

ORIGINAL

001638

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

RECEIVED
SEP 10 5 00 PM '98

U.S. POSTAL SERVICE
WASHINGTON, D.C. 20268-0001

MAILING ONLINE SERVICE

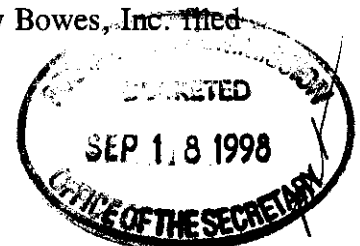
Docket No. MC98-1

**INITIAL BRIEF OF
MAIL ADVERTISING SERVICE ASSOCIATION INTERNATIONAL
ON THE MARKET TEST PROPOSAL**

Background

On July 15, 1998, the United States Postal Service filed a Request with the Postal Rate Commission ("PRC") for a recommended decision for proposed additions to the Domestic Mail Classification Schedule ("DMCS") establishing a proposed Mailing Online Service ("MOL") on an experimental basis. The Request also sought PRC approval of a market test for the proposed Mailing Online Service prior to its introduction as an experimental mail classification.

In Order No. 1217 the Commission granted the Postal Service's motion for a waiver of the requirement that a market test request be appended to a request for a permanent change in rates or classification. The Commission also bifurcated proceedings on the market test and the request for experimental classification. Hearings on the market test request were held on August 26 and 27, 1998, during which the Postal Service's direct case and the designated written cross-examination was received in evidence, and oral cross-examination was conducted with respect to certain Postal Service witnesses. One intervenor, Pitney Bowes, Inc. filed



rebuttal testimony. The record for the market test request was closed on September 16, 1998. POR No. MC98-1/7.

Mail Advertising Service Association International ("MASA") files this brief opposing the market test request, and setting forth what should be required of a data collection plan should the Commission allow a market test to proceed.

I. THE POSTAL SERVICE'S PROPOSED MARKET TEST REQUEST SHOULD BE REJECTED

The Commission identified as one issue for consideration in these proceedings whether the market test is "likely to help the Commission evaluate the Postal Service's proposed experimental classification." Order No. 1217 at 7-8. If the market test "is not likely to be of some value . . . in evaluating the proposed experimental classification" a decision recommending the market test was said to be "very unlikely." Order No. 1217 at 8.

On the record, it is highly unlikely that the market test will assist the Commission in deciding the experimental request. Although the Postal Service has to some extent danced around the issue, it is reasonably clear that the true purpose of the market test request in this case is simply to permit the Postal Service to continue the development of its proposed new product according to its own time schedule. Although the Postal Service allows the possibility that information gathered during the market test might affect its request for an experimental filing in some manner not now possible to foresee, the Postal Service has no real expectation that the market test will produce any information that will change its experimental classification request or support it in any meaningful way.

Indeed, the manner in which the Postal Service proposes to conduct the market test virtually guarantees that any information that is gathered during the market test will be unreliable. The start up nature of the MOL service, coupled with the short duration (3 months) of the proposed market test and the fact that a significant portion of whatever data is collected will reach the Commission late in the decision process, makes it highly unlikely that the data collected will be suitable for use in reaching conclusions about a more mature MOL service to be offered on a nationwide basis. The Postal Service has apparently done nothing to remedy these inherent limitations of the market test data it proposes to collect. It has taken no steps to conduct the market test in a manner that will ensure the statistical reliability of any data collected. Tr. 2/330-31. Nor does it plan to use the data to conduct a new market study to estimate volume, notwithstanding the obvious weaknesses of the National Analysts study on which the current volume estimates are based.¹ Tr. 2/332, 366-67. The best that can be said of the market test from the point of view of the rate and classification process is that it may produce a certain body of anecdotal data and operational data that would provide an extremely dubious basis for generalizing to conclusions about the broader, more mature nationwide experimental service the Postal Service has proposed.²

MASA thus continues to oppose the market test request. If the market test is permitted to proceed, however, the Commission should make very clear that any information that is

¹ To name one glaring weakness, the prices used by Rothschild are substantially lower than those in the contract actually entered into with the contractual printer. Tr. 2/365-66. Moreover, the market test concededly did not survey the full range of potential MOL users. Tr. 4/872.

² This data may be of a sort that the Postal Service may reasonably wish to rely upon for its business, management and planning purposes. MASA expresses no view on that subject because the market test rules do not permit gathering information solely for such a purpose, nor is it the province of these proceedings.

gathered during a market test will be subjected to careful scrutiny to determine whether it is appropriate to rely upon in drawing conclusions and reaching a decision with respect to the experimental classification request. This caution is particularly germane in the event the Commission were to adopt the proposal of intervenor Pitney Bowes to, in effect, stay the experimental proceedings pending completion of the market test and delivery of data to the Commission and the parties. Information gleaned from a market test should not come with any presumption of reliability, even if the experimental test is delayed so that the parties and the Commission will have more time to evaluate the market test results.

II. THE DATA COLLECTION PLAN SHOULD BE SUPPLEMENTED TO INCLUDE DATA CONCERNING COMPETITION.

It is further quite important that, if the market test is allowed to proceed, the Postal Service gather data relevant to all the issues that will or should be considered during the Commission's evaluation of the Postal Service's experimental request. MASA believes that the OCA has done a commendable job of identifying many of the data points on which the Postal Service should be required to gather information during a market test, and MASA supports the OCA's efforts in this regard. MASA adds the following comments.

The Postal Service should be required as a part of any market test approved by the Commission to collect information on cost items that are relevant to the cost base for setting fees for MOL or determining the experimental classification request. Accordingly, the Postal Service should be required to gather information on the following subjects.

- (i) Usage of the Fast Forward address correction service (for which the Postal Service does not propose to charge, notwithstanding that private mailers are required to pay for

use of Fast Forward). Tr. 2/156-157. The Postal Service plans to collect this information and has no objections to providing it. Tr. 2/314-15.

(ii) Usage of the Help Desk. Such data should be segmented between the so-called “technical help desk” usage specific to Mailing Online, and Postage Online help desk resources used for MOL matters. Tr. 4/853. The Postal Service has indicated that such data can be collected. Tr. 2/316-318.

(iii) Data regarding the level and depth of sort achieved by MOL. The Postal Service has available to it much of this information on the Forms 3602 it prepares and files with itself. Tr. 2/323-324. It cited nothing that would prevent it from gathering this information and reporting it to the Commission.

(iv) Information regarding advertising and marketing expenses. The Postal Service contends that such expenses are not attributable because they are bundled with other products in advertising Postal Online. Tr. 2/154, 305-07; 4/881. The Postal Service should not be allowed to predetermine the outcome of the costing issues this raises by depriving the Commission and the parties of information regarding advertising and marketing costs.

The Commission should also require the Postal Service to collect information bearing on competition issues raised by MOL. It is clear that MOL will compete in a variety of ways with private businesses. Pitney Bowes’ witness has offered testimony reflecting direct competition between MOL and a service it offers, DirectNet. Tr. 4/816-825. The Postal Service has conceded that some competition may exist with respect to lettershops (USPS-T-1 at 13; Tr. 2/151), while attempting to assure the Commission and those representing lettershops any such competition would be *de minimus*. Id. It is apparent on the face of the request,

001643

however, that MOL would provide services to customers in printing, sorting and entering their mail pieces, that are now provided by private businesses. It is also clear that the Postal Service would do so in a manner that would make lower rates available to MOL users than are available to the customers of private businesses that offer the same services.

Commission decisions make clear that a significant factor affecting a Postal Service request for a new service is the extent to which the service will compete with existing products and services offered by the private sector. In the first E-Com decision, the Commission noted its "obligation to consider competition issues herein and to attempt to promote competition so far as consistent with regulatory requirements." MC78-1 at 51. It stated further that it would review any matter that would have a "significant effect on competition," especially where the Postal Service's offering would "compete in a heretofore private market." MC78-3 at 189. The operative principle governing Commission decisions on competition issues was stated succinctly: "As a partial monopoly competing in a private market governed by competitive principles, the terms of [the Postal Service's] entry will be closely scrutinized for any anti-competitive effect they may have." MC78-3 at 190-91. See also 232.

This fundamental view of competitiveness concerns has been reiterated and elaborated by the Commission in subsequent proceedings. In the second E-Com decision, the Commission focused its analysis on the possibility that the Postal Service, as a monopolist, would deny access to its competitors or charge its competitors a higher rate than it was implicitly charging itself for the same service. R83-1 at 35-37. Ultimately, these considerations were a significant contributor to the Commission's recommended decision setting rates significantly higher than those requested by the Postal Service.

In light of the Commission's long adherence to the proposition that the degree and impact of competition with private industry is, in a case such as MOL, a critical factor in deciding Postal Service requests for rates and classification changes, it is critically important that if the market test is to proceed, the Postal Service gather information that will allow the Commission to evaluate competitive concerns. If the Commission authorizes the Postal Service to conduct the market test, it should require the Service to gather information that would afford a factual basis for the parties and the Commission to evaluate the Postal Service's largely unsupported assertion that the services proposed would not be materially competitive with lettershops, mailing service firms and other private businesses. The Service should be required to gather at least the following data.

(i) Data as to which of the five categories of expected uses for MOL market test mailings fall into.³ There is no operational barrier to collecting this information. The Postal Service nevertheless objects that this is not information required for a customer to use MOL and that it would be "intrusive." Tr. 2/327-29. The information could be collected with one added data field asking the customer to check the box of one of 5 potential categories of mailing type with a sixth choice of "other."

(ii) Information as to whether market test users would have mailed the pieces sent through MOL using a third-party mailing service and a different rate category if MOL were not available. Such information would provide some insight into the question of diversion from other classes of mail and from private businesses. It would thus be relevant to the evaluation of the Postal Service assertion that most MOL users would not otherwise use a

³ The five categories are (i) invoices/statements; (ii) announcements/confirmations; (iii) advertising mail, (iv) newsletters; and (v) forms. USPS-T-4 at 4.

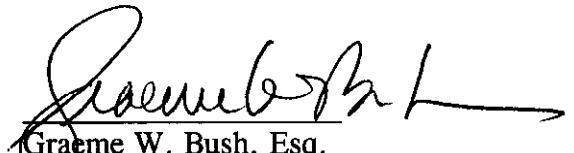
mailing service firm and that the volume of mailings is too small to attract such firms. The Postal Service's only objection to collecting this data is the insufficient argument that it is not now required in order to use MOL.

(iii) Information about features that may be added or dropped as a result of customer preferences. The Postal Service will collect this information. Tr. 2/310-11. The only objection to providing it to the Commission is that it might be misinterpreted. Tr. 2/312-14. This objection is frivolous.

Conclusion

For the foregoing reasons, MASA requests that the Commission deny the request for approval of a market test for Mailing Online, and, in the alternative, that it require, as a condition of approving any market test, that the Postal Service collect data set forth above.

Respectfully submitted,

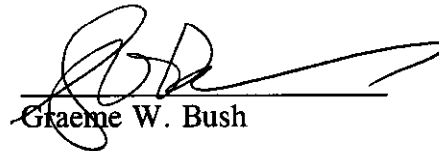
A handwritten signature in black ink, appearing to read 'Graeme W. Bush', with a long horizontal flourish extending to the right.

Graeme W. Bush, Esq.
CAPLIN & DRYSDALE, CHARTERED
One Thomas Circle, NW
Washington, D.C. 20005

Counsel for Mail Advertising Service
Association International

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Initial Brief was served in accordance with Rule 12 of the Rules of Practice and POR No. MC98-1/4 this 18th day of September 1998.



Graeme W. Bush