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POSTAL REGULATORY COMMISSION
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Regulations Establishing System of Ratemaking	))	Docket No. RM2007-1

OCA COMMENTS IN RESPONSE TO ADVANCE NOTICE OF PROPOSED RULEMAKING ON REGULATIONS ESTABLISHING A SYSTEM OF RATEMAKING
(April 6, 2007)

In Order No. 2, “Advance Notice of Proposed Rulemaking on Regulations Establishing a System of Ratemaking,” issued January 30, 2007, the Commission heralded a new system of ratemaking under the Postal Accountability and Enhancement Act, Public Law 109-435 (PAEA). Commenters are invited to provide comments and suggestions on how to best fulfill the responsibilities and purposes of the PAEA. The Office of the Consumer Advocate thanks the Commission for the opportunity to present its views on the vital issues arising from establishing the new system.

In commenting on how the new system should function, it is useful to highlight the critical differences that Congress wrought as departures from the former system of ratemaking. Since amendments to the Postal Reorganization Act (PRA) in 1976, the Commission has been required to issue its omnibus rate case decisions in 10 months. Intervenors frequently complain that 10 months is a small fraction of the time ordinarily allotted other governmental agencies to reach decisions on matters of comparable breadth and complexity. Ten months now appear as an embarrassment of riches compared to the 45-day price increase determinations (39 U.S.C §3622(d)) and the 90-day compliance determinations (39 U.S.C §3653). The radically reduced periods to consider price increases in the context of broad policy criteria necessitates a radical new paradigm that will allow the Commission to issue its statutorily required determinations within the specified statutory time limits. A set of approaches that will allow the Commission to discharge its new responsibilities fully and thoroughly is discussed in the first section of these comments, *Part One: Price Setting Under the PAEA*.

In enacting the PAEA, Congress recognized that one of the most serious risks in substituting a price cap system for a breakeven system of ratemaking is that the Postal Service would allow service to degrade, thereby reducing costs (and increasing profits), while staying within the price cap. To spare mailers this damaging result, Congress gave the Commission significant new powers to shore up quality of service. This new system of quality assurance is embodied in a new statutory provision – 39 U.S.C. §3691. Establishing appropriate service standards and devising methods for measuring service performance of the Postal Service is discussed in the second section of these comments, *Part Two: Service Performance Under the PAEA*.

Congress took the revolutionary step of removing named competitive products (priority mail, expedited mail, bulk parcel post, bulk international mail, and mailgrams) from the pricing policies of the PRA and the objectives and factors of the new PAEA. In *Part Three: Competitive Products Under the PAEA*, OCA articulates its understanding of the operation of the statutes in the provision of competitive products and services.

OCA engaged in research of price cap systems in other regulatory fora and reports on the methods that have been effective (or ineffective) so that lessons learned by other regulators can be applied building a regulatory system under the PAEA. This research is discussed in *Part Four: Lessons from Other Regulatory Systems*.

Finally, *Part Five: Role of the OCA Under the PAEA* focuses on the specific duties Congress established for the OCA under the new system.

Part One: Price Setting Under the PAEA

Perhaps the most far-reaching reforms in the PAEA are the allowance for retained earnings and the shift of rate setting from the Commission to the Postal Service. The opportunity to earn profits should alter significantly the incentives of postal managers to contain expenses and to set rates above cost. The effectiveness of price-cap regulation depends on the existence of these incentives.[1] If the profit motive works as hoped, the Commission can step back from marginal-cost estimation.[2] A profit-seeking Postal Service would not be expected to price a product below marginal cost. In the interest of simplicity, transparency, and reduction of administrative burden, the Commission can now redefine "attributable" cost as it applies to market dominant products. In particular, the formulae for calculating attributable (*i.e.,* incremental) costs can be greatly simplified.

The "modern system of regulation" required by the PAEA is both *post-hoc* and light-handed. That is, the Commission no longer sets rates for the future.[3] Rather, the Commission determines after the fact whether the Postal Service was in compliance with the PAEA. Under the new regulatory regime, the Commission must determine, within 90 days of receiving an annual report from the Postal Service and after

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[1] M.A. Crew and P.R. Kleindorfer, *A Critique of the Theory of Incentive Regulation,* in M.A. Crew and P.R. Kleindorfer, eds, Future Directions in Postal Reform 37, 55 (2001).

[2] The Postal Service, on the other hand, will need even better estimates of marginal cost. Marginal cost, together with marginal revenue, determines whether to produce a product at all and, if so, how much. *See, e.g.,* D. Kreps, Microeconomics for Managers 42-46 (2004).

[3] Although, as a result of its annual determination of compliance, the Commission may find itself prohibiting certain ratemaking methods. *See* 39 U.S.C. § 3653(b)(1) (as amended Dec. 20, 2006).

comments from stakeholders, whether the Postal Service was in compliance with the requirements of new Chapter 36 of Title 39 during the prior fiscal year. The number of different ratemaking techniques used by the Postal Service in a given year could be large. If the Commission is to have a meaningful opportunity to evaluate the Postal Service's compliance with Chapter 36, such compliance must be readily discernible from the Postal Service's annual report.

The PRA contained nine factors that the Commission had to balance when setting rates. Not only did rates have to cover costs, but eight other criteria had to be met by a recommended set of rates. In its Opinion in Docket No. R2006-1, the Commission "commented on the breadth of the non-cost factors, noting that they encompass both standards of efficiency and equity and indeed that *they serve sometimes-conflicting objectives.*"[4] The Postal Accountability and Enhancement Act ("PAEA" or "Act") directs the Commission to establish a "modern system of regulation."[5] The PAEA also requires the balancing of a much larger number of criteria than did the PRA.

One approach to balancing conflicting objectives is illustrated by the Commission's treatment of Efficient Component Pricing in Docket No. R2006-1. The Commission stated,[6]

4 PRC Op. R2006-1, para. [4046] (emphasis added).

5 39 U.S.C. § 3622(a).

6 PRC Op. R2006-1, para. [5095].

> The Commission's recommendations analyze rates within a framework of Efficient Component Pricing. The rates are then weighed against the factors of the Act and appropriately adjusted where necessary. Generally, the rates recommended for Letters and Sealed Parcels are consistent with both Efficient Component Pricing and the requirements of the Act.

This approach can be generalized for use in the modern system of regulation. First, identify a group of *compatible* criteria. Second, use these compatible criteria to design a regulatory regime that would be a "neutral starting position."[7] Third, identify circumstances (*e.g.,* postal products, NSA opportunities) where other objectives of the PAEA would require deviation from the "neutral starting position." Fourth, establish the "neutral starting position" as the "modern system of regulation" with explicit deviations as required by conflicting objectives. One possible deviation would be optional tariffs to improve the profitability of the Postal Service.

The PAEA requires the Postal Service "to bind the Nation together" and to "provide prompt, reliable, and efficient services to patrons in all areas and [to] render postal services to all communities."[8] It requires that postal rates be fair, equitable, just, and reasonable.[9] The Act also requires (in addition to other criteria) that the Postal Service be allowed to exercise rate flexibility and to retain earnings,[10] that rates cover

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[7] *Id.* at para. [4043].

[8] 39 U.S.C. § 101(a). This embodies the Postal Service's universal service obligation.

[9] **Fair:** *id.* at §§ 101(d), 403(a); **equitable:** *id.* at §§ 101(d), 404(b), 3622(d)(1)(E); **just:** *id.* at § 3622(b)(8); **reasonable:** *id.* at §§ 403(a), 404(b), 3622(b)(8), 3622(d)(1)(E), 3691(b)(1)(C).

[10] *Id.* at § 3622(b)(4)-(5).

attributable and reasonably assignable costs,[11] that administrative burdens be minimized,[12] that incentives to reduce costs be maximized,[13] that intelligent mail be promoted for both security and value-added purposes,[14] and that rate changes be predictable in terms of both amount and frequency.[15] These objectives appear to be compatible with each other and to encompass criteria that stakeholders consider most important.

The OCA suggests two ways for the Commission to evaluate the Postal Service's compliance with the above objectives. One way to evaluate compliance with these objectives (transparency in particular) is to require the filing of monthly reports. The monthly reports would contain the same type data as the annual report, and would allow the Commission and stakeholders to monitor the Postal Service's compliance with the PAEA throughout a fiscal year. The data would include costs and volumes by operation (or activity) as well as any other data needed to calculate rates offered to different customers. There would thus be few, if any, surprises when the annual report is filed. A lack of surprise would allow for a speedy evaluation and determination of compliance.

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11 *Id.* at § 3622(c)(2). It is noteworthy that the Commission will no longer actually set rates. Rather, the Commission will verify, after the fact, that rates covered cost (and complied with the other objectives and factors of the PAEA) in the previous fiscal year. *Id.* at § 3653.

12 *Id.* at § 3622(b)(6).

13 *Id.* at §§ 3622(b)(1), (c)(5), (c)(12).

14 *Id.* at §§ 3622(b)(7), (c)(13).

15 *Id.* at §§ 3622(b)(2), (d)(1)(A)-(B).

A second way to ease evaluation of the Postal Service's annual report would be to establish a list of ratemaking techniques that the Commission considers to be *prima facie* compliant with the criteria of the PAEA (as well as easy to implement and to monitor), provided that any technique adopted by the Postal Service be available to *any* mailer.[16] Such techniques should all meet one basic criterion: under any ratemaking technique, no product should be charged more than its stand-alone cost nor less than its incremental cost.[17] The Postal Service could use all, any, or none of the ratemaking techniques on the list. To the extent that the Postal Service used pre-approved ratemaking techniques (it would be free, of course, to use others), the Commission's task in preparing its annual compliance statement would be less burdensome.[18] To the extent that the Postal Service did not use pre-approved techniques, it would run the risk of an adverse determination (and remedial order[19]) in the Commission's compliance statement. By pre approving certain ratemaking methods, the Commission would create incentives for the Postal Service to conform to the Commission's views on

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[16] Customers could even choose different ratemaking techniques for different mailings. *See* Decision of the Governors, Docket No. R2006-1, March 19, 2007, at 16: "The third option . . . would be to provide mailers a choice between two rate schedules . . . ." Under the OCA proposal, the list of options would not be limited to two.

[17] This is the basic lesson to be drawn from the article recommended by Professor Gregory Sidak at the March 13 Summit. http://www.prc.gov/docs/56/56056/Transcript-Summit-Meeting-3-13-07.pdf at 175. The article is "Cross-Subsidization: Pricing in Public Enterprises," Gerald R. Faulhaber, *The American Economic Review*, Vol. 65, No. 5 (Dec., 1975), pp. 966-977. As a practical matter, the statutory rate cap would prevent a class of mail from being charged its stand-alone cost.

[18] The Commission would need to verify that the Postal Service was properly implementing pre-approved techniques, but this would be much easier than evaluating a new ratemaking technique for compliance with the factors of the PAEA.

[19] 39 U.S.C. §§ 3653(c), 3662(c).

proper rate relationships—even though the PAEA delegates all initial ratemaking authority to the Postal Service.

The OCA has tested several possible ratemaking techniques against the criteria of the Act and found four that merit consideration for advanced approval. These techniques have long histories and are solidly grounded in economics and co-operative game theory. The techniques offer means of readily determining compliance with (1) justice and reasonableness of product rates, (2) coverage of attributable cost by product rates, and (3) appropriateness of workshare discounts—while simultaneously minimizing administrative burden. These techniques would (1) recover "ordinary" out-of-office delivery costs through a per-piece access charge (DAC) and (2) recover collection, retail, and overhead costs through a per-piece universal-service fee (USF).[20] The ratemaking methods range from individual rates for individual pieces to boundaries on rate changes for heterogeneous groups within subclasses.

The recovery of universal service costs via a uniform per-piece fee can be interpreted as follows. The PAEA imposes on the Postal Service[21]

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[20] The USF would be constant across all classes. The DAC could vary across classes as necessary to comply with rate caps.

[21] 39 U.S.C. §§ 101(a)(b). *See also* "USPS Transformation Plan," April 2002, App. U at U-1:

> Historically, Congress has provided the Postal Service a legal monopoly over the delivery of letters in order to provide financial support for universal service to all areas of the United States. This universal service obligation, or USO, as summarized in the Postal Reorganization Act of 1970, requires the Postal Service to "provide prompt, reliable, and efficient services to patrons in all areas and…render postal services to all communities" at "fair and equitable" rates. The Act further requires the Postal Service to "receive, transmit, and deliver throughout the United States written and printed matter, parcels and like materials…". The extent of the Postal Service's universal service obligation is quite broad. It must serve "as nearly as practicable the entire population of the United States."

> the obligation to provide postal services to bind the Nation together through the personal, educational, literary, and business correspondence of the people. It shall provide prompt, reliable, and efficient services to patrons in all areas and shall render postal services to all communities. The costs of establishing and maintaining the Postal Service shall not be apportioned to impair the overall value of such service to the people.

The Postal Service must also

> provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining. No small post office shall be closed solely for operating at a deficit, it being the specific intent of the Congress that effective postal services be insured to residents of both urban and rural communities.

Providing these services is a burden that has been imposed on the Postal Service as a whole. One can think of this burden as being financed from a fund whose source is separate charges imposed on *all* mailers, and the per-piece contributions to the "Universal Service Fund" from the intended beneficiaries should not exceed the per-piece contributions from non-beneficiaries. One might even argue that the beneficiaries of the universal service obligation should contribute significantly less to the fund.[22] And if the Postal Service finds that it can make higher profit by reducing the rate for a particular mailer below the level implied by the OCA mechanism, it has the authority to do so under section 3622(b)(4).

> Additional requirements specify that the Postal Service must offer a uniform rate for sealed letters.

[22] This result would occur if the phrase "just and reasonable" is equated with Rawlsian justice. In simple terms, deviation from equal division of benefits and burdens should be in the direction of improving the lot of the least well-off in postal rate making, the intended beneficiaries of the USO. Such a result also occurs under the Telecommunications Act of 1996. *See* http://www.fcc.gov/cgb/consumerfacts/universalservice.html.

Described below are several ratemaking techniques that do not violate any of the important objectives listed earlier as being compatible. One technique would use intelligent mail to charge separate rates for individual mailpieces:[23]

a. Identify universal service costs (*e.g.,* collection, retail, out-of-office delivery, overhead).

b. Identify the minimum out-of-office delivery costs needed to deliver "ordinary" pieces—*i.e.,* pieces not requiring customer contact or separate accesses for large pieces.

c. Divide the Postal Service's mail handling, mail processing, and transportation work into discrete stages and place a barcode reader at the beginning of each stage.

d. Have the Service calculate the total cost of each stage periodically.[24]

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[23] This illustration is an adaptation of a solution from Game Theory known as "Airport Pricing." See H. Peyton Young, Equity in Theory and Practice 88-90 (paperback 1996); William Thomson, "Cost Allocation and Airport Problems," (Mimeo, Feb. 2, 2007). The problem is to allocate the cost of an airstrip to the types of aircraft that use it. Aircraft are ordered by the length of runway they require, a Piper Cub requiring less than an Airbus 380. The Piper Cub could land on a short strip and would have no use for a runway capable of handling the Airbus 380. On the other hand, the Airbus 380 (and other types of aircraft between the size of the Cub and the 380) will use the portion of the airstrip needed by the Cub. The cost-allocation procedure spreads the cost of the Cub-size airstrip over all types of aircraft, since all types need a strip of at least that length. The extra cost of extending the strip to accommodate the next-smallest type of aircraft is allocated to all types except the Cub, since these aircraft will all use the first extension.

The postal analog to the air strip is the set of processing and transportation facilities required to get different types of pieces ready for carrier delivery. If we consider only letter-shaped pieces, the analog of the Piper Cub is a barcoded 5-digit piece entered at the destination processing plant. This piece requires only some container movement, DPSing, and transportation to the carrier station (plus whatever in-office work occurs at the delivery unit). All delivered pieces require this much capacity, and all would contribute to its cost. A 3-digit destination-entered piece would require more capacity. All pieces except 5-digit destination pieces would contribute to the extra cost of this extra capacity. This procedure continues until the cost of the last increment of capacity required to handle the letter-shaped analog of an Airbus 380 is allocated only to those letters. This procedure generates efficient component prices, since mailers pay only for the processing and transportation they actually use.

[24] This cost would include labor, capital, maintenance, PESA, depreciation, etc. Simple piggy-backing of indirect costs will not work with this mechanism. Consider the calculation of the change in cost resulting from adding capacity in a plant to handle a given volume of barcoded 3-digit letters instead of the same volume of barcoded 5-digit letters. There will be additional labor and machine hours, since an additional sort must be performed. The additional labor hours will generate additional use of HVAC, light, and water. The additional machine hours will generate more use of electricity and more maintenance. However, no additional equipment is needed. The 3-digit letters must be sorted to 5-digits *before* DPSing can begin, and the same equipment is used for both operations. No extra equipment means no extra space. Thus, the change in each element of indirect cost must be evaluated individually.

e. Have the Service count the total number of pieces through each stage each period.

f. Have the Service count the number of each mailer's pieces sent through each stage for the period.

g. Each mailer's share of the total cost of each handling, processing, or transportation stage is the ratio of the mailer's pieces to the total pieces of each stage.[25]

h. Each mailer's share of universal service and "ordinary" delivery costs is the ratio of the mailer's total pieces to total pieces entered into the Postal Service.

The rate for a piece would consist of a contingency add-on[26] plus the DAC plus the USF plus the processing,[27] handling, transportation, and *extra* delivery activities[28] *actually used* by a piece. Such a pricing technique would automatically generate worksharing discounts for all, since it would not charge a piece for avoided activities. Any mailer of any number of pieces could take advantage of this technique, with small

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[25] The same counting procedure could be applied to sorting or handling of bundles, containers, and transportation. In this case, the cost of, *e.g.,* the bundle-handling operations would be allocated first to bundles and then to the pieces within the bundles. Pieces requiring, "extra" delivery services would be scanned on delivery. *See* GAO, "Delivery Performance Standards, Measurement, and Reporting Need Improvement, GAO-06-733, July 2006, 80-81 (description of tracking pieces, bundles, containers, and vehicles).

[26] The Postal Service's ability to earn profits depends, in part, on the existence the contingency provision built into R2006-1 rates. The revenue for this contingency provision plus an inflation factor will be built into all future rates (just as current rates contain all previous contingency allowances). The contingency add-on would be calculated as the contingency provision from the last PRA rate case plus cumulative inflation all divided by total volume. This assumes that the Service holds actual expenses below the rate of inflation. If not, the contingency add-on would have to be reduced in order to keep total charges for a piece below the rate cap.

[27] Including in-office delivery costs.

[28] The term "processing, handling, and transportation activities" is intended to encompass all operations that involve scanning of pieces, containers, or vehicles (including rail cars and aircraft). The term "extra delivery activities" is intended to encompass difficulties at a delivery point due to large shape or special service.

mailers working through a reseller of intelligent barcodes or IBI postage. The feasibility of this technique will be tested in the Bank of America NSA.[29]

This procedure generates the following outcomes.

a. The Postal Service would no longer have to file estimates of marginal cost or elasticity of demand, as the Commission would not need such estimates to make its annual determination under section 3653 (reducing administrative burden and improving financial transparency).

b. Every mailer who uses intelligent mail pays a total postage bill that is less than that mailer's stand-alone costs and greater than that mailer's incremental costs (just and reasonable cost allocation).

c. The Postal Service is free to identify specific mailers for optional rate schedules (NSAs) that increase profits (retained earnings).

d. Mailers contribute to the costs of universal service in proportion to their usage of the Postal Service (fair and equitable rates).

e. Mailers would not be charged for processing and transportation stages that they did not use (workshare discounts)

f. Mailers would not be charged for extraordinary delivery costs that they did not cause.

A second technique would be shape-based average-incremental-cost pricing. Under this technique, the rate for a piece would also consist of four separate charges. One charge would be the average total cost of processing, handling, transportation and extra delivery activities—*i.e.,* the total costs of processing, handling, transporting, and

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[29] Docket No. MC2007-1. As part of the NSA, the Postal Service will use intelligent barcodes, not only to identify the pieces of BAC and record the operations through which each piece passes, but also to enable BAC to identify the line of business associated with each piece. *See* Request of the United States Postal Service for a Recommended Decision on Classifications, Rates and Fees to Implement a Baseline Negotiated Service Agreement with Bank of America Corporation, Feb. 7, 2007, Attachment F, §§ IV.B.4.c, IV.C.3.

delivering a given shape of mail divided by the total volume of the shape. The other charges would be the contingency add-on, DAC, and USF described above.[30]

A third technique would be to allow any set of rates such that the proportion of costs contained in the calculations of the DAC and USF recovered from a class were within pre-approved limits. For example, First-Class rates would have to recover at least *x* percent, but no more than *y* percent, of delivery access costs plus Universal Service costs.

A fourth technique would be to require every rate element within a subclass to exceed *100+z* percent of attributable (*i.e.,* incremental) cost. This requirement, in concert with the statutory cap, would ensure that class revenues covered incremental costs and did not exceed stand-alone cost. The cost to serve any one subclass six days a week to every address in the country would far exceed the statutory cap. Thus, the statutory cap would prevent any subclass from paying more than stand-alone cost.

The four techniques described above have the following desirable properties.

- Simplicity
- Fairness[31]
- Ability and incentives to earn profits
- Reduced need for cost-based NSAs[32]

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[30] There would be no double-counting of delivery costs. Extra costs of difficult shapes or special services would be removed before calculating the DAC.

[31] "Postal rates shall be established to apportion the costs of all postal operations to all users of the mail on a fair and equitable basis." 39 U.S.C. § 101(d).

[32] Volume-based NSAs would continue to be needed to allow the Postal Service to take account of value of service. 39 U.S.C. §§ 3622(c)(1), (8).

A. Simplicity

The calculations required by the four techniques are simple—provided the necessary data are available. The formula for the USF is easy to state algebraically, but what exactly are the costs of universal service? The OCA defines these costs as (1) the costs necessary to manage a Postal Service capable of delivering six days a week to every address in the country (*e.g.,* general administrative costs) and (2) costs essentially required by the PAEA (*e.g.,* collection and retail[33]). Labor costs for these activities can be extracted from the current Cost Segments and Components Report.[34] Other costs may have to be extracted from existing expense account numbers. And some new accounts may have to be created by direction of the Commission.[35] In any event, the Commission is required by the Act to estimate universal service costs.[36]

The Commission's definitions of attributable costs can be greatly simplified, because the Postal Service is no longer required to set rates by marking up attributable costs. Rather, the Postal Service, as a profit-seeking enterprise, can be expected to set rates for individual classes, categories, or mailers (or individual pieces) based on *its* estimate of marginal cost and elasticity of demand. The Commission's task will be to verify that revenues of subclasses covered attributable and reasonably assignable costs, as defined by the Commission.

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33 *See, e.g.,* 39 U.S.C. §§ 101, 3651(b)(1).

34 *E.g.,* components 2.3, 18.1. Components such as 18.3 require reallocation to labor components.

35 *See* 39 U.S.C. § 3651(c).

36 *Id.* § 3651(b)(1).

B. Fairness

The disciplines of philosophy, political science, law, and economics have used game theory to develop concepts of justice or equity. One concept, called the "core" of a game is closely related to the concepts of incremental and stand-alone costs, as those terms have been used in Commission proceedings.[37] With respect to cost allocation, the core consists of the set of possible allocations among customers that the customers themselves would voluntarily accept rather than go without service altogether. The lack of coercion inherent in core allocations makes them attractive as criteria for both fairness and efficiency. Various allocation rules have been developed to ensure that a product or customer is assigned a fair share of costs.

The Commission can take advantage of allocation rules that ensure that no product is charged less than incremental cost or more than stand-alone cost. Specifically, the Commission can rely on the Postal Service's not charging a customer (or group of customers) more than stand-alone cost, as this would risk driving customers away and reducing profits. The pre-approved ratemaking methods described above guarantee that no customer (or group of customers) pays less than incremental cost.

C. Profit Incentives

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[37] *E.g.,* E. Peyton Young, Equity in Theory and Practice 81-96 (paperback 1995); Edward E. Zajac, Political Economy of Fairness 201-13 (paperback 1996). For a more technical discussion, see W. Thomson, "Axiomatic and Game-Theoretic Analysis of Bankruptcy and Taxation Problems: A Survey", 45 Mathematical Social Sciences 249-297 (2003); *id.,* The Theory of Fair Allocation (forthcoming Princeton University Press).

Under the PAEA, the Postal Service can earn profits by preventing the rate of cost increases from exceeding the rate of inflation. Potential profits are already built into current rates via the contingency provision. All of the ratemaking methods described above preserve these potential profits (either through an explicit charge or through rate relationships that build off existing rates). The Postal Service will realize these potential profits so long as its expenses do not increase faster than the rate of inflation.

D. Cost-Based NSAs

The first ratemaking technique proposed by the OCA (separate rates for separate pieces) eliminates the need for NSAs for low-cost mailers. By charging for the number of handlings and the amount of transportation consumed by a piece, that technique allows the equivalent of both workshare discounts and NSAs for any mailer. A mailer who believes that his mail is of higher quality than average, need only OneCode his mail and observe his savings on his monthly statement.

Part Two: Service Performance Under the PAEA

This section addresses service standards, and measurement of performance, for the major classes of mail, Special Services, single-piece international mail, and universal postal services.

No modern system for regulating rates for market-dominant products can be considered complete without modern service standards, and a means of measuring service performance. Establishing clear service standards and maintaining high levels of service performance is essential to protect mailers from higher rates imposed without reference to the statutory system for changing rates. For example, degrading service performance quality is one means of imposing higher rates on mailers without formally changing such rates.

OCA's research into the operation of other regulatory systems relying price caps (see *Part Four: Lessons from Other Regulatory Systems*) reveals that one of the greatest risks to customers is that the service provider will seek to stay within the price cap by degrading service quality.[38] OCA submits that, for most of the mail handled by the Postal Service today, the Postal Service already fails to meet the service standards it has itself established. Further degradation in service would have disastrous results for the nation's commercial activities.

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[38] This was also a concern of participants at the recent summit meeting on the changing postal regulatory environment; *see* Summit Meeting: Postal Customers Needs in a Changing Regulatory Environment, Tr. 1/ 151-52. The imposition of higher rates without formally changing such rates can also be achieved by imposing more stringent mail preparation requirements. Id., at 152; see also id., at 34-35.

In a *Report to Congressional Requesters, U.S. Postal Service, Delivery Performance Standards, Measurement, and Reporting Need Improvement*,[39] the Government Accountability Office (GAO) found pervasive failures on the part of the Postal Service to measure and report on its delivery performance:

> USPS does not measure and report its delivery performance for most types of mail . . . . [R]epresentative measures cover less than one-fifth of mail volume and do not include Standard Mail, bulk First-Class Mail, Periodicals, and most Package Services. . . .
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> USPS's rate of progress in developing a set of delivery performance measures for all major types of mail and been slow and inadequate, as has its progress in reporting its performance for these types of mail.
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> Some impediments to progress include USPS's lack of continued management commitment and follow through on recommendations made by joint USPS/mailer committees . . . .
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> Without complete information, USPS and mailers are unable to diagnose delivery problems so that corrective action can be implemented. In addition, stakeholders cannot understand how well USPS is fulfilling its basic mission, nor can they understand delivery performance results and trends. Deficiencies in measurement and reporting also impair oversight and accountability by PRC and Congress.
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> USPS has lacked commitment to implementing delivery performance measurement and reporting for all major types of mail; particularly, as some mailers told us, USPS has tended to resist greater transparency, oversight, and accountability. A USPS senior vice president told us that USPS had no plans for implementing additional measures of delivery performance. A second USPS senior vice president explained that although some pieces of mail may be tracked as automated equipment reads barcodes on the mail, enabling more information for management and diagnostic purposes, these pieces are unrepresentative, and USPS

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[39] GAO-06-733, July 2006, at "Highlights;" also at 5, 22, and 33-34.

> has no plans for using mail tracking data to develop representative measures of delivery performance. As for major types of mail that are not measured, USPS has publicly reported that it has no system in place for measuring service performance for Standard Mail on a systemwide basis and currently has no plans for the development of such a system. Similarly, USPS officials told us that it has no plans to develop representative measures of delivery performance for bulk First-Class Mail, which, after Standard Mail, is the second-largest volume of mail that is not measured.

GAO's findings suggest that it may not be advisable to rely solely on the Postal Service to measure and report its service performance.

A. OCA Proposal for Independent Service Measurement and Reporting by the PRC

For market-dominant products, the Commission is the last bulwark against the degradation of postal services provided to the mailing public. Unlike a business operating solely in the private sector, the Postal Service does not experience direct competition to maintain or improve service performance for market-dominant products. At the same time, given the statutory requirement to remain within the price cap, degrading service performance in untold ways will be an easy option for the Postal Service. Consequently, the Commission will find itself in an unending game of "cat and mouse" attempting to determine whether and how service performance has been degraded.

Congress understood this predicament. Under §3691, Congress expressed a clear preference for "objective external performance measurements for each market-dominant product," but gave the Commission the discretion to approve (or disapprove) use of an "internal measurement system."

In responding to this Congressional preference, OCA makes a bold proposal for the Commission to consider: the Postal Regulatory Commission should establish and administer a PRC-managed external performance measurement system for market dominant products. Such a system would provide aggregate service performance information, and thereby facilitate oversight and accountability by mailers and the Commission.[40]

OCA submits that mailers and the general public will have much more confidence in a PRC-managed system of performance measurement than one managed by the Postal Service. By definition, a PRC-managed measurement system would be independent: the design and execution of the external measurement system and data to be collected would be under the strict control of the Commission and its consultants. It is a matter of simple logic that anyone interested in how the Postal Service performs will find a neutral, objective Postal Regulatory Commission far superior to having the Postal Service, as the service provider, measure itself. It is natural that the Postal Service would strive to report its service performance in the best possible light—perhaps suppressing information that suggests lower-quality achievement or perhaps deciding, in the interests of keeping the measurement costs relatively low, to cut corners in the measurement system. This is clearly true today—EXFC does not collect any information on the 20 percent of destinating stamped and metered mail volume that is addressed to regions in the country with the lowest

[40] GAO-06-733 at 44.

population densities.[41] These are areas where delivery performance is likely to be worse than the mail population actually measured by EXFC. Due to this substantial gap in measurement and reporting, the Postal Service publishes an artificially high record of success in delivering First-Class Mail.

A PRC-managed external measurement of Postal Service performance would enhance transparency. The Commission can release reports to Congress and the public in aggregated, or disaggregated form, as it deems most useful and appropriate. It can also obtain service performance data on services or geographic areas that the Postal Service might decide it does not want measured. Moreover, the timing of the release of these public reports will be entirely within the control of the Commission, including release to the media.

Retail postal products readily lend themselves to measurement and anonymity. OCA respectfully suggests that the Commission give serious consideration to establishing such a measurement program in the short term. Although data collection is more complicated for permit-paid, BMEU-entered bulk mail, the Commission may want to establish such external measurement systems for bulk mail. According to the GAO, the Postal Service has long resisted measuring bulk mail service performance.

For its part, the Postal Service will almost certainly want to use internal measurement systems so that it can provide mailer-specific and facility-specific information for strategic use by mailers. The Postal Service would be free to measure

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41 Id. at 96.

mail as it sees fit—both systems can co-exist, although in the interest of economic efficiency, duplication should be avoided.

For the first time, review of the Commission's budget will not be limited to the Postal Service (former §3604 of title 39). Under PAEA §504(d), the Commission will submit its budget to Congress. Congress' favorable or unfavorable reaction to the expenses associated with Commission administration of a measurement and reporting system would be easy to gauge.

B. Postal Service Neglect of Service Standards for Special Services, International Mail, and Universal Services

Pursuant to Title III of the Postal Accountability and Enhancement Act ("herein "PAEA"), the Postal Service has begun a process to establish modern service standards for market-dominant products. Under the Postal Service's direction, a workgroup has been organized, operating through the Mailers Technical Advisory Council (MTAC), to receive industry guidance on modern service standards and measures for service performance.[42] In addition to the main workgroup, four subgroups have been established, one each for the four major mail classes in the market-dominant category—First-Class Mail, Periodicals, Standard Mail, and Package Services.[43]

However, the Postal Service's efforts are too limited because it has defined service too narrowly. As a result, while service standards are to be established for the four major classes of mail, service standards are not being considered at all for some

[42] Meeting Minutes of MTAC Workgroup 114: Service Standards and Measurement for Market-Dominant Products, February 21, 2007.

[43] Id., at 3.

services. One group of such services is Special Services. Another is single-piece international mail services. Also excluded are services considered part of the Postal Service's universal service obligations. Such universal services typically include terms of access to delivery services, retail services, and collection.[44] Other services deserving modern service standards include the processing of Change of Address notices and complaints concerning service actually provided.

The Commission should incorporate service standards and service performance measurement into the system of modern rate regulation it recommends. Regulating rates for market-dominant products can be effective only if service standards and measurement of service performance is given equal weight in the system of modern rate regulation.

1. Special Services

The Postal Service's existing workgroup process does not address the need to establish service standards or service performance measurement for special services, as required by Title III. Market-dominant products, for which service standards are to

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[44] *See supra* Part One: Price Setting Under the PAEA, at 9-10. Section 702 of the PAEA requires a written report on universal postal service in the United States that includes consideration of the "scope and standards of universal service provided under current law (including sections 101 and 403 of title 39, United States Code)." Section 403(b) specifies the following responsibilities of the Postal Service:

> (1) to maintain an efficient system of collection, sorting, and delivery of the mail nationwide;
>
> (2) to provide types of mail service to meet the needs of different categories of mail and mail users; and
>
> (3) to establish and maintain postal facilities of such character and in such locations, that postal patrons throughout the Nation will, consistent with reasonable economies of postal operations, have ready access to essential postal services.

be established, are specified in Title II of the PAEA, and include "(9) special services."[45] As noted above, the four subgroups established to date address only the four major mail classes.

Any standard setting mechanism must address the market-dominant special services, identified by Fee Schedule: Address Corrections (911); Zip Coding of Mailing Lists, Correction of Mailing Lists, Address Changes for Election Boards and Registration Commissions, and Sequencing of Address Cards (912); Post Office Boxes and Caller Service (921); Business Reply Mail (931); Merchandise Return Service (932); Bulk Parcel Return Service (935); Shipper Paid Forwarding (936); Premium Forwarding Service (937); Certified Mail (941); Registered Mail (942); Insurance (943); COD (944); Return Receipts (945); Restricted Delivery (946); Certificate of Mailing (847); Delivery Confirmation (948); Signature Confirmation (949); Parcel Air Lift (951); Special Handling (952); Stamped Envelopes (961); Stamped Cards (962); Money Orders (971); and, Confirm (991).

With few exceptions, the Postal Service states that "[t]here are no service or performance goals, objectives, or directives for [ ] special services."[46] Of the 19 special services identified above, the Postal Service states that the following have no service or performance standards: Registry, COD, Certified Mail, Money Orders, Return Receipts, Stamped Cards, Stamped Envelopes, Post Office Box/Caller Service, Bulk Parcel

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45 Postal Accountability and Enhancement Act, Pub. L. No. 109-435, § 201.

46 Docket No. R2005-1, Tr. 8D/4698 (OCA/USPS-32).

Return Service, Restricted Delivery, and Shipper Paid Forwarding.[47] Nor is there evidence of documented service standards for Business Reply Mail (931), Merchandise Return Service (932), Premium Forwarding Service (937), Parcel Airlift ((951), Special Handling (952), or Confirm (991). The Postal Service is able to cite documented service standards for the following special services: 1) processing times for properly completed and supported claims seeking payment of Postal Insurance; 2) delivery scan rates for Delivery Confirmation and Signature Confirmation services used in conjunction with Priority Mail, First-Class Mail parcels, and Package Services; and, 3) response times for the correction and return of mailing lists with respect to Address Changes for Election Boards, Correction of Mailing Lists, and ZIP Coding of Mailing Lists services.[48] Nevertheless, the Postal Service claims a "scan performance goal" for Certified Mail,[49] and cites the existence of box "Up Times" for post office boxes.[50]

Moreover, the nature of many special services requires that separate attention be given to the establishment of standards for special services. Traditionally, special services have been considered ancillary to the major mail classes, which have their own service standards.[51] This suggests that service standards of the underlying mail

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[47] Id. The special services listed in response to OCA/USPS-32 were referenced in Tables 11 and 12 of the testimony of witness Taufique (USPS-T-28) in Docket No. R2005-1. Tables 11 and 12 also included "Permit Imprint Permits" and "Meter Service." Permit Imprint Permits consist of miscellaneous fees, and Meter Service was removed as a special service offering in Docket No. R2006-1. PRC Op. R2006-1, para. 5254.

[48] Docket No. R2005-1, Tr. 8D/4698 (OCA/USPS-32).

[49] Docket No. R2005-1, Tr. 8D/4948 and Tr. 8D/4945 (OCA/USPS-166 and 164), respectively.

[50] Docket No. R2005-1, Tr. 8D/4945 (OCA/USPS-164). Post office box "Up Times," which are posted in and vary by office, are generally between 9:00 a.m. and 12:00 p.m.

[51] Docket No. R2005-1, Tr. 8D/4698 (OCA/USPS-32).

classes are relevant to special services. In general, the primary service provided for the major mail classes is delivery; thus, standards based upon delivery time are the most important benchmark for such classes. For the four major classes of mail, therefore, the establishment or revision of delivery service standards are the primary focus of the four MTAC sub-workgroups.[52]

For some special services, however, delivery time often, but not necessarily, attaches to the underlying class of mail. In the case of Return Receipt, for example, the one-, two-, or three-day service standard may be relevant when the Return Receipt card is detached from a piece of First-Class Mail by the carrier and returned through the mail to the original sender.[53] For other special service, delivery time may not be a relevant service standard. In the case of Certified Mail, the attached Certified Mail label will receive the same delivery as the underlying mailpiece. However, mailers using Certified Mail are purchasing a record that provides proof of mailing and delivery, making the recording of entry and delivery the most important service requiring a standard.

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[52] OCA is in no way suggesting any deviation from the standards/measurements devised in the MTAC workgroups for MTAC members. In the MTAC workgroups, the Postal Service understandably gains input primarily from MTAC members—small, medium, and large business customers of active trade associations. It is essential that the needs of consumers and small businesses (i.e., businesses so small and remote that they are unlikely to be members of the MTAC associations) also be considered in establishing service standards and measurements for these mailers. The Flute Network (with 6000 subscribers) is a good example of the type of non-profit Standard mailer whose mail may not be measured under some of the fairly costly, sophisticated tools envisioned by the Postal Service. Rather, we propose that the Postal Service supplement the MTAC efforts with research specifically targeted to the needs of low-volume or low-density Periodicals and Standard Mail.

[53] From the mailer's perspective, a more meaningful service standard than that of the underlying mail class would be the total delivery time in days for the Return Receipt card, from entry by the original sender of the mailpiece with the attached card to the return receipt of the card.

As these examples suggest, characteristics other than delivery time should form the basis for many service standards for special services. These examples also suggest that special additional attention will be required to design and execute systems to accurately and consistently measure service performance for special services.

2. Single-Piece International Mail Services

For the first time, Congress gives the Commission jurisdiction over single-piece International Mail (39 U.S.C. §3621(a)(10)). Absent from the list of MTAC subgroups that are determining modern service standards and measurement tools is international mail products. Congress recognizes that the Postal Service has a *de facto* monopoly over single-piece International Mail products and suggested nowhere in the PAEA that these products should receive inferior treatment to the four major classes of mail. It is essential that the Postal Service establish a workgroup (not necessarily through MTAC) to set modern service standards and performance measurement tools for single-piece International Mail.

3. Universal Service Obligations

A modern system of regulating rates that incorporates modern service standards must also address the totality of services provided to the mailing public. In addition to the service standards for the various classes of mail and special services, standards should be established for services important to the mailing public that cut across the mail classes, such as the availability of delivery, convenience of retail postal services, and collection of mail. Other such services include processing change of address orders and public complaints concerning postal services. The nature of these "universal service" obligations should be defined as modern service standards that are incorporated into the Commission's recommended system of modern rate regulation.

The "concept of universal postal service has never been defined in the United States."[54] However, in 39 U.S.C. §§3691, as well as §§101 and 403,[55] Congress has articulated (although not exhaustively) the essential elements of universal service. These include:

> (Section 101)
>
> "prompt, reliable, and efficient services to patrons in all areas and shall render postal services to all communities"
>
> "[t]he costs of establishing and maintaining the Postal Service shall not be apportioned to impair the overall value of such service to the people"
>
> "[t]he Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining"
>
> it is the "specific intent of Congress that effective postal services be insured to residents of both urban and rural communities"
>
> [p]ostal rates shall be established to apportion the costs of all postal operations to all users on a fair and equitable basis"
>
> "the Postal Service shall give the highest consideration to the requirement for the most expeditious collection, transportation, and delivery of important letter mail"
>
> "[m]odern methods of transporting mail . . . to achieve overnight transportation to the destination of important letter mail to all parts of the Nation shall be a primary goal of postal operations"

(Section 403)

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54 H. Rept. No. 66, Part 1., 109th Cong., 1st Sess. 62 (2005).

55 *Supra* Note 44.

> "The Postal Service shall plan, develop, promote, and provide adequate and efficient postal services at fair and reasonable rates and fees"
>
> "The Postal Service shall receive, transmit, and deliver throughout the United States, its territories, and possessions . . . and . . . throughout the world, written and printed matter, parcels, and like materials"
>
> "The Postal Service shall serve as nearly as practicable the entire population of the United States"

It is the responsibility of the Postal Service to:

"maintain an efficient system of collection, sorting, and delivery of the mail nationwide"

"provide types of mail service to meet the needs of different categories of mail and mail users"

"establish and maintain postal facilities of such character and in such locations, that postal patrons throughout the Nation will . . . have ready access to essential postal services"

"the Postal Service shall not . . . make any undue or unreasonable discrimination among users of the mails, nor shall it grant any undue or unreasonable preference to any such user"

(Section 3691)

Service standards shall be designed to achieve the following objectives

"enhance the value of postal services to both senders and recipients"

"to preserve regular and effective access in all communities, including rural areas or where post offices are not self sustaining"

"to reasonably assure Postal Service customers delivery reliability, speed, and frequency consistent with reasonable rates and best business practices"

to take into account "the degree of customer satisfaction with Postal Service performance in the acceptance, processing and delivery of mail"

to take into account "the needs of Postal Service customers, including those with physical impairments" to take into account "the effect of changes in technology, demographics, and population distribution on the efficient and reliable operation of the postal delivery system"

Standards for access to delivery services by the mailing public should be defined in objective, measurable terms. In this regard, service standards and measurement of delivery service are essential to satisfy Congress' intent with respect to "delivery reliability," §3691(b)(1)(C); "the degree of customer satisfaction with Postal Service performance in the . . . delivery of mail," §3691(c)(2); and "the value of postal services to . . . recipients," §3691(b)(1)(A).

Presently, delivery is required by law to be 6-days per week (Monday through Saturday).[56] In addition to the number of days per week and deliveries per day, standards for satisfactory delivery should specify the time of day that mail is delivered (i.e., no later than 5 p.m.); the delivery of mail to each delivery address every delivery day (assuming there is mail for the address); and, no mis-delivered mail (i.e., all of the mail addressed to me is delivered to me, not another address; and all the mail that I receive is addressed to me, not for another household or business).

OCA emphasizes the importance of establishing service standards for the time of day of delivery. Numerous media reports have indicated that in locations around the country, carriers are delivering mail in the dark, frequently late in the evening. Delivery at this time of day creates great inconvenience for mail recipients concerned about their safety when picking-up mail at night. It also increases exposure to mail theft that may

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56 Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act, Pub. L. 109-115, "Payment to the Postal Service

occur when late-delivered mail is left outside overnight. Delivery of mail to each address each delivery day has also been identified as a nationwide problem in media reports caused by the Postal Service's unwillingness (or insufficient efforts) to fill carrier vacancies and its increased reliance on substitute carriers whose knowledge of a route clearly is not equal to that of a permanent carrier, resulting in mail deliveries being skipped one or more times per week. This is not the expectation of mailers, whose mail purchase value is diminished by erratic delivery; nor does it satisfy the needs of recipients who may suffer adverse consequences by infrequent deliveries (such as late payments for late-received bills).

Modern service standards for access to retail postal services are also necessary. The wording used in §3691 strongly suggests Congress' intent for the establishment of service standards applicable to retail channels ("regular and effective access to postal services in all communities," §3691(b)(1)(B); "degree of customer satisfaction with . . . acceptance," §3691(c)(2); "the value of postal services to . . . senders," §3691(b)(1)(A). The essential elements of satisfactory standards regarding access to retail channels include time spent waiting in line for service at a retail counter; proximity of post offices to public transportation; adequate parking for access by car; the hours of business for retail facilities; the number and location of street collection boxes; and the time that mail is picked up at street collection boxes. OCA proposes that service standards be devised that are expressed in objective terms, such as number of retail

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Fund" (2005), ("Provided further, That 6-day delivery and rural delivery of mail shall continue without windows/population; distance of post offices to public transportation; number of street collection boxes/population; distance of consumer and small business mailers to nearest street collection box; distance of consumer and small business mailers to nearest postal retail facility; number of hours open/population; and proportion of hours by time period (e.g., Monday –Friday, 9 a.m. – 5 p.m.; Monday – Friday, 5 p.m. – 8 p.m.; Saturday 9 a.m. – noon; noon – 3 p.m.; Sunday 9 a.m. – noon; noon – 3 p.m.).

The Change of Address is an important service provided by the Postal Service. Approximately 17 percent of households move each year, requiring the updating of their address information for family and friends as well as various business and periodicals mailers.[57] However, timely changes of address changes are one of the most problematic services offered by the Postal Service.[58] Oftentimes, accurate change of address notices filed by customers in advance of a move are effectuated many weeks after the move has occurred, leaving customers desperate to locate important mail matter. To give one illustration of the hardship that may ensue, OCA was contacted by a small business that had relocated from one county in Texas to an address in a different county. A change of address was timely filed (well in advance of the move). For many weeks, bill payments made to the business were held in the former delivery office and were not forwarded. The small business involved contacted OCA in

reduction:”).

[57] 2002 Comprehensive Statement on Postal Operations, U.S. Postal Service, at 62; *see also* http://www.usps.com/businessmail101/addressing/checkingAccuracy.htm, which states “17% of Americans change address annually.”

[58] Docket No. R2005-1, Tr. 8C (Part 1)/4347-65 (DFC/USPS-3).

desperation—for lack of essential revenues that were contained in the mailed payments, the small business was on the verge of bankruptcy.

As a valuable service provided to the mailing public, Change of Address service standards should include the following: the time to process change of address notices or cards; the number of days to deliver to the new address, subsequent to filing a change of address order; and, a mechanism for customers to determine the location of their mail.

The Postal Service operates a Call Center, as well as its website, for postal customers seeking information on prices and available services, as well as general information. Both also provide means for postal customers to register complaints about the quality of service they have received. In this regard, the Postal Service receives over 2 million complaints concerning service each year. Such complaints range from undelivered, delayed or damaged mail, to long wait-times at retail windows, as well as rude retail clerks.

In the first instance, the Postal Service's top priority should be to minimize service complaints by improving service. However, when service complaints do arise, the Postal Service should establish service standards for the handling of such complaints in a timely fashion. Service standards should exist for receiving the initial customer complaint, such as the number of rings before a call is answered by the call center; the number of days before providing an initial response to the customer's complaint; and, the number of days for subsequent follow-up responses.

Part Three: Competitive Products Under the PAEA

Congress devises an asymmetric system for the pricing of competitive (versus market-dominant) products and services. Market-dominant prices, as discussed in *Part One*, must comply with/reflect a large number of requirements, objectives, and factors. By contrast, Congress explicitly prescribes very few requirements for competitive products. Most of these are in the nature of a "floor" for competitive prices. In 39 U.S.C. §3633, the Postal Service is prohibited from subsidizing competitive products by market-dominant products; each competitive product must cover its attributable costs; and all competitive products must bear an appropriate share of the institutional costs of the Postal Service.[59]

The rate "floor" that the PAEA imposes on competitive products is a sweeping constraint. The PAEA makes a distinction between "classes" and "products." This distinction creates a difference in how the Commission evaluates coverage of attributable costs for market-dominant and competitive products. For market-dominant products, the Act repeats the requirement of old section 3622(b)(3) that a "class" bear its attributable and reasonably assignable costs.[60] For competitive products, the Act requires each "product" to recover its attributable cost.[61] The latter requirement is much more stringent than the former.

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[59] In addition, 39 U.S.C. §3634 requires the Postal Service to pay an "Assumed Federal income tax" on its competitive products.

[60] 39 U.S.C. § 3622(c)(2). There is additional language with respect to estimating attributable costs, but the "requirement" concerning costs of a "class" remains the same as old section 3622(b)(3).

[61] *Id*. § 3633(a)(2).

The word "product" is defined in section 102(6) as "a postal service with a distinct cost *or* market characteristic for which a rate or rates are, or may reasonably be, applied . . . ." (Emphasis added.) This definition seems to be based on rate differences at the rate cell level. Such a result seems to be required by the phrase "distinct cost . . . characteristic." Virtually all differences among rate cells are cost-based. For example, within Priority Mail, transportation costs are allocated across rate cells according to distance.[62] One aspect of the definition that might be seen as running against the rate-cell interpretation is the phrase "rate or rates." If a single product can have "rates" associated with it, the rate-cell interpretation could be ruled out. However, even individual rate cells can have more than one rate associated with them. This occurs in both Express Mail and Parcel Post. The same weight/zone in Express Mail has different rates depending whether a piece is Post Office to Post Office or Post Office to Addressee. The same thing can occur with Inter-BMC and Intra-BMC Parcel Post. Accordingly, "product" within the competitive market is defined at the rate-cell level.

While Congress was explicit in preventing cross-subsidization from the market-dominant, to the competitive product, basket, and within the competitive basket, there are no comparable restrictions placed on the price "ceiling" for competitive products. This lack of restrictions suggests that the Postal Service has great flexibility to price its products at higher levels than were seen under the PRA. It would not be an exaggeration to characterize the new flexibility to set prices for competitive products as a major step toward deregulating the provision of such products.

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62 PRC Op. R2006-1, para. [5317].

The experience of the cable industry after deregulation at the Federal Communication Commission is relevant and provides a cautionary note about the deregulation of products in an environment in which the provider proves to have a *de facto* monopoly over a significant volume of the product. The Commission's system of regulation should include provisions to monitor the level of competition actually occurring and provide now for procedures and, if possible, the substantive criteria, for moving competitive products back into the market dominant list of products, if necessary.

Cable deregulation after the 1984 Cable Communications and Policy Act led to unexpected consequences. About 20 years after the legislation, the rates charged to consumers for cable services had increased 50.3 percent compared to CPI increases of 19.3 percent. This largely resulted from the lack of competition in many of the areas where cable systems operated. Direct competition with other cable companies occurred relatively rarely. This history is instructive and perhaps a warning of the potential future impact of the PAEA on rates for those "competitive" postal services that may not be, in fact, as competitive as it is believed.

For instance, Express Mail, Priority Mail, and bulk parcel post are the primary competitive postal products enumerated in Section 3631 of Title 39. Much of the Priority Mail and Express Mail, and some bulk parcel post, are sold at retail, although the products are also entered at various plant entry points.[63] The degree of competition between these products and the products of other carriers is uncertain. The Postal

[63] International Mail is also a competitive product, but that special case is not considered here.

Service provides a different service in some ways that may be important in terms of future pricing. For instance, the Postal Service provides service six days per week and, in some cases, seven days per week. The Postal Service delivers packages via a familiar Postal Service carrier. The Postal Service provides service of these products to all geographic areas in the nation, whereas its competitors do not provide service to all geographic areas. In many rural localities, the degree of competition is diminished, if not totally absent, for some products. Consequently, the Postal Service may be able to increase prices for certain products to levels not now anticipated, and it may do so. Alternatively, if, in fact, there is less than full competition for any of these products, the Postal Service could easily reduce service in a number of ways that would reduce its costs without reducing prices.

Deregulation of competitive Postal Service products leaves this Commission with only limited authority over the pricing of competitive products, but the Commission does retain some authority and must not simply assume that competition will be free and open, effective and workable, or that service will not diminish as a result of less than effective competition. The Commission should be prepared for possible future consequences and establish procedures now to monitor the potential negative impacts if something less than full competition exists for these products in order to determine whether the classes of service are appropriately allocated to the competitive and market-dominant categories.

If the Commission is to monitor attributable costs of the competitive products, the Commission‘s regulations should, at base, assume the provision of certain levels of service as provided for in the classes of service established by the Governors. The prices and services offered with the "competitive" classes have heretofore been regulated under the PRA. Workable competition is assumed, but is not yet a certainty. The actual impact of deregulation upon service levels is unknown. The OCA believes the Commission must be vigilant from the outset of the PAEA and insure that the level of service initially defined and provided for by the established rates is maintained at the rates offered. If the service offered is diminished, that fact must be conveyed to the Commission and included within the DMCS.

Where competition is lacking among products, service could diminish to the point of hardship on affected customers. The Commission must monitor these situations so that it may consider whether to move portions of competitive products, such as single-piece Priority Mail and single-piece Express Mail, to the market-dominant list, pursuant to 39 U.S.C. § 3642. In fact, if it is determined that Postal Service has the power to effectively decrease quality significantly, or raise prices significantly, then, unquestionably the Postal Service is the market-dominant provider. Accordingly, such products should then be moved to the market-dominant category.

Where there is competition, if service declines precipitously, without advance indications, so may volumes decline, leading to unexpected cross-subsidization of competitive products by market-dominant products. The Commission's competitive product regulations must therefore also focus on the specific services offered and prohibit un-announced changes in service in the competitive classes to better insure against cross-subsidization and to insure that competitive products collectively cover an appropriate share of institutional costs of the Postal Service.

Several sections of the PAEA suggest that it may be necessary to transfer products initially designated as competitive into the market-dominant category. Section 403(a) of title 39 provides that services shall be provided "at fair and reasonable rates and fees." Presumably, this means *all* rates. In the same section, the Postal Service is directed to "serve as nearly as practicable the entire population of the United States." And in §403(c), except as specifically authorized in this title, the Postal Service must not "make any undue or unreasonable discrimination among users of the mails, nor shall it grant any undue or unreasonable preferences to any such user."

The policy embodied in these sections prohibits non-uniform rates to all mailers except in justifiable circumstances. The Postal Service cannot establish discriminatory rates for any of its service, including competitive category products, unless they are specifically justified and ultimately found PAEA-compliant by the Commission (likely in the §3653 annual compliance determination or in a §3662 complaint proceeding). Section 3632 (Action of Governors) permits rates not of general applicability, but they are subject to special provisions and are for NSAs. (§404. Specific Powers).

In OCA's view, the Commission should be open to the possibility, and should be prepared, to exercise the powers granted to it by Congress in §3642, "Transfers of products between market-dominant and competitive categories of mail." Section 3642(a) specifically permits, upon the Commission's own initiative,[64] transfers of

[64] Or the initiative of the Postal Service or "users of the mails."

products from the competitive category to the market-dominant category under criteria as set forth in 3642(b). Specifically, the criteria apply where the Postal Service has market power to set the price of the product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products giving due regard to the availability and nature of enterprises in the private sector providing the service, the views of those using the product, and the likely impact on small business concerns as defined. Thus, the Act specifically recognizes the possibility that some competitive products may not be competitive and can be removed by the Commission to the market-dominant category.

Part Four: Lessons from Other Regulatory Systems

OCA has conducted research on how other regulatory systems contend with price caps and maintenance of high quality services. The fruits of this research are presented in this section.

A. Price Caps: An Overview

Price caps are generally used to regulate the prices charged by a utility for its services. Typically the regulatory agency determines an appropriate base price, and the price cap may be subsequently adjusted upwards to account for inflation. In most cases, the upward adjustment is offset downwards to some degree to account for a specified productivity offset. A price cap will usually cover a basket of related services or products, with the firm being permitted to raise its rates for some of the services in the basket, provided it lowers its rates for other services, thereby keeping within the overall price cap. Price-cap regulation has been implemented to provide competitive incentives to regulated firms when conditions indicate that effective competition is not feasible. Typically price-caps are established when cost of service regulation is being replaced by a less-regulated system.[65] The price-cap approach is identified as "CPI-X," in which the formula used to set price caps takes into account the rate of inflation, while subtracting some or all of the expected efficiency savings. In cases where both adjustors are set equal to zero, the price cap is a constant.

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[65] Jaison R. Abel, "The Performance of the State Telecommunications Industry Under Price-Cap Regulation: An Assessment of the Empirical Evidence," National Regulatory Research Institute, September 2000, NRRI 00-14 at 7. (Hereinafter referred to as "Abel").

The movement to utility deregulation spurred the interest in price caps. Under traditional cost-of-service utility regulation, the firm is required to provide service at fixed rates and is permitted to earn fair returns on capital and recoup operating and other allowable costs. With increasing deregulation and competition utilities have been allowed greater pricing flexibility. The use of price caps was expected to remove price escalation risks due to transitory or inadequate competition in the movement to competitive markets. The implementation of price caps is a departure from cost-of-service regulation, which lacks incentives for productivity improvement, or cost minimization, and involves substantial regulatory costs and delays. Under a price cap, the utility has an incentive to operate at increased efficiency, by eliminating unnecessary costs, given that it can retain some or all of the gains from efficiency improvements. The Postal Service, of course, under 39 U.S.C. §3622(b)(5), is now explicitly permitted to retain earnings, having been freed from the PRA break-even constraint.

B. Price Caps: Implementation and Impacts

Price caps have been implemented in both telephony and electric power, usually in conjunction with deregulation:

- Telephone: In 1999, 37 state public utility commissions used price-cap regulation.[66]
- Electric: An Edison Electric Institute study has identified 65 cases of price caps in the electric utility industry.[67] Rate freezes and price caps have in some cases been

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66 Id. at 3.

negotiated as part of a decontrol package in the deregulation of electric utility markets, with the object of protecting consumers from market disruption and giving them a share in some of the expected benefits resulting from industry decontrol and restructuring.

Regulatory systems based on price caps produce several benefits:

- Price caps control prices paid by the consumer, at least in the short run. Without them, in the absence of vigorous competition, large spikes in consumer electric prices have immediately followed decontrol in some states.
- Price-caps can promote production efficiency by encouraging cost minimization behavior through investments in infrastructure, research, and development efforts, as well as minimization of operating and maintenance costs.[68]
- Importantly, cross-subsidization of unregulated products by regulated products is no longer profitable.

Jaison Abel states that given that firms under price caps have an incentive to minimize costs, the effect of price caps on service quality has been a matter of concern:[69]

> For example, one might quite straightforwardly predict that firms will have lower production costs, increased productivity, and be more apt to make investments in modern infrastructure under price-cap regulation than under more traditional forms of regulation. On the other hand, the

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[67] Edison Electric Institute, "Why Are Electricity Prices Increasing?" EEI website.

[68] Price caps do not necessarily promote allocative efficiency. The price cap, when set, may not equal incremental cost. Given that costs can change over time, the inequality can persist.

[69] Abel at 9.

> direction real prices will move or how service quality will be affected is not entirely clear.

Concordant views were articulated at the recent Regulatory Summit: “[I]t's important to prevent the Postal Service from beating the index just by cutting corners on service performance.”[70]

Abel reports the results from his review of studies of the impact of price caps in the telephone business.[71]

- Prices: Results are mixed. Some research indicates that prices are lower, apparently due to the technological efficiency component of the price-cap. The author noted that the result may also be associated with the simultaneous effects of increased competition.
- Productivity: Two out of the three studies that address productivity find a strong positive relationship between price caps and productivity, while the third finds a positive, but insignificant impact.[72]
- Financial Performance: Telephone companies under price-cap regulation appear to be performing no worse financially than telephone companies under other forms of regulation.
- Service Quality: The studies did not find a deterioration of service quality, with one exception, i.e., that there were longer repair times for equipment than was previously the case. However, the results were considered to be inconclusive: the

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[70] Remarks of panelist David Levy. Transcript of Summit Meeting, March 13, 2007, at 151.

[71] Methodologies and conclusions differ to some extent from study to study.

potential for possible deterioration in service was apparently somewhat offset by technological change and network modernization.

A National Regulatory Research Institute (NRRI) survey found that 47 states had quality of service standards for telephone services.[73] Clements makes a case for imposition of standards:[74]

> Economic welfare improves if demand is sensitive to quality, the elasticity of demand is low, the marginal cost of quality is low, and consumers place low value on poor quality.

The question may arise whether service standards are necessary, especially in environments in which there is emerging competition. The answer, however, is clear – Commission-imposed, and monitored, standards can safeguard consumers against quality degradation and discrimination and improve aggregate economic welfare. An unregulated monopolist will generally not optimally set quality.[75] In a price-cap system of regulation, “Quality degradation with a binding price restraint is not entirely unexpected.”[76]

The theoretical literature seems to indicate that minimum quality standards in both monopoly, and even some competitive environments, are welfare enhancing and

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72 Abel at 34.

73 Michael Clements, “Quality of Service and Market Implications of Asymmetric Standards in Telecommunications,” NRRI, October 1998.

74 Id. at 9.

75 Id. at 5.

76 Id. at 6.

thus desirable.[77] As of 1998 most state commissions imposed some type of minimum threshold quality-of-service standard.[78]

Robert Burns, a staff member at the National Regulatory Research Institute, has concluded that price-cap regulation in the telephone industry resulted in service deterioration. With respect to the electric utility industry, he noted that there are also concerns about quality of service, outage rates being but one example.[79] He noted that under price-caps and rate freezes, utilities have an incentive to cut costs, especially operation and maintenance costs. He cited an example in the electric utility industry – a new concept called "predictive" maintenance. Predictive maintenance is performed on a just-in-time basis, rather than as part of an ongoing program of preventive maintenance. Burns concluded that for many customers, the value of lost power may be higher than the cost of avoiding an outage. The concern is that quality of service could deteriorate under a program of predictive maintenance.[80]

Burns summarized service standards experience as of 2003:

- 23 state commissions rely on reporting and monitoring to assure reliability and service quality.
- 13 states have put into place objective performance standards.

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[77] Id. at 10.

[78] Id. at 23.

[79] Robert E. Burns, Esq., "The Impact of Price Caps and Rate Freezes on Service Quality," Harvard Electricity Policy Group, December 11, 2003.

[80] Newspaper articles in recent years have noted that insufficient tree trimming and budget cuts are associated with power outages.

- 7 states have penalties for failing to meet the objective standards.

  10 states set minimum standards for tree trimming.

- 10 states address poorly performing circuits.

Anna Ter-Martirosyan[81] examined quality impacts of incentive regulation[82] in the electric utility industry. The main findings were that incentive regulation results in quality degradation, in particular when it is not paired with explicit quality provisions; and that incentive regulation affects quality through the impact on operations and maintenance expenses. She noted that many states explicitly incorporate quality standards into incentive regulation plans, along with financial penalties and rewards in meeting certain quality criteria. She notes that:[83]

> I have found that incentive regulation is associated with deterioration of some dimensions of quality of service for distribution utilities, if it is not accompanied with strict quality benchmarks. However, if quality benchmarks are present, the quality of service is the same or even higher than the quality without incentive regulation.

An NRRI survey with 41 state responses on electric reliability rules and standards found the following:[84]

- Reporting and monitoring: 24 states
- Performance standards: 21 states

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81 Anna Ter-Martirosyan, "The Effectiveness of Incentive Regulation on Quality of Service in Electricity Markets," Working Paper, October 2002, George Washington University, Department of Economics, at 4. (Hereinafter "Ter-Martirosyan").

82 She defines incentive regulation as rate case moratoriums, rate freezes, price caps, revenue caps, and revenue sharing.

83 Ter-Martirosyan at 21. She defines quality of service in terms of duration of outages. Frequency of outages is not affected by incentive regulation.

- Penalties/Rewards: 15 states
- Data on outages: Collected in some form by 26 states
- Power quality: Collected by 13 states
- Accounting for service quality in performance-based or incentive ratemaking mechanisms: 7 states

Ter-Martirosyan also reported that most benchmarks are utility-specific, and that 19 states had not set benchmarks for reliability standards.

Price caps appear to have a positive effect on utility rates: in the short run, prices may be lower than they would otherwise have been, and there is an incentive for increased efficiency. However, in the case of electric utilities, there has been an additional concern in view of the PG&E bankruptcy, which shows that poorly designed price caps can create problems.[85]

> A third flaw in California's market design was the use of price caps in its retail power rates. As scarcity drove up wholesale power prices in 2000, the majority of customers in California continued to consume power at retail price levels frozen below 1996 levels. The retail price caps distorted the market by increasing demand and driving price spikes higher. Yet, utilities remained obligated to provide all the power people wanted at capped prices. As a result, price caps had the unintended consequence of driving Pacific Gas and Electric, California's largest utility with $22 billion dollars of assets, from an "A" credit rating to bankruptcy court in less than four months.

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[84] NRRI, "State Electric Reliability Rules and Standards," November 2004.

[85] Lawrence J. Makovich, Cambridge Energy Research Associates, testimony to the U.S. Senate Committee on Governmental Affairs, June 13, 2001.

In most cases, electric price caps appear to have involved the setting of maximum rates, set for a period of time. With the removal of price caps, there have been rate spikes, and there have been concerns that some rates have caused utilities to spend less on service quality. In the case of telecommunications, price caps have allowed for CPI inflation adjustments, offset for productivity improvements.

John Norsworthy has provided a summary of the telecommunications experience as related to quality of service:[86]

> Under appropriate incentives, regulated companies regularly find ways to improve efficiency without beggaring the quality of service *if service quality is appropriately monitored*.

Price caps appear likely to reduce cross-subsidies and regulatory induced inefficiencies, as well a providing an inducement to increased efficiency. The concerns about possible degradation of utility service have been noted; accordingly, monitoring of service quality is important.

C. Postal Regulation in the United Kingdom

The United Kingdom's (UK) Postal Services Act of 2000 established two governmental agencies to safeguard competition and mailer interests: (1) a Postal Services Commission (Postcomm) and (2)a Consume r Council for Postal Services (Postwatch). The Act established a Memorandum of Understanding on how the two organizations would co-operate and exchange information regarding postal services.

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[86] John R. Nosworthy, "Incentive Regulation and Service Quality," Harvard Electricity Policy Group, December 2002 at 7.

The mission of Postcomm is to ensure that licensed postal operators – Royal Mail, particularly – meet the needs of their customers throughout the UK. Postcomm carries out its mission by:

(1) *Protecting universal service*. Universal service means that anyone in the UK can post letters and parcels to any other part of the country, at the same affordable rates. Daily delivery of mail to every UK household and business is guaranteed. This must occur six days a week. Mail collection must be provided every day except Sunday.

(2) *Regulating Royal Mail*. With more than 90 percent of the letters market, Royal Mail is the dominant provider of mail services in the UK. In order to protect customers and prevent the company from taking unfair advantage of its dominant position, Postcomm regulates Royal Mail's quality of service and its prices.

Postcomm also licenses postal operators, since the UK postal market has been greatly liberalized. Postcomm is also introducing competition into mail services by opening the UK mail market to competition for bulk mail services (mailing of 4,000 or more items). This program was launched in 2003; there will be a full market opening on January 1, 2006. Both the Postal Regulatory Commission, the Postal Service, and U.S. bulk mailers can take pride in the fact that the U.S. is a world leader in providing worksharing discounts to business mail. The U.S. is decades ahead of the UK.

The role of Postwatch is to protect, promote and develop the interests of all UK postal service customers. Postwatch campaigns for better overall postal service for customers, and apprises the Government, the Regulator and the Royal Mail Group of consumer views, demands and needs. Postwatch has nine committees across the UK with offices in Scotland, Wales, Northern Ireland and six regions across England. Through Postwatch's network of contacts, each region determines its customer needs and ensures that these are properly represented at the national level. At a national level, Postwatch meets regularly with consumer groups to gain insight into customer needs. In addition, Postwatch conducts market research to find out what postal customers think about specific issues.

Postwatch has regular contact with Royal Mail's competitors and mailers to hear about their concerns about the postal market. This allows Postwatch to present the views of the business community to the Royal Mail Group, Postcomm and both the local and national Government.

Postwatch monitors Royal Mail's performance and advises Postcomm on the appropriate action to take if Royal Mail fails to meet its performance targets or breaches its license conditions. Postwatch is involved in local issues such as the closure of specific post offices, problems on local delivery routes, and trials of new products or services in an area. Postwatch assists consumers in filing complaints and aids in resolving complaints with Royal Mail or other postal operator.

On January 1, 2006, Postcomm opened up the mail market. Now licensed companies are able to collect, sort and deliver mail to customers. Competitors to Royal

Mail must continue to apply for an operating license from Postcomm. Royal Mail must continue to provide universal postal service for first and second class mail, including one mail delivery and collection each working day, at a uniform price throughout the UK.

Royal Mail's current price control is in effect for at least four years, from April 1, 2006 to 2010. For the purpose of price controls, Royal Mail's tariffs fall into one of three categories. Those categories are: (1) Basket A, (2) Basket B and (3) the group of price controlled services known as "Access Services."

The prices of Basket A and Basket B products are limited by the application of an "RPI-X" formula which prevents prices from rising by more than inflation (measured by reference to an index or retail prices) less an efficiency factor. After an initial price increase of 6.2 percent in the first year of the control, the efficiency factor (X) is proposed to be 1.5 percent per year for Basket A products and 3.5 percent per year for Basket B products.

The "RPI-X" limit is based upon average prices. Royal Mail is free to adjust individual tariffs by up to 3 percent above the overall limit, each year. However there is a provision for the first weight step price for second class stamped and metered letters to be increased by up to 2 pence in the first year of the control. As previously noted, Royal Mail may increase some prices above the overall limit. However, it must make compensating reductions in other prices within the same Basket such that the overall average increase remains within the specified limit. In addition, the thresholds (currently 3 percent) are applied on a two year rolling basis, so that the price flexibility not taken in one year may be carried over to the following year. The price control is expected to prevent Royal Mail from moving away from geographically uniform rates unless Postcomm gives its consent.

In addition to having price controls, Royal Mail must continue to provide the regulated services on as wide a basis as were offered in March 2006 and under the same terms. This provision was added to the license to prevent price controls from being circumvented by a withdrawal of services.

Royal Mail's service standards are published in its license agreement. A copy of those standards is provided in Appendix I to this document. If Royal Mail fails to meet its service standard, a customer may file a request for compensation. The retail compensation scheme applies to Royal Mail Special Delivery 9 a.m., Royal Mail Special Delivery Next Day, First Class, Second Class, Recorded Signed For, and Standard Parcels. The compensation offered for retail customers is as follows: (1) if a mail item arrives five or more days after it was posted, Royal Mail will compensate the customer with twelve First-Class stamps. In addition, if a customer can provide additional evidence of delay and the claim for compensation is accepted, the customer will be sent a check for £5, or £10 if the mail piece was delivered more than eleven working days after the day of posting and the customer provides additional evidence or proof of delay. If a customer's mail piece is lost, Royal mail will give a minimum of twelve First-Class stamps. However, if there was something of value in the mail piece, Royal Mail will refund the actual loss, up to a maximum of £32 or the market value, whichever is the smaller amount. However, Royal Mail does not pay compensation without an original certificate of posting being produced.

If Royal Mail fails to meet its quality of service targets for bulk qualified products by more than 1 percent, bulk mailers may be entitled to compensation. Eligible customers are compensated on a percentage of their yearly spending on the product concerned. For example, if Royal Mail misses a service target by 1.2 percent, eligible customers will receive compensation, by way of a credit against future invoices, of 1.2 percent of their annual spending on that product. The maximum level of compensation is 5 percent of an account's yearly spending on any one product. If Royal Mail fails to meet its target by less than 1 percent, no compensation is due. If the delay in mail delivery is a result of circumstances beyond Royal Mail's control (i.e., exceptionally severe weather conditions, acts of terrorism and vandalism, or acts of third parties with whom Royal Mail has no contractual relationship), then no compensation is due a mailer.

ANNEX TO CONDITION 4

Scheduled standards and standardised measures maintained in accordance with paragraph 2(a) of Condition 4

	Scheduled services	**Performance bands for scheduled standards**			
		I	**II**	**III**	**IV**
		Standard (%)	**No automatic consequences (%)**	**Users receive price reductions or compensation (%)**	**Postcomm considers investigation (%)**
1	**Grouping 1** Retail first class	93.0	<93.0 but >92.0	92.0 to >88.0	88.0 or less
2	**Grouping 2** Retail second class	98.5	<98.5 but >97.5	97.5 to >93.5	93.5 or less
3	**Grouping 3** Bulk first class	91.0	<91.0 but >90.0	90.0 to >86.0	86.0 or less
4	**Grouping 4** Bulk second class	97.5	<97.5 but >96.5	96.5 to >92.5	92.5 or less
5	**Grouping 5** Bulk third class	97.5	<97.5 but >96.5	96.5 to >92.5	92.5 or less
6	Standard Parcels	90.0	<90.0 but >89.0	89.0 to >85.0	85.0 or less
7	European International Delivery	85.0	<85.0 but >84.0	84.0 to >80.0	80.0 or less
8	Special Delivery (Next Day)	99.0	Compensation in accordance with contractual specification		94 or less
	Standardised measures				
9	Postcode area target % (delivered)	91.5	<91.5 but >90.5	90.5 to >86.5	86.5 or less
10	% of collection points served each day	99.90	<99.90 but >99.80	99.80 to >99.40	99.40 or less
11	% of delivery routes completed each day	99.90	<99.90 but >99.80	99.80 to >99.40	99.40 or less
12	% of items delivered correctly	99.50	<99.50 but >99.40	99.40 to >99.00	99.00 or less

Part Five: Role of the OCA Under the PAEA

Congress explicitly provides for OCA participation in six statutory sections:

1) §404a. The Postal Service is barred from promulgating any rule or regulation that is intended to, or has the effect of, precluding competition; or creates an unfair advantage for itself of any entity funded by the Postal Service. OCA is granted the power to bring complaints under this section.

2) §505. The Postal Regulatory Commission shall designate an officer of the Postal Regulatory Commission in all public proceedings (such as developing rules, regulations, and procedures) who shall represent the interests of the general public. OCA performed this role under the PRA and will continue to do so under the PAEA.

3) §2011(h)(2)(A). The OCA is specifically directed to comment on rules that will be established by the U.S. Treasury concerning competitive postal products.

4) §3653. The OCA is given the power to file comments in the Annual Determination of Compliance.

5) §3661. The OCA is given the power to participate in hearings on the record concerning a change in the nature of postal services.

6) §3662. OCA lacked to power to file complaints under the PRA, but is given the power to do so under the PAEA.