

**DOCKET SECTION**

**BEFORE THE  
POSTAL RATE COMMISSION  
WASHINGTON, D.C. 20268**

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POSTAL RATE COMMISSION  
WASHINGTON, D.C. 20268

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Postal Rate and Fee Changes, 1997  
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**Docket No. R97-1**

**JOINT COMMENTS OF ADVERTISING MAIL MARKETING ASSOCIATION,  
ADVO, INC., THE DIRECT MARKETING ASSOCIATION, MAIL ORDER  
ASSOCIATION OF AMERICA, AND PARCEL SHIPPERS ASSOCIATION IN  
RESPONSE TO NOTICE OF INQUIRY NO. 5  
(ON RECOGNIZING INTERIM YEAR RESULTS)**

The Advertising Mail Marketing Association, ADVO, Inc., The Direct Marketing Association, Mail Order Association of America and Parcel Shippers Association submit these comments in response to the Commission's Notice of Inquiry which raises two questions concerning the Postal Service's net income for the interim (FY1997) year.

As the Notice of Inquiry ("NOI") states, in its development of 1998 test year results, the Postal Service estimated net income in the interim 1997 year of \$636 million. The Annual Report for that year (issued after the filing of the rate case) shows a net income of \$1.264 billion.

The first question raised by the Commission is whether it "[s]hould . . . recognize" the actual 1997 net income "in developing rate recommendations in this case." If this question is meant to ask whether the Commission can find, as a matter of fact, that the Postal Service's interim year net income exceeded projections by \$628 million, the answer is yes. The Commission certainly has the power to take official notice of information contained in the Postal Service's Annual Report whether or not that report

is a part of the record; and the Commission has implicitly done so through the issuance of the NOI. However, both the first and second questions imply a legal, rather than factual, issue: whether the Commission has the authority to make "rate recommendations . . . reflecting that information." NOI at 1. Other than to adjust the amount of the Prior Year Loss Allowance and thereby adjust all rates, the Commission does not have the power to adjust rates on the basis of the additional interim year surplus. There are at least two reasons for this.

First, any attempt to recognize the additional surplus in specific rate recommendations would result in a mismatch between revenue and costs. The CRA for the interim year is not available and will not be available until after the record in this case is closed. Thus, the interim year would consist of actual revenues as stated in the Postal Service's 1997 Annual Report, applied to *estimated* interim year costs, rolled forward to the test year in this mismatched fashion. The Commission has never viewed its review of Postal Service rate requests to empower it to adjust revenues in the interim year without also adjusting accrued costs. See Opinion and Further Recommended Decision in R90-1 at Appendix I, p. 16. To do so in this case would make it all but impossible for the Commission to conclude that the rates it recommends will generate revenues that "equal as nearly as practicable" anticipated test year costs.<sup>1</sup> At all

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<sup>1</sup> Even if the cost data were available, the practical effect of the Commission's analysis would be to treat FY1997 as the base year. The Commission has, in fact, acknowledged that the substitution of actual interim year revenue and cost data for the Postal Service filing "in effect advance[s] the base year." Opinion and Further Recommended Decision in Docket R90-1 at App. I, p. 16. Absent a request from the Postal Service for a waiver of Section 54(f) and (j) to permit this to happen, the Postal Service could very legitimately claim that this shortening of the base-to-test-year relationship unduly impinges upon 'management prerogatives' under the discretion granted by Section 54 and therefore infringes its powers under Section 3621 et seq.

events, the Commission surely could not adjust the new base year costs without affording all interested parties the opportunity to test the substituted (actual) 1997 cost data on the record, as mandated by the Act. MOAA et al. v. USPS, 2 F.3d 408, 429-30 (D.C. Cir. 1993).

There is a further, and overarching, statutory bar to any attempt by the Commission to “recognize” the actual 1997 surplus in developing its specific rate recommendations. Without cost data, the Commission cannot “recognize” the additional surplus by adjusting the test year institutional cost allocations to a class or rate element by the amount (or a part) of the extra surplus. The Commission’s methodology of allocating institutional costs insists that attributable costs for the subclasses be determined first: without actual attributable costs data for each class of mail or type of mail service in the interim year, there is no way for the Commission to determine whether its test year institutional cost coverages comport with the non-cost factors of the Act. The adjustment of the revenue requirement of any class, subclass or rate element based solely on the amount of the surplus (or any part of it) would imply that the surplus was “earned” by the subclass whose revenue requirement is reduced. There is no basis for this assumption. Thus, the attempt to apply the revenues represented by the extra surplus to a particular subclass or rate element would raise a fundamental question whether the resultant rates are “fair and equitable.” Section 3622(a)(1).<sup>2</sup>

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<sup>2</sup> The Commission can apply a portion of the surplus to the Prior Year Loss Allowance because such a re-adjustment of the amount of the annual allowance entails no assumptions as to which

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Thus, except with respect to the Prior Year Loss Allowance, it is not within the Commission's power to "recognize" the actual 1997 surplus in its recommendation of rates in this case. That does not, however, mean that there is no remedy. The responsibility for the initiation of a rate case and for the timing of implementation of rates rests with the Board of Governors of the Postal Service. The parties signing these comments fully intend to bring the fact of the actual surplus to the attention of the Board of Governors and to urge them, in the strongest possible terms, to exercise their conceded statutory power to defer implementation of the new rates. Although the statute does not permit the Commission to recommend to the Board of Governors an implementation date, there is absolutely nothing in the statute to prevent the

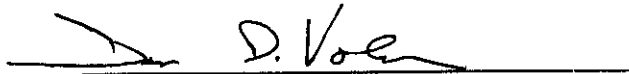
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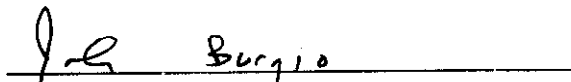
class has "earned" the surplus and is consistent with Board of Governors resolutions concerning the amortization of "negative equity."

Commission -- both in and after its decision -- to urge the Board of Governors to "recognize" the extra surplus and defer implementation of the new rates.

Respectfully submitted,



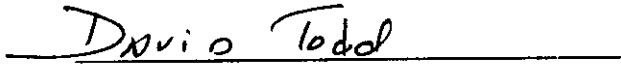
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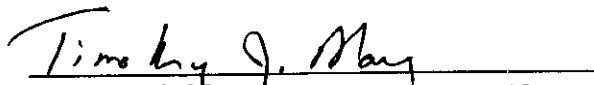
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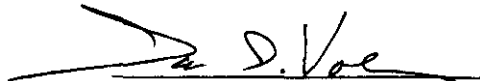


Timothy J. May *re 10v*  
Counsel for Parcel Shippers Association

Dated: February 13, 1998

**CERTIFICATE OF SERVICE**

I hereby certify that I have on this date served this document upon all participants of record in this proceeding in accordance with section 12 of the rules of practice.

  
Ian D. Volner

DATE: February 13, 1998

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