

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

REGULATIONS ESTABLISHING SYSTEM
OF RATEMAKING

Docket No. RM2007-1

INITIAL COMMENTS OF THE UNITED STATES POSTAL SERVICE
(April 6, 2007)

On February 5, 2007, in response to the enactment of the Postal Accountability and Enhancement Act (PAEA) on December 20, 2006, the Postal Regulatory Commission issued an Advance Notice of Proposed Rulemaking establishing this docket. The Advance Notice invited interested parties to file comments as to how the Commission should go about fulfilling its responsibilities under the PAEA to establish regulations for market-dominant products under new 39 U.S.C. § 3622, and for competitive products under new 39 U.S.C. § 3633. The Postal Service hereby submits its Initial Comments.

The Postal Service first would like to recognize the Commission's leadership in organizing and participating in the Summit on "Meeting Customer Needs in a Changing Regulatory Environment" at the Bolger Academy on March 13, 2007. Over the course of that day, the Postal Service and the Commission listened to customers describe how the PAEA could be used to create pricing and product structures that better suit their needs. The input received at the summit has been valuable to the Postal Service as it considers the implications of the PAEA.

I. Introduction: The Mission Set by the PAEA

The Postal Service has served an important role in helping to bind the nation together, with the touchstone of its mission being the provision of universal postal services at affordable prices. The passage of the Postal Reorganization Act (PRA) in 1970 allowed the Postal Service to pursue this mission in a more effective, independent, and business-like manner. While the PRA was a success, and led to improved service and increased financial stability for the Postal Service, the regulatory structure it created became inadequate to meet the challenges of the current marketplace. Technological change has profoundly affected the Postal Service. This has resulted in both new challenges, as electronic communication has reduced some types of mail, and new opportunities, as electronic commerce has increased the use of the mail to send merchandise. Congress intended, through the PAEA, to give the Postal Service the ability to operate more effectively in this new environment.

In the PAEA, Congress has moved the Postal Service into a modern regulatory structure with elements such as increased transparency, additional incentives for efficiency, and greater flexibility to address customer needs. In the last three decades, regulatory systems that applied to numerous sectors of the economy, including the airline, rail, trucking, energy, and telecommunications industries, have been reformed (or in some cases completely eliminated) as heavy-handed regulation became incompatible with technological progress and market evolution, making more flexible regulatory frameworks preferable. Similarly, the PAEA represents a Congressional recognition of the need for greater regulatory flexibility in response to fundamental technological and market changes.

Congress has given the Commission, the Postal Service, and other members of the postal community a box of tools and a list of tasks to complete. Key tasks set out in the PAEA not only include the establishment of the new pricing structures that are the subject of this proceeding, but also implicate the use of separate regulatory reporting for market-dominant and competitive products, service standards for market-dominant products, the future of the mail processing and distribution network, the application of U.S. laws to competitive products, and the appropriate future business model of the Postal Service. All of these tasks are fundamentally interrelated in that they all point to the same objective: modernization of the physical communications infrastructure of the United States so that it is better adapted to the implications of new technologies and to the evolving needs of the American people. As the postal community moves forward in implementing the various provisions of the PAEA, it will be important to keep constantly in mind this overriding mission. The new world that we are entering will only be what we collectively make of it.

Looking forward, the Postal Service sees a future with many opportunities to build on the successes achieved since the passage of the PRA. The Postal Service is committed to meeting the needs of its customers by improving efficiency and adapting to evolving technology, market, and service demands, and will in that regard continue in its efforts to deploy the Flats Sequencing System (FSS) and to have mail use the Intelligent Mail® barcode. It is vital that the new regulatory system be implemented in such a way as to support the introduction of new technologies, such as these, that will improve the efficiency and reliability of postal services.

The Postal Service welcomes this opportunity to work with the Commission and

all other stakeholders to implement the new law, and views these Comments as the first step in a cooperative process to create a regulatory structure that will maintain universal service, and encourage growth and efficiency.

II. Approaching the New System: Experience over Theory

The Postal Service respectfully suggests that the optimal approach for the Commission to take in this rulemaking is to recognize that, to paraphrase John Dewey, an ounce of experience is likely to prove better than a ton of theory. On the market-dominant side, the Commission should adopt those rules that are necessary to operate the CPI-U price cap structure laid out by Congress in § 3622(d), and to refrain from imposing additional requirements until it perceives a compelling need to do so based on how the market and public needs develop. Given the complexities involved, and the existence of the CPI-U constraint, it would be better to proceed slowly with the benefit of actual experience rather than theoretically, which presents the danger of producing unintended consequences as hypothetical issues are addressed without a specific factual basis. Indeed, we suggest that a bias towards the issuance of regulations only on an “as-needed” basis comports well with the overall intent of the PAEA and the implications of rapidly changing markets.¹

With respect to competitive products, meanwhile, it is difficult to see any reason why the pricing freedoms envisioned by the PAEA should not be put in place as soon as possible, and easy to see many reasons why they should. Pricing freedom for the Postal Service’s competitive products is desirable to ensure that customers, particularly

¹ The Commission can, if necessary, address in subsequent proceedings pursuant to §§ 3622(a), 3653, or 3662 any issues that may arise.

households, small businesses, and commercial parcel mailers, have affordable options.

A distinct advantage of such an incremental, “as-needed” approach is that it would allow the development of the respective pricing structures to be informed by the results of other tasks set in motion by the PAEA. These include the establishment of the Competitive Products Fund (§ 2011), the development of procedures for the annual compliance review (§ 3653), a review of the application of U.S. laws to competitive products (PAEA § 703), and a review of the future of universal service and the postal monopoly (PAEA § 702). These and other tasks set forth in the PAEA will offer insights into how the regulatory systems should be structured.

In addition, this approach would also have the laudable result of allowing for an early implementation of the new pricing structure, well before the June 2008 deadline. A smooth transition to the new system requires the consideration of all options, based on the principles of minimizing any potential disruption in the marketplace while ensuring that the Postal Service remains financially sound.

III. Market-Dominant Products

Our customers have emphasized, and the PAEA reflects, the importance of predictable and stable price changes and the need for the Postal Service to be open and direct in discussing its planned pricing and product changes. At the Summit, Mr. Wilhelm of Bookspan echoed the comments of other customers when he described his firm’s needs:

I always tell my CFO when, how much and where? Don't surprise me, and don't give me any surprises. I can't deal with this. When is the increase happening? How much is the increase going to be? On which class of mail are we talking about? And surprised would be for example

reclassification or stuff like that you know that we are not prepared for, and we cannot deal with.

So whatever happens I think predictability has to be a factor that we have to define as an industry, and maybe we should get together as a group of people and try to come up with some definitions that most people can live with. But I think what we want at the end of the day is we don't want to have anything we can't deal with.²

Customers' interest in greater predictability and stability in prices, along with increased transparency and efficiency on the part of the Postal Service, and an enhanced ability of the Postal Service to meet customer needs through greater flexibility in its pricing and product decisions, were drivers of the PAEA. These principles are, in the parlance of the new statute, "objectives" of the new system, part of the variety of policy goals laid out for the new market-dominant pricing system in 39 U.S.C. § 3622. The Commission's task is to promulgate rules that balance these provisions in a manner consistent with the language of the statute as a whole and the intent of Congress to modernize the pricing process through a decisive step away from the past.

This section of the Comments addresses that task. The Postal Service first discusses § 3622 and the other provisions of the statute which, along with that section, combine to create a unified scheme for the conduct and regulatory review of market-dominant pricing. This discussion shows that implementing the price cap structure set forth by Congress in § 3622(d), while considering the regulatory structure further on an "as-needed" basis, is fully consistent with the statute. The Postal Service then identifies the minimum range of regulatory topics that, it appears to us, must logically be addressed in order to get the new system "up and running." Topics that must be

² See *Summit—Meeting Postal Customer Needs in a Changing Regulatory Environment*, Transcript at 81, lines 2-16.

addressed include how the regulatory calendar will work, how average price changes and compliance with the cap will be calculated, and how classifications will be handled under the new system.

A. The PAEA supports an “as-needed” approach to the development of the regulatory structure

1. Section 3622 is structured in a hierarchical fashion

The best interpretation of § 3622, when its various provisions are balanced in the context of the statute as a whole, is that it is structured in a hierarchical fashion.

Section 3622 spells out a number of policy principles that the new pricing system should achieve or should take into account. It also sets out some specific substantive and procedural provisions that are required to be part of the new system and are consistent with the policy goals.

Those specific substantive and procedural provisions are spelled out by Congress in § 3622(d)(1)-(2).³ These “requirements” are best understood as Congress stating, in oftentimes very specific detail, its determination as to how to give effect, for the next ten years, to many of the “objectives,” while taking into account the “factors.” After those ten years, the Commission will review the pricing structure laid out by § 3622(d) to see whether it is achieving the “objectives,” taking into account the “factors.”⁴ Following that review, the Commission may revise or eliminate the § 3622(d) structure if doing so is deemed “necessary to achieve the objectives.”⁵

³ See 39 U.S.C. § 3622(d) (stating that the “system for regulating rates and classes for market-dominant products *shall...*”) (emphasis added).

⁴ See 39 U.S.C. § 3622(d)(3).

⁵ See *id.*

The policy principles for the new pricing system are laid out in §§ 3622(b), (c), and (e). Foremost among these policies are the “objectives” of § 3622(b) and the workshare discount standards set forth in § 3622(e). The “objectives” are the foundational principles of the PAEA’s mandate for a pricing system that moves away from the cost-of-service regime of the PRA.⁶ They reflect the general intent of Congress that the new system enhance the Postal Service’s ability to provide universal service at affordable rates through a pricing system that increases transparency, provides strong incentives to hold down costs and increase productivity, leads to greater predictability and stability in prices, allows retained earnings to reinvest in the business, and gives the Postal Service the flexibility to change prices and products quickly and efficiently in order to respond to the needs of customers. Section 3622(e), in turn, lays out general standards governing the Postal Service’s offering of “workshare discounts.” Subordinate to both of these provisions, finally, are the “factors” of § 3622(c), which are general pricing and classification policy considerations that are to be “take[n] into account” by the Commission and the Postal Service as they operate under the new system.⁷

2. The Commission should interpret section 3622 as a unified whole, and in the context of the rest of the statute

Consistent with this hierarchy, as well as with sound principles of statutory interpretation, the Commission should look to § 3622 as a unified whole, rather than as

⁶ See 39 U.S.C. § 3622(b) (stating that the modern pricing system market-dominant products “*shall be designed to achieve the following objectives*”) (emphasis added).

⁷ See 39 U.S.C. § 3622(c) (stating that in establishing or revising the new pricing system, the Commission “shall take into account” the specified factors).

a series of provisions whose meaning should be interpreted in isolation.⁸ The PAEA directs that the “objectives” be applied “in conjunction” with one another,⁹ meaning one particular objective should not be elevated above the others, or interpreted without regard to the principles laid out in the other objectives. The factors, meanwhile, must be read in a manner that is wholly consistent with the “objectives” and with the workshare discount provision of § 3622(e), since they are subordinate to those provisions. These general provisions must, in turn, be applied in a manner that is consistent with the more specific “requirements.”¹⁰

Similarly, the Commission should also interpret the provisions of § 3622 in the context of the statute as a whole.¹¹ At one level, this means the Commission should interpret the provisions of § 3622 in a manner that recognizes that there are other sections of the law which directly relate to market-dominant pricing and which, along with § 3622, serve to create an overall statutory scheme for the conduct and regulatory review of such pricing. For instance, one “objective” is that the new system should lead to increased transparency in the pricing process.¹² When considering the meaning of this provision, the Commission should recognize the existence of §§ 3652 and 3653, which squarely address the issue of transparency by mandating the filing and review of an annual compliance report laying out costs, revenues, and other data on pricing.

⁸ See, e.g., 2A NORMAN J. SINGER, SUTHERLAND STATUTORY CONSTRUCTION § 46.05 (6th ed. 2002) (stating that “[e]ach part or section [of a statute] should be construed in connection with every other part or section so as to produce a harmonious whole,” consistent with the general purpose and intent of Congress).

⁹ See 39 U.S.C. § 3622(b).

¹⁰ This follows from the principle that general statutory language cannot be read in a manner such that it conflicts with specific statutory language. See, e.g., *Department of Housing and Urban Development v. Rucker*, 535 U.S. 125, 133 n.5 (2002) (noting that general statutory language cannot trump specific statutory language).

¹¹ See, e.g., SUTHERLAND STATUTORY CONSTRUCTION at § 46.05.

¹² See 39 U.S.C. § 3622(b)(6).

In addition, the principle of reading the statute “as a whole” also applies to those provisions that may not, on their face, be directed towards pricing, but which enunciate policy goals with pricing implications. The PAEA sets forth numerous policy goals in provisions other than § 3622, policies which should be taken into account in constructing the new pricing system. Several of the “objectives” and “factors” seem to be directed to precisely this point—in other words, they remind the Commission, the Postal Service, and other stakeholders that the pricing system should be structured so as to enable the achievement of policies set forth elsewhere in the Act. One example is the “objective” that the new system allow for the “maint[enance of the] high quality service standards established under section 3691.”¹³ The PAEA establishes a detailed process regarding those service standards, and for review of the Postal Service’s compliance with them through the complaint and annual compliance proceedings. This objective thus seems to affirm the fundamental principle that the new pricing system consider the Postal Service’s financial ability to invest in infrastructure and rationalize the network to maintain high quality service standards over time.

Likewise, several of the provisions of § 3622 seem to be directed as much, if not more, to the Postal Service than to the Commission. For example, an “objective” laid out by the PAEA is that the new system “enhance mail security and deter terrorism,”¹⁴ while a factor is that the new system “promot[e] intelligent mail.”¹⁵ These are clear directives to the Postal Service to continue, with respect to the former, to develop the infrastructure to detect and prevent dangerous agents from being delivered through the mail, and, with respect to the latter, to move forward on its Intelligent Mail efforts. The

¹³ See 39 U.S.C. § 3622(b)(3).

¹⁴ See 39 U.S.C. § 3622(b)(7).

¹⁵ See 39 U.S.C. § 3622(c)(13).

Commission's task, meanwhile, seems to be to ensure that the new system enables the Postal Service's pursuit of these policies for the benefit of customers.

3. Section 3622(d) lays out core substantive and procedural elements of the new pricing system for the next ten years

Congress has, for the next ten years, specifically laid out core substantive and procedural elements of the new pricing system in § 3622(d). These provisions set forth, among other things, 1) the price cap that is to be employed in the new system (CPI-U); 2) the product groupings to which that price cap is to be applied (the classes of mail as in effect in the DMCS on December 20, 2006); and 3) the time period for the prior regulatory review of pricing changes (45 days).

a. The specific formulation of the price cap is established by Congress.

In some previous versions of reform legislation, Congress contemplated leaving the issue of the proper price cap to the discretion of the Commission,¹⁶ while in others it specified the cap with no opportunity for modification at a later date.¹⁷ The PAEA represents a middle ground approach, wherein Congress has specified the price cap which shall apply for the next ten years, after which the Commission will have the discretion to revise or eliminate the cap as it sees fit in order to achieve the "objectives" of the Act.

¹⁶ See S. 2468, 108th Cong., § 201 (2004) (requiring, in § 3622(d)(1), the Commission to "set annual limitations on the percentage changes in rates based on inflation using indices, such as the Consumer Price Index, the Employment Cost Index, the Gross Domestic Product Price Index, or any similar measure as the [PRC] may prescribe.").

¹⁷ See H.R. 22, 109th Cong., § 201 (2006) (as passed by the Senate) (requiring, in § 3622(d)(1)(A), a price cap "equal to the change in the Consumer Price Index for All Urban Consumers unadjusted for seasonal variation over the most recent available 12-month period preceding the date the Postal Service files notice of its intention to increase rates.").

The language of § 3622(d) is largely drawn from the Senate version of H.R. 22, whose lineage can be traced back to S. 662 in the 109th Congress and S. 2468 in the 108th Congress. S. 2468 gave the Commission the discretion to establish the price cap by choosing what specific inflation index to use and whether to adjust that index through a productivity factor or other offsets.¹⁸ In the PAEA, however, Congress itself decided to specify the price cap, stating that it is to be “*equal to*” the change in CPI-U over the preceding twelve months.¹⁹ Congress therefore appears to have chosen the price cap that is to be employed rather than leaving that issue to the Commission, though it also has empowered the Commission to revisit, after ten years, the formulation of the cap (or, for that matter, to impose some other type of pricing system for some or all market-dominant products).²⁰

b. Congress has established the product groupings to which the price cap is to be applied

S. 2468 also gave the Commission the discretion to determine the product groupings to which the price cap would apply.²¹ In the PAEA, however, Congress has followed the approach of S. 662 and the Senate version of H.R. 22 by specifying that the product groupings are to be the classes of mail “as defined in the [DMCS] as in

¹⁸ See S. 2468, 108th Cong., § 201; S. REP. NO. 108-318, at 10 (2004) (“The Committee expects that the Postal Regulatory Commission...will fully and carefully evaluate the merits of a wide range of rate cap structures. This consideration should include, but not be limited to, the relative merits of different inflation indices...; the definition of the product groupings to which the caps will be applied; and the use of productivity factors or offsets.”), at 33 (“Although S. 2468 specifies that market-dominant products would be subject to a rate cap, the actual design of the rate cap mechanism, including choice of inflator, is left to the Regulatory Commission.”).

¹⁹ See 39 U.S.C. § 3622(d)(1)(A) (emphasis added).

²⁰ See 152 CONG. REC. S11,675 (daily ed. Dec. 8, 2006) (statement by Sen. Collins that, “After 10 years, the Postal Regulatory Commission will review the rate cap and, if necessary, and following a notice and comment period, the Commission will be authorized to modify or adopt an alternative system.”).

²¹ See S. REP. NO. 108-318, at 10.

effect on the date of the enactment of the [PAEA].”²² Based on this language as well as the PAEA’s categorization of which products are market-dominant, the Postal Service interprets this to mean that the CPI-U price cap should be applied separately at the class level to the following classes:²³

First-Class Mail, including First-Class Mail Letters and Sealed Parcels, and Cards;

Standard Mail;

Periodicals;

Package Services, including single-piece Parcel Post, Media Mail, Bound Printed Matter, and Library Mail;

Special Services.

c. Congress has laid out a prior review provision for pricing changes

Both S. 2468 and S. 662 proposed a limited period for the prior review of price changes, an approach followed by the PAEA in § 3622(d)(1)(C). Congress seems to have recognized that short before-the-fact review periods are an important aspect of pricing and product flexibility, because they allow the Postal Service to meet customer needs by quickly responding to changing market and operational conditions, while ensuring that customers are informed of price changes.²⁴

When introducing the PAEA to the floor of the Senate prior to its passage, Senator Collins discussed this provision:

²² See 39 USC § 3622(d)(2)(A).

²³ As noted above, the PAEA makes the price cap of § 3622(d)(1)(A) applicable to the classes of mail “as defined in the *Domestic Mail Classification Schedule* as in effect on the date of enactment of the Postal Accountability and Enhancement Act.” (emphasis added) Since international mail has never been classified in the DMCS, it appears that the Commission has the discretion to establish a modern regulatory system which recognizes the exceptional circumstances of international mail.

²⁴ See, e.g., S. REP. NO. 108-318, at 11 (noting that a short prior review period is “consistent with the goals of increasing Postal Service pricing flexibility”).

The compromise legislation before the Senate replaces the current lengthy and litigious rate-setting process with a rate cap-based structure for products such as first class mail, periodicals, and library mail. *For 10 years, the price changes for market-dominant products like these will be subject to a 45-day prior review period by the Postal Regulatory Commission.* The Postal Service will have much more flexibility, but the rates will be capped at the CPI. That is an important element of providing 10 years of predictable, affordable rates, which will help every customer of the Postal Service plan.²⁵

The Commission should establish clear standards in support of this process.

Congress has, in § 3622(d)(1)(D), required that the new system contain “procedures whereby the Postal Service may adjust rates not in excess of the [price cap].” In light of Senator Collins’ characterization, noted above, of the Commission review period for price changes being 45 days, this provision should be read as asking the Commission to establish a clear process, including the filing requirements that must be met when the Postal Service acts pursuant to § 3622(d)(1)(C)(i) and the subsequent procedures for Commission review pursuant to § 3622(d)(1)(C)(ii)-(iii). The establishment of clear procedures will allow for the rapid, transparent determination of whether price adjustments are lawful.

In addition, it is also important to note that § 3622(d)(1)(C) represents a legal timeframe for the *regulatory review* of price changes, and does not necessarily speak to any additional amount of time that the Postal Service may set aside for the *actual implementation* of those changes to meet customer and operational needs. The Postal Service intends to use market-friendly notice and implementation practices that will assure customers that they have the information they need to plan for their business and mailing decisions. Given the technology available today, for annual price changes the Postal Service intends to provide public notice at least 60 days prior to the planned

²⁵ 152 CONG. REC. S11,675 (daily ed. December 8, 2006) (emphasis added).

implementation date, which would accommodate the Commission’s prior review period and provide the additional time necessary to ensure an efficient implementation. In addition, the Postal Service will publicize long-term plans for product and pricing changes that could require substantial reprogramming or business process redesign. If, for example, the Postal Service planned to implement a new product structure over time (e.g., associated with the implementation of FSS, or the Intelligent Mail® barcode), it will use appropriate public forums to tell customers of our plans; to discuss the potential effect of any changes with the industry; and to describe the implementation plan for any preparation or price changes that would affect customers.

d. Predictability and stability is provided through a number of different aspects of the new regime

The need of customers for increased predictability and stability in prices was one of the basic principles underlying the passage of the PAEA, and is therefore an “objective” of the new system.²⁶ Congress reinforces this message in § 3622(d)(1)(B), which requires that the new pricing system be characterized by a “schedule” of price changes that occur at “regular intervals” and in “predictable amounts.” There are thus two dimensions to the notion of “predictable and stable” rates: the procedural dimension (*i.e.*, when price changes occur), and the substantive dimension (*i.e.*, by how much the prices change).

Understood in both ways, “predictability and stability” are provided for through several aspects of the new system, including:

the CPI-U price cap applied at the class level,

²⁶ See 39 U.S.C. § 3622(b)(2).

the movement away from a litigious pricing process to one in which the standards are clearer and the processes more streamlined, and the elimination of the PRA “rate case” regime, which will allow the Postal Service the opportunity to price in a more gradual, incremental, and market-friendly manner.

e. The statute specifies the two means by which the price cap can be exceeded in any given year

Finally, Congress has also in § 3622(d) specified the two situations in which the Postal Service may exceed the price cap in a given year. The first is through the “banking” provision of § 3622(d)(2)(C). If the weighted average rate increase for a class is not raised to the full extent of CPI-U in a given year, the unused pricing authority can be applied in subsequent years to increase rates above CPI-U, so long as the increase does not exceed 2 percent above CPI-U in any year. The second is pursuant to the “exigency” provision of § 3622(d)(1)(E). That provision acts as a “safety valve” for those “extraordinary or exceptional” situations in which the CPI-U cap cannot be met even through honest, efficient, and economical management. The Postal Service does not believe that it is necessary or prudent to attempt, in this rulemaking, to specify the situations this exigency standard might cover in advance of an actual need to do so, since it would appear to call for a highly fact-intensive analysis.

4. The “objectives” are to be given effect in a number of different ways

Many of the objectives (specifically, objectives (b)(1), (4), (5), and the first half of (6)) seem to be given full effect by the price cap structure set forth by Congress in § 3622(d). This is consistent with the best understanding of § 3622(d)—specifically,

that is it Congress' view as to how to achieve many of the public policy goals of the PAEA for the next ten years. This does *not* mean that these provisions could in no way be used as a justification for additional rules beyond what Congress laid out in the "requirements" provision, but that additional rules are not *necessary* at this time in order to give full effect to these provisions.

First, with respect to the (b)(1) "efficiency" objective, the CPI-U cap will necessarily lead to "incentives to reduce cost and increase efficiency" being "maximize[d]." As the Postmaster General has previously noted, a cap based on CPI will be a "challenging" benchmark for an organization with the Postal Service's cost structure.²⁷ Thus, the cap established by Congress will provide the Postal Service with very strong incentives to find new ways to encourage the use of mail and to work even more closely with customers and other stakeholders to create operational efficiencies that will enable the Postal Service to operate in a more cost-effective, efficient, and market-friendly manner. Among other things, deployment of FSS and use of the Intelligent Mail® barcode will be keys in this regard.

Second, with respect to the (b)(5) "adequate revenue" objective, the authority of the Postal Service to price up to the CPI-U cap and retain earnings achieved through cost efficiencies, coupled with the "safety valve" of the exigency provision, should "assure adequate revenues, including retained earnings, to maintain financial stability." Finally, with respect to the (b)(4) "pricing flexibility" objective and the "administrative burden" portion of objective (b)(6), a 45-day prior review period, in conjunction with the flexibility to manage prices within the CPI-U cap at the class level, serves to "allow the

²⁷ See *U.S. Postal Service: What is Needed to Ensure its Future Viability?: Hearing Before the Senate Committee on Homeland Security and Governmental Affairs, 109th Cong. 22 (2005)* (statement of Postmaster General Potter).

Postal Service pricing flexibility” as well as to “reduce the administrative burden...of the ratemaking process.”

The objective that the new system “increase the transparency of the ratemaking process” underlies other sections of the statute which, along with § 3622, serve to create a unified scheme for the conduct and regulatory review of market-dominant pricing. This principle finds its fullest expression in the various reports mandated by the PAEA, particularly the annual report of § 3652 and the financial reports mandated under § 3654. Commission implementation of those provisions will thus give effect to this objective. In addition, increased transparency would also result from the application of a price cap in conjunction with clear standards regarding the calculation of the cap and the filing requirements attendant to the 45-day prior review of pricing changes.

Other objectives articulate the principle that the new market-dominant pricing system should enable the achievement of policies set forth elsewhere in the Act. As discussed above, the (b)(3) “service standard” objective seems to establish the fundamental principle that the pricing system must give the Postal Service the financial ability to invest in infrastructure and rationalize the network in order to maintain its market-dominant service standards. Congress has stated that compliance with these standards may be reviewed pursuant to a complaint,²⁸ or through the annual compliance review process;²⁹ in both situations, the Commission has the authority to order remedial action, including fines in cases of “deliberate noncompliance.”³⁰ Thus, if the Postal Service’s compliance with its market-dominant service standards becomes an issue of contention, a statutory remedy is provided through these processes.

²⁸ See 39 U.S.C. § 3691(d).

²⁹ See 39 U.S.C. § 3653(b)(2).

³⁰ See 39 U.S.C. § 3662(d); 39 U.S.C. § 3653(c).

In addition, objective (b)(9) refers to the principle articulated by § 3633(a)(3) that competitive products collectively make an “appropriate” contribution to the institutional costs of the Postal Service. This objective will be addressed by the Commission in the regulations it issues under that provision of the Act, as discussed later in these Comments.

Finally, objective (b)(8) sets forth a “just and reasonable schedule for rates and classifications” as a standard for the new system. As a standard for pricing, the phrase “just and reasonable” has been interpreted as requiring that prices fall within a “zone of reasonableness,” based on the interests of the firm and the consumer. As the D.C. Circuit stated in one case:

We begin from this basic principle, well established by decades of judicial review of agency determinations of “just and reasonable” rates: an agency may issue, and courts are without authority to invalidate, rate orders that fall within a “zone of reasonableness,” where rates are neither “less than compensatory” nor “excessive.”³¹

Thus, this objective specifies that the rate and classification schedule as a whole must fall within a “zone of reasonableness.” Consistent with an “as-needed” regulatory approach, precise determinations of what exactly this standard means with regard to postal pricing in the context of the PAEA and the price cap can be worked out over time.

5. Section 3622(e) promotes a price schedule that is efficient and reflective of the full array of pricing variables

The PAEA, in section 3622(e), establishes general standards to govern the Postal Service’s provision of “workshare discounts.” Through this provision, Congress has recognized the “principle, supported by the Postal Service, the [Commission], and postal employees, that workshare discounts should generally not exceed the costs that

³¹ *Farmers Union Central Exchange v. FERC*, 734 F.2d 1486, 1502 (D.C. Cir. 1984).

the Postal Service avoids as a result of the worksharing activity.”³² However, Congress also recognized that there are situations in which this general principle must be set aside to provide for the efficient operation of the Postal Service. This is consistent with the overall intent of Congress that the new system be one in which the Postal Service has the flexibility to respond to changing market and operational conditions.³³

The Postal Service submits that the language of this section (with its exceptions to the general statement that passthroughs not exceed 100 percent), as applied in the context of the price cap system envisioned by Congress, does not lend itself to an inflexible view of pricing or to the elevation of one particular theory of pricing above all others. Instead, it is important for the vitality of the mailstream that pricing and product changes be based on the consideration of numerous variables.

The pricing system must be designed to allow operational changes that increase efficiency, or improve service. For example, the deployment of FSS is expected to reduce operational costs and thereby increase efficiency. The Intelligent Mail® barcode, meanwhile, offers opportunities to improve service performance while providing valuable information to customers and the Postal Service. As it anticipates such changes, the Postal Service will need the flexibility to ensure that prices and classifications provide appropriate incentives for customers to change their behavior so as to successfully implement these new technologies. For example, in the past the Postal Service encouraged the early adoption of efficient letter mail preparation by

³² See S. REP. NO. 108-318, at 12. Transparency with regard to workshare discounts is provided for through § 3652(b), which requires that the cost data underlying existing “workshare discounts” be reported annually, and § 3622(e)(4), which requires a report that spells out the data underlying newly established workshare discounts at the time they are established.

³³ See, e.g., H.R. REP. NO. 109-66, pt. 1, at 44 (2005) (“The bill gives postal management and employees the tools to adapt and survive in the face of enormous challenges caused by changing technology and a dynamic communications marketplace.”).

proposing automation discounts that reflected an expected savings once letter automation equipment was deployed. Effectively, this approach recognized the ability of price to drive efficient behavior through consideration of the potential cost savings. Likewise, to encourage the growth of customer adoption of mail preparation requirements for FSS or the Intelligent Mail® barcode, the new pricing system should not focus solely on current costs and ignore how prices can be set to achieve long-term efficiencies or to promote the growth of the mailstream. The successful implementation of these two initiatives will depend heavily on the regulatory flexibility accorded to the Postal Service in the immediate future.

6. Like the “objectives,” the “factors” are given effect in a variety of ways

The “factors” of § 3622(c) are pricing and classification policies that must be “taken into account” in the operation of the new system. As discussed above, the “factors” are subordinate to the other substantive provisions of § 3622, and thus must be applied in a manner that does not undercut the principles articulated by those provisions. Like the “objectives,” many of the factors seem to be given full effect by the pricing structure laid out by Congress in § 3622(d),³⁴ or are principles that underlie other sections of the statute.³⁵ Therefore, as is also the case with the “objectives,” additional rules to implement these “factors” are not necessary at this time.

Other “factors” address policy considerations that are directed as much to the Postal Service as they are to the Commission. For example, several of the “factors” set

³⁴ Specifically, the constraint imposed by the price cap established by Congress seems to address the “effect of rate increases” factor ((c)(3)), and the “increased efficiency” factor ((c)(12)). At the same time, the structure laid out by Congress also provides the Postal Service with increased flexibility to change prices and products based on numerous variables. This seems to address both the “value of service” factor ((c)(1)), which makes demand a relevant characteristic, and the “pricing flexibility” factor ((c)(7)).

³⁵ For example, the (c)(5) “degree of preparation” factor is specifically dealt with by § 3622(e).

forth classification policies that are always relevant to the rational, business-like management of a product structure adapted to the postal needs of the United States.³⁶ Still others address policy considerations that recognize the public service mission of the Postal Service,³⁷ or reaffirm the Postal Service's efforts to move towards more intelligent mail.³⁸ All of these provisions, therefore, enunciate principles that guide the management of the Postal Service's product structure, with the Commission having the ability to act, if the need arises, if it believes that these policy concerns are not being appropriately addressed by the Postal Service.

The "cost" factor of § 3622(c)(2), meanwhile, can conceivably be interpreted as being more important than the other "factors" due to the fact that it is styled as a "requirement." However, as a "factor," this provision must be read in a manner consistent with the principles articulated by the "objectives" and which underlie the substantive and procedural elements Congress laid out in § 3622(d). Congress criticized the cost-of-service regime of the PRA as not imposing sufficient incentives for efficiency on the Postal Service:

The current [pre-PAEA] rate-setting process provides little or no incentive for the Postal Service to control its costs because all its costs are ultimately passed through to the consumer regardless of how efficiently or inefficiently the Postal Service operates.³⁹

A price cap system, on the other hand, provides greater incentives for efficiency due to the fact that it fundamentally changes the relationship between cost and price. Thus, reading this factor as "requiring" that every class of mail cover its costs,

³⁶ Specifically, the "simplicity" factor ((c)(6)), the "relative value" factor ((c)(8)), and the "importance of providing classifications with different service standards" factor ((c)(9)).

³⁷ See 39 U.S.C. § 3622(c)(11) (the "ESCI" factor).

³⁸ See 39 U.S.C. § 3622(c)(13).

³⁹ H.R. REP. NO. 109-66, pt. 1, at 48.

regardless of the ceiling imposed by the cap, would eviscerate the framework set forth by Congress. At the same time, it should be recognized that considerations of cost should be fundamentally different in a price cap regime than in a cost-of-service regime.

7. Overall, the statute supports an approach of regulatory forbearance when it comes to pricing

An approach whereby the Commission implements the CPI-U price cap set forth in § 3622(d), and considers the necessity of additional rules “as-needed” based on the development of the market and the practical experience of the postal community under the new system, is therefore amply supported by the statute. An examination of the language of § 3622 shows that nothing in the “objectives,” “factors,” or “workshare discount” provisions necessitates the promulgation of additional pricing constraints at this time. Many of the “objectives” and “factors” can be given effect by implementing the price cap structure set forth by Congress, or by setting forth rules pursuant to other provisions of the PAEA (such as the annual report provision of § 3652). Others establish broad standards or set forth policy guidance for the operation of the new system whose regulatory import can be worked out over time as practical experience is gained and issues arise. The workshare discount section, meanwhile, supports giving the Postal Service the ability to price in a flexible manner, based on the consideration of numerous variables, in order to ensure the efficiency of the mailstream.

B. Harmonizing the regulatory calendar with business and customer needs must receive careful consideration

Considering the timeframe in which price changes will occur in the new system is difficult because of the numerous regulatory and business considerations that must be

taken into account.⁴⁰ Any calendar must allow customers to effectively budget for price changes, and must lead to the implementation of rates at a time that will not adversely affect the use of the mail.⁴¹ In addition, given the current level of effort needed to implement changes in mailing technology, public notice of a price change must occur at least 60 days prior to the planned implementation date. Trying to produce a regulatory calendar that harmonizes the statutory provisions of the PAEA, such as the annual compliance review process under §§ 3652 and 3653, with these business and customer needs is a challenging task that must receive careful consideration in this proceeding.

Consider the annual compliance review. The Postal Service would like to have the ability to change prices as early in the calendar year as January, but we are aware that an implementation date early in the calendar year would occur prior to the conclusion the annual compliance review, if that review covers an October-September time period. In fact, because as a practical matter customers need 60 days in order to implement a price change, any implementation date in the late winter or spring (which seems to strike the right balance between business and customer needs) would require the filing of the public notice prior to the conclusion of the annual compliance review.

Articulating these distinct sources of tensions under the new system serves to underscore the value of dialogue among mailers, the Postal Service, the Commission,

⁴⁰ As a practical matter, the Postal Service anticipates changing most prices during an annual Notice of Price Changes. The PAEA does not require that all price changes be made simultaneously or that price changes be limited to one per product per year, however, and there are many circumstances (e.g., customized pricing agreements or new product offerings) that could result in off-cycle price changes designed to meet customer needs. During the periods after the major price changes, the Postal Service would focus on smaller changes to our offerings, particularly those that add options for customers. As appropriate, small product changes, customized pricing and other new services could be introduced at any time during the year.

⁴¹ For example, price changes implemented during the fall mailing season would be disruptive even if they were predictable. Businesses develop mailing and operational plans many months in advance, and a fall price change could result in difficulties adjusting to even modest price changes.

and other members of the postal community with regard to how they can most effectively be harmonized. Approaches that appear optimal from one perspective may have major detrimental consequences from another. The Postal Service is committed to working with stakeholders before the Reply Comments are due to develop proposals for a workable schedule and regulatory approach that balances the various considerations. A variety of options might be available to address the issue; for example, stakeholders may want to consider what period of time the annual compliance report should cover. Particularly useful in the process might be some indication from the Commission regarding its perception of the optimal relationship between the annual compliance review, and the timing of annual price increases.

Also, when considering the statutory process, it should be recognized that pricing must blend the use of historical data with a look to the future and the strategies needed to align prices with the future environment. Moreover, the data that will be reviewed in the annual compliance process may not always be amenable to instant analysis or action. For example, refinements of data collection, along with the normal stochastic variations of even relatively large samples, can cloud results. This is in no way meant to question the importance of the annual compliance review in achieving the policies of the Act, but is simply a recognition that these kinds of influences, coupled with the need to price with an eye toward the future, may complicate the specification of a schedule for remedying any perceived variation.

C. The mechanics of the price cap should be as straightforward and simple as possible

As discussed above, the PAEA outlines a basic framework for limiting the annual increases in the prices for market dominant products, based on the following elements:

1) the use of a cap equal to CPI-U; 2) the application of the cap at the level of the individual mail class; and 3) the ability to carry forward unused rate authority to subsequent years, subject to certain limitations.

While the PAEA outlines the price cap framework, the Commission must develop the implementing details. The Postal Service believes that this should be guided by three related goals:

1. The price cap mechanism should be straightforward and as simple as possible. A simple structure will create the greatest opportunity to realize the efficiencies intended by the new system as compared with the historical ratemaking process.
2. The price cap mechanism should be transparent. The new structure should be implemented in such a way that it is clear to the Commission, customers, and all other stakeholders whether prices are in compliance with the cap.
3. The price cap mechanism should be predictable. The new structure should provide customers with a new degree of certainty as to how much prices are likely to change and at what intervals.

If the mechanics of the price cap are designed with these three goals in mind, Congress' intent to move the postal system into a more modern system of incentive regulation will be realized.

1. The price cap index

The PAEA specifies that the price cap should use the CPI-U “unadjusted for seasonal variation over the most recent available 12-month period preceding the date the Postal Service files notice of its intention to increase rates.”⁴² The Bureau of Labor Statistics (BLS) index that meets this requirement would be the “Consumer Price Index – All Urban Consumers, U.S. All Items” (the “CUUR0000SA0” series).⁴³ The BLS schedules the release of its inflation indices approximately two weeks after the close of a month. For example, the current schedule for releasing the consumer price indices is December 14, 2007, for the indices which include November 2007 and January 16, 2008, for the indices which include December 2007.⁴⁴ Therefore, if the Postal Service files its notice of a price change pursuant to § 3622(d)(1)(C)(i) on the first day of a month, the “most recent available” data for purposes of the statute will be data for the 12-month period ending one month before the notice is filed.

2. Determining compliance with the price cap

Determining compliance with the price cap involves answering two questions for each market-dominant class of mail. First, are the proposed rate changes at or below the maximum allowed rate change for the year, as measured by the annual change in CPI-U? Second, if the proposed rate changes are above the maximum allowed rate change for the year, is there any unused or “banked” rate adjustment authority from previous years that can be used to achieve compliance?

⁴² See 39 U.S.C. § 3622(d)(1)(A).

⁴³ This series is not seasonally adjusted and sets 1982-84 = 100.

⁴⁴ See www.bls.gov/schedule/schedule/by_prog/cpi_sched.htm.

To answer the first question, a weighted average price change would be computed for each class of mail to compare with the increase in CPI-U over the previous 12 months. Specifically, for each class, the percentage price change would be calculated by comparing the average revenue per piece before the price change to the average revenue per piece after the price change. Revenue per piece would be calculated simply by multiplying the price for each rate element times the volume, summing the total revenue across all rate elements within the class, and dividing by the total number of pieces. If the proposed weighted average price change for the class is below the annual price cap, then the proposed prices are in compliance with the new law. For example, if the proposed weighted average price change for First-Class Mail is 2.0 percent and the inflation cap is 2.5 percent, the proposed rates would be in compliance.

However, if the weighted average price change exceeds the cap, the price change would not be in compliance unless there is unused pricing authority from a past year. Unused pricing authority for any given year expires after five years.⁴⁵ In addition, unused pricing authority cannot be used to increase the price change for a class by more than 2 percent above the CPI-U cap in a given year.⁴⁶ Continuing the above example, if the proposed weighted average price change for First-Class Mail were 3.0 percent, it would exceed the cap by 0.5 percent and be out of compliance unless there was 0.5 percentage points of unused rate authority in the First-Class Mail “bank.” If such unused rate authority were available, the proposed rates would be in compliance

⁴⁵ See 39 U.S.C. § 3622(d)(2)(C)(ii).

⁴⁶ See 39 U.S.C. § 3622(d)(2)(C)(iii)(IV).

because the 0.5 percent additional increase over CPI-U would be less than the 2.0 percentage point limit.

E. How are classifications changed for market-dominant products?

39 U.S.C. § 102(6) defines a “product” as “a postal service with a distinct cost or market characteristic for which a rate or rates are, or may reasonably be, applied.” Based on this definition as well as the provisions of the PAEA, the best interpretation seems to be that “product” is synonymous with what is called a “subclass” in the existing postal lexicon. In the baseline lists of market-dominant and competitive products provided in §§ 3621 and 3631, for example, “product” appears to be equivalent to “subclass.” Taken together, these provisions strongly suggest that, as a practical matter, “products” under the new regulatory regime should be defined for classification purposes essentially as subclasses have been under the previous regime.

Section 3622(b)(8) refers to the establishment and maintenance of a “schedule for...classifications” with respect to market-dominant products. Apparently, therefore, the concept of a mail classification schedule has not been abandoned under the new system. On the other hand, the provisions of the PRA governing procedures for adopting and modifying the classification schedule have been repealed, and the PAEA does not indicate any replacement classification procedures specifically applicable to market-dominant products, except for “special classifications” under § 3622(c)(10).

In § 3642, however, the PAEA does explicitly require the Commission to maintain the lists of market-dominant and competitive products by adding new products, removing products, or transferring products. All of these are clearly acts of mail classification. Consequently, it appears that a classification change which rises to the

level of adding, removing, or transferring a subclass with respect to the lists of market-dominant and competitive products must follow the procedures specified in § 3642.

Conversely, a classification change below the subclass level (as long as it does not involve a transfer between the market-dominant and competitive lists) does not seem to bring the procedures of § 3642 into play. This suggests that the Postal Service should be able to implement market-dominant classification changes below the subclass level, if a price change is incorporated, following a prior review by the Commission commensurate with the provisions for market-dominant price changes under section 3622(d)(1)(C).

Consider an example in which the Postal Service wishes, after discussion with its customers, to introduce a new rate category within an existing subclass. Purely as a hypothetical, think of a small flat-rate container within First-Class Mail. The process to establish such a new subset of First-Class Mail service should involve nothing more than including notice of the contemplated new classification (as well as the contemplated new rate) with the rest of the filing when First-Class Mail rates are being adjusted in accordance with section 3622(d)(1)(C). No special procedures should be required to support the determination to adjust the classification schedule in order to accommodate such a new rate category within an existing subclass.

To aid in this process, the Postal Service can provide advance notice and work with the mailing community in order to ensure that the classification change addresses their needs and is anticipated. In addition, as also noted above, the Postal Service will publicize long-term plans for product and pricing changes that could require substantial

restructuring or business process redesign, and work with customers to ensure a smooth implementation of those changes.

Some cost considerations would be relevant to a new classification to create a new workshare discount category in accordance with § 3622(e)(4). In practical terms, however, establishment of the new workshare *classification* still should be achieved by including notice of the contemplated classification along with the notice of the contemplated new workshare discount *rate* in accordance with the 45-day process specified in section 3622(d)(1)(c). While the formal Commission process would be undertaken within 45 days, consistent with the discussion above, the Postal Service will discuss potential classification changes with the mailing community to learn their needs and address them in the development of the product structure.

In conclusion, for classification changes below the subclass level, the classification process should parallel, and if feasible be incorporated within, the prior review process specified in section 3622(d)(1)(c) for rate changes. In other words, the pricing flexibility afforded the Postal Service under the new regime should extend to classification changes as well.

IV. Competitive Products

The PAEA sets forth a regulatory scheme for competitive products that differs markedly from the regulatory scheme for market dominant products. Congress has determined that since open and fair competition with private sector firms will encourage the cost-effective provision of competitive products, only a minimal regulatory burden is

necessary.⁴⁷ In §3631, Congress designated Priority Mail, Expedited (Express) Mail, bulk parcel post, and bulk international mail as competitive products.

The PAEA gives the Governors the authority to set prices and classes for competitive products pursuant to § 3632. The Commission's oversight responsibility is found through the implementation of § 3633, which seeks to: 1) prevent cross-subsidization of competitive products by market-dominant products, 2) ensure that each competitive product covers its attributable costs, and 3) ensure that all competitive products collectively cover an "appropriate share" of the Postal Service's institutional costs. The Commission's role is thus to set a price floor for competitive products at a level that promotes fair competition.⁴⁸

Under § 3633, the Commission's long standing approach to attributable costs can form the basis for the implementation of the competitive product regulations. Section 3633(a)(2) requires that each competitive product cover its "costs attributable;" the PAEA defines "costs attributable" to mean "the direct and indirect postal costs attributable to such product through reliably identified causal relationships."⁴⁹ In the 108th Congress, the Senate Report discussed cost attribution as follows:

Identifying costs which can reliably be found to have been caused by each specific subclass and service is essential to maintaining economically efficient rates and avoiding inequitable cross-subsidization, which occurs when rates from one product are used to pay costs associated with another. Over the history of the Postal Reorganization Act the ability to accurately attribute costs has constantly evolved, and the Committee expects that with greater transparency about the Postal Service's operations, this process will continue.⁵⁰

⁴⁷ See S. REP. NO. 108-318, at 14-15.

⁴⁸ See *id.*

⁴⁹ See 39 U.S.C. § 3631(b).

⁵⁰ S. REP. NO. 108-318, at 9.

The report continues with an affirmation of the decision in the Supreme Court's decision in *National Assoc. of Greeting Card Publishers v. USPS*⁵¹ that "emphasized the need for reliable indicators of causality" when attributing costs.⁵²

This precedent should inform the implementation of § 3633(a)(1) and (2). With regard to the first of the three elements of § 3633(a), the correct and reliable identification of the attributable costs of the competitive products group as a whole will ensure that market-dominant products do not cross-subsidize competitive products. With regard to element (a)(2), the accurate attribution of the cost of each product will provide the transparency needed for determining whether the revenue of each product covers its attributable costs.

The third element of § 3633(a), that all competitive products collectively cover an "appropriate share" of institutional costs, should be carefully considered within the context of protecting fair competition. In evaluating the appropriate quantification of the this statutory requirement, the Postal Service recognizes that the competitive products should provide a reasonable contribution to institutional costs. However, it should also be recognized that the Postal Service serves a unique niche within the competitive product arena, providing package delivery for small business and household customers, as well as rural destinations. The Postal Service does not believe that Congress intended § 3633(a)(3) as an additional burden on the prices that these customers must pay for mail services.

In some sense, the markup the Commission recommended in Docket No. R2006-1 for the products now deemed competitive could be considered appropriate

⁵¹ *National Association of Greeting Card Publishers v. USPS*, 462 U.S. 810 (1983).

⁵² See S. REP. NO. 108-318, at 10.

given that it was based on a comprehensive weighing of a range of considerations. However, the consideration of the factors identified in § 3633(b), that is, the competitive conditions of the market and the degree to which any costs are uniquely or disproportionately associated with any competitive products, may also inform the Commission's decision and could, we believe, justify a lower markup.⁵³

Finally, the Commission will need to address the interplay of § 3633 with other sections of the PAEA. Section 3632 grants the Governors the authority to set the prices and classes of competitive products in accordance with the requirements of §§ 3631-3633 and with the regulations promulgated by the Commission under § 3633. It requires notice of changes in prices and classes: 30 days for "rates or classes of general applicability" and 15 days for "rates and classes not of general applicability."⁵⁴ The section does not expressly require an opportunity for comment or a process of review by the Commission, which is consistent with the principle that the market is the best way to ensure economically efficient prices. Instead, compliance with the requirements of §3633 can mainly occur through the annual compliance report of § 3652, or through complaints filed pursuant to § 3662.

One of the tasks of the Commission in its § 3633 proceeding is to establish criteria for determining whether a rate or class is or is not one of "general applicability." Consistent with the statutory scheme, the definition of rates and classes of "general applicability" should apply to any price that is publicly available nationwide or throughout

⁵³ Section 3633(b) provides for a five year review of the § 3633(a)(3) requirement through considering, among other things, the conditions of the market. A baseline review of the prevailing conditions in the market place could influence the Commission's determination of the "appropriate share," though it need not impede the early implementation of the competitive rules.

⁵⁴ See 39 U.S.C. § 3632(b)(2)-(3).

a portion of the nation. Any other rates or classes would then be subject to the 15-day notice provision and procedures in §3632(b)(3).

V. Conclusion

As the Commission, Postal Service, and mailing community move into the new business and regulatory environment mandated by the PAEA, the Postal Service respectfully submits that the creation of the new pricing regimes should be benchmarked by certain fundamental principles. Specifically, the new regime should:

Provide flexibility so that the Postal Service can respond effectively to market and operational conditions, and the needs of customers. This will allow the Postal Service to pursue new revenue sources and foster growth and innovation in the mailstream, which is critical to its ability to provide a strong postal system for years to come.

Provide incentives for the Postal Service and mailers to operate in a way that improves the efficiency of the nation's postal system.

Support corporate best practices, such as rational investments in infrastructure, and realigning resources to match the changing needs of customers.

Promote honest, economical, and efficient management.

Allow the Postal Service's competitive products to compete fairly in the marketplace.

Ensure adequate revenues to support the Postal Service's network and set prices that cover costs in a manner consistent with the law.

Streamline pricing and classification to increase predictability and reduce administrative burdens.

These principles are consistent with the intent of Congress and are essential if the Postal Service is to achieve its mission in a more efficient and business-like manner in order to meet the challenges presented by the realities of the current market place. A

regulatory approach that is guided by experience and the development of the market and public needs, rather than by theory or hypothetical concerns, will be the best way to achieve these principles and ensure the continued vitality of the mailstream.

Respectfully submitted,

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