

DOCKET SECTION

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

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

**REPLY BRIEF OF THE ASSOCIATION
OF AMERICAN PUBLISHERS**

Mark L. Pelesh
John R. Przepyszny
Drinker Biddle & Reath LLP
901 Fifteenth Street, NW
Suite 900
Washington, D.C. 20005

April 10, 1998

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The Association of American Publishers, Inc. ("AAP"), hereby submits its Reply Brief on the Request of the United States Postal Service for Postal Rate and Fee Changes in R97-1. AAP is the principal representative of the book publishing industry in the United States. It has over 300 members which encompass large and small publishing houses, as well as university and other non-profit publishers. These members make particular use of the Standard Mail (B) Bound Printed Matter ("BPM") subclass.

AAP submits this reply in order to respond to the Initial Brief of the Office of Consumer Advocate ("OCA"). OCA argues that the Postal Rate Commission (the "Commission") should adjust the revenue requirement to permit First Class rates to remain unchanged while subjecting all other classes of mail to a rate increase; that the Commission should reject the Postal Service's proposed addition of delivery confirmation for BPM; and that the Commission only approve the pre-barcode discount for BPM as a "shell classification." OCA's proposal for exempting First Class from a rate increase while imposing rate increases on all other classes is unlawful. In addition, OCA's eleventh-hour objections to the delivery confirmation and pre-barcode discount

proposals for BPM are unsupported by the record and should be rejected by the Commission.

I. THE OCA PROPOSAL FOR SELECTIVE RATE INCREASES IS UNLAWFUL

In the first section of its initial brief, OCA argued that, based on actual FY 1997 revenues and year-to-date FY 1998 revenues, the Postal Service had not shown that it would actually suffer a test year deficit and, consequently, that the Commission should either recommend no increases for any classes of mail or, in the alternative, that the Commission should recommend no increase for First Class rates. See OCA Brief, First Section, at 33. Recognizing the difficulty of having the Commission take into account actual year-to-date FY 1988 revenues, OCA -- in the subsequently filed second section of its brief -- now asserts that the Commission should adjust the Postal Service's revenue requirement downward and apply the savings from that adjustment in a manner which would permit the Commission to recommend no increase for First Class mail. See OCA Brief, Second Section at 44.

AAP is likewise concerned that actual FY 1997 income and current FY 1998 income figures suggest that the Postal Service may have seriously underestimated revenues when it initiated this proceeding. AAP also believes that the record provides justifiable reasons for imposing a downward adjustment to the Postal Service's revenue requirement. The brief of the Direct Marketing Association, for example, describes several areas in which the Postal Service's FY 1998 costs may have been overestimated and suggests several record-based adjustments. See Initial Brief of the Direct Marketing Association at 4-8; Direct Testimony of Lawrence G. Buc, DMA-T-1 at 4. Further, the testimony of Postal Service Witness Porras called into question the legitimacy of other test-year costs, such as the \$298 million specified to fix the "Year 2000

Problem.” See Tr. 35/18639.¹ However, the proposal by OCA for dealing with the Postal Service revenue requirement, particularly its proposal that First Class mail be the sole beneficiary of any revenue adjustment, has no basis in the record and would amount to unlawful discrimination among classes of mail.

The Joint Brief of the Advertising Mail Marketing Association, et al., presents cogent reasons as to why a selective reduction of proposed First Class rates would be unlawful under the Postal Reorganization Act. See Joint Brief of AMMA, et al., Regarding Revenue Requirement at 2-3. As noted by AMMA, et al., the argument that First Class mail should be the sole beneficiary of any reduction in proposed rates incorrectly presupposes that the Postal Service windfall is due exclusively to First Class revenues and “ignores entirely the costs and non-cost factors of Section 3622(b).” Id. at 3. In fact, the Postal Service’s revenue gains are due to increases in virtually all major mail subclasses. See 1997 USPS Annual Report.

If the Commission chooses to make a downward adjustment of the Postal Service’s revenue requirement and to adjust rates accordingly, applying the reduction in a manner which solely benefits First Class would violate the requirement that each class of mail bear its direct and indirect costs and require the Commission to conduct additional or new proceedings to determine which classes should, or should not, benefit from the revenue reduction. See 30 U.S.C. § 3622(b)(3). Such an approach is clearly infeasible at this point. To the extent any revenue requirement reduction results in a decrease in the Postal Service’s proposed rates, the benefits of

1. AAP also submits that the Postal Service should not accept the proposal of Postal Service Witness Porras to increase the contingency reserve from 1% to 1.5%. Witness Porras has not laid the appropriate foundation for requesting such an increase, and the current test-year surplus shows that such an increase is not necessary. The Commission, however, should reduce the Prior Year Loss Allowance as proposed by the Postal Service.

any such reduction must be applied across-the-board to all classes of mail and in a non-discriminatory manner.

II. THE COMMISSION SHOULD ADOPT THE DELIVERY CONFIRMATION AND PRE-BARCODED DISCOUNT PROPOSALS FOR BPM

OCA encourages the Commission to deny the Postal Service's proposal to establish delivery confirmation service for all sub-classes of Standard (B) mail, including BPM, and for Priority Mail. Further, OCA requests that the Commission only approve the pre-barcode discount for BPM, Special Standard and Library Rate mail as "shell classifications to be given rate effect in the next omnibus rate case." OCA's positions with respect BPM delivery confirmation and pre-barcode discounts are without any merit and should be rejected by the Commission.

A. Delivery Confirmation

The primary reason asserted by OCA for denying the Postal Service's proposal to establish delivery confirmation service for Standard (B) mail is that the identical service is not being made available to First Class, Periodicals and Standard (A) mail. See OCA Brief, Second Section, at 117. According to OCA, Postal Service Witness Treworgy has failed to justify why delivery confirmation service would only be available to Standard (B) and Priority mail users. In fact, witness Treworgy noted that the service was being offered to these classes of mail "to meet the needs of *expedited and package mailers*." Response of Postal Service Witness Treworgy to OCA/USPS-T22-8(b); TR 3/1238. (Emphasis added).

Thus, the Postal Service clearly has proposed this service offering in order to enable it to better compete with the United Parcel Service and other expedited letter and package carriers -- all of whom offer delivery confirmation. The service is of particular value to users of Standard

(B) and Priority Mail because they are the very mailers that have the realistic option of choosing alternative carriers which, unlike the Postal Service, offer delivery confirmation. Accordingly, the unique usage characteristics of Standard (B) mail justify the approval of the Postal Service's proposal. Indeed, it defies logic to restrain the Postal Service from instituting competitive services long requested by Standard (B) mailers such the members of as AAP only because the same service is not offered to users of classes of mail which the service realistically could not benefit. If such users of other classes of mail express a need for a delivery confirmation service -- and OCA has identified no others mailers that have actively sought this service -- the Postal Service can seek to expand its delivery confirmation service in future rate proceedings.²

B. Pre-barcoded Discount

OCA offers no support in the record for its assertion that the pre-barcoded discount should be implemented only as a shell classification and given effect after the next omnibus rate case. The only explanation OCA offers for delaying implementation of the discount until the next rate case is to ensure that "increases in other rates be used to offset any revenue deficiencies." OCA Brief, Second Section, at 159. Yet, OCA cannot identify any portion of the record which shows that revenue deficiencies will occur because of the proposed discount. Thus, there is utterly no factual support for OCA's contention that the implementation of the pre-barcoded discount should be delayed until the next rate case. The record as it stands supports the discount, no adverse cost effects have been shown, and the Commission should recommend the Postal

2. OCA only makes the unsupported assertion that users of First Class mail "might prefer" having this service. OCA Brief, Second Section, at 119. Clearly, the Commission should not recommend denial of the Postal Service's delivery confirmation proposal as a result of mere speculation on the part of OCA that there may be a demand for delivery confirmation among users of First Class mail.

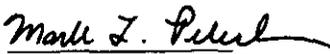
Service's proposal.

C. Both Proposals Would Be of Substantial Benefit to AAP's Members

Ultimately, in the case of both the delivery confirmation service and pre-barcoded discount proposals, OCA is asserting that the Postal Service should be prohibited from offering services that its customers, including AAP's members, have long advocated. AAP submits that OCA's position fails to take into account the educational, scientific, cultural and informational value of the mail matter which might benefit from these proposals. In fact, both proposals would benefit AAP's members -- the senders of books. As noted by Postal Service Witness O'Hara, "[o]ver the years an increasing number of books have been mailed as BPM." Direct Testimony of Donald J. O'Hara, USPS-T-30 at 39. Marketing through the Internet and World Wide Web has increased the number of books sold through the mail. The addition of delivery confirmation and pre-barcoded discounts as options for users of BPM would enhance the ability of book publishers to effectively and efficiently serve the needs of their customers. In offering these proposals, the Postal Service has acted responsively and responsibly to meet customer demand and has sought to ensure that BPM and other classes of mail adapt to the changing needs the mailing community.

The Postal Service should not be penalized for its willingness to offer these innovative and competitive services.

Respectfully Submitted,



Mark L. Pelesh

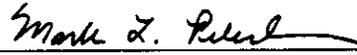
John R. Przypyszny

Drinker Biddle & Reath LLP
901 Fifteenth Street, NW
Suite 900
Washington, D.C. 20005
(202) 842-8800

Counsel for Association of
American Publishers

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document, by First-Class Mail, upon the participants in this proceeding.



Mark L. Pelesh