

DOCKET SECTION

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

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

PERIODICALS CLASSIFICATION CHANGE, 1999

Docket No. MC99-3

**RESPONSE OF THE NATIONAL FEDERATION OF NONPROFITS
TO COMMISSION RULING ON POSTAL SERVICE MOTION FOR EXPEDITION AND TO
FOREGO HEARINGS (PRESIDING OFFICER'S RULING NO. MC99-3/1)**

On May 3, 1999, the Presiding Officer issued Order Number MC99-3/1, giving intervenors the opportunity to respond to the Postal Service's motion to forego hearings in MC99-3. The ruling requested that respondents (separately) address the separate issues of the relevance of cross-examination of Postal Service witness Taufique and the NFN request to present a direct case on the effective date of the proposed postage refunds.

NFN appreciates the opportunity to submit this response, and hereby addresses the separate issues in the order set forth in the Order.

Insofar as Witness Taufique is qualified to testify only about the economic impact upon the Postal Service of the so-called rate anomaly which occasioned the instant filing, NFN has no interest in cross examining the Witness. But NFN takes issue with the Postal Service's characterization of the issue, namely whether cross examining Witness Taufique would be germane. The question is not whether examination of Taufique's testimony would be germane, but whether the Postal Service has offered germane testimony.

NFN notes the comments of the Alliance of Nonprofit Mailers (ANM) in its Notice of Intervention, which correctly point out that the proposed classification change does not provide a permanent and complete solution to the rate anomaly identified by the Postal Service in this docket. ANM goes on to state that

“Allowing nonprofit mailers to pay rates *no higher* than commercial rates does not achieve the legislative policy of maintaining *lower* rates for nonprofit mailers.” Given that the effective rates paid by some nonprofit mailers contravene long-established and stated Congressional policy (that Nonprofit rates should be lower than Regular rates) , NFN requests the opportunity to examine a witness who will testify as to the relative costs of processing and delivering Nonprofit and Classroom Periodicals, as compared to Regular rate Periodicals.

NFN is fully aware that the recommendations of the Commission and decisions of the Board of Governors in Docket R97-1 cannot be altered by any action short of Congressional initiative or an omnibus rate case, but believes that relevant Postal Service testimony will establish that Nonprofit periodicals are less costly to process and deliver than are Regular rate Periodicals, and having such a statement in the record will be useful in the next omnibus rate proceeding. Therefore, NFN seeks to demonstrate, among other things, that the rates in question are not an “anomaly” but an error.

Moreover, NFN believes that PRC Order No. 1227, referenced by the Chairman during the pre-hearing conference and by the Presiding Officer in her Order, does not establish that refunds are beyond the Commission’s jurisdictional scope, but that, in the Commission’s words, “The Commission shall entertain only those complaints which clearly raise an issue concerning whether or not rates or services contravene the policies of the [Postal Reorganization] Act.” NFN believes that the proposed classification change, with its effective date of April 9, 1999 to be eligible to request refunds, does contravene those policies, because the Postal Service has already accepted payment of the lower of Nonprofit and Regular rates from at least one mailer, prior to the April 9, 1999 date.

NFN believes it would be unfair to other mailers similarly situated, and in contravention of the Postal Reorganization Act, not to treat other mailers the same way as it has already treated at least one Nonprofit mailer.

During the pre-hearing conference, counsel for the Postal Service stated that it is a “management decision” not to offer refunds to Nonprofit and Classroom mailers who, during the period January 10, 1999 through April 8, 1999 paid postage at the Nonprofit Periodicals rate which was higher than the equivalent Regular rate. He did not claim that the Postal Service was under any restriction, legal or otherwise, which would prevent it from offering refunds retroactively. However, NFN is aware, and is prepared to demonstrate, that at least one mailing during the period January 10th through April 8th was made at the Regular rate, with the full knowledge and consent of the Postal Service. Moreover, NFN has reason to believe that, in generally analogous situations in the past, the Postal Service has offered refunds to affected mailers. It is to demonstrate that our belief is accurate, and that the “management decision” to not offer refunds for the period January 10 to April 8 is arbitrary, capricious, unfair to those mailers who were not offered the lower rate, and contrary to the policies enunciated in the Postal Reorganization Act, that NFN requests a hearing, and wishes to conduct discovery.

Compounding the unfair and unequal treatment of some mailers, the Postal Service, which was aware of the “anomaly” on or about February 4, 1999, delayed for nine weeks, until April 9, 1999, to file its Proposal, meanwhile permitting at least one mailer to mail Nonprofit Periodicals at the lower, Regular rate. The Elks Magazine notified the Postal Service on or about February 4th, 1999 that the rate “anomaly” existed. On February 24, 1999, Chairman McHugh of the U.S. House of Representatives Subcommittee on Postal Service requested that the Postal Service and Postal Rate Commission review the situation and report on a possible solution. The Chairmen of those two agencies responded to Chairman McHugh on March 10, outlining a proposed solution. The Postal Service met with interested parties on March 30 to discuss details of the proposal. While NFN believes that refunds should be available for all applicable mailings beginning on January 10th, 1999, any of the named dates since January 10th would be more appropriate as a starting date for refund eligibility than is April 9.

NFN believes that the Postal Service has, by its action in filing its Proposal, admitted to the impropriety of the rate "anomaly". The rate was no less improper prior to April 9th than it is after the filing. NFN believes that fairness and adherence to the policies delineated in the Postal Reorganization Act require that all mailers who paid excessive postage because of their use of the Nonprofit rate under the circumstances detailed in the filing should have the same opportunity, under the same circumstances, to request refunds as do those who will benefit if the proposal included in the instant filing becomes part of the Domestic Mail Classification Schedule.

NFN emphasizes that, contrary to Congressional intent, the rates that some Nonprofit Periodicals mailers are currently paying, and would continue to pay whether or not the Postal Service's proposal is adopted, are not lower than Regular rates. In fact they would be, at best, the same rates.

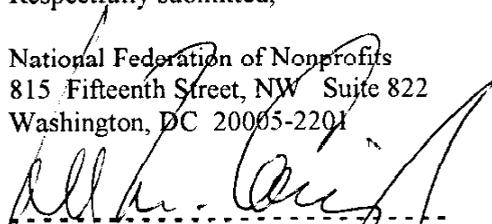
The "management decision" of the Postal Service to offer refunds only in the case of mailings made after April 9, 1999, would, if permitted to remain in effect, result in the Commission validating what NFN believes is a decision that contravenes the policies of the Postal Reorganization Act, given that at least one Nonprofit Periodicals mailer has already been permitted to pay the lower, Regular, rate. Other mailers should have the opportunity for refunds on all applicable mailings since January 10, 1999, so that the final rate paid is the lower of Nonprofit and Regular rates.

For the reasons stated above, NFN respectfully requests that the Commission deny the Postal Service request to forego hearings, and grant NFN's request for discovery and hearings.

May 5, 1999

Respectfully submitted,

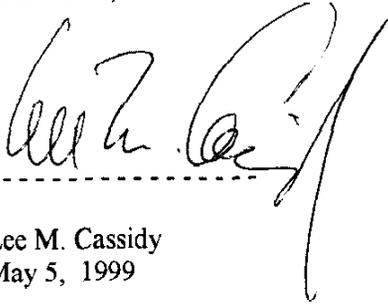
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by Lee M. Cassidy, Executive Director

CERTIFICATE OF SERVICE

I hereby certify that I have this date served copies of this filing with all known parties, including intervenors, in this Docket.



A handwritten signature in black ink, appearing to read "Lee M. Cassidy", is written over a horizontal dashed line.

Lee M. Cassidy
May 5, 1999