Postal Rate Commission
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BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268–0001

Reporting Requirements for Nonpostal Services	Docket No. RM2004-2

REPLY COMMENTS OF THE UNITED STATES POSTAL SERVICE
(May 17, 2004)

On March 5, 2004, the Postal Rate Commission issued Order No. 1394 (Order), soliciting comments on a proposed amendment to its Rule 54 to establish additional reporting requirements for nonpostal services. In accordance with that Order, the Postal Service hereby offers its reply comments on the proposed new provisions of the rules.

Initial comments were filed on April 15, 2004, by the Postal Service, the OCA and Consumer Action (OCA/CA), Pitney Bowes, and PostCom. For the reasons stated in its Initial Comments, the Postal Service takes the view that no amendment to Rule 54 on the topic of nonpostal services is either necessary or desirable. Pitney Bowes, on the other hand, expresses agreement with adoption of the new rules as proposed, but offers no detailed analysis to support that view.

PostCom appears not to oppose the rule as proposed, but would also prefer that the new reporting requirements be periodic, rather than operative only at the time of a rate filing. The rationale behind this suggestion, however, is flawed. For example, PostCom claims that information about nonjurisdictional services provided in response

to periodic reporting provisions could be used as the basis for requests to the Commission to initiate a section 3662 complaint case. PostCom Initial Comments at 2. PostCom proffers this claim despite the obvious and inherent contradiction in the notion that the Commission could have jurisdiction under section 3662 over a nonjurisdictional service. Similarly, PostCom identifies FERC rules it perceives to be analogous, notes that those FERC rules have explicit statutory foundation, but nonetheless claims that the powers of the Postal Rate Commission are certainly broad enough to justify imposition of reporting rules similar to those maintained by FERC. PostCom Initial Comments at 3. In fact, however, the courts have consistently held that the Commission does not have broad regulatory powers like those of true regulatory agencies. For example:

> The responsibilities of the Postal Rate Commission are strictly confined to relatively passive review of rate, classification, and major service changes, unadorned by the overlay of broad FCC-esque responsibility for industry guidance and of wide discretion in choosing the appropriate manner and means of pursuing its statutory mandate.

United Parcel Service v. US Postal Service, 455 FSupp 857, 873 (ED Pa 1978), *aff'd* 604 F2d 1370 (3rd Cir 1979), *cert. denied* 446 US 957 (1980); quoted in *Governors of the Postal Service v Postal Rate Commission*, 654 F2d 108, 117 (DC Cir 1981). PostCom is in error to suggest that the Commission has the authority to promulgate periodic reporting rules regarding nonpostal services, although it bears noting that the Commission has proposed no such thing in this rulemaking.

The OCA/CA comments suffer from the same fundamental flaw as the rationale presented in Order No. 1394 to justify promulgation of the proposed rules. The OCA/CA comments state:

> This rule is needed, as the Commission must have accurate financial data regarding non-jurisdictional services to forecast accurately the costs and revenues of jurisdictional (domestic) services. This is essential to insure that the costs associated with these services are not being recovered through jurisdictional rates.

OCA/CA Comments at 3. Like Order No. 1394, however, the OCA/CA Comments fail to explain why information regarding each nonpostal service individually, as opposed to nonpostal services in the aggregate, is necessary to achieve these objectives. In reality, disaggregated information is not needed, which is why the existing rule is sufficient.

The OCA/CA Comments continue:

> The nonjurisdictional activities are commercial in character and compete in the marketplace with private companies. Their scope, attributes, and financial condition must be fully reported in order for the Commission to understand the potential impact on the competitive market. To the extent the activities are not deemed postal services, the Commission must provide for transparent reporting of the operating details of each service and all costs and revenues related to each service.

Id. Once again, the OCA and CA have failed to explain why the Commission "must" understand the impact on competitive markets of nonjurisdictional services. Even if there were any such impacts, concerns relating to them would be outside the scope of the Commission statutory responsibilities, which are limited to jurisdictional services. OCA/CA assertions to the contrary are transparently conclusory, and provide no meaningful basis to justify the proposed amendments to Rule 54.

Overall, the Postal Service finds nothing in the initial comments filed by others to alter its conclusion that the proposed amendments to Rule 54 are unwarranted. Having aggregate rather than disaggregate information on nonpostal services has not impeded the Commission's ability in the past to render recommended decisions on postal services, and neither experience nor logic suggest any cogent reason why information provided under the Commission's existing rules will be inadequate in the future.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document in accordance with Section 12 of the Rules of Practice.

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