

# DOCKET SECTION

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

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POSTAL RATE AND FEE CHANGES, ) Docket No. R97-1  
1997 )

## INITIAL BRIEF OF THE ASSOCIATION OF ALTERNATE POSTAL SYSTEMS

Although the position of the Association of Alternate Postal Systems has been mischaracterized as seeking increases in the saturation mail rates in order to enable its members to compete more successfully with the Postal Service,<sup>1</sup> its position, as should be clear from the testimony of witness Ken Bradstreet, is that for a variety of legal and factual reasons, these rates should not be *decreased* by as much as 18%. A reduction of anywhere near this magnitude at a time of unprecedented growth in USPS advertising and relative equilibrium among the competitors for hard copy advertising mail can properly be characterized as having as its primary goal not conformance of rates with the statutory criteria but destruction of competition.

AAPS's position is completely and compellingly set forth in the testimony of its Executive Director, Ken Bradstreet (Tr. 11978-12042), supplemented by the testimony of Joe Green (Tr. 11955-58), who operates a small alternate delivery operation in Indiana. This brief will focus on the major themes of that testimony and will endeavor not to repeat the fully-documented and powerful arguments against the proposed pound

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<sup>1</sup> See, e.g., the rebuttal testimony of witness Andrew for MOAA, et al., at Tr. 19712, line 17 ("rates for ECR should be increased") and line 18 ("such an increase would enable AAPS to better compete").

rate reduction contained in the March 26, 1998 “Memorandum of Law” filed by the Newspaper Association of America.

### **Public Servant versus Aggressive Competitor**

Mr. Bradstreet demonstrates through an historical analysis as well as an examination of the rate setting criteria of the Postal Reorganization Act—especially criteria 4 (impact on mailers and competitors) and 5 (available alternatives)—that the Postal Service was created with a public service mission and an obligation to operate efficiently, not as an aggressive competitor with the private sector with an obligation to be “business-like.”<sup>2</sup>

That mission and obligation appears to have been lost on the Postal Service, however, as evidenced by, among other things, the Postmaster General’s unbridled glee in driving a hard-copy competitor out of business (“we ran them out of business...”), Tr. 11991, its absurd position in a discovery dispute over the latest SAI report that criterion 4 demands consideration of the impact on competitors of a postal rate increase but not a decrease, and most of all its approach to setting rates for the monopoly and competitive segments of its business.

### **Monopoly versus Competitive Mail**

This case, like all of its predecessors, shows that objective numerical data can become highly subjective in the hands (and testimony) of expert witnesses. There is no escaping the fact, however, that the Postal Service has been on a focused and partially successful mission to drive up the rates for mailers with few or no practical

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<sup>2</sup> As Mr. Bradstreet pointed out, operation like a “business” is inconsistent with the Postal Service’s non-profit status, its freedom from taxes, and, most of all, its \$42 billion of monopoly-protected revenues.

alternatives, while holding down increases in, or even decreasing, rates where there is competition. Witness Bradstreet highlights the special treatment afforded saturation advertising mail, when compared with both selective advertising mail and First-Class mail. His chart at Tr. 11986 shows that, since 1978, the piece and pound rates for saturation advertising have increased by 36% and 53% respectively, while the proposal here would result in cumulative changes of 40% and 17%. On the other hand, the highest third-class/standard rates have increased 264%, and after the proposal here would still increase by 257%. The current proposal would result in a First-Class increase of 120% for the first ounce and 77% for added weight. No explanations about additional mailer worksharing<sup>3</sup> or starting points can alter the reality that the Postal Service is pricing with competition as its driving force.<sup>4</sup>

### **The Importance of Weight**

Substantial portions of Mr. Bradstreet's direct testimony, written cross-examination and oral cross-examination are focused on the seemingly never-ending issue of the extent to which weight affects the costs of processing and delivering Standard A mail. The primary reason that this issue never ends, as witness Bradstreet points out, is that the Postal Service has for nearly two decades steadfastly refused to conduct or authorize a comprehensive study of this question. Rather, in this case as in several others, it presents a study (Exhibit No. 44B) that purports to measure only the

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<sup>3</sup> If increased mailer worksharing is so significant, why haven't the rates for periodicals—where there is virtually no competition—enjoyed the same favorable pattern?

<sup>4</sup> Witness Buckel would prefer that a comparison begin in 1987, right before a large third-class pound rate increase, but he agreed that even with that most favorable of starting points, the pound rate has increased at the same rate as the CPI (Tr. 17255-56), which would be reasonable but for the large decrease proposed here. It is noteworthy that Mr. Buckel and the saturation mailers support a pound rate

in-office costs—where weight is much less of a factor—and to rely upon supposition with respect to street time, where weight, not pieces, is the major determining factor for route and loop sizes and certain other costs.<sup>5</sup>

Advo's effort, through witness Crowder, to refute Mr. Bradstreet's demonstration that added weight increases carrier street time was singularly unsuccessful, in part because she, like the Postal Service, relies upon conjecture and assumptions rather than facts. Her main point (Tr. 18305) is that the Bradstreet analysis ignores the "excess delivery weight capacity available in the system..." with an unrealistic assumption of a 600 stop route with ten loops. She calls the *Postal Service's own assumption* of sixty stops per loop "extreme." (Tr. 18325). She contends (Tr. 18326) that only 3% of all loops contain sixty or more stops.

Her analysis and conclusions are faulty in several respects. First of all, her statement that only 3% of all loops contain 60 or more stops, if accurate (it is based on a sample size of only 52—Tr. 18370), is uninformative. She admits (Tr. 18326) that many loops have very few stops and that, in fact, 17% of loops have ten or fewer stops. The relevant number—which she never provides—is what percentage of stops are on loops with 40, 50, or 60 stops, not what percentage of loops have that many stops.<sup>6</sup> Therefore, Ms. Crowder's conclusion (Tr. 18327) that the system can absorb more

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that would be lower than any in effect since before the increase ordered in R87-1, and lower than those implemented in 1981 and 1983.

<sup>5</sup> Even the limited study presented produced absurd, inexplicable results (see Tr. 7699-7700 and 7790-7793), possibly because of thin data (Tr. 7797-98, 7800). NAA's Memorandum of Law filed March 26 presents a comprehensive analysis of the shortcomings of this so-called study.

<sup>6</sup> In other words, while 15% of the loops have may 40 or more stops (Tr. 18369), that 15% obviously represents far more than 15% of the total stops. If in fact, given the large number of low-stop routes, 50% of all stops are on loops with 40 or more, then the addition of Mr. Buckel's "8 ounces to a pound"

weight than Mr. Bradstreet believes is pure speculation that could be tested by the Postal Service, if it truly wanted to know.

### **The Rate Proposal**

By over-relying on the percentage cost coverage concept (Tr. 12006-09) and its seriously flawed weight study, failing to pass on any more than 35% of the cost differential to ECR letter-sized mail (Tr. 12020), deeming virtually all advertising costs for advertising mail to be non-attributable (Tr. 12020), refusing to distinguish between loose and bound pieces (see Tr. 7788-89 and 7831-32) and hiding behind its high profits and low overall rate increase proposal (Tr. 12003), the Postal Service proposes a rate decrease for saturation mail that, if enacted, will seriously harm competition for the alternate delivery of advertising, which, as Mr. Green explained, is already limited by the Postal Service's interpretation of the Private Express Statutes to a sliver of the potential market. Tr. 11956-57.

Such a reduction makes no sense and is certainly not necessary to protect the Postal Service's rapidly expanding advertising business or the mailing businesses that rely upon the Postal Service. The testimony of witnesses Otuteye for AISOP and Buckel for the Saturation Mail Coalition<sup>7</sup> shows that mailers want both the benefits of a flat rate to (at least) 3.3 ounces without the burden of an escalating pound rate above that level.

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(Tr. 17257) pieces to the mailstream would increase the weight to many of the stops by as much as 40 pounds.

<sup>7</sup> Could it be that ADVO's record profits made it inadvisable for it to present its own witness to complain about the tyranny of the present pound rate?

Mr. Otuteye, for example, seems to care little about the pound rate, because his business involves stuffing, on average, 25-28 light-weight coupons (Tr. 14514) into a piece-rated envelope, taking care to avoid the pound rate, although it is obvious that he would avoid the pound rate at any reasonable rate. In fact, he admitted that by the time his franchisees approach the breakpoint, they are stuck with providing deep discount service for as little as \$30 per thousand (Tr. 14521). The fact is that the incremental postage cost for Mr. Otuteye's typical piece is less than one-half cent,<sup>8</sup> even at today's pound rate, and it is apparent that his problem, if he has one, is the inability to obtain enough customers to his couponing business (even at levels where there is *no* incremental postage).

Mr. Buckel, on the other hand, at least appears to have some interest in the pound rate, although he too cries wolf about its present level. The fact is that even though his mailed pieces pay the pound rate, he mails four times as many pieces as he distributes through alternate delivery. To be sure, Mr. Buckel would see his annual postage decrease by \$90,000 (holding volume constant) if the USPS proposal for a reduction were adopted (Tr. 17262), and his profit increase would likely be greater if, as he expects, his volume were to increase (Tr. 117263), yet his greater profit potential under a lower rate does not support the notion that the present rate is too high.

In addition, Mr. Buckel's attempt to demonstrate that the pound rate has hurt the Postal Service's market share (Tr. 17243) mischaracterizes that market share and is

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<sup>8</sup> He complains in an interrogatory response that, in addition, he would have to pay a "flat surcharge" of .4143 cents per piece as a result of a rate design that fails to provide letter-shaped mail—such as his—with the benefits of its lower cost. Tr. 14529. Yet his testimony ignores this valid issue, presumably because pieces above the breakpoint are a small portion of his business. Tr. 14531.

unpersuasive. Under cross-examination, Mr. Buckel confirmed that his analysis counted the number of mailed pieces irrespective of the number of advertisements in those pieces, so that, for example, Advo's increase in actual mailed advertisements as shown in a recent quarterly report would "show up" as a decrease to reflect the fact that more ads were sent in fewer sets (Tr. 17253-54). One need look no further than the high breakpoint and Mr. Otuteye's testimony, as well as at the rate design's forcing potential solo mailers into shared mail sets, to understand why and how the Postal Service can gobble up more and more advertising business without showing an equivalent increase in its market share.<sup>9</sup>

The alleged problem of the saturation mailers—a pound rate that increases directly with weight—could be alleviated by what would probably be a more rational rate design: a true piece plus pound rate beginning perhaps as low as the 1/10<sup>th</sup> of an ounce coupon weight, but certainly no higher than one ounce. Such a rate would permit a substantial flattening of the pound rate, would eliminate the "rate shock" at the breakpoint that Mr. Otuteye bemoans, and would give merchants whose interests both witnesses claim to be protecting greater mailing options. Yet Mr. Buckel would not express support for such a modified rate design (Tr. 17262), preferring the current rate structure with its 3.3 ounce breakpoint.

### CONCLUSION

In past cases, only the Postal Rate Commission has stood between the Postal Service's goal of securing a much larger share of the mailed advertising business, at the

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<sup>9</sup> Neither the Postal Service nor Mr. Buckel would count a single newspaper with twenty preprint inserts or a single alternate delivery set with seven ads as one piece, yet when it comes to the mail, that is

expense of both competition and competitors,<sup>10</sup> and the total achievement of that goal. At this time, Mr. Bradstreet explained (Tr. 12051), it is especially important that the Commission step in, because there is a sense of equilibrium in the market. Many publishers have long mailed their products, because they view the present pound rate as a good deal, while others, including some former AAPS members, have more recently shifted to the mail. Some use alternate delivery. Mr. Buckel's company is comfortable using both. Mr. Bradstreet continued that there:

appears to be a balance between postal and alternative delivery where postal volumes are growing and where alternate delivery, though in many cases struggling, is able to compete somewhat effectively. A substantial reduction in the pound rate will tip that balance heavily toward the Postal Service at the expense of alternate delivery providers.

The record will not support that reduction, and AAPS calls upon the Postal Rate

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exactly what they do.

<sup>10</sup> Mr. Buckel disagrees with the Postal Service's marketing report's claim that seventy percent of the alternate delivery businesses are affiliated with newspapers and are not profitable. We do not know the source of the Postal Service's claim, but we do know that—presumably unlike Mr. Buckel—it has conducted substantial research on the subject.

Commission to again protect the integrity of the statutory rate-setting process by  
rejecting the proposal for a reduced pound rate for ECR mail.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that I have on this 31st day of March, 1998, served the foregoing Initial Brief in accordance with Section 12 of the Commission's Rules of Practice.

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