

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

Reporting Requirements for)
Nonpostal Services)

Docket No. RM2004-2

OFFICE OF THE CONSUMER ADVOCATE AND CONSUMER ACTION
REPLY COMMENTS ON PROPOSED RULEMAKING CONCERNING
REPORTING REQUIREMENTS FOR NONPOSTAL SERVICES
(May 17, 2004)

The Office of the Consumer Advocate ("OCA") and Consumer Action ("CA") hereby file a reply to comments on the Commission's proposal to amend Rule 54 of the Commission's rules of practice and procedure. The proposed amendment would require additional financial detail for non-jurisdictional services to be filed with formal requests for changes in rates and fees. 39 C.F.R. §3001.54(h)(1). ("Rule 54(h)(1)").¹ CA is an independent non-profit membership organization founded in San Francisco in 1971. It serves consumers nationwide by advancing consumer rights.²

¹ "Proposed Rulemaking Concerning Reporting Requirements for Nonpostal Services," Order No. 1394, March 5, 2004.

² CA refers consumers to complaint-handling agencies through a free hotline, publishing educational materials in English, Spanish and a variety of major Asian languages including Russian, and advocating for consumers in the media and before legislators. The organization also assists consumers by comparing prices on credit cards, bank accounts, and long distance services. CA previously filed before the Commission on October 15, 2002 a petition requesting the institution of Commission proceedings to review the jurisdictional status of fourteen specified services and to establish rules accounting for costs and revenues of non-jurisdictional domestic services. See "Order Denying, in Part, and Granting, in Part, Petition," *Petition to Review Unclassified Services*, Order No. 1388, January 16, 2004.

The OCA and CA, jointly, filed comments in this proceeding on April 15, 2004. Comments were also filed by the United States Postal Service, Pitney Bowes Inc., and the Association for Postal Commerce ("PostCom"). A letter comment was also filed by postal patron, B. Sachau.

Pitney Bowes supports the proposed rule.³ PostCom supports the rule requiring the additional information in rate case filings, but it further proposes that the information should be filed periodically--perhaps annually. The OCA and CA support the suggestion to increase the frequency of filing so-called nonpostal cost and revenue data. It would provide potential rate case litigants with timely information that may shorten the time for litigation and thus expedite future rate proceedings. It would also greatly improve the transparency of non-jurisdictional-services' costs and revenues between rate proceedings and assist in signaling if complaints are warranted.

The Postal Service opposes the proposed rule because it is unconvinced (1) that a disaggregated reporting requirement for financial information about non-jurisdictional services would aid the ratemaking process, and (2) that the disaggregated information is "required" to be filed under the Postal Reorganization Act. (Comments at 1).

In response to the Postal Service's first objection that disaggregated reporting may not aid ratemaking, we submit that the proposed rule is necessary because it is clear the current rules permitting the reporting for nonpostal services on an aggregated basis are not adequate. Lump sum reporting of so-called nonpostal service costs and revenues does not ensure that the costs of these services are properly or completely

³ The Sachau letter comment supports "full accounting of the costs and revenues of each service."

accounted for. The GAO studies and our own observations in recent Commission proceedings indicate that when costs are reported in the aggregate, not all of the costs attributable to non-jurisdictional services are or will be accurately included and recognized by the Postal Service. Unless those costs are disaggregated and reviewed by account or class of costs, there is no way to determine if the Postal Service has included all of the direct non-jurisdictional services' costs in the aggregate and allocated them appropriately to the non-jurisdictional side of the ledger in the ratemaking process.

Surprisingly, the Postal Service claims the Commission order does not explain why information is needed on a disaggregated basis. Yet the Postal Service comments reiterate the Commission's determination that reliable estimates of non-jurisdictional revenues and expenses are needed to ensure properly attributable costs are reflected in jurisdictional rates. In fact, that is the reason information is needed on a disaggregated basis. Unless the costs are disaggregated, the attributions cannot be analyzed. The history of the last thirty years, in the face of the substantial increase in non-jurisdictional activity, is not an adequate reason for continuing the current reporting procedure.

The Postal Service suggests that its non-jurisdictional activities are scrutinized sufficiently. It points to review by the Board of Governors. Yet that circumstance is insufficient under the current statutory scheme. This Commission's duty is to review and make recommendations upon the proposals of the Postal Service's Board of Governors. This includes developing an evidentiary record (under 39 U.S.C. §3624) comprised of facts needed to apply 39 U.S.C. §3622 criteria to the Postal Service's proposal. Without detailed evidence of record, the Commission will be unable to satisfy

its responsibilities under §3622, especially application of criterion (b)(3). Both the Commission and participants in rate request proceedings must be able to evaluate, independently of the Board of Governors, whether costs properly attributable to non-jurisdictional services have been excluded from the costs charged to jurisdictional ratepayers under §3622(b)(3). The fact that the Postal Service prepares such reports for review by the Board of Governors reinforces the Commission's observation that "any burden imposed . . . by the proposed rule would appear to be minimal"⁴ since these data are "tracked and periodically reported to senior management."⁵

The Postal Service also cites the GAO as another entity providing scrutiny of its nonpostal services. The GAO, as the Postal Service recognizes, has published several reports on Postal Service programs. However, the Postal Service fails to mention the GAO's concern in those reports about the failure of the Postal Service to maintain transparency and to properly account for the costs and revenues of its non-jurisdictional services, particularly its e-commerce programs. GAO uncovered pervasive deficiencies in the Postal Service's accounting.⁶ Some of the problems cited by the GAO reports will be resolved by the transparent disaggregation of non-jurisdictional service costs and

⁴ Order No. 1394 at 12.

⁵ Id., quoting Letter from Mr. John Nolan, Deputy Postmaster General, to Mr. Bernard L. Ungar, Director, Government Business Operations Issues, August 29, 2000, GAO Report GGD-00-188, at 74.

⁶ See, e.g., *U.S. Postal Service Deteriorating Financial Outlook Increases Need for Transformation*, GAO-02-355 Report, February 2002, at 35 ("Transparency and accountability are fundamental principles to ensuring public confidence in USPS."); "US Postal Service: What Can Be Done to Ensure Its Future Viability?", Senate Governmental Affairs Committee Hearing, September 17, 2003, Statement of Senator Joe Lieberman and Statement of James A. Johnson, Co-Chair, Presidential Commission on the U.S. Postal Service; and "The Report of the Presidential Commission on the U.S. Postal Service: Preserving Access and Affordability," Senate Governmental Affairs Committee Hearing, November 5, 2003, Statement of Comptroller General David Walker.

revenues. It must be underscored that the Postal Service refuses to make public its annual updates to GAO on Postal Service e-commerce activities.⁷ Unless this information is made public and included in the evidentiary record of a rate case, there is no means for applying the information reported to GAO to determine the proper share of costs for jurisdictional ratepayers under §3622(b)(3). It must also be noted that the annual update to GAO is not a comprehensive report on *all* non-jurisdictional services, but only a subset of them involving e-commerce activities.

Finally, the Postal Service notes the Office of the Inspector General (OIG) has scrutinized *individual* non-jurisdictional services. Thus, the OIG does not appear to perform regular, comprehensive reviews of non-jurisdictional services. Absent such reviews and public reports, no credible argument can be made that reports on individual services are equivalent to the reporting requirements proposed by the Commission in its new rule. In any event, neither the GAO nor the OIG are vested with the statutory responsibility to analyze the non-jurisdictional service costs in the detailed manner necessary to allow this Commission to fulfill its ratemaking duties.

As to its second objection, the Postal Service does not believe the incremental cost test is either required or authorized to be applied to individual non-jurisdictional services. The Postal Service notes the Commission's apparent implicit agreement with

⁷ See, e.g., its filings with the Commission on May 14, 2004, and May 20, 2003. Both filings with the Commission contain the warning: "Access to this document is restricted." OCA understands that the Commission will not release the annual updates to members of the public, pursuant to Postal Service instructions.

the arguments of OCA and CA that the value of applying the incremental cost test to individual non-jurisdictional services lies in testing for cross-subsidies. (Comments, note 3 at 4.) It is obvious that proper application of the incremental cost test requires the disaggregation of costs related to individual services so as to insure that all of the costs are taken into account and appropriately allocated. Moreover, an aggregation of non-jurisdictional costs is merely the summing of individual service costs. It is not possible to have confidence in an aggregate figure that leaves out the details of the aggregation exercise.

Section 3603 of the Postal Reorganization Act provides this Commission with authority to issue "rules and regulations and establish procedures" and take actions necessary and proper to carry out its functions and obligations under the Act. (39 U.S.C. §3603). The proposed amendment will assist the Commission in carrying out its responsibilities. The proposed rule is also necessary to properly carry out the Commission's functions under §§3621 and 3622, as well as §403(c), which prohibits undue discrimination and undue preferences. Section 3622(d)(3) of the Postal Reorganization Act requires that each jurisdictional service pay only the direct and indirect postal costs attributable to that service and other reasonably assignable costs. The costs of non-jurisdictional services must not be recovered by jurisdictional classes or types of service. Thus, this Commission must take all steps necessary and proper to insure that cross-subsidies do not exist. Accordingly, the proposed rule is well within the Commission's authority.

The Postal Service also does not believe the Commission may examine, in Rule 54 proceedings, claims of unfair competition arising from individual nonpostal services.

It says that Commission jurisdiction in Chapter 36 proceedings extends only to domestic services. The Postal Service's comment does not elaborate further to support its contention.

First, we should point out that OCA and CA have argued in other ongoing Commission proceedings not yet concluded that all services except those "nonpostal" services offered on behalf of other governmental entities are jurisdictional. In that case, virtually all of the so-called nonpostal services are jurisdictional and subject to Chapter 36 which requires Commission review of anticompetitive impacts. Second, §3622(d)(4) requires the Commission to consider the effect of rate increases upon the general public. Where the activities of the Postal Service, even non-jurisdictional activities, are shown to have an anticompetitive impact, the Commission may take that factor into account when fashioning rate recommendations. Without question, unfair competition by non-jurisdictional services is subject to the Commission's authority if the unfairness in competition is made possible by cross-subsidies by captive postal services of money-losing non-jurisdictional services.

Wherefore, OCA and CA ask that the Commission adopt the version of accounting and reporting rules for non-jurisdictional services appended to the initial comments filed April 15, 2004.

Respectfully submitted,

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