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

CUSTOMIZED MARKET MAIL MINOR CLASSIFICATION CHANGES	**DOCKET NO. MC2003-1**

REPLY BRIEF OF POSTCOM AND MFSA

The Association for Postal Commerce ("PostCom") and the Mailing & Fulfillment Service Association ("MFSA") (referred to collectively as PostCom) file this brief in reply to certain of the arguments made in the initial round of briefing in the proceeding. Both PostCom and MFSA endorsed the settlement agreement that has been advanced to conclude the proceeding; the ultimate position of these two entities on the merits of the Customized Market Mail ("CMM") offering is clear. The positions staked out by some of the other parties to the proceeding are more confusing.

The Initial Brief of Valpak Direct Marketing Systems, Inc., and Valpak Dealers' Association, Inc. ("Valpak brief") and the "Initial Brief of the Office of the Consumer Advocate" ("OCA brief") start from the more or less common premise that the Postal Service's presentation in favor of CMM is inadequate because of the dearth of cost and volume data. The two presentations quickly diverge rather sharply from that common starting point with the Valpak brief concluding that the

CMM rates proposed are likely too high and the OCA brief concluding that those rates are likely too low.

PostCom concedes, as the record in the case requires, that this proceeding is not a paradigm of the customary cases before the Commission in which the OCA, PostCom and Valpak have previously litigated. The absence of more finely developed data on CMM costs and volumes does create some risk that either the OCA brief fears that the proposed CMM rates are too low or the Valpak brief protestations that the proposed rates are too high could be correct. Must the recognition of that possibility foredoom the CMA proposal? PostCom submits that it does not.

It is undoubtedly right that one of the ambitions of the Postal Reform Act of 1970 was to "get "politics out of the post office". [1] But Congress was certainly not so naïve as to believe it could render all of the uncertainty out of the "judgment on a myriad of facts" entailed in ratemaking. National Association of Greeting Card Publishers v. United States Postal Service, 462 U.S. 810, 825, 828-832 (1983) (discussing legislative history).

There will be uncertainty and the exercise of judgment and discretion in the ratemaking process. The question presented by the CMM proposal is whether the Postal Service has taken the PRC outside of the boundaries of its legitimate exercise of discretion by providing it with too few facts. We think that the answer to that question depends on the balance of two considerations.

The first of these is the power of the Postal Service to offer new postal services when it has candidly conceded that the cost of measuring rigorously derived cost and volume information a new service would outweigh the utility of the service itself. The second factor to this balance is the likelihood that the

[1] National Association of Greeting Card Publishers v. United States Postal Service, 569 F.2d 570, 588 (D.C. Cir. 1976) (quoting H.R. Rep. No. 91-1104, 91st Cong. 2d Sess. 6, U.S. Code Cong. & Admin. News 1970, 3649, 3654).

absence of good better data on costs and volumes will lead to an outcome flatly prohibited by the Act.

Neither the OCA brief nor the Valpak brief challenge the conclusion that the CMM offering is, in concept, desirable. See OCA brief 9, Valpak brief at 1. The Postal Service must have the power to initiate such services. Both briefs insist that absent more refined cost and volume and data, the rates associated with the new CMM classification, minor though it may be, will definitionally fail to meet the standard of 39 U.S. C. § 3622(b)(3).

Although not formulated in precisely this fashion, what the Postal Service has assumed is that the costs of the new CMM product will not exceed the undiscounted rate for Standard Mail Non-letters weighing up to 3.3 ounces when the Residual Shape Surcharge is applied, an "effective rate of CMM pieces in the Regular Subclass [of] 57.4 cents per piece, which constitutes the highest rate element combination in Standard Mail for piece-rated pieces." United States Postal Service Initial Brief Commenting on Stipulation and Agreement, 2. There is no reason to believe that this assumption is ill-founded. When gauging the extent to which reasonable-appearing facts assumed by the Postal Service in classification proposals ought to be credited by the Commission, one additional consideration is elemental. If an assumption only indirectly bolstered by facts runs the risk of fostering statutorily prohibited cross-subsidies, the Commission should proceed with considerable caution. When that condition is not threatened, however, the Commission ought to extend greater generosity to the Postal Service's assumptions.

Where, as here, every available shard of evidence suggests that the volumes of CMM mail likely to be produced by the new-found eligibility of such mail pieces for entry into the mail stream will be extraordinarily small. Recognition of this fact, which is not seriously disputed in the OCA brief, secures the conclusion that, even if the Postal Service is substantially wrong in its costing

analysis for the new service, there will be no significant adverse impact on other Standard Mail mailers.

The assumption in the OCA brief that every piece of mail that touches the mail stream must have its eligibility for entry festooned with elaborate proof that the rates charged for that mail piece defray its attributable cost and make some contribution to institutional cost raises formalism to too high a plane. The unarguable fact is that CMM mail will not have any cognizable prospect for increasing the costs of other standard mail. That secure conclusion is a sufficient basis for the Commission to recommend the CMM rates proposed by the Postal Service.

The OCA brief might be read as seeking to launch a very collateral attack on the Residual Shape Surcharge rate previously approved by the Commission in R2001-1. Any such reading should be summarily rejected as well beyond the procedural boundaries of this proceeding. Using a minor classification case to seek to re-litigate prior adjudications with which the OCA is dissatisfied would run the risk of perpetual reconsideration of settled standards in proceedings ill-equipped to bear such burdens. When changes in the Residue Shape Surcharge are proposed by the Postal Service, as probably they will be, the OCA will have every opportunity to voice its theories as to the appropriate level of those charges. Those theories should not be heard here.

The CMA classification proposal is a modest one. It should be considered on its own terms and not freighted with much larger issues the resolution of which should await an appropriate venue.

Respectfully submitted,

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