

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

REQUEST TO ADD  
PRIVATE ADDRESS FORWARDING  
TO THE MARKET DOMINANT PRODUCT LIST

Docket No. MC2013-60

**REPLY OF THE UNITED STATES POSTAL SERVICE TO COMMENTS  
IN RESPONSE TO THE REQUEST TO ADD PRIVATE ADDRESS FORWARDING  
TO THE MARKET DOMINANT PRODUCT LIST**  
(December 20, 2013)

The United States Postal Service hereby submits its reply to the comments of the parties filed on November 18, 2013, regarding the *Private Address Forwarding* (PAF) product concept.<sup>1</sup> The Postal Service appreciates Petitioner's interest in postal product development. However, for the reasons stated below, in accordance with 39 C.F.R. § 3020.55, the Commission should decline to initiate further proceedings under 39 U.S.C. § 3642 for the purpose of considering whether to amend the Mail Classification Schedule to include a PAF (or similar) product.

**I. The Amended Product Concept Reinforces The Need For The Commission To Accord Broad Deference To Postal Management**

As directed by Order No. 1838,<sup>2</sup> the Postal Service submitted its comments and preliminary views on October 16, 2013<sup>3</sup> regarding the PAF product concept presented by Petitioner to the Commission on September 18, 2013. In doing so, the Postal

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<sup>1</sup> Reply Comment by Chris Phoenix to USPS' Comments on Private Address Forwarding Proposal (November 18, 2013); Public Representative Comments (November 18, 2013); Comments of the Association of Postal Commerce (November 18, 2013).

<sup>2</sup> Docket No. MC2013-60, Notice and Order Concerning Request to Add Private Address Forwarding to the Market Dominant Product List (September 23, 2013).

<sup>3</sup> Comments of the USPS In Response to Notice and Order Concerning Request To Add Private Address Forwarding To Market Dominant Product List (October 16, 2013).

Service demonstrated that PAF is a variation of an existing *Digital License Plate* (DLP) product concept that raises a number of complex technical feasibility, cost, demand, and policy issues. The Postal Service also explained that the concept was one of many product concepts that were candidates for cross-functional feasibility analysis, but has not yet been subjected to such review.

In a motion dated November 4, 2013, Petitioner submitted numerous substantive and technical revisions to his original PAF concept, as well as additional product features for consideration.<sup>4</sup> The seven pages of concept changes raise a host of additional technical, cost, demand, and policy questions affecting the feasibility of the PAF product concept. Instead of replying here to each change, the Postal Service makes the following several general observations.

The November 4<sup>th</sup> changes do not, in every instance, clarify the product concept. For instance, on page 1 of Petitioner's November 4<sup>th</sup> motion, it is not clear what constitutes a "[r]efusal of service standards" that may be "served in the same manner as they are for P[ost ]O[ffice] Box applications." Accordingly, the Postal Service is unable to formulate a response to this aspect of the proposed PAF customer application process.

Petitioner's proposal at pages 4-5 of his November 4<sup>th</sup> motion for "vanity PAF" identities (IDs) and his suggested restrictions on the use of such vanity IDs at page 6 reveal the potential complexity in determining such matters as when IDs are "confusingly similar to the names of distinct entities," or when an individual's name is

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<sup>4</sup> See, Petitioner's Motion to Amend Private Address Forwarding Proposal (November 4, 2013). At page 1 of the motion, Petitioner emphasizes that, to the extent that they are severable, "PAF components should be implemented incrementally where appropriate."

“non-unique,” when a name is “generic,” or whether a vanity ID is “obscene” or constitutes an otherwise protected form of expression. At page 6 of his November 4<sup>th</sup> motion, Petitioner proposes that the Postal Service establish an internal appellate process for the review of initial determinations in response to vanity PAF ID applications. Presumably, such review would cover disputes that arise between competing applicants, or that arise when a non-applicant claims to be offended or aggrieved by a decision to grant an application.<sup>5</sup> Presumably, the Postal Service would find itself participating in the civil court litigation between parties embroiled in vanity ID proceedings described at page 7 of Petitioner’s November 4<sup>th</sup> motion.

As indicated on page 4 of that motion, the Postal Service would be expected to allow individuals or other entities to register multiple PAF IDs<sup>6</sup> and require an affirmation at the time of their applications that they have no intent to re-sell those IDs. However, this latter requirement creates tension with the proposal at page 4 that “[t]ransfer of ownership of a PAF ID should be permitted . . . [at] a reasonable fee (e.g. \$35).” It is not clear how the Postal Service would be expected to police whether the owner of multiple IDs had the intent to re-sell them at the moment they were originally purchased or whether such intent came into existence afterward.

Petitioner’s various new pricing proposals at pages 3-4 add significant additional complexity to his original proposal. In addition, the proposal at page 3 of his November 4<sup>th</sup> motion to assess a zero “annual or registration fee” for some postal customers based

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<sup>5</sup> These considerations, in turn, raise the question of whether a final determination by the Postal Service in response to a vanity PAF application would, itself, provide grounds for filing a complaint under 39 U.S.C. 3662(a) alleging a failure to comply with sections 401(2), 403(c) and/or 404a(2).

<sup>6</sup> At page 5 of his November 4<sup>th</sup> motion, Petitioner touts this option as a means for the Postal Service to generate “potentially significant income at near zero marginal cost.”

on their status as “humans”<sup>7</sup> raises the question of whether such a pricing approach would constitute undue or unreasonable discrimination or preference within the meaning of 39 U.S.C. § 403(c). Moreover, efforts by the Postal Service to restrict the zero annual or registration fee only to qualifying individuals could be hampered by section 404(c), which significantly restricts the ability of the Postal Service to monitor whether mail sealed against inspection and intended for delivery to an address designated by a zero-fee individual PAF registrant is in fact intended for that person, as opposed to some other person or entity associated with the registrant.

These issues, as well as those identified in the Postal Service’s October 16, 2013 Comments filed in response to Order No. 1838,<sup>8</sup> are not an exhaustive list.<sup>9</sup> However, the Postal Service’s discussion and reference to such complications should not be interpreted as casting aspersions at the PAF product concept. As revealed by the Postal Service’s October 16<sup>th</sup> Comments,<sup>10</sup> the PAF concept shares core substantive or technical characteristics with several product concepts that have been generated internally within the Postal Service. And, as emphasized in those Comments, the Postal Service has not yet determined whether the product concepts similar to PAF merit the

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<sup>7</sup> Presumably, the term “humans” here is interchangeable with “individuals.” The intent here appears to be to limit zero-fee PAF IDs to individuals, as distinct, for example, from persons acting on behalf of a marriage, civil union or family, or other joint association, partnership, corporation, government agency, or charitable, social or fraternal organization, or as solo owner or operator of a business or other enterprise, or as the holder of a public office.

<sup>8</sup> Docket No. MC2013-60, Comments of the United States Postal Service In Response to Notice and Order Concerning Request to Add Private Address Forwarding to the Market Dominant Product List (October 16, 2013).

<sup>9</sup> Several more significant issues are identified at page 3 of the Public Representative’s Comments (November 18, 2013).

<sup>10</sup> Docket No. MC2013-60, Comments of the United States Postal Service In Response to Notice and Order Concerning Request to Add Private Address Forwarding to the Market Dominant Product List (October 16, 2013).

considerable investment of in-depth cross-functional analysis that would be necessary to determine their technical or operational feasibility, estimate underlying costs, or to assess potential customer demand.

## **II. No One Should Mistake Postal Management's Prudence For Intransigence**

Whether generated internally or presented to the Postal Service by a customer, every new postal product concept has an enthusiastic sponsor. However, each sponsor must confront the reality that, at any given time, there may be numerous internally or externally generated product concepts under development for presentation to senior postal management decision-makers. Irrespective of a concept's source, practical limitations prevent the Postal Service from satisfying every product sponsor's preference that her or his concept be given the highest priority in terms of access to analytical resources and an exhaustive feasibility determination. The planning and development of new products require postal management to constantly assess numerous competing concepts and to determine which ones to submit to cross-functional analysis, at the expense of other concepts which will be accorded a lower level of priority, or others that may be excluded from further consideration altogether.<sup>11</sup> Such decisions must take into account availability of resources within the agency, internal assessments of potential capital investment and internal systems capabilities necessary for implementation of a concept, preliminary assessments of developmental lead time, perceptions about potential demand for various product concepts, and numerous other factors. Such preliminary assessments of the relative merits of various

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<sup>11</sup> The Postal Service can affirm that it has not rejected the possibility of pursuing product concepts resembling those discussed in its October 16<sup>th</sup> Comments.

concepts must be made (and regularly reassessed) for the purpose of establishing and updating investigative priorities, without definitively resolving issues of technical or operational feasibility, or potential costs and demand. Such prioritization should not be interpreted as a negative assessment of the feasibility of the concepts not selected for immediate in-depth analysis. It merely reflects the necessity to rationally apply finite resources to multiple options at any given time.

At page 2 of its Comments, the Public Representative expresses its concern for “the development of a process which allows entities from outside the Postal Service to present new ideas for the Postal Service’s consideration” and declares that “[t]his may require a new openness on the part of the Postal Service.” The Public Representative warns that “[t]he Postal Service, as a business, will not move forward if it limits itself to only consider internally conceived product ideas” and argues that the Postal Service “appears in effect to be discouraging anyone, other than itself, from promoting proposals for new products.”<sup>12</sup>

Given its legacy of active participation in every mail classification or new product docket initiated under Title 39 of the United States Code, the Public Representative’s warning and its argument reflect a puzzling view of postal product development. Since the Postal Reorganization Act of 1970, and especially since the enactment of the Postal Accountability and Enhancement Act in 2006, the Mail Classification Schedule has been changed numerous times. On many such occasions, this has occurred at the request of the Postal Service to reflect product modifications or the addition of new products that

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<sup>12</sup> Docket No. MC2013-60, Public Representative Comments at 2 (November 18, 2013).

originated as concepts brought to it for consideration by interested mail users, or that were developed as a result of their collaboration with the Postal Service.<sup>13</sup>

The Commission's adoption of 39 C.F.R. § 3020, Subpart C in 2007 implements the 39 U.S.C. § 3642(a) requirement that users of the mails be permitted to petition the Commission to initiate proceedings to explore the establishment of new mail products. At page 4 of its Comments, the Public Representative expresses the expectation that an "inundation of new ideas" will flow as a result of the opportunity for customers to file such petitions. The Postal Service has no basis for projecting the pace at which such petitions will be filed. The current pace may reflect a general preference to continue the long-standing practice of submitting proposals directly to the Postal Service for consideration. At page 2 of its Comments, the Public Representative suggests the "formulat[i]on of] a process whereby new ideas can be considered in a less adversarial fashion than what appears to be the case under the Commission's rules." The Public Representative may not be aware of the frequency with which the Postal Service receives non-adversarial product suggestions from customers of every type, who bring with them varying levels of sophistication and understanding of what may be feasible. The Postal Service regularly conducts market research and consults with marketing experts to assess customer preferences, and welcomes any suggestions the Public Representative may have for making individual customers more aware of the Postal Service's willingness to hear from them directly.

As noted above, the Public Representative argues at page 3 of its Comments that the Postal Service should avoid the appearance of discouraging such petitions.

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<sup>13</sup> Upon further reflection, the Public Representative might recall the role of the Office of the Consumer Advocate in collaborating with the Postal Service to develop the Forever Stamp concept.

The Postal Service is committed to product innovation and will continue its *long-standing* openness to new ideas, no matter their origin. And the Postal Service will not hesitate to inform the Commission when it sees merit in the immediate examination under section 3642 of any externally generated product concept. However, the Postal Service does not consider that it is obliged now to prove its commitment to product innovation by agreeing to move the PAF product concept ahead of numerous other concepts currently being contemplated, and shifting whatever resources are necessary to immediately give PAF the fullest measure of its product research, analytical and developmental resources. The Postal Service does not share the pessimism reflected at page 2 of the Public Representative's Comments that postal customers will be discouraged from continuing to approach the Postal Service in the future with new product concepts or from filing petitions under 39 C.F.R. § 3020, Subpart C rule simply because it declined to give priority to resolving the feasibility of Petitioner's version of an existing product concept.

It is important to the Postal Service that brainstorming customers and employees are encouraged to generate and present new product ideas. However, whether inside or outside of the Postal Service, product concept sponsors should understand that their concepts may not always be as novel or flawless as they perceive them to be, that their ideas may compete with numerous others for limited postal analytical resources, and that there may be rational bases for not according the highest priority to their product concepts, or for rejecting them. In lieu of submitting product ideas directly to the Postal Service, mail users are encouraged by section 3642(a) to exercise the option of submitting mail classification petitions to the Commission. In doing so, mail users also



should understand that the Commission may decide under 39 C.F.R. § 3020.55(b) to defer to postal management's product development priorities and decline to initiate proceedings for the purpose of considering changes to the Mail Classification Schedule.

It may be that the Petitioner in the instant docket perceives section 3642 as authorizing the Commission to act unilaterally in determining what product concepts merit feasibility review and implementation by postal management. It also may be Petitioner's view that the enactment of section 3642 as part of the Postal Accountability and Enhancement Act of 2006 nullified the section 403(a) authority to develop and plan new postal products that was granted to the Postal Service by enactment of the Postal Reorganization Act of 1970. Accordingly, it could be useful if the Commission took this opportunity to affirm that such a view of the relationship between sections 403(a) and 3642(a) represents a fundamental misreading of Title 39 U.S.C. It also may be beneficial if the Commission were to take the occasion of its response to Petitioner's request to explicitly express its concurrence with the view that sections 403(a) and 3642(a) must be read in harmony, and in a manner that recognizes that Congress has granted neither the Commission nor the Postal Service unilateral authority to determine the content of the Mail Classification Schedule.

### **III. The Commission Should Decline To Initiate Further Proceedings**

Section 3642 and the Commission's implementing regulations supplement the long-standing Postal Service product development process by inviting public petitions for new product concepts for Commission consideration. However, by operation of 39 C.F.R. § 3020.55(b), the Commission has discretion to decline to initiate proceedings in

response to such petitions under appropriate circumstances, and to accord broad deference to the Postal Service, which is charged by section 403(a) with the responsibility to plan and develop postal services. Such circumstances exist here. In the absence of an obligation to create a particular product to fulfill a specific statutory mandate or to correct a perceived mail classification deficiency<sup>14</sup> in response to a section 3662 complaint, the Commission should accord postal management broad deference in determining which postal product concepts to consider and prioritize for research, analysis and development. The Public Representative's characterization of PAF at page 4 of its Comments as "non-essential" is both fair and compelling. The Postal Service concurs with the Public Representative's assessment<sup>15</sup> that it would be a fruitless exercise for the Commission to add PAF to the Mail Classification Schedule.

At page 5 of its Comments, the Public Representative suggests that Petitioner might be able to develop a PAF business plan based on information he could obtain from the Postal Service, if only he were permitted to conduct discovery. However, what should be clear at this point is that the Postal Service has developed concepts similar to PAF, which it has not yet subjected to technical or operational feasibility analysis, or evaluated for the purposes of estimating potential costs or demand. Nor has the Postal Service undertaken analysis to resolve the various privacy or other policy issues identified in its October 16<sup>th</sup> Comments in Reply to Order 1838. Since such information has not yet been developed by the Postal Service, it seems unreasonable to expect that discovery directed to the Postal Service would cure Petitioner's lack of information with

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<sup>14</sup> For instance, to remedy a finding that the absence of a mail classification or product resulted in unreasonable or undue discrimination or preference within the meaning of section 403(c).

<sup>15</sup> Expressed at page 5 of its Comments.

which to develop a business plan of the type contemplated at pages 4-5 of the Public Representative's Comments.

Likewise, the Commission should decline to adopt the suggestion at page 4 of the Public Representative's Comments that a conference be scheduled "as a first step to instituting further proceedings." There, the Public Representative asserts that "[t]wo issues are ripe for consideration: a determination of what additional information in support of PAF is necessary to go forward, and the possibility of discovery."

In this regard, the Commission should give considerable weight to several factors. First is the Public Representative's concession that the PAF product concept is non-essential. The Commission should refrain from directing the Postal Service to expend resources to re-order and set-aside ongoing product development activities for the benefit of a non-essential product concept variation that, at its core, is not original, and is unique only by virtue of having been brought to the Postal Service's attention via a petition filed with the Commission under section 3642(a).<sup>16</sup>

Secondly, the "information necessary to go forward" with a PAF product concept would seem to be the fruits of an exhaustive cross-functional feasibility analysis conducted by various components of postal management of the issues identified in the Postal Service's October 16<sup>th</sup> Comments in Reply to Order No. 1838, and the instant pleading. Although no such analysis has been performed to-date for the postal versions of the same general product concept, it is clear that PAF and related product concepts generate a variety of technical and operational issues. Identifying the information

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<sup>16</sup> The fact that the Postal Service's internally generated product concepts similar to PAF have yet to gain sufficient traction to warrant in-depth cross-functional review should serve as proof that its reluctance to leap-frog the PAF concept ahead of numerous others is not the result of a bias against externally-generated product concepts.

necessary to go forward is often an iterative process and can involve a commitment of incremental levels of engineering and other technical research for products that rely on technologies that are either not in existence or not already in place.

The Public Representative concedes that, before it could support going forward with PAF, it would have to examine a business plan that quantified the potential demand for PAF, and the potential costs and revenues. The Postal Service agrees that these are critical factors in determining the feasibility of such a product concept, and emphasizes that any such quantification could be performed only after sufficient resources were expended or committed to making the concept technically and operationally feasible. More importantly, the Postal Service concurs that it would be unfair for the Commission to expect postal management to set aside its own product development priorities in the current marketplace to assume the burden of developing a business plan for a non-essential product.

As evidenced by the Postal Service's October 16th Reply to Order No. 1838, product development may generate intellectual property interests that require protection. In addition, as acknowledged at page 5 of the Public Representative's Comments, the development of a product concept also can involve pre-decisional postal management deliberations that would be chilled if participants were concerned that their opinions and debates were subject to mandatory public disclosure. Three of the five categories of information<sup>17</sup> described at pages 2-3 in Petitioner's Motion for PRC Order For Disclosure Of Related USPS Documents (October 18, 2013) seek access to such privileged communications.

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<sup>17</sup> Numbers 1, 2 and 5.

When exercising its authority under section 3642(a), the Commission should give careful consideration and due regard to the Postal Service's authorities and responsibilities under 39 U.S.C. § 403(a), the statutory scheme, and the policies embodied in the Title 39 U.S.C. In this instance, the Commission should defer to the Postal Service's responsibilities and prerogatives to allocate its scarce resources within the context of overall financial, operational, and service objectives, as determined by postal management. Irrespective of any overlap of service features between the *Private Address Forwarding* concept favored by Petitioner and by commenter Chris Phoenix and the Postal Service's internally generated *Digital License Plate* concept, the contributions of Petitioner and Mr. Phoenix to this docket provide postal management with insight regarding service features of interest to mail users. Their contributions to the record in the instant docket can be referenced in the event that the Postal Service elects to subject a DLP or PAF product concept to in-depth feasibility analysis.

#### **IV. Conclusion**

For the reasons explained above and in the Comments of the USPS In Response to Order No. 1838 (October 16, 2013), the Commission should exercise its authority under 39 C.F.R. § 3020.55(b) and reject Petitioner's request that further proceedings be initiated for the purpose of exploring whether to amend the Mail Classification Schedule to include a *Private Address Forwarding* product.

Respectfully submitted,

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