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I. INTRODUCTION

In this economic climate where the financial sector and investment banking industry are in turmoil due to lax oversight and accountability, the general public has a strong interest in ensuring that regulators have the proper amount of oversight of their industries.¹ With respect to this case, the proper amount of oversight, transparency, and accountability of the Postal Service depends on how the statutory term “nonpostal services” in 39 U.S.C. § 404(e) is interpreted. The Public Representative argues that Commission should interpret the term according to its plain meaning. The Postal Service conceded that:

Prior to the passage of the PAEA, the Postal Service, the Commission and others used the term “nonpostal” as a vernacular for revenue derived from sources other than the revenue accruing from products and services classified in the Domestic Mail Classification Schedule. In other words, “nonpostal” became an easy short-hand for services or revenue that were not regulated by the Commission. For example, in rate cases, the Postal Service would report “nonpostal” revenue from fees for passport applications or payments received for use of post office lobbies to distribute advertising materials, even though these were authorized under provisions of the PRA other than former 404(a)(6).

Postal Service Brief at 2. Despite this widely accepted, admittedly “generic application of the word ‘nonpostal’” which “has existed for a long time,”² in this case, the Postal Service attempts to muddy the waters by arguing that the term “nonpostal services” in

¹ Boston Globe “McCain, Obama call for more oversight of bailout” September 22, 2008.

² *Id.* at 2 n.1.

the PAEA should not be given this long standing, ordinary meaning. Instead, it incorrectly argues that the term “nonpostal services,” in fact, only means six activities.³ The Commission should not be swayed by the Postal Service’s attempts to complicate this simple statutory construction issue.

II. LEGAL ANALYSIS

The participants’ initial briefs raise several important issues. First, several participants ask the Commission to adopt an overly narrow definition of the term “services.” These participants needlessly seek to complicate the Commission’s task in this case. For the Commission to fulfill its responsibilities under § 404(e), it does not have to choose between competing reference book definitions of the term “service.” The statute does not require the Commission to adopt a general definition of term “services.” All it requires is for the Commission to determine which “nonpostal services” should continue. With all of the current Postal Service nonpostal activities identified in this docket,⁴ the Commission can identify and classify those activities as “services” on a case-by-case basis. If, however, the Commission determines it is necessary to adopt a general definition of the term “services,” the Commission should make such determinations on a case-by-case basis. These determinations would be based on a multi-factor balancing test to ensure that important policy factors implicated by such a determination are considered and given appropriate weight.

Second, the Postal Service erroneously argues that the proper interpretation of the term “nonpostal services” would result in Congress unconstitutionally delegating its

³ *Id.* at 74-89. Of course, had Congress intended for the term “nonpostal services” to mean only six discrete services, it could have just listed those six services in the statute. *Cf.* 39 U.S.C. § 3621(a) (initial list of ten market dominant postal products subject to changes by the Commission).

⁴ See *e.g.*, Donahoe Statement (providing testimony on certain Postal Service revenue generating activities).

legislative authority to the Commission. The Postal Service's argument is based on a flawed reading of the Supreme Court's nondelegation case law. Third, contrary to the Postal Service's contention, 39 U.S.C. §§ 2003 and 2011 are easily harmonized with the proper interpretation of the term "nonpostal services." Finally, the Postal Service complains that the proper interpretation of the term "nonpostal services" would place an unfair administrative burden on it to comply with the requirements of 39 U.S.C. § 3632. This complaint is unjustified. The Postal Service need not comply with the requirements of 39 U.S.C. § 3632 with respect to certain competitively classified "nonpostal services."

A. The Commission Need Not Adopt a General Definition of the Term "Services" in 39 U.S.C. § 404(e)(1)

To fulfill its statutory mandate under § 404(e), the Commission does not need overly complicate matters and adopt a general definition of the term "service." Both Valpak⁵ and the Postal Service⁶ suggest that the Commission adopt a general definition of the term "service" that is inappropriately narrow.

Valpak's definition would limit "nonpostal services" to only those nonpostal retail activities that are regularly offered to the general public.⁷ What Valpak fails to recognize, however, is that the word "service" is used in both the terms "postal service" and "nonpostal service."⁸ Any definition of the word "service" with respect to the term "nonpostal service" also has an effect on the term "postal service."⁹ Therefore, the Commission must be careful to also consider the implications that defining service

⁵ Valpak Brief at 4-8.

⁶ Postal Service Brief at 21.

⁷ Valpak Brief at 6.

⁸ It would be counterintuitive and contrary to statutory interpretation rules for the word "service" to mean different things with respect to these complementary terms.

⁹ In other words, Valpak's definition would create four categories of activities: postal services, nonpostal services, nonpostal nonservices, and postal nonservices.

narrowly would have on the regulatory scheme of “postal services.” For example, if the Commission were to define “services” as activities regularly offered to the general public, then this would create statutory construction problems for those postal activities that are not offered to the general public.¹⁰ Additionally, the PAEA does not contemplate or set up a regulatory scheme for the Postal Service’s provision of activities that are not “services.”¹¹

There is no support for a narrow definition of the term service.¹² In other contexts, the typical plain meaning of the term service is broadly defined.¹³ If anything, a more appropriate way to adopt a general definition of the term “services” would be by referring to the defined term “postal services” in § 102(5), especially since the term “nonpostal services” is defined by reference to the term “postal services.” 39 U.S.C. § 404(e)(1). To give effect to the Congressionally mandated interplay between statutory

¹⁰ Examples of such activities include Negotiated Service Agreements under § 3622(c)(10) and competitive rates or classes not of general applicability under § 3632(b)(3).

¹¹ Defining such postal activities as “postal nonservices,” begs the question of how these activities are to be regulated since the statute only discusses postal services, not postal nonservices.

¹² Valpak argues that Congress’ use of the term “public” in the criteria section of § 404 demonstrates that the term “service” only applies to retail offerings regularly offered to the public. Valpak Brief at 6. However, the public need for services has nothing to do with whether they are regularly offered to the public. For example, Congress has decided that there is a public need for a space program. However, members of the public are not offered the opportunity to take trips into space.

¹³ *Hodges v. Delta Airlines, Inc.*, 44 F.3d 334, 335 (5th Cir. 1995) (en banc) (in the context of the ADA, the court recognized that “‘services’ generally represent a bargained-for or anticipated provision of labor from one party to another.”); *Clark Advertising Agency, Inc. v. Tice*, 490 F.2d 834 (5th Cir. 1974) (in the context of a contract dispute, the court held that, in accordance with Webster’s Third New International Dictionary, services means furthering some end or purpose); *Creameries of Am. v. Ind’l Comm’n*, 102 P.2d 300, 304 (Utah 1940) (“In ordinary usage the term ‘services’ has a rather broad and general meaning. It includes any act performed for the benefit of another under some arrangement or agreement whereby such act was to have been performed. The general definition of ‘service’ as given in Webster’s New International Dictionary is ‘performance of labor for the benefit of another’; ‘Act or instance of helping, or benefiting.’”); Md. Com. Code Ann. § 11-201(g) (defining service, for purposes of the state antitrust law, as “any activity performed in whole or in part for the purpose of financial gain, and includes any sale, rental, leasing, or licensing for use.” (emphasis added)). This Maryland Commercial Code provision highlights the fact that all revenue-producing activities have some service elements associated with them, and thus the activity as a whole could be considered a “service.”

terms, “services” in the definition of “nonpostal services” must be harmonized with the term “postal services.” Section 102(5) defines “postal service” as “the delivery of letters, printed matter, or mailable packages, including acceptance, collection, sorting, transportation, or other *functions* ancillary thereto.” 39 U.S.C. §102(5) (emphasis added). The part of the definition of “postal services” that relates to “services” is “functions.” Therefore, if the Commission found it necessary to adopt a general definition of the term “services,” it should define “services” as “profit seeking functions performed by the Postal Service to the benefit of the public.”¹⁴

However, since this case deals with a limited number of nonpostal activities, a better approach would be for the Commission to refrain from adopting a general definition of the term “service” and instead decide which nonpostal activities are “nonpostal services” within the meaning of § 404(e) on a case-by-case basis.

1. The Commission Should Define “Services” on a Case-by-Case Basis

Focusing the Commission’s attention on a general definition of the term “services” as used in § 404(e)(1) is a red herring. The Commission does not need to adopt a general definition of the term “services.” The Postal Service has provided the entire universe of nonpostal activities in which it engages and has provided testimonial evidence in this docket in support of those activities. All § 404(e) requires is for the Commission to review the activities that have been presented in this docket and determine if they should continue. The Commission merely has to look at the facts and circumstances of each of the 13 nonpostal activities identified in this docket¹⁵ and determine, based on the individual facts and circumstances on an activity-by-activity basis, whether such activity rises to the level of a “service.”

¹⁴ This definition would encompass all those nonpostal activities identified in the Public Representative’s Initial Brief. Public Representative Brief at 24-33.

¹⁵ Public Representative Brief at 24-33.

As an alternative, the Commission may also undertake this inquiry in reverse. It may first review of all nonpostal activities presented in this docket under the criteria of § 404(e)(3). If, after such review, the Commission believes that all the nonpostal activities should be continued, there would be no harm or injury to the Postal Service.¹⁶ If the Commission does not believe that certain activities should continue (because the Postal Service has not met the statutory criteria in § 404(e)(3)), the Commission may then decide whether that specific nonpostal activity is a “service” under § 404(e)(1) on a case-by-case basis – looking at the facts and circumstances of each particular nonpostal activity. There is no reason for the Commission to adopt a general definition of the term “service” at this time.

2. If the Commission is Inclined to Adopt a Definition of the Term “Services,” it Should Use a Balancing Test

If, the Commission feels it is appropriate to adopt a definition of the word “services” for purposes of § 404(e)(1), the Commission should adopt a multi-factor balancing test to ensure that important policy factors implicated by such a determination are considered and given appropriate weight. Whether a nonpostal activity is to be considered a service has significant consequences. If a nonpostal activity is not

¹⁶ The Constitution limits the judicial power under Article III to “Cases” and “Controversies.” See *In re Navy Chaplaincy*, 534 F.3d 756 (D.C. Cir. 2008). One of the main “elements in the definition of a case or controversy under Article III is standing.” *Hein v. Freedom From Religion Foundation, Inc.*, 127 S. Ct. 2553, 2562 (2007) (internal quotation marks and alteration omitted). The three factors establishing the “irreducible constitutional minimum” of standing are well established. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992). First is injury-in-fact. A plaintiff must have suffered “an invasion of a legally protected interest” that is (i) “concrete and particularized” rather than abstract or generalized, and (ii) “actual or imminent” rather than remote, speculative, conjectural, or hypothetical. *Id.* (internal quotation marks omitted); see also *Pub. Citizen, Inc. v. Nat’l Highway Traffic Safety Admin.*, 489 F.3d 1279, 1292-93 (D.C.Cir.2007). Second is causation. The asserted injury must be “fairly traceable to the challenged action of the defendant.” *Lujan*, 504 U.S. at 560 (internal quotation marks and alterations omitted). Third is redressability. A favorable decision by the court must be likely to redress the plaintiff’s injury. *Id.* at 561. All three of these Constitutional standing elements would be missing if the Commission allows all the nonpostal services to continue.

considered a service, contrary to the purposes of the PAEA, it will fall outside of Commission oversight and escape accountability. Accordingly, the Commission must carefully weigh a number of important factors in order to determine if transparency, oversight, and accountability are in the public interest for that particular nonpostal activity in deciding if it rises to the level of a “service.”

The factors that the Commission should weigh in its review of a particular nonpostal activity to determine whether it is a service are:

- whether the public perceives that the activity is backed by the trust of the Postal Service;¹⁷
- whether the fundamental purpose of the arrangement is to act as economically as possible or is to produce revenue;¹⁸
- the frequency and regularity with which the activity occurs;¹⁹
- the degree and amount of labor being provided in connection with the activity;
- the value of the activity to the recipient;
- the availability of alternatives;
- the importance of pricing flexibility;
- the harm caused to the marketplace by engaging in the activity; and
- the need of the Postal Service to increase efficiency and reduce costs.

¹⁷ Section 404(e) should not allow the Postal Service to avoid oversight and accountability by allowing a third party to engage in that same activity if the public perceives that such activity is being done by the Postal Service. For example, with respect to ReadyPost, the Postal Service allows Hallmark Custom Marketing, Inc. to use the Postal Service brand name to sell shipping supplies. See, e.g., Myer Statement at 2. The public may think that these items are made directly by the Postal Service since the product uses the Postal Service brand name. These should be considered “services” even though they are being performed by a third party.

¹⁸ See Postal Service Brief at 66.

¹⁹ Valpak Brief at 2.

Several of these factors are derived, in part, on those that Congress listed in 39 U.S.C. § 3622(c) as being important to effectuating the purposes of the PAEA.

Weighing these factors will allow the Commission to make an informed decision on whether or not a particular activity should be considered a service under § 404(e)(1) without unnecessarily restricting the Commission in fulfilling its responsibilities under § 404(e). Accordingly, if the Commission feels it is appropriate to adopt a definition of the term “services” for purposes of § 404(e)(1), the Commission should adopt the above multi-factor balancing test.

B. The Postal Service Misunderstands the Case Law on the Nondelegation Doctrine

The Postal Service incorrectly argues that the Commission should apply the nondelegation doctrine to limit its statutorily granted authority since, otherwise, the Commission would be delegated the power to change certain laws passed by Congress. None of the cases cited by the Postal Service stand for the proposition that Congress may not delegate the power to legislate to the Commission.²⁰ If that were the case, then § 3622(d)(3) would be unconstitutional on its face since it explicitly allows the Commission to alter a statutory provision.²¹ The case law on the nondelegation doctrine does not go anywhere near that far. The case law merely states that Congress may not grant the Commission “excessive legislative discretion.”²²

²⁰ Additionally, the courts did not strike down any of the statutes as an improper delegation of legislative authority in the cases cited by the Postal Service.

²¹ In that provision, Congress tasked the Commission with the responsibility of reviewing the Congressionally designed system for regulating rates and classes for market-dominant products after being in effect for 10 years. Congress further legislated that the Commission may “make such modifications or adopt such alternative system for regulating rates and classes for market dominant products as necessary to achieve those objectives [listed in § 3622].” 39 U.S.C. § 3622(d)(3). Of course, this subsection is not a violation of the nondelegation doctrine because Congress provided the Commission with an “intelligible principle” to apply – “necessary to achieve those objectives.”

²² *Mistretta v. United States*, 488 U.S. 361, 371-72 (emphasis added) (“Congress simply cannot do its job absent an ability to delegate power under broad general directives”; “The Constitution has never

In order to determine whether a legislative grant of discretion to an agency is “excessive,” courts apply the “intelligible principle” test to ensure that Congress has laid down “by legislative act an intelligible principle to which [the person or body authorized to exercise the delegated authority] is directed to confirm.”²³ If so, that “legislative action is not a forbidden delegation of legislative power.”²⁴ In all of the Supreme Court cases on the nondelegation doctrine since 1935, the Court has “upheld without deviation, Congress’s ability to delegate power under broad standards.”²⁵

Here, as discussed in the Public Representative’s initial brief (see pages 19-20), not only has Congress set forth a clear, well-defined intelligible principle for the Commission to exercise its discretion in determining which “nonpostal services” should continue, it has provided explicit determinative criteria for the Commission to use in its evaluation. *Am. Power*, 329 U.S. at 105 (holding that the statute does not even “have to provide determinative criterion for the exercise of the delegated power so long as a policy is articulated”). Thus, there can be no question that Congress has not impermissibly delegated its authority to the Commission.

been regarded as denying to the Congress the necessary resources of flexibility and practicality, which will enable it to perform its function”).

²³ *Id.* at 72 (alternations in original) (quoting *J.W. Hampton, Jr. & Co. v. United States*, 276 U.S. 394 (1928)).

²⁴ *Id.*

²⁵ *Id.* at 73. See, e.g., *Lichter v. United States*, 334 U.S. 742, 785-786 (1948) (upholding delegation of authority to determine excessive profits); *American Power & Light Co. v. SEC*, 329 U.S. 90, 105 (1946) (upholding delegation of authority to Securities and Exchange Commission to prevent unfair or inequitable distribution of voting power among security holders); *Yakus v. United States*, 321 U.S. 414, 426 (1944) (upholding delegation to Price Administrator to fix commodity prices that would be fair and equitable, and would effectuate purposes of Emergency Price Control Act of 1942); *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 600 (1944) (upholding delegation to Federal Power Commission to determine just and reasonable rates); *National Broadcasting Co. v. United States*, 319 U.S. 190, 225-226 (1943) (upholding delegation to Federal Communications Commission to regulate broadcast licensing “as public interest, convenience, or necessity” require).

The one lone case cited by the Postal Service in support of its proposition that the nondelegation doctrine is used to limit the scope of statutory terms deserves clarification. That case deals with the cross-industry Occupational Safety and Health Administration's (OHSA) discretion and is inapplicable here.²⁶ In *Int'l Union*, the D.C. Circuit found a narrower reading of the statute necessary since the scope of the OHSA's "claimed power to roam" was "immense, encompassing all American enterprise." *Id.* at 1317. The Court found that when the scope increases to immense proportions, the intelligible principle must be correspondingly more precise. Accordingly, the "mass of cases in courts that had upheld delegations of effectively standardless discretion, [were] distinguished [] precisely on the ground of the narrower scope within which the agencies could deploy that discretion."²⁷ Indeed, that court specifically held that "[c]ases upholding delegations governing a single industry are thus inapposite." *Id.* Not only is there a well-defined, precise intelligible principle here, but also the PAEA is dealing with only the postal industry. Thus, this case is inapposite.

Additionally, the Postal Service seems to suggest that the Commission may be able to avoid a nondelegation issue by exercising its discretion to review only those six "nonpostal services" identified by the Postal Service. Postal Service Brief at 27-29. However, even if the Commission exercised its discretion in the manner suggested by the Postal Service, a statutory provision that violated the nondelegation doctrine would still have to be struck down as unconstitutional. In the Supreme Court's most recent case on the nondelegation doctrine it stated, "[w]e have never suggested that an agency can cure an unlawful delegation of legislative power by adopting in its discretion a limiting construction of the statute." *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457 (2001).

²⁶ *Int'l Union, United Auto., Aerospace & Agr. Implement Workers of America, UAW v. OSHA*, 938 F.2d 1310 (D.C. Cir. 1991).

²⁷ *Michigan v. EPA*, 213 F.3d 663 (D.C. Cir. 200) (quoting *Int'l Union*, 938 F.2d at 1317-18).

C. Sections 2003 and 2011 Do Not Imply that Congress Sought an Overly Narrow Definition of the Term “Nonpostal Services” in 39 U.S.C. § 404(e)

The Postal Service erroneously argues that the wording of §§ 2003 and 2011 implies that a narrow reading of the term “nonpostal services” in § 404(e) is appropriate. Section 2003 states that non-competitive product receipts may come from the following sources: revenues from postal and nonpostal services, (see § 2003(b)(1)); appropriations, (see §§ 2003(b)(3), 2003(b)(6)); reimbursement and interest, (see §§ 2003(b)(2), 2003(b)(4)); law enforcement related activities, (see §§ 2003(b)(7), 2003(b)(8), 2003(b)(9)); and “other receipts,” (see § 2003(b)(5)). However, all that can be inferred from these provisions is that Congress thought that these extraordinary revenue generating activities (reimbursement and interest revenue, law enforcement related activities, and appropriations) needed explicit clarification under the law for inclusion in the Postal Service Fund.²⁸

Moreover, a broader interpretation of the term nonpostal service than advocated by the Postal Service would not result in statutory terms in §§ 2003(b)(2)-(9) being rendered superfluous. Had Congress sought to include every postal and nonpostal service asset in § 2003(b)(1), it would have used the phrase: assets obtained from postal and nonpostal services rendered by the Postal Service. As used in this context,

²⁸ For example, the term “revenue” does not always include items for which reimbursement was obtained. In other words, if company X provides the Postal Service with a fuel discount paid as reimbursement at the end of the month, it is questionable whether that discount is, in fact, revenue. As an additional example, without § 2003(b)(4) it would be unclear if once money is removed from the Fund for investment purposes under § 2003(c), whether or not those investment proceeds are automatically made part of the Fund without the explicit direction in § 2003(b)(4). This is because to be invested, the money would need to be removed from the Fund and given to brokers for investment purposes. See *Schmueser v. Burkburnett Bank*, 937 F.2d 1376, 1028-29 (5th Cir. 1991) (finding the term services does not include extending credit or borrowing money).

the term revenue used in § 2003(b)(1) is a subset of the term assets.²⁹ Accordingly, because “postal and nonpostal service revenue” are not the complete whole of the Postal Service’s § 2003 Fund, the statutory provisions §§ 2003(b)(2)-(9) are not rendered meaningless if a broad definition of the term “services” is accepted.

Similarly, § 2011 states that competitive product receipts may come from the following sources: revenues from competitive products, (see § 2011(b)(1)); reimbursement and interest, (see §§ 2003(b)(2); 2003(b)(3)); and “other receipts,” (see § 2003(b)(4)). All that one can discern from these provisions is that Congress thought that these extraordinary revenue generating activities (reimbursement and interest revenue) needed explicit clarification under the law for inclusion in the Competitive Products Fund. Accordingly, for these reasons, it is clear that §§ 2003 and 2011 do not imply that Congress sought an overly narrow definition of the term “nonpostal services” in § 404(e).

D. The Postal Service Need Not Comply With § 3632 with Respect to Certain Competitive Nonpostal Services

The Postal Service argues that the Commission should interpret § 404(e) narrowly since otherwise complying with § 3632 would be too much of an administrative burden for the Postal Service to bear with respect to nonpostal competitive products. Postal Service Brief at 59-70. This complaint is unfounded since the law does require the Postal Service to comply with § 3632 with respect to certain competitive nonpostal services.

Section 3632 requires the Governors to follow certain procedures with respect to “rates or classes” for products “in the competitive category of mail.” 39 U.S.C. § 3632(a). “Rates or classes” as used in this subsection should be read to only apply to

²⁹ Compare § 2003(b)(1) (“revenues from postal and nonpostal services” are part of the Fund) with § 2002(b) (“capital of the Postal Service at any time shall consist of its assets, including the balance in the Fund and the balance in the Competitive Products Fund, less its liabilities”). The term “including” may mean that these two funds are not the whole of all the Postal Service’s assets.

“postal services.” This interpretation finds support in the definition of the term “rate.” With respect to the definition of “rates,” the PAEA states “as used with respect to products, includes fees for *postal services*.” 39 U.S.C. § 102(5) (emphasis added). Congress’ use of the term “postal services” in this definition shows that it intended for § 3662 to only apply to postal services.³⁰ However, the Commission may apply its rules promulgated under § 3663 to all competitive products – nonpostal services and postal services – since that section is not written in terms of “rates.” Since the Commission may wish to establish separate rules for certain nonpostal services, Congress has provided it with the authority to do so. See §§ 503, 3663.

Additionally, as the Postal Service points out, § 3662 only applies to “competitive products *of mail*.” (Emphasis added). Postal Service Brief at 63 n.94. Thus, for certain competitive nonpostal services not related to the mail, the Postal Service may be exempt from complying with § 3662 with respect to those activities.

Finally, § 404(e)(5) does not automatically place all nonpostal services products on equal footing with postal service products. Section 404(e)(5) states that a nonpostal service allowed to continue by the Commission shall “*be regulated under this title as a market dominant, a competitive product, or an experimental product.*” This “be regulated as” language shows that they are not automatically made into market dominant or competitive products, but rather that they are regulated, to the extent practicable, as market dominant or competitive. Accordingly, for those portions of the new regulatory regime that would not make sense for nonpostal products, the Commission may set up special rules to govern those nonpostal services.

³⁰ A similar conclusion may be reached with respect to the Commission’s market dominant regulations and price cap rules under § 3622(a). This section tasks the Commission with the responsibility of “establish[ing by regulation] ... a modern system for regulating *rates and classes* for market-dominant products.” 39 U.S.C. § 3622(a) (emphasis added).

III. CONCLUSION

For the reasons set forth above and its initial brief, the Public Representative respectfully requests that the Commission (1) interpret the term “nonpostal services” in § 404(e) in accordance with the applicable rules of statutory construction and the Congressional intent of the PAEA and find that that it includes all services that are not postal services, (2) all Postal Service postal³¹ and nonpostal services listed in Section

³¹ In its initial brief, the Postal Service argues that certain nonpostal services should be classified as postal services. Postal Service Brief at 91-108. These reclassifications as “postal services” are properly part of this docket. In the initial order establishing this case, the Commission stated that “the Commission is initiating this docket to fulfill its responsibilities under section 404(e).” PRC Order No. 50 (December 20, 2007) at 2. The Order further stated that it was a requirement for this proceeding for the Postal Service to “provide a complete description of each nonpostal service offered by the Postal Service on the date of enactment of the PAEA.” *Id.* The Order also stated that “[t]he description shall include the current status of each nonpostal service and the Postal Service’s *classification of each such service...*” *Id.* (Emphasis added). This Order was clearly initiated for the purpose of classifying each nonpostal service (as that term is used in its generic sense) – as market dominant or competitive, postal or nonpostal as long as it was formerly not considered a “postal service” under the Postal Reorganization Act. Clearly, the classification of former nonpostal services as postal services is either within the scope of the initial order or a logical outgrowth of this docket. Furthermore, back in April 2008, in Order No. 74, the Commission explicitly clarified that this proceeding includes those activities. It stated, “with respect to nonpostal services that it now wishes to have classified as postal services, the Postal Service is directed....” PRC Order No. 74 (April 29, 2008) at 14. All of the activities that the Public Representative argues should be classified as “postal services” fit that criteria.

III of the Public Representative's initial brief be allowed to continue categorized and listed on the Mail Classification Schedule as described therein, and (3) grant any other relief it deems just and proper.

Respectfully Submitted,

/s/ Robert Sidman

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