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

Docket No. R97-1

Postal Rate And Fee Changes, 1997

REPLY BRIEF OF
ALLIANCE OF NONPROFIT MAILERS

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The Alliance of Nonprofit Mailers ("ANM") respectfully submits this reply brief. The brief concerns two issues raised in the Postal Service's initial brief: (1) the overstatement of mail processing costs attributable to Standard (A) nonprofit mail resulting from the entry of mail bearing nonprofit markings at commercial rates; and (2) flaws in the TRACS system for estimating purchased transportation costs. ANM addresses the issue of the Postal Service's revenue requirement in its joint reply brief with the American Library Association and the Coalition of Religious Press Associations.

ARGUMENT

I. THE POSTAL SERVICE HAS FAILED TO PROVIDE CREDIBLE EVIDENCE OF THE MAIL PROCESSING COSTS ATTRIBUTABLE TO STANDARD (A) NONPROFIT MAIL.

In its initial brief, ANM showed that the reported attributable cost data for nonprofit Standard (A) mail are tainted with IOCS tallies for mail with nonprofit markings entered at nonprofit rates. ANM demonstrated that this conclusion is

supported not only by Dr. Haldi's study for ANM, but also by documentation for Dr. Schenk's rebuttal study for the Postal Service. ANM Br. 18-38.

The Postal Service's insistence that this phenomenon is insignificant (USPS Br. III-126-142) is unsupported by the record. Dr. Schenk's testimony establishes only one thing: that the anomaly in the data underlying the proposed rate increases for non-ECR nonprofit Standard Mail (A) is real. Dr. Schenk does not quantify the phenomenon or establish the upper limit of the mismatch between the revenue information from the RPW system and volume information from the IOCS system on which the Postal Service bases its request for new rates.

The burden of establishing the upper limit of the distortion is on the Postal Service. Since the Postal Service has not met its burden—i.e., it has not supplied the information necessary to support the rates it has requested for non-ECR nonprofit Standard Mail (A)—the Commission is left without a sufficient evidentiary record to recommend *any* increase in the current rates for non-ECR nonprofit Standard Mail (A).

A review of the Survey Questionnaires upon which Dr. Schenk's testimony is based, and the disqualification logs for the survey sites, reveals a systematic minimization of the amount of nonprofit Standard Mail (A) that was disqualified for eligibility reasons and entered at the regular Standard Mail (A) rates. This systematic downward bias pervades every stage of the survey: from the survey forms, to the data reported by the Postal Service employees, and to the interpretation of those data by Dr. Schenk and her colleagues. Though the information in the logs is insufficient to determine the upper limit of the data systems mismatch, it confirms that the mismatch is both real and significant.

Before proceeding, ANM notes that Dr. Schenk's testimony is not accompanied by work papers that permit the Commission or the parties to trace the numbers in her testimony or exhibits to the page, line, column, etc., in the primary source, the logs, as required by section 54(o)(4) of the Commission's Rules of Practice, 39 C.F.R. § 3000.54(o)(4). That is, Dr. Schenk does not provide a link between the data in the logs and her testimony as required by the Commission's rules. For this reason alone, Dr. Schenk's testimony should be denied any evidentiary weight.

One cannot determine for certain which log entries were accepted as reflecting nonprofit mail that was disqualified for entry at the nonprofit rates by the Postal Service and which were not. Nevertheless, a review of the logs suggests each entry accepted by Dr. Schenk as reflecting the disqualification of nonprofit mail for eligibility reasons is indicated by "x" inside a circle (*see, e.g.*, the seventh entry on page 0000005¹ and the fourth entry on page 0000309). The entries on the log forms for Site 1 marked by an "x" in a circle are the ones set out in the attachment to the Survey Questionnaire for that site. No entry without such a mark is included in the attachment or included in the results for Site 1.

Site 1

The logs reflect more disqualifications of nonprofit mail than those accepted and included by Dr. Schenk. Dr. Schenk does not include the sixth entry on page 0000007 of the Site 1 logs, even though the reasons given for rejection are 5 (Mailing Statement Irregularities) and 6 (Indicia/Meter Irregularity) could reflect a disqualified nonprofit mailing.

Dr. Schenk has not included the sixth entry on page 000012 even though a note at the bottom of the page indicates "12- not qualified for rates claimed."

¹ References to page numbers are to the pages in the ANM-XE-4. The pages constituting the logs as produced by the Postal Service were not numbered consecutively, so reference here is to the logs as reproduced in AMN-XE-4.

But the tenth entry on page 000012 that uses Reason Code for Disqual., (“Reason Code”) 12, was accepted as reflecting a disqualified nonprofit mailing. There is simple no basis for accepting one of these entries but not the other. It is worth noting that in both cases the disposition indicated was that the mailer was notified and additional postage was charged. This means that in both cases mail was entered with nonprofit indicia even though it paid regular, Standard Mail (A) rates. This is the phenomenon the ANM believes has led to the mismatch between the IOCS data and the RPW data that have seriously overstated the attributable costs of non-ECR nonprofit Standard Mail (A).

Dr. Schenk appears to accept the first entry on page 000013, but not the second entry on that page even though the Reason Code is the same for both “5,7,8.” Reason Code 5 is supposed to reflect “Mailing Statement Irregularities.” Reason Code 7 is supposed to reflect “Piece Count Differences.” Reason Code 8 is supposed to reflect “Improper Endorsement.” Why does one of these entries reflect the disqualification of nonprofit mail for eligibility reasons while the other does not? The Postal Service does not explain.

Why does the sixth entry on page 000015 explained by Reason Code 10 (Classification) not reflect the disqualification of a nonprofit mailing? The fourth entry on page 000017 that uses Reason Code 10 was included. Dr. Schenk also accepted the fourth entry on page 000018 that is explained by Reason Code 10. However, the sixth entry on page 000021 that is explained by Reason Code 10 was not accepted as a disqualified nonprofit mailing. Again, no explanation from Dr. Schenk or the Postal Service.

In AP 11 all disqualified mailings were 2nd class. (The “2” is written backward.) In any event, the seventh entry on page 000023 which was disqualified for Reason Code 10 (Classification Identification) was not counted, but the first entry on page 000024 was counted, even though both mailings are identified as to class with a backward 2. All mailings disqualified in AP 13 were Standard. (The classes apparently take turns being disqualified at Site 1.)

Site 2

Exhibit USPS-RT-22-2 has zero volume for "disqualified nonprofit, paid reg. Std. (A)" for Site 2. On page 0000020 of the Site 2 Survey Questionnaire, the respondent apparently said "travel adv. biggest problem w/compliance" and states that the Site "worked w/ mailer; one-time exception." The response noted on page 0000020 also notes "a lot more in 96 => 20/25 per AP mellow out to 2/3 [per] AP by AP4 of FY97." In short the survey notes reflect a serious problem in FY96, but the volume assigned to this site is "0". This is unwarranted.

Site 3

Not included

Site 4

The clerk providing the information had been working only since 9/97, see Survey Questionnaire at page 0000034. This makes the answer to the question about changes since FY95 meaningless. It also gives the respondent too little experience to state what, if any, period is comparable.

Even though no estimate for volume is included on the Survey Questionnaire and no volume is indicated on the logs, Dr. Schenk concluded that 25,010 pieces out of some 41 million of nonprofit mail were disqualified and paid regular Standard (A) rates. How?

Site 4, is one of the few sites that provide anything like a complete set of logs even though AP1 is missing the period when the phenomenon was at its height. These logs reveal serious problems, however.

The logs for Site 4 were kept on different forms at different times. The form used during the first part of the FY96 did not have Reason Codes. The clerk was expected to write in an explanation. In a large number of case the clerk entered "\$" or "\$ \$" as the explanation. That could apply to mail entered at nonprofit rates that did not qualify for that rate, but that is not what Dr. Schenk

assumed. (This reflects an unstated assumption and thus a violation of section 51(k)(1) of the Commission's Rules of Practice, which requires all studies to include a clear statement of all assumptions.)

The following entries were not marked with an "x" in a circle, and thus apparently not counted by Dr. Schenk, even though they should have been:

Fifth entry on page 0000036

First entry on page 0000039

Seventh entry on page 0000039

First entry on page 0000042

Sixth entry on page 0000042

Eighth entry on page 0000048

Eleventh line on page 0000058²

Ninth entry on page 0000061³

Fifth entry on page 0000077⁴

Tenth entry on page 0000084⁵

When the logs switch to a form that asks for a "Reason Code" in AP5, a number of inconsistencies emerge. The new form does not include a Reason Code specifically for Classification (unlike the forms used at other sites and at this site later in the year). On page 0000099, the seventh entry includes a note "travel advertising." Since there is nothing wrong with travel advertising in a first, second or regular third class (Std. (A)) mailpiece, this must reflect the disqualification of

² "Checking for Non-profit status" could refer to the mailer or to the mail.

³ "Not eligible for 3C rates" could refer to nonprofit since the mail was in fact released.

⁴ "No Non Profit in Indicia." Would only be a problem if the mail appeared to come from a nonprofit but was entered at regular rates.

⁵ See footnote 4.

nonprofit mail. However, the entry is not marked with an "x" in a circle and was, apparently, not included in Dr. Schenk's figures. The Reason Code used for this entry is "11." A marking at the bottom of the form states that "11 "Other (describe on reverse)." The reverse side is not provided.

On page 0000103, the thirteenth entry appears to have been accepted as reflecting the disqualification of nonprofit mail, but the sixth entry was not. The Reason Code originally entered for the thirteenth entry, the one Dr. Schenk accepted, has been obliterated, so no reason for disqualification of this mail is actually provided. The explanation of sixth entry is Reason Code 8 for "Incorrect Rates." Why does this entry not reflect the disqualification of nonprofit mail?

The second entry on page 0000104 is similar to the sixth entry on the previous page; but it does not appear to have been accepted as reflecting the disqualification of nonprofit mail. Why not? This is important because there are 75 more entries where the Reason Code 8 is used without any annotation. None of these appear to have been considered as reflecting the disqualification of nonprofit mail by Dr. Schenk. Why not?

Other anomalous entries include:

Twelfth entry on page 0000107⁶

Thirteenth entry on page 0000117

Fifth entry on page 0000121⁷

Eleventh and Twelfth entries on page 0000124⁸

First, tenth and eleventh entries on page 0000127

Twelfth and fourteenth entries on page 0000128

⁶ Only information is "Incorrect Rates" why isn't this a disqualified nonprofit mailing?

⁷ See comment on fifth entry on page 0000077, footnote 4.

⁸ Couldn't "wrong rates" apply to disqualified nonprofit mail?

Third entry on page 0000129⁹
Ninth entry on page 0000131
Second entry on page 0000132¹⁰
Fourteenth entry on page 0000138¹¹.
Sixth entry on page 0000138 ¹²
Seventh entry on page 00139¹³

(Beginning on page 0000139 clerks start using "12" as a Reason Code though no such code is included at the bottom of the page and 11 is "Other".)

Fourth and fifth entries on page 0000139¹⁴
Ninth entry on page 0000140¹⁵
Tenth entry on page 0000141¹⁶

After page 0000155 the log form uses 12 to mean "Hopeless."

⁹ "Indicia missing, Nonprofit Organization." What if it was entering mail at regular rates?

¹⁰ Not eligible for N.P. Rates anyway.

¹¹ This entry uses Reason Code for Disqual. 11 in a case where there is "advertisement in N.P.

This means 11 is used to indicate a disqualification for nonprofit rates.

¹² Uses Reason Code 11 without explanation. A disqualified N.P. Mailing?

¹³ Reason Code 11/3 "Not Periodical Format for ads". This would only make sense if there was a nonprofit mailing, but it wasn't included by Dr. Schenk.

¹⁴ Disqualified with Reason Code 12 without explanation.

¹⁵ Id.

¹⁶ "Bulk Rate" in indicia N/P in paper work.

Fifth entry on page 0000161

Fifth entry on page 0000172¹⁷

Third entry on page 0000174¹⁸

Thirteenth entry on page 0000175¹⁹

Fifth entry on page 0000178²⁰

Fourth entry on page 0000202²¹

Third entry on page 0000213²²

Thirteenth entry on page 0000236²³

Fifteenth entry on page 0000236²⁴

Third entry on page 0000262²⁵

¹⁷ Disqualification Code 8 followed by "Used n/p form should be "BULK RATE". Isn't this a nonprofit mailing a regular rates?

¹⁸ "Didn't have non profit indicia". Isn't this same problem as Third entry on page 0000129.

¹⁹ Reason Code 8 with "Advertising" added is apparently accepted but "8" alone is not, see Seventh entry on page 0000176.

²⁰ Even the Postal Service reviewer is confused. This entry is proceeded by ?? in a circle. The explanation is "'Bulk Rate' and 'N/P' in indicia." The Disposition Code indicates the problem was corrected and the mail reentered. How? Couldn't this be a nonprofit attempting to enter mail at regular rates?

²¹ "Illegal 'Ad Info'" must be disqualification of nonprofit mail. Ad info in regular 3C is okay.

²² "Indicia say Bulk Rates paper work n.p." This looks like a nonprofit mailing a regular rates.

²³ Note "AD INFO". This only relevant only if this is a nonprofit mailing.

²⁴ See fifth entry on page 0000178 above.

²⁵ "Indicia say Bulk Rates and NP." This looks like a nonprofit mailing at regular rates.

Thirteenth entry page 0000265²⁶

The fourth entry on page 0000309 uses Reason Code 8 with the annotation "Not N/P". Reason Code 8 is also used in the thirteenth entry on page 0000175. This entry is accepted apparently because the word "advertising" follows it. Dr. Schenk apparently accepts these entries. But when Reason Code 8 is used without any annotation Dr. Schenk does not accepted the entry as reflecting the disqualification of nonprofit Standard Mail (A). Dr. Schenk accepts only entries accompanied by notes that compel the conclusion that they relate to the disqualification of some nonprofit mail. But an additional annotation of entries is not required by the form or by the instructions as Dr. Schenk acknowledged during cross-examination (Tr. at _____)

The sixth entry on page 0000170 is accompanied by a note "Not N/P" and is accepted, but the unannotated use of Reason Code 8 in the fourteenth entry on that page does not get that entry accepted. There is no reasoned basis for this distinction.

Even if all entries that use Reason Code 8 are not related to the disqualification of nonprofit mail, many may be. Dr. Schenk does not know which are or which are not: she simply *assumed* that if a Reason Code 8 is unaccompanied by an explicit annotation that it reflects the disqualification of nonprofit mail, the disqualified mail belonged to some other subclass.²⁷

There are at least seventeen entries where Reason Code 8 is used in combination with other Reason Codes, but none of these entries appear to have been accepted by Dr. Schenk.

²⁶ "Indicia sez 'Bulk Rate'." If this were a regular rate Standard Mail (A) mailing this would not a problem, so it appears to be a nonprofit mailing at regular rates.

²⁷ Again, this assumption is not expressly stated as required by the Commission's Rules of Practice that require, section 31(k)(1), that all studies clearly state all relevant assumptions.

Another Reason Code used to reflect the disqualification of nonprofit mail is Reason Code 11. This is supposed to be "Other (described on reverse side)". However, as with Reason Code 8, the only entries using Reason Code 11 that Dr. Schenk accepts are those accompanied by a note on the face of the form, not the reverse side, that reveals that it is related to the disqualification of nonprofit mail. *See* the eleventh entry on page 0000137, fourth entry on page 0000146, the second, fourth, fifth, and sixth entries on page 0000152, the eleventh entry on page 0000163 (which, by the way, stands in marked contrast to the twelfth entry on the same page, where the addition of the words "not non-profit" led to acceptance of that entry by Dr. Schenk), the twelfth, thirteenth and fourteenth entries on page 0000202, second entry on page 0000221, the fifteenth entry on page 228, the fourth entry on page 232, the fifth entry on page 235 and the first entry on page 239. This systematic exclusion of another set of entries without supplemental explanation reflects yet another unstated assumption buried in Dr. Schenk's study and testimony in violation of the Commission's Rules of Practice.

Not all entries using Reason Code 11 are accepted by Dr. Schenk *even when accompanied by a note indicating they reflect a problem with nonprofit mail*. For example, the seventh entry on page 0000099 uses Reason Code 11 and adds "Travel Advertising." But this entry does not appear to have been accepted by Schenk. Why not? Travel advertising is not a problem for mail entered at the Standard Mail (A) rates, it is only a problem for mail entered at nonprofit Standard Mail (A) rates. See, also, the next to last entry on page 0000117, and the ninth entry on page 0000131. On page 0000218 the fifteenth entry is not counted even though the Reason Code is 11 and a note suggests the problem relates to a "travel ad" while the second entry on page 220 that uses Reason Codes "5/11" followed by "advertising" is counted.

The seventh entry on page 0000139 uses Reason Codes 11 and 3 but does not appear to be accepted by Dr. Schenk even though a note says, "not periodical format for ads." Since a periodical format would be needed only for nonprofit

Standard Mail (A), this must reflect the disqualification of nonprofit mail, but it was not counted by Dr. Schenk. The fourteenth entry on page 0000144 used Reason Codes 11 and 3. However, that entry was accepted by Dr. Schenk because of a note.

Site 5

There is virtually no information in the Survey Questionnaire. The notes state only: "This is not really a problem." But on page 0000060 notes reflect that there "were some problems in 96 couldn't tell w/o looking at logs." Logs were not produced for Site 5, which has five detached mail units. Dr. Schenk resolved the uncertainty by claiming no nonprofit mail was disqualified and sent as "reg Std (A)" at this site. This conclusion is utterly without foundation.

Site 6

Survey Questionnaire reflects, at page 0000078, the practice of allowing nonprofit mailers to enter mail at regular rates with nonprofit endorsement. The only volume information is a guess that most mailings were in the 5,000 - 10,000 range. This proves nothing. What if one of the mailings contained ten million pieces?

At top of page 0000075 the notes reveal that the respondent for this Site doesn't know how many nonprofit mailing were rejected in AP5 in FY 98. Nevertheless, her statement that 10 were rejected for poor preparation and 2 or 3 for content is accepted.

Even worse, the respondent admits on page 0000072, the first page of Site 6 Survey Questionnaire, that she is unsure whether AP5 98 is representative. Dr. Schenk is pounding square pegs through round holes. When the respondent was asked for FY 96 volumes she said she did not know, see page 0000084, and the logs do not provide this information. Site 6 should be dropped entirely from Dr. Schenk's "study."

Site 7

No logs. The respondent sees nothing inconsistent with stating that most recent AP is representative (page 0000088) and stating that there were "a large number [of nonprofit mailings] being rejected in the beginning of FY 96." This demonstrates that current or even FY97 data are unuseable.

Site 8

Answer to Survey questionnaire question 3 is anomalous. It suggests that 99% of this Site's business is nonprofit. But no logs were produced, and the Postal Service asserts that eligibility was not a problem. There is too little information in the Survey form. The logs are a joke: 12 pages, one per AP. (AP11 is missing.) Every log page is blank except that the word "negative" has been written in at the top except for one page. This page, page 0000395, is the only one where the AP was entered in the FY field and the year, 96, was entered in the AP field. It reflects one disqualification. The notion that this Site had only one disqualification in an entire year is absurd on its face.

Site 9

No logs

Site 10

Respondent for Site had only "just moved into this job." This provides no basis for his guesstimates. Not all the logs are accounted for.

Respondent is aware that Publication 417 caused problems. This impeaches statement that current AP is representative. Page 0000146 reflects respondent doesn't know information on content-based rejections but that "We are going to proceed from here as if there were 3 in APs." There is simply no basis for this assumption, especially when respondent just moved into the job.

One cannot tell what volume range the guess of "2" entered in response to question 3. iv. refers to. This "estimate" is also inconsistent with decision noted on page 0000146 to assume 3 per AP.

The notes on the Survey Questionnaire indicate that while 65% of mailers re-endorse mail only 20% of mail is re-endorsed. This undermines the significance of the assertion under question 3. iv. that disqualified mail usually came from "smaller mailers." The majority of instances may involve "smaller mailers" but most of the mail must be coming from larger mailers if 65% of mailer re-endorse, but only 20% of the mail is re-endorsed. In any event it is clear that 80% of the mail is not re-endorsed and thus is entered with nonprofit indicia but at regular rates.

The logs for Site 10 also reflect inconsistencies and bias. First, the log forms used in APs 1-2 do not use Reason Codes. Instead explanations were written in. In 38 of 155 entries the explanation is "Documentation does not match statement." What does this mean? In no case, however, does Dr. Schenk assume it reflects the disqualification of nonprofit mail. Why not?

In the form used for the rest of the year 101 of the 405 entries use Reason Code 11 "Supporting Documentation not submitted/incorrect." Since most disqualifications are resolved at this Site by charging additional postage and then accepting the mail, much of this mail could be non-qualifying nonprofit mail being changed to commercial rate mail. These entries could be, but never were, interpreted by Dr. Schenk to reflect the disqualification of nonprofit mail or the entry of regular rate mail with nonprofit indicia. Why not?

Thirteenth entry on page 0000411 reflects "bulk rate mailer on non profit statement." This could be a nonprofit mailer entering regular rate mail.

Starting in AP3 for FY96 the log forms change. The most common entries are 11 (Supporting Documentation not submitted/incorrect) and 5 (Mailing Statement Irregularities) either or both could be disqualified nonprofit mail. There

is no basis for assuming, as Dr. Schenk does, that none of it was nonprofit mail disqualified for eligibility reasons.

Four entries explained by Reason Code 8 (Improper Endorsement) are accepted by Dr. Schenk. See, the fourth entry on page 0000430, the first entry on page 0000437, the fifth entry on page 0000444 and the second entry on page 0000446. But two other entries using Reason Code 8 were not. See the ninth entry on page 0000440 and the first on page 0000441. More importantly four entries using the Reason Code 10 (Classification) were not accepted by Dr. Schenk, at least not when used at this Site. See first entry on page 0000427, the tenth entry on page 0000437, and the third and fourth entries on page 0000441. Again, why not?

Site 11

No logs.²⁸ Answer to question A.1 fails to establish anything and A.2. says respondent doesn't know current volumes. Numbers in B1 and B.2. are not supported by logs. If respondent doesn't know current period volumes and doesn't have logs where did FY96 numbers come from. They are purse guesses.

Site 12

No logs. Survey Questionnaire acknowledges at page 0000158 that Publication 417 cracked down on mailing practices, and that there were problems at the beginning of 1996. *Answer to Question B.6.c.v. on page 0000163 acknowledges that some nonprofit mail was accepted under regular rates but not endorsed Nonprofit.*

The answer "almost all small" does not justify assuming all mailings were under 500 pieces. If 10 were small but one was 1 million the numbers would

²⁸ This Survey Questionnaire is out of order. It begins with page 0000100. That comes before the Questionnaire for Site 8.

change radically. Moreover many people might regard a bulk mailing of five thousand pieces as a small mailing.

Site 13

Not included

Site 14

Not included

Site 15

Not included

Site 16

Respondent estimates that of 5-10 mailings ruled ineligible in most recent AP, 0-4 were for content. This variance is too great to permit use of the data.

The logs for Site 16 are useless. Reason Code for 539 out of 628 or 82 % entries is 12. But there was no 12. There were only eleven Reason Codes. Thus, "12" must mean other. There is no more reason for excluding these entry than there is for including them. The logs are simply useless.

All of the rest of the entries are explained by Reason Code 1 (2866 failures). Only two reasons are given for all disqualifications, 1 and 12 in FY96 at this Site. The Survey Questionnaire clearly indicates that nonprofit mail rejected for content was not required to change the endorsement so at least some mail with nonprofit indicia was entered at regular rates at Site 16, but there is no basis for the estimated volume of 9000 pieces.

Site 17

No logs. Very little information in the Survey Questionnaire, but Dr. Schenk manages to convert "unknown" as to the volume of disqualified nonprofit

mail into “0”—even though respondent for site indicated nonprofit eligibility was at least a small problem for this Site. Without logs and a respondent who knows the volume, the information at this Site is insufficient to include the Site in the “study”.

Site 18

No logs. Respondent reports the problem is a growing one at this Site. The most recent AP, 5 for 98 had thirty rejections about half for content. But in all of FY96 there were allegedly only 100 to 120 rejections. Thus, there are four times as many rejections this year as in FY96. To say the least this seems odd. Without logs these unrefreshed recollections cannot be given evidentiary weight.

Site 19

No logs. Most of the Survey Questionnaire has been marked out and “NA” written in. The statement “No Problems In the 6 years he has been accepting mail” is entered under a question asking if mailer compliance was any different in FY96 compared with FY95. The answer is simply not responsive to the question. This survey without logs can not be given evidentiary weight.

Site 20

No logs. The statement “In the 10 years he has been on the job it has never happened” is entered under a question asking if mailer compliance was any different in FY96 compared with FY95. The answer is simply not responsive to the question. The questions regarding volume have been crossed out and marked NA. This survey without logs can not be given evidentiary weight.

Site 21

No logs.

Site 22

The Survey Questionnaire for this Site reflects no volume data and admits it is not in the logs. An entry on page 0000303 makes reference to Advertising in FY 96. Since advertising is acceptable at regular rates, this must refer to nonprofit mail, but Dr. Schenk says there was no disqualified nonprofit mail.

Third entry on page 0000564 of logs could be disqualified nonprofit mailing. First and second entries on page 0000566 of these logs are not explained. Fourth entry on page 0000567 is unannotated as is fourth entry on page 0000569 and first entry on page 0000570. First entry on page 0000572 is not explained. None of entries on page 0000573 are explained. First and third entries on page 0000574 not explained.

Site 23

No logs. Notes on Survey Questionnaire at page 0000312 indicate no problem because person responsible "helps mailers prepare their mail". This suggests some nonprofit mail could have been entered as "reg. rate Std (A)." There is no volume data, but that doesn't support conclusion there was none in absence of logs. Answer to B.5. on page 0000318 reflects working with customers. States that "... 2 customers have NP status but mail reg. Rate because too much advertising..."

Site 24

Not included

Site 25

No logs. Survey Questionnaire reflects 15 rejections in some period, page 0000346. These went out with NP endorsements, page 0000348. Statement that volume of mail was usually less than 1000 pieces is insufficient, especially with

no logs, to supporting Dr. Schenk's finding that only 3000 pieces of disqualified nonprofit mail paid reg Standard (A) rates.

Site 26

Not included

Site 27

Dr. Schenk's conclusion that only 3000 pieces were disqualified and paid reg. Std, (A) rates is apparently based on statement on page 0000375 that, of "319,566 nonprofit pieces rejected for any reason less than 1% rejected because of *volume*." (emphasis added) Rejection for "volume" is a irrelevant. A review of entries in the logs for this and other sites reflects the fact that mail is frequently rejected because of *insufficient* volume—i.e., too few pieces. Thus, the statement that "less than 1%" was rejected because of volume" proves nothing! It does not support the conclusion that this represents all the disqualified nonprofit mail that paid regular rate.

Insufficient postage, another common reason for rejecting mail could be an explanation for a mailing that did not qualify for nonprofit rates, see the thirteenth entry on page 0000580, second entry on page 0000581, fifteenth entry on page 0000583, fifteenth entry on page 0000584, seventeenth, nineteenth and twentieth entries on page 0000585, entries six, seven and eight on page 0000586. Note "Insufficient Postage" must be different from "insufficient funds," the most common explanation for a disqualification. Nevertheless, Dr. Schenk never assumes that "Insufficient Postage" reflect the rejection of nonprofit mail for eligibility reasons. "Bulk Fee Due" the explanation for entries eight and nine on page 0000582 could also be disqualified nonprofit mail being entered at regular bulk rates. If that isn't what it is, what does it mean?

After the log form changes in AP2 to a form using Reason Codes, there are unannotated entries with Reason Codes 5, 6 and 10. Any of these could represent

the disqualification of nonprofit mail. See first and sixth entries on page 0000589, first entry on page 0000591, and the seventh entry on page 0000598 for an Reason Code 10 which is a nonprofit problem. This demonstrates that Reason Code 10 is used for disqualified nonprofit mail, and thus that Dr. Schenk's unstated assumption that unannotated Reason Code 10s do not reflect disqualified nonprofit mail is unwarranted. There are also unannotated Reason Code 10s in the eighth and ninth entries on page 0000608 and the sixth entry on page 000067.

Reason Codes 5 and 6 could also be nonprofit mail. So the following entries could all reflect disqualified nonprofit mailings:

- Third on page 0000599
- Fourth on page 0000600
- Fifth entry on page 0000601
- Third and tenth entries on page 0000604,
- Fourth entry on page 0000607
- Second entry on page 0000608
- Second, third and fifth entries on page 0000670
- Fourth and tenth entries on page 0000672
- Fifth entry on page 0000673
- Tenth, entry on page 0000674
- Second, third and fourth entries on page 0000677
- Fourth and sixth entries on page 0000678
- Sixth entry on page 0000609.

The ninth entry on page 0000620 uses an unannotated Reason Code 8 (Improper. Endorsement). All, or more likely some of the entries listed above reflect the disqualification of nonprofit mail for eligibility reasons, but Dr. Schenk excludes them all without any basis.

Dr. Schenk does not appear to have accepted any entries from Site 27 as reflecting the disqualification of nonprofit mail or the entry of mail with nonprofit indicia at regular rates at this Site. However, there are a number of entries in the logs that use Reason Code 10 (Classification). See, the fifth and sixth entries on page 0000598, the second and ninth entries on page 0000692, the fifth entry on page 0000679, and the seventh entry on page 0000666. If Reason Code 10 was accepted reflecting a nonprofit qualification problem at other Sites, why isn't it sufficient here? There are also numerous entries explained with Reason Code 8 (Improper Endorsement). These easily reflect the entry by nonprofits of mail at regular rates.

Site 28

The logs begin with AP6. The problem was most severe in the early APs of FY96, of course; so the most important APs are excluded.

Only five AP periods out of thirteen are covered by the logs for this Site. A substantial number of entries in AP 6 and AP7, 59 out of 319 or 18.5%, have no explanation at all. Entries two, eleven and twelve on page 0000704 reflect nonprofit issues as does the sixteenth entry on page 0000705. Entry fifteen "wrong rate" on page 0000707 could be a nonprofit disqualification as could entry nineteen "wrong postage" on page 0000710. "No-eligibility" the fifth entry on page 0000713 is clearly a nonprofit eligibility problem. All ten entries on pages 0000715, 0000716, and most of 0000717 have no explanation at all. None of these entries appear to have been accepted by Dr. Schenk.

Once the log forms start using Reason Codes, they are not consistently used in accordance with the form. Nevertheless, there are three entries on page 0000718 which use the Reason Code 10 without any annotation. Reason Code 10 should reflect a classification problem and could be a nonprofit classification problem. Dr. Schenk does not know, and neither do we, but she has no basis for

assuming it does not. She simply ignores these entries to minimize the phenomenon she has been hired to attack.

Only one of ten entries on page 0000719 is explained. Only half of ten entries are explained on page 0000720 but three of the entries that are explained by Reason Code 10, which signifies a classification problem. There is another entry on page 0000721, two more entries, one and four, on page 0000722 that are explained by Reason Code 10. Eventually, the entries begin to be explained by use of Reason Code 12 written in as "other" but never explained.

On pages 0000723, 0000724 and 000725 fourteen of thirty entries are entirely unexplained. On page 0000726 eight of fourteen entries are unannotated 10s. Two of these ten entries, the third and fourth, on page 0000727 are explained by Reason Code 5/10 or classification/mailling statement irregularities. These could be nonprofit disqualifications. Dr. Schenk does not know what they are, but she nonetheless excludes them. Four of the ten entries, the first, second, third and eighth entries, on page 0000728 are 10s. Two of ten entries on page 0000731 are unannotated 10s. There are five more unannotated 10s. None of the unannotated Reason Code 10 entries are accepted by Dr. Schenk. This arbitrary decision illustrates Dr. Schenk's strategy of minimizing a phenomenon she cannot dismiss in its entirety.

Site 29

No logs or Survey Forms

Site 30

No logs or Survey Forms

* * *

The conclusion warranted by the foregoing review is obvious: Dr. Schenk cannot possibly elicit any valid conclusions from such incomplete data. The

“study” only accomplishes one thing: it confirms that a substantial volume of mail in FY96 bore nonprofit markings yet paid regular Standard Mail (A) rates and was recorded as regular Standard Mail (A) in the RPW system.

II. THE TRACS METHODOLOGY OVER-ATTRIBUTES TRANSPORTATION COSTS TO STANDARD (A) NONPROFIT MAIL.

A. Contrary to Postal Service Assertions, the TRACS Expansion Process Makes No Economic Sense Whatsoever.

The Postal Service claims it “has demonstrated compelling evidence why it is both logical and fair to distribute these costs [of empty space] to mail found in containers.” USPS Initial Brief, p. III-175. To the contrary, no such demonstration has been made by the Service, nor does the record evidence provide any support for this assertion.

Postal Service witness Pickett says that “the purpose of TRACS is to report what is actually happening.” 35 Tr. 18794:17-18. In a similar vein, the Postal Service’s Initial Brief asserts that “TRACS was designed to capture the proportions of mail using transportation services at any given time.” USPS Br. III-176. The expansion process, by arbitrarily assigning a vast amount of empty space to the different subclasses of mail, totally distorts the amount of transportation service being provided to the actual mail volume of any subclass, thereby defeating the alleged purpose.

Witness Pickett admits that if a sack is the container, whatever volume of mail happens to be in the sack is expanded to the capacity of the sack (35 Tr. 18791:9-12). He further admits that if only one sack is bed loaded on the floor of the vehicle, the floor space occupied by that sack is expanded to the entire height of the vehicle (*id.* at 18791).

Similarly, if two identical parcels are bed loaded on the floor of a truck, the floor space occupied by those parcels is expanded up to the height of the truck. If they are stacked one on top of another, the same two parcels are charged with

half the cube (*id.* at 18809:1-21). When basic data are manipulated in this way, it is impossible to ascertain “what is actually happening,” assertions to the contrary notwithstanding. Consider, for example, the following testimony (*id.* at 18797:12-18):

Q If partially loaded containers are a frequent occurrence – are they?

A Well, I don’t know what frequent is. I imagine TRACS would – well, TRACS wouldn’t even tell you that necessarily. I couldn’t tell you.

Q TRACS doesn’t tell you how often it occurs?

A No.

It is folly to maintain that TRACS tells “what is actually happening” when one has no idea how many containers are partially loaded.

The faulty and unnecessary expansion process is so embedded in the TRACS system that basic data concerning the actual volume of mail are not even recorded in any consistent manner (*id.* at 18803:13-17, 18804:2-5):

Q If the container has empty space in it, then the TRACS program expands and assigns the empty space to mail that is actually there?

A It’s either the TRACS program or the data collector on site.

* * *

Q Do you mean that the clerical [*sic*] enters the notation if there is a half full container, that he would record it as being 100 percent full?

A He had that option, yes.

Since TRACS does not record the actual volume of mail that is offloaded from sampled trucks, it is impossible to ascertain “what is actually happening,” or how much transportation service was actually provided to each subclass of mail.

The average weight of nonprofit bulk mail is less than commercial bulk mail. Accordingly, the cube of nonprofit bulk mail is also less. The expansion process of TRACS is likely to penalize lighter weight, lower cube mail by assigning it a disproportionate amount of empty space. In conclusion, it is neither logical nor fair to distribute the costs of empty space the way it is done in TRACS.

B. The Arbitrary Assignment of Joint Costs to Route-Trip-Destination-Days Is Incorrect and Indefensible.

On brief, the Postal Service quotes witness Haldi's statement that "'TRACS breaks the route into independent segments' (22 Tr. 11822). The Postal Service asserts that this treatment is incorrect because route-trips are jointly determined" and that TRACS does not 'artificially' break a route into segments, but samples route-trip-destination days. USPS Initial Br. at III-171.

The Postal Service candidly admits that "the cost of a contract is jointly determined by all of the route trips which are served on the contract." *Id.* at III-171. At the same time, witness Pickett candidly admits that the Postal Service arbitrarily divides the joint cost between individual segments on the route, because "[the] cost of that leg has to be in some way attributed to the mail that was on the truck." 35 Tr. 18833-34. Clearly, the TRACS procedure is to divide the joint costs of a complete trip in a totally arbitrary manner. It is equally clear that the immediate and direct effect of this arbitrary procedure is to develop unit transportation costs that vary inversely with the volume on the truck.

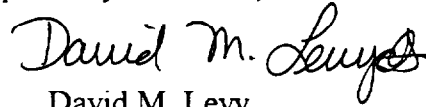
As Dr. Haldi stated in his direct testimony, "TRACS" is an economist's worst nightmare come true." 22 Tr. 11821-22 (Haldi). The arbitrary allocation of

joint costs to individual legs, as carried out under TRACS, is completely unsound and without any economic foundation. The result is to over allocate costs to subclasses in proportion to the use of largely empty trucks by those subclasses. Nonprofit bulk mail, which is drop shipped less than commercial bulk mail, is a victim of such over allocation.

CONCLUSION

For the foregoing reasons, and those stated in ANM's initial brief and joint reply brief, the Postal Service's proposed rate request should be denied in its entirety.

Respectfully submitted,



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April 10, 1998

CERTIFICATE OF SERVICE

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

David M. Lewy

April 10, 1998