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

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Mailing Online Services

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Docket No. MC98-1

REPLY BRIEF OF PITNEY BOWES

In this Reply Brief, Pitney Bowes Inc. ("Pitney Bowes") responds briefly to the Postal Service's arguments on two of the key issues in this case.^{1/} Those issues are:

1. Whether the Commission should require that the special rate preferences the Postal Service intends to offer Mailing Online users also be made available to any functionally equivalent and competitive service, including Pitney Bowes' DirectNET; and

2. Whether the Commission should require the Postal Service to conduct a new market survey to determine anticipated volumes using the actual Mailing Online printing prices.

^{1/} We do not find it necessary to address the Postal Service's claims with respect to the scope of the proposed data collection program that should be required in conjunction with the market test. The OCA's brief as supplemented by the briefs filed by MASA and Pitney Bowes, demonstrate the inadequacy of the Postal Service's original data collection plan. To the extent that the Postal Service has responded to these criticisms or other Rate Commission criticisms, its claims are unpersuasive.

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We have shown, in our Initial Brief, that both of these questions should be answered in the affirmative. In its Brief, the Postal Service has failed to respond directly to either point.

**The Postal Service Fails to Address the Competitive
Consequences of the Special Rules of Eligibility**

The Postal Service seeks to make much of the fact that there are already several companies -- including Pitney Bowes -- in the hybrid electronic/postal market, and that at least one other company has announced such a service. Postal Service Brief at 18-20. The Postal Service puts much emphasis on its contention that there are, at present, "no barriers" to entry into this market by private sector providers of hybrid service. Postal Service Brief at 20. It is true that private sector providers who are able to meet the normal eligibility rules for the entry of First-Class Automation, Standard (A) and Standard (A) Drop Entry Discounts will receive those discounts. But, this misses the point.

The fact is that the Postal Service proposes to provide itself with discounts without regard to the eligibility requirements. The Mailing Online proposal establishes one set of conditions of eligibility for postage discounts for the Postal Service (and its Mailing Online customers) and another, more stringent standard of eligibility, for private sector providers of hybrid electronic/postal services, such as Pitney Bowes. In a very real sense, this erects barriers to entry into this field by private sector providers, at least during the market and experimental tests by giving the Postal Service a competitive edge. Mr. Brand's analysis of the effects of these special rules is unanswered and unanswerable:

Certainly during the proposed market test and the proposed 2-year experimental phase, potential customers deciding whether to use Mailing Online or DirectNET will be faced with the opportunity to obtain from the Postal Service postage discounts for which they would not otherwise qualify and for which they cannot obtain from DirectNET. For customers for whom price is the primary or perhaps the only consideration, the choice seems reasonably clear -- they will opt for Mailing Online.

Rebuttal Testimony of Patrick Brand, Tr. 4/822. The fact that private sector providers may be able to give smaller mailers discounts for which they would not otherwise be eligible by consolidating mail to achieve necessary volumes and delivering to DBMCs is irrelevant: mailers using Mailing Online will have access to these discounts whether or not the Postal Service meets applicable standards.

The Postal Service seeks to avoid the anti-competitive effects resulting from its proposed preferential rules of eligibility by arguing that its service "is designed specifically to fill a niche not being served by existing providers" and has "unique characteristics" not shared by these services. Postal Service Brief at 18. Apart from the self-serving assertions of the Postal Service's own witnesses, there is absolutely no evidence to support this contention. Indeed, the record suggests the contrary conclusion. The Postal Service's Brief ignores Mr. Brand's testimony showing that "from a customer's viewpoint" there are no meaningful distinctions between DirectNET and Mailing Online. Rebuttal Testimony of Patrick Brand at Tr. 4/819. The Postal Service's claim that Mailing Online "is not well-suited" for longer run print jobs (Postal Service Brief at 18)

presumes (without foundation) that private sector service providers have no interest in serving needs of smaller mailers. The claim also ignores the fact that there is no numerical limitation on the number of pieces a Mailing Online user can enter in a single mailing. Thus, there is no basis for a conclusion that Mailing Online will serve a market that cannot be served by its private sector competitors, given the same rules of eligibility.

Accordingly, while it is true that the Postal Service has not attempted to use its statutory monopoly over letter mail to flatly prohibit private sector companies from offering a hybrid electronic/postal service, the effect (if not the intended purpose) of the special conditions of eligibility will be to inhibit private sector competition with the Postal Service.^{2/} The Postal Service's conclusion that Mailing Online will not create a barrier to private sector entry into the hybrid electronic/postal market (Postal Service Brief at 18-21) is simply untenable.

This conclusion does not, however, necessarily compel rejection of the special preferences the Postal Service has proposed for itself. As we acknowledged in our Initial Brief, it remains to be seen whether the Mailing Online service will, at maturity, generate sufficient volume and density to qualify

^{2/} The Postal Service is equally mistaken in its claim that this competitive imbalance has nothing to do with the Postal Service's statutory monopoly over letter mail. Postal Service Brief at 19-20. *Virtually the only kind of mail suitable for entry into the postal system through a hybrid electronic/postal service offering like Direct Net or Mailing Online is mail that falls within the statutory and regulatory definitions of "letter mail" and is, therefore, subjected to the Postal Service's monopoly. Mailing Online competes directly with other hybrid electronic/postal service offerings, and the Postal Service surely has a monopoly over the final delivery function of much, if not all, of that potential market.*

for the First-Class automation, Standard (A) bulk and Standard (A) drop entry discounts. However, the same may also prove true of DirectNET and other hybrid services. For precisely this reason, the Postal Service should not be permitted to confer upon itself an unfair competitive advantage even during the market test. Consistent with its statutory duty to further the national policies favoring fair competition, the Commission should require that the special rate preferences the Postal Service intends to offer Mailing Online users also be made available to any functionally equivalent and competitive service, including Pitney Bowes' DirectNET.

Unless a New Market Survey is Conducted, the Commission Will Not Be Able to Reach an Informed Decision on the Mailing Online Experiment

In its brief, the OCA points out that the Rothschild volume estimates are central to virtually all aspects of the Mailing Online experiment. Witness Plunkett relied on those estimates to calculate total revenues; the proposition that sufficient volumes will be generated to permit batching also depend on the volume estimates; and the Rothschild volume estimates are the "primary information source" for calculating computer and telecommunication capacity. See, OCA Brief at 3-7. The OCA therefore contends that information concerning the five applications of Mailing Online specified in the Library Reference must be collected during the market test.

We certainly do not disagree. However, we believe that the issue concerning the market survey is more fundamental. In addition to requiring the collection of volume information during the relatively brief market test, the

Commission should condition any recommendation of a market test upon a requirement that the Postal Service conduct a new market survey which, at the minimum, is based upon the actual Mailing Online printing prices rather than the hypothetical prices upon which the Rothschild volume estimates were based.

The Postal Service's Brief states that its "target customers" for Mailing Online "appear to be price sensitive." Postal Service Brief at 11. The Postal Service also freely conceded during the hearings that, if the Rothschild survey were done again -- using actual rather than hypothetical printing costs -- there would be "some different results." Tr.2/366. Just how different those results would be cannot, of course, be ascertained. Thus, it is clear (as the Postal Service has basically conceded) that the Commission will be able to repose very little, if any, confidence in the Rothschild volume estimates. On the other hand, because of its limited duration and scope, volume information collected during the market test -- while certainly not "useless" as the Postal Service contends (Postal Service Response to OCA Motion at 4) -- will be fragmentary at best. In short, unless a new survey is done, the parties are going to be forced to litigate the critical issues on the experimental proposal -- revenues, costs, contributions and competitive effect -- on volume estimates which are conceded to be inaccurate, augmented by actual volume experience which will be fragmentary.

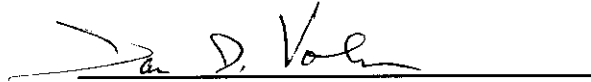
The Postal Service's Brief ignores this problem. Surely, the Postal Service does not mean to imply that accurate volume estimates are irrelevant to the Commission's consideration of its experimental proposal; that would be

wrong as a matter of law. 39 C.F.R. § 3001.67(b)(2) ("Rule 67(b)(2)") Likewise, the Postal Service cannot mean to suggest that a well specified and soundly grounded market survey is useless to the Commission's determination of the "magnitude" (Rule 67(b)(2)) of a proposed experiment: Market tests have been used and relied upon by this Commission in numerous proceedings. There is, therefore, no valid basis for the Postal Service to refuse to conduct a new market survey.

In these circumstances, there is but one solution: The Commission should condition any favorable recommendation of the market test upon requirement that the Postal Service conduct a new market survey. Although the rules do not explicitly require a market survey of any type, the situation here warrants such a requirement for two reasons: The Postal Service has presented a market survey and it also has conceded that, in one critical respect, the results of that survey would be "different" if the survey were conducted again. In these circumstances, the Commission's insistence upon a new market survey would not, in any respect, intrude upon managerial prerogatives. Precisely how the Postal Service conducts a new survey is entirely for it to decide. It is, however, equally within the Commission's prerogatives to insist, as a condition of authorizing a market test, that a new and solidly grounded survey be conducted

in furtherance of the basic purposes of both the market test and experimental rules. The Commission should do so.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ian D. Volner", is written over a horizontal line.

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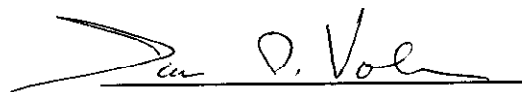
Counsel to Pitney Bowes Inc.

September 25, 1998

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the United States Postal Service in this proceeding in accordance with sections 12 and 20(c) of the rules of practice.



Ian D. Volner