

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001

Postal Rate and Fee Changes, 2005

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Docket No. R2005-1

**COMMENTS OF ALLIANCE OF NONPROFIT MAILERS
IN SUPPORT OF STIPULATION AND AGREEMENT
(September 23, 2005)**

The Alliance of Nonprofit Mailers (“ANM”) respectfully submits these comments in support of the Stipulation and Agreement (“Stipulation”) filed by the USPS today. ANM is a signatory to the Stipulation. These comments have two purposes: (1) to submit to the Commission a letter dated September 19, 2005, from Postmaster General Potter to ANM concerning an issue raised by the Postal Service’s proposed rates for nonprofit Standard Mail;¹ and (2) to explain why the letter, in the unique circumstances of this case, satisfies ANM’s concerns and enables it to join in support of the rates proposed in the Stipulation.

ANM agrees with the policy justifications offered by the Postal Service for proposing rate increases that are nearly uniform across the board. An across-the-board increase is the fairest way to distribute among all mailers the burden of funding the \$3.1 billion annual escrow obligation imposed by Public Law No. 108-18. See Potter Direct (USPS-T-1). Moreover, while most intervenors (including ANM) undoubtedly would prefer changes in the existing coverage ratios and rate designs, the decision of the Postal Service and nearly all intervenors to defer consideration of these issues until the

¹ See First Interrogatories of Alliance of Nonprofit Mailers to USPS Witness Taufique (ANM/USPS-T28-1-2) (August 30, 2005); *Alliance Report* 05/28 (Sept. 7, 2005).

next omnibus rate case is entirely reasonable. The recent blow to Postal Service operations and finances from Hurricane Katrina further underscores the desirability of a quick resolution of this case.

ANM has been concerned, however, with an issue first raised in this case by Valpak: whether the rates proposed for the regular and ECR subclasses of nonprofit Standard Mail satisfy 39 U.S.C. § 3626(a)(6). Section 3626(a)(6)(A) requires that rates for each subclass of nonprofit Standard mail be set so that the “estimated average revenue per piece to be received by the Postal Service” for each subclass is equal, “as nearly as practicable,” to “60 percent of the estimated average revenue per piece to be received from the most closely corresponding regular-rate subclass of mail.” The rates actually proposed by the Postal Service depart from the 60 percent ratio, however. For the regular subclass of Standard mail, the proposed nonprofit rates will produce an estimated average revenue per piece equal to approximately 60.9 percent of the corresponding commercial rates.² For the ECR subclass, the ratio is approximately 56.4 percent.³

ANM is concerned less with the financial effects of these disparities (which, because of the greater volume of the regular subclass than the ECR subclass, virtually cancel out for the nonprofit Standard subclass as a whole) than with their potential precedential effect. The USPS has defended its departure from the 60 percent ratio by arguing, in effect, that the qualifying phrase “as nearly as practicable” reduces Section 3626(a)(6)(A) to a nonbinding guideline that may be subordinated to other ratemaking

² Revised answer of USPS witness Taufique to Valpak interrogatory VP/USPS-T28-52 (filed Aug. 24, 2005).

³ *Id.*

concerns.⁴ In ANM's view, however, the constraint established by Section 3626(a)(6)(A) is binding and nondiscretionary; and the only deviations from the 60 percent ratio authorized by the phrase "as nearly as practicable" are those required by the tenth-of-a-cent rounding convention for rates. Accordingly, approval of the proposed rates on the theory that the 60 percent ratio is merely a discretionary guideline would create an unlawful exception to a statutory constraint that Congress intended to be inviolable.

One of the bedrock principles of postal ratemaking since the enactment of the Postal Reorganization Act in 1970 is the binding character of the overall rate relationships prescribed by Congress for the preferred subclasses. The House committee report stated:

H.R. 17070 reserves to congressional initiative any changes in categories or rates applicable to mail formerly entitled to free or reduced rates. Thus . . . any change will be made only by affirmative legislation in the conventional sense. In this sense, H.R. 17070 reflects the fact that any changes in rates or categories for free or reduced-rate mail entails questions of policy that are less appropriate to the expertise of a ratemaking commission than to a congressional determination of the public interest.

H. Rep. No. 1104, 91st Cong., 2nd Sess. (1970) (reproduced in 1970 U.S. Code Cong. & Admin. News 3666). Congress, while changing the statutory formula several times since 1970, has continued to reserve to itself the power to set overall rate levels for the preferred subclasses, and required the Commission and the Postal Service to adhere

⁴ See Response of USPS witness Taufique to Valpak interrogatory VP/USPS-T28-2.

mechanically to the statutorily-prescribed relationships, without any consideration of the judgmental criteria of 39 U.S.C. § 3622(b).⁵

Nothing in the legislative history of Pub. L. No. 106-384, the source of 39 U.S.C. § 3626(a), suggests that Congress intended, by changing the statutory calculation of nonprofit rates from a percentage of nonprofit attributable costs to a percentage of commercial rates, to make the results any less binding on the Postal Service and the Commission. Senator Cochran, introducing S. 2686, the bill that was to become Pub. L. No. 106-384, stated that “this legislation would protect all categories of nonprofit mail from unpredictable rate swings in the future” by “establishing a *structured relationship* between nonprofit and commercial postage rates.” Cong. Rec. S4669 (June 7, 2000) (emphasis added). Specifically, he explained, the bill would

set nonprofit and classroom Periodical rates *at 95 percent* of the commercial counterpart rates (excluding the advertising portion), set nonprofit Standard A rates *at 60 percent of the commercial Standard A rates*, and set Library and Educational Matter rates *at 95 percent* of the rates for the special subclass of commercial Standard B mail.

Id. (emphasis added). Likewise, the Senate committee report on S. 2686, the bill that became the law, stated that the legislation was designed to solve technical problems in the nonprofit ratesetting structure (i.e., the increasing volatility of reported attributable

⁵ Before 1993, the law required that preferred rates be set at 100 percent of attributable costs unless Congress failed to provide the required revenue forgone appropriation, in which case preferred rates would be raised pro rata to offset the funding shortfall. 39 U.S.C. § 3626(a)(2) (pre-1993 ed.). The Revenue Forgone Reform Act of 1993 changed the formula to require that preferred rates be set, after a statutory phase-in period, at a markup over the attributable costs of the subclass equal to half the markup of the corresponding commercial rates over the attributable costs of the corresponding commercial subclass. 39 U.S.C. § 3626(a)(2) and (3) (pre-2000 ed.).

costs for the nonprofit subclasses and smaller preferred subclasses) by “*locking in the current rate relationship between nonprofit and commercial rate mail.*” S. Rep. No. 468, 106th Cong., 2nd Sess. (Oct. 3, 2000) at 1.

The House sponsors of the legislation were of the same mind. Cong. McHugh, for example, stated that “these problems [created by the volatility of the attributable cost data] are addressed in S. 2686 by *locking in the current rate relationship between nonprofit and commercial rate mail.*” Cong. Rec. H9802 (Oct. 11, 2000). Cong. Davis, a Democratic cosponsor of the legislation, agreed that the bill would “*lock in the current rate relationship between nonprofit rates and their commercial rate counterparts.*” *Id.* (emphasis added). Similarly, Cong. Chaka Fattah, the ranking member of the House Subcommittee on the Postal Service, described the 60 percent provision as follows:

How does S. 2686 correct the rate anomaly? The bill would ‘*lock-in’ the rate relationship between nonprofit and commercial Standard A and nonprofit rates . . . by doing the following: Set nonprofit Periodical rates at 95% of the commercial counterpart rate. . . . Set the revenue per piece for nonprofit Standard A mail to reflect a 40% discount over the revenue per piece received by commercial Standard A mail. Set library rates at 95% of the rates for the Special subclass of Standard B mail.*

Cong. Record E1798 (Oct. 16, 2000) (emphasis added).

Two other provisions of the 2000 legislation provide further evidence that Congress intended the 60 percent ratio prescribed in 39 U.S.C. § 3626(a)(6)(A) as a binding, nondiscretionary constraint. First, 39 U.S.C. § 3626(a)(6)(B) specifically requires that the 60 percent test be applied by using Test Year Before Rates volume data. It would be odd for Congress to take the trouble of defining the ratio formula so precisely if Congress regarded the ratio as merely an approximate guideline that could

be overridden by discretionary application of the qualitative factors of 39 U.S.C. § 3622(b).

Second, if Congress had intended to give the USPS and the Commission discretion to deviate from the 60 percent ratio, one would have expected Congress to prescribe criteria for exercising this discretion, just as 39 U.S.C. § 3622(b) prescribes criteria for exercising the discretion delegated by Congress to apportion institutional costs among rate classes. The 2000 legislation provides no such criteria, however.

To allay ANM's concerns, the Postal Service has formally committed to adhere precisely to the 60 percent ratio in future rate cases, with departures allowed only to the extent required by (1) the tenth-of-a-cent rounding convention for rate elements, or (2) an intervening change in the governing law:

The USPS agrees that, in any future request or proposal for a rate or classification change involving mail under former 39 U.S.C. §§ 4452(b) or (c), the estimated average revenue per piece to be received by the USPS from each subclass of such mail shall equal 60 percent of the estimated average revenue per piece to be received from the most closely corresponding regular-rate subclass of mail, except to the extent that departures from the 60 percent ratio are required by (1) the tenth-of-a-cent rounding convention for rate elements, or (2) an intervening change in the governing law.

Letter from Postmaster General John E. Potter to R. Neal Denton (Sept. 19, 2005) (attached hereto). The Postal Service has also agreed that, "if any questions arise concerning the application of [39 U.S.C. § 3626(a)(6)] to future rate changes, the Postal Service will consult with ANM before submitting its proposals to the Commission." *Id.*

In the unique circumstances of this case, the letter satisfies ANM's concerns. These circumstances include (1) the financial and legal developments that led the USPS to propose a virtually across-the-board increase, (2) the essentially self-canceling nature of the departures from the 60 percent benchmark by the proposed nonprofit Standard Mail rates, (3) the nonprecedential effect of the Stipulation and Agreement, and (4) the Postal Service's commitment to adhere strictly to 39 U.S.C. § 3626(a)(6) in future cases. Accordingly, ANM joins the Postal Service and the other signatories to the Stipulation and Agreement in asking the Commission to recommend without modification the rate changes proposed by the Postal Service in this docket.

Respectfully submitted,

/s/

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September 23, 2005

JOHN E. POTTER
POSTMASTER GENERAL, CEO



September 19, 2005

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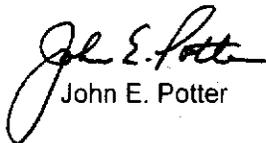
Dear Mr. Denton:

Representatives of the Alliance of Nonprofit Mailers (ANM) and the Postal Service have recently engaged in discussions concerning the Postal Service's proposals for rate and fee increases in the pending omnibus postal rate case before the Postal Rate Commission (Docket No. R2005-1). Under the unique circumstances giving rise to this case, the Postal Service has proposed across-the-board increases of approximately 5.4 percent applied to current rates and fees. ANM and the Postal Service have discussed specifically the Postal Service's rate increase proposals for Nonprofit Standard Mail.

The Postal Service agrees that, in any future request or proposal for rate or classification changes submitted to the Commission involving mail under former 39 U.S.C. §§ 4452(b) or (c), the estimated average revenue per piece to be received by the Postal Service from each subclass of such mail shall equal 60 percent of the estimated average revenue per piece to be received from the most closely corresponding regular-rate subclass of mail, except to the extent that departures from the 60 percent ratio are required by: (1) the tenth-of-a-cent rounding convention for rate elements, or (2) an intervening change in the governing law. The Postal Service agrees that, if any questions arise concerning the application of this provision to future rate changes, the Postal Service will consult with ANM before submitting its proposals to the Commission.

It is my further understanding that ANM agrees to adhere to the Stipulation and Agreement for settlement previously submitted in Docket No. R2005-1.

Sincerely,


John E. Potter