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

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

MAILING ONLINE SERVICE

Docket No. MC98-1

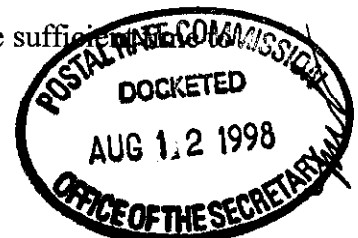
COMMENTS OF
MAIL ADVERTISING SERVICE ASSOCIATION INTERNATIONAL
IN COMPLIANCE WITH ORDER 1216

The Postal Rate Commission on July 17, 1998, issued a Notice and Order on the Request of the United States Postal Service for a recommended decision on proposed additions to the Domestic Mail Classification Schedule ("DMCS") on an experimental basis for a new service called Mailing Online ("MOL"), and for fees associated with a market test of MOL beginning in September 1998. The Notice and Order directed the parties to file by August 12, 1998:

- (i) any request for a hearing on the proposed market test, along with the statement of disputed issues required by Rule 163(e);
- (ii) a statement of disputed issues on which a hearing is required under Rule 67a(b) of the experimental rules; and
- (iii) answers to the Postal Service's Motion for Expedition, and for Waiver of Certain Provisions of Rule 161 and Certain Provisions of Rule 64(h) ("Motion").

The Notice and Order also set August 14, 1998, as the date for the prehearing conference in this matter.

Thereafter, Mail Advertising Service Association International ("MASA") and certain other parties filed motions to extend the time for filing the prehearing statements described above and to continue the prehearing conference so that the intervenors would have sufficient time to file their comments.



develop considered responses to items raised by the Postal Service Request, taking into account the Postal Service responses to initial interrogatories filed by the parties. The Presiding Officer denied these motions on August 10, 1998. POR MC98-1/2. In the course of denying the motion, the Presiding Officer directed the parties to be prepared to address at the August 14, 1998 prehearing conference whether it would be possible to bifurcate the proceedings, holding expedited hearings, if necessary, and following an expedited briefing schedule with respect to the market test request. The Presiding Officer asked that parties be in a position to discuss on August 14th whether they will be contesting any part of the evidentiary showing by the Postal Service and whether they intend to offer rebuttal testimony on the market test request. He also directed the Postal Service to identify at the hearing the parts of its testimony it relied upon in support of the market test request.

MASA believes that the current Postal Service proposals raise important questions concerning competition by the Postal Service with private business in areas that do not directly involve the acceptance, processing and delivery of mail. These questions should not be summarily and superficially disposed of simply because the Postal Service has invoked the expedited procedures of Rules 161, *et seq.* and 67, *et. seq.* MOL as proposed poses a substantial competitive threat to private businesses in the mailing services industry, many of whom are dependent on the Postal Service and constitute some of its largest customers. The proposed service is, moreover, by definition in development and experimental, with an express purpose of the experimental offering being to determine what features potential customers would find attractive so that MOL can be modified accordingly. The short of it is that there is very little to stop the Postal Service from adding features and making available a broader range of mailing rates such that MOL would be attractive to virtually all users of direct mail advertising and fund

raising. Consideration of the full range of competitive issues must begin now and should not be swept under the rug with the broom of Postal Service assurances that its request involves only modest volume and is targeted at potential customers that are not currently served by the mailing services industry.

Although MASA is limited in its ability to comply with the Notice and Order by the fact that it has not received any answers to its initial set of interrogatories, and has not fully analyzed the USPS responses to interrogatories from the OCA and others that have been received to date, it nevertheless files this pleading in a good faith attempt to comply with the Notice and Order. It requests, however, that in light of the state of the record at this point the Presiding Officer look favorably on later amendments or supplements to this filing as discovery progresses and the issues crystallize.

I. REQUEST FOR HEARING ON MARKET TEST PROPOSAL.

MASA requests a hearing on the market test proposal for MOL filed by the Postal Service. The market test proposal does not satisfy the explicit requirements of Rule 161 for treatment as a market test in that it is not filed as part of a request for permanent changes in classifications and rates. It does not, likewise, satisfy the purpose for a market test, even in the context of an experimental classification request, in that it is not for the purpose of developing information necessary for the establishment of the experimental classification.

The Postal Service Request and the testimony in support thereof make clear that the market test request is merely a request for experimental classification on an interim basis. USPS witness Garvey's testimony states expressly that the request for market test status is being made at this point because the Postal Service (i) wishes to expand the operational test and believes that it would be too expensive to do so without changing the fee structure heretofore used; (ii) wishes

to have a more realistic environment to “assess market demand and service requirements accurately,” which requires that customers have “access to discounted postage rates”; and (iii) needs interim fees to develop “projectible demand data” premised upon customer usage “when payment for printing services has not been waived,” as it was during the operational test. USPS-T1 at 6. Not one of these asserted purposes has, as its objective, developing data necessary for the experimental filing, let alone for some hypothetical permanent filing, which would occur at the earliest, under the Postal Service timeline, two and one half years hence.

Under Rule 163(e), MASA is required in connection with its request for a hearing on market test status to “state with specificity the fact or facts set forth in the Postal Service’s filing that [it] disputes, and when possible, what [it] believes to be the true fact or facts and the evidence it intends to provide in support of its position.” Rule 163(e). MASA has been hampered by the shortness of time for this filing in complying with all parts of this rule, especially the part requiring it to state its own factual contentions and to identify its evidence. MASA has likewise been hampered by the curious fact, recognized in POR No. 2, that the Postal Service has combined its market test request with its request for experimental classification, making it difficult (if not impossible) to determine what evidence it is offering in support of the former as distinct from the latter. It appears from the Request and supporting testimony that the evidence offered is directed to the experimental request primarily. Until the Postal Service has responded to the Presiding Officer’s order in POR No. 2 that it identify those parts of its evidence that support its market test filing, it is impossible to respond fully.

At this point, MASA identifies the following issues it believes are in dispute with respect to the market test request. It should be noted, however, that in MASA’s view, the full range of issues identified below with respect to the experimental filing is also presented by the market test

request. Further, MASA may supplement or amend this list in light of further clarification from the Postal Service in response to POR No. 2:

- (i) the propriety of and qualification of the MOL market test request under applicable PRC rules (see objection to USPS request for waiver of Rule 161 *infra*);
- (ii) whether the Postal Service request for market test classification satisfies the requirement, set forth in Rule 162(i), that it “include a plan for gathering data needed to support a permanent change in mail classification and for reporting test data to the Commission;”¹
- (iii) whether the market test request meets the requirement of Rule 162 that the Postal Service satisfy its burden of showing that the request “is in the public interest and in accordance with the policies of the Act and the applicable criteria of the Act.”

II. STATEMENT OF DISPUTED ISSUES FOR EXPERIMENTAL REQUEST.

The Presiding Officer has recognized in POR No. 2 the difficulty faced by an intervenor in complying with the Rule requiring it to designate disputed factual issues at an early stage in an experimental case, before significant discovery has been taken from the Postal Service witnesses. Indeed, MASA has not as of the filing of this pleading, received any response from the Postal Service to any interrogatory it has filed (not because the Postal Service is dilatory, but because the answers are not yet due). Moreover, the deadline for filing notices of intervention is August 12th, the very day that this pleading is to be filed, and it is obvious that many intervenors will not be in a position by this date to identify disputed factual issues with specificity. Nevertheless, and

¹ It is worth noting that the “Experimental Data Collection Plan” filed as Appendix A to the Request, applies only to the experimental request and to the data collection requirement of Rule 67c. By its explicit terms it has no bearing on the independent data collection requirement of Rule 162(i). The Market Test Data Collection Plan, attached to the Request as Exhibit B, is extremely cursory. By its terms, it would not seek any costing information, instead being limited to “mailpiece characteristics and customer reactions.” Under the timeline preferred by the Postal Service, as modified by its recent acknowledgment that the market test would not begin until October at the earliest, it is highly unlikely that the report of “all operational statistics and customer feedback data each Accounting Period,” referred to in Appendix B would be used in any meaningful way by the PRC in reaching a decision by November.

with the foregoing caveats in mind, MASA sets forth the following as the disputed factual issues it has identified at this time:

- (i) the reliability of the market research testimony and the conclusions the Postal Service witnesses have drawn from it, including (a) the market most likely to use the service; (b) the percentage of the expected volume to come from mailings that would not otherwise have been made in the absence of MOL; (c) the percentage of the expected volume to come from mailings that would have been made even in the absence of MOL; (e) the assertion that so-called "long run" print jobs would be less likely to use MOL; and (f) the propriety of the assumptions made in formulating and conducting the market research;
- (ii) the costing data with respect to the cost of the contractual print aspects of MOL, including whether such testimony is necessary or relevant in light of the pricing of MOL, which simply marks up contractual printing prices by 25% ;
- (iii) the costing evidence with respect to the technology costs to be incurred by the Postal Service during and after the experimental period;
- (iv) the assumption that the postage rates are justified without any costing evidence with respect to the postage component of MOL (particularly in light of the fact that MOL customers will not have to meet volume and possibly other requirements for the postage rates they will be charged);
- (v) the assertion (without meaningful evidentiary support) that the impact of MOL on competitive businesses is likely to be slight;
- (vi) whether the Postal Service may appropriately provide for a fee non-postal services such as printing and presenting mail to the Postal Service for processing and delivery, or whether the proposal constitutes unfair competition;
- (vii) whether mail using MOL will receive favorable treatment within the Postal Service as compared to other mail that is presented at the same rates as MOL;
- (viii) whether the Postal Service is providing certain services to MOL customers (e.g., list cleaning) without charge and in a manner that discriminates against other Postal Service customers;
- (ix) how the Postal Service intends to market MOL, whether the costs of such marketing have been properly accounted for in the costing testimony, and whether the marketing plan unfairly competes with private businesses that use the Postal Service and supply market sensitive information in the normal course of presenting a mailing to the Postal Service;

(x) whether the 25% markup of contractual printing costs is sufficient to cover Postal Service costs and make a reasonable contribution to overhead, or whether a fee based on such a markup is unfairly competitive;

(xi) what the basis is for limiting the printers, customers and mailing service firms which can take advantage of MOL to the contract printers, who are expected to number no more than 25, and quite likely less, even when the MOL service is fully operational;

(xii) whether MOL is really most likely to be used by the so-called short run printers and the SOHO market; what makes it unattractive to larger mailers, and what is to prevent the Postal Service from offering new features that would make MOL attractive to a much broader range of potential users.

MASA may supplement this list as additional issues come to light or are refined in discovery and other proceedings in this docket.

III. OBJECTIONS TO POSTAL SERVICE MOTION FOR WAIVER.

The Postal Service filed with its Request a Motion for expedition and waiver of certain rules otherwise applicable to its market test and experimental filings. MASA objects to this Motion in part, as outlined in more detail below.

Motion for Expedited Treatment. The Postal Service has moved formally for expedited treatment for its experimental request, seeking a recommended decision in slightly less than the 150 day period contemplated by Rule 67d. It has implicitly requested expedited treatment for its market test request because it seeks a recommended decision within 45 days of the filing rather than the 90 days contemplated by Rule 164.

MASA objects to the expedited treatment of the market test request. As set out more fully elsewhere herein, it is MASA's view that the market test proposal is properly treated as a part of the experimental request. It is unclear how much more time is available for deliberations as a result of the Postal Service extension of the start date for the market test to October. MASA

believes that the important issues raised by the Postal Service filing should be addressed in the longer time frame for the experimental request.

Whether the full 150 days provided for a recommended decision in an experimental case will be necessary remains to be seen. If the schedule is set to produce a decision by the literal end of November (as the Postal Service has requested), it may be possible to address the issues in that time frame. Anything earlier, however, would unfairly constrain the parties and the PRC.

Rule 161 Waiver. The Motion requests a waiver of those portions of Rule 161 that contemplate and require that a market test request be filed in connection with a request for a permanent change in classifications, rates or fees. MASA objects to this request because it is not consistent with the purpose of the rule and because it appears the rule is being used by the Postal Service as an expedient for early commencement of its experimental test of MOL

The market test rules by their terms can be invoked only in connection with a simultaneous filing for permanent rates and classifications. The express purpose of the market test contemplated by the rule is to develop information necessary to support a permanent change.

Rule 161(a). The market test contemplated by the Request plainly does not satisfy the express requirements of the Rule, inasmuch as it forthrightly is not a part of a permanent filing.

Moreover, it does not even satisfy a similar purpose with respect to the experimental classification request of which it is a part. The Postal Service argues that the market test would provide “real world” experience, but it does not argue that the test would enable it to satisfy any filing requirements for the experimental classification. *See Motion at 2-5.* The market test data collection plan, moreover, makes plain that the market test will not produce information necessary for the PRC to determine the request for experimental classification; indeed, given the time constraints imposed by the Postal Service implicit request for expedited treatment, it is

highly unlikely that any data from the market test would even be available at a time and in sufficient detail to be of any use to the Commission in rendering its recommended decision. *See note 1, supra.*

The Postal Service argument that its “approach” (i.e., two stages, market test followed by the experiment) would permit the Commission to “track product development more closely” and permit detailed monitoring of costs, feasibility, reception by mailers and the effect of MOL on the overall system, *Motion at 4*, confuses the market test and the experiment. It is impossible to tell from the Motion why the market test, as distinct from or in any manner different from the experiment, would satisfy these objectives. Indeed, it appears that what is really happening is that the market test is being used as a device by the Postal Service to begin its experiment in advance of a PRC decision on the experimental classification request.

While one can argue, as the Postal Service has implicitly, that the market test proposed is of such short duration that the Commission should simply approve it quickly and get on with the experimental request, MASA objects to this distortion of the rules. It is justified by expediency alone, and supported solely by the argument that it will allow the Postal Service to follow its own preferred timeline. This justification is bootstrapping pure and simple -- the need for expedience, to the extent it exists at all, is a direct result of the Postal Service’s own timing decisions, and not of any external event over which the Postal Service had no control. The case for immediate implementation of the market test – the case for expedience -- has not in any event been made. The Postal Service has not identified any way in which its development of MOL would be harmed by denying the market test request and simply dealing with the request as what it really is – a request for experimental classification. Accordingly, MASA requests that the Presiding Officer deny the Postal Service request for waiver of the requirement of Rule 161 that it be filed

with a permanent request for changes in classifications, rates or fees in order to develop information necessary to support the permanent filing.

Specific Waiver Requests Under Rule 54. The Postal Service has requested waiver of all or portions of certain of the filing requirements of Rule 54. Except as objected to below, MASA has no objection at this time to waiver of the rules enumerated in the Motion.

Rule 54(b)(3). This rule requires the Postal Service to provide information on the degree of economic substitutability between various classes and subclasses of mail. The Postal Service states that it has addressed this issue in the testimony of witness Garvey, and contends that MOL causes “minor substitution among users of postal services.” *Motion at 8.* It argues that to the extent the rule requires additional information on cross-elasticity of demand, it does not have the historical data necessary to develop cross-elasticity estimates. *Ibid.*

The data that the Postal Service has provided asserts that 68% of the projected MOL volume will come from mailings that would be mailed at some rate even in the absence of MOL. It has provided no data whatsoever that sheds any light on the classes and subclasses from which this volume would be diverted. In light of the significant portion of MOL volume that would come from existing mailings, the Postal Service should be required to provide some estimates of the classes of mail from which MOL would be diverted. It should be able to provide some such estimates even if it is unable to provide formal cross-elasticity estimates. MASA accordingly objects to waiver of Rule 54(b)(3) to the extent requested by the Postal Service.

Rule 54(f) and (h). The Postal Service argues that it should be relieved of the requirements imposed by these rules because of the limited scope of the market test and experiment, and because “further attempts to separate and project costs . . . would be an unnecessarily and needlessly complex undertaking.” *Motion at 8-9.* The costing testimony is

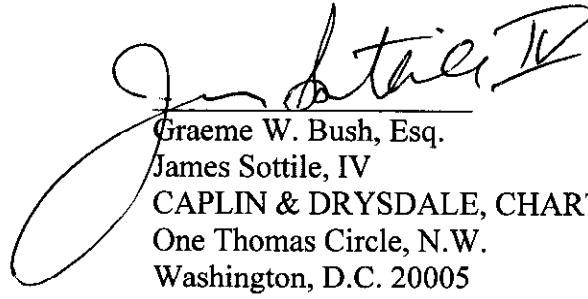
notable, however, for at least two large gaps. First, the cost of postage is not addressed at all. Second, there is no estimate of Postal Service internal costs (as opposed to the contract printer costs) generated by the introduction and operation of MOL except for the so-called technology costs estimated by USPS witness Stirewalt.

MASA objects to the waiver request with respect to cost data. No showing has been attempted, let alone made, that the mailing costs for MOL will be precisely the same as the costs for the subclasses at which MOL will be entered. Indeed, in light of the fact that MOL mailings will not have to meet preparation and volume requirements for these subclasses, the assumption appears to be fallacious on its face. Given the complete array of services being offered, and the assertions about favorable delivery treatment available to MOL users, there are additional reasons to question the assumption. Without the costing data, however, it is not possible to answer the question.

The assumption of witnesses Stirewalt and Seckar that the only internal costs generated by MOL are the technology costs is also suspect. OCA interrogatories have already suggested additional costs not accounted for in technology cost estimates. *See OCA/USPS-T5-4, 10.* MASA has served interrogatories seeking additional cost information regarding marketing expenses, which have apparently not been accounted for in the Postal Service cost evidence. *MASA/USPS-T3-1, 2.*

The parties should not be forced to get through discovery costing evidence from the Postal Service that should have been filed as part of its case in chief. Accordingly, MASA objects to the waiver of Rule 54 (f) and (h) to the extent that the Postal Service has not provided full direct, indirect and accrued cost estimates with respect both to the postage and the fee components of MOL.

Respectfully submitted,



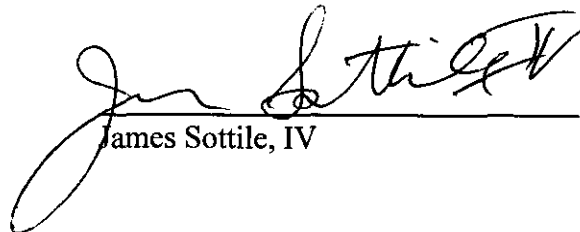
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing comments were served by first class mail on the parties on the attached service list this 12th day of August 1998.


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