

DOCKET SECTION

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FEDERAL BUREAU OF INVESTIGATION  
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BEFORE THE  
POSTAL RATE COMMISSION  
WASHINGTON, D.C. 20268-0001

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Docket No. R97-1

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Postal Rate And Fee Changes, 1997

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**COMMENTS OF  
AMERICAN LIBRARY ASSOCIATION  
ON RECONSIDERATION**

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The American Library Association (“ALA”) respectfully submits these comments on the Standard Mail Library rate, one of the matters opened for reconsideration by the Commission in Order No. 1215. ALA agrees with the Postal Service that the Commission should modify its recommended decision of May 11, 1998, by recommending a discrete rate schedule for Library Mail.<sup>1</sup> For the reasons stated below, however, the rates should be set by applying the statutory markup for Library Mail to the same attributable *costs* as determined by the Commission for Special Standard mail. This approach would yield slightly lower rates than would the Governors’ proposal to establish the “exact

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<sup>1</sup> ALA is a member of the Alliance of Nonprofit Mailers, which is seeking judicial review of the lawfulness *vel non* of all rate changes in Docket No. R97-1. *Alliance of Nonprofit Mailers v. USPS*, No. 98-1320 (D.C. Cir.; petition filed July 17, 1998). Without waiving any of the claims raised by ANM and other petitioners in court, ALA assumes *arguendo* in these Comments that the record in Docket No. R97-1 provides a basis for recommending rates that differ from those set in R94-1.

same *rates*” recommended for Special Standard Mail. *Cf.* Decision of the Governors (June 29, 1998) at 11-14.

**A.**

ALA concurs in the Commission’s finding that mechanical application of the unreliable, unstable and “highly questionable” cost data generated by the Postal Service for Library Mail would result in “anomalous” rates. R97-1 Op. & Rec. Decis. ¶¶ 5740-45. Adoption of such rates would be unsupported by substantial evidence, and hence unlawful. For the reasons noted by the Governors, however, “bridging” Special Standard rates to Library Mail is a problematic remedy.

(1) The Postal Reorganization Act provides that the Commission, upon “receiving a request” for a recommended decision from the Postal Service, “shall make a recommended decision on the request for changes in rates . . . in *each class of mail* . . . in accordance with the policies” of Title 39. 39 U.S.C. § 3622(b) (emphasis added). The Postal Service’s original rate request expressly encompassed Library Mail; and the Postal Service, in seeking reconsideration, has renewed its request that the Commission recommend a rate schedule for this subclass. Accordingly, the Commission is obligated to recommend a schedule of rates for Library Mail “in accordance with the policies” of Title 39.

(2) The Commission’s attempted patch for the hole in the Postal Service’s cost data for Library Mail—redirecting beneficiaries of Library Mail to Special Standard mail instead of recommending rates for their own subclass—accords with neither the policies nor the plain language of the Act. The Library Mail subclass is a creature of statute, and its “abolition is beyond

the Commission's authority to recommend and the Board of Governors' power to order." R97-1 Op. & Rec. Decis. ¶ 5745; *see also* 39 U.S.C. §§ 3626(a)(1) and 3683 (incorporating former section 4554). The Revenue Forgone Reform Act provides that rates for the subclass shall be "established" so that markups over the "estimated costs attributable" to the subclass shall equal a specified percentage of the markups for the "most closely corresponding regular-rate category"—here, Special Standard Mail. 39 U.S.C. § 3626(a)(3). Ratemaking for Library Mail thus entails two distinct tasks: the "costs attributable" to the subclass must be "estimated"; and rates must be "established" at a specified percentage markup over those "estimated costs." "Bridging" Library Mail to Special Standard rates accomplishes neither step.

(3) As the Governors note in their June 29 decision (at p. 13), the Commission's approach would be the death knell of a separate Library Mail subclass. With no economic incentive to continue using the subclass, much if not all of its volume would migrate into the Special Standard subclass.<sup>2</sup> ALA agrees with the Governors that "collection of accurate Library Mail cost data under such a regime might be virtually impossible." *Id.* First, it is hard to

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<sup>2</sup> Publishers, for example, are entitled to use Library Mail only to fulfill orders from libraries and other qualifying entities. Orders from non-qualifying purchasers (e.g., commercial bookstores) must be shipped at Special Standard or other non-preferred rates. 39 U.S.C. § 3683(b)(2)(D). Publishers that serve both qualifying and non-qualifying purchasers could minimize printing, record-keeping and other costs by consolidating all shipments of Library and Special Standard mail in the Special Standard subclass. The existing rate structure provides an offsetting economic incentive for publishers and other mailers to continue entering mail in both subclasses. The May 1998 Recommended Decision would eliminate this offsetting incentive.

imagine how the Postal Service could ensure consistency between the Library Mail volumes entered in the RPW and the aggregate costs reported by the IOCS. Without such consistency, the resulting unit costs are worthless.<sup>3</sup> Second, it is hard to imagine how extrapolations based on a diminished number of IOCS tallies (and other tallies based on sampling systems) could have any statistical significance, when Library Mail costs *already* “suffer from some instability due to the small volume and the nature of the IOCS sampling procedure,” R97-1 Op. & Rec. Decis. ¶ 5741 (quoting USPS response to Presiding Officer’s Information Request No. 2).

(4) As the Governors note, the record contains no testimony showing that expansion of eligibility for Special Standard Mail to all qualified Library Mail would satisfy the classification criteria enumerated in 39 U.S.C. § 3623(c). Decision of the Governors at 13.

(5) The Commission also made no findings, and the record contains no evidence, that the rates recommended for Special Standard Mail would satisfy the ratemaking criteria enumerated in 39 U.S.C. § 3622(b) if applied to mail qualifying for the Library Mail subclass under 39 U.S.C. § 3683(b). While the

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<sup>3</sup> In its recommended decision, the Commission found “particularly persuasive” the hypothesis that “some nonprofit [Standard A] mail may be correctly reported in the RPW system as commercial mail, but recorded as nonprofit in the IOCS.” R97-1 Op. & Rec. Decis. ¶ 5613 (May 11, 1998). The potential problem here would be even more severe, because the choice between the Library and Special Standard subclasses would have no effect on the postage paid by the mailer or received by the Postal Service. What are the odds that the Postal Service can devise—let alone administer consistently in the field—a mechanism to ensure that all pieces captured by the IOCS as “Library Mail” tallies are entered in the RPW as Library Mail volumes?

coverage ratio recommended in R97-1 for Special Standard Mail is low, 39 U.S.C. §§ 3626(a) and 3683(b) reflect a Congressional determination that the informational value of books and other qualifying matter sent to and from libraries merit a coverage ratio that is even lower. By the Commission's own admission, however, the rates recommended for Special Standard mail in this case incorporate "the same percentage coverage recommended in" Docket No. R94-1, when the Commission also recommended Library Mail rates at levels low enough to preserve Library Mail as a separate subclass. R97-1 Op. & Rec. Decis. ¶ 5755 (May 11, 1998).

## **B.**

Although the Governors' "embrace" of the Commission's decision not to base rates for Library Mail on the Postal Service's unreliable cost data for Library Mail is gratifying (Decision of the Governors at 13), the separate-but-equal rate schedules proposed by the Governors for the Library and Special Standard subclasses would not cure the problems inherent in the joint schedule recommended by the Commission. In particular, migration of mail volumes from the Library to the Special Standard subclass would remain a threat in the absence of an actual rate preference to offset the greater operational costs of continuing to use both subclasses, and "the future viability of Library Mail as a distinct subclass" would remain in jeopardy. *Id.*

Moreover, establishment of separate-but-equal rates for Library and Special Standard mail rests on the implicit and unsupported assumption that the unit attributable costs of Library Mail are 2.7 percent higher than the

corresponding costs of Special Standard mail.<sup>4</sup> The record contains no credible evidence to support such a finding. As the Commission found in its recommended decision, the Postal Service's attributable cost estimates for Library Mail are "highly questionable." R97-1 Op. & Rec. Decis. ¶ 5743. The Service has failed to offer any explanation for the "sharp" rise in the costs it has attributed to Library Mail in recent years, other than to admit the possibility of "instability due to the small volume and the nature of the IOCS sampling procedures." *Id.* ¶ 5741.

In these circumstances, a better alternative would be assume, in the absence of evidence to the contrary, that the unit attributable costs of Library and Special Standard mail are the same—i.e., to use the unit attributable costs of Special Standard Mail as a proxy for the unit attributable costs of Library Mail. Equalizing costs rather than rates would maintain a differential of 2.7 percent between Library and Special Standard rates. This differential, although small, would preserve the Library subclass as a distinct economic entity.

ALA appreciates the Commission's concern that equating the costs of the two subclasses is an "uncertain assumption." R97-1 Op. & Rec. Decis. ¶ 5743. So it is. But in the absence of statistically reliable cost data for another subclass that corresponds more closely with the Library subclass, or

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<sup>4</sup> The Commission recommended a coverage ratio of 1.056 for Special Standard mail. R97-1 Op. & Rec. Decis. at App. G, p. 32. The corresponding coverage ratio for Library Mail dictated by 39 U.S.C. § 3626(a)(3)(D) is 1.028. For the disparate coverage ratios to produce the same rates, the attributable costs of Library Mail must be 2.7 percent higher than for Special Standard mail ( $1.056 \div 1.028 = 1.027$ ).

for the Library subclass itself, the attributable cost data for the Special Standard subclass are the best evidence of record.<sup>5</sup>

There is ample precedent for this approach. In Docket No. R90-1, the Postal Service based classroom second-class rates on nonprofit second-class costs, rather than classroom costs, because the Cost Revenue Analysis report indicated a 60 percent increase in classroom costs. The Service explained that “These new costs could be correct; they could also be due to sampling error, given the small volume of classroom.” USPS-T-20 (Mitchell) at 58. Despite the different makeup and operational characteristics of the two subclasses, the Commission adopted this approach as a “cautious, temporary solution” to the unresolved possibility of error in the Service’s costing system. R90-1 Op. & Rec. Decis. (Jan. 4, 1991) at V-148-149. The Commission has continued to adhere to this approach since then. R97-1 Op. & Rec. Decis. ¶¶ 5867-68.

If the Commission nonetheless concludes that the attributable cost data for Special Standard mail are too uncertain a foundation for setting Library Mail rates, then the only lawful alternative open to the Commission is to recommend no change in Library Mail rates over existing R94-1 levels. ALA respectfully reminds the Commission that the initial burden of producing credible evidence of the costs attributable to Library Mail, and the ultimate burden of proof, rest with the Postal Service—not ALA, or OCA, or anyone

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<sup>5</sup> In Docket No. R94-1, the Commission found that because “the processing of library rate and special rate fourth-class pieces is virtually indistinguishable, the unit attributable costs for these two subclasses should be roughly comparable.” R94-1 Op. & Rec. Decis. ¶ 5381 (Nov. 30, 1994). The same is true today: the Service’s “operating plan does not segregate Library Mail from Special rate mail.” R97-1 Op. & Rec. Decis. ¶ 5741.



else. The Postal Service bears this burden not just because the Act so provides,<sup>6</sup> but because there is no practical alternative: if the Service fails to develop reliable cost data for Library Mail, no one else has the resources (or access to Postal Service data and operations) to fill the gap.

It is well and good for the Commission to “offer the Postal Service an opportunity to focus special scrutiny on Library Mail” before the next rate case. R97-1 Op. & Rec. Decis. ¶ 5745. But this is not the first case in which Postal Service cost data for Library Mail have warranted special scrutiny: in Docket No. R94-1, a “precipitous increase” in the attributable costs estimated by the Postal Service persuaded the Commission, “with great reluctance,” to recommend a 69.9 percent increase in Library Mail rates. R97-1 Op. & Rec. Decis. ¶ 5729. Admonitions to develop probative cost data are empty unless the Commission enforces the statutory burden of proof when probative data are absent.

Moreover, the deficiencies in the IOCS data for Library Mail, if left untreated here, are likely to spread to larger mail classes. Automation and mechanization of mail handling renders the IOCS samples, and cost data based on those samples, increasingly unreliable. The random work-sampling system was not designed for a heavily automated, hands-off environment. As that environment becomes reality, the number of direct tallies will dwindle, and fewer and fewer subclasses will have enough direct tallies to draw reliable cost inferences.

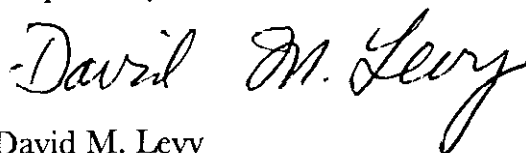
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<sup>6</sup> The Postal Service, as the proponent of change, bears the burden of proof. 39 U.S.C. § 3624(a) (incorporating 5 U.S.C. § 556(d)).

## CONCLUSION

For the foregoing reasons, ALA respectfully requests that the Commission recommend rates for Library Mail derived by applying the statutory markup for Library Mail to the Commission's estimated attributable costs for Special Standard Mail.

Respectfully submitted,



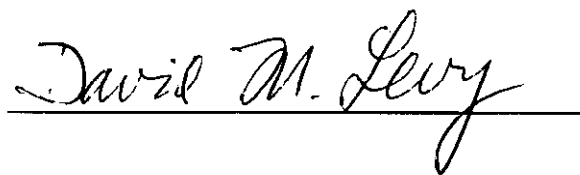
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July 30, 1998

## **CERTIFICATE OF SERVICE**

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

A handwritten signature in cursive script, reading "David M. Levy", is written above a solid horizontal line.

July 30, 1998