

UNITED STATES OF AMERICA
BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

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In the Matter of

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

MEMORANDUM REPLY BRIEF OF
THE BROOKLYN UNION GAS COMPANY
ON
PREPAID REPLY MAIL

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Of Counsel for
The Brooklyn Union Gas Company

Dated: April 10, 1998
Washington, D.C.

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Pursuant to the revised procedural schedule in this case, The Brooklyn Union Gas Company ("Brooklyn Union") hereby submits its reply brief on the United States Postal Service's ("Postal Service") proposal to implement a new rate category for Prepaid Reply Mail ("PRM"). In its Initial Brief ("IB"), Brooklyn Union strongly supported the PRM proposal and urged the Commission to approve it subject to the following conditions and modifications:

- (1) the PRM service should be considered and approved *separately and apart from* other proposals, in particular the Office of Consumer Advocate's ("OCA") proposal for Courtesy Envelope Mail ("CEM");
- (2) the cumbersome accounting procedure proposed by the Postal Service for PRM should be replaced with a simpler mechanism modeled on the existing accounting procedure for BRMAS BRM recipients; and
- (3) PRM mail pieces should be required to be addressed to a post office box, to maximize the potential cost savings of this highly efficient type of mail.

Brooklyn Union has received initial briefs in support of PRM from the Postal Service, the American Postal Workers Union ("APW") and the Magazine Publishers Association ("MPA"). The OCA has not opposed approval of PRM but the OCA does believe its own CEM proposal is somehow "superior" to PRM.

Only the Coalition of CRM Mailers ("CRM Coalition"), a thirteenth-hour group composed in large part of parties who only sought intervention in these proceedings *after* the formal evidentiary record closed, has requested the Commission to "defer action on PRM and direct the Service to form a task force to examine sensible alternatives to the present PRM proposal."¹ Brooklyn Union takes strong exception to the CRM Coalition's tactics. Many of the mailers and organizations that now comprise the CRM Coalition originally eschewed direct participation in this proceeding where all issues regarding the PRM proposal could be addressed in an open and procedurally fair manner. Instead, after delaying some eight months and then forming a CRM mailers' cabal, they sought to circumvent the Commission's authority by urging the Board of Governors to order the Postal Service to withdraw the PRM proposal in this proceeding and making a preemptive strike by leaking their letter to the Board to the trade press even before the letter was sent to the Board. Tr. 33/17633. Only when their backdoor tactics failed did these mailers belatedly intervene in this proceeding for the purpose of reorganizing themselves as the CRM Coalition and participating openly in this case.

For the following reasons, the belated objections to PRM are based on fundamental misperceptions of the Postal Service's PRM program and/or a prejudiced and wholly erroneous view of the scope and purposes of the instant proceedings.

¹ Coalition IB at 1.

ARGUMENT

I. The OCA's CEM Proposal Reinforces The Need To Consider And Act Upon PRM And CEM Separately

The evidence presented by OCA witness Willette supported a 30 cent rate for Courtesy Envelope Mail ("CEM") on the basis that "[t]he cost study prepared by Postal Service witness Miller for PRM/QBRM letters is applicable to CEM."² On brief, however, the OCA has abandoned the rationale of its own witness and now seeks to capture the entire 4 cent savings identified by the Postal Service in support of the proposed 30 cent rate for PRM. See OCA IB at 45.

In its Initial Brief (at 6), Brooklyn Union requested that the Commission separately consider and act upon the Postal Service's PRM proposal and the OCA's CEM proposal, for a variety of reasons. However, if there were ever any doubt as to the wisdom of treating the two proposals separately, the OCA's revised proposal on brief has definitively resolved the issue in favor of separate treatment of the two proposals.

Without intending to criticize the OCA's latest proposal for a 29 cent CEM rate, Brooklyn Union nonetheless wishes to emphasize that it is not seeking a 29 cent rate for PRM at this time. Although Brooklyn Union witness Bentley demonstrated *by uncontroverted evidence* that the higher density of PRM enables this type of reply mail to achieve much greater processing cost savings than Courtesy Reply Mail, CEM, or QBRM, Brooklyn Union is not seeking to override the Postal Service's 30 cent PRM rate proposal in this case. Brooklyn Union will be satisfied with a Commission

² TR. 21/10685 (footnote omitted).

recommendation for a 30 cent PRM rate even if the Commission also chooses, *separately*, to adopt the 29 cent CEM rate OCA belatedly proposed on brief.³

Moreover, any lingering doubt that the OCA's CEM proposal and the Postal Service's PRM proposal are separate and divisible proposals should be laid to rest by the fact that the OCA itself has not proposed a 29 cent rate for PRM. Obviously, therefore, the OCA itself considers PRM and CRM to be two *separate* proposals.

II. The OCA's Assertion That CEM Is "Superior" To PRM Confuses The Relevant Issues Presented For Consideration By The Commission

In an effort to promote its recommendation in favor of CEM, the OCA (IB at 51) has asserted that "CEM is an attractive, and superior alternative to PRM." The OCA's claim is misleading and unhelpful for several reasons.

The question before the Commission is not whether to adopt the Postal Service's PRM proposal or to adopt the OCA's CEM proposal. Indeed, OCA witness Gail Willette herself recognized as much by stating, in response to the Presiding Officer's suggestion that the OCA's CEM proposal was a "counteroffer" to PRM:

Well, they are two very different services. We haven't taken a specific position on PRM, because it is very different from CEM.⁴

³ OCA witness Willette states, "I propose that the CEM rate be the same as approved [by the Postal Service or 30 cents] for PRM and QBRM." Tr. 21/10685.

⁴ Tr. 21/10797.

For this reason alone, the OCA's attempt on brief to cast the issues as a contest between PRM and CEM does a disservice to both proposals. Moreover, there is no factual or logical basis for asserting that PRM or CEM are superior to one another in terms of the service offered.⁵ For a mailer who receives a PRM envelope on which the recipient has agreed to pay the full postage charge, PRM service plainly is "superior" to CEM, since the same mailer would have to pay *no postage*, whereas the CEM mailer would have to pay whatever First-Class rate is applicable to CEM. But not all reply mail recipients are willing to pay the First-Class Mail postage on their return mail pieces. Therefore, mailers obviously are benefited most by having **both** PRM service and CEM service available to them. Accordingly, contrary to the OCA's suggestion, PRM and CEM are not substitutes for one another. If anything, they are complementary but entirely independent services.

III. The Postal Service's Objections To Brooklyn Union's Proposed Modifications Are Misplaced

The Postal Service (IB at V-100) has characterized as "unwelcome" Brooklyn Union's proposed modifications to the Service's PRM proposal. Unfortunately, the Postal Service has misinterpreted the purpose and intent of the modifications Brooklyn Union proposed.

At the outset, Brooklyn Union notes that the Postal Service has not taken any exception to Brooklyn Union's request that the unduly complicated accounting procedure proposed by the Postal Service be replaced by a straight forward accounting

⁵ There is no doubt, however, that the Postal Service finds the OCA's CEM concept, with two First-Class stamps, simply "unfeasible". (Tr. 4/1570). Unless and until the Service's serious reservations about CEM can be overcome, PRM is clearly the superior service.

procedure already used for BRMAS BRM reply mail recipients. Therefore, the Commission should approve Brooklyn Union's minor modification as part of its approval of the PRM proposal.

A. Postage Determination

The Postal Service has objected (IB at V-100) to what it characterizes a Brooklyn Union's suggestion that a weight averaging procedure should be adequate to determine postage for PRM recipients. The Postal Service is mistaken. Brooklyn Union only made this "suggestion" in response to the Postal Service's interrogatory soliciting Brooklyn Union's views about how the PRM program could be implemented. Tr. 21/11126. As Mr. Bentley tried to emphasize during cross-examination, the response to the USPS interrogatory did not constitute an affirmative proposal on Brooklyn Union's part.⁶ Moreover, the record shows that the only problem that the Postal Service has articulated with regard to the weight averaging approach—"it would not leave an audit trail or create the types of reports and documentation that a manifest system would"⁷—simply would not be a "problem" under the weight averaging system Brooklyn Union contemplated. As the evidence shows, the weight averaging methodology utilized by Brooklyn Union during a trial of the PRM concept involved use

⁶ On cross-examination, Mr. Bentley clarified that, with respect to postage determination, he did not "propose anything differently from what the Postal Service proposed." Tr. 21/11143. Indeed, Mr. Bentley admitted that he did not know that the Postal Service's PRM proposal anticipated that weight averaging techniques to determine postage would not be permitted. This position was not made public in the Service's initial description of the newly proposed PRM rate category, and was not articulated until USPS witness Fronk stated so in an interrogatory answer. During cross-examination of Mr. Bentley, USPS counsel did not disclose witness Fronk's interrogatory answer to Mr. Bentley. Tr. 21/11135-36.

⁷ USPS IB at V-100. See also Tr. 4/1509-10.

of an extensive audit trail that included independent counts generated as part of reports produced by third parties. Tr. 21/11143; see also Brooklyn Union's supplement to the record on this point, which is attached hereto as Appendix A for the Commission's convenience.

B. Address Requirements

Brooklyn Union recommended (IB at 13-14) that PRM reply mail pieces be required to be addressed to a post office box for two principal reasons:⁸

- Having time sensitive high volume PRM reply mail addressed to a post office box and/or delivered to the recipient in "firm holdout" generally results in the recipient receiving his reply mail pieces sooner than they would be if they have to be delivered by a carrier; and
- Addressing PRM to a post office box results in substantial cost savings –approximately 4 cents per piece – for the Postal Service.⁹

The Postal Service (IB at 101) has objected to Brooklyn Union's recommendation on the ground that:

There could be circumstances where alternative mail exit points provide for a suitable point from which to tender mail to a PRM recipient. Imposition of a rigid post office box delivery requirement now could result in an unnecessary limitation that would require significant regulatory process to change later.

The Postal Service appears to be suggesting that there are certain situations in which having PRM delivered to a post office box or firm holdout may not be the most efficient and cost effective procedure. Brooklyn Union was unaware of this operational

⁸ As Brooklyn Union pointed out (IB at 13-14), the impact of adopting this recommendation would be minimal since over 90 percent of BRM is already addressed to post office boxes. See, e.g. Opinion 87-1 at 795 [6143].

⁹ See, Exhibit USPS-29C, p. 1 (revised October 1, 1997).

circumstance when it made its recommendation. Nevertheless, the Postal Service's position, which the Commission should adopt, is entirely consistent with the intent of Brooklyn Union's recommendation: to "*insure* that the Postal Service will, in fact, realize additional cost savings."¹⁰ Accordingly, Brooklyn Union suggests that the Postal Service be given some latitude to determine circumstances in which it is less expensive or otherwise to the Service's benefit to have PRM addressed to a location other than a post office box. In its recommended decision in this case, therefore, the Commission should adopt Brooklyn Union's request that having PRM envelopes be addressed to a post office box be a requirement for this service, except in circumstances where the Postal Service determines that such a requirement should be waived because other delivery procedures will be less expensive.

IV. There Is No Merit In The CRM Coalition's Belated Objections To PRM

A group of Courtesy Reply Mail recipients calling itself the "Coalition of CRM Mailers" has tried to derail the Postal Service's PRM proposal at the last minute despite the fact that the PRM proposal was a prominent part of the Service's rate application since the very beginning of this proceeding. There is absolutely no merit to the CRM Coalition's arguments against implementing PRM and the Commission should give no weight to their arguments that are devoid of evidentiary value.

The arguments which the CRM Coalition has advanced against PRM manifest a basic misunderstanding of the PRM concept and the Postal Service's proposal. At the very heart of the CRM Coalition's concerns about the PRM program is

¹⁰ Tr. 21/11085.

the mistaken notion that the program will be *mandatory*.¹¹ Nothing could be further from the truth. The PRM program clearly is a purely voluntary program for those reply mail recipients who *elect* to participate. PRM is an outgrowth of the existing BRMAS BRM program, which also has been purely voluntary service, as the members of the CRM Coalition well know or at least should know.¹²

The CRM Coalition attempts to discredit PRM by supplementing its *counsel's* "testimony" regarding alleged problems with implementing PRM with out-of-context references to the Postal Service's market research. For example, Coalition counsel (IB at 4) cites various "problems" that banks and retailers allegedly may encounter with paying the postage for their customers and then seeks to buttress his "testimony" with statements from the market research study. This is improper. The comments taken from the market research study were made by respondents who clearly did not want to participate in any prepaid mail program, especially a mandatory one. Accordingly, such statements have no bearing on the central PRM issues presented here –whether the PRM rate category ought to be established as a *purely voluntary, additional service option* for reply mail recipients who make decisions that paying for postage charges on behalf of their customers is economically feasible and advantageous for them; and whether approving a 30 cent rate, which more closely

¹¹ For example, the CRM Coalition (IB at 6) has denounced the PRM program as "unacceptable to the businesses upon which it would be *imposed*" (emphasis added).

¹² Based on information and belief, Brooklyn Union understands that many of the mailers who comprise the CRM Coalition already utilize BRMAS BRM, directly or indirectly, for purposes other than receiving payment remittances. Indeed, in connection with such other operations, these same mailers who are criticizing use of PRM reply mail for payment remittance purposes may benefit substantially from implementation of the PRM program.

tracks the costs of processing this highly efficient mail, is reasonable and consistent with the applicable statutory criteria. For these reasons, Brooklyn Union urges the Commission to see through this charade and ignore the CRM Coalition counsel's "testimony" against PRM.¹³

No one expects PRM to be a universal, one-size-fits-all service.¹⁴

Brooklyn Union cannot say it any more directly than the Postal Service already has:

PRM is *not* intended to be a panacea. It is another option to help improve the reply mail stream, *for those reply mail recipients who determine that it satisfies their needs. . . .* [W]hether an organization is interested in PRM or QBRM will depend on a number of factors, including its willingness to prepay postage and whether it finds a monthly fee or a (QBRM) per-piece fee more advantageous financially.¹⁵

¹³ Another example of this phenomenon is evident from Coalition counsel's "testimony" on the difficulties of paying customers' postage and then being reimbursed by specific customers. Once again counsel testifies and then takes statements from the Postal Service's market research study out of context. CRM Coalition IB at 2-3. The cited market research comments merely illustrate why certain mail recipients might find PRM not to be economically feasible for their specific operations. Such comments provide no legitimate reason for rejecting PRM and thereby penalizing the many other reply mail recipients who do find it economically feasible to pay the postage for their customers. Indeed, application of the notions implicit in Coalition counsel's analytical approach would illogically and unfairly deprive the Postal Service of an opportunity to provide BRM service to willing reply mail recipients simply because certain recipients are not capable of figuring out how to recoup the related postage costs from their customers.

¹⁴ Under current rates, CRM mail recipients have, by definition, already made the decision not to pay their customers' postage. That is, if the insertion of a prebarcoded CRM envelope costs, say, 3 cents, then it will cost the recipient an additional 34 cents (First-Class stamp plus the 2 cent BRMAS BRM piece fee) to pay the postage for its customers. That computes to more than a ten-fold increase in cost, from 3 cents to 37 cents, that CRM recipients have decided not to pay. Under the new PRM service proposal, that comparison will not be much different. The new total alternative cost becomes 33 cents (3 cents for the envelopes plus 30 cents for PRM postage) plus \$1,000 per month for postage verification. Accordingly, as Mr. Bentley testified, "[a]t least at the outset of the PRM program, the major source of potential PRM recipients obviously will be existing BRMAS BRM recipients...since these mail recipients already pay the postage for their customers." Tr. 21/11128.

¹⁵ Postal Service IB at V-33 (citations omitted; emphasis added).

The Postal Service might have added (but of course it should not be necessary to state the obvious) that if a reply mail recipient does not find it financially advantageous to avail itself of either PRM or QBRM, there is no feature of those programs that requires the reply mail recipient to do so.

Nor is there anything inherent in the Postal Service's PRM and QBRM service offerings which would compel an existing CRM reply mail recipient to stop using CRM. The decisional considerations faced today by reply mail recipients who have elected CRM over BRM under existing rates will be essentially the same as those they will face after PRM is implemented. Most current CRM recipients likely will not avail themselves of the new PRM service option; instead, they will simply continue sending CRM envelopes to their customers, just as they are doing today. Accordingly, there is no factual or logical basis for the CRM Coalition's claim (IB at 3) that "[m]any large businesses could not participate in the PRM program and would have to opt out of providing courtesy reply envelopes."

Most of the CRM Coalition's remaining arguments are wholly speculative ruminations about the allegedly high costs and difficulties that various businesses would face in implementing and administering PRM. Suffice it to say that these speculative concerns run directly counter to Brooklyn Union's experiences in implementing BRM, then BRMAS BRM, and most recently the prepaid mail trial which was the precursor of the Postal Service's PRM proposal in this case. Nevertheless, there obviously will be business enterprises of all types that will not find PRM to be suitable to their business purposes, just as those organizations do not find BRMAS BRM to be suitable to their

needs today. But that “fact” provides no legitimate reason to reject PRM or defer implementation of this new service choice for those reply mail recipients like Brooklyn Union who are not intimidated by the Service’s straight forward requirements and are ready, willing and able to switch to PRM *to the mutual benefit of the participants and the Postal Service.*

The CRM Coalition (IB at 5) argues that “if the Commission recommends adoption of both the [OCA’s] CEM and [the Postal Service’s] PRM proposals, the Governors . . . are likely to put PRM into effect and to block CEM, thus killing CEM’s chances forever.” Brooklyn Union does not rule out the possibility that the Governors may not implement a rate for CEM service until after a reviewing court rules on the merits of the serious objections to CEM posed by the Postal Service. Indeed, that is one of the reasons that Brooklyn Union (IB at 6) urged the Commission to consider and act separately on the PRM and the CEM proposals. The fact that this may occur should not deter the Commission from acting separately on what now are clearly two very different proposals. Whatever actions the Commission takes on these two proposals, it may have to justify its actions to a reviewing court, just as it did, unsuccessfully, in the Docket No. R90-1 proceeding. However, that provides no valid reason for the Commission to hold the PRM service hostage to the ultimate outcome of the OCA’s CEM proposal. For these reasons, the Commission should not adopt the CRM Coalition’s suggestion that the fate of PRM be linked to that of CEM.

The CRM Coalition’s final plea (IB at 6) – that “the Commission should defer action upon the [PRM] concept, while inviting the Service to convene a working group or task force that includes all stakeholders”—is ludicrous. This

proceeding is the appropriate forum for consideration of PRM issues. Having failed to avail themselves of the full and fair due process rights afforded to them by this Commission's procedures, the CRM Coalition cannot responsibly suggest that PRM should be deferred because not all stakeholders participated in the process. Accordingly, the Commission should summarily reject such illogical arguments.

V. PRM Is A Reasonable Expansion Of Mailers' Choices

The arguments of PRM's critics notwithstanding, the Postal Service's PRM proposal is an entirely rational response to the operational realities and costs that reply mail recipients and the Postal Service face. As discussed in Brooklyn Union's initial brief (at 11-12) reply mail received in bulk quantities today costs so little to process that recipients are required to pay on average more than 9 cents more per piece towards institutional costs than First-Class Automation mailers. This, in itself, is grossly unfair. The proposed 30 cent PRM rate reduces that 9 cents to a more manageable 6 cents.

Promoting greater consumer choice in the nature and types of services offered is the hallmark of the Postal Service's PRM and QBRM proposals in this case, just as it has been other industries that formally were pervasively regulated. The Commission should recognize and applaud the Postal Service for voluntarily coming forward with innovative proposals designed expressly to bring postal rates more in line with the cost sparing characteristics of highly efficient types of reply mail. If, however, the Commission fails to do so and rejects or defers implementation of PRM and/or QBRM, that ruling will have an understandably chilling effect on the Postal Service's willingness to come forward with innovative proposals in the future.

The PRM proposal is an innovative *beginning* in a fundamental restructuring of reply mail services. It is not, and need not be, the final word on this important subject. The Service's experience with marketing and implementing PRM service for willing reply mail recipients doubtless will lead to further refinements and improvements in PRM service and possibly further service offerings that may be more palatable to naysayers like the members of the CRM Coalition.

CONCLUSION

For all the foregoing reasons, the Commission should *separately* approve the Postal Service's new Prepaid Reply Mail proposal modified to (1) eliminate the cumbersome accounting procedure proposed by the Postal Service in favor of a simpler mechanism modeled on the existing accounting procedure for BRMAS BRM recipients, and (2) adopt the requirement that PRM reply mail pieces must be addressed to a post office box, except where the Postal Service determines that such a requirement should be waived because other delivery procedures will be less expensive.

Respectfully submitted,

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APPENDIX A

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**CLARIFICATION OF
THE BROOKLYN UNION GAS COMPANY**

At the hearings held on February 18, 1998, The Brooklyn Union Gas Company's ("Brooklyn Union") Witness Richard E. Bentley, was asked whether the weight averaging methodology used by Brooklyn Union to count prepaid reply mail pieces during a "test" period was the same as the weight averaging methodology Brooklyn Union used prior to the test period to verify postage.¹ Counsel for Brooklyn Union undertook to "inquire and inform" the record on this matter. Brooklyn Union's response is as follows:

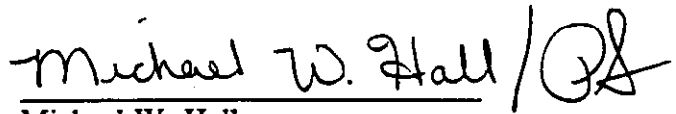
(1) In general, the weight averaging methodology used by Brooklyn Union before and during the test were the same. Moreover, that methodology was consistent with the weight averaging method the Postal Service used prior to the test. Specifically, Brooklyn Union would select 50 representative return envelopes (excluding heavier pieces which might include correspondence in addition to the customer's check and the remittance portion of the bill). After determining the weight of all mail pieces, that weight was divided by the average unit weight of the 50 sample pieces to arrive at the total number of return mail pieces.

¹ Tr. 21/11146.

(2) The methodology Brooklyn Union used during the test only differed from the methodology utilized prior to the test in one respect -- Brooklyn Union purchased a new high capacity postage scale. (Detecto Cardinal Scale Manufacturing Company, Model #285DF-5D) This scale automated the task of determining the number of return mail pieces. Specifically as before, Brooklyn Union selected 50 representative return mail pieces which were weighed on the new scale to confirm the count of 50 pieces. Then trays of return mail pieces were weighed. The scale automatically deducted the standardized tray weight and determine the number of pieces of return mail.

(3) As Mr. Bentley also testified, during the test, the Postal Service and Brooklyn Union used piece counts generated by independent third parties² to whom payment remittance were sent for processing in order to further verify the accuracy of the return mail piece counts derived by Brooklyn Union on a daily basis to determine postage due.

Respectfully submitted,



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Date: March 9, 1998
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² Tr.21/11142-43.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all relevant participants in accordance with Section 12 of the Rules of Practice and Rule 3(c) of the Special Rules of Practice in this proceeding.

Dated at Washington, D.C., this 9th day of March, 1998.

Michael W. Hall / 
Michael W. Hall

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with Section 12 of the Rules of Practice.

Dated at Washington, D.C., this 10th day of April, 1998.

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