

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

CUSTOMIZED MARKET MAIL MINOR
CLASSIFICATION CHANGES

Docket No. MC2003-1

**UNITED STATES POSTAL SERVICE
REPLY BRIEF
COMMENTING ON OPPOSITION
TO THE STIPULATION AND AGREEMENT**

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.
Chief Counsel, Ratemaking

Anthony Alverno
Attorney

475 L'Enfant Plaza West, S.W.
Washington, D.C. 20260-1137
(202) 268-2997 Fax -6187
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I. THE OPPONENTS MISCHARACTERIZE THE CMM PROPOSAL AND APPLY THE WRONG LEGAL REQUIREMENTS.

A. The Opponents Misinterpret And Misapply The Act's Requirements.

Both OCA and Valpak support a fundamental misapplication of the Postal Reorganization Act's requirements to the Customized Market Mail (CMM) proposal. In essence, the opponents believe that cost information showing satisfaction of the 3622(b)(3) criterion is required as a matter of law in this pure classification case. OCA claims that the "statute requires a finding that the proposed revenues will cover the costs, no matter what the size of the project." OCA Brief at 33. Valpak echoes this concern, stating that evidence of cost "is not a minor factoid which can be waived—it is the statutorily required essence of rate setting for new mail classifications." Valpak Brief at 6-7. These claims are erroneous.

First, however, it is critical to understand the nature of the CMM proposal. The Request simply seeks the Commission's recommendation of several classification changes, all of which are designed to expand eligibility within existing Standard Mail categories to allow heretofore nonrectangular shapes to become mailable. Such minor changes do not equate to a request for change in rates. Indeed, not a single rate cell would change under this proposal. The request instead pertains to changes in two rate categories' physical characteristics, namely, easing shape restrictions in a manner that minimizes the effect on postal operations. In both theory and practice, such changes pertain exclusively to postal classification. See *National Retired Teachers Association v. United States Postal Service*, 430 F. Supp. 141, 147 (D.D.C. 1977), *aff'd*, 593 F.2d 1360, 1363 (D.C. Cir. 1979) (identifying key characteristics of a 3623 classification as

“restrictions on size, weight, content, ease of handling, identity of mailer and recipient, or other factor relevant to the makeup of a mail classification.”).

Moreover, the Request in this docket is not intertwined with a rate change request. While courts have recognized “it is not possible to establish rates [for new services] in the absence of classifications of service to which those rates apply,” *United Parcel Service v. US Postal Service*, 615 F.2d 102, 111 (3d Cir. 1979), the converse is not true; that is, a pure classification case can stand on its own without an accompanying request for change in rates. See *National Easter Seal Soc. for Crippled Children & Adults v. United States Postal Service*, 656 F.2d 754, 762-63 (D.C. Cir. 1981) (commenting that a pure classification case is not accompanied by recommended rate changes). The un rebutted evidence in this proceeding clearly demonstrates that this proceeding is nothing but a pure classification case.

The opponents would effectively read section 3623 out of the Act. Judicial precedent has long held that the Act establishes “separate, though parallel, procedures for considering” mail classification and postal rate changes. *National Ass’n of Greeting Card Publishers v. USPS*, 607 F.2d 392, 412 (1979), *cert. denied*, 444 U.S. 1025 (1980); *Dow Jones v. US Postal Service*, 656 F.2d 786, 790 (D.C. Cir. 1981). Under 39 USC § 3623(c), the Act establishes a number of requirements for requests to change the Domestic Mail Classification Schedule (DMCS). Nowhere in the 3623 criteria is there a requirement that the Commission make findings pertaining to whether a service for which a classification change is requested also meets the 3622(b)(3) criterion that it be shown to cover its attributable cost. Rather, that requirement applies only to

proceedings in which the Postal Service requests a recommended decision “in a rate or rates of postage or in a fee or fees for postal services.” 39 USC § 3622(a).

The opponents’ argument effectively defies the intent of Congress to distinguish classification proceedings from rate proceedings. If Congress had intended that the Postal Service file with each classification request precisely the same showing that must be demonstrated under §3622 for changes in rates, regardless of whether the Postal Service determined that a change in rates was warranted, Congress’ intended distinction would be read out of the Act. Instead, section 3623 sets forth an independent set of statutory criteria by which requests for changes in classification are to be evaluated.

This is not to suggest that the Postal Service can decline to produce evidence pertaining to the 3622(b) criteria by merely characterizing a proposal as a classification change. See *United Parcel Service v. US Postal Service*, 615 F.2d 102, 111 (3d Cir. 1979). To the contrary, the Postal Service does not dispute that the section 3622(b) criteria may be relevant in a proceeding denominated as a classification case, but only when the Postal Service has combined its classification request with a change in an existing, or introduction of a new, rate or fee. That is not the case in the instant proceeding.

It should be further emphasized that the 3622(b) criteria are not relevant here. The Commission’s longstanding practice has been to require evidence of demand and 3622(b)(3) cost information at the subclass level. By contrast, rate categories “need not have institutional costs assigned to them directly,” PRC Op. MC95-1 at III-8, and thus the 3622(b)(3) demonstration need not be established for each category. Simply put, a

progressive expansion in eligibility within in a pre-existing classification does not *ipso facto* imply that a new subclass, requiring a section 3622(b)(3) analysis, has been created. The CMM proposal, which merely adjusts the classification schedule to allow more creative and unique shapes, is appropriately treated strictly as a classification proceeding. The opponents have thus misdirected their arguments in this proceeding. The request relates purely to minor classification changes, and as such, does not require evaluation under the 3622(b) criteria.

B. The Opponents Misinterpret The Rules Of Practice.

The opponents mischaracterize the requirements under the expedited minor classification rules. In essence, the opponents allege that the minor classification rules are tied to a showing that the 3622(b)(3) criterion is met. OCA Brief at 11-13; Valpak Brief at 7-9. OCA further asserts that the proposal cannot be recommended if it decreases the institutional cost contribution of the affected subclass. OCA Brief at 24. The opponents carelessly misapprehend the Commission's rules and their history.

The genesis of the opponents' misunderstanding appears to be rooted in a single passage of Order No. 1110, the Commission's Order in Docket No. RM95-4 establishing new rules, including, *inter alia*, the minor classification change rules. The opponents selectively quote a passage from that Order referencing the Commission's intent to adhere to the 3622(b)(3) criterion, but that quotation is taken out of context. OCA Brief at 11; Valpak Brief at 3-4. While Order No. 1110 does affirm that the Commission is bound "to recommend rates that recover estimated costs and contribute to the institutional costs of the Postal Service" under 3622(b)(3), its statement was not explicitly directed at the minor classification change rules. Indeed, the statement itself

refers to recommending *rates*. The statement clearly could not have been intended to apply to the minor classification rules, because these new rules *explicitly bar from consideration any proposal involving a change in a rate or fee*. Rule 69(a)(1). Rather, the Commission's reference to the 3622(b)(3) criterion in Order No. 1110 could only be reasonably interpreted to apply to other streamlined rules that were established simultaneously in connection with the minor classification rules. For example, the passage's reference to the 3622(b)(3) criterion would make sense if applied to the provisional service rules, under which requests for new, stand-alone services of limited duration, accompanied by rates or fees, with separately assigned markups, could be evaluated. Thus, the opponents are remiss in relying on the Commission's passing reference to 3622(b)(3) in Order No. 1110. Neither logic nor the plain language of Order No. 1110 could fairly be interpreted to signal the Commission's intent to apply a 3622(b)(3) evaluation in the context of the expedited minor classification change rules.

Based on their mistaken interpretation of the rule's history, the opponents misinterpret the Commission's Rules of Practice and Procedure as preventing the Commission from recommending classification change proposals that are not shown to satisfy the 3622(b)(3) criterion. Nowhere in the Commission's minor classification change rules is there any requirement that a classification change must be shown to satisfy section 3622(b)(3). Rather, the Commission's rules for expedited minor classification changes, as well as the rules for permanent classification changes, simply require, in the absence of waiver, a showing of the effect on costs, revenues, and volumes. Rules 64(d), 69a(a)(3). Here, in view of the proven minor nature of the CMM proposal, such requirement has been waived by Order No. 1368.

Moreover, the opponents cannot deny that the expedited minor classification change rules contemplate that a Request could result in a negative change in contribution of a given subclass. The rules clearly state a Request filed under the expedited minor classification change rules must not “*significantly increase or decrease* the estimated institutional cost contribution of the affected subclass or category of service.” Rule 69(a)(3) (emphasis added). Thus, classification changes brought under Rule 69, or for that matter under the regular rules of Rule 64, are not doomed simply because a participant alleges that the proposed change might yield an insignificant negative contribution. Indeed, the expedited rules expressly contemplate that a classification proposal resulting in a reduction in a subclass’ contribution would still be eligible to be recommended in accordance with those rules as long as the effect on contribution is insignificant. Although in the instant proceeding the uncontroverted record provides a reasonable basis to conclude that CMM would not cause a net loss, USPS-T-2 at 10; Tr. 2/80-84, non-evidentiary assertions to the contrary raised by the opponents on brief are insufficient grounds for the Commission to reject the proposal under the expedited rules.

C. The Commission Precedent Cited By The OCA Is Inapposite.

OCA claims that Docket No. MC93-1, the bulk small parcel service (BSPS) case controls here. OCA Brief at 32-34. The analogy to BSPS is inapposite. Docket No. MC93-1 involved a request for an “independent and self-contained class of mail,” PRC Op. MC93-1 at 66, consisting of highly automated bulk parcels. The Commission determined that the evidence did not demonstrate the need for an entirely new class; instead, it recommended that a separate rate category be established for bulk small

parcels. See PRC Op. MC93-1 at 77. The Commission explained that its decision was based on its analysis of the classification factors in 3623(c), as well as its findings regarding the Postal Service's cost and volume estimates. *Id.*

OCA also argues that the Mailing Online (MOL) case, Docket No. MC2002-2, is relevant to CMM. OCA Brief at 28. Similar to Docket No. MC93-1, the MOL proceeding involved, *inter alia*, a separate subclass for the non-postage related aspects of the MOL service. PRC Op. MC2000-2 at 68-76.

Neither BSPS nor MOL is instructive here. The principal flaw in OCA's analogy to BSPS is that it erroneously equates minor classification changes with a new class proposal, as was the case in BSPS. Similarly, it is wrong to suggest that CMM is a subclass proposal, as was MOL. Nowhere in the Postal Service's direct case is there any representation that CMM has unique cost and demand characteristics that warrant separate class subclass treatment for this product. *Cf.* PRC Op. MC95-1 at III-7-9 (citing PRC Op. R77-1 at 247). The CMM proposal would simply expand eligibility within existing Standard Mail categories to allow heretofore nonrectangular shapes to become mailable.

The Postal Service surely does not dispute that had it sought to justify class or subclass status for CMM, its evidentiary burden would have been much different. In such instance, barring a waiver of the Commission's rules, it would have had to furnish an analysis in some detail of the cost and demand characteristics of CMM mail. Yet the CMM Request is neither a class proposal, nor a subclass proposal, nor even a new rate category proposal. Rather, it is simply an expansion of eligibility for two existing rate categories. This is a far cry from the nature of the BSPS docket.

It also should be noted that BSPS was much wider in scope, thereby requiring a more rigorous evaluation by the Commission. The BSPS proposal was predicted to attract over 130 million parcels in the test year, with revenues estimated at roughly a quarter billion dollars. See Docket No. MC93-1, USPS-T-2 at 18 and Exhibit 2A. Similarly, MOL was predicted to generate in excess of \$600 million over the life of its experimental period. This clearly differs from the instant proceeding, which involves a very minor adjustment to two existing Standard Mail rate categories. Simply put, the CMM classification change does not equate to a new subclass, and the rates and fee criteria of § 3622(b) do not apply.

In insisting on a faulty analogy to Docket No. MC93-1, OCA reveals its own inexplicable memory lapse. Its selective account of Commission precedent dating back to the 1992-1993 period conveniently ignores the outcome of Docket No. MC93-2, a much more analogous classification case, filed less than two weeks after Docket No. MC93-1. In Docket No. MC93-2, the Postal Service requested changes to the classification of prebarcoded letter mail in First-, Second-, and Third-Class Mail to enable the Postal Service to require eleven digit delivery point barcodes in lieu of nine-digit ZIP+4 barcodes then required on automation-compatible mail. While seemingly minor, this change facilitated the adoption of automated delivery point sequence sortation, thereby paving the way for fundamental changes in mail processing and delivery operations. Several postal witnesses, including now Postmaster General Potter and now Senior Vice President Moden, offered testimony in support of the classification change. The support for the classification change was qualitative in nature; no cost studies analyzing the change in costs to the Postal Service were offered

in evidence. This led the opponents in that proceeding to challenge the proposal in evidentiary rebuttal and on brief. The Commission summarized the opposition in its

Opinion:

The parties opposing this proposal argue that the Postal Service's failure to introduce evidence allowing the Commission to review and evaluate the propriety of the assigned [delivery point barcode] rate is a fatal flaw, and the Commission should not approve the proposed classification change. [The opponents] suggest that the Postal Service deliberately and improperly termed its proposal a "classification" request to avoid Commission ratemaking proceedings under §3622. [One opponent] suggests that the Commission reject the service's proposal entirely until a limited ratemaking proceeding can be conducted.

PRC Op. MC93-2 at 29 at 9 (citations omitted). These arguments bear remarkable similarity to those now raised in opposition to the CMM proposal. In Docket No. MC93-2, however, the opponents' challenge did not obstruct the Commission's recommendation. The Commission explicitly rejected the opponents' claims and issued a recommended decision endorsing a reclassification of pre-barcode letters to require 11-digit delivery point barcodes. The Commission concluded that the then current barcode letter discount, which was based on cost models that assumed operational flows predating delivery point sequencing, could reasonably serve as the basis for the delivery point barcode letter discount. *Id.* at 31. The Commission explained that "[t]he current pre-barcode discount, even in the absence of a specifically designed [delivery point barcode] study, is a reasonable reflection of Postal Service savings." *Id.* at 31-32 (footnote omitted). The Commission went on to conclude that the proposal met the statutory criteria in 39 USC § 3623(c). *Id.* at 41-43. Of note is the fact that the Commission did *not* analyze the 3622(b) criteria, in conformity with its status as a pure classification change. *Id.*

The same reasoning and outcome should apply here with equal force. Inasmuch as the Commission was able to recommend the delivery point barcode classification change, it should also recommend the CMM proposal. Much like the Docket No. MC93-2, the Postal Service's current direct case rests purely on qualitative evidentiary support. Docket No. MC93-2 arguably presented more challenging circumstances, particularly given that the direct case had been challenged by record evidence rather than just argument, and the scope of the change involved more than 10 billion prebarcoded, presorted letters and cards. *Cf.* PRC Op. R90-1, Appendix G, Schedule 2 (units of presorted, prebarcoded letters and cards). Here the factors favoring recommendation of CMM are even more persuasive. The Postal Service's direct case has not been challenged on the record. Moreover, the scope of the change is miniscule in relation to the number of letters affected by the MC93-2 recommended decision. The Commission should accordingly reject the OCA's claim that the BSPS outcome case controls here. Rather, the Commission should look to its favorable disposition of Docket No. MC93-2 for guidance in rejecting the opponents' claims in this docket.

D. Claims That The Postal Service Has Met Not Its Evidentiary Burden Are Without Merit.

OCA resurrects arguments from its failed motion to suspend the proceeding and again claims that the Postal Service has been unreasonable in failing to obtain and provide cost, revenue, and volume information. OCA Brief at 16. OCA further claims that studies of costs and revenues are "so fundamental to an adequate record" that the Commission cannot merely waive these requirements and recommend approval. OCA Brief at 17. Valpak echoes these concerns and claims that the CMM proposal requires "separate costing." Valpak Brief at 9.

These claims have already been litigated and have been soundly rejected. In Order No. 1368, the Commission granted the Postal Service's Motion for Waiver of Certain Filing Requirements. Order No. 1368 at 7. In particular, the Postal Service was excused from having to provide quantitative cost, revenue, and volume information that would otherwise be required under Rules 64(b)(3), 64(d), and 69a(a)(3). It defies logic and common sense for the opponents to again insist upon studies and analyses on revenues and costs. The Commission's unconditional granting of the waiver effectively moots the opponents' claim that such information is a prerequisite to affirmative Commission action.

In addition, the evidentiary record supporting the proposal is uncontroverted. Neither of the opponents assembled any evidentiary presentation or testimony attesting to alleged failings in the Postal Service's direct case. Instead, the opponents bluster on redundantly on brief, in the vain hope that repetition of the canard that specific cost measurements are required makes it a truism. As the Postal Service argued in its Initial Brief, the Postal Service's direct case 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).

II. THE OPPONENTS' CHALLENGES TO THE COSTS AND REVENUES ARE ERRONEOUS, UNSUBSTANTIATED, AND SELF-CONTRADICTORY.

The opponents also make numerous, unsupported factual errors and contradictory allegations in their attacks on the cost, revenue, and volume evidence offered for CMM. Upon close inspection, none of the opponents' claims withstand

scrutiny.

For instance, OCA alleges that “CMM mail may weigh less than the average parcel but we do not know that.” OCA Brief at 22. OCA further claims that even if CMM weighs less, “we do not know whether that weight difference, which may be very small, is significant.” *Id.* These allegations are patently false, and are squarely at odds with record evidence. As discussed by witness Hope, the FY 2002 weight of the average residual shape surcharge (RSS) piece in the Regular subclass was 9.33 ounces; in Standard Nonprofit it was 7.50 ounces. Tr. 2/82. Both of these figures are between *two to three* multiples of *maximum* weight of CMM pieces, none of which can exceed the 3.3 ounce maximum weight. It should therefore be impossible for OCA to claim that the weight of CMM in relation to other residual shapes is an unknown fact. Moreover, since the maximum weight of CMM is limited to 3.3 ounces, it is likely that the average weight of CMM pieces will be much less than 3.3 ounces, and thus the disparity in weight between CMM and other residual shapes must be even greater. Indeed, this factor is one of many factors that witness Hope cites in support of the reasonable proposition that CMM pieces will have lower cost characteristics than their RSS counterparts. Tr. 2/81-84.

Another example of OCA’s ignorance of record evidence is found in the claim that the record is “silent” on whether CMM “is less costly to handle than the average parcel.” OCA Brief at 23. This false allegation is also coupled with OCA’s erroneous allegation that “there is no excess revenue contribution available from that surcharge to ameliorate losses from excessive CMM carrier, acceptance and implementation costs.” OCA Brief at 22.

These claims are unsubstantiated and wrong. The record clearly points to the opposite conclusion. Witness Hope demonstrates beyond question that CMM will exhibit much lower costs than other RSS pieces. She explains that CMM would avoid all of the transportation costs, and most of the mail processing costs, incurred by average RSS pieces. Together, the mail processing and transportation costs of average RSS pieces amount to 63.3 cents, or roughly 75 percent of the 84.1 cent differential between parcels and flats. Tr. 2/80-81. Assuming that all mail transportation and virtually all of the mail processing costs are avoided for CMM pieces, then the 23-cent RSS would be sufficient to cover the remaining 20.7 cents ($84.1 - 63.3$ cents) given the very conservative assumption that CMM exhibited the same cost characteristics as the average RSS piece. As witness Hope explains, however, there are abundant reasons why CMM would exhibit even lower cost characteristics than its other RSS counterparts in the operations in which CMM is actually present. Witness Hope's further assertion that CMM should yield positive contribution, USPS-T-2 at 10, is eminently 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. Her analysis puts to rest OCA's baseless allegations, and provides substantial record support for the conclusion that the RSS, in combination with the basic tier rate, will adequately cover CMM costs. USPS-T-2 at 10. OCA has presented no evidence to contradict the Postal Service's direct case, and its unsupported claims on brief should be rejected.

OCA also fails in analyzing the effects of CMM on other RSS shapes. Specifically, OCA claims that "CMM will exacerbate an already undesirable situation,

i.e., that non-residual shape pieces have to pay even higher rates than they are already paying” OCA Brief at 8. This allegation is not credible. The record clearly establishes the converse. Witness Hope explains that “[i]f anything, application of the RSS to CMM is likely to lower the overall average unit costs in the RSS pool, which includes parcels, rather than to raise them, as is suggested by the above question(s).” Tr. 2/84. For the OCA’s claim to be true, CMM would have to have higher cost characteristics than other residual shape pieces. Only in that circumstance could CMM even possibly widen the gap in costs between parcels and flats. OCA’s contention is completely without merit, especially when one considers the clear evidence that CMM pieces avoid many of the mail processing steps and delivery procedures that other residual shapes undergo. See USPS-T-2 at 10; Tr. 2/81-84.

OCA further errs in suggesting that because RSS pieces are on average below cost, the “presumption” must be that “parcel shaped” CMM will also not recover its costs. OCA Brief at 24. OCA cites no authority for such a speculative, and completely uninformed, proposition. One does not have to “presume” that CMM mirrors the cost characteristics of other residual shapes. In any given non-homogeneous grouping, one could disaggregate the pieces and identify some pieces that are above and below the average unit cost. This is a natural consequence of averaging, and is implicit in the rate design of all subclasses in which pieces having slightly different characteristics exhibit different cost profiles in relation to the subclass average. There is nothing novel or unprecedented about a sub-grouping of a rate category exhibiting lower cost characteristics than its counterparts within the same category. The Postal Service’s direct case shows beyond question that the costs of CMM pieces will be lower than the

average cost of other RSS pieces. There is accordingly no basis to lend any credence to the OCA's unproven "presumption".

OCA also erroneously claims that "[s]ome level of analysis must be required" on cost, volume, and revenue, thereby implying that this docket is devoid of such information. OCA Brief at 16. It is intellectually dishonest for OCA to put forward such a sweeping assertion. The Postal Service's direct case analyzes the cost, revenue, and volume effects of CMM with qualitative information, based on third-party market research, USPS LR-2, as well as the witnesses' professional experience. USPS-T-1 at 4-7; USPS-T-2 at 8-10. Moreover, OCA chooses to ignore that quantitative information on revenues and volumes will be provided prospectively, until the conclusion of the next rate case. Thus, contrary to the OCA's false assertions, these concepts have been addressed at several levels that the OCA apparently refuses to see.

The Commission should also ignore OCA's claim that CMM "should not be approved, if the USPS can only argue that by blending the costs of the mail category, or by averaging costs, the negative impact of the new but unprofitable service will be diminished." First, the Postal Service has not argued that the costs of CMM should be "blended" with other RSS pieces to "diminish" their costs. To the contrary, the record contains substantial record support for the opposite conclusion: if anything, CMM pieces will have a beneficial effect on other RSS pieces. In particular, CMM should *reduce* the cost differences between flats and other nonletters. Tr. 2/84. Second, the Postal Service has not sought to average the costs of CMM with other pieces so as to soften the alleged "negative impact" of CMM. To the contrary, the record points to the conclusion that CMM will cover its costs. USPS-T-2 at 10. It must be also emphasized

that the OCA is isolated in its pessimism and fear regarding the risk of losses occasioned by CMM. The only vocal opponent to the Stipulation and Agreement, Valpak, suggests the exact opposite, *i.e.*, that CMM is likely priced too high, not too low. Valpak Brief at 13.

OCA also erroneously assumes that that the Postal Service should have accounted for the costs associated with the review of CMM mailings, as well as training and implementation costs. OCA Brief at 19-21. First, however, it must be pointed out that the record establishes that mailpiece design approval is optional for CMM. USPS-T-1 at 11. Second, OCA provided no testimony on training, implementation, and design approval costs, and there is no record basis to evaluate the OCA's contentions. Finally, given that the record establishes that CMM is a minor classification change, any time and resources expended on training, implementation, and design evaluation would likely be absorbed in existing "stand-up" talks to postal employees, or combined with existing publications.

OCA further errs in its analysis of CMM costs and revenues. For example, it claims that the Postal Service has not "attempted to calculate the possible revenue leakage resulting from the substitution of CMM mail for current Standard Mail." OCA Brief at 17. Such "revenue leakage" is, as a practical matter, impossible; hence, OCA's fears are unfounded. If CMM is introduced, and at least one CMM mailing is entered that would not otherwise have been mailed, then postal revenues would unquestionably increase. There would be no "leakage" in this instance. CMM is also not at risk of cannibalization or diversion, because CMM would be priced at the highest per-piece rate in the Regular subclass. Standard Mail letters and piece-rated flats migrating to

CMM would be ineligible for presort and destination entry discounts, and would be subject to an additional 23-cent surcharge. Thus, in all likelihood, even if CMM attracted no new volume, existing pieces converting to CMM would generate more revenue. OCA's fear of revenue leakage would only come true in the improbable scenario in which pound-rated, surcharged nonletters above the breakpoint migrated to CMM, thereby depriving the Postal Service of revenue from the pound rate for these pieces. It is difficult to imagine why such pieces would want to shed extra weight in order to be entered as CMM instead of being entered as pound-rated nonletters. Thus, OCA's fears of revenue leakage cannot be taken seriously.

Valpak exaggerates the risk associated with instituting CMM as a permanent classification change. Valpak Brief at 9. Valpak fears that introducing CMM "without any record cost estimate is unacceptable and dangerous for all mailers." *Id.* This claim seriously overstates the risks. As the Postal Service pointed out in its Initial Brief, the Stipulation and Agreement provides for a data collection and reporting plan. Initial Brief at 14-15. Thus, participants interested in revisiting the impact of CMM would be equipped with statistics that would aid in framing an analysis of CMM in future rate cases. The risk of trying something new is adequately addressed, since the settlement provides a means to enable both the Commission and the participants to gauge the success of CMM.

Both OCA and Valpak cry foul because the Postal Service has not even developed a "ballpark" estimate of CMM unit costs. Valpak Brief at 14; OCA Brief at 14. Yet the opponents cannot seriously contend that the Postal Service can simply flick the proverbial switch and instantaneously generate an estimate of CMM costs. It is

important to keep in mind that CMM, by definition, will include an infinite universe of shapes. CMM's infinite variety of allowable shapes makes it impossible to structure a meaningful cost study for CMM. In addition, studying CMM's costs in a live environment, even prospectively, is likely to be a time-consuming and costly exercise. CMM volumes are expected to be small, and the rare CMM mailing would be unlikely to come within a data collector's purview. Thus, in all likelihood, sampling of CMM costs is unlikely to yield reliable cost estimates. Moreover, the case for studying the costs of CMM has no theoretical justification. To insist upon a study of basic tier, residual shape costs below the rate category level would be unnecessary, particularly given that CMM fits neatly within existing categories, and there is no record basis to conclude that CMM should be treated any differently than other RSS pieces. If the process of developing costs for CMM is as straightforward and simple as Valpak and OCA suggest, then one may reasonably question why neither directed its resources to making such a presentation, in lieu of making the shallow arguments put forth on brief.

Finally, in relation to the costs, the opponents also fail to consider practical considerations. CMM is expected to be a small volume service. The Postal Service applied due diligence in analyzing the market and developing the product design, and has developed a sensible and logical plan to introduce it using existing categories in which it fits naturally, while minimizing the effect on postal operations. It must be emphasized that CMM's costs will be measured, but only in the same manner as other RSS shapes. While it is easy to lob criticisms at the Postal Service for not having conducted, or committing to conduct, disaggregated cost studies for CMM, one must also consider that the resources needed for such an effort must be weighed against the

benefits. In this case, the record abundantly supports the conclusion that the postal Service struck the appropriate balance.

III. THE OPPONENTS' CHALLENGES TO THE PRODUCT DESIGN FAIL.

The opponents' criticisms of the product design and data collection are without merit. First, the opponents question whether the residual shape surcharge should apply to CMM. Specifically, OCA questions why the RSS would be extended to CMM if it is not like a parcel. OCA Brief at 23. Similarly, Valpak questions the application of the RSS, particularly given that CMM avoids most of the costs underlying the RSS. Valpak Brief at 11. The opponents' bare allegations do not withstand scrutiny. Neither party offered testimony in support of any other alternative, and application of the RSS to CMM is amply supported by substantial record evidence. USPS-T-2 at 7. As to OCA's concern, by definition, a residual piece does not need to be parcel shaped; rather, any piece that does not meet the requirements of a letter or flat, or even non-residual shapes that elect to avail themselves of the benefits of parcel preparation requirements, are subject to the RSS. Thus, there is no basis for challenging the application of the RSS to CMM pieces.

There is substantial record support for the product design. Based on simple logic and the current Standard Mail rate design, witness Hope reasonably 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 nor (2) satisfy the specifications of letter or flats as prescribed in the Domestic Mail Manual. USPS-T-2 at 7.

It is of no moment that the record establishes that CMM would exhibit lower cost

characteristics on average than other RSS pieces. This is a natural consequence of any non-homogeneous grouping. Surely, if one undertook to disaggregate a rate category based on any given non-uniform characteristic within that category, one might be able to make findings that the costs of one sub-category grouping are measurably different from those of another. This does not imply, however, that the rate category's classification is unfair or arbitrary. Indeed, the Commission has explained that “[n]either statutory logic nor practical reality ... requires that each separately-rated kind of mail be placed in a separate class or subclass. To do so would create a classification schedule of overwhelming length and complexity.” PRC Op. MC95-1 at III-8. The same logic applies at the rate category level. In a perfect world, where expense is no object, one might be able to identify, and give separate rate treatment to, an infinite number of sub-groupings within a rate category.¹ Yet no legal or policy objective compels such an outcome. The opponents’ argument would lead to an unwieldy and complicated classification schedule, and would spark an avalanche of proposals for further disaggregation. The Commission should not open this Pandora’s box.

Valpak also argues that the lack of destination entry discounts appears to constitute undue discrimination. Valpak Brief at 10. Valpak, however, points to absolutely no record evidence justifying any alternative. The record shows that the proposed product design reasonably precludes CMM from receiving destination entry

¹ The same reasoning applies to Valpak’s criticism of the data collection plan. Valpak criticizes the data collection plan in the Stipulation and Agreement on grounds that even after CMM has been offered for several years, the Postal Service still would not have any product-specific cost data with which to evaluate CMM, including applicability of the RSS. Valpak Brief at 16. Again, there is no basis for it to contend that each and every sub-grouping of a given rate category should be separately analyzed for purposes of assigning a unique rate.

discounts. Given the high price and expected low volume of CMM, it is anticipated that volumes per destination delivery unit will be small. USPS-T-2 at 7. Thus, precluding CMM from eligibility for destination entry discounts is reasonable and supported by substantial record evidence.

IV. OCA’S CHALLENGE TO THE MARKET RESEARCH UNDERMINES ITS FEARS.

OCA claims that the CMM product is faced with “paltry market potential.” OCA selectively quotes passages from the market research, and then boldly concludes that there is an “insufficient market for this service.” OCA Brief at 27. OCA further alleges the Postal Service has failed to identify customers of CMM. *Id.*

These baseless allegations are contradicted by the market research report. For instance, the report summarizes positive feedback based on individual statements. USPS LR-2/MC2003-1 at 15. Specifically, the researchers conclude that “advertisers and their agency partners love the *Customized Marketmail™* concept” *Id.* (lower case added). Further, the researchers found that “a large contingent believes that [CMM] has many of the design and response advantages of dimensional pieces....” *Id.* at 16 (lower case added). These conclusions stand in stark-contrast to the OCA’s bare and unsupported allegations.

The OCA also distorts witness Ashe’s response to discovery. OCA would have the Commission believe that simply because potential customers of the service have not been identified, there is no market for the service. OCA Brief at 30-31. This is not surprising, however, because the service does not exist, and there has been no

coordinated effort to collect and roll up such requests. Yet simply because the Postal Service does not maintain a directory of prospective CMM customers does not imply that demand for the product does not exist.

These arguments also expose internal contradictions in OCA's Initial Brief. On the one hand, OCA protests that CMM may be unprofitable, and its losses will come at the expense of other Standard Mailers, none of whom share OCA's view. OCA Brief at 16. On the other hand, OCA complains that the product has no demand. OCA Brief at 30-31. If the latter is true, however, then there is nothing for the OCA to fear, for the mere availability of a CMM option that no one utilizes cannot logically be the source of a financial loss. OCA seems perfectly content, however, to argue from both ends, perhaps because it has no facts or other evidence to support its contradictory allegations.

V. THE CRITICISMS PUT FORTH BY THE OPPONENTS DO NOT DETRACT FROM THE REASONABLE NATURE OF THE PROPOSAL.

The Commission should seize this opportunity to show the public that, together with the Postal Service, it can respond appropriately to the needs of the modern postal marketplace. The consequences of letting such an opportunity slip by would be regrettable. The business climate within which the Postal Service now operates dictates that the Postal Service become more customer-oriented and market responsive. The Postal Service is facing a rapidly changing business environment. The Postal Service must be allowed to meet these new challenges through the introduction of innovative changes, without having to confront insurmountable hurdles. The Commission should join the Postal Service in pursuing this objective by recommending the proposed CMM classification changes.

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,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.
Chief Counsel, Ratemaking

Anthony Alverno
Attorney

475 L'Enfant Plaza West, S.W.
Washington, D.C. 20260-1137
(202) 268-2997 Fax -6187
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