

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

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

PERIODICALS CLASSIFICATION CHANGE

Docket No. MC99-3

COMMENTS OF THE UNITED STATES POSTAL SERVICE
ON AMMA PLEADING REGARDING THE NEED FOR
HEARINGS IN THIS DOCKET
(May 10, 1999)

On May 7, 1999, the Advertising Mail Marketing Association (AMMA) filed a pleading styled as a "response" to the Postal Service's motion to forgo hearings. The contents of the pleading, however, are not limited to the need (or lack thereof) for hearings in this docket. The pleading also includes AMMA's views on the implementation authority of the Board of Governors, and the potential scope of the Commission's recommendations to the Governors. The Postal Service submits that those views are erroneous, and should not be left unchallenged.

On the matter of hearings, AMMA apparently agrees that all relevant issues in this proceeding can be resolved without the need for hearings. AMMA Response at 2. To that extent, the Postal Service and AMMA share common ground. AMMA also states, however:

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.

AMMA Response at 3. These comments are erroneous in several respects.

First, there is no citation for any authority to support the proposition that the Board's discretion to select the implementation date for rate and classification changes "is predicated on the notion that the rates are valid in the first instance." Section 3625(f) contains no such limitation, and the entire proposition appears to be without foundation.

Second, there has been no determination by anyone -- the courts, the Postal Service, or the Commission -- that the Nonprofit and Classroom rates currently in effect were "invalid from the outset." In fact, those rates are not even "at issue in this proceeding." What is at issue in this proceeding is a proposed classification change. There simply is no basis for AMMA to pronounce the existing legal rates to be "invalid."

Third, AMMA fails to come to grips with that portion of Presiding Officer's Ruling No. MC99-3/1 which notes the Commission's recent holding that "refunds are an operational decision of Postal Service management, which is beyond the Commission's jurisdictional scope." AMMA's views cannot be reconciled with that holding, even though it was plainly stated on pages 1-2 of the very ruling pursuant to which AMMA purports to respond.

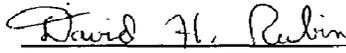
Lastly, in light of the plain language of section 3625(f), the Commission has no authority to include as part of its formal recommended decision any limitation on the timing of implementation. That issue was resolved in the Governors case, 654 F2d 108, 115-16. While AMMA may be trying to suggest that the Commission could

include such a recommendation informally (i.e., as dicta), the language chosen by AMMA ("the Commission has ample authority to make this recommendation as part of its overall recommendations on the Postal Service's proposed classification change") hardly supports such an interpretation. In any event, while AMMA's intent may not be perfectly clear, what is clear is that the Commission cannot make its recommended decision conditional upon any particular implementation date (or limited range of implementation dates).

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

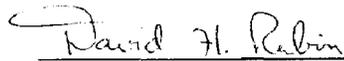


David H. Rubin

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.



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