

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

REPLY BRIEF OF THE UNITED STATES POSTAL SERVICE
(June 2, 1999)

The United States Postal Service hereby provides its reply brief in this proceeding. Four participants filed initial briefs: the Advertising Mail Marketing Association (AMMA), the Alliance of Nonprofit Mailers (ANM), the National Federation of Nonprofits (NFN), and the Office of the Consumer Advocate (OCA). None of these briefs took the opportunity provided by the Commission to "challenge the [Postal] Service's contention that both the plain language of 39 U.S.C. § 3625(f) and the relevant case law indicate that the Commission has no authority to include as part of its recommended decision any limitation on the timing of implementation." Order No. 1243 at 8-9. Nonetheless, the Postal Service hereby responds to certain arguments made by AMMA.¹

I. THE REFUND PROCEDURE ESTABLISHED BY THE POSTAL SERVICE IS NOT ARBITRARY

AMMA's general argument is that the Periodicals preferred rates have been invalid since January 10, and that therefore the Postal Service's initiation of a refund

¹ NFN adopts the AMMA arguments as its own, and supports the AMMA Brief. NFN Brief at 1.

procedure on April 9, rather than January 10, is arbitrary. The Postal Service disagrees, both as to the validity of the existing rates, and the basis for making the refund procedure start on April 9.

A. The Existing Rates, While Anomalous in Certain Respects, are Lawful.

AMMA argues that “the rates and rate structure that produce the anomaly that led to this proceeding were and are invalid because they are contrary to the principles of the Postal Reorganization Act of 1970, as amended, 39 U.S.C. § 101 et seq.” AMMA Brief at 2. While the Postal Service prefers to correct the anomaly as proposed in its Request, the existing rates and rate structure are valid, and do not contravene any law.² They were recommended by the Commission and approved by the Postal Service Governors in Docket No. R97-1, fully in accord with the requirements of the Postal Reorganization Act.

The specific rates result from the application of all pertinent statutory criteria and a balancing of several rate design constraints, as embodied in the Commission’s Opinion and Recommended Decision in Docket No. R97-1. In particular, the rates comply with the cost coverage rules in 39 U.S.C. § 3626, and do not contradict any policy “set out in” title 39. See AMMA Brief at 3, quoting 39 U.S.C. § 3662. Furthermore, no party challenged, pursuant to the applicable judicial review provisions of 39 U.S.C. § 3628, either the procedures that led to the recommendation of these rates, or their substance, on the basis alleged by AMMA. In sum, unlike the cases cited by AMMA, these rates have not been found to be defective on any grounds.³

² See Postal Service’s initial brief, at 4, n. 4.

³ *Dow Jones & Co., Inc. v. U.S. Postal Service*, 656 F.2d 786 (D.C.Cir. 1981) and *Combined Comm. Corp. v. U.S. Postal Service*, 686 F.Supp. 663 (M.D.Tenn. 1988), *aff’d*, 891 F.2d 1221 (6th Cir. 1989) declared rates and regulations invalid. See

Moreover, the preferred rates generally provide “reduced rates” compared both to the Regular rates, and to the rates that would exist if the preferred cost coverages had been set equal to that of the Regular subclass. In fact, the average Nonprofit publication pays 16.54 cents per piece, while the average Regular publication pays 23.78 cents per piece.⁴ The circumstances that postage charges using the Regular rates are lower for some mailings of certain publications should not obscure the more fundamental fact that Nonprofit and Classroom rates generally are lower, consistent with their status as preferred rates.

Contrary to AMMA’s claim, the establishment of a refund procedure for mailings made April 9 or later does not “confirm[] the legal deficiency of the rates.” AMMA Brief at 4. Rather, the refund procedure is consistent with the “application pending” procedure used by mailers applying for preferred status. DMM §§ E270.8.0 - 9.0. Under that procedure, no rate is unlawful. Instead, once the preferred status is recognized, the preferred rate is the applicable “lawful” rate.

B. The Timing of the Refund Procedure is Not Arbitrary.

AMMA argues that the Postal Service’s “refund program is arbitrary and analytically flawed”, because it applies to mailings from April 9 on, rather than January 10. AMMA Brief at 6. The choice of the April 9 date is not arbitrary. The refund procedure requires the mailers to take affirmative steps at the time of mailing (e.g., submitting dual mailing statements), and operates in the same manner as a well-established procedure with which both the Periodicals mailers and postal

AMMA Brief at 2-3.

⁴ PRC Op., R97-1, Vol. 2, App. G, at 1. The average Classroom publication pays 23.079 cents per piece, which is still less than the average Regular charge. *Id.*

personnel are familiar.⁵ Since the procedure was not announced until April 9, mailers could not comply with it until that date. An earlier date would require a different procedure that would raise administrative concerns (since mailings qualifying for refunds would not be clearly identified), and would not be consistent with the existing "application pending" procedure.

II. THE TIMING OF THE POSTAL SERVICE'S REFUND PROCEDURE IS BEYOND THE SCOPE OF THIS PROCEEDING.

AMMA argues that the Commission must "bring to the Governors' attention the arbitrary nature of the Postal Service's refund procedure." AMMA Brief at 8. As has been demonstrated above, the refund procedure is not arbitrary. Even if it were, however, the timing of the refund procedure is beyond the scope of this proceeding.

The goal of this proceeding is to provide a prospective remedy for a Periodicals rate anomaly. The Commission will issue a recommended decision on whether the proposed changes should be adopted. If the Commission recommends the changes, and the Governors approve this recommendation, then the Board of Governors will select a future implementation date for the changes.⁶

The authority for the Postal Service's refund procedure does not derive from the Commission's recommended decision. Instead, the refund procedure is based on the eligibility of preferred mailers for both preferred and Regular rates, subject to appropriate administrative procedures.

⁵ Request of the United States Postal Service for a Recommended Decision on Periodicals Classification Change, at 2, n.1. See also 64 Fed. Reg. 20340-41 (April 26, 1999).

⁶ The classification changes would have only prospective application, and thus should not affect the application of the refund procedure.

AMMA correctly notes that the "Commission is duty bound to assess the equity and fairness of Postal Service proposals." AMMA Brief at 7. However, the refund procedure is not part of the Postal Service's proposal in this proceeding.⁷ Comments on the refund procedure in the recommended decision are therefore neither necessary nor appropriate.

CONCLUSION

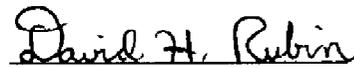
For the foregoing reasons, the Postal Rate Commission should make and submit a recommended decision to the Governors recommending the proposed revisions to the Domestic Mail Classification Schedule and its attendant rate schedules set forth in Attachments A and B to the Postal Service's Request. The nature of the Postal Service's plans for refunds is beyond the scope of the Postal Service's proposal.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Daniel J. Foucheaux, Jr.
Chief Counsel, Ratemaking



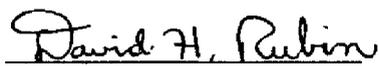
David H. Rubin
Attorney

475 L'Enfant Plaza West, S.W.
Washington, D.C. 20260-1137
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⁷ The Postal Service mentioned the procedure in its Request, at 2, n.1, only to provide notice of the procedure, and to stress the unusual circumstances underlying it.

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.


David H. Rubin

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Washington, D.C. 20260-1137
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