

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

Request to Add Private Address Forwarding To the Market
Dominant Product List

Docket No. MC2013-60

ADDENDUM TO CLOSING MOTION

December 23, 2013

Re. [USPS' 2013-12-20 comments](#)

In its latest comments, the USPS essentially argues the following:

1. The USPS already receives ideas from others on a regular basis, and would prefer that I had submitted my proposal through those channels.

I invite the USPS to demonstrate where it offers such a channel to ordinary mail users (and not e.g. PostCom members), together with its history of responding cooperatively to ordinary mail users' proposals for new services made through such a channel.

The PAEA established a clear method — §3642 — for proposing "new products". Not having privileged access to USPS management, I availed myself of this statute. No negative inference may be drawn from my having done so.

2. "The PAF concept shares core substantive or technical characteristics with several product concepts that have been generated internally within the Postal Service";
USPS resources to do full feasibility analyses are limited; and
USPS management has not seen fit to give formal "cross-functional feasibility analysis" review to those other concepts, based on internal management-decided priorities that the USPS refuses to divulge.

That my proposal shares significant features with multiple USPS-internal proposals only goes towards creating a presumption that it is indeed feasible.

The USPS' position that the PRC should *only* accept a proposal for which the USPS has already (unilaterally) decided to give "cross-functional feasibility analysis" review is *directly opposed* to the PAEA's grant of ability to ordinary users of the mails to make new proposals, which are to be evaluated *by the PRC* under statutorily defined criteria. The USPS cannot lawfully nullify an express intent of Congress by managerial fiat.

3. I am requesting that the PRC "move the PAF product concept ahead of numerous other concepts currently being contemplated, and shift[] whatever resources are necessary to immediately give PAF the fullest measure of its product research, analytical and developmental resources" and "determin[e] what product concepts merit feasibility review and implementation by postal management".

This is false, as I have stated repeatedly and explicitly. What I am asking is simply that the PRC make the determinations that *the PRC* (not the USPS) is statutorily mandated to make, and that it do so based on reasonable evidence that is *currently* available to it — by using its subpoena power to obtain *extant* USPS documents.

Nowhere have I asked the PRC to order the USPS to conduct further research on PAF. Doing so would be premature at this point — but might be appropriate after a preliminary determination by the PRC that PAF is of at least plausible feasibility and would likely meet Title 39's requirements and goals. The USPS argues based on the false belief that it, not the PRC, determines what products meet Title 39's requirements.

4. The "information necessary to go forward" with a [mail user initiated proposal is] an exhaustive cross-functional feasibility analysis conducted by various components of postal management', and the PRC "should accord postal management broad deference in determining which postal product concepts to consider and prioritize for research, analysis and development".

The USPS is incorrect in claiming that its management's prioritization decisions —

especially those based on factors and evidence that it has refused to share — have any statutory standing whatsoever, let alone that a proposal requires a "cross-functional feasibility analysis" to go forward. They do not.

§3642 requires the PRC to evaluate each proposal on a case by case basis, based on the information available — not to compare the proposal to all other (secret) proposals the USPS may be developing internally. Nor can the PRC deny a proposal merely because it is not prioritized by USPS management; doing so would, again, create a nullity of §3642's grant of power to ordinary users of the mails.

The USPS merits deference when it submits *evidence* that a proposal is infeasible, unprofitable, violates Title 39 standards, or the like. The USPS has provided no evidence *whatsoever*. It has only asserted that it *alone* should make proposals, and raised questions about the development of PAF in its fullest form.

I do not claim that the PAEA "nullified the section 403(a) authority to develop and plan new postal products". Rather, the PAEA nullified any *exclusive* authority therein. It is completely unambiguous in stating that the PRC, not the USPS, determines whether to add a product to the MCS, and determines as a threshold question whether a proposed product is likely to meet the applicable criteria defined in Title 39.

If there is no evidence on the record on which to base a reasoned decision, but there is evidence that the PRC can acquire, the PRC is obligated to do so, lest its decision be arbitrary, capricious, and an abuse of discretion. If a proposed product seems likely to meet the criteria, the PRC should approve it or schedule further proceedings to investigate and develop the proposal further.

If the USPS intends, in saying that "it would be a fruitless exercise for the Commission to add PAF to the Mail Classification Schedule", that it it would refuse to implement PAF *regardless* of Commission action, it would be violating the clearly expressed intent of Congress — and the Commission should proceed regardless of such a threat.

5. Discovery should not be permitted, because it "seems unreasonable to expect that

discovery directed to the Postal Service would cure Petitioner's lack of information with which to develop a business plan", and because some of the information I requested disclosure of should not be made public.

The USPS, again, *does not deny* that it has documents that would materially inform the Commission's determination. Its internally generated concepts *have* undergone some amount of development (including preparation for patent and trademark). While they may not have had the full scrutiny the USPS would want before proposing them itself, the USPS has not given any reason not to permit mere *discovery of extant documents*.

As for documents that *may* merit protection from public release, [39 CFR 3007](#) *explicitly* provides for how such material should be handled, and what standards govern its release. The USPS has provided no reason why §3007 is inadequate here.

6. The USPS recognizes in footnote 4 that 'to the extent that they are severable, "PAF components should be implemented incrementally where appropriate"'. However, they ignore this in their argument, and argue instead against the complexity of the full extent of my proposal (i.e. with all of its *optional* features, which could be separately rolled out).

To deny my proposal, the PRC must determine that its *core* component — the assignment of random PAF IDs as forwarding addresses, with an application similar to that for PO Boxes, and a relatively simple change to mail processing software to look up such forwarding addresses (much as it already does for other mail forwarding) — is infeasible or violates the statutory goals or standards of US Code Title 39. The PRC may defer optional components for further, incremental evaluation.

7. The USPS wonders what I meant by ' "[r]efusal of service standards" that may be "served in the same manner as they are for P[ost] O[ffice] Box applications."'.

The DMM already prescribes rules that PO Box holders must follow, the violation of which is grounds for termination of PO Box service as well as for refusal of future service. The USPS' initial comments about how my suggested grounds for refusal of PAF service might

be met without a burdensome criminal background check or the like.

My suggestion is just that PAF service standards can be handled in the same way as the USPS already handles the PO Box refusal of service standards: ask applicants to affirm that they will not and have not violated the standards, and permit the USPS to refuse or terminate service if it discovers that they have.

The USPS' concern about a tension between permitting transfer of PAF addresses, and prohibiting their acquisition *for the purposes* of resale, is quite similar. The USPS would likely become aware of someone buying up large numbers of addresses and transferring them, and could then administratively determine that that customer is acting as a "name squatter" and should therefore be denied service.

The USPS' concern about giving each human a single zero-fee PAF ID is likewise misplaced. It need not investigate whether the mail is "intended for" the registrant or not. Just as the USPS *already* creates price structures that are different for corporations vs. individuals, PAF can be similarly structured, and corporations will want their own IDs.

In summary: the PRC should obtain documents available to it; make a preliminary determination *based on that evidence* of whether PAF is likely to meet the statutory criteria; and approve PAF or schedule further proceedings for development if it is.

Sincerely,
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Petitioner

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