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POSTAL RATE COMMISSION  
OFFICE OF THE SECRETARY

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

Periodicals Classification Change

Docket No. MC99-3

Response of the Advertising Mail Marketing Association  
to Postal Service Motion to Forego Hearings

Pursuant to the Presiding Officer's ruling on May 3, 1999 (Presiding Officer's Ruling No. MC99-3/1, Ruling on Postal Service Motion for Expedition and to Forego Hearings (May 3, 1999)), the Advertising Mail Marketing Association (AMMA) hereby submits its response to the Postal Service's motion. Although AMMA does not perceive a need for a hearing on the issue, AMMA strongly supports the National Federation of Nonprofits' (NFN) request that the Postal Service's proposed refund plans be applied retroactively to January 10, 1999. This Commission has jurisdiction to recommend that the Board Governors adopt and implement a retroactive refund program in the course of this proceeding, and AMMA urges the Commission to do so.

The Postal Service initiated this proceeding to address an unintended result of applying the current rate schedule, which took effect on January 10, 1999: The Non-Profit and Classroom rates for certain publications in the Periodicals classification may be higher than the corresponding Regular rate.<sup>1</sup> The Post Service, which describes this situation as a "rate anomaly," did not intend that non-profit mailers wind up paying more

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<sup>1</sup> See Request of the United States Postal Service for a Recommended Decision on Periodicals Classification Change ("USPS Request") at 1-2.

for their postage than Regular rate mailers.<sup>2</sup> It has, therefore, proposed a classification change to permit Non-Profit and Classroom mailers to avail themselves of the Regular rate schedule when it produces a lower rate, without sacrificing their eligibility for reduced rates. The Postal Service also announced that it has established a procedure to allow Non-Profit and Classroom mailers to apply for refunds for the difference between the reduced rates that they actually pay and the Regular rates that would otherwise apply under the pending classification change.<sup>3</sup> Refunds under the proposal, however, would be available only prospectively, beginning on the April 9, 1999, when the Post Service initiated this proceeding. NFN seeks to make refunds available from January 10, 1999, the date the current rates and, therefore, the anomaly, went into effect. NFN has requested a hearing on the question of the effective date of eligibility for postage refunds.

AMMA agrees that refunds should be available from January 10, 1999. The situation, however, presents a legal issue, not a factual question, that can thus be resolved without the need for a hearing or presentation of a direct case. Neither the Postal Service nor this Commission ever intended that Non-Profit or Classroom rates be greater than the corresponding commercial, Regular rates. Moreover, the inadvertent anomaly is at odds with principles underlying section 3626 of title 39 and congressional intent to ensure that non-profit mailers generally enjoy reduced rates for postage. Thus, albeit unintended, the subject non-profit rates as applied to the publications affected by the anomaly were and are invalid *ab initio*.

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 2, fn. 1

The Postal Reorganization Act generally contemplates that the Board of Governors will retain exclusive discretion to determine when a rate change will be applied. Yet, the Governors' discretion is predicated on the notion that the rates are valid in the first instance. The Non-Profit rates at issue in this proceeding were invalid from the outset. In these exceptional circumstances, therefore, the Commission can and should at the very least recommend that the Governors apply the refund program retroactively, to the date the invalid rates were first applied, to reverse the effects of the invalid rates. The Commission has ample authority to make this recommendation as part of its overall recommendation on the Postal Service's proposed classification change.

In addition, applying refunds retroactively to January 10, 1999 will serve the public interest and helps achieve the goals of section 3623 of title 39. The publications affected by the anomaly generally offer unique benefits and value based on their high editorial and educational content. Moreover, they typically have little advertising revenue to provide a buffer against the economic impact of this unintended anomaly. The costs of making refunds available from January 10<sup>th</sup>, on the other hand, would have a minimal economic impact on the Postal Service. The Postal Service has prepared and furnished to the Office of the Consumer Advocate (OCA) a worksheet estimating that the *total* annual impact of its proposal would be \$5 million.<sup>4</sup> Thus, making refunds available from January 10, 1999 can be estimated to cost, at most, an additional \$1.25 million. Thus, applying refunds retroactively will have a relatively minor economic impact on the Postal Service, but provide much-needed relief to Non-Profit and Classroom mailers with

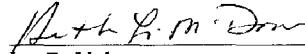
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<sup>4</sup> Office of the Consumer Advocate Response to Motion of the United States Postal Service for Expedition and Waiver of Certain Provisions of Rule 64(h), at 4.

limited ability to absorb the effect of rates that were invalid from the start and whose publications have a high editorial content.

In light of the extraordinary situation presented, therefore, AMMA supports NFN's request that refunds be made available from the date the subject rates took effect.

Respectfully submitted,



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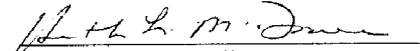
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May 7, 1999

CERTIFICATE OF SERVICE

I hereby certify that I have this 7<sup>th</sup> day of May, 1999 served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the rules of practice.

  
Heather L. McDowell