

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

CUSTOMIZED MARKET MAIL MINOR
CLASSIFICATION CHANGES

Docket No. MC2003-1

**UNITED STATES POSTAL SERVICE
INITIAL BRIEF
COMMENTING ON STIPULATION AND AGREEMENT**

UNITED STATES POSTAL SERVICE

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PROCEDURAL HISTORY

This proceeding was initiated on March 14, 2003, when the Postal Service filed with the Commission a Request for a Recommended Decision on Customized Market Mail (CMM) Minor Classification Changes. In support of its Request, the Postal Service filed the direct testimony of Christopher Ashe (USPS-T-1) and Laraine Hope (USPS-T-2). The Postal Service also filed two library references. USPS LR-1 contains possible samples of CMM pieces, and USPS LR-2 contains market research commissioned for the purpose of gauging market interest in a CMM product.

The Postal Service designated the request as one which involves a minor classification change, and thereby requested that the Commission apply its expedited minor classification case rules of practice and procedure in 39 CFR §§ 3001.69 - 3001.69c. The Postal Service also proposed additional measures to expedite the proceeding, and provided advance notice to the Commission of the prospects for settlement. The Postal Service also moved for waiver of sections 64(b)(3), 64(d), and 69a(a)(3) (in part) of the Commission's Rules of Practice and Procedure in connection with its Request.

The proceeding moved along swiftly. On March 19, the Commission issued Order No. 1365 providing notice of the proceeding and inviting interested persons to intervene through April 9. 68 Fed. Reg. 14435 (Mar. 25, 2003). The Commission also appointed the Office of Consumer Advocate (OCA) to represent the general public in the proceeding. To expedite the proceeding, the Commission encouraged interventions and responses to the Postal Service's motions for waiver and expedition by April 3. The Commission further appointed counsel for the Postal Service as settlement coordinator.

Activity in the proceeding was relatively light. Fifteen participants filed notices of intervention in this proceeding. Only the OCA and David B. Popkin directed

interrogatories to Postal Service witnesses. Postal witnesses generally responded to discovery requests early, usually within ten days of filing. No participant challenged objections raised by the Postal Service to a few OCA discovery requests. There were no contested material issues of fact. No participants requested hearings on the Postal Service's direct case or the opportunity to present a case-in-chief or evidentiary rebuttal.

On April 3, the OCA filed its response to the Postal Service's motions for waiver and expedition, and filed motions of its own.¹ The basic theme of the OCA pleading was that the Postal Service's Request for CMM was deficient because, in the OCA's view, the Postal Service had not provided sufficient information to determine the impact on postal costs and revenues, or the impact on other Standard Mail users. The OCA sought various remedies, including (i) suspending the proceeding until the Postal Service filed supplemental cost, volume, and revenue data; (ii) suspending the proceeding to allow the Postal Service to recast the Request as a market test, provisional, or experimental change; or (iii) summarily rejecting the Request if the Postal Service did not furnish additional information demanded by the OCA. The Postal Service argued in response that (i) the Request for CMM was properly before the Commission under the expedited minor classification rules, (ii) the OCA's concerns were misleading and prematurely raised, and (iii) the forms of relief requested in the OCA Motion lacked legal foundation and were in direct conflict with statutory and judicial authority.

The Commission addressed these controversies in Order No. 1368, issued on April 14. Specifically, the Commission ruled that the Request was properly before the Commission under the expedited minor classification rules. The Commission also

¹ Office of the Consumer Advocate (OCA) 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 a Hearing (hereinafter "OCA Motion"), filed on April 3, 2003.

denied the OCA's request to suspend the proceeding. The Commission further granted the Postal Service's Motion for Waiver.

Settlement and prehearing conferences were scheduled on April 9. In view of the fact that no participants requested a hearing, on April 23 the Presiding Officer issued a ruling establishing a schedule for close of written discovery and submission of designated written cross-examination, witness attestations, settlement documents, and briefs, if any.

On April 30, the Postal Service moved to have the Commission accept a Stipulation and Agreement. In that motion, the Postal Service advised that a large number of participants had committed to signing it. In addition to the Postal Service, eleven of fourteen participants filing notices of intervention in this docket, including Advo, Alliance of Nonprofit Mailers, American Postal Workers Union, American Spirit Graphics, AOL/Time Warner, Mail Fulfillment Service Association, Direct Mail Association, Magazine Publishers Association, Mail Order Association of America, Parcel Shippers Association, and Postcom signed onto the Stipulation and Agreement. As of the date of this brief, the few remaining participants that filed notices of intervention in this docket, including the Val-Pak Dealers' Association, Inc., Val-Pak Direct Marketing Systems, and two individual participants, as well as the OCA, have not signed. Also, as of this date, the Postal Service's Motion for Consideration of the Stipulation and Agreement as the Basis for Recommended Decision stands unopposed. No participant filed a response within the requisite seven day period, as provided in section 21 of the Commission's Rules of Practice and Procedure.

ARGUMENT

I. THE RECORD DEMONSTRATES CONCLUSIVELY THAT THE CMM PROPOSAL HAS BEEN ADEQUATELY ANALYZED AND SENSIBLY DESIGNED.

The record in this proceeding establishes that CMM has been adequately analyzed and reasonably designed. As background, the proposed CMM classification changes will enable certain types of advertising pieces, consisting of thin, lightweight, nonrectangular shapes, to becomeailable.² Such pieces would be limited to the nonletter basic rate categories in the Standard Mail Regular and Nonprofit subclasses.

Unlike other Standard Mail Nonletters, which can weigh up to 16 ounces, CMM pieces would be limited to 3.3 ounces, and would not be eligible for additional presort or destination entry discounts. CMM pieces would further be subject to strict entry requirements, so as to prevent them from entering into mail processing operations. Specifically, CMM would bypass all mail processing operations at plants and would enter the mailstream at the deepest possible entry point, *i.e.*, the destination delivery unit (DDU) level. Mailers could enter CMM directly at the DDU under existing mailing standards, or avail themselves of upstream verification combined with Express, Priority or Plant-Verified dropshipment for entry at the DDU. Ancillary and special service restrictions would also simplify handling methods and prevent CMM from entering the mail processing network in other ways. In addition, due to the fact that CMM would not consist of rectangular shapes and would not consist of letters or flats as currently defined, it is proposed that the residual shape surcharge apply to all items entered as

² In addition, CMM would be an option for pieces between ¼-inch and ¾-inch in thickness.

CMM. Accounting for the surcharge, the effective rate of CMM pieces in the Regular subclass would be 57.4 cents per piece, which constitutes the highest rate element combination in Standard Mail for piece-rated pieces.³

Witnesses Ashe and Hope provide a logical and reasonable explanation of the underlying rationale for the purpose and design of the CMM product. Specifically, witness Ashe offers sound business reasons for the proposal. USPS-T-1 at 2-7. His testimony notes that the current exclusion of nonrectangular letter- and flat-size pieces has limited the options available to advertisers seeking to reach their customers with advertising messages and designs that are more unique and creative than those allowed under current mailing requirements. USPS-T-1 at 4. Witness Ashe explains:

because of the existing prohibition on mailpieces that are nonrectangular and ¼-inch or less in thickness, advertisers and designers have had to rely on color and text alone to lure the addressee into the content of a mailpiece, where more creativity can be employed in the presentation of the sender's message. Where those techniques were considered inadequate, advertisers had no choice but to use channels other than the mail to deliver their message.

USPS-T-1 at 4. Witness Ashe states that CMM has accordingly been designed as a means for enabling senders to create mailpieces with highly-individualized designs.

USPS-T-1 at 5. As amply demonstrated in witness Ashe's testimony and market research in USPS LR-2, CMM responds to demonstrated customer interest in uniquely shaped advertising media. USPS-T-1 at 6; see *also* USPS LR-2/MC2003-1 at 35.

As witness Ashe explains in his testimony, CMM would overcome the limitations now imposed on creatively shaped pieces, but only under controlled circumstances that ensure minimal impact on postal operations. Witness Ashe explains that CMM would

³ Nonprofit CMM would be subject to an effective unit price of 46 cents.

bypass mail processing operations entirely by entry at or dropship to DDUs, thereby avoiding many of the operations that other Standard Mail residual shapes must undergo. USPS-T-1 at 7-8. In addition, CMM would not be eligible for additional presortation or destination entry discounts, and would be restricted from special and ancillary services. USPS-T-1 at 12.

Witness Hope's testimony offers a sound and reasoned explanation for the proposed classification changes extending eligibility to accommodate CMM. She notes that because CMM would be used in targeted mailings and would not necessarily be concentrated in 3- or 5-digit ZIP Code areas or on specific carrier routes, the Standard Regular and Nonprofit subclasses would serve as the most appropriate subclasses for CMM. USPS-T-2 at 6. Within these subclasses, she logically concludes that the Basic Nonletter, non-destination entry rate with the residual shape surcharge would be the best fit for CMM. USPS-T-2 at 6-7. As described in her testimony, the Basic category is appropriate because each CMM mailing would not be subject to any minimum quantity requirements other than the subclass minimum. USPS-T-1 at 7. She reasons that the density of CMM mailings would be unlikely to allow for the significant level of presortation that is currently required in order to qualify for further presort or destination entry discounts in the Regular and Nonprofit subclasses. *Id.* Furthermore, based on her review of market research in USPS LR-2, witness Hope justifies limiting CMM's eligibility to the Nonletter rate because the product is likely to be configured as a non-rectangular flat. USPS-T-2 at 7; see also USPS LR-2/MC2003-1 at 23. In light of qualitative market research, she reasonably deduces that the Nonletter basic rate would serve as the most suitable rate category for which CMM should be eligible. USPS-T-2

at 7. Finally, based on simple logic and the current Standard Mail rate design, witness Hope concludes that CMM should be subject to the residual shape surcharge because it would neither (1) be prepared as either a letter or a flat or (2) satisfy the specifications of letter or flats as prescribed in the Domestic Mail Manual. USPS-T-2 at 7.

In sum, the record demonstrates conclusively that the Postal Service has applied reasonable and sound analysis in its design of the CMM product. The proposal, as now embodied in the Stipulation and Agreement, merits recommendation by the Commission.

II. CMM FITS WELL WITHIN THE DEFINITION OF AN EXPEDITED MINOR CLASSIFICATION.

The uncontroverted record in this docket amply demonstrates that CMM conforms to the definition of an expedited minor classification as specified in sections 69 to 69c of the Commission's Rules of Practice and Procedure, 39 CFR §§ 3001.69 - 3001.69c. Those rules require that, to be eligible for consideration as an expedited minor classification, a proposal must (i) not involve a change in any existing rate or fee; (ii) not impose any restriction in addition to pre-existing conditions of eligibility for the entry of mail in an existing subclass or category of service, or for an existing rate element or work sharing discount; and (iii) not significantly increase or decrease the estimated institutional cost contribution of the affected subclass or category of service.⁴

⁴ The genesis of the procedures in Rule 69 can be traced to the Report by the Joint Task Force on Postal Ratemaking entitled POSTAL RATEMAKING IN A TIME OF CHANGE (June 1, 1992) (hereinafter "JTFR"). The Joint Task Force on Postal Ratemaking, which was composed of representatives from both the Postal Service and the Postal Rate Commission, was created to develop recommendations to the Postal Rate Commission and the Board of Governors on opportunities to improve the effectiveness

As amply demonstrated in the Postal Service's Request and supporting testimony, this proposal satisfies these criteria. First, CMM would be subject to existing Standard Mail Regular and Nonprofit nonletter basic category mail rates along with the residual shape surcharge. USPS-T-2 at 6-7. No new rates, fees, or surcharges were requested. USPS-T-1 at 13. Second, eligibility standards would not be restricted under this proposal; to the contrary, for pieces less than ¼-inch in thickness, the proposed classification changes would “make existing mail classifications more inclusive.”⁵ *Id.* For pieces greater than ¼-inch but less than or equal to ¾-inch in thickness, the proposed classification changes would establish optional entry and handling procedures. *Id.* Consistent with the minor classification requirements, CMM would constitute an optional mail preparation method. *Id.* Finally, as discussed more thoroughly in Part IV below, record evidence clearly demonstrates that CMM will not cause a significant impact on the contribution of Standard Mail towards institutional costs. USPS-T-1 at 13; USPS-T-2 at 8-10; Tr. 2/81-84. Thus, the proposal clearly fits within the standards for consideration as a minor classification change.

The Commission concurs that CMM is well suited for consideration as a minor classification, based on its finding that CMM’s “effects are likely to be appropriately limited in scope and overall impact.” PRC Order No. 1368, at 7. In sum, CMM is a prime example of a service warranting swift consideration and recommendation under

of the postal ratemaking process. JTFR at i. The Joint Task Force established a series of “consensus recommendations,” including accelerated procedures for, *inter alia*, expedited minor classification cases. JTFR at 55. The JTFR identified “changes in mailing requirements, eligibility standards, and categories of service with low aggregate costs and revenues” as examples of services suitable for expedited minor classification change procedures. This proposal clearly falls within the ambit of what the Joint Task Force intended be addressed in an expeditious manner.

the expedited minor classification rules.

III. CMM HAS BEEN APPROPRIATELY STRUCTURED TO LIMIT ITS IMPACT ON POSTAL OPERATIONS.

The record demonstrates that the Postal Service has developed a sensible and manageable plan for the introduction of CMM pieces. Witness Ashe explains that, if CMM-shaped items were introduced into the mailstream without entry restrictions, then they would require entirely manual handling and would not fit properly into containers designed to carry other mail. USPS-T-1 at 2-3. CMM has been designed to avoid such inefficient processing entirely. In particular, CMM has been designed to “bypass the mail processing operations designed for other mail.” USPS-T-1 at 7. Witness Ashe’s testimony explains that all CMM pieces must be entered at the DDU where this option is available, or dropshipped from upstream locations to the destination DDU. *Id.*

Dropshipment options would include Express or Priority Mail dropshipment to the DDU and plant-verified dropshipment. *Id.* In this manner, CMM would avoid mail processing operations at plants prior to delivery.

The record also shows that the Postal Service reasonably structured CMM to limit its handling and presence in mail processing operations after delivery. Specifically, witness Ashe explains that undeliverable-as-addressed CMM would not be eligible for ancillary forwarding or return services, thereby preventing its reentry into the mail processing environment. USPS-T-1 at 12. An additional factor designed to improve the operational efficiency of the service is that CMM pieces would never be held for pickup. USPS-T-1 at 12; Tr 2/62. Instead, CMM pieces would be required to participate in the carrier release program, which averts the need for the carrier to leave

⁵ Cf. PRC Order No. 1110 at n.18.

a delivery notice and return a piece to a delivery unit if it is too large to fit in a mail receptacle. Tr 2/62, 2/73-74. In sum, the Postal Service has undertaken careful planning so as to structure the operational design of CMM in a manner that limits its impact on postal operations.

IV. THE RECORD DEMONSTRATES BEYOND QUESTION THAT CMM WILL HAVE MINIMAL EFFECT.

The record in this proceeding shows conclusively, and without contradiction, that CMM will have minimal impact. The Commission should accordingly not have any reservation about recommending CMM under the terms of the Stipulation and Agreement.

Witness Ashe's findings that CMM will be a low-volume "niche" classification are unrebutted on the record. USPS-T-1 at 4, 6, 7. Specifically, he explains that focus group research surveying advertising and marketing professionals, "reinforce[es] ... that CMM is expected to be a 'niche' type of mail – complementing, rather than displacing, other forms of Standard Mail." USPS-T-1 at 6. Witness Ashe reasonably concludes that the industry's lack of experience with CMM, and the need to develop a cost-effective model for using it, will cause CMM to be a "low-volume form of mail, generating proportionally small revenues, and used only in those situations where a message of that sort makes financial and commercial sense." USPS-T-1 at 7. Witnesses Ashe and Hope further note that the relatively higher production costs of CMM would serve to limit use of the product. USPS-T-1 at 4, 6-7; USPS-T-2 at 8-9.

Witness Hope's testimony echoes these uncontroverted findings. She reasonably concludes that CMM would be a "low volume, specialized marketing

product,” Tr. 2/84, that would likely be used in “limited circumstances.” USPS-T-2 at 8.

These conclusions are based on the self-evident observation that CMM would “cost mailers more in both creation and execution than their current, more conventional direct mail campaigns.” USPS-T-2 at 9. Indeed, the effective rate of CMM pieces in the Regular subclass would be 57.4 cents per piece, which constitutes the highest rate element combination in Standard Mail for piece-rated pieces.

To illustrate the point, consider the tables below, which illustrate the postage cost of hypothetical Regular subclass mailings consisting of CMM pieces weighing 1.5 ounces each. Tables I and II below indicate that, putting aside entirely the production cost of CMM pieces, the unit cost of postage when CMM is entered using Priority Mail dropshipment would be quite substantial. As shown in column 8 in the tables below, the CMM total postage price per piece in the hypothetical mailings would range from roughly 66 to 96 cents per piece. The effective postage would be *nearly two to three multiples* of the current 34.4-cent rate that would be applicable if the CMM pieces were instead configured as basic tier flats.

TABLE I
Priority Mail Dropshipment
200 piece CMM Mailing at Regular Subclass Rates

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Number of Pieces per DDU	Weight of each DDU-bound package, including envelope and documents	Priority Mail Postage (average zone 5)	Total Priority Mail Postage	Total Priority Mail Postage per piece (column 4/ 200)	Total CMM Postage	Total Postage for mailing (column 4 + column 6)	Total Postage per piece (column 7/200)
10	1 pound	\$3.85	\$77.00	\$0.385	\$114.80	\$191.80	\$0.959
20	2 pounds	\$4.90	\$49.00	\$0.245	\$114.80	\$163.80	\$0.819
200	19 pounds	\$20.20	\$20.20	\$0.101	\$114.80	\$135.00	\$0.675

*Assumes each CMM piece weighs 1.5 ounces

TABLE II
Priority Mail Dropshipment
500 piece CMM Mailing at Regular Subclass Rates

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Number of Pieces per DDU	Weight of each DDU-bound package, including envelope and documents	Priority Mail Postage (average zone 5)	Total Priority Mail Postage	Total Priority Mail Postage per piece (column 4 /500)	Total CMM Postage	Total Postage for mailing (column 4 + column 6)	Total Postage per Piece (column 7/500)
10	1 pound	\$3.85	\$192.50	\$0.385	\$287.00	\$479.50	\$0.959
20	2 pounds	\$4.90	\$122.50	\$0.245	\$287.00	\$409.50	\$0.819
250	25 pounds	\$25.75	\$ 51.50	\$0.103	\$287.00	\$338.50	\$0.677

*Assumes each CMM piece weighs 1.5 ounces

Based on Tables I and II, it is clear that based on postage cost alone, mailers would have to make substantially higher investments in CMM postage, relative to mailings of rectangular flat-shaped advertising mailings. Moreover, this analysis does not account for the likely additional production costs associated with unusual and creative shapes, which would raise the total cost of CMM from the advertisers' perspective considerably. See USPS-T-2 at 8-9. Given the alternative of sending

rectangular shapes at a fraction of the cost, there can be no doubt that users of CMM will be drawn by the expected uniqueness of pieces rather than by their costs, thereby assuring that CMM will be a low-volume application.

Because CMM is accurately predicted to be a low volume category, witness Hope's conclusion regarding CMM's "negligible" impact upon institutional costs, USPS-T-2 at 9, is reasonable and based on substantial record evidence. Specifically, she concludes that "CMM's impact on Standard Mail Regular and Nonprofit subclasses overall is anticipated to be minimal, and its effect on the coverage of institutional costs is expected to be negligible." USPS-T-2 at 9. Witness Hope's further assertion that CMM should yield positive contribution is reasonable, particularly given her detailed analysis of CMM's physical characteristics, entry profile, and special and ancillary service restrictions. USPS-T-2 at 10; Tr. 2/81-84.

In sum, the record demonstrates convincingly that CMM will be a relatively small-volume application with minimal effect on costs and revenues.

V. THE CMM PROPOSAL COMPLIES WITH AND FURTHERS THE CLASSIFICATION CRITERIA OF THE POSTAL REORGANIZATION ACT.

The requested amendments to the DMCS will further the general policies of the Postal Reorganization Act ("Act") to "plan, promote, and provide adequate and efficient postal services at fair and reasonable rates and fees." 39 U.S.C. § 403(a). The requested changes also conform with the criteria of 39 U.S.C. § 3623(c). Specifically, as witnesses Ashe and Hope conclusively demonstrate, CMM promotes fairness and equity by offering mailers a new, optional method for sending creative, uniquely shaped direct marketing pieces. USPS-T-1 at 2-7; USPS-T-2 at 6-7. CMM is desirable from the perspective of advertisers and mailers interested in creative methods of communicating

with customers. USPS-T-2 at 8. The proposal is also desirable from the Postal Service's perspective, since CMM readily fits into the existing rate design and structure of Standard Mail Regular and Nonprofit subclasses, and expands postal offerings without burdening mail processing operations with highly inefficient pieces. USPS-T-2 at 8. In this sense, CMM, as structured in this proposal, would be mutually beneficial to both mailing and marketing industries, and to the Postal Service.

In sum, the record irrefutably demonstrates that the policies of the Act are satisfied.

VI. THE COMMISSION SHOULD HAVE NO RESERVATION ABOUT BASING ITS RECOMMENDATION ON THE SETTLEMENT AGREEMENT.

The Commission should have no reservation about basing its recommendation on the Stipulation and Agreement. The requested classification changes at issue in this proceeding have met relatively limited resistance. Indeed, the Stipulation and Agreement has received overwhelming support, with twelve participants⁶ signing onto its terms. Only a handful of participants filing interventions, namely the Val-Pak parties and two *pro se* participants, as well as the OCA, have not signed the document. Only the OCA and Val-Pak have expressed concerns about procedural and evidentiary aspects of the proposal though motions practice.

In addition, there has been no effort to present testimony that contradicts or attempts to modify the Postal Service's case-in-chief. All participants elected to forgo the opportunity to request hearings on the Postal Service's direct case. There have no issues of material fact to resolve. None of the participants exercised the opportunity to

⁶ In addition to the Postal Service, the signatories include Advo, Alliance of Nonprofit Mailers, American Postal Workers Union, American Spirit Graphics, AOL/Time Warner, Mail Fulfillment Service Association, Direct Mail Association, Magazine Publishers Association, Mail Order Association of America, Parcel Shippers Association, and Postcom.

present a case-in-chief or evidentiary rebuttal to the Postal Service's direct case. The Commission should also note that no participant has yet challenged the Postal Service's Motion for Consideration of the Stipulation and Agreement as the Basis for Recommended Decision.

In addition, the evidentiary record supporting the proposal is uncontroverted. No record evidence supports any alternatives to the CMM proposal, nor does any contradict the Postal Service's case-in-chief. Under the circumstances, where the Postal Service's direct case has not been challenged, it should be accepted, where, as here, there are no clear and convincing grounds challenging the credibility of the testimony. *See Dickinson v. United States*, 346 U.S. 389, 396-97 (1953); *White Glove Bldg. Maintenance, Inc. v. Brennan*, 518 F.2d 1271, 1276 (9th Cir. 1975); *see also Randall v. Comfort Control, Inc.*, 725 F.2d 791 (D.C. Cir. 1984) ("Although administrative law judges are not bound by uncontroverted testimony on the record, it is generally understood that an ALJ must 'expressly state clear and convincing reasons' for rejecting the uncontroverted evidence").

Even though a unanimous settlement does not appear likely, there is no requirement that settlement agreements be unanimous before they may form the basis of regulatory action. Indeed, the Commission has previously issued Recommended Decisions embracing nonunanimous settlement agreements, or even settlements which are opposed, such as the most recent omnibus rate proceeding, Docket No. R2001-1. *See* Initial Brief of the Postal Service, Docket No. R2001-1, at I-6 – I-8.

In sum, under the circumstances, the Commission should have no reservation about recommending the settlement agreement in the Stipulation and Agreement.

VII. THE STIPULATION AND AGREEMENT PROVIDES A SOUND BASIS FOR ACCEPTANCE OF THE POSTAL SERVICE'S PROPOSAL.

The Commission may easily conclude from its independent review of the record that the classification changes embodied in the Stipulation and Agreement are fully supported by substantial evidence on the record, and are entirely consistent with the policies and provisions of the Act. The merits of the proposals, and the uncontroverted record support for them, provide ample justification for the Commission to recommend the settlement agreement in its entirety.

The terms and conditions embodied in the Stipulation and Agreement are similar in structure and content to settlement agreements offered in previous Commission proceedings. The settlement's terms "pertain[] only to the instant proceeding" and do not bind the signatories to any ratemaking or legal principle that may underlie the settlement. Stipulation and Agreement ¶ 6. In addition, the settlement is not entitled to any precedential effect, and signatories to it are not "bound or prejudiced" by their assent to its terms. Stipulation and Agreement ¶ 7. The Stipulation and Agreement thus embodies the fundamental principle that it represents a negotiated settlement of the Postal Service's Request for a recommendation on CMM. The Commission's adoption of the Stipulation and Agreement would similarly not risk a broader, and unintended, application of the settlement in future proceedings. The Stipulation and Agreement would enable the Commission to support the objectives embodied in the Postal Service's proposal, without creating any binding precedent. See *Kelly v. FERC*, 96 F3d 1482, 1489-90 (DC Cir. 1996); *Office of Consumer's Counsel v. FERC*, 783 F2d 206 (DC Cir. 1986). Neither any party, nor the Commission, should therefore have

any reservations about a Recommended Decision based on the entirety of the proposals in the Stipulation and Agreement.

The Stipulation provides a further incentive for the Commission to accept it as a basis for its recommended decision. Specifically, paragraph 10 of the Stipulation and Agreement obligates the Postal Service to undertake a data collection and reporting plan. This additional measure goes well beyond what is required in the expedited minor classification change rules, which, as the Commission has recently acknowledged, are distinguished from the experimental rules in part based on the absence of post-implementation data collection and reporting. See PRC Order No. 1368 at 5.

The data collection required in the Stipulation would be accomplished through the Postal Service's agreement to amend its mailing statements to require separate identification of CMM mail. Data from the mailing statements would then be collected and analyzed to estimate both the annual volume and revenue of CMM. Under the terms of the Stipulation and Agreement, the Postal Service would report estimates of CMM volume and revenue annually to the Commission. Data reporting would continue until the conclusion of the next omnibus rate proceeding. As a result of the settlement, participants interested in revisiting the impact of CMM would be equipped with statistics that would aid in framing an analysis of CMM in the next omnibus rate case. Thus, the settlement provides a means to enable both the Commission and the participants to gauge the success of CMM prospectively, in the next rate case.

The Postal Service further submits that paragraph 10 of the Stipulation and Agreement adequately addresses the concerns expressed during the course of the proceeding, specifically with regard to the OCA's concerns that CMM risks becoming a

significant drain on Standard Mail institutional costs. The risk inherent in trying something new would be minimized, because the data collection and reporting effort would afford adequate mechanisms for evaluating the scope of CMM, once it is implemented.

CONCLUSION

WHEREFORE, the Postal Service, pursuant to 39 U.S.C. § 3623(b), hereby requests that the Commission submit a recommended decision in accordance with the Postal Service's Request and the Stipulation and Agreement.

Respectfully submitted,

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