Postal Regulatory Commission
Submitted 9/12/2018 3:19:19 PM
Filing ID: 106517
Accepted 9/12/2018

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

Institutional Cost Contribution Requirement for Competitive Products

Docket No. RM2017-1

COMMENTS OF PITNEY BOWES INC. ON ORDER NO. 4742

(September 12, 2018)

Pitney Bowes Inc. (Pitney Bowes) respectfully submits these comments in response to Order No. 4742,[1] which proposes modifications to the Commission's formula-based approach to determine the minimum amount that competitive products as a whole are required to annually contribute to the Postal Service's institutional costs.

The Postal Service's competitive products business has been a success story since the enactment of the Postal Accountability and Enhancement Act (PAEA).[2] Competitive products are growing and profitable and collectively cover an increasing share of the Postal Service's institutional costs. Because the Postal Service has an incentive to maximize profits on its competitive products and has been increasing prices on growing volumes, the actual contribution of all competitive products collectively to the Postal Service's institutional costs significantly exceeds the current regulatory price floor of 5.5 percent and will likely continue to exceed the contribution that would result from any reasonable regulatory price floor. In a world of secular letter mail volume declines,

[1] *See* Dkt. No. RM2017-1, Order No. 4742, Revised Notice of Proposed Rulemaking (Aug. 7, 2018)("Order No. 4742").
[2] *See* Pub. L. 109-435, 120 Stat. 3198 (Dec. 20, 2006). The PAEA amends various sections of title 39 of the United States Code. Unless otherwise noted, section references in these comments are to sections of title 39.

the positive financial contribution from competitive products is and will be increasingly necessary to help defray the costs of and sustain the Postal Service's universal service obligation.

The growth and success of the Postal Service's competitive products business has been accomplished within a statutory and regulatory framework that preserves fair competition in the package delivery market. The PAEA expressly prohibits the cross-subsidization of competitive package products and requires that each competitive product, including each individually-negotiated contract, covers its costs.[3] The Commission's implementation of these rules has proven to be more than adequate to protect against any concerns regarding cross-subsidization and anticompetitive pricing practices. The federal courts have upheld the Commission's "considerable discretion" in adopting and implementing cost attribution methodologies that implement these statutory requirements, while noting that the Commission "properly recognized that its role is to carry out the particulars of the scheme Congress created, not to engineer specific market outcomes." *United Parcel Service v. Postal Regulatory Commission*, 890 F.3d 1053, 1067, 1069 (D.C. Cir. 2018).

The success of the Postal Service's competitive products business should not be taken for granted. The package delivery business is competitive and dynamic. Consumer expectations continue to evolve in new and different ways. Changes in the way consumers interface with the digital economy create new challenges and additional uncertainty. All of these considerations militate in favor of a light-handed regulatory approach, with only minimal intervention necessary to protect fair competition in the market. This is especially true where, as reaffirmed by the Commission in Order No. 4742, the Postal Service continues to operate at a competitive disadvantage relative to private-sector competitors.[4]

Order No. 4742 correctly reaffirms that no minimum contribution requirement is necessary to preserve fair competition, that the current costing methodologies attribute all reliably identifiable,

[3] *See* 39 U.S.C. § 3633(b)(1)-(2).
[4] *See* Order No. 4742 at 57-58.

casually related costs to individual competitive products, and that there are no other relevant circumstances that compel maintaining or increasing the minimum contribution requirement.[5] Order No. 4742 also reaffirms that there is little risk in setting the appropriate share too low because the Postal Service is incentivized and, in fact, has consistently set prices on competitive products to maximize its profits.[6] The Commission properly views the appropriate share provision as imposing a floor, or minimum amount.[7] In the ten years since the initial competitive products rules were first implemented, the actual contribution of competitive products has consistently exceeded the minimum contribution requirement and the delta between the actual contribution and the regulatory minimum has steadily grown.

By contrast, any change in approach that results in an increase in the minimum contribution requirement presents a significant risk. If the Commission does not set the regulatory price floor correctly, the Postal Service may be forced to set its prices at non-competitive levels. This risk is compounded by the fact that no formula can accurately predict future changes in a dynamic market. The Postal Service, as the operator, is in the best position to assess the potential for competitive products to contribute to institutional costs. The only parties that benefit from setting a price floor that forces the Postal Service to raise its prices to non-competitive levels are private competitors who could then raise their own prices to generate larger returns or lower their prices to take volume and contribution from the Postal Service, or both. In either scenario, a binding price floor would distort competition in the package delivery business, harm businesses and consumers that rely on affordable postal package delivery services, and threaten the operational and financial viability of the postal system.

---

[5] *See* Order No. 4742 at 49-55.
[6] *See* id., at 57.
[7] *See* Dkt. No. RM2007-1, Order No. 26, Order Proposing Regulations to Establish a System of Ratemaking (Aug. 5, 2007) at 72.

For all of these reasons, the majority of industry stakeholders, including the Postal Service, urged the Commission to eliminate (or, at least, not increase) the minimum contribution requirement.

If the Commission adopts a formula-based approach, it should do so in a manner that maintains the flexibility and discretion for the Commission to make adjustments as necessary to respond to changing conditions. As discussed in Pitney Bowes' prior comments, the language and purpose of the PAEA confirm the importance of maintaining the Commission's flexibility and discretion in setting a minimum contribution requirement.[8] The final rule should clarify that the Commission will explicitly consider the qualitative factors the Commission has developed in prior reviews in conjunction with any new quantitative inputs as part of its assessment of changes in the market.

The record confirms that the Commission's successful implementation of the statutory pricing rules have ensured fair competition in the parcel delivery market while enabling the Postal Service to profitably grow its competitive products business. There is no need to maintain or increase the minimum contribution requirement. If the Commission imposes a minimum contribution requirement it should be implemented in a manner that preserves the Commission's flexibility and discretion.

Respectfully submitted:

_____/s/________________
Michael F. Scanlon
K&L GATES LLP
1601 K Street, NW
Washington, DC 20006
Telephone: (202) 661-3764
E-Mail: michael.scanlon@klgates.com

Counsel to PITNEY BOWES INC.

[8] *See* Dkt. No. RM2017-1, Comments of Pitney Bowes, Inc. (Apr. 16, 2018) at 13-15.