

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

Proposed Amendments to the
Commission's Rules

Docket No. RM2004-1

REPLY COMMENTS OF THE UNITED STATES POSTAL SERVICE
IN RESPONSE TO ORDER NO. 1424
(March 1, 2005)

On January 16, 2004, the Postal Rate Commission issued Order No. 1389, initiating this rulemaking and soliciting comments on a proposed amendment to its rules to incorporate a definition of the term "postal service." As requested by that Order, the Postal Service and other parties offered initial and reply comments on the proposed definition in March and April. On November 12, 2004, the Commission issued Order No. 1424, advancing for comment a new proposed definition. On December 9, 2004, at the request of the Postal Service, the Commission issued Order No. 1426, extending the deadline for initial comments to February 1, 2005, and for reply comments to March 1, 2005. The Postal Service filed its initial comments on February 1, 2005, and hereby offers its reply comments in response to Order No. 1424.

In addition to those of the Postal Service, four other initial comments to Order No. 1424 were filed, by Parcel Shippers Association (PSA) on January 11, 2005, and by Pitney Bowes, PostCom, and the OCA/Consumer Action (CA), all on February 1, 2005. PSA and Pitney Bowes filed relatively short pleadings, the gist of which in both

instances was that the revised proposal was satisfactory to achieve the objectives of those parties. Neither PSA nor Pitney Bowes offered any substantive analysis beyond what had been submitted previously, and therefore the most recent pleading of neither requires reply from the Postal Service. PostCom, however, takes issue with the definition proposed in Order No. 1424, as it did in its original comments in this docket with respect to the earlier definition proposed in Order No. 1389. PostCom proposes that, if the intent is to rely on statutory terminology as the basis for the definition, the Commission should stick entirely with the language of section 403, and presents specific suggestions to achieve that result. PostCom Comments (Feb. 1, 2005) at 5. In terms of the actual language of a definition, the Postal Service would view the wording suggested by PostCom to be an improvement over that proposed in Order No. 1424. More broadly, PostCom asserts that “[p]urely electronic services unrelated to physical mail delivery are not ‘postal services’ within the meaning of the 1970 Act; and the Postal Service cannot offer such services.” *Id.* at 1. For reasons already discussed at some length in pleadings in this and related dockets, the Postal Service agrees with the first of those contentions, and disagrees with the second.

The OCA/CA Comments once again stray well beyond the question of what explicit definition of postal services should be included within the Commission’s rules. To some extent, this is not surprising, as Order No. 1424 itself was not intended merely to present potential revisions to the earlier language of the proposed definition. Instead, its primary motivation appears to have been to serve as a platform for a pronouncement that the Commission plans to expand the concept of postal services to include certain

purely electronic services. As stated in the Postal Service's initial comments in response to Order No. 1424, it is the proposed expansion of the concept, rather than the mere revision of words, that is most troublesome. It remains the view of the Postal Service that unilateral expansion of the concept of postal services, beyond how it has been defined by the courts, is not within the Commission's limited role under the carefully balanced ratemaking and classification scheme enacted by Congress.

Not surprisingly, the OCA/CA comments do not share that view. The vast majority of the OCA/CA comments, however, range well beyond the matter of drawing a line between postal and nonpostal services. Instead, the OCA/CA comments seek to revisit matters such as their belief that the Postal Service is not authorized to offer nonpostal services other than those undertaken on behalf of other government agencies, and the steps they are proposing that the Commission should take to review nonpostal activities. Where the Commission has already rejected their arguments on these matters, they either challenge the Commission's conclusions, or espouse new lines of reasoning to reach the same conclusions.

The Postal Service will not address those arguments in these reply comments. They are not germane to the subject of the rulemaking – the proposed definition of postal services. Instead, those arguments of the OCA and CA will be addressed in a more appropriate context, if and when such a context ever arises.

Nothing stated in the comments of other parties convinces the Postal Service to deviate from the recommendations presented last month in its initial comments. The primary recommendation is simply to abandon the attempt to incorporate a definition

into the Rules of Practice and Procedure. Alternatively, if a definition is still to be pursued, a necessary first step would be to return to the language proposed in Order No. 1389. Second, it would become even more imperative for the Commission to include the footnote suggested by the Postal Service in its Initial Comments in March of last year, referring to the *NAGCP I* opinion and signifying that the intent of the definition is merely to inform interested parties of the standards previously enunciated by the courts.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing document in accordance with Section 12 of the Rules of Practice.

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