

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Tony L. Hammond, Vice Chairman;
Mark Acton
Dan G. Blair; and
Nanci E. Langley

Annual Compliance Report, 2009

Docket No. ACR2009

ORDER DENYING PUBLIC REPRESENTATIVE MOTION TO
COMPEL THE POSTAL SERVICE TO PROVIDE CERTAIN
ESTIMATES OF RATE ADJUSTMENTS

(Issued January 7, 2010)

On December 17, 2009, the Public Representative filed a motion to compel the Postal Service to provide certain estimated rate level adjustments for every market dominant rate.¹ The Public Representative seeks estimates that would equate overall Postal Service revenue with overall Postal Service estimated costs and be sufficient to ensure financial stability of the Postal Service by the end of FY 2011. In support of its Motion, the Public Representative discusses the Postal Service's financial difficulties, its interpretation of Congressional intent regarding Postal Service appropriations and other legislative relief, the Commission's legal authority to adjust unlawful rates, and its perceived need for the estimates of rate adjustments it seeks as a result of the Motion.

¹ Public Representative Motion Requesting Commission to Direct United States Postal Service to Provide Estimates of Rate Adjustments Necessary to Maintain Financial Stability, December 17, 2009 (Motion). In the alternative, the Motion requests the Commission to issue an information request to the same effect.

The Postal Service filed an opposition to the Motion on December 18, 2009.² It “submits that it would be patently unreasonable to divert...[its resources] to attempt to address the substance of the Public Representative’s motion.” *Id.* at 2. It further states that the information sought by the Motion would require “months and months” of preparation. *Id.*

Several parties, including Greeting Card Association (GCA), American Business Media (ABM), Mail Order Association of America (MOAA), and Valpak Direct Marketing Systems, Inc. and Valpak Dealers’ Association (Valpak), filed comments in opposition to the Motion.³ In addition, several parties filed a joint motion, requesting an extension of time to respond to the Public Representative’s Motion.⁴ In support of the Joint Motion, PostCom *et al.* briefly outlined several arguments in opposition to the Motion that they suggest need to be addressed. *Id.* at 2-3.

Parties opposing the Motion raise a variety of issues. GCA discusses the flaws in what it believes is the “vital” assumption of the Public Representative—that the only route to financial stability is through rate changes. GCA Response at 2-6. It also argues that the existence of a deficit does not, by itself, make certain rates unlawful.⁵ ABM argues that the Public Representative incorrectly asserts that rates resulting in revenues below costs are, *per se*, unlawful. It further believes that the Motion seeks

² Response of the United States Postal Service in Opposition to Motion of the Public Representative, December 18, 2009 (Postal Service Response).

³ Reply of Mail Order Association of America to Response of the United States Postal Service in Opposition to the Motion of the Public Representative, December 22, 2009; Reply of the Greeting Card Association to Motion of the Public Representative for Production of Estimates of Rate Adjustments, December 23, 2009 (GCA Response); Preliminary Answer of American Business Media To Motion of Public Representative For Order Directing Submission of Rate Estimates, December 24, 2009 (ABM Response); Valpak Direct Marketing Systems, Inc., and Valpak Dealers’ Association, Inc. Answer in Opposition to Motion of the Public Representative Requesting Commission to Direct United States Postal Service to Provide Estimates of Rate Adjustments, December 24, 2009 (Valpak Response).

⁴ Motion of the Association for Postal Commerce, Direct Marketing Association, Alliance of Nonprofit Mailers, Magazine Publishers of America, Inc., and Time Warner Inc. for Extension of Time to Respond to Motion of the Public Representative, December 22, 2009 (Joint Motion). Joint movants are referred to herein as PostCom *et al.*

⁵ GCA also questions the Public Representative’s apparent argument that “the First-Class letter stamp should be a particular target of rate increases.” *Id.* at 9.

rate adjustments that are impossible to produce. ABM Response at 2. MOAA joins the Postal Service's opposition to the Motion.

Valpak argues that the Motion "asks the Commission to put the cart before the horse" by attempting to fashion a remedy for noncompliance before even beginning the process for determining whether the Postal Service is in compliance with applicable law under 39 U.S.C. § 3653. Valpak Response at 2-3.

Lastly, PostCom *et al.* suggest that the relief sought is beyond the Commission's authority to grant. Joint Motion at 2-3.

Commission analysis. The Public Representative's Motion is essentially a discovery request, seeking estimated rate adjustments for all market dominant products necessary to equate overall Postal Service revenue with overall Postal Service estimated costs by FY 2011. The Public Representative submits that the Commission may need this information to fashion a remedy if it finds that the Postal Service is not in compliance with applicable provisions of law. Motion at 1.

In its Annual Compliance Determination (ACD), the Commission analyzes, among other things, whether any rates or fees were not in compliance with certain applicable laws and regulations during the just-completed fiscal year. 39 U.S.C. § 3653(b)(1). Any determinations occur after interested persons have had an opportunity to comment. 39 U.S.C. § 3653(a). If the Commission finds that certain rates or fees were not in compliance with applicable laws and regulations, then the Commission must determine whether action is appropriate in order to achieve compliance with applicable requirements and to remedy the effects of any noncompliance. 39 U.S.C. §§ 3653(c), 3662(c).

The information sought by the Public Representative's Motion is directed at exploring one of a number of potential actions the Commission could consider or that the Postal Service might take to ameliorate a finding of noncompliance due to inadequate revenues from some or all products. The Postal Service's Annual Compliance Report, the Commission's periodic reporting regulations, and the statutory standards provide interested persons with a meaningful starting point for data,

information, and analysis to argue to the Commission whether Postal Service rates and fees are (or are not) in compliance with applicable requirements. They also provide much of the information the Public Representative, or any other party, would use to offer suggested remedies for any perceived noncompliance. Such information may be supplemented if circumstances warrant. Requiring the Postal Service to go through the complex and time consuming process of developing several sets of estimated rates for all market dominant products as called for by the Public Representative's Motion is not warranted. Therefore, the Motion is denied.

Requests for an extension of time. As noted, PostCom *et al.* request an extension of time, until January 7, 2010, to respond more fully to the Public Representative's Motion. Several participants filed statements in support of the Joint Motion.⁶ The Commission concludes that the pleadings are sufficient to enable it to rule on the Public Representative's Motion without the need to consider any additional arguments that might be raised by PostCom *et al.* Consequently, the Joint Motion is denied.

It is Ordered:

1. The Public Representative Motion Requesting Commission to Direct United States Postal Service to Provide Estimates of Rate Adjustments Necessary to Maintain Financial Stability, filed on December 17, 2009, is denied.
2. The Motion of the Association for Postal Commerce, Direct Marketing Association, Alliance of Nonprofit Mailers, Magazine Publishers of America, Inc.,

⁶ Answer of National Postal Policy Council to Motion of the Association for Postal Commerce *et al.* for Extension of Time to Respond to Motion of the Public Representative, December 23, 2009; Concurrence of the National Newspaper Association With Motion of Association of Postal Commerce (PostCom), *et al.* for Extension, December 23, 2009; Answer of American Business Media in Support of Motion for Extension of Time, December 24, 2009.

and Time Warner Inc. for Extension of Time to Respond to Motion of the Public Representative, filed on December 22, 2009, is denied.

By the Commission.

Shoshana M. Grove
Secretary