Service.

The Request does not provide the Commission with enough information to determine the impact on postal costs and revenues. Nor is it possible to determine the impact on other mail users of Standard Mail. If the CMM service is unprofitable and does not contribute to institutional costs there would be an impact upon those Standard Mail users. The Postal Service's claim that the impact is minor should not be sufficient to even consider a minor classification procedure where the Postal Service is unable to demonstrate the proposed service will be profitable. There must be a minimum amount of information supplied to the Commission to approve a request for a new service classification. The Postal Service's admitted lack of studies quantifying the impact of the service indicates the new service is not ready for consideration for a permanent classification under the minor classification rules.

The OCA therefore moves to deny the request for minor classification treatment of the Request, as filed. The Commission should suspend the proceedings until the Postal Service is able to file sufficient cost, volume and revenue data to enable a determination that the new service will contribute to institutional costs or until the Postal Service recasts the Request for consideration under the market test, provisional or experimental change rules of the Commission.

Alternatively, if the Commission determines to consider the application pursuant to the minor classification rules, then pursuant to Rule 69a(b) (because OCA has demonstrated that the Postal Service has been unreasonable in failing to first secure the cost, volume and revenue estimate information for CMM and submitting it in accordance with Rule 64) the OCA should be permitted to contend the Request should be rejected on the grounds that the required data has not been provided by the Postal Service.

## II. Response to Postal Service Motion for Waiver of Filing Requirements

The Postal Service motion seeks waiver of certain filing requirements normally required by the Commission's rules to be included in formal requests for classification changes. The Commission rules suggest that in order for the Commission to take into account the omission of information required by the filing requirements and to take that deficiency into account in ruling upon the application, it must be shown that the Postal Service was "clearly unreasonable...to propose the change in question without having first secured the information and submitted it..." (Rule 69a(b)(1).) In OCA's view, the Postal Service has been clearly unreasonable in failing to secure this information and that further, without the information, the Request is materially deficient and the application to consider the Request pursuant to the minor classification rules should be denied.<sup>6</sup>

In any event, for the reasons stated herein, if the Commission decides to hear the Request, the OCA should be permitted pursuant to Rule 69a(b) to contend the

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<sup>6</sup> The OCA will move ahead with discovery but cannot recommend the service on the record that has been provided by the Postal Service.

Request should be rejected on the grounds that the required data has not been provided by the Postal Service.

Specifically, the Postal Service seeks waiver of Rules 64(b)(3), 64(d) and 69a(a)(3), in part. Rule 64(b)(3) requires schedules containing a statement identifying the degree of economic substitutability between the various classes, *e.g.* a description of cross-elasticity of demand as between various classes of mail. The Postal Service points out that the new service would not change any rates. It concludes that because economic substitutability measures a volume response to price changes, the economic substitutability of demand would not be expected to change under its proposal.

While this may be true, if the new service involves the substitution of existing Standard Mail volumes at the current rates with new volumes under the CMM service at different rates,<sup>7</sup> the cross-elasticity of demand impact might have an impact within the Standard Mail category. The DDU point of entry effectively changes the rate for the mailer. The impact is totally unknown except for the input from a very few focus groups as discussed in USPS-LR-2. There clearly must an impact on the substitutability of the mail.

Rule 64(d)(i), from which the Postal Service seeks waiver, is particularly relevant. It states that for every formal request, a statement is required showing the effects of the changes upon "The costs attributed and assigned to each class and subclass of mail for service as developed pursuant to §3001.54(h)."<sup>8</sup> Also Rule 69a(a)(3), in part,

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<sup>7</sup> Although no numbers are changed on the DMCS Rate Schedules, the rates for CMM mail are different from that charged for any other Standard Mail piece.

<sup>8</sup> The Postal Service requests waiver of all of Rule 64. OCA does not contest waiver of Rule 64(d)(ii) and (iii) as those subsections relate to *total* costs and revenues and are not as significant here.

requires "An estimate, prepared in the greatest level of detail practicable, of the overall impact of the requested change in mail classification on postal costs and revenues, mail users, and competitors of the Postal Service." The Postal Service seeks waiver because it says the proposal would not result in significant changes to postal cost and revenue relationships, and the "limited nature of the proposal" and "the small number of users likely to avail themselves of these new classification provisions" means that the detailed analysis is "not justified," and that waiver "will not impair the ability of the Commission... to evaluate the presentation." (Motion for Waiver at 3.)

To the contrary, some level of analysis surely must be required. Even if the detailed analysis normally done for more significant classification changes is not feasible, there must be an attempt to provide some detailed numbers, as practicable. There is a total absence of any estimates of costs that will be assigned to this mailstream (*i.e.* the non-letter Standard mail residual shape DDU entry service) in the prepared testimony and library references submitted with the request.

Also absent is any numerical estimate of projected revenues. The Postal Service has not provided the information "in the greatest level of detail practicable" for this record. Not only is the missing information relevant and material to the Commission's decision, the Postal Service's claim that it would be an undue burden to provide this information is without reason.<sup>9</sup> In all likelihood, the Postal Service prepared an analysis for this project estimating the return on investment (ROI) at some point before the

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<sup>9</sup> The Postal Service's claims, relevant to revenue, are that data regarding economic substitutability (Rule 64(b)(3)) would not be necessary or useful and would not impair the Commission's ability to evaluate the Request. As to the other Rules, 64(d) and 69(a)(3) (in part) "Strict compliance...would be unduly burdensome, particularly given the limited value of the quantitative data called for in evaluating the Postal Service's proposal." It would not be, they say, in the interests of the Postal Service or the public to delay opportunities to expand eligibility of heretofore unmailable shapes.



project was approved by management. But, not only is no study provided, there is not even a cursory calculation provided in the filing for the Commission to evaluate the potential for profitability of the Request. It stretches credulity that the Postal Service has moved ahead with this project with no more cost, volume or revenue analysis or projected ROI analysis than that presented in the materials filed.

Furthermore, Rule 69a(b) provides that where data is unavailable, the Postal Service shall explain that unavailability as required by Rules 64(a)(2)(i)(ii) and (iv). The Postal Service has not met those requirements. Rule 64(a)(2)(ii) calls for the reasons that information is not available and cannot be made available without undue burden. The Postal Service has not provided reasons why they have not done a market test that would provide some estimate of revenues and they have not explained why they have failed to provide the cost calculations to support the application of the residual shape surcharge being applied to CMM. Nor have they attempted to calculate the revenue lost from the substitution of CMM mail for current Standard Mail except to suggest that it could not occur. Nor have any reasons been provided why they cannot calculate the start-up costs for this service and other overhead costs.

The marketing report in USPS-LR-2 even recognizes there will be a certain amount of implementation costs. It says, the Postal Service will need to "Educate mail acceptance clerks and carriers, iron out the delivery kinks (e.g., non-damaged placement in mailboxes), gather data on recipients' impressions and likely responses." (USPS-LR-2 at 35.) Also, USPS-LR-2 says the Postal Service must work with its sales force and business partners to ensure adequate lists of post office addresses, compile lists linking delivery addresses to DDU's, identify consolidators willing and able to handle

drop shipments, educate mail houses and printers as to the new procedures, drop shipment options, and reasonable cost alternatives. (*Id.*) All these activities have costs. If the revenues will be as light as suggested, there is a distinct possibility that there will never be profits.

A. There are no cost estimates

Studies regarding costs, volumes and revenues to support the classification change are so fundamental to a record that the Commission cannot merely waive these requirements and continue with the case. The OCA has combed all of the submitted testimony, library reference USPS-LR-2, and the formal Request for cost, volume and revenue estimates offered by the Postal Service to support this permanent classification request. No numbers are included anywhere. Responses to interrogatories to date have also failed to elicit numbers. In fact, they confirm that no calculation estimates exist.

Costs of the CMM service are mentioned only once by witness Hope ("application of the rates...helps to assure that the CMM price and costs are not misaligned. Given that CMM pieces will bypass operations at the mail processing plant, from a qualitative perspective, it would appear that CMM pieces will yield positive contribution at the applicable rates.") (Hope at 10, l.1-4.) Note, the perspective cited is qualitative rather than quantitative and it "would appear" the contribution will be positive. No numerical calculations are provided whatsoever to support even this tentative conclusion. Witness Ashe does not testify as to costs and only refers once to witness Hope's prepared testimony that "CMM will not cause a significant impact on the contribution of Standard Mail toward institutional costs." (page 14, l. 1-2.)

The Library Reference sponsored by witness Ashe provides virtually no discussion of costs except to highlight a Postal Service cost that may or may not impact contribution. It notes that the Postal Service expenses for approving CMM mailing should be free to the mailer because no one is willing to pay for such a review and this would be true even if "pilot tests" were conducted (which the Postal Service apparently has not done). The cost of Postal Service review and approval is not estimated in any of the filed material.

Finally, the Request points to witness Hope's vague conclusory testimony, noted above, that CMM would not cause a significant impact on the contribution of Standard Mail toward institutional cost. However, the rule for minor classification treatment is stricter, and is cited by the Postal Service, itself: the proposal must "not significantly increase or *decrease* the estimated institutional cost contribution of the affected subclass or category of service." (Emphasis supplied.) (Request at 3) The potential impacts on contributions from the CMM service are not estimated. The Request incorporates by reference cost assignments pertaining to classes of mail from Docket No. R2001-1 (Request, Attachment D, page 5.) (we might add, without specific references to the record such as to Standard Mail cost assignments or specific exhibits or testimony), and is grossly insufficient. The Postal Service notes that it has not prepared a "full analysis of the effects on the Postal Service's costs, revenues or volumes...." (*Id.*) The Postal Service has apparently done *no* analysis and certainly has not presented any to the Commission in this case.<sup>10</sup>

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<sup>10</sup> The interrogatory responses from witnesses Ashe and Hope have confirmed this conclusion. OCA/USPS-T1-2--"The Postal Service did not perform any analysis or studies that examined the carrier time needed to handle and deliver Customized Market Mail " (no noticeable impact on handling/processing and delivery at DDU); OCA/USPS-T1-7--"there is no basis for making volume projections of the sort relied

There would be costs for implementing the service such as roll-out costs and training costs that will probably never be recovered. Overhead costs of implementing the service cannot be insignificant when compared to the potential estimated revenue. At the very least, information must be provided to the DDUs for handling CMM together with some degree of training or explanation to the personnel who may be responsible for handling CMM. Even though the CMM is to be entered at the DDU at the basic Standard Mail rate which eliminates some transportation and processing costs, the amounts are not estimated by the Postal Service and may actually be more than offset by added carrier costs and DDU processing costs.

Significantly, the residual shape surcharge cannot be considered likely to cover and offset any additional costs incurred to provide CMM service. The residual shape surcharge itself only covers a fraction of the true difference in cost between presorted parcels and flats. In Docket No. R2000-1, it appears the flat-parcel cost differential, after adjusting for the presort and dropship differential, was 84.1 cents. The current residual shape surcharge of 23 cents is designed to recover some of the costs related to the shape differences, but only 27.3 percent of those costs are passed through to the mailer. (23 cents / 84.1 cents is 27.3 percent) The Commission permitted flow-through of only a portion of the actual flat-parcel cost differential in order to mitigate the rate shock on mailers subject to the residual shape surcharge.<sup>11</sup> Thus, there is no excess revenue contribution available from that surcharge to ameliorate unanticipated and unidentified losses from excessive CMM carrier, acceptance and implementation

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upon to conduct a ratemaking analysis. No quantitative market research exists to inform such an analysis." Responses redirected to witness Hope: OCA/USPS-T1-8--"quantitative calculations were not performed for CMM" OCA/USPS-T1-13--"I have not calculated a ballpark [unit] cost figure."

costs.<sup>12</sup> The Postal Service has not provided a cost study to support its use of the basic rate with the residual shape surcharge.

Also, CMM is a new service. The rate charged for that service must cover its costs. As noted above, the flat-parcel cost differential does not provide for the recovery of attributable costs. While the concern for rate shock may have been relevant for the existing services, it should not be a factor in determining the viability of new services. Otherwise, the new service will clearly be subsidized by other users in the rate category. New service should not be approved if the Postal Service can only suggest that by blending the costs of the mail category or averaging costs the negative impact of the new but unprofitable service will be diminished.

The important point is that the Postal Service has not even attempted to quantify the costs to demonstrate that the revenues will exceed the costs. Given the shortfall in the residual shape surcharge revenues below costs, the presumption must be that the revenues for parcel shaped CMM mail will not recover costs.

Finally, to meet the Rule 69a(a) requirement that an estimate in the greatest level of detail practicable must be provided on the overall impact of the change on postal costs and revenues, the Request cites to the conclusions of witnesses Hope, and Ashe (who relies on Hope), that "the proposal would have no appreciable impact on contribution." (Attachment D at 10.) Then, the Postal Service asks for waiver of the

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<sup>11</sup> "Opinion and Recommended Decision," Docket No. R2000-1 at 353; "Opinion and Recommended Decision," Docket No. R97-1 at 404.

<sup>12</sup> See LR-J-58, Tables 5 and 6, Docket No. R2000-1. The difference in cost between handling a Standard Mail flat and a parcel is 93.6 cents less a 9.5 cents adjustment to reflect the difference in presorting and entry profile, or 84.1 cents.

provision, "To the extent that the information and materials cited and incorporated above are deemed insufficient under the Commission's filing requirements..." (*Ibid.*)

Under the Commission's rules, in order to obtain minor classification treatment the proposal must not significantly decrease the estimated institutional cost contribution of the affected subclass or category of service. It is clear from the above survey of the materials presented by the Postal Service that the Commission will be unable to determine whether this is true. In any event, it is at least possible and even probable that the new service will be subsidized by other Standard Mail users.

B. There are no volume estimates

Just as with the missing cost analysis, the volume and revenue analyses are equally deficient and would be insufficient to support approval. Witness Ashe provides the limited volume estimate evidence. With surprising candor, Witness Ashe says, "there is no documented record of demand or use for CMM. Obviously, when something has never been available before there cannot be a record of its use..." (page 5-6.) His only other volume related comments refer to the Report in Library reference USPS-LR-2, stating that the CMM was "received with enthusiasm" in the focus groups (page 6, l 13-4.) but there was "a desire to evaluate its effectiveness before using it in widespread mailings" (*Id.* at l. 16.) Witness Ashe concludes that for the foreseeable future CMM would remain a low-volume form of mail. (pages 6-7.) Again, there was no attempt to even estimate a volume. Witness Ashe does point out that the low volume was deemed to be so low (we do not know how low) that it would

rarely qualify for destination entry discount or another presort rate and therefore, in the interests of simplicity those rates were not recommended. (page 9, l. 11-17.)

Witness Hope notes CMM is "low-volume" (page 3, l. 1.) and reiterates witness Ashe's testimony that "there is no estimate of volume for [CMM's] use." Witness Hope continues that as one of many advertising vehicles available, "it is clear that CMM would likely be used in limited circumstances." Again, witness Hope's testimony contains only qualified statements of volume usage drawn from the market research, apparently only that in USPS-LR-2.

The Market Potential report, USPS-LR-2, only says this about volumes, "All test mailings are likely to be incremental volume." (page 23) and "Given advertisers' desire to market test, the initial volume is likely to be manageable." (page 35).

The Request adds nothing regarding the estimated volumes. It notes the "low-volume of CMM" (page 2) and requests waiver of Rule 64(d), as noted above, concerning the impact of changes in total revenues which rely in turn on estimated volume. If waiver is permitted, the record is bare of reasonable estimates of the impact on cost contribution, *i.e.* is the contribution from CMM positive or negative. Presumably, the Commission would not wish to approve CMM if, standing alone, it were known to be a money loser, even if the Standard Mail rate category (*i.e.*, nonletter basic piece rated mail that pays 34.4 cents) still continues to contribute to institutional costs. CMM would, in that way, unfairly impact users of other Standard Mail categories, contrary to the claim of witness Hope (page 7, l. 17.)

C. There are no revenue estimates

The pleadings are also consequently very sparse with the revenue estimations. Witness Ashe cites "small revenues" (page 7, l. 2.). The filing repeats several times that CMM will have no substantial effect on institutional contribution. (Ashe at page 7, l. 7-8; page 13, l. 9; page 14, l. 2.) (Hope at page 3, l. 3; page 9, l. 20.) (Request, Attachment D at page 10.) Witness Hope concludes more specifically with respect to the CMM profitability, without foundation, that "it would appear that CMM pieces will yield positive contribution at the applicable rates." (page 10, l. 3-4.) The Market Potential study<sup>13</sup> (Library Reference USPS-LR-2 sponsored by witness Ashe) indicates that there may only be, at best, a small market and, thus, revenue support for CMM service is minimal. The Market Report (USPS-LR-2) notes that the exact price per piece had not yet been determined; therefore it could not have estimated revenues with any degree of certainty. (USPS-LR-2 at 2.) Realistically, as there are no definitive statements of intent to use the service from mailers, the Market Potential report demonstrates such an insufficient market for this service that it is possible the Postal Service would establish another service that will lose money.

It is also significant that the Postal Service is here requesting a permanent classification, rather than planning a market test (which they have not even done). The history of Mailing Online is recalled as relevant.<sup>14</sup> There the initial market analysis proved optimistic. The Postal Service incurred large losses implementing that service

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<sup>13</sup> "The Market Potential for Customized MarketMail, Qualitative Insights" prepared for USPS, National Analysts Research and Consulting, November 4, 2002.

<sup>14</sup> See *Mailing Online Service*, "Opinion and Recommended Decision on Market Test," Docket No. MC98-1, October 7, 1998; *Mailing Online Experiment*, Docket No. MC2000-1, "Opinion and Recommended Decision," June 21, 2000.



with negligible revenues.<sup>15</sup> Here, the marketing study consists of indefinite statements suggesting only that potential customers might be interested in the CMM service. In fact, for the Mailing Online project, the Postal Service did a brief market test followed by an experiment,<sup>16</sup> in order to "avoid premature commitment to a permanent service in need of adjustment."<sup>17</sup> In this case, without any known market, without any specific cost estimates or overhead cost estimates, and without any experimental-change test, the Postal service expects the Commission to approve a permanent classification, all on an expedited basis.

There is no known market and the Postal Service has not pointed even to one customer ready to use the service. As stated by the Postal Service, the revenue will be negligible, if any, so there will be no revenue benefit from an early decision. In fact, the sooner the classification is approved, the sooner the Postal Service may incur losses on this service.

Merely because the Postal Service is picking and choosing to apply certain parts of the existing Standard Mail rate structure to the CMM service does not ensure that the new service will be self-sustaining and will contribute to overhead costs. In fact, only a cursory analysis suggests the opposite--that the new service will be a burden on those existing Standard Mail customers who do not make use of the new service. Surely, the Commission would not approve a new unprofitable service on the theory advanced by the Postal Service that the market is so small and the costs so limited that the overall institutional cost contribution of Standard Mail or Standard Mail non-letter basic will be

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<sup>15</sup> *Mailing Online Experiment*, Docket No. MC2000-2, at 5, 8-12.

<sup>16</sup> *Mailing Online Service*, Docket No. MC98-1 at 1, 4-6.

only slightly impacted (although detrimentally). Nor can the Commission move forward to consider a request where the Postal Service admits from the outset that it has no costs, volumes or revenues to support a favorable determination and where any realistic appraisal indicates the service will not contribute to recovery of institutional costs..

The Commission must either suspend the proceedings pending the Postal Service providing estimated costs, volumes and revenues or reject the Request as inadequate on which to reach a decision. On the face of the proposal, as filed, there simply is insufficient data in the nature of costs, volumes or revenues to permit the Commission in good conscience to consider this application.

D. Other requirements for waiver have not been met

Also, pursuant to Rule 69a(b), the Postal Service has not satisfactorily explained the unavailability of information required under Rule 64. The above arguments demonstrate why the Postal Service's explanation is not satisfactory and why, as provided by Rule 69a(b)(1), "it was clearly unreasonable for the Postal Service to propose the change in question without having first secured the information and submitted it in accordance with §3001.64...."

III. Suspension and other alternative procedures

If the Commission determines the minor classification rules are inappropriate and suspends the proceeding to provide the Postal Service an opportunity to either

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<sup>17</sup> *Id.* at 6.

provide the required data or recast the Request, the following alternatives might be followed by the Postal Service.

Rather than seek a permanent classification, given the lack of information as to the market for the CMM service, the Postal Service ought to consider requesting authority pursuant to Rules 161 through 166 for a market test of CMM. The market test rules recognize the need to collect data to support a permanent classification. The rules provide for the gathering of data and the reporting of that data to the Commission during the market test and *before* the subsequent filing of a request for a permanent classification change. The kind of data contemplated to be collected in a market test has not been provided by the Postal Service in this case. At a minimum, the Postal Service needs a market test to obtain this data. The excuse that the cost of collection is a burden suggests, instead, that the classification is not warranted.

Alternatively, the Postal Service might proceed pursuant to Rules 171 through 176 for provisional service changes of limited duration. These changes supplement, but do not alter, existing mail classifications and rates for a limited and fixed duration, generally for up to two years. They provide for the introduction of provisional services that enhance the range of postal services available to the public without materially affecting postal revenues or costs or causing unreasonable harm to competitors. Those rules contemplate that, if the provisional service is successful, permanent classification may thereafter be sought. Those rules also provide for the gathering of data; again data that has not been provided by the Postal Service in this case where it seeks a permanent classification.

Also available, are the experimental change rules, Rules 67 and 67a through 67d. These rules also contemplate the collection of data to support a later permanent classification.

Significantly, the minor classification rules relating to requests for permanent classification do not provide for data gathering. By the time a request for permanent classification is filed, sufficient market data is expected to be available to enable the Commission to determine whether permanent service is justified. Thus, no purpose would be served by requiring the further gathering of data for minor classification proceedings that will become permanent. The unavailability of any data to support the Postal Service Request, filed pursuant to minor classification rules that assume there is no need to further compile market or experimental data because it has already been collected, underscores the inappropriateness of the rules invoked by the Postal Service in this case.

The Request should be rejected summarily if, after given further opportunity, the Postal Service refuses to provide or is unable to provide the missing information. If the Commission continues the case pursuant to the minor classification rules, the Commission should deny the request for waiver (with minor exceptions relating to the requirement to provide information as to the *overall* impact on Postal Service costs and revenues).

#### IV. Postal Service motion for expedition

OCA sees no need at this time to grant the request for expedition. OCA recognizes that Rule 69c provides that minor classification cases will be treated as

"subject to the maximum expedition consistent with procedural fairness." A schedule shall be adopted to allow for a recommended decision in not more than 90 days after the filing of the request if no hearing is held, or, in this case, June 12, 2003. If a hearing is held, a recommended decision is to be issued in not more than 120 days, July 12, 2003.

No reasonable grounds have been presented for expedition of this request. In fact, other than recounting the current factual situation, the Postal Service's request for expedition merely states that, because there are only two pieces of testimony and one substantive library reference, discovery should not be an issue. However, it is not the volume of testimony, but the deficiency in the application that precludes the ability to continue with the Request as a minor classification proceeding and precludes a need for expedition

#### V. Settlement discussions

The OCA does not oppose the establishment of settlement discussions; however, for the reasons stated above, the total absence of potential costs and revenues may preclude meaningful settlement discussions.

#### VI. OCA motion to defer the time to request a hearing

The OCA requests deferral of the time for requesting a hearing pending a Commission ruling upon the Postal Service's motion for waiver and OCA's motion to deny the request for minor classification treatment of the Request and suspension of proceedings.

## VII. Conclusion

Wherefore, OCA respectfully requests that the Commission

1. Deny the waiver requests of the Postal Service (except for Rule 64(d)(ii) and (iii), relating to *total* Postal Service costs and revenues) on grounds that the required data has not been provided to the greatest level of detail practicable and that without any such data the filing would be deficient;
2. Determine that consideration of the Request pursuant to the minor classification rules is not appropriate at this time and suspend the proceeding pending the further submittal of supporting cost, volume and revenue data by the Postal Service or pending a decision by the Postal Service to recast the nature of its Request to proceed under the market test, provisional, or experimental change rules suggested herein, or that the application may be treated in accordance with other appropriate provisions pursuant to Subpart C of the Commission's regulations;
3. Grant OCA's motion to defer the time for parties to request a hearing pending the Commission's ruling upon the outstanding motions;
4. Deny the Postal Service motion for expedition; and,
5. If the Commission determines that the minor classification request should be further considered by the Commission, then pursuant to Rule 69a(b), because OCA has demonstrated that the Postal Service has been unreasonable in failing to first secure the cost, volume and revenue estimate information for CMM and submitting it in accordance with Rule 64, permit OCA to contend the Postal Service minor classification request

should be rejected on the grounds that the required data has not been provided by the Postal Service.

Respectfully submitted,

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